FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

October 1, 2008

Honorable Ron Wyden
United States Senate
Washington, D.C. 20510

Dear Senator Wyden:

Thank you for sharing your views about Federal Deposit Insurance Corporation supervisory policies and their potential impact on the homebuilding industry in Oregon. You raise valid concerns about the weak housing market, which combined with the other financial stressors you mention, can significantly depress the public's confidence in the health of the economy.

The FDIC, as part of its safety and soundness examination process, recommends that lenders take prudent steps to monitor and maintain current data for their real estate portfolios, particularly given present economic circumstances. I can assure you that the FDIC is not prescriptive with respect to loan modifications or other actions. In addition, we strongly encourage banks to work with borrowers to develop mutually advantageous repayment arrangements.

We recognize that a borrower's willingness and ability to repay a loan are fundamental to prudent lending and are more important than ever in a market where real estate values are declining. We encourage the institutions to look to the borrower and his repayment capacity rather than just the value of the underlying collateral.

If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C Bair

Sheila C. Bair

LA08-396

RON WYDEN
OREGON

223 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5244
(202) 224-1280 (TDD)

United States Senate

WASHINGTON, DC 20510-3703

COMMITTEES:
COMMITTEE ON THE BUDGET
COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS
SPECIAL COMMITTEE ON AGING
SELECT COMMITTEE ON INTELLIGENCE
COMMITTEE ON FINANCE

August 27, 2008

FDIC
SEP 16 2008
OFFICE OF LEGISLATIVE AFFAIRS

Ms. Sheila C. Bair
Chairman of the Board of Directors
Federal Deposit Insurance Corporation
550 17th St, NW, Room 6076
Washington, DC 20429

Dear Chairman Bair:

I write today to bring to your attention the potential consequences certain Federal Deposit Insurance Corporation (FDIC) policies are poised to inflict upon Oregon's home building industry and small financial institutions and to ask you to consider alternative approaches that may lessen these impacts.

As you know, the national housing market is experiencing a dramatic downturn in new home sales, resulting in a number of negative developments including, but not limited to, a decrease in the availability of credit and increases in unemployment in the homebuilding and wood products industries. Collectively, these events, among others, have had the effect of diminishing Americans' confidence in the ability of our economy to recover from the current slump.

To its credit the FDIC has recently taken a number of steps to restore that confidence. While many of these measures have been thoroughly thought through, some of them may benefit from more in-depth review.

For instance, in an effort to minimize the potential number of defaults, many banks have extended the terms of building loans as long as the borrower continues to make payments. This has allowed borrowers who are holding larger inventories of new housing stock to maintain and market the properties beyond the closing date specified by the initial loan.

However, FDIC appears to be ordering member banks to cease this practice, in effect forcing borrowers to sell their inventory at lower prices to pay off the construction loans. According to Portland area real estate experts, this is depressing appraisal values and having a deflationary effect on housing stock in Oregon—something our state has mostly avoided to date.

At the same time, the recent FDIC directive to member institutions to reassess the valuations of collateral underlying outstanding commercial homebuilding debt may actually be forcing financially stable borrowers into default. It is my understanding that borrowers whose newly assessed construction loans fail to meet the original 35% loan-to-valuation (LTV) ratio, are being forced to pay the financial institutions an amount necessary to bring the loans into compliance with the original LTV ratios. Due in part to the aforementioned sales downturn, many borrowers may be unable to meet these new financial requirements and may be forced into insolvency. In that event, the lending banks will then be forced to assume ownership of the collateral housing inventory.

Increasing the banks' Real Estate Owned (REO) assets may destabilize not just the real estate market, but also the liquidity of the participating banks. Imposing this kind of liquidity crunch on these banks seems counter to the FDIC's mission of maintaining stability and public confidence in the nation's financial system.

For these reasons, and to avoid a further downward spiral in credit and housing markets, the public and the treasury might be better served by allowing banks to at least temporarily continue to extend the terms of development and construction loans as long as the borrower isn't otherwise in default. If the borrowers can plan out their finances for a prescribed period of time—perhaps 12 months—then they may be willing to designate other, not yet at risk assets, toward the marketing and sale of the subject properties.

As the homebuilding industry is a major contributor to the economic vibrancy of Oregon and the entire country, I ask you to carefully consider whether FDIC policies may be increasing the risk of default by borrowers and whether alternative policies, such as allowing banks to continue to extend development and construction loans as long as the borrower isn't otherwise in default, may reduce this risk as you carry out your monitoring and regulatory duties. Americans require and appreciate a vigorous FDIC, and will benefit from your careful exercise of your regulatory discretion.

If I can be of help to you in this matter, please do not hesitate to contact me or my staff. I have asked Jay Ward, Director of Business Outreach to act as my liaison in this matter. He can be reached in my Portland, Oregon office at (503) 326-7525 or at Jay_Ward@wyden.senate.gov.

Thank you for your attention to this matter.

Sincerely,

Ron Wyden

Ron Wyden
U.S. Senator

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

October 16, 2008

Honorable Hillary Rodham Clinton
United States Senate
Washington, D.C. 20510

Dear Senator Clinton:

Thank you for your letter regarding proposals to acquire Wachovia Corporation, Charlotte, North Carolina.

As you know, since the close of our bidding process, Wells Fargo & Company came forth with a new offer that does not require Federal Deposit Insurance Corporation assistance. On October 12, the Federal Reserve Board approved the application of Wells Fargo & Company to acquire Wachovia Corporation.

If you have further questions or comments, please do not hesitate to contact me at 898-6974 or Eric Spitler, Director of Legislative Affairs, at 898-3837.

Sincerely,

Sheila C Bair

Sheila C. Bair

Duplicate response sent to Senator Clinton

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

October 16, 2008

Honorable Charles E. Schumer
United States Senate
Washington, D.C. 20510

Dear Senator Schumer:

Thank you for your letter regarding proposals to acquire Wachovia Corporation, Charlotte, North Carolina.

As you know, since the close of our bidding process, Wells Fargo & Company came forth with a new offer that does not require Federal Deposit Insurance Corporation assistance. On October 12, the Federal Reserve Board approved the application of Wells Fargo & Company to acquire Wachovia Corporation.

If you have further questions or comments, please do not hesitate to contact me at 898-6974 or Eric Spitler, Director of Legislative Affairs, at 898-3837.

Sincerely,

Sheila

Sheila C. Bair

LA08-467

CHARLES E. SCHUMER
NEW YORK

COMMITTEES:
JOINT ECONOMIC
BANKING
FINANCE
JUDICIARY
RULES

United States Senate

WASHINGTON, DC 20510

October 9, 2008

FDIC
OCT - 9 2008
OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Sheila Bair
Chairman
Federal Deposit Insurance Company
550 17th Street, NW
Washington, DC 20429

Dear Chairman Bair:

As the credit crisis continues to unfold, the federal regulators have had to take extraordinary and aggressive measures to protect our banking system and broader economy from severe deterioration. The Federal Deposit Insurance Company (FDIC) in particular has played a leading role in attempting to protect the stability of the banking system, most recently with its extensive involvement in the negotiations in the sale of Wachovia Corporation.

As negotiations over the sale of Wachovia continue with the Federal Reserve and the Office of the Comptroller of the Currency, it is our hope that the FDIC, in its current role monitoring the negotiations, keeps the interests of all parties in mind in addition to analyzing the impact of any final decisions on the financial system as a whole.

We thank you for the role that you have played to date in getting this situation resolved as quickly and effectively as possible. We share the goal of restoring stability to our capital markets and mitigating the negative consequences of this global credit crisis for the U.S. economy. Please do not hesitate to contact us to discuss this matter in more detail.

Sincerely,

Chuck Schumer

Charles E. Schumer
United States Senator

Hillary Rodham Clinton

Hillary Rodham Clinton
United States Senator

PLEASE RESPOND TO THE FOLLOWING OFFICE:

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

October 16, 2008

Honorable Thad Cochran
United States Senate
Washington, D.C. 20510

Dear Senator Cochran:

Chairman Bair asked me to respond to your letter regarding proposals to acquire Wachovia Corporation.

As you know, since the closing of our bidding process, Wells Fargo & Company came forth with an offer that does not require Federal Deposit Insurance Corporation assistance. The acquisition was subsequently approved on October 12, 2008, by the Federal Reserve Board under its expedited procedures. The primary federal regulators of the banks and savings associations involved in the acquisition imposed no objections.

It is important to emphasize that the Wells Fargo acquisition fully protects all creditors including depositors, insured and uninsured. All banking customers of the merged institutions will be fully covered with no disruption in service. The quick resolution of Wachovia should provide assurance to depositors at a time when public confidence in the safety of their money is critically important.

Your interest in this matter is appreciated. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

Eric J. Spitler

Eric J. Spitler
Director
Office of Legislative Affairs

10/09/2008 16:21 FAX

LA08-464 0002/0003

THAD COCHRAN
MISSISSIPPI

COMMITTEE ON
APPROPRIATIONS
RANKING MEMBER

COMMITTEE ON
AGRICULTURE, NUTRITION,
AND FORESTRY

COMMITTEE ON
RULES AND
ADMINISTRATION

United States Senate
WASHINGTON, DC 20510-2402

October 9, 2008

FDIC
OCT 14 2008
OFFICE OF LEGISLATIVE AFFAIRS

Ms. Sheila C. Bair
Chairman of the Board
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Dear Ms. Bair:

I want to thank you for all of your recent tireless efforts on behalf of the American people. I write to you today to share concerns that have been communicated to me by a group of interested Mississippians.

It is my understanding that the dispute between Citigroup and Wells Fargo regarding the acquisition of Wachovia is extremely complex and is constantly changing status. Because of the FDIC's involvement in this important matter, I am bringing to your attention the thoughts of my concerned constituents who have contacted my office on this topic.

I would appreciate if you would take the time to review the concerns enumerated in the attached letter and would keep their thoughts, and the thoughts of other individual shareholders, in mind as this process moves forward.

Again, I thank you for all of your immeasurable and vital work. Please feel free to contact my office with any questions regarding this matter.

Sincerely,

Thad

THAD COCHRAN
United States Senator

TC/pw

The Honorable Thad Cochran
United States Senate

Dear Senator Cochran:

I am contacting you as an individual as to an urgent emergency request for your assistance in a critical matter of great importance to re-building confidence in the U.S. economy and of grave importance to many of your Mississippi constituents.

For eighteen years I was Chairman of the Board and Chief Executive officer of The Jefferson Bank, Biloxi, MS. Jefferson was held by First Jefferson Corp., a one bank Holding Company. Jefferson was a small locally owned full service commercial bank. Jefferson was very strong in capital and assets. In 1994 First Jefferson merged with SouthTrust Bank. During my time as Chairman of the Board & C.E.O. of the then SouthTrust Bank of South Mississippi we merged in Citizens National Bank, Pascagoula, MS., another very strong locally owned Mississippi bank. In 2004 SouthTrust Corp. merged with Wachovia.

I know I need not review for you the recent events in the financial sectors. However, the events of last week-end relative to Wachovia and the forced sale by F.D.I.C. to Citibank are unimaginable. Wachovia was dealing in good faith with Wells Fargo who was offering, at that time, $20 billion on a typical stock for stock merger. I am told, and as confirmed in this week's Wall Street Journal, that when Wells Fargo said over this past week-end that they needed a bit more time to finalize their due diligence on the Wachovia loan portfolio that the regulators called in Citibank and between 2:00 A.M. on Monday morning and 6:30 A.M. on Monday morning, Wachovia's Board was forced to agree to selling off the bank assets for $2.1 Billion with government assistance to some billions of dollars, the exact amount of which I am unsure.

This was in exchange for the bank not being taken over by the regulators. The news reports say that "this was not a bank failure". Thus, the regulators were not the acquiring party and shareholder approval surely would have been required to sell roughly $700 billion in assets out of the bank corporation. Today Wells Fargo's Board has approved the purchase of Wachovia, not just its assets, but the entire bank Holding Company for $15 billion with no government assistance. The Citibank deal left the 662,000 shareholders holding 2.1 billion shares of Wachovia in a terrible position. Wells Fargo's offer surely does not make the shareholders whole, but does represent today a value of approximately $7.00 per share vs the $1.00 per share from Citibank. The Wells Fargo deal places the Wachovia shareholder in the only AAA rated bank in the U.S. and the opportunity, over time, to regain some of the lost value from the Wachovia high at the beginning of this year at $52.00 per share.

Reports today on CNN, Fox, etc. are saying that Citibank, supported by F.D.I.C., are trying to block Wells Fargo's offer to the shareholders of Wachovia. The shareholders of Wachovia have not approved the "cram down" to Citibank.

The shareholders of Wachovia believed in the core value of Wachovia, stood firm awaiting stability in the market. My personal opinion is that when on last Friday the Congress of the United States of American turned down the "bail-out" bill that Wachovia became the sacrificial lamb to prove to the Congress how critical the "bail out" bill was and what better way than when the markets opened on Monday morning the "forced sale" of Wachovia... Word was running wild of the week-end events between the parties interested in acquiring Wachovia and yes, of the "forced sale". Thus when the market opened, the value of Wachovia "ran out the door". What else would one expect...

Assistance is requested in your guidance of what should be done to save the many Mississippi and U.S. shareholders who are at peril. Those few Gulf Coast residents who are frantically calling me today hold approximately 431,805 shares of Wachovia. This is awful.

Thanking you, I am

D'Auby H. Schiel
Chairman of the Board
Community Bank of Mississippi

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

October 16, 2008

Honorable Carolyn B. Maloney
Chairman
Subcommittee on Financial Institutions
and Consumer Credit
Committee on Financial Services
House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

Thank you for your letter regarding proposals to acquire Wachovia Corporation, Charlotte, North Carolina.

As you know, since the close of our bidding process, Wells Fargo & Company came forth with a new offer that does not require Federal Deposit Insurance Corporation assistance. On October 12, the Federal Reserve Board approved the application of Wells Fargo & Company to acquire Wachovia Corporation.

If you have further questions or comments, please do not hesitate to contact me at 898-6974 or Eric Spitler, Director of Legislative Affairs, at 898-3837.

Sincerely,

Sheila

Sheila C. Bair

LA08-464

CAROLYN B. MALONEY
14TH DISTRICT, NEW YORK

2331 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3214
(202) 225-7944

COMMITTEES:
FINANCIAL SERVICES

GOVERNMENT REFORM

JOINT ECONOMIC COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-3214

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☐ 28-11 ASTORIA BOULEVARD
ASTORIA, NY 11102
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WEBSITE: www.house.gov/maloney

October 8, 2008

FDIC
OCT - 8 2008
OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Sheila Bair
Chairman
Federal Deposit Insurance Company
550 17th Street, NW
Washington, DC 20429

Dear Chairman Bair:

During these difficult economic times, where we have seen immense pressures in our capital markets and on our financial institutions, Congress and federal regulators have been called upon to work quickly to best deal with a rapidly changing situation. One situation that has been receiving significant attention for the way it has been handled in the last few weeks is the fate of Wachovia Corporation.

It is my understanding that there are a variety of options now under consideration regarding the outcome of Wachovia Corporation. It is my hope that any decision that is made regarding this situation is done as quickly as possible and in a way that is fair to all the parties and that most benefits the broader economic system.

I stand ready to work with you on this and on other matters as we move forward. I thank you for you attention in getting this situation resolved as quickly and as beneficially as possible to all parties. Please do not hesitate to contact me with any questions you may have.

Sincerely,

Carolyn B. Maloney

CAROLYN B. MALONEY
Member of Congress

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

October 16, 2008

Honorable Robin Hayes
House of Representatives
Washington, D.C. 20515

Dear Congressman Hayes:

Thank you for your letter regarding proposals to acquire Wachovia Corporation, Charlotte, North Carolina.

Since the close of our bidding process, Wells Fargo & Company came forth with a new offer that does not require Federal Deposit Insurance Corporation assistance. On October 12, the Federal Reserve Board approved the application of Wells Fargo & Company to acquire Wachovia Corporation.

If you have further questions or comments, please do not hesitate to contact me at 898-6974 or Eric Spitler, Director of Legislative Affairs, at 898-3837.

Sincerely,

Sheila C Bair

Sheila C. Bair

ROBIN HAYES
8TH DISTRICT, NORTH CAROLINA

130 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) [illegible]
FAX: (202) [illegible]
[illegible]

COMMITTEES:

COMMITTEE ON ARMED SERVICES
COMMITTEE ON AGRICULTURE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Congress of the United States
House of Representatives
Washington, DC 20515–3308

LHUD 1~

DISTRICT OFFICES:

137 UNION STREET, SOUTH
CONCORD, NC [illegible]
(704) [illegible]
FAX (704) [illegible]

230 EAST FRANKLIN STREET
ROCKINGHAM, NC [illegible]
([illegible]) [illegible]
FAX ([illegible]) [illegible]

TOLL FREE IN NC
([illegible]) [illegible]

FDIC
OCT 3 2008
OFFICE OF LEGISLATIVE AFFAIRS

October 3, 2008

Sheila Bair
Chairman, Federal Deposit Insurance Corporation
550 17th Street, NW
Washington DC 20429

Dear Chairman Bair:

I am writing you with sincere concern over FDIC's announced opposition to the merger between Wachovia and Wells Fargo.

I certainly understand why the other party is opposed – as evidenced by the terms of this latest merger, they got a great deal and they want to keep it.

But for the life of me, I cannot understand why the FDIC would stand in the way of Wachovia entering into an agreement that seems better for their employees, shareholders, customers and the community around them. And since FDIC is not part of this merger, it would seem that it's better for the taxpayer as well.

From all accounts, the merger announced Monday was anything but a negotiated deal with two willing parties. It was a forced arrangement with FDIC in the middle.

I don't understand why FDIC has taken the position they have, but I would like to know. I eagerly await your response.

Sincerely,

Robin Hayes

Robin Hayes,
Member of Congress

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

October 16, 2008

Honorable Mike Hewitt
Senate Republican Leader
Washington State Senate
314 Legislative Building
Olympia, Washington 98504

Dear Senator Hewitt:

Chairman Bair asked me to respond to your letter regarding the failure of Washington Mutual Bank.

On September 25, 2008, the Office of Thrift Supervision declared Washington Mutual Bank insolvent and the Federal Deposit Insurance Corporation was appointed receiver. The FDIC has facilitated a transfer of all the assets and most of the liabilities of Washington Mutual Bank to JPMorgan Chase. JPMorgan Chase paid a premium of $1.88 billion to acquire those assets and liabilities.

JPMorgan Chase purchased assets with a book value of $298.7 billion. Additionally, they acquired liabilities totaling $258.5 billion. The actual market value of those assets is yet to be determined. However, according to media reports issued by JPMorgan Chase, they immediately wrote down the book value of the assets by $30 billion.

Alan Fishman, Chief Executive Officer of Washington Mutual Bank, did in fact have a golden parachute agreement which could have paid him $11.6 million for what in effect was three weeks work. That agreement was between Mr. Fishman and the bank holding company, Washington Mutual, Inc. Since the FDIC does not regulate bank holding companies, the FDIC did not approve that agreement. Additionally, the FDIC is unable to stop the holding company from paying that bonus. However, the holding company has now declared bankruptcy, so it is highly unlikely that the bonus could be paid even if Mr. Fishman were to file a claim in the bankruptcy court.

Your interest in this matter is appreciated. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

Eric J. Spitler

Eric J. Spitler
Director
Office of Legislative Affairs

LA08-432

Washington State Senate

Senator Mike Hewitt
Senate Republican Leader
16th Legislative District

314 Legislative Building
PO Box 40416
Olympia, WA 98504-0416

Phone: (360) 786-7630
FAX: (360) 786-1266
e-mail: hewitt.mike@leg.wa.gov

Via facsimile 202-898-3500

FDIC
SEP 29 2008
OFFICE OF LEGISLATIVE AFFAIRS

September 26, 2008

Sheila Bair, Chairman
Federal Deposit Insurance Corporation
3501 N. Fairfax Dr.
Arlington, VA 22226

Dear Chairman Bair,

On September 25, 2008, the operations of Washington Mutual Bank were seized by federal regulators. Washington Mutual was then sold in a transaction facilitated by the Office of Thrift Supervision (OTS) and the Federal Deposit Insurance Corporation (FDIC). According to news reports, the FDIC allowed Washington Mutual's $134.7 billion in assets to be sold to JPMorgan Chase for $1.9 billion. On June 30th of this year, Washington Mutual's assets were valued at over $188 billion.

Thankfully, the customers of Washington Mutual will be protected. Shareholders and bondholders, however, will reportedly be wiped out. The Washington State Investment Board is reporting that its fund will lose $47 million reducing the amount of retirement funds available to Washington state workers.

The New York Times is now reporting an analysis by James F. Reda and Associates shows that Alan H. Fishman, Washington Mutual's chief executive, will be eligible for $11.6 million in cash severance and will get to keep his $7.5 milllion signing bonus. Mr. Fishman began working for Washington Mutual September 9. So, this multimillion dollar golden parachute is in exchange for two and a half weeks service. This in unconscionable. If shareholders and bondholders are left unprotected, the head of the bank should not be profiting at this level of compensation.

Mr. Fishman's compensation comes on top of Kerry Killinger – long time Washington Mutual chief executive – receiving an eight-figure severance package earlier this month valued at more than $22 million.

The FDIC, of course, did not approve Killinger's golden parachute. Did you give approval to the reported severance portion of Mr. Fishman's parachute?

Earlier this month, it was reported that the chief of executive of Fannie Mae – Daniel Mudd – and the chief of executive of Freddie Mac – Richard Syron – were in line for multi-million dollar severance packages. In Mr. Mudd's case, it was reported the package could be worth as much as $8.4 million. In Mr. Syron's case, it was reported he was in line for as much as $15.5 million.

When the outrage over these packages grew, James Lockart, director of the Federal Housing Finance Agency banned both men from receiving the golden parachute portions of their packages.

I understand the anger of the many Washington Mutual shareholders in Washington state. I strongly object to outrageously large executive compensation for a chief executive with a 2 ½ week tenure when Washington Mutual's shareholders get nothing.

For decency sake, I implore you to consider these shareholders – especially lower and middle income people whose retirement safety nets have just been wiped out. Please do the right thing.

The Federal Housing Finance Agency acted on a golden parachute situation very similar to this one in the case of Freddie Mac and Fannie Mae. If you failed to act on this matter when you had control of Washington Mutual and now believe you cannot press for this action, I would like an explanation of your reasoning for failing to do so.

I look forward to your prompt response.

Mike Hewitt

Senator Mike Hewitt, Leader
Washington State Senate Republican Caucus

CC:
Senator Christopher Dodd, Chair, Banking, Housing and Urban Affairs Committee, U.S. Senate
Senator Richard Shelby, Ranking, Banking, Housing and Urban Affairs Committee, U.S. Senate
Representative Barney Franks, Chair, Financial Services Committee, U.S. House of Representatives
Representative Spencer Bachus, Ranking, Financial Services Committee, U.S. House of Representatives
Senator Patty Murray, U.S. Senate
Senator Maria Cantwell, U.S. Senate
Representative Jay Inslee, U.S. House of Representatives
Representative Rick Larsen, U.S. House of Representatives
Representative Brian Baird, U.S. House of Representatives
Representative "Doc" Hastings, U.S. House of Representatives
Representative Cathy McMorris Rodgers, U.S. House of Representatives
Representative Norm Dicks, U.S. House of Representatives
Representative Dave Reichert, U.S. House of Representatives
Representative Adam Smith, U.S. House of Representatives
Mr. John Reich, Director, Office of Thrift Supervision
Scott Jarvis, Director, Washington State Department of Financial Institutions
Senator Jean Berkey, Chair, Financial Institutions and Insurance Committee, Washington State Senate
Senator Don Benton, Ranking, Financial Institutions and Insurance Committee, Washington State Senate
Representative Steve Kirby, Chair, Insurance, Financial Services and Consumer Protection Committee, Washington State House of Representatives
Representative Dan Roach, Ranking, Insurance, Financial Services and Consumer Protection Committee, Washington State House of Representatives
Rob McKenna, Washington State Attorney General

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

October 16, 2008

Honorable Virginia Foxx
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Foxx:

Chairman Bair asked me to respond to your letter regarding proposals to acquire Wachovia Corporation.

As you know, since the closing of our bidding process, Wells Fargo & Company came forth with an offer that does not require Federal Deposit Insurance Corporation assistance. The acquisition was subsequently approved on October 12, 2008, by the Federal Reserve Board under its expedited procedures. The primary federal regulators of the banks and savings associations involved in the acquisition imposed no objections.

It is important to emphasize that the Wells Fargo acquisition fully protects all creditors including depositors, insured and uninsured. All banking customers of the merged institutions will be fully covered with no disruption in service. The quick resolution of Wachovia should provide assurance to depositors at a time when public confidence in the safety of their money is critically important.

Your interest in this matter is appreciated. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

Eric J. Spitler

Eric J. Spitler
Director
Office of Legislative Affairs

LA08-485

VIRGINIA FOXX
5TH DISTRICT, NORTH CAROLINA

430 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
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Congress of the United States
House of Representatives
Washington, DC 20515-3305

COMMITTEE ON EDUCATION AND LABOR

COMMITTEE ON AGRICULTURE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

FDIC
OCT 14 2008
OFFICE OF LEGISLATIVE AFFAIRS

October 3, 2008

Eric Spitler
Director, Office of Legislative Affairs
Federal Deposit Insurance Corporation
550 Seventeenth Street, NW, Room 6076
Washington, DC 20429

Dear Eric:

During these uncertain economic times, all of us are distressed to learn of the failure of such a fine institution as Wachovia Bank that has served North Carolinians so well for so many years. It is my hope that the shareholders, customers and taxpayers will receive the best possible result from the negotiations over the future of the company. It is also very important to keep the public informed of any developments as this process moves forward. I request that you share with me any information regarding the FDIC's involvement or intervention in the proposed merger between Wachovia and Wells-Fargo. Best wishes.

Sincerely,

Virginia Foxx

Virginia Foxx
Member of Congress

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

October 16, 2008

Honorable Sheldon Whitehouse
United States Senate
Washington, D.C. 20510

Dear Senator Whitehouse:

Thank you for your letter dated October 2, which I received on October 15, sharing your comments on the recent turmoil in the nation's economy.

The core mission of the Federal Deposit Insurance Corporation is to maintain stability and public confidence in the nation's financial system by insuring deposits, supervising financial institutions, and resolving the failure of insured institutions. In these uncertain economic times, the FDIC's mission is more important than ever in ensuring that the insured deposits of consumers and small businesses are protected in the event of a bank failure. In the 75 year history of the FDIC, no depositor has ever lost a penny of insured funds.

The FDIC remains committed to our mission as we address the issues faced by insured banks and their customers. Again, thank you for your thoughts on these important issues.

Sincerely,

Sheila C Bair

Sheila C. Bair

LA08-482

SHELDON WHITEHOUSE
RHODE ISLAND

COMMITTEES:
AGING
BUDGET
ENVIRONMENT AND PUBLIC WORKS
INTELLIGENCE
JUDICIARY

United States Senate

WASHINGTON, DC 20510-3905

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October 2, 2008

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Room 6076
Washington, DC 20429

Dear Chairman Bair,

My friends Chris Dodd and Jack Reed speak very highly of you, so I take the liberty to write. I would urge you to please consider this letter as you implement the extraordinary authority and discretion Congress has given you.

People across the country are hurting. In the Bush economy, average wages for a household under 55 are down $2,000, and expenses are up $4,600 (not counting child care, another $1,500 increase), for a combined loss of $6,600 in spending power. For someone making $30-40,000 a year, that is a really big deal.

People across the country have been hurting this way for a while, and nobody in authority has given a red hot damn about them, and they know it. Gas companies made record profits while prices at the pump broke their budgets; credit card companies found new and more devious ways to jack effective interest rates over 30% and beyond. They've lost homes. They've lost jobs. They've lost health insurance. It is not pretty.

And all the while, they were subjected to a grotesque spectacle of lavish compensation and Gilded Age excess, often taxed at rates below their own meager incomes.

Now that rich and connected people are in trouble, it seems to them, suddenly Washington is interested, and expecting them to pay for it. Skeptical eyes from struggling families, whose plight is very real but has been widely ignored, now are watching what you will do.

It would be easy for you to implement your new authority in ways that comfortably accomodate the financial world. Since it is your world, you may even think you are alleviating pain overall if you go that road. The banks and CEOs and investment groups and hedge funds you will be working with will be pushing hard for you to accommodate their interests, and you will be surrounded by them, and may yield to an understandable inclination to make them happy. Many of them are your friends.

But you risk, in the lawful exercise of your discretion, so disillusioning and infuriating the long-suffering people, who missed the party but now have to pay for the clean-up, that lasting damage is done to our unity as a nation. You are in a position now to tear the very fabric of this country. And I am afraid you will if you are not VERY attentive to this concern.

When I spoke last week with Secretary Paulson and Chairman Bernanke, I got the impression they saw this as a larger financial problem that contained the smaller political problem of dealing with Congress. I think it is the other way around. We have a smaller financial problem within a larger political problem.

That larger political problem is to maintain sufficient national unity, and sufficient confidence in democratic institutions, to be able to address the massive problems bearing down on us that require action in the near future. These include:

> The over $7 trillion of debt that George W. Bush has run up as President;
>
> Our $34 trillion Medicare liability – which is just one symptom of our bloated and unsustainable health care system;
>
> The $740 billion annual trade deficit the United States of America is running;
>
> The 1.2 billion American credit cards carrying one trillion dollars in debt at often abusive and totally uncontrolled interest rates;
>
> An energy policy that hemorrhages $600 billion a year to oil-producing countries and puts us on the losing end of the biggest wealth transfer in the history of humankind; and
>
> The tons of carbon and greenhouse gases we are pumping into our thin and delicate atmosphere.

These are even more serious problems than our present credit panic, and it will take a unified country to address them through our democratic institutions in a timely and responsible way. Thus my warning: the easy and painless way through this for you may sow the seeds of disaster for our country as these larger problems bear down on us.

Sincerely,

Sheldon Whitehouse
United States Senate

As discussed in my answer to Question #2, I have suggested a number of other steps for Congress to consider that would provide additional protections to consumers. Opportunities exist to improve and expand the ability of the federal banking agencies to protect consumers. The FDIC stands willing to assist Congress and to join with our fellow regulators to explore ways to ensure a financial industry that is profitable for the institutions and fair to its customers.

Q2. Do consumers have adequate protections against predatory lending practices, e.g., subprime credit cards?

A2. While I support the operation of market forces, regulators need to set rules for market participation. Moreover, price competition does not work if consumers do not understand the true cost of financial products. Through appropriate rulemaking, regulators can establish strong protections for consumers that consistently guard against abuse across industry and supervisory lines. Meaningful enforcement authority and sufficient resources should be devoted to that authority.

With regard to credit cards, the Federal Reserve Board recently proposed amendments to Regulation Z, which implements the Truth in Lending Act. The notice of proposed rulemaking on Regulation Z contains significant advances in credit card disclosures. The proposed amendments would require important changes to the format, timing, and content requirements in documents provided to consumers throughout the life of a credit card account, including changes in solicitations, applications, account opening documents, change-in-term notices, and periodic billing statements. These proposed amendments will assist consumers in better understanding key terms of their credit card agreements such as fees, effective interest rates, and the reasons penalty rates might be applied, such as for paying late.

My written testimony describes additional proposals for improving consumer protections regarding credit cards and mortgage lending. I suggest that Congress consider the following reforms:

Create national standards for subprime mortgage lending by all lenders through either legislation or rulemaking under the Home Ownership and Equity Protection Act of 1994 (HOEPA). A statutory approach could draw from the 36 state anti-predatory mortgage laws currently in effect. At its core, however, a statutory framework should address two important areas: (1) the ability of the borrower to repay the loan; and (2) misleading marketing and disclosures that make it unnecessarily difficult for borrowers to fully understand the terms of loan products.

Expand rulemaking authority under Section 5 of the Federal Trade Commission (FTC) Act to all federal banking regulators to address unfair and deceptive practices. Under the FTC Act, the Federal Reserve Board, Office of Thrift Supervision, and the National Credit Union Administration have authority to issue rules regarding unfair or deceptive acts or practices for the institutions under their supervision. But the FTC Act does not give the FDIC authority to write rules that apply to the 5200 state non member banks that it supervises -- nor does it grant that authority to the OCC for its 1700 national banks. Although our examinations indicate that most FDIC-supervised banks are not engaging in predatory practices, the FDIC could more effectively address unfair and deceptive practices if we had rulemaking authority in this area. To effectively address predatory

Thank you in advance for your assistance in this matter.

Sincerely,

Melvin L. Watt, Chairman
Subcommittee on Oversight & Investigations
House Financial Services Committee

LA08-511

United States Senate

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

WASHINGTON, DC 20510-6075

October 21, 2008

FDIC

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OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429-9990

Dear Chairman Bair:

On behalf of the Senate Committee on Banking, Housing, and Urban Affairs, I am writing to confirm that you will testify before the Committee at our hearing on "Turmoil in the U.S. Credit Markets: Examining Recent Regulatory Responses." The hearing is scheduled for **Thursday October 23rd at 10:00 a.m.** in the Banking Committee's hearing room located in the **Dirksen Senate Office Building, room 538.**

The Committee would find it helpful for your testimony to discuss recent actions taken by the FDIC to address the financial crisis, including the decision to increase deposit insurance and guarantee senior bank debt. As a board member of the HOPE for Homeowner's program, as well as a holder of mortgages and mortgage-backed securities as a result of recent market interventions, we are particularly interested in the FDIC's actions to assist Americans in avoiding foreclosure, and any recommendations for how we can better help families avoid foreclosure.

For purposes of the Committee Record and printing, your written statement must be submitted in electronic form by email to Amy_Friend@banking.senate.gov and Dawn_Ratliff@banking.senate.gov, or on a CDRW in WordPerfect (or other comparable program) format and typed double spaced. Also, two ORIGINAL copies of the statement must be included for the printers, along with 73 copies for the use of Committee members and staff. Your statement should be sent no later than 24 hours prior to the hearing. You should expect to have approximately 5 minutes to give your testimony at the hearing. Your full statement will be made part of the hearing record.

If you have any questions regarding this hearing, please contact Amy Friend at 202-224-7391.

Thank you for your cooperation.

Sincerely,

Chris Dodd

CHRISTOPHER J. DODD
Chairman

~~No written response~~
Chairman's staff responded via phone call

BOB FILNER
51st District, California

Veterans' Affairs Committee
Chairman

Transportation and Infrastructure Committee
Aviation
Highway and Transit
Water Resources and Environment

Congress of the United States
House of Representatives

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October 27, 2008

Sheila Bair
Chairwoman
Federal Deposit Insurance Corporation
550 17th St NW
Room 5046
Washington, DC 20429

FDIC
NOV 5 2008
OFFICE OF LEGISLATIVE AFFAIRS

Dear Sheila:

I write to invite you to address a group of mortgage lenders and community leaders in my district about the FDIC foreclosure prevention plan.

As you know, the foreclosure issue and available responses to the situation are a major topic of speculation and discussion across the country. In addition to bank failures, there are bank mergers, bank buyouts, the purchase of securities by government agencies and the ongoing failure of small and large investment firms. Much of the discussion about these circumstances occurs, as it should, in Washington D.C. However, there is a strong "need to know" in local communities undergoing the impacts.

The San Diego region, a large portion of which I represent, has been dramatically impacted by foreclosures. In the last fiscal quarter alone there were over 13,000 notices of default filed and over 5000 foreclosures. This rate has been repeated over the previous two years.

We have many agencies assisting homeowners to rewrite their loans. Their biggest problems are access and the lack of any clear policy by the banks on workouts. It is my understanding that the FDIC has, in their oversight of Indy Mac, developed a consistent and pragmatic set of guidelines for other lenders. We know as well that Fannie Mae and Freddie Mac and now Treasury are in oversight of large numbers of bad loans and in need of a workout plan.

We are deeply concerned about the opportunity of our residents to access fair treatment in their financial duress. We want to support your efforts to standardize these practices.

Accordingly, I, in conjunction with the City Club of San Diego, the Chamber of Commerce and the City/County Reinvestment Task Force, chaired by Councilman Tony Young and County Supervisor Ron Roberts, would like to invite you to come to San Diego and present your plan. We can also discuss with local partners a strategy to support your efforts. The dates for this event are flexible. I urge you to contact my scheduler Nora May, at (619)-422-5963 and Mr. Jim Bliesner, Director of the City/County Reinvestment Task Force at (858)-694-8771 to find a date that works on everyone's calendar.

Sincerely,

Bob

BOB FILNER
Member of Congress

Cc: Mr. George Mitrovich, CEO, The San Diego City Club
Mr. Anthony Young, Councilman 4th District, San Diego City Council
San Diego Chamber of Commerce

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FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

November 4, 2008

Honorable Brad Sherman
House of Representatives
Washington, D.C. 20515

Dear Congressman Sherman:

Thank you for your letter regarding the Federal Deposit Insurance Corporation's need for office space in Southern California. We are in the process of acquiring leased space for a West Coast Temporary Satellite Office (WCTSO). This office will serve as a temporary satellite operation for our resolution and receivership function that is based in our Dallas Regional Office.

The WCTSO will handle the management and liquidation of receivership assets from failed banks and will be staffed by approximately 300-600 non-permanent employees and contractors. The FDIC requires approximately 200,000 square feet of space for a lease term of three to five years. This temporary office will be closed when work is completed.

The FDIC is conducting a lease competition in accordance with our leasing policy and we are nearing completion of the competitive process. Several landlords in the Los Angeles and Orange County areas identified by our national broker have submitted proposals. An evaluation team will recommend the offer that is determined to be the best value for the FDIC, considering mission objectives, price, and other qualitative factors.

Subsequent to completion of the competition, a business case will be presented to the FDIC Board of Directors for site selection approval. After Board approval, the FDIC will announce the selection decision.

I appreciate your interest in this matter. If you have further questions or concerns, please contact me at (202) 898-6794 or Eric Spitler, Director of the Office of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C. Bair

Sheila C. Bair

LA08-504

BRAD SHERMAN
UNITED STATES CONGRESS

October 17, 2008

PH: (202) 225-5911
FAX: (202) 225-5879

FDIC
OCT 2 1 2008
OF LEGISLATIVE AFFAIRS

VIA FACSIMILE

The Honorable Sheila C. Bair
Chairwoman
Federal Deposit Insurance Corporation
550 17th Street, NW, MB-6020
Washington, DC 20429

Re: FDIC Los Angeles Area Office: In Support of Woodland Hills Site

Dear Chairwoman Bair:

I am writing with regard to the Federal Deposit Insurance Corporation's ("FDIC") proposal to locate an office in the Los Angeles area. I urge you to establish an office in the Woodland Hills area of the San Fernando Valley, home to a number of important financial and insurance institutions, as well as the U.S. Bankruptcy Court. I understand that you are looking for a site with 200,000 square feet capable of housing approximately 600 employees, and are considering a site in the Woodland Hills area of the City of Los Angeles.

The San Fernando Valley is home to nearly two million residents. According to the most recent report prepared by the U.S. Census Bureau on the San Fernando Valley, 30 percent of the population age 25 and over have received a bachelor's degree or higher. California State University, Northridge, located in the heart of the San Fernando Valley, has one of the region's largest and most respected programs in accounting, finance, and business.

The Warner Center area of Woodland Hills is easily accessible via freeway and public transit through the Metro Orange Line and Metro Rapid Bus service. The Warner Center Transit Hub, which connects local and regional mass transit systems (including the Metro Orange Line), is within walking distance of the Woodland Hills site the FDIC is currently evaluating.

The City of Los Angeles, represented by Mayor Antonio R. Villaraigosa and local City Councilmember Dennis P. Zine, strongly supports the location of an FDIC office in Woodland Hills. The City can meet the FDIC's requirements including occupancy of a site in Woodland Hills by the end of the year, and will be providing you with other important information about the benefits of locating an office in the San Fernando Valley. In particular, Mayor Villaraigosa's letter to you of October 16, 2008 (copy attached) says in part:

"As Mayor, I am also able to fast track our permitting process to meet your deadlines and to offer economic incentives such as water and power discounts...I would request that the City have an opportunity to present its best case to you before any decision is reached."

I am particularly interested in bringing the resources of the Federal government closer to our constituents and businesses. Should the FDIC establish an office in Woodland Hills, you will find a well-educated, highly-motivated workforce in the San Fernando Valley eager to support the FDIC's core mission, vision, and values.

Thank you for your consideration. I look forward to the FDIC's site selection decision.

Sincerely,

BRAD SHERMAN
Member of Congress

Attachment

cc: Mayor Antonio R. Villaraigosa
Los Angeles City Council

ANTONIO R. VILLARAIGOSA
MAYOR

October 16, 2008

The Honorable Sheila C. Bair
Chairwoman and Members of the Board of Directors
Federal Deposit Insurance Corporation
550 - 17th St., NW, Room MB-6020
Washington, DC 20429

Dear Chairwoman Bair and Members of the Board of Directors:

I am writing to request your support for a decision to locate a new regional office of the Federal Deposit Insurance Corporation (FDIC) in the LNR property located in Woodland Hills, California.

It is my understanding you are looking for a site that has 200,000 square feet and is capable of housing approximately 600 employees. You also need to fast track the permitting requirement in order to occupy the space by the end of this year.

The LNR site is perfectly suited for the FDIC. It has the required space; is easily accessible both by freeway and by public transportation; is in the heart of the San Fernando Valley, with one of Southern California's most educated workforces; is in close proximity to several financial and insurance institutions including within feet of the U.S. Bankruptcy Court.

As Mayor, I am also able to fast track our permitting process to meet your deadlines and to offer economic incentives such as water and power discounts.

Unfortunately, I have only now been made aware of your pending decision. I would request that the City have an opportunity to present its best case to you before any decision is reached.

Thank you for your consideration.

Very truly yours,

ANTONIO R. VILLARAIGOSA
Mayor

ARV:jbc

Cc: Members of the Los Angeles Congressional Delegation

200 NORTH SPRING STREET • LOS ANGELES, CALIFORNIA 90012
PHONE: (213) 978-0600 • FAX: (213) 978-0750
EMAIL: MAYOR@LACITY.ORG

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

November 4, 2008

Honorable Jerry Moran
Ranking Minority Member
Subcommittee on General Farm Commodities and Risk Management
Committee on Agriculture
House of Representatives
Washington, D.C. 20515

Dear Congressman Moran:

Thank you for your letter inquiring about bilateral over-the-counter (OTC) interest rate swaps and cleared futures contracts.

The Federal Deposit Insurance Corporation's risk-based capital requirements for the counterparty credit risk associated with OTC interest rate swaps and cleared futures contracts are consistent with the treatment of the Basel Committee on Banking Supervision's "International Convergence of Capital Measurement and Capital Standards" (Basel I) and "Basel II: International Convergence of Capital Measurement and Capital Standards: A Revised Framework" (Basel II). In conjunction with interagency rulemakings with the other federal banking agencies, the FDIC's implementation of Basel I and the Basel II advanced approaches for risk-based capital rules are codified at 12 C.F.R. Part 325, Appendices A and D, respectively. The FDIC also is involved in an interagency rulemaking that would implement the Basel II Standardized Approach.

Enclosed are copies of the FDIC's Financial Institution Letter (FIL) No. 59-95, announcing the implementation of Basel I for derivatives contracts and FIL No. 107-2007, announcing the implementation of the Basel II advanced approaches risk-based capital rule for derivatives contracts.

I also am enclosing data prepared by our Capital Markets staff regarding the positions in interest rate derivatives at FDIC-supervised institutions and an overview of the capital treatments for interest rate swaps and cleared futures contracts under both the Basel I-based and advanced approaches regulatory capital frameworks.

I hope this information is helpful. To set up a meeting with our agency subject matter experts or if you have additional questions, please contact Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C. Bair

Sheila C. Bair

Enclosure

DATA REGARDING OUTSTANDING INTEREST RATE DERIVATIVES CONTRACTS AND RISK-BASED CAPITAL REQUIREMENTS FOR BILATERAL OTC INTEREST RATE SWAPS AND CLEARED FUTURES CONTRACTS

I. Notional amount and maturity profile of interest rate derivatives at FDIC-supervised institutions

Information on the outstanding notional amounts of interest rate derivatives for individual institutions can be found on Schedules RC-L and RC-R of the quarterly, publicly available Consolidated Reports of Condition and Income (Call Report) filed by all insured U.S. commercial banks and trust companies.[1]

In total as of June 30, 2008, institutions supervised by the FDIC reported interest rate swaps with notional amounts of $184.4 billion. The Call Report does not provide a maturity break down for interest rate swaps. However, it does provide maturity information for all types of interest rate derivatives contracts excluding futures contracts. These institutions also reported interest rate derivatives contracts with a notional amount of $84.4 billion with maturity less than one year, $73.4 billion with a maturity between one and five years, and $54.4 billion with a maturity greater than five years.[2]

II. Capital Requirements

Basel I

Bilateral OTC interest rate swaps:

Capital requirements for bilateral OTC interest rate swaps are calculated by multiplying a credit equivalent amount of the swap contract by the counterparty's risk weight. The first step in this process is to determine the credit equivalent amount which is the sum of current exposure (CE) and potential future exposure (PFE).

To calculate the CE, a bank must first calculate the mark-to-market value of the underlying contract. The CE is the mark-to-market value if the value is positive (i.e. the bank is in-the-money); otherwise the CE is zero.

The PFE is calculated by multiplying the notional amount of the contract by a credit conversion factor (CCF).[3] The CCFs for interest rate contracts are based on maturity as follows:

[1] Call Reports are available at https://cdr.ffiec.gov/public/SearchFacsimiles.aspx.
[2] These numbers include swaps, forwards, and purchased options on interest rate contracts, but do not include notional amounts for single currency interest rate swaps in which payments are made based on two floating rate indices.
[3] No PFE is calculated for single currency interest rate swaps in which payments are made based on two floating rate indices (so called floating/floating or basis swaps); the credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

Remaining maturity	CCF
One year or less	0.0%
More than one year to five years	0.5%
Greater than five years	1.5%

Once the credit equivalent amount is determined, that amount is then risk weighted based on the counterparty. The risk weights applied to various types of counterparties are listed in Table II of Appendix A to Part 325. For example, the risk weight for a depository institution in the United States is 20 percent. Risk weights applied to credit equivalent amounts for derivatives contracts are capped at 50 percent. The final capital requirement is eight percent times the risk-weighted credit equivalent amount.

If a bank has multiple interest rate derivatives contracts with the same counterparty, the bank may be allowed to net these exposures and calculate capital requirements on the netting set[4] as opposed to calculating capital requirements separately for each position with the same counterparty. Netting allows a bank to offset in-the-money positions with out-of-the-money positions with the same counterparty.

Netting is incorporated by altering the calculation of the credit equivalent amount. In the case of netting, the CE is the sum of all positive and negative mark-to-market values of all contracts in the netting set (again, if this final number is negative, then the CE is zero). The PFE is the sum of the PFE calculations for all contracts in the netting set adjusted by a formula which gives partial recognition of offsetting contracts.[5]

Cleared futures contracts:

Banks are not required to hold risk-based capital under Basel I for cleared futures contracts traded on an exchange. Specifically, the rule states: "Exchange rate contracts with an original maturity of 14 calendar days or less and derivatives contracts traded on exchanges that require daily receipt and payment of cash variation margin may be excluded from the risk-based ratio calculation."

<u>Basel II</u>

Bilateral OTC interest rate swaps:

---

[4] A netting set is the set of contracts eligible for netting. A netting set is defined by a Master Netting Agreement.
[5] The formula determines an adjusted add-on amount, or net PFE, (A_{net}). The formula is:

$$A_{net}=(0.4\times A_{gross})+0.6(NGR\times A_{gross})$$

NGR is the ratio of net current exposure to gross current exposure. A_{gross} is the sum of the PFE calculations.

The Basel II advanced approaches rule allow banks to choose between two approaches for calculating capital requirements for bilateral OTC interest rate swaps. These approaches will calculate an exposure at default (EAD) for an OTC interest rate swap or a group of derivatives contracts in a netting set.

The first approach is similar to the method described above for Basel I. Instead of applying a risk weight to that amount, the bank uses its own estimate of the probability of default (PD) and loss given default (LGD) of its counterparty for the interest rate swap to calculate a risk weight. The 50 percent risk weight cap does not apply under the Basel II advanced approaches rule.

The second approach allows a bank to develop its own internal models, after obtaining supervisory approval, to calculate required capital. Under this internal models methodology, a bank uses an internal model to estimate the expected exposure for a derivative or netting set, based on a bank's forecast of future interest rate paths. The average positive exposure resulting from these paths is then used to calculate EAD based on a supervisory formula which includes a scalar of 1.4, which could possibly be lowered based on approval from a bank's supervisor.

We expect that the risk-based capital requirement could fall significantly for exposures to which the internal models method is applied. This reduction in risk-based capital requirements under the internal models methodology is a result of: 1) the use of the *average* positive exposure – as opposed to some more conservative value; 2) the incorporation of risk mitigation practices, e.g. collateral posting requirements, into the bank's internal model; and 3) a full recognition of netting. The internal models methodology in the Basel II advanced approaches rule provides an expanded recognition of netting, including cross-product netting, i.e. netting of all types of OTC derivatives with repo-style transactions and eligible margin loans. However, it should be noted that the Basel II advanced approaches rule has not yet been applied.

Cleared futures contracts:

Banks are not required to hold risk-based capital under the Basel II advanced approaches rule for cleared futures contracts traded on an exchange. Specifically, the rule states: "A bank may attribute an EAD of zero to . . . derivatives contracts that are publicly traded on an exchange that requires the daily receipt and payment of cash-variation margin."

FDIC

Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-107-2007
December 7, 2007

RISK-BASED CAPITAL RULES

Final Rule on Advanced Capital Adequacy Framework – Basel II

Summary: The federal bank and thrift regulatory agencies have jointly issued the attached final rule concerning the domestic application of selected elements of the Basel II capital framework. The final rule requires some banks, and permits other banks, to use an internal ratings-based approach to calculate regulatory capital requirements for credit risk and an advanced measurement approach to calculate regulatory capital requirements for operational risk. The final rule will take effect on April 1, 2008.

Distribution:
FDIC-Supervised Banks (Commercial and Savings)

Suggested Routing:
Chief Executive Officer
Chief Financial Officer
Chief Risk Officer

Related Topics:
Basel II
Risk-Based Capital Rules
12 CFR Part 325

Attachments:
Key Aspects of the Final Rule on Risk-Based Capital Standards: Advanced Capital Adequacy Framework – Basel II

Final Rule on Risk-Based Capital Standards: Advanced Capital Adequacy Framework – Basel II

Contacts:
Jason C. Cave, Associate Director, Capital Markets Branch, at jcave@fdic.gov or (202) 898-3548,

Bobby R. Bean, Chief, Capital Markets Policy Section, at bbean@fdic.gov or (202) 898-3575

Note:
FDIC financial institution letters (FILs) may be accessed from the FDIC's Web site at www.fdic.gov/news/news/financial/2007/index.html.

To receive FILs electronically, please visit http://www.fdic.gov/about/subscriptions/fil.html.

Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center, 3501 Fairfax Drive, Room E 1002, Arlington, VA 22226 (1-877-275-3342 or 703-562-2200).

Highlights:

The attached final rule:

- Applies to banking organizations that (1) have consolidated assets equal to $250 billion or more, (2) have consolidated total on-balance sheet foreign exposures of $10 billion or more, (3) elect to use the rule, or (4) are subsidiaries of a bank or bank holding company that uses the rule.
- Provides that a banking organization may be exempt from applying the final rule if its primary federal supervisor determines that the application of the final rule is not appropriate in light of the banking organization's asset size, level of complexity, risk profile, or scope of operations.
- Applies to the determination of risk-based capital requirements for wholesale, retail, equity and securitization exposures. The rule also requires a bank to determine risk-based capital requirements for operational risk.
- Includes prudential safeguards to maintain sufficient capital in the banking system such as (1) providing that no bank can exit the third transitional floor period until the agencies publish a study finding no material deficiencies with the advanced approaches that cannot be addressed by existing tools, (2) maintaining the transitional floor period of at least three years, and (3) retaining the leverage ratio and prompt corrective action standards.

Key Aspects of the Final Rule on Risk-Based Capital Standards: Advanced Capital Adequacy Framework – Basel II

I. Introduction

The final rule is generally consistent with the advanced approaches outlined in the Basel Committee on Banking Supervision document *International Convergence of Capital Measurement and Capital Standards: A Revised Framework, Comprehensive Version*, published in June 2006 (Basel II framework, or framework). The final rule requires certain banks (core banks), and permits other banks (opt-in banks), to use the advanced internal ratings-based approach (AIRB) to calculate regulatory credit risk capital requirements and the advanced measurement approach (AMA) to calculate regulatory operational risk capital requirements. Both core and opt-in banks will remain subject to the present agency rules for Prompt Corrective Action and the leverage ratio.

Specifically, the final rule sets forth the U.S. banking and thrift regulatory agencies' (Agencies) requirements for the U.S. implementation of the AIRB for assessing credit risk capital charges and the AMA for assessing operational risk capital charges. The use of the AIRB and AMA (collectively, the Advanced Approaches) will be required for a core group of large and internationally active U.S. banking organizations (core banks) and allowed for other banking organizations that, on an opt-in basis, are able to qualify for the framework (opt-in banks). Core banks are banking organizations with consolidated total assets (excluding assets held by an insurance underwriting subsidiary of a bank holding company) of $250 billion or more, or with consolidated total on-balance sheet foreign exposure of $10 billion or more. A bank must also apply the Advanced Approaches if it is a subsidiary of another bank or bank holding company that uses the Advanced Approaches, unless it is exempted by its primary federal supervisor from being required to use the Advanced Approaches.

Under the final rule, a bank's on- and off-balance sheet exposures will be divided into four categories: wholesale, retail, securitization and equity. A bank must calculate for each wholesale and retail credit exposure or pool of credit exposures certain key risk inputs, which are described later in this document. These inputs, in conjunction with supervisory formulas described in the rule, determine the risk-based capital requirement.

The final rule also contains a regulatory capital charge for operational risk. Operational risk is the risk of loss resulting from inadequate or failed internal processes, people, and systems or from external events.

The Basel II framework allows three options for calculating capital requirements, which includes the AIRB that is adopted in the attached final rule, a Foundation Approach, and a Standardized Approach. The Agencies are currently developing a Notice of Proposed Rulemaking (NPR) that would provide banks that are not subject to the Advanced Approaches framework with the option of adopting the Standardized Approach of the Basel II framework (Basel II Standardized NPR). The Basel II Standardized NPR will replace the Basel IA notice of proposed rulemaking that was issued on December 26, 2006.[1] The Agencies will pose a question in the Basel II Standardized NPR whether core banking organizations should be allowed to adopt the Standardized Approach as an alternative.

II. Basel II Final Rule

A comprehensive description of the final rule, or all the changes made in response to comments on the Agencies' 2006 Advanced Approaches NPR, is beyond the scope of this document.[2] The interested reader is referred to the *Federal Register* notice. The remainder of this document provides only a few highlights of the final rule.

Pillar 1: Minimum Risk-Based Capital Requirements

U.S. banks and banking organizations are subject to a dual framework of capital regulation. A set of leverage requirements specifies the minimum amount of tier 1

[1] 71 FR 77446 (December 26, 2006).
[2] 71 FR 55830 (September 25, 2006).

capital that banks and banking organizations must hold as a percentage of balance sheet assets. For insured banks, the leverage requirements are an integral component of the statutory framework of Prompt Corrective Action (PCA) mandated in the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA).[3] The leverage and PCA requirements are unaffected by this final rule.

Risk-based capital requirements complement the leverage requirements by requiring capital for risks that are either not reflected on the balance sheet, or that pose materially more risk than the leverage requirements were designed to address. Current risk-based capital rules involve converting the notional amounts of off-balance sheet risks to on-balance sheet equivalents using defined conversion factors, and then requiring capital for the resulting on-balance sheet equivalents, and for all other balance-sheet items, using predefined risk buckets. Current rules also prescribe separate capital requirements for market risk, which apply to a small number of U.S. banks.

Other risks facing banks, such as interest rate risk on exposures held outside the trading account, liquidity risk, strategic or business risk, and reputational risk associated with off-balance sheet activities (for example, with certain asset-backed commercial paper conduits) are not explicitly addressed either by the Advanced Approaches or by the current risk-based capital requirements. These risks will be addressed under the second pillar of the Basel II framework, supervisory review (Pillar 2), which is described later in this document.

Credit Risk. The final rule requires core banks to use the AIRB approach for determining risk-based capital requirements for credit risks. The AIRB approach requires banks to estimate certain key risk parameters for each credit exposure or pool of exposures. Banks must then feed these risk parameters into predefined formulas (supervisory formulas). The supervisory formulas identify the amount of risk-weighted assets that are required for each exposure or pool of exposures. The amount of risk-weighted assets is a function of the risk parameters input by the bank into the supervisory

[3] Statutory PCA requirements apply only to insured depository institutions, not their corporate owners.

formulas. The minimum capital requirement is then, by definition, eight percent of the risk-weighted asset amount (an adjustment to the capital requirement based upon the level of the institution's loan loss reserves is described later).

The AIRB framework is broadly similar to the credit value-at-risk (VaR) approaches used by some banks as the basis for their internal assessment of the economic capital necessary to cover credit risk. It is common for a bank's internal credit risk models to consider a one-year loss horizon, and to focus on a high loss threshold confidence level. As with the internal credit VaR models used by banks, the output of the risk-based capital formulas in the AIRB framework is an estimate of the amount of credit losses over a one-year horizon that would only be exceeded a small percentage of the time. The Agencies' use of a one-year loss horizon is intended to balance the fact that banking book positions likely could not be easily or rapidly exited, with the possibility that a bank could attempt to cover credit losses by raising additional capital should the underlying credit problems manifest themselves gradually. The nominal confidence level of the AIRB risk-based capital formulas (99.9 percent) means that if all the assumptions in the AIRB supervisory model for credit risk were correct for a bank, there would be less than a 0.1 percent probability that credit losses at the bank in any year would exceed the AIRB risk-based capital requirement.[4]

Exposure at default (EAD). To calculate capital requirements for credit risk using the supervisory formulas, banks must estimate certain key risk inputs for each credit exposure or pool of exposures. The first key risk parameter banks must estimate is the exposure at default, or EAD. This is a dollar amount, and it is important because it is the amount against which capital will be held. The EAD of a credit exposure must at least equal the amount of the exposure that is carried on the balance sheet. For portions of an exposure that reside off balance sheet, the EAD is the bank's own estimate of the amount of the exposure that would likely be owed the bank if there were a default. This

[4] Banks' internal economic capital models typically focus on measures of equity capital, whereas the total regulatory capital measure underlying this proposal includes not only equity capital, but also certain debt and hybrid instruments, such as subordinated debt. Thus, the 99.9 percent nominal confidence level embodied in the IRB framework is not directly comparable to the nominal solvency standards underpinning banks' economic capital models.

contrasts with current rules: Instead of converting off-balance sheet amounts using predefined regulatory conversion factors, these amounts are converted based on each bank's own estimate of the appropriate conversion factor.

Probability of default (PD). The second key risk parameter determining the capital requirement for a credit exposure is the probability of default, or PD. The PD is the bank's estimate of the probability the borrower will default over the next 12 months. It is intended to be a conservatively estimated "through the cycle" average of default rates the credit exposure would be likely to experience during both expansionary and recessionary periods of economic activity. The rule gives banks significant flexibility as to how they will estimate their PDs, but these estimates are expected to be supported by historical data including default data from recession periods.

Capital requirements under the rule will depend importantly on banks' PDs. These PDs, in turn, will depend on the way defaults are defined in the banks' databases. Thus, the definition of default is of fundamental importance to the operation of the rule. In the final rule, the Agencies have changed the definition of default for wholesale credit exposures from that proposed in the NPR.

The Agencies have adopted a definition of default for wholesale exposures in the final rule that is consistent with the Basel II framework. In particular, the final rule has deleted the NPR's requirement that default is triggered by a bank incurring a credit-related loss of 5 percent or more of the exposure's initial carrying value in connection with the sale of the exposure or the transfer of the exposure to the held-for-sale, available-for-sale, trading account, or other reporting category. Under the final rule, a bank's wholesale obligor is in default if:

- The bank determines that the obligor is unlikely to pay its credit obligations to the bank in full, without recourse by the bank to actions such as realizing collateral (if held); or
- The obligor is past due more than 90 days on any material credit obligation(s) to the bank.

In the preamble to the final rule, the Agencies provide a discussion of what may constitute an indication of an obligor's unlikeliness to pay its credit obligations in full.

For retail exposures, the final rule retains the proposed definition of default, which is consistent with the Basel II framework. However, the Agencies clarified that, subject to certain considerations, a foreign subsidiary of a U.S. bank may, in its consolidated risk-based capital calculations, use the applicable host jurisdiction definition of default for retail exposures of the foreign subsidiary in that jurisdiction.

Loss given default (LGD). The third determinant of the capital requirement is the loss given default or LGD. LGD is the bank's estimate of the credit loss as a percentage of exposure in the event the borrower defaults. LGD is especially important because the capital requirement is a straight line multiple of the LGD. For example, required capital for an exposure whose LGD is 20 percent will be exactly one half the amount that would be required if the LGD were 40 percent. Similarly, required capital would be zero if the LGD were zero. The LGD is expected to include all material credit related losses including indirect expenses and an appropriate risk-adjusted discount rate for defaulted assets held in a workout mode. It is also expected to reflect the loss experience likely to be realized during economic downturn conditions.

Maturity (M). A bank must also calculate a maturity adjustment, or M, for each wholesale exposure. For wholesale exposures, other than repo-style transactions, eligible margin loans, and certain over the counter (OTC) derivative contracts, M is the weighted-average remaining maturity of the expected contractual cash flows from the exposure, using undiscounted cash flows as weights. For repo-style transactions, eligible margin loans and certain OTC derivative contracts, M is the weighted-average remaining maturity of the individual transactions subject to a qualifying master netting agreement, with the transaction weight based on the transaction's notional amount. For most exposures, M may be no greater than five years and no less than one year; however, for certain transactions with an original maturity of less than one year, M may be set as low as one day.

Expected loss (EL). A final determinant of required capital for a credit exposure or pool of exposures is the expected loss, or EL, defined as the product of EAD, PD and LGD. For example, consider a pool of subprime credit card loans with an EAD of $100. The PD is 10 percent – in other words, $10 of cards per year are expected to default, on average. The LGD is 90 percent, so that the loss on the $10 of defaults is expected to be $9. The EL is then $100 multiplied by 0.10 multiplied by 0.90, that is, $9. EL can be interpreted as the amount of credit losses the lender expects to experience in the normal course of business, year in and year out. If the total EL for the bank, on all its exposures, is less than its allowance for loan and lease losses (ALLL), the excess ALLL is included in the bank's tier 2 capital (this credit is capped at 0.6 percent of credit risk-weighted assets). Conversely, if the total EL exceeds the ALLL, the excess EL is deducted from capital, half from tier 1 and half from tier 2. In this example, the EL that would be compared to the ALLL was a very substantial 9 percent of the exposure. The example is intended to illustrate that for subprime lenders or other lenders involved in high charge-off, high margin businesses, the EL capital adjustment may be significant.

Definition of Securitization Exposures and Hedge Funds. Under the final rule, a traditional securitization is a transaction in which:

- All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties other than through the use of credit derivatives or guarantees;
- The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;
- Performance of the securitization exposures depends upon the performance of the underlying exposures;
- All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities);
- The underlying exposures are not owned by an operating company;

- The underlying exposures are not owned by a small business investment company; and
- The underlying exposures are not owned by a firm an investment in which qualifies as a community development investment.

The final rule also provides the primary federal supervisor of a bank with discretion to exclude from the definition of a traditional securitization those investment firms that exercise substantially unfettered control over the size and composition of their assets, liabilities, and off-balance sheet transactions. The Agencies will consider a number of factors in the exercise of this discretion, including the assessment of the investment firm's leverage, risk profile, and economic substance. This supervisory exclusion is intended to provide discretion to the primary federal supervisor to distinguish structured finance transactions, to which the securitization framework was designed to apply, from more flexible investment firms such as many hedge funds and private equity funds. If the primary federal supervisor excludes an investment that has greater than immaterial leverage, the exposure will be risk weighted at 600 percent.

Securitization Exposures. Securitization exposures are instruments in which there is a tranching of credit risk. Securitization exposures may include mortgage-backed securities, collateralized debt obligations, asset-backed commercial paper, certain types of loan participations, structured investment vehicles and hedge fund exposures.

The final rule provides a hierarchy of approaches that must be used to determine the risk-based capital requirement for a securitization exposure: the ratings-based approach (RBA), the internal assessment approach (IAA), and the supervisory formula approach (SFA). Under the RBA, banks determine risk weights for securitization exposures based on the external ratings assigned to each exposure by a nationally recognized statistical rating organization (NRSRO). The final rule provides a matrix that assigns a risk weight to each external rating depending upon the exposures' seniority and the amount of granularity in the securitization's underlying asset pool. For the IAA, the bank will calculate its risk-based capital requirement for a securitization exposure to an asset-backed commercial paper program by mapping the bank's internal credit assessment of the asset-backed commercial paper securitization exposure to an equivalent NRSRO credit rating. Under the SFA, the bank will apply a formula specified in the final rule for securitization exposures.

Equity Exposures. Equity exposures include publicly traded and non-publicly traded stock as well as instruments (other than securitization exposures) in which the return on the instrument is based on the performance of an instrument representing a direct or direct ownership interest in a company.

The final rule provides two approaches to calculate risk-based capital for equity exposures: the simple risk-weight approach (SRWA) and the internal models approach (IMA). The SRWA generally applies a 300 percent risk weight to publicly traded equity exposures and a 400 percent risk weight to non-publicly traded equity exposures. The final rule also provides for risk weights between zero percent and 100 percent for certain equity exposures, such as equity exposures to a Federal Reserve Bank, Federal Home Loan Bank, or community development corporations. In addition, the SRWA allows a portion of "non-material" equity exposures, up to 10 percent of tier 1 capital plus tier 2 capital, to receive a 100 percent risk weight.

The IMA allows a bank to develop an internal model to produce an estimate of potential loss that is not less than an estimate produced by a Value at Risk methodology using specified parameters. However, a bank generally may not assign a risk weight of less than 200 percent to publicly traded equity exposures and 300 percent to non-publicly traded equity exposures. In addition, if the bank uses the IMA, it is not eligible to assign a preferential risk weight to any "non-material" portion of its equity exposure. A bank may not apply the IMA to equity exposures that receive a zero, 20, or 100 percent risk weight under the SRWA.

Operational Risk. The final rule also provides for the use of the AMA for determining risk-based capital requirements for operational risk. Operational risk is defined as the risk of loss resulting from inadequate or failed internal processes, people, and systems or from external events. This definition also includes legal risk – which is the risk of loss (including litigation costs, settlements, and regulatory fines) resulting from the failure of the bank to comply with laws, regulations, prudent ethical standards, and contractual obligations in any aspect of the bank's business – but excludes strategic and reputational risks.

Under the AMA, a bank will use its internal operational risk management systems and processes to assess its exposure to operational risk. Given the complexities involved in measuring operational risk, the AMA provides banks with substantial flexibility and, therefore, does not require a bank to use specific methodologies or distribution assumptions. Nevertheless, a bank using the AMA must demonstrate to the satisfaction of its primary federal supervisor that its systems for managing and measuring operational risk meet established standards, including producing an estimate of operational risk exposure that meets a one-year, 99.9^{th} percentile confidence interval. A bank's estimate of operational risk exposure includes both expected operational loss (EOL) and unexpected operational loss (UOL) and forms the basis of the bank's risk-based capital requirement for operational risk.

The AMA allows a bank to base its risk-based capital requirement for operational risk on UOL alone if the bank can demonstrate to the satisfaction of its primary federal supervisor that the bank has eligible operational risk offsets, such as certain operational risk reserves, that equal or exceed the bank's EOL. To the extent that eligible operational risk offsets are less than the EOL, the bank's risk-based capital requirement for operational risk must incorporate the shortfall.

Market Risk. The Agencies are finalizing the rulemaking that would change certain aspects of the Agencies' market risk capital rules. The proposal will improve risk sensitivity and enhance the disclosure of qualitative and quantitative factors.

Total Capital Requirement. The total capital requirement for a bank subject to this final rule includes the amount of capital determined by the application of the AIRB framework and the amount determined for operational risk under the AMA formulas (and, for banks subject to the market risk capital standards, a market risk capital charge).

The formulas derive an actual dollar amount for a capital requirement. Accordingly, in order to calculate capital ratios for regulatory purposes, the Advanced Approaches transform this direct capital requirement into a risk-weighted assets equivalent. This is done by multiplying the dollar amount of the calculated capital charge by a 12.5 conversion factor – the reciprocal of the 8 percent minimum capital requirement.

Pillar 2: Supervision

The second pillar of the Basel II framework, supervisory review, outlines several principles highlighting the need for banks to assess their capital adequacy positions relative to risk, and the need for supervisors to review and take appropriate actions in response to those assessments, such as requiring additional buffer capital given the risk profile of the institution. While the final rule primarily focuses on the first pillar, minimum capital requirements, there are significant provisions within the rule that require supervisory review.

The Agencies intend that banks adopting the Advanced Approaches possess the highest level and quality of internal risk measurement and management systems. Not only must these banks develop and maintain qualifying loss and default data for portfolios subject to the AIRB framework, but those measurement systems must be subject to strict internal control processes, stress testing and validation programs, independent review and oversight, and other qualitative standards.

Similar standards are required for the measurement and management of operational risk. Clearly, a capital standard is not the sole or complete solution to address operational risks. As described in the final rule, the AMA for determining a capital charge for operational risk will depend heavily upon supervisory judgment. Active federal supervision, independent auditors, effective internal controls and strong bank management are obvious key components.

In February 2007, the Agencies issued proposed guidance for a bank's internal capital adequacy assessment process (ICAAP) and the process for a comprehensive supervisory assessment of capital adequacy.[5] A bank's primary federal supervisor will assess the bank's overall capital adequacy and will take into account a bank's ICAAP, its compliance with the minimum capital requirements set forth in this rule, and all other relevant information. The primary federal supervisor will require a bank under its jurisdiction to increase its capital levels if the supervisor determines that current levels are deficient or some element of the bank's business practices suggests the need for more capital. In addition, a primary federal supervisor may, under its enforcement authority, require a bank to modify or enhance risk management and internal control authority, or reduce risk exposures, or take any other action as deemed necessary to address identified supervisory concerns.

Pillar 3: Disclosures

Market discipline is a key component of the Basel II framework. Under the third pillar, disclosure requirements are established to allow market participants to assess key information about an institution's risk profile and its associated level of capital, provide for comparability of risk elements, and at the same time allow bank management adequate flexibility. Increased disclosures, especially regarding a bank's use of the AIRB approach for credit risk and the AMA for operational risk, are intended to allow an institution's private sector stakeholders to more fully evaluate the institution's financial

[5] 72 FR 9189, February 28, 2007.

condition, including its capital adequacy. This greater transparency is critical in order to foster the development of a significant amount of market discipline.

The final rule requires the top-tier legal entity at the global, consolidated level – either the top-tier banking holding company or depository institution, if not under a holding company structure – to make certain mandatory disclosures on a quarterly basis. The final rule also requires one or more senior officers of the bank to attest that the disclosures meet the Agencies' requirements.

In addition to disclosing risk-based capital ratios and their components, the reporting entity must also report other information that is designed to enable market participants to better evaluate the bank's capital structure, risk exposure, risk management performance, and capital adequacy. To further enhance transparency, the reporting entity is encouraged to place all disclosures made over the last three years in a single location on the bank's public Web site.

The final rule requires each reporting entity to have a formal disclosure policy that is approved by the board of directors. This policy must provide for effective internal controls and disclosure controls and procedures to ensure that appropriate verification of the disclosure takes place.

Separately from this final rule, the Agencies will require insured depository institutions (IDIs) and holding companies to report certain supporting details of their risk-based capital calculations on their quarterly reports of financial condition and income filed with the federal banking agencies. Finally, separately from this final rule, the Agencies will collect on a confidential basis from each IDI and holding company adopting the new framework, more detailed data supporting the capital calculations for each type of exposure. Such information will be shared among the Agencies and used for purposes of benchmarking, analyzing trends and promoting consistency in the implementation of these proposals.

A bank's material noncompliance with the qualification requirements is an important factor in market participants' assessments of a bank's risk profile. Under the final rule, a primary federal supervisor may require public disclosure of material noncompliance with the qualification requirements.

Domestic Implementation and Timeline

Both core and opt-in banks will be required to comply with all qualification standards concerning the internal ratings systems used to measure credit and operational risk exposures and will be subject to supervisory requirements for risk management before being able to apply the final rule for regulatory capital calculation purposes. Also, under the final rule, all U.S. institutions will continue to calculate the numerator of the regulatory risk-based capital ratios in a manner substantially similar to the way it is currently calculated. Except for the adjustment based on the difference between EL and ALLL described above, and a few new capital deductions required for advanced banks, the elements of capital will be unchanged under the final rule.

In addition, notwithstanding the presumptive requirement that all IDI subsidiaries adopt the Advanced Approaches if their holding company is adopting the Advanced Approaches, an IDI may request an exemption from its primary federal supervisor from the requirement to adopt the Basel II framework. The primary federal supervisor may grant such a request based on factors such as the size, complexity or risk profile of the IDI. Any such requests would be carefully considered to ensure that banking organizations are not "cherry picking" the framework by requesting exemptions for the purpose of selectively applying capital regimes across IDIs in order to minimize regulatory capital requirements.

As indicated earlier, all insured banks will continue to comply with the existing leverage ratio requirements under existing PCA legislation and implementing regulations. Specifically, to be considered well-capitalized under PCA, a bank must have at least a 10 percent total risk-based capital ratio, a 6 percent tier 1 risk-based capital ratio, and a 5 percent leverage ratio. The leverage ratio is the ratio of Tier 1 capital to average total assets. These and other PCA categories will not change.

Under the final rule, all banks will need to submit an implementation plan for approval to their primary supervisors and successfully complete a parallel run of at least four consecutive quarters before they will be allowed to apply the final rule for purposes of determining minimum regulatory capital requirements. During the parallel run, the bank will remain subject to the general risk-based capital rules, including ratios required for PCA, but will also be required to calculate its capital ratios using the advanced approaches included in the final rule.

The bank's primary federal supervisor will have responsibility for determining the bank's readiness to apply an Advanced Approach and is ultimately responsible, after consultation with other relevant supervisors, for determining whether the institution satisfies the qualifying criteria for the AIRB and AMA. The Agencies recognize that interagency consistency in implementing the Advanced Approaches will be important to the ultimate success of any final standards to be implemented and they are developing a uniform set of validation standards and procedures that will ensure consistency.

The bank's primary federal supervisor will notify the bank of the date that it may begin using the Advanced Approaches for determining risk-based capital requirements. However, the final rule imposes three transitional floor periods that limit the amount by which capital may decline under the Advanced Approaches of the final rule relative to the general risk-based capital rules. The bank's primary federal supervisor will inform the bank when it may move from one transitional floor period to the next, and, provided the Agencies release an interagency study finding no material deficiencies with the framework that cannot be addressed with then-existing tools, when it may exit the final transitional floor period.

During the initial transitional floor period for a core or opt-in bank, the bank will be required to calculate its risk-weighted assets under the general risk-based capital rules and multiply by the appropriate transitional floor percentage provided in Table 1. The resulting "floor-adjusted" risk-weighted assets will then be used as the denominator for purposes of determining risk-based capital ratios using the general risk-based capital rules. The resulting capital ratios will be compared against the capital ratios determined under the final rule, with the lower of the ratios binding for risk-based capital and PCA purposes. Banks that do not opt-in to the final rule at the earliest possible date may use the general risk-based capital rules or the Standardized Approach for their transitional floor calculations.

Table 1

Transitional Floor Period	Transitional Floor Percentage
First Floor Period	95 Percent
Second Floor Period	90 Percent
Third Floor Period	85 Percent

For core banks, and banks that opt in to the final rule at the earliest possible date, the transitional floors will be determined using the general risk-based capital rules without consideration of any changes to the risk-based capital rules that may be enacted by the Standardized Approach.

Interagency Study

The Agencies have implemented an important safeguard in the final rule. Under the final rule, the Agencies will jointly evaluate the effectiveness of the new capital framework. The Agencies will issue a series of annual reports during the transition period that will provide timely and relevant information on the implementation of the Advanced Approaches. In addition, after the end of the second transition year (after 2010), the Agencies will publish a study (interagency study) that will evaluate the Advanced Approaches to determine if there are any material deficiencies. For any primary federal supervisor to authorize any bank to exit the third transitional floor period, the interagency study must determine that there are no such material deficiencies that cannot be addressed by then-existing tools, or, if such deficiencies are found, they must be first remedied by changes to regulation. Notwithstanding the preceding sentence, a primary federal supervisor that disagrees with the finding of material deficiency may not authorize a bank under its jurisdiction to exit the third transitional floor period unless it first provides a public report explaining its reasoning.

Federal Register

Friday,
December 7, 2007

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

Department of the Treasury

Office of Thrift Supervision

12 CFR Parts 559, 560, 563, and 567

Risk-Based Capital Standards: Advanced Capital Adequacy Framework—Basel II; Final Rule

Financial Institution Letters

Risk-Based Capital

FIL-59-95
September 8, 1995

TO: CHIEF EXECUTIVE OFFICER
SUBJECT: *Calculation of the Potential Future Exposure of Derivatives*

The FDIC, the Federal Reserve Board and the Office of the Comptroller of the Currency have jointly amended the risk-based capital calculations used to determine the potential future exposure of derivative contracts. The amendment: (1) incorporates a broader range of off-balance-sheet contracts into the calculation; (2) reflects the higher risk exposure of certain types of derivative transactions and contracts with relatively long maturities; and (3) further encourages the use Of bilateral netting agreements, which reduce credit risk. Attached is a copy of the final rule, which is substantially the same as a proposal issued for public comment last year.

Under the final rule, the "conversion factors" used in calculating potential future exposure will be changed to reflect the higher risks of "long-dated" interest rate and exchange rate contracts (i.e., those with remaining maturities of five years or more). Conversion factors for derivative contracts related to equities, precious metals and other commodities will be revised to better reflect the volatility of the underlying indices or prices. Institutions also will be permitted to recognize a reduction in potential future credit exposure for this wider array of transactions now eligible for inclusion in qualifying bilateral netting arrangements.

The final rule will become effective October 1, 1995, for use starting with the Call Report (Report of Condition and Income) for the fourth quarter of the year. For more information, please contact one of the FDIC officials listed on Page 46170 of the attached *Federal Register* notice.

Nicholas J. Ketcha Jr.

Acting Director

Attachment: PDF Format (193 kb, PDF help or hard copy), HTML Format

Distribution: FDIC-Supervised Banks (Commercial and Savings)

Last Updated 07/16/1999

federal register

Tuesday
September 5, 1995

Part IV

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

Risk-Based Capital Standards: Derivative Transactions; Final Rule

LA08-433

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September 19, 2008

FDIC
SEP 29 2008
OFFICE OF LEGISLATIVE AFFAIRS

Ms. Shelia C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Dear Ms. Bair:

I am writing to inquire about the requirements under the Federal Deposit Insurance Corporation capital rules for bilateral over-the-counter (OTC) interest rate swaps versus a cleared futures contract.

The recent financial market turmoil related to the credit crisis has severely affected US financial institutions and their capital levels. Bilateral credit risk related to OTC swaps held by US financial institutions has also been an issue of increased concern. If available, please provide an estimate of the notional amount and maturity profile of bilateral OTC interest swaps held by the financial institutions subject to your jurisdiction as of the most recent reporting period. It would be helpful to know how your agency collects this information and whether such information is readily available to the public.

Your Agency has capital rules the financial institutions subject to your jurisdiction must follow. It is my understanding that under Basel I and II capital rules a bilateral OTC interest rate swap held by a financial institution is considered to be higher risk than a cleared futures contract. As such, financial institutions subject to Basel I and II capital rules are required to hold more capital against their bilateral OTC interest swaps than the institutions would be required to hold if their position were a futures contract which was cleared by a clearinghouse.

I would like to know whether your Agency's capital rules are consistent with the Basel I and II capital rules on the treatment of bilateral OTC interest rate swaps versus cleared futures contracts. Please describe how your Agency's capital rules address the counterparty credit risk for bilateral OTC interest rate swaps versus cleared futures contracts as well as how your capital rules distinguish between OTC swaps of different maturity profiles. In your response, please identify the specific regulation(s) that address this issue.

In addition, please identify and attach to your response and official or informal guidance your Agency has issued addressing the capital treatment of bilateral OTC interest rate swaps and cleared futures contracts. Please discuss in your response what steps your Agency has taken, or is in the process of taking, to make financial institutions aware of this capital treatment. Finally, I would like you to identify Agency staff members(s) who are subject matter experts for this area and their respective contact information.

Very Truly Yours,

Jerry Moran

Jerry Moran

JM:int

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

November 4, 2008

Honorable Henry A. Waxman
House of Representatives
Washington, D.C. 20515

Dear Congressman Waxman:

Thank you for your letter regarding the Federal Deposit Insurance Corporation's need for office space in Southern California. We are in the process of acquiring leased space for a West Coast Temporary Satellite Office (WCTSO). This office will serve as a temporary satellite operation for our resolution and receivership function that is based in our Dallas Regional Office.

The WCTSO will handle the management and liquidation of receivership assets from failed banks and will be staffed by approximately 300-600 non-permanent employees and contractors. The FDIC requires approximately 200,000 square feet of space for a lease term of three to five years. This temporary office will be closed when work is completed.

The FDIC is conducting a lease competition in accordance with our leasing policy and we are nearing completion of the competitive process. Several landlords in the Los Angeles and Orange County areas identified by our national broker have submitted proposals. An evaluation team will recommend the offer that is determined to be the best value for the FDIC, considering mission objectives, price, and other qualitative factors.

Subsequent to completion of the competition, a business case will be presented to the FDIC Board of Directors for site selection approval. After Board approval, the FDIC will announce the selection decision.

I appreciate your interest in this matter. If you have further questions or concerns, please contact me at (202) 898-6794 or Eric Spitler, Director of the Office of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C. Bair

Sheila C. Bair

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LA08-502

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

MEMBER
COMMITTEE ON ENERGY AND COMMERCE

Congress of the United States
House of Representatives
Washington, DC 20515–0530

HENRY A. WAXMAN
30TH DISTRICT, CALIFORNIA

October 17, 2008

FDIC
OCT 20 2008
OFFICE OF LEGISLATIVE AFFAIRS

Mr. Eric Spitler
Director, Office of Legislative Affairs
Federal Deposit Insurance Corporation
550 Seventeenth Street, NW, Room 6076
Washington, D.C. 20429-0002

Dear Mr. Spitler:

I am writing on behalf of Los Angeles Mayor, Antonio Villaraigosa and City Councilmember Dennis Zine. Both elected officials contacted my office regarding their strong support for an FDIC presence of approximately 600 employees in the Warner Center Park in Woodland Hills, California. I have enclosed their correspondence for your review.

I would appreciate the FDIC giving Mayor Villaraigosa and Councilmember Zine's correspondence full and fair consideration consistent with applicable laws, rules, and regulations.

Thank you for your time and assistance in this matter. Please feel free to contact my District Director, Lisa Pinto at (323) 651-1040 with any questions or concerns.

With kind regards, I am

Sincerely,

Henry A. Waxman

HENRY A. WAXMAN
Member of Congress

HAW:mc
Enclosures

ANTONIO R. VILLARAIGOSA
MAYOR

October 16, 2008

The Honorable Sheila C. Bair
Chairwoman and Members of the Board of Directors
Federal Deposit Insurance Corporation
550 - 17th St., NW, Room MB-6020
Washington, DC 20429

Dear Chairwoman Bair and Members of the Board of Directors:

I am writing to request your support for a decision to locate a new regional office of the Federal Deposit Insurance Corporation (FDIC) in the LNR property located in Woodland Hills, California.

It is my understanding you are looking for a site that has 200,000 square feet and is capable of housing approximately 600 employees. You also need to fast track the permitting requirement in order to occupy the space by the end of this year.

The LNR site is perfectly suited for the FDIC. It has the required space; is easily accessible both by freeway and by public transportation; is in the heart of the San Fernando Valley, with one of Southern California's most educated workforces; is in close proximity to several financial and insurance institutions including within feet of the U.S. Bankruptcy Court.

As Mayor, I am also able to fast track our permitting process to meet your deadlines and to offer economic incentives such as water and power discounts.

Unfortunately, I have only now been made aware of your pending decision. I would request that the City have an opportunity to present its best case to you before any decision is reached.

Thank you for your consideration.

Very truly yours,

ANTONIO R. VILLARAIGOSA
Mayor

ARV jhc

Cc: Members of the Los Angeles Congressional Delegation

200 NORTH SPRING STREET • LOS ANGELES, CALIFORNIA 90012
PHONE: (213) 978-0600 • FAX: (213) 978-0750
EMAIL: MAYOR@LACITY.ORG

MAILING ADDRESS:

CITY HALL
200 N. Spring Street
Room [illegible]
Los Angeles, CA 90012
(213) [illegible]
(213) [illegible] Fax
TDD (213) [illegible]

City of Los Angeles

Councilman
Dennis P. Zine
Third District

DISTRICT OFFICES:

[illegible] Street
[illegible], CA [illegible]
(818) 756 [illegible]
(818) 756-8175 Fax
TDD (818) [illegible]

RECEIVED

OCT 1 4 2008

Henry A. Waxman, M.C.
District Office

October 8, 2008

Congressman Henry Waxman
2204 Rayburn H.O.B.
Washington, DC 20515

Dear Congressman Waxman: Henry

I am writing to support the FDIC establishing a presence with 600 jobs in Warner Center Park in Woodland Hills, California. This location is in both of our districts and will benefit the economy and quality of life for both of our constituents.

LNR Property Corporation, 5700 Canoga Avenue in Woodland Hills has the 200,000 square feet of office space available to accommodate the FDIC and it is freeway close with an abundance of housing available in the area. LNR has proposed to offer a generous rent and TI package.

I will diligently work with your staff to keep this important economic interest in our district rather than see it slip away to Orange County or Burbank. Please contact Mr. Ken O'Neil of LNR Property Corporation at (818) 206-3013. For any assistance from my office please contact my Chief of Staff, Cliff Ruff at (213) 473-7003.

This is important for both of our constituents.

Sincerely,

Dennis Zine

DENNIS P. ZINE
Councilman, 3rd District

DPZ:cd/ma

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

November 6, 2008

Honorable Joe Baca
House of Representatives
Washington, D.C. 20515

Dear Congressman Baca:

Thank you for your letter regarding the Federal Deposit Insurance Corporation's need for office space in Southern California. We are in the process of acquiring leased space for a West Coast Temporary Satellite Office (WCTSO). This office will serve as a temporary satellite operation for our resolution and receivership function that is based in our Dallas Regional Office.

The WCTSO will handle the management and liquidation of receivership assets from failed banks and will be staffed by approximately 300-600 non-permanent employees and contractors. The FDIC requires approximately 200,000 square feet of space for a lease term of three to five years. This temporary office will be closed when work is completed.

The FDIC is conducting a lease competition in accordance with our leasing policy and we are nearing completion of the competitive process. Several landlords in the Los Angeles and Orange County areas identified by our national broker have submitted proposals. An evaluation team will recommend the offer that is determined to be the best value for the FDIC, considering mission objectives, price, and other qualitative factors.

Subsequent to completion of the competition, a business case will be presented to the FDIC Board of Directors for site selection approval. After Board approval, the FDIC will announce the selection decision.

I appreciate your interest in this matter. If you have further questions or concerns, please contact me at (202) 898-6794 or Eric Spitler, Director of the Office of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C. Bair

Sheila C. Bair

LR08-537

JOE BACA
43rd District, California
Washington Office:
1527 Longworth House Office Building
Washington, DC 20515-0542
Phone: (202) 225-6161
Fax: (202) 225-8671

District Office:
201 North E Street, Suite 107
San Bernardino, CA 92401
Phone: (909) 885-BACA (2222)
Fax: (909) 888-5959

Congress of the United States
House of Representatives

Committees
Agriculture Committee
Financial Services Committee
Natural Resources Committee
Caucuses
Congressional Hispanic Caucus
Chair

October 28, 2008

Ms. Sheila Bair
Chair, Board of Directors
Federal Deposit Insurance Corporation
550 17th Street, NW. Room 6028
Washington, DC 20429

Ms. Bair:

I write in regards to the FDIC's recent decision to place a new office in Irvine, California, responsible for the liquidation of troubled bank and thrift assets.

As you know, the Inland Empire, and in particular San Bernardino County, which I represent in Congress, has been one of the hardest hit areas in the nation during the current foreclosure crisis. This past September, one out of every 101 homes in San Bernardino County was facing foreclosure. In neighboring Riverside County, one out of every 90 homes faced foreclosure. Currently these counties rank fifth in the nation in overall rates of foreclosure. Given the devastating impact these foreclosures have had on the economic well being of Inland families and communities, I urge you to reverse the FDIC's recent decision to place a new office in Irvine, and instead consider San Bernardino County as an alternate location.

As the transportation hub of California, I am confident you will find the Inland Empire has the airport and freeway capability necessary to meet your needs. The availability of skilled labor and affordable office space should also make San Bernardino County an attractive locale for any new FDIC office. But most importantly, as one of the areas of the nation most devastated by the current foreclosure crisis, the Inland region is in desperate need of this direct assistance in purchasing and managing illiquid assets.

Thank you for your attention to this request. Please contact Mike Trujillo at my San Bernardino office at 909-885-2222 with any further questions or concerns you may have.

Sincerely,

Joe Baca

JOE BACA, Congressman
43rd Congressional District

FDIC
OCT 29 2008
OFFICE OF LEGISLATIVE AFFAIRS

Printed on Recycled Paper

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

November 6, 2008

Honorable Ken Calvert
House of Representatives
Washington, D.C. 20515

Dear Congressman Calvert:

Thank you for your letter regarding the Federal Deposit Insurance Corporation's need for office space in Southern California. We are in the process of acquiring leased space for a West Coast Temporary Satellite Office (WCTSO). This office will serve as a temporary satellite operation for our resolution and receivership function that is based in our Dallas Regional Office.

The WCTSO will handle the management and liquidation of receivership assets from failed banks and will be staffed by approximately 300-600 non-permanent employees and contractors. The FDIC requires approximately 200,000 square feet of space for a lease term of three to five years. This temporary office will be closed when work is completed.

The FDIC is conducting a lease competition in accordance with our leasing policy and we are nearing completion of the competitive process. Several landlords in the Los Angeles and Orange County areas identified by our national broker have submitted proposals. An evaluation team will recommend the offer that is determined to be the best value for the FDIC, considering mission objectives, price, and other qualitative factors.

Subsequent to completion of the competition, a business case will be presented to the FDIC Board of Directors for site selection approval. After Board approval, the FDIC will announce the selection decision.

I appreciate your interest in this matter. If you have further questions or concerns, please contact me at (202) 898-6794 or Eric Spitler, Director of the Office of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C Bair

Sheila C. Bair

LA08-557

Congress of the United States
Washington, DC 20515

October 29, 2008

FDIC
NOV - 4 2008
OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Sheila Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W. Room MB-6028
Washington, D.C. 20429

Dear Chairman Bair:

It has been brought to our attention that the Federal Deposit Insurance Corporation (FDIC) is proceeding with a site selection plan for a southern California office which will liquidate the assets of troubled banks and thrifts in the western United States. As you may know, the Inland Empire in California is widely known to be at the epicenter of the mortgage crisis and is a logical location that should be considered as the site selection process continues.

After a sustained period of unprecedented growth in home sales, new home construction and average home prices, housing markets across the United States have experienced their most serious downturn of the past 60 years. As a result, there have been huge costs to not only borrowers and lenders, but also to entire communities. The high number of foreclosures have resulted in vacant homes that, in turn, may invite crime and create an appearance of market distress, diminishing the market value of other nearby properties.

As the FDIC continues through the selection process, we want to point out that the Inland Empire has average asking rates for office space that are significantly less than in surrounding areas. Additionally, it has higher market vacancy rate, lower lease rates, and has over one million square feet of new office space under construction. Within this region, there are currently five buildings, four of which are on the doorstep of Ontario International Airport (ONT), that meet the FDIC's size and amenity needs. In addition to the availability and affordability of office space, the Inland Empire is geographically relative to the housing crisis at hand.

We support your mission to implement programs that result in mortgage loans that can be sustained over time and to avoid unnecessary foreclosures that harm individual borrowers and the economy. To that end, we encourage the FDIC to consider the Inland Empire as a viable alternative, as part of the selection process, and to ensure the location that is chosen best serves our nation during this housing crisis and difficult time.

Sincerely,

Ken Calvert
KEN CALVERT
Member of Congress

Jerry Lewis
JERRY LEWIS
Member of Congress

Gary Miller
GARY MILLER
Member of Congress

Joe Baca
JOE BACA
Member of Congress

Mary Bono Mack
MARY BONO-MACK
Member of Congress

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

November 7, 2008

Honorable Sheldon Whitehouse
United States Senate
Washington, D.C. 20510

Dear Senator Whitehouse:

Thank you for your letter discussing proposals for a loan modification program. Your interest in this vital issue is appreciated.

Mortgage credit distress and falling home prices are at the heart of the uncertainty plaguing our financial markets. Two factors are driving down these prices. One is an "overhang" of excess vacant homes that is estimated to be approximately 1.1 to 1.3 million units. The other factor is distress sales of foreclosed properties, which are occurring in the hundreds of thousands per year. Loan modification on a large scale appears to be the most effective way to deal with these fundamental problems.

Unfortunately, even though foreclosures are costly to lenders, borrowers, and communities, the pace of loan modifications continues to be extremely slow. In order to counteract this trend, we believe it is imperative to provide incentives to achieve a sufficient scale in loan modifications to stem the rise in foreclosures that is helping to drive home prices downward.

The FDIC's proposal is to offer mortgage servicers who modify past due loans a credit guarantee of up to one half the losses they incur if the loan eventually redefaults. The modification process itself would work very much like the program the FDIC has already initiated at IndyMac Federal Bank to reduce first lien mortgage payments to as low as 31 percent of monthly income. Modifications are based on interest rate reductions, extension of term, and principal forbearance. We believe that modifying loans according to this standard will dramatically reduce their incidence of redefault and foreclosure. Moreover, offering mortgage servicers a well-structured loss share guarantee will provide a decisive financial incentive for them to modify loans on a large scale, thereby limiting the supply of new foreclosed properties put on the market. Modifying loans in place can help to achieve these goals without purchasing the assets outright and placing them under government management.

As you outline in your letter, another approach to modifying past due loans would be to amend the Bankruptcy Code to authorize bankruptcy judges to modify defaulted mortgages on principal residences. While the FDIC has not taken a formal position regarding changes to the Bankruptcy Code, we continue to actively explore approaches to loan modifications that would not result in the negative impact on a borrower's credit history caused by a bankruptcy filing.

In summary, we believe that a loan modification program that provides incentives and/or loss sharing with loan servicers will result in urgently needed relief in the financial markets. In so doing, this program would benefit taxpayers, all of whom are adversely affected, directly or indirectly, by current instability in these markets.

If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C Bair

Sheila C. Bair

LA08-539

SHELDON WHITEHOUSE
RHODE ISLAND

COMMITTEES:
AGING
BUDGET
ENVIRONMENT AND PUBLIC WORKS
INTELLIGENCE
JUDICIARY

United States Senate

WASHINGTON, DC 20510-3905

http://whitehouse.senate.gov
(202) 224-2921
TTY (202) 224-7746
170 Westminster Street, Suite 1100
Providence, RI 02903
(401) 453-5294

October 29, 2008

FDIC
OCT 30 2008
OFFICE OF THE CHAIRMAN

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Room 6076
Washington, DC 20429

Dear Chairman Bair,

The Wall Street Journal (WSJ) reported last week that the Bush Administration is considering a number of proposals to help stem the foreclosure wave. This is a positive, necessary, and overdue development. The financial recovery plan passed by Congress and signed into law on October 3, while critical to address the stability of our financial markets, was clearly only a beginning. What must be done now is to restore our underlying economy. Citizens who were trapped by the housing bubble in over-priced homes and mortgages need to believe that our government is not only concerned with assisting the big banks, but is also dedicated to helping homeowners. The Administration's initial plan to have the mortgage industry voluntarily rework mortgages to prop up the housing market has clearly not worked – and won't. I am glad that you now agree that government action is necessary and appropriate, for the sake of the housing market and economy in general.

I am deeply concerned, however, about some of the proposals under consideration, including the idea of giving banks, in the WSJ's words, a "financial incentive to turn troubled loans into more-affordable mortgages." The price tag to taxpayers for creating this financial incentive, according to the WSJ article, could be in the $40 billion range. The taxpayers have already paid to shore up our banking system. Must every way to address the foreclosure problem involve paying the banks with taxpayer dollars?

There is a more straightforward way to do this, in the form of proposed legislation that would give bankruptcy courts the power to modify mortgage terms on principal residences -- in the same manner that they can modify most other kind of contracts, including mortgages on second and third homes. It strikes me as absurd that a bankruptcy judge can modify the terms of a mortgage on a ski chalet or beach bungalow, but not on a principal residence, and outrageous that banks and lending institutions whose own borrowings can be thus modified are objecting to the same rights for their customers. Legislation to fix this anomaly in the Bankruptcy Code, introduced by Senator Dick Durbin as S. 2136, is viewed by many leading economists as the simplest, most straightforward way to stem the foreclosure tide, giving lenders the incentive on a case by case basis to modify mortgage terms, even before the initiation of bankruptcy proceedings. The bill would cost the taxpayer nothing according to the Congressional Budget Office, and would keep an estimated 638,000 Americans in their homes.

This legislation has been vigorously opposed by the lending industry, and was blocked from consideration in the Senate last spring by the Republican minority. Now the Administration has acknowledged the need to address the foreclosure wave. Let's do it the best way, at no taxpayer expense, using familiar institutions and powers, to provide needed relief to Americans suffering in this crisis.

Sincerely,

Sheldon Whitehouse
United States Senate

CC: Henry M. Paulson, Jr., Secretary, Department of the Treasury
Ben S. Bernanke, Chairman, Federal Reserve Board

United States Senate

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510-6075

October 30, 2008

President George W. Bush
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Bush:

On October 23, the Senate Committee on Banking, Housing, and Urban Affairs held an oversight hearing to review the Administration's progress in implementing the *Economic Emergency Stabilization Act of 2008*, (EESA). EESA provided the Treasury Department with broad and unprecedented authority and with $700 billion to address the key challenges facing our economy.

While members of the Committee raised many issues at the hearing, of paramount concern was the dire need to ensure that all the tools made available by EESA are brought to bear to help families keep their homes by modifying mortgages in order to prevent foreclosures.

In our view, and in the view of many economists and experts from across the political spectrum, the key to the recovery of the economy is recovery of the housing market, and the key to the recovery of the housing market is to reduce foreclosures. As economist Mark Zandi noted in March of this year:

> Only if more homeowners are able to remain in their homes will the negative cycle of foreclosures begetting house price declines begetting more foreclosures be short-circuited. This, in turn, is necessary to ending the downdraft in the housing market that is weighing so heavily on the economy and financial system.

We are aware of recent news reports that progress is being made within your Administration to adopt a program to reduce foreclosures. While we certainly hope that these reports are true, they have been circulating for over a week without confirmation. The fact remains that the Administration has not dedicated the time, attention or resources needed to address the cause of the crisis – the historic levels of foreclosure. Rather, it has focused almost exclusively on the symptoms of the crisis – financial arteries clogged with bad mortgage-backed debt and housing-related losses undermining the capital positions of our financial institutions. While we support the goals of restoring liquidity and bolstering bank capital, these efforts, by themselves, will not end the current turmoil. For this reason, and to address the current policy imbalance, the Treasury Department must use its authority under EESA to act decisively, aggressively, and swiftly to reduce foreclosures.

Section 109 of EESA authorizes the Secretary of the Treasury to "use loan guarantees and credit enhancements to facilitate loan modifications to prevent avoidable foreclosures." We urge you to immediately direct the Treasury to create a program using this authority to comprehensively address the exploding foreclosure crisis. Such a program must encourage systematic modifications designed to create long-term sustainable homeownership, based on transparent criteria.

Further, we ask that you direct the Treasury Department to contract with the Federal Deposit Insurance Corporation (FDIC) to design and implement such a program. As you know, the FDIC has already developed such a program with loans it now owns or services as a result of its takeover of IndyMac Bank. FDIC Chairman Sheila Bair testified at our hearing that the FDIC was willing to take on this responsibility. Further, given the FDIC's demonstrated commitment to the goal of foreclosure prevention, and its proven track record in achieving results, the FDIC is clearly the federal agency best suited to implementing this program quickly and efficiently.

Mr. President, time is short. Every day we delay, thousands more families face the specter of losing their homes. We cannot afford further delay. We ask that you move as quickly on this initiative, and that you continue to explore other options for addressing this very serious problem.

Thank you for considering these views.

Sincerely,

Christopher J. Dodd
Chairman

Tim Johnson

Jack Reed

Charles E. Schumer

Thomas R. Carper

Robert Menendez

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

November 7, 2008

Honorable Charles Grassley
Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

Thank you for your letter regarding discussions between the Department of the Treasury and the Federal Deposit Insurance Corporation on a plan to assist distressed homeowners. In your letter, you ask that the Treasury and the FDIC ensure that no taxpayer dollars are used to assist homeowners who obtained their mortgages improperly.

I strongly agree that any plan to assist distressed homeowners needs to focus on helping legitimate borrowers stay in their homes. As you are aware, mortgage credit distress and falling home prices are at the heart of the uncertainty plaguing our financial markets. Two factors are driving down U.S. home prices: 1) an "overhang" of excess vacant homes estimated at between 1.1 million and 1.3 million units, and 2) distress sales of foreclosed properties, which are taking place at a rate of hundreds of thousands per year. There is no doubt the mortgage crisis is continuing to get bigger and costlier. Thus, the FDIC believes an essential public policy goal is to promote loan modifications to prevent foreclosures.

The FDIC has been advocating loan modifications for more than a year. Meanwhile, foreclosures in the first half of this year were 77 percent above the pace of a year ago. Problem loans 60 days or more past due are rising at a rate of more than 700,000 per quarter, net of any existing problem loans that return to performing status. A program that encourages mortgage lenders and servicers to modify loans on a sustainable basis, and that does so efficiently on a large scale basis, will help us get ahead of this fundamental problem. If we can provide lenders and servicers with appropriate incentives to systematically modify their growing inventory of problem loans, there is hope that we will finally stop falling behind this problem and begin to stabilize our housing markets and our financial system.

You have asked some important questions related to how a loan modification process might be implemented under a federal program. The questions deal with whether the original loan documents will be reviewed, which criteria will be used to determine eligibility, whether fraudulent loans can be detected and excluded, and how covered loans would be managed. As the Treasury and the FDIC have not finalized the design of a loan modification proposal, I will describe the FDIC's actions to modify loans at IndyMac Federal Bank to attempt to address your concerns.

As you are aware, the FDIC has initiated a systematic loan modification program at IndyMac Federal Bank, where it is conservator. This program identifies loans with high monthly payments relative to income and makes offers to borrowers, who are living in their homes, to reduce the monthly payment to as low as 31 percent of monthly income. Modifications are undertaken according to a standard protocol based on interest rate reductions, extensions of term, and principal forbearance. Like any mortgage servicer, the FDIC must undertake a net present value (NPV) test for every modified loan to ensure that this strategy will maximize the value of that loan. One of the advantages of this approach is the ability to modify loans that have been securitized, leaving them in place under private management. The FDIC also requires confirmation of the occupancy status and verification of the current income of the borrower.

Based on this experience, the FDIC has been working with the Treasury to develop a credit guaranty program, as authorized under the Emergency Economic Stabilization Act (EESA), which would provide financial incentives for a wide range of mortgage lenders and servicers to modify high-cost mortgage loans using streamlined protocols similar to those we are applying at IndyMac. The purpose of the proposed credit guaranty program would be to focus the NPV calculation away from immediate foreclosure and toward an analysis of whether a loan modification is a less costly alternative. The credit guaranty would protect mortgage lenders and servicers for up to half of the downside risk of a redefault, a risk made less likely due to the requirement that mortgage payments under modified loans be affordable under a clear, objective standard. As at IndyMac, the FDIC has proposed that loans modified under this process would be subject to verification of borrower income and occupancy status, and the modification would be available only for loans on owner-occupied properties.

While we believe the controls in place at IndyMac are essential to ensure that program costs are contained and that homeowners are qualified to receive assistance, there are no plans to carry out an in-depth analysis of the underwriting that took place at origination. Our goal is to deal with the current crisis by reducing the number of unnecessary foreclosures and maximizing the value of these troubled loans. While such a program can verify that the current homeowner is not a speculator, the program is not designed to sort out the culpability of parties such as the broker and/or appraiser in originating the loan. However, where fraud or other irregularities appear to be issues, the matter would be referred to the appropriate state and federal authorities.

Finally, with regard to the possible purchase or management of problem loans by the federal government, the FDIC's experience has been that problem loans are generally best managed by the private sector as long as the lender or servicer retains the proper financial incentives. Accordingly, we believe that any proposal to systematically facilitate affordable and sustainable loan modifications need not involve government purchases of the underlying mortgage assets. Avoiding foreclosure through cost effective, fair, and sustainable loan modifications should be the goal of any proposal.

Therefore, any new program should provide incentives for current mortgage lenders and servicers to modify loans under their management if this strategy can be shown to maximize the value of the loans.

I hope this information is helpful. We would be happy to brief you on this matter at your convenience. Please contact me at (202) 898-6974, or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila

Sheila C. Bair

Senator -
This is a
good program
I would be
happy to discuss
with you.

LA08-546

United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

FDIC
OCT 30 2008
OFFICE OF LEGISLATIVE AFFAIRS

October 30, 2008

Via Electronic Transmission

The Honorable Henry M. Paulson, Jr.
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Sheila C. Bair
Chairman of the Board
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Secretary Paulson and Chairman Bair:

This morning, I read with great interest the many articles noting that the Department of the Treasury (Treasury) and the Federal Deposit Insurance Corporation (FDIC) are giving serious consideration to covering as many as three million homeowners in danger of foreclosure at a cost of almost $50 billion. While details on the plan are still being worked out, I am writing to strongly suggest that your agencies find a way to ensure that those who improperly and perhaps even fraudulently obtained mortgages are not rescued with taxpayer dollars.

I am troubled by the fact that I have yet to see any information addressing the underlying reason for the losses; namely the loans themselves. We cannot and should not rescue everyone for the sake of it; we need to understand the underlying loans and determine which are viable customers and which are fraudulent or "straw" buyers. There are far too many Americans legitimately struggling to stay in their homes for the Federal Government to ignore those who "gamed" the system with knowledge and intent. In light of this concern, I would appreciate a written response to the following questions by no later than November 5, 2008 as well as a briefing shortly thereafter:

1) Will the Treasury/FDIC conduct a review of the *original* loan documents to confirm the legitimacy of the mortgage and the basis upon which it was approved? If not, why not?

2) What processes will Treasury/FDIC implement to review the mortgages and what criteria will Treasury/FDIC employ to determine which mortgages are worthy of being guaranteed? Please respond in detail.

3) If managed by the government, how will the Treasury/FDIC determine, for example, who are the genuine credit customers; culpability of collusive customers; and outright fraud losses through broker/appraisal collusion?

4) Are the assets underlying each mortgage going to be purchased by the government, managed by the government or managed through identified banks? Please respond in detail.

In cooperating with the Committee's review, no documents, records, data, or other information related to these matters, either directly or indirectly, shall be destroyed, modified, removed, or otherwise made inaccessible to the Committee.

All documents responsive to this request should be sent electronically, in searchable PDF format to Brian_Downey@finance-rep.senate.gov. If you have any questions, please do not hesitate to contact Emilia DiSanto or Jason Foster at (202) 224-4515.

Sincerely,

Chuck Grassley

Charles E. Grassley
Ranking Member

Duplicate responses sent to Congressman Markey [illegible]

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

November 7, 2008

Honorable Barney Frank
Chairman
Committee on Financial Services
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter concerning the use and acceptance of demand drafts.

The Federal Deposit Insurance Corporation recognizes that while most payment processors effect transactions that are legitimate payments for a variety of reputable merchants, telemarketing and online merchants, in the aggregate, have displayed a higher incidence of unauthorized charges and associated returns or charge backs, which is often indicative of fraudulent activity. To address this emerging risk, the FDIC recently issued guidance regarding payment processors to the institutions we supervised to ensure that they take steps to protect customers in these transactions. The enclosed *Guidance on Payment Processor Relationships* reminds institutions that to mitigate the risks, they must assume responsibility for implementing and maintaining an effective system of internal controls and ongoing account monitoring of demand drafts.

In this Guidance, we require financial institutions to be alert to consumer complaints that suggest a payment processor's merchant clients are inappropriately obtaining personal account information. Further, the guidance directs institutions to act promptly when they believe fraudulent or improper activities have occurred related to activities of a payment processor. Appropriate actions may include, but are not limited to filing a Suspicious Activity Report, requiring the payment processor to cease processing for that specific merchant, or terminating the financial institution's relationship with the payment processor.

We also recognize that payment processors pose greater money laundering and fraud risk if they do not have an effective means of verifying their merchant clients' identities and business practices. In these cases, the Guidance requires financial institutions to perform enhanced due diligence and heightened account monitoring.

Proper controls help detect fraudulent activity and mitigate losses to consumers and financial institutions. The FDIC works with financial institutions through the supervisory process to ensure the effectiveness of anti-fraud practices and procedures and seeks to educate consumers about the risks of fraud and their rights should they fall victim to fraud. The FDIC also continues to monitor developments in these payment mechanisms and will take appropriate actions to ensure consumers' rights are adequately protected.

The FDIC investigates consumer complaints about specific financial institutions. Although we are aware of complaints against certain telemarketers, the FDIC has not received complaints of fraud associated with the use of demand drafts. However, the FDIC recognizes that some consumers may be encountering problems. Accordingly, we have developed programs to educate consumers about the warning signs of scams and, as part of these programs, we emphasize that consumers not disclose sensitive account or personal information to unfamiliar parties making unsolicited requests. We publish this information in a variety of venues, including on our website, in press releases, and in the *FDIC Consumer News*.

To more effectively address the risks of fraud associated with demand drafts, the Federal Reserve Board amended Regulation CC in 2006 to place greater liability on financial institutions accepting those drafts for deposit. The amendments shifted liability for an unauthorized demand draft from the customer's bank to the institution that first received the draft for deposit (the depository financial institution). In addition, the interagency Identity Theft Red Flag (Red Flag) rule is another tool that will help banks identify the risk of fraud in certain types of accounts, and compliance with this rule is mandatory by November 1, 2008. The rule requires financial institutions to develop a written plan to detect, prevent, and mitigate identity theft that is appropriate to the size and complexity of the institution and the nature and scope of its activities. For example, the FDIC expects a bank that has a customer who issues demand drafts, either on behalf of the bank or its customers (e.g., telemarketers), to ensure that fraud detection and monitoring processes, such as those included in the Red Flag rule's written identity theft prevention program, are in place.

If you have further questions or concerns, please contact me at (202) 898-6794 or Eric Spitler, Director of the Office of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila

Sheila C. Bair

Enclosure

FDIC

Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-127-2008
November 7, 2008

GUIDANCE ON PAYMENT PROCESSOR RELATIONSHIPS

Summary: The FDIC is issuing the attached guidance that describes potential risks associated with relationships with entities that process payments for telemarketers and other merchant clients. These types of relationships pose a higher risk and require additional due diligence and close monitoring. This guidance outlines risk management principles for this type of higher-risk activity.

Distribution:
FDIC-supervised Institutions

Suggested Routing:
Chief Executive Officer
Executive Officers
BSA Compliance Officer

Related Topics:
Risk Management
FDIC Guidance for Managing Third-Party Risk (FIL 44-2008, June 2008)
FFIEC Handbook on Retail Payment Systems (March 2004)
FFIEC Handbook on Outsourcing Technology Services (June 2004)
FFIEC Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual

Attachment:
Guidance on Payment Processor Relationships

Contact:
Michael Benardo, Chief, Cyber Fraud and Financial Crimes Section, at mbenardo@fdic.gov or (202) 898-7319

Note:
FDIC financial institution letters (FILs) may be accessed from the FDIC's Web site at www.fdic.gov/news/news/financial/2008/index.html.

To receive FILs electronically, please visit http://www.fdic.gov/about/subscriptions/fil.html.

Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226 (1-877-275-3342 or 703-562-2200).

Highlights:

- Account relationships with entities that process payments for telemarketers and other merchant clients could expose financial institutions to increased strategic, credit, compliance, transaction, and reputation risks.
- Account relationships with these higher-risk entities require careful due diligence and monitoring as well as prudent and effective underwriting.
- Payment processors pose greater money laundering and fraud risk if they do not have an effective means of verifying their merchant clients' identities and business practices.
- A financial institution should assess its risk tolerance for this type of activity as part of its risk management program and develop policies and procedures that address due diligence, underwriting, and ongoing monitoring of high-risk payment processor relationships for suspicious activity.
- Financial institutions should be alert to consumer complaints that suggest a payment processor's merchant clients are inappropriately obtaining personal account information.
- Financial institutions should act promptly when they believe fraudulent or improper activities have occurred related to a payment processor.

GUIDANCE ON PAYMENT PROCESSOR RELATIONSHIPS

The FDIC has seen an increase in the number of relationships between financial institutions and payment processors in which the payment processor is a deposit customer of the financial institution and uses its customer relationship to process payments for merchant clients. Most payment processors effect transactions that are legitimate payments for a variety of reputable merchants. However, telemarketing and online merchants, in the aggregate, have displayed a higher incidence of unauthorized charges and associated returns or charge backs, which is often indicative of fraudulent activity. Payment processors pose greater money laundering and fraud risk if they do not have an effective means of verifying their merchant clients' identities and business practices. In these cases, financial institutions should perform enhanced due diligence and heightened account monitoring.

Payment processors typically process payments by creating and depositing remotely created checks (RCCs)—often referred to as "Demand Drafts"—or by originating Automated Clearing House (ACH) debits on behalf of their merchant customers. The payment processor may use its own deposit account to process such transactions, or it may establish deposit accounts for its merchant clients to process transactions. Although all the core elements of managing third-party risk are present in payment processor relationships (e.g., risk assessment, due diligence, and oversight), managing this risk where there may not be a direct customer relationship with the merchant can present challenges for financial institutions. Risks associated with this type of activity are heightened when neither the payment processor nor the financial institution performs adequate due diligence on the merchants for which payments are originated.

Potential Risks Arising from Payment Processor Relationships

Deposit relationships with payment processors expose financial institutions to risks that may not be present in relationships with other commercial customers, including increased strategic, credit, compliance, and transaction risks. In addition, financial institutions also should consider the potential for legal, reputation, and other risks presented by relationships with payment processors, including those associated with customer complaints, returned items, and potential unfair or deceptive practices. Financial institutions that do not adequately manage these relationships may be viewed as facilitating fraudulent or unlawful activity by a payment processor or merchant client. Therefore, it is imperative that financial institutions recognize and understand the businesses with which they are involved.

Financial institutions should be alert for payment processors that use more than one financial institution to process merchant client payments. Processors may use multiple financial institutions because they recognize that one or more of the relationships may be terminated as a result of suspicious activity.

Financial institutions also should be alert to consumer complaints that suggest a payment processor's merchant clients are inappropriately obtaining personal account information and using it to create unauthorized RCCs or ACH debits.

Financial institutions should act promptly when they believe fraudulent or improper activities have occurred related to activities of a payment processor. Appropriate actions may include, but are not limited to, filing a Suspicious Activity Report, requiring the payment processor to cease processing for that specific merchant, or terminating the financial institution's relationship with the payment processor.

Risk Management Controls

Financial institutions should establish clear lines of responsibility for controlling risks associated with payment processor relationships. These include effective due diligence and underwriting, as well as ongoing monitoring of high-risk accounts for an increase in unauthorized returns and suspicious activity. Implementing appropriate controls over payment processors and their merchant clients will help identify those payment processors that process items for fraudulent telemarketers or other unscrupulous merchants and help ensure that the financial institution does not facilitate these transactions. Due diligence, underwriting, and account monitoring are especially important for financial institutions in which processors deposit RCCs and through which processors initiate ACH transactions for their merchant clients.

<u>Due Diligence and Underwriting</u>
Due diligence and effective underwriting are critical for an effective risk management program. Financial institutions should implement policies and procedures to reduce the likelihood of establishing or maintaining an inappropriate relationship with a payment processor through which unscrupulous merchants can access customers' deposit accounts.

Financial institutions that initiate transactions for payment processors should develop a processor approval program that extends beyond credit risk management. This program should include a due diligence and underwriting policy that, among other things, requires a background check of the payment processor and its merchant clients. This will help validate the activities, creditworthiness, and business practices of the payment processor. At a minimum, the policy should authenticate the processor's business operations and assess the entity's risk level. An assessment of the processor should include:

- Reviewing the processor's promotional materials, including its Web site, to determine the target clientele.[1]

[1] Businesses with elevated risk may include offshore companies, on-line gambling-related operations, and on-line payday lenders. For example, a processor whose customers are primarily offshore would be inherently riskier than a processor whose customers are primarily restaurants.

- Determining if the processor re-sells its services to a third party who may be referred to as an "agent or provider of Independent Sales Organization opportunities" or "gateway" arrangements".[2]

- Reviewing the processor's policies, procedures, and processes to determine the adequacy of due diligence standards for new merchants.

- Identifying the major lines of business and volume for the processor's customers.

- Reviewing corporate documentation, including independent reporting services and, if applicable, documentation on principal owners.

- Visiting the processor's business operations center.

Financial institutions should require the payment processor to provide information on its merchant clients, such as the merchant's name, principal business activity, geographic location, and sales techniques. Financial institutions should verify directly, or through the payment processor, that the originator of the payment (i.e., the merchant) is operating a legitimate business. Such verification could include comparing the identifying information with public record and fraud databases and a trusted third party, such as a credit report from a consumer reporting agency or the state Better Business Bureau, or checking references from other financial institutions.

<u>Ongoing Monitoring</u>
Financial institutions that initiate transactions for payment processors should implement systems to monitor for higher rates of returns or charge backs, which often are evidence of fraudulent activity. High levels of RCCs or ACH debits returned as unauthorized or due to insufficient funds can be an indication of fraud.

Financial institutions are required to have a Bank Secrecy Act/Anti-Money Laundering (BSA/AML) compliance program and appropriate policies, procedures, and processes in place for monitoring, detecting, and reporting suspicious activity. Non-bank payment processors generally are not subject to BSA/AML regulatory requirements, and therefore some payment processors may be vulnerable to money laundering, identity theft, fraud schemes, and illicit transactions. The FFIEC BSA/AML Examination Manual urges financial institutions to effectively assess and manage risk with respect to third-party payment processors and, as a result, a financial institution's risk management program should include procedures for monitoring payment processor information, such as merchant data, transaction volume, and charge-back history.

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[2] An Independent Sales Organization is an outside company contracted to procure new merchant relationships. Gateway arrangements are similar to Internet service providers that sell excess computer storage capacity to third parties, who in turn distribute computer services to other individuals unknown to the provider. The third party would make decisions about who would be receiving the service, although the provider would be responsible for the ultimate storage capacity.

Evolving Legal Framework for Remotely Created Checks

The laws and regulations governing the acceptance of RCCs are continually evolving in response to new fraud techniques, technological advancements, increased use of image-based processing, and other factors. As such, financial institutions should ensure that payment processors and their merchants are aware of and comply with the legal/regulatory framework governing these payments and have in place a process to remain informed of changes to applicable laws and regulations, such as:

- Changes to Federal Reserve Bank Operating Circular 3 that clarify electronically created images (including RCC items) that were not originally captured from paper are not eligible to be processed as Check 21 items (effective July 15, 2008).[3]

- Changes to Regulation CC that establish transfer and presentment warranties for RCC items that effectively return the responsibility for ensuring a check is authorized by the account holder to the bank of first deposit (effective July 1, 2006).[4]

- Rules and regulations governing the applicable ACH payment transactions.[5]

- Rules governing the use of telemarketing that require verifiable authorization of payment for services.[6]

Conclusion

The FDIC supports financial institutions' participation in payment systems to serve the needs of legitimate payment processors and their merchant clients. However, to limit potential risks, financial institutions should implement risk management policies and procedures that include appropriate oversight and controls commensurate with the risk and complexity of the activities. At a minimum, risk management programs should assess the financial institution's risk tolerance for this type of activity, verify the legitimacy of the payment processor's business operations, and monitor payment processor relationships for suspicious activity. Financial institutions should act promptly if they believe fraudulent or improper activities have occurred related to activities of a payment processor.

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[3] Federal Reserve Banks Operating Circular No. 3 - Collection of Cash Items and Returned Checks, www.frbservices.org/files/regulations/pdf/operating_circular_3.pdf.
[4] Effective July 1, 2006 [70 Fed. Reg. 71218-71226 (November 28, 2005)].
[5] NACHA [www.nacha.org/ACH_Rules/ach_rules.htm].
[6] Federal Trade Commission Telemarketing Sales Rule [16 CFR 310].

LA08-306

Congress of the United States
Washington, DC 20515

FDIC
AUG 13 2008
OFFICE OF LEGISLATIVE AFFAIRS

August 13, 2008

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 Seventeenth Street, NW
Washington, DC 20429

Dear Chairman Bair:

In June 2007, Representatives Frank and Markey wrote to the Federal Reserve, FDIC, OCC, OTS, and NCUA with several questions regarding the use of and problems associated with demand drafts. While your responses stated that demand drafts can be a convenient and efficient payment method, you and your fellow federal banking regulators acknowledged their vulnerability to abuse despite regulatory efforts to provide financial institutions with guidance and enhance consumer protections. Moreover, the OCC noted that imposing warranty liability on the depository bank in accordance with existing regulations may not be sufficient to achieve appropriate levels of due diligence regarding merchants and third-party processors. As we have seen in the *Wachovia* case, it is these intermediaries that are most likely to perpetrate demand draft-related abuses that victimize elderly, low-income, and mentally disabled individuals.

In light of the recent settlement in the *Wachovia* case, and continued calls from state attorneys general to limit acceptance of demand drafts due to the high potential for fraud, it has become clear that we need stricter consumer protections in place. With the widespread availability of other direct payment options that are less susceptible to abuse, it is increasingly difficult to justify the continued use and acceptance of these instruments.

Please provide us with the specific plans your agency currently has for the promulgation of new rules or the institution of other new safeguards relating to demand draft use and acceptance. We look forward to your reply by September 1, 2008.

BARNEY FRANK	EDWARD J. MARKEY	JOE SESTAK
Member of Congress	Member of Congress	Member of Congress

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

November 7, 2008

Honorable Charles Grassley
Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

Thank you for your letter regarding discussions between the Department of the Treasury and the Federal Deposit Insurance Corporation on a plan to assist distressed homeowners. In your letter, you ask that the Treasury and the FDIC ensure that no taxpayer dollars are used to assist homeowners who obtained their mortgages improperly.

I strongly agree that any plan to assist distressed homeowners needs to focus on helping legitimate borrowers stay in their homes. As you are aware, mortgage credit distress and falling home prices are at the heart of the uncertainty plaguing our financial markets. Two factors are driving down U.S. home prices: 1) an "overhang" of excess vacant homes estimated at between 1.1 million and 1.3 million units, and 2) distress sales of foreclosed properties, which are taking place at a rate of hundreds of thousands per year. There is no doubt the mortgage crisis is continuing to get bigger and costlier. Thus, the FDIC believes an essential public policy goal is to promote loan modifications to prevent foreclosures.

The FDIC has been advocating loan modifications for more than a year. Meanwhile, foreclosures in the first half of this year were 77 percent above the pace of a year ago. Problem loans 60 days or more past due are rising at a rate of more than 700,000 per quarter, net of any existing problem loans that return to performing status. A program that encourages mortgage lenders and servicers to modify loans on a sustainable basis, and that does so efficiently on a large scale basis, will help us get ahead of this fundamental problem. If we can provide lenders and servicers with appropriate incentives to systematically modify their growing inventory of problem loans, there is hope that we will finally stop falling behind this problem and begin to stabilize our housing markets and our financial system.

You have asked some important questions related to how a loan modification process might be implemented under a federal program. The questions deal with whether the original loan documents will be reviewed, which criteria will be used to determine eligibility, whether fraudulent loans can be detected and excluded, and how covered loans would be managed. As the Treasury and the FDIC have not finalized the design of a loan modification proposal, I will describe the FDIC's actions to modify loans at IndyMac Federal Bank to attempt to address your concerns.

As you are aware, the FDIC has initiated a systematic loan modification program at IndyMac Federal Bank, where it is conservator. This program identifies loans with high monthly payments relative to income and makes offers to borrowers, who are living in their homes, to reduce the monthly payment to as low as 31 percent of monthly income. Modifications are undertaken according to a standard protocol based on interest rate reductions, extensions of term, and principal forbearance. Like any mortgage servicer, the FDIC must undertake a net present value (NPV) test for every modified loan to ensure that this strategy will maximize the value of that loan. One of the advantages of this approach is the ability to modify loans that have been securitized, leaving them in place under private management. The FDIC also requires confirmation of the occupancy status and verification of the current income of the borrower.

Based on this experience, the FDIC has been working with the Treasury to develop a credit guaranty program, as authorized under the Emergency Economic Stabilization Act (EESA), which would provide financial incentives for a wide range of mortgage lenders and servicers to modify high-cost mortgage loans using streamlined protocols similar to those we are applying at IndyMac. The purpose of the proposed credit guaranty program would be to focus the NPV calculation away from immediate foreclosure and toward an analysis of whether a loan modification is a less costly alternative. The credit guaranty would protect mortgage lenders and servicers for up to half of the downside risk of a redefault, a risk made less likely due to the requirement that mortgage payments under modified loans be affordable under a clear, objective standard. As at IndyMac, the FDIC has proposed that loans modified under this process would be subject to verification of borrower income and occupancy status, and the modification would be available only for loans on owner-occupied properties.

While we believe the controls in place at IndyMac are essential to ensure that program costs are contained and that homeowners are qualified to receive assistance, there are no plans to carry out an in-depth analysis of the underwriting that took place at origination. Our goal is to deal with the current crisis by reducing the number of unnecessary foreclosures and maximizing the value of these troubled loans. While such a program can verify that the current homeowner is not a speculator, the program is not designed to sort out the culpability of parties such as the broker and/or appraiser in originating the loan. However, where fraud or other irregularities appear to be issues, the matter would be referred to the appropriate state and federal authorities.

Finally, with regard to the possible purchase or management of problem loans by the federal government, the FDIC's experience has been that problem loans are generally best managed by the private sector as long as the lender or servicer retains the proper financial incentives. Accordingly, we believe that any proposal to systematically facilitate affordable and sustainable loan modifications need not involve government purchases of the underlying mortgage assets. Avoiding foreclosure through cost effective, fair, and sustainable loan modifications should be the goal of any proposal.

Therefore, any new program should provide incentives for current mortgage lenders and servicers to modify loans under their management if this strategy can be shown to maximize the value of the loans.

I hope this information is helpful. We would be happy to brief you on this matter at your convenience. Please contact me at (202) 898-6974, or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila

Sheila C. Bair

Senator –
This is a
good program –
I would be
happy to discuss
with you.

LA08-546

United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

FDIC
OCT 30 2008
OFFICE OF LEGISLATIVE AFFAIRS

October 30, 2008

Via Electronic Transmission

The Honorable Henry M. Paulson, Jr.
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Sheila C. Bair
Chairman of the Board
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Secretary Paulson and Chairman Bair:

This morning, I read with great interest the many articles noting that the Department of the Treasury (Treasury) and the Federal Deposit Insurance Corporation (FDIC) are giving serious consideration to covering as many as three million homeowners in danger of foreclosure at a cost of almost $50 billion. While details on the plan are still being worked out, I am writing to strongly suggest that your agencies find a way to ensure that those who improperly and perhaps even fraudulently obtained mortgages are not rescued with taxpayer dollars.

I am troubled by the fact that I have yet to see any information addressing the underlying reason for the losses; namely the loans themselves. We cannot and should not rescue everyone for the sake of it; we need to understand the underlying loans and determine which are viable customers and which are fraudulent or "straw" buyers. There are far too many Americans legitimately struggling to stay in their homes for the Federal Government to ignore those who "gamed" the system with knowledge and intent. In light of this concern, I would appreciate a written response to the following questions by no later than November 5, 2008 as well as a briefing shortly thereafter:

1) Will the Treasury/FDIC conduct a review of the *original* loan documents to confirm the legitimacy of the mortgage and the basis upon which it was approved? If not, why not?

2) What processes will Treasury/FDIC implement to review the mortgages and what criteria will Treasury/FDIC employ to determine which mortgages are worthy of being guaranteed? Please respond in detail.

3) If managed by the government, how will the Treasury/FDIC determine, for example, who are the genuine credit customers; culpability of collusive customers; and outright fraud losses through broker/appraisal collusion?

4) Are the assets underlying each mortgage going to be purchased by the government, managed by the government or managed through identified banks? Please respond in detail.

In cooperating with the Committee's review, no documents, records, data, or other information related to these matters, either directly or indirectly, shall be destroyed, modified, removed, or otherwise made inaccessible to the Committee.

All documents responsive to this request should be sent electronically, in searchable PDF format to Brian_Downey@finance-rep.senate.gov. If you have any questions, please do not hesitate to contact Emilia DiSanto or Jason Foster at (202) 224-4515.

Sincerely,

Chuck Grassley

Charles E. Grassley
Ranking Member

(570) 424-7288

MONROE COUNTY BAR ASSOCIATION
913 MAIN STREET
P.O. BOX 786
STROUDSBURG, PENNSYLVANIA 18360
MONROEBAR.ORG

FAX: (570) 424-8234

November 11, 2008

The Honorable Paul E. Kanjorski
United States House of Representatives
2188 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Kanjorski:

I am writing to you on behalf of the Monroe County Bar Association. Supporters of funding for civil legal services for the poor in Pennsylvania and the United States require your support and assistance on an urgent matter. The Temporary Liquidity Guarantee Program, as it is currently structured by the FDIC regulators, does not cover IOLTA accounts. As a result, a vital source of funding for civil legal aid for the poor could be dramatically reduced. Although this was not intended by the regulators, it may be an unfortunate consequence of the TLGP as currently designed.

I request your immediate action to assure that full coverage, regardless of dollar amount, is provided for these unique and critically important interest-bearing deposit transaction accounts that provide critical funding for civil legal aid. To provide further background, I am enclosing a copy of a letter on this subject that was sent by the Governmental Affairs Office of the American Bar Association to the Chair of the FDIC on October 22, 2008. Comments have been requested by the FDIC for receipt by November 13, 2008 and should be sent to:

> Robert E. Feldman
> Executive Secretary
> Federal Deposit and Insurance Corporation
> 550 17th Street NW
> Washington, DC 20429
> Attention: Comments RIN #3064-AD37

Thank you for your assistance and support in this important matter.

Very truly yours,

Gerard J. Geiger, President
Monroe County Bar Association

cc: Susan Kenny, Executive Director

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

December 17, 2008

Honorable Paul E. Kanjorski
House of Representatives
Washington, D.C. 20515

Dear Congressman Kanjorski:

Thank you for your letter to Chairman Bair on behalf of Gerard Geiger, President of the Monroe County Bar Association, concerning the impact of providing unlimited insurance coverage to noninterest-bearing transaction accounts under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program (TLGP). The FDIC received a number of similar comments during the rulemaking process.

The Final Rule governing the TLGP, issued on November 20, 2008, provides that, assuming the other requirements of the Transaction Account Guarantee Program are met by a participating entity and irrespective of the standard maximum deposit insurance amount defined in the FDIC's regulations (presently $250,000), IOLTAs will be guaranteed by the FDIC in full as noninterest-bearing transaction accounts.

Your interest in this matter is appreciated. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

Eric J. Spitler

Eric J. Spitler
Director
Office of Legislative Affairs

LA08-743

PAUL E. KANJORSKI
11TH DISTRICT, PENNSYLVANIA

COMMITTEE ON
FINANCIAL SERVICES

CHAIRMAN:
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE,
AND GOVERNMENT SPONSORED ENTERPRISES

COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM

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Congress of the United States
Washington, DC 20515-3811

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TOLL FREE HELP-LINE
(800) 222-2346

November 26, 2008

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th St., NW, MB-6028
Washington, DC 20429

Dear Chairman Bair:

Enclosed please find a letter from Gerard Geiger, a constituent of mine who is President of the Monroe County Bar Association.

I share Mr. Geiger's concern regarding a potential reduction in funding for civil legal services for the indigent.

Please direct your staff to promptly look into this matter. Thank you for your consideration.

Sincerely,

Paul E. Kanjorski

Paul E. Kanjorski
Member of Congress

Enclosure

FDIC

Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

November 13, 2008

Honorable Nick Lampson
House of Representatives
Washington, D.C. 20515

Dear Congressman Lampson:

Thank you for your letter to the Federal Deposit Insurance Corporation's Executive Secretary concerning the impact of providing unlimited insurance coverage to non-interest bearing transaction accounts under the FDIC's Temporary Liquidity Guarantee Program (TLGP). We are looking at the concerns you and others have raised with respect to IOLTA accounts.

We have heard from many parties on this issue. I assure you that all views will be carefully considered as we work to finalize the TLGP.

Sincerely,

for

Eric J. Spitler
Director
Office of Legislative Affairs

NICK LAMPSON
22ND DISTRICT TEXAS

Congress of the United States
House of Representatives
Washington, DC 20515-4322

COMMITTEE ON AGRICULTURE

COMMITTEE ON SCIENCE
CHAIRMAN
SUBCOMMITTEE ON ENERGY AND ENVIRONMENT

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

CO-CHAIRMAN AND FOUNDER, CONGRESSIONAL CAUCUS ON MISSING AND EXPLOITED CHILDREN

November 12, 2008

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

ATTN: Comments RIN #3064-AD37

Dear Mr. Feldman:

I am writing to provide comments on the October 23 Interim Rule establishing the Temporary Liquidity Guarantee Program (TLGP). I urge you to use your powers to ensure that the Transaction Account Guarantee Program (TAGP) also covers Interest on Lawyer Trust Accounts (IOLTAs).

IOLTA accounts are essentially the same as covered transactions accounts, and act as clearing accounts for pooled funds from clients. Client funds in an IOLTA account are either in a very small amount or are held for too short a period to earn interest. These funds are typically are for routine actions like as court filing fees, settlements and retainers.

Nearly thirty years ago, the FDIC and Federal Reserve implemented exceptions to permit banks to pay interest on IOLTA accounts, which encouraged the establishment of these accounts, now in all 50 states. IOLTAs provide an indispensable public good without any cost to taxpayers. The remainder of the interest generated by IOLTA accounts is distributed through local grant processes to worthy not-for-profit organizations in each state, including funding legal aid services for foreclosure victims, the poor, legal education programs and victims of domestic violence. According to the American Bar Association, IOLTA grants totaled $240 million last year.

However, because IOLTAs do pay interest, the TLGP Interim Rule issued on October 23 does not fully cover IOLTA accounts. Thus, it is a very real concern that if the interim rule is not be modified, lawyers would abandon IOLTAs and place their client funds exceeding $250,000 in non-interest bearing deposit transaction accounts in order to secure FDIC insurance, and the vital public service activities funded by IOLTA-generated interest would suffer immensely.

would significantly impair the institution's liquidity or would otherwise create significant hardship. The FDIC would consider exemption requests on a case-by-case basis.

The FDIC recognizes that we have access to a $100 billion credit line at Treasury, which, temporarily, can be expanded to $500 billion, as a result of the action taken by Congress in May 2009. But we believe that it is important for the industry to maintain public confidence by demonstrating that it will not reflexively fall back on the public safety net in a period of distress. Prepayment of assessments ensures that the deposit insurance system remains directly industry-funded and preserves Treasury or Federal Financing Bank borrowing for emergency situations. Nonetheless, the mechanics are already in place to implement this option quickly if that should become necessary.

While the FDIC believes that our proposed solution is a reasoned approach to meeting the challenges we will soon face, we have requested comment on all aspects of the proposal and will seriously consider public comments before making a final decision.

If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Paul Nash, Deputy for External Affairs, at (202) 898-6962.

Sincerely,

Sheila

Sheila C. Bair

At this time of economic crisis and rising national foreclosures, it is clear that programs funded by IOLTA-generated income provide an indispensable public benefit to the poor. To preserve these benefits, I strongly urge you to provide an exception in the Final Rule specifying that IOLTA accounts are guaranteed unlimited deposit insurance through TLGP.

Thank you for your consideration.

Sincerely,

Nick Lampson

NICK LAMPSON
Member of Congress

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

November 13, 2008

Honorable Dave Loebsack
House of Representatives
Washington, D.C. 20515

Dear Congressman Loebsack:

Thank you for your letter to the Federal Deposit Insurance Corporation's Executive Secretary concerning the impact of providing unlimited insurance coverage to non-interest bearing transaction accounts under the FDIC's Temporary Liquidity Guarantee Program (TLGP). We are looking at the concerns you and others have raised with respect to IOLTA accounts.

We have heard from many parties on this issue. I assure you that all views will be carefully considered as we work to finalize the TLGP.

Sincerely,

for

Eric J. Spitler
Director
Office of Legislative Affairs

DAVID LOEBSACK
2ND DISTRICT, IOWA

COMMITTEES:
ARMED SERVICES
SUBCOMMITTEES:
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READINESS

EDUCATION AND LABOR
SUBCOMMITTEES:
HEALTH, EMPLOYMENT, LABOR, AND PENSIONS
EARLY CHILDHOOD, ELEMENTARY AND SECONDARY EDUCATION

Congress of the United States
House of Representatives
Washington, DC 20515-1502

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November 12, 2008

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
ATTN: Comments RIN #3064-AD37
550 17th Street, N.W.
Washington, DC 20429

Dear Mr. Feldman:

I am writing to urge you to ensure that the Temporary Liquidity Guarantee Program (TLGP), as established by the October 23, 2008 Interim Rule, includes Interest on Lawyer Trust Accounts (IOLTAs) in the Transaction Account Guarantee Program.

IOLTA programs provide an essential public service, strengthen our judicial system, and are operated at no cost to taxpayers. They exist in all fifty states, the District of Columbia, and the Virgin Islands, and are mandated in 37 states. Through this program, client funds that are too small in amount or held for too brief a period to earn interest for the client are placed in a pooled interest-bearing trust account. Bank fees are paid from the interest earned on these pooled accounts, and the remainder of the interest generated by IOLTA accounts is distributed through local grant processes to not-for-profit organizations to fund critical legal aid services for victims of domestic violence; families facing foreclosure; those affected by consumer fraud; and to fund legal education programs. According to the American Bar Association, IOLTA grants totaled $240 million in 2007.

Currently, the TLGP Interim Rule would not extend unlimited FDIC insurance to IOLTA's because they pay interest. I am concerned that lawyers, working in the best interest of their clients, will choose to place their client funds exceeding $250,000 in non-interest bearing deposit transaction accounts in order to secure FDIC insurance. The resulting loss of funding would have a severe impact on the much-needed public service activities funded by IOLTA-generated interest.

To preserve the benefits of the IOLTA program, and because the interest they pay is dedicated only to third-party non-profit IOLTA programs, rather than to attorney account holders or their clients, I urge you to provide an exception in the Final Rule specifying that IOLTA accounts are guaranteed unlimited deposit insurance through TLGP.

Thank you for your consideration of this matter.

Sincerely,

Dave Loebsack

Dave Loebsack
Member of Congress

CC: Eric Spitler, Director, Office of Legislative Affairs

LA08-642

BARNEY FRANK, MA, CHAIRMAN

United States House of Representatives
Committee on Financial Services
2120 Rayburn House Office Building
Washington, DC 20515

SPENCER BACHUS, AL, RANKING MEMBER

November 13, 2008

FDIC
NOV 17 2008
OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 Seventeenth Street, NW
Washington, DC 20429

Dear Chairman Bair:

The Committee on Financial Services will hold a hearing on "Oversight of Implementation of the Emergency Economic Stabilization Act of 2008 and of Government Lending and Insurance Facilities: Impact on Economy and Credit Availability" on Tuesday, November 18, 2008, in room 2128 Rayburn House Office Building. I am writing to confirm your invitation to testify at this hearing.

Your testimony should address the following specific issues or questions:

- With respect to the programs you have established under EESA or other pre-existing authority to address the problems in the credit and financial markets, what impact are these measures having on the availability of credit and on the economy generally?
- How are decisions being made about the use of TARP funds? What input from industry or other experts are you getting in making these decisions? What conditions are you imposing or reports are you requiring to assure that institutions are using the money in a way that is consistent with the objectives of the program? What other mechanisms do you have to help you evaluate the impact or measure the success of the steps that have been taken?
- Has the authority been used for the right purposes? What additional measures or authority is needed?
- What have been the unintended consequences of the facilities established to date and how are those consequences being addressed?

Please read the following material carefully. It is intended as a guide to your rights and obligations as a witness under the rules of the Committee on Financial Services.

The Form of your Testimony. Under rule 3(d)(2) of the Rules of the Committee on Financial Services, each witness who is to testify before the Committee or its subcommittees must file with the Clerk of the Committee a written statement of proposed testimony of any reasonable length. This must be filed at least two business days before your appearance. Please note that changes to the written statement will not be permitted after the hearing begins. Failure to comply with this requirement may result in the exclusion of your written testimony from the hearing record. Your oral testimony should not exceed five minutes and should summarize your written remarks. The Chair reserves the right to exclude from the printed hearing record any supplemental materials submitted with a written statement due to space limitations or printing expense.

Submission of your Testimony. Please submit at least 100 copies of your proposed written statement to the Clerk of the Committee not less than two business days in advance of your appearance. These copies should be delivered to: Clerk, Committee on Financial Services, 2129 Rayburn House Office Building, Washington, D.C. 20515.

Due to heightened security restrictions, many common forms of delivery experience significant delays in delivery to the Committee. This includes packages sent via the U.S. Postal Service, Federal Express, UPS, and other similar carriers, which typically arrive 3 to 5 days later than normal. The United States Capitol Police have specifically requested that the Committee refuse deliveries by courier. The best method for delivery of your testimony is to have an employee from your organization deliver your testimony in an unsealed package to the address above. If you are unable to comply with this procedure, please contact the Committee to discuss alternative methods for delivery of your testimony.

The Rules of the Committee require, to the extent practicable, that you also submit your written testimony in electronic form. The preferred method of submission of testimony in electronic form is to send it via electronic mail to fsctestimony@mail.house.gov. The electronic copy of your testimony may be in any major file format, including WordPerfect, Microsoft Word, or ASCII text for either Windows or Macintosh. Your electronic mail message should specify the date and which committee or subcommittee you are scheduled to testify before. You may also submit testimony in electronic form on a disk or CD-ROM at the time of delivery of the copies of your written testimony. Submission of testimony in electronic form facilitates the production of the printed hearing record and posting of your testimony on the Committee's Internet site.

Your Rights as a Witness. Under clause 2(k) of rule XI of the Rules of the House, witnesses at hearings may be accompanied by their own counsel to advise them concerning their constitutional rights. I reserve the right to place any witness under oath. Finally, a witness may obtain a transcript copy of his testimony given in open, public session, or in a closed session only when authorized by the Committee or subcommittee. However, by appearing before the Committee or its subcommittees, you authorize the Committee to make technical, grammatical, and typographical corrections to the transcript in accordance with the rules of the Committee and the House.

The Rules of the Committee on Financial Services, and the applicable rules of the House, are available on the Committee's website at http://financialservices.house.gov. Copies can also be sent to you upon request.

The Committee on Financial Services endeavors to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, or have any questions regarding special accommodations generally, please contact the Committee in advance of the scheduled event (4 business days notice is requested) at (202) 225-4247; TTY: 202-226-1591; or write to the Committee at the address above.

Please note that space in the Committee's hearing room is extremely limited. Therefore, the Committee will only reserve 1 seat for staff accompanying you during your appearance (a total of 2 seats). In order to maintain our obligation under the Rules of the House to ensure that Committee hearings are open to the public, we cannot deviate from this policy.

Should you or your staff have any questions or need additional information, please contact Deborah Silberman at (202) 225-4247.

Sincerely,

Barney Frank

Barney Frank
Chairman

BF/ds

Enclosure

cc: The Honorable Spencer Bachus

Duplicate letters sent to all signers

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

November 14, 2008

Honorable Benjamin L. Cardin
United States Senate
Washington, D.C. 20510

Dear Senator Cardin:

Thank you for your letter to the Federal Deposit Insurance Corporation's Executive Secretary concerning the impact of providing unlimited insurance coverage to non-interest bearing transaction accounts under the FDIC's Temporary Liquidity Guarantee Program (TLGP). We are looking at the concerns you and others have raised with respect to IOLTA accounts.

We have heard from many parties on this issue. I assure you that all views will be carefully considered as we work to finalize the TLGP.

Sincerely,

for

Eric J. Spitler
Director
Office of Legislative Affairs

United States Senate

WASHINGTON, DC 20510

November 13, 2008

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

FDIC
NOV 13 2008
OFFICE OF LEGISLATIVE AFFAIRS

ATTN: Comments RIN #3064-AD37

Dear Mr. Feldman:

We are writing to provide comments on the October 23 Interim Rule establishing the Temporary Liquidity Guarantee Program (TLGP). Specifically, we urge you to ensure that the Transaction Account Guarantee Program, through which the FDIC will guarantee certain noninterest-bearing accounts, also covers Interest on Lawyer Trust Accounts (IOLTAs).

Created by various state supreme courts and state legislatures, and made possible by changes in federal banking and IRS laws, IOLTA programs provide an essential public good at no cost to taxpayers. These programs currently operate in all fifty states and in the District of Columbia and the Virgin Islands, and they are mandated in 37 states. Client funds that are too small in amount or held for too brief a period to earn interest for the client, net of bank charges or administrative fees, are placed in a pooled interest-bearing trust account, termed an IOLTA.

Bank fees are paid from the interest earned on these pooled accounts, and the remainder of the interest generated by IOLTA accounts is distributed through local grant processes to not-for-profit organizations in each state, funding invaluable legal aid services for victims of domestic violence, families facing foreclosure, those affected by consumer fraud, and others, as well as legal education programs. According to the American Bar Association, IOLTA grants totaled $240 million in 2007.

However, because IOLTAs do pay interest, the TLGP Interim Rule as issued on October 23 would not extend unlimited FDIC insurance to these accounts. We believe however, that the public benefit generated by IOLTAs, and the fact that the interest they pay is dedicated only to third-party non-profit IOLTA programs, rather than to attorney account holders or their clients, merits an exception in the final rule.

We are concerned that should the interim final rule not be modified to guarantee IOLTAs under TLGP, lawyers would instead place their client funds exceeding $250,000 in non-interest bearing deposit transaction accounts in order to secure FDIC insurance, and that the much-needed public service activities funded by IOLTA-generated interest would suffer.

To preserve the benefits of the IOLTA program, we strongly urge you to provide an exception in the Final Rule specifying that IOLTA accounts are guaranteed unlimited deposit insurance through TLGP.

Thank you for your consideration of this matter.

Sincerely,

Benjamin L. Cardin
United States Senator

Arlen Specter
United States Senator

Bernard Sanders
United States Senator

John F. Kerry
United States Senator

Tom Harkin
United States Senator

Joseph I. Lieberman
United States Senator

Claire McCaskill
United States Senator

Patty Murray
United States Senator

Debbie Stabenow
United States Senator

Robert P. Casey, Jr.
United States Senator

Dianne Feinstein
United States Senator

Edward M. Kennedy
United States Senator

Russell D. Feingold
United States Senator

Jeff Sessions
United States Senator

Carl Levin
United States Senator

Richard Durbin
United States Senator

Hillary Rodham Clinton
United States Senator

Charles E. Schumer
United States Senator

Patrick J. Leahy
United States Senator

Duplicate letters sent to all signers

LA 08-613 R

FDIC

Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

November 14, 2008

Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter to the Federal Deposit Insurance Corporation's Executive Secretary concerning the impact of providing unlimited insurance coverage to non-interest bearing transaction accounts under the FDIC's Temporary Liquidity Guarantee Program (TLGP). We are looking at the concerns you and others have raised with respect to IOLTA accounts.

We have heard from many parties on this issue. I assure you that all views will be carefully considered as we work to finalize the TLGP.

Sincerely,

for

Eric J. Spitler
Director
Office of Legislative Affairs

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951
http://www.house.gov/judiciary

November 13, 2008

FDIC
NOV 13 2008
OFFICE OF LEGISLATIVE AFFAIRS

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

ATTN: Comments RIN #3064-AD37

Dear Mr. Feldman:

We write to comment on the October 23 Interim Rule establishing the Temporary Liquidity Guarantee Program (TLGP). Specifically, we urge you to ensure that the TLGP, through which the FDIC will fully guarantee certain non-interest bearing transaction accounts, also covers Interest on Lawyer Trust Accounts (IOLTAs).

Among its most critical responsibilities, the Judiciary Committee oversees matters involving the administration of justice and access to the legal system, such as the Legal Services Corporation. While IOLTA programs are created by state law or supreme court rule and not federal legislation, we strongly support the unique and important role they serve in providing resources to allow the poor to resolve or prevent legal problems. IOLTA programs exist in all 50 states and the District of Columbia. In fact, 37 states require lawyers to deposit client funds that cannot earn net interest for the client in IOLTAs. Interest generated from IOLTAs is paid to IOLTA programs that issue grants for the provision of civil legal aid to the poor, the administration of justice, and law-related education -- programs that are vital to our democratic system's guarantee of equal access to justice for all.

IOLTAs act as clearing accounts for pooled client funds. From the perspectives of both the account holder and the beneficial owner of the funds, IOLTAs effectively are the same as insured accounts. As a general matter, client funds pooled in an IOLTA are either nominal, or a significant amount held only long enough for a check to clear or for the attorney to disperse the funds. Funds placed in an IOLTA might include court filing fees, real estate escrows, settlements and retainers. The real estate escrows are both most at risk without full coverage, and of the greatest importance for IOLTA programs because these short-term large funds generate a significant amount of IOLTA revenue.

These IOLTAs generate interest to the third-party non-profit IOLTA programs under an exception granted by the Federal Reserve and the FDIC. However, because IOLTAs do generate interest, the TLGP Interim Rule as issued on October 23 would not extend unlimited FDIC insurance to these accounts. Lawyers holding client funds in excess of $250,000 must now consider whether to move their client funds from IOLTAs to a fully insured, non-interest bearing deposit transaction account. Under another option, lawyers in the 37 mandatory IOLTA states might move the substantial sums in their trust accounts from community banks to larger institutions viewed as less likely to fail. That option would be contrary to the FDIC's goal in creating the TLGP, which was to ensure stability in the banking system.

If lawyers move their IOLTA-eligible funds to non-interest bearing accounts, the interest income received by IOLTA programs in all of our states would be greatly reduced. IOLTA programs nationwide provided more than $212 million dollars in 2007 for the provision of civil legal services to the poor, making it the second largest source of such funding in the country. Without IOLTA funds, many low-income families who are being hit particularly hard by the current economic situation will not be able to receive help with legal problems such as foreclosures, consumer problems, domestic violence, child support and other critical needs. We believe that the public benefits generated by IOLTAs, and the fact that the interest they pay is dedicated only to third-party non-profit IOLTA programs, rather than to attorney account holders or their clients, merit inclusion of IOLTAs in the unlimited insurance in the final rule.

For reasons consistent with the FDIC's goals and for the public good, it is critical that the FDIC extend the unlimited insurance coverage of the TLGP to IOLTAs. We request that the FDIC include IOLTAs in the full insurance available under the new TLGP.

We thank you for your consideration.

Sincerely,

John Conyers, Jr.
John Conyers, Jr.
Chairman, House Judiciary Committee

Linda T. Sánchez
Linda T. Sánchez
Chair, Subcommittee on Commercial and Administrative Law

Robert C. Scott
Chairman, Subcommittee on Crime, Terrorism, and Homeland Security

Zoe Lofgren
Chair, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

Rick Boucher
Member, Committee on the Judiciary

Luis V. Gutierrez
Member, Committee on the Judiciary

William D. Delahunt
Member, Committee on the Judiciary

Debbie Wasserman Schultz
Member, Committee on the Judiciary

Betty Sutton
Member, Committee on the Judiciary

Tammy Baldwin
Member, Committee on the Judiciary

Jerrold Nadler
Chairman, Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Howard L. Berman
Chairman
Subcommittee on Courts, the Internet, and Intellectual Property

Melvin L. Watt
Member, Committee on the Judiciary

Sheila Jackson-Lee
Member, Committee on the Judiciary

Steve Cohen
Member, Committee on the Judiciary

Brad Sherman
Member, Committee on the Judiciary

Keith M. Ellison
Member, Committee on the Judiciary

Henry C. Johnson, Jr.
Member, Committee on the Judiciary

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

November 19, 2008

Honorable Henry Cuellar
House of Representatives
Washington, D.C. 20515

Dear Congressman Cuellar:

Thank you for writing to express your concerns regarding proposed changes to risk-based premiums, recent temporary changes to Federal Deposit Insurance Corporation insurance coverage limits, and other initiatives to shore up liquidity in the financial system The FDIC believes that these actions will strengthen the deposit insurance fund and help to maintain stability and public confidence in the U.S. financial system. Your letter raised several issues, which this response discusses below.

Higher deposit insurance premiums: As explained below, the temporary changes in the insurance coverage limits are not responsible for the need to increase FDIC premium rates. Rather, recent bank failures have significantly increased the insurance fund's losses, resulting in a decline in the reserve ratio (the fund balance as a percent of total estimated insured deposits). As of June 30, 2008, the reserve ratio stood at 1.01 percent, down from 1.19 percent at March 31. When the reserve ratio falls below 1.15 percent, the FDIC is required by law to establish and implement a restoration plan in order to return the reserve ratio to at least 1.15 percent within five years. On October 7, 2008, the FDIC established a restoration plan and published a notice of proposed rulemaking that would raise assessment rates and make other changes to the risk-based assessment system. These changes are primarily to ensure that riskier institutions will bear a greater share of the proposed increase in assessments.

Changes to risk-based premiums for secured liabilities: The FDIC proposes to increase assessment rates of institutions with secured liabilities (including Federal Home Loan Bank advances and repurchase agreements, among other liabilities) exceeding 15 percent of domestic deposits. Under the current rules, substituting secured liabilities for unsecured liabilities (including subordinated debt) generally raises the FDIC's loss in the event of failure without providing increased assessment revenue. An institution funded with secured liabilities, compared to an institution funded with deposits, pays a smaller deposit insurance assessment, even if both institutions pose the same risk of failure and would cause the same losses to the FDIC in the event of failure. Substituting secured liabilities for deposits can also lower an institution's franchise value in the event of failure, which increases the FDIC's losses, all else being equal.

Temporary increase of deposit insurance limit to $250,000: The Emergency Economic Stabilization Act of 2008 temporarily increased the coverage on deposit

With an increasing number of insolvent banks, I believe, and in fact evidence demonstrates, that the public markets will not be an adequate source for the level of new capital that will be needed to shore up bank balance sheets and provide money for new lending. Although several large banks have recently raised capital in the public markets, I doubt that the capacity exists to fund the capital needs of the hundreds of small and mid-tier banks that will suffer losses. The *Wall Street Journal* recently concluded that losses from commercial real estate loans alone could generate losses of $100 billion by the end of next year at more than 900 small and midsize banks. If the public markets are not sufficient, the Treasury Department may choose to use additional TARP funds—this is not an appealing option, and one that I would strongly oppose given that there is a significant amount of existing and willing private capital on the sidelines.

Among other private sources of capital, private equity firms have the resources and expertise to facilitate the recapitalization of many small and mid-tier banks. I am told private equity has over $450 billion in available capital to invest, and a number of firms have raised new funds to be dedicated exclusively to financial services. Private equity firms also have proven their ability to attract experienced CEOs, effectively manage risk and improve the efficiency and profitability of the companies in which they invest. They are exactly the kind of investors that should be encouraged to invest in the banking sector.

I am concerned that the banking regulators are not taking appropriate action to facilitate the flow of private investment into the banking system. In fact, it seems that the regulators are actually taking steps to reduce the role of some sources of private capital—a position that I find very troubling and contradictory to the administration's broader efforts through programs like TALF and the public-private investment partnerships.. For example, the FDIC recently proposed guidelines to govern private investments in failed banks that are under FDIC receivership. These guidelines would apply exceptional rules to private investors, such as a "super capital" requirement, a broad "source of strength" requirement, and a "cross-guarantee" rule. Each of these requirements would pose a substantial deterrent to private investors. Although I recognize that the FDIC is attempting to provide clarity for future acquisitions and that the agency does have justifiable concerns regarding the purchase of a failed bank, the measures as currently proposed would significantly impede private investment. According to the Congressional Budget Office, the FDIC is responsible for over $100 billion in losses during the next few years. With this looming liability, I think it is in the interest of the FDIC and the taxpayers to attract additional sources of private capital to reduce these losses. I do not think that the federal government should bear these costs when private investors are willing to step in and take the risk.

I urge all of the federal regulators to adjust their current statutory interpretations where there is flexibility to allow additional private investment in banks and thrifts. I understand that many of the current investment limitations are rooted in concerns about the appropriate separation of banking and commerce. As you know, I have my own opinions about this debate and the record of commercial and banking affiliations. I believe that these changes can be accomplished without re-opening this historical debate.

insurance to $250,000 for all accounts in order to enhance depositor confidence and prevent bank runs that could threaten failure of otherwise healthy institutions. The temporary increase expires on December 31, 2009. The legislation directs FDIC not to consider the temporary coverage increase to $250,000 in setting assessments. Therefore, the FDIC will not include the additional insured deposits in calculating the insurance fund reserve ratio, which guides our assessment planning.

The Temporary Liquidity Guarantee Program (TLGP): Under the TLGP, banks and thrifts may elect for a fee to have the FDIC guarantee the full balance of their non-interest bearing transaction accounts through December 31, 2009. This part of the program is intended to help individuals and provide confidence to businesses that maintain large transaction account balances for payroll and other ongoing business expenses. We anticipate that the great majority of institutions will participate in this part of the TLGP because of the benefits it will provide. In order to instill confidence in credit markets during this period of financial turmoil, banks, thrifts, and most holding companies may also choose for a fee to have the FDIC temporarily guarantee certain newly issued senior unsecured debt.

Money market funds: The U.S Treasury Department's Money Market Guarantee Program, announced in September 2008, is intended to provide additional support and stability to the financial markets. The FDIC is not involved in this program. This program's guarantee will only apply to shares of eligible money market funds held as of September 19, 2008. Eligible funds must have had a policy of maintaining a stable net asset value or share price that is equal to or greater than $1.00 and must have had such a policy on September 19, 2008. Funds that successfully applied by October 10, 2008 and have been accepted into the program will be covered. This program will be in effect for an initial three month term, after which the Secretary of the Treasury has the option to extend the program up to the close of business on September 18, 2009. Since this government guarantee will only apply to a limited number of funds for a limited time period, this program will not serve as a long term attractive alternative to insured bank deposits.

I hope that you find this information useful in responding to the concerns of some of the community banks in your District. We believe that all financial institutions, large and small, as well as their customers, will benefit from these efforts to stabilize financial markets, increase liquidity in the financial system, and maintain a strong deposit insurance fund that instills public confidence and protects taxpayers.

If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C Bair

Sheila C. Bair

LA08-501

COMMITTEE ON
HOMELAND SECURITY

SUBCOMMITTEES:

CHAIR, EMERGENCY COMMUNICATIONS,
PREPAREDNESS AND RESPONSE

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CONGRESSIONAL HISPANIC CAUCUS
CHAIR, INTERNATIONAL RELATIONS TASK FORCE

HENRY CUELLAR
U.S. HOUSE OF REPRESENTATIVES
SENIOR WHIP

COMMITTEE ON
AGRICULTURE

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FDIC
OCT 2 0 2008
LEGISLATIVE AFFAIRS

October 17, 2008

The Honorable Shelia C. Bair
Chairwoman
Federal Deposit Insurance Corporation
550 Seventeenth Street, NW, Room 6076
Washington, DC 20429

Dear Chairwoman Bair:

I write to request your assistance in addressing the concerns of some of the community banks in my Congressional District. A provision in the recently enacted economic rescue package allows for the Federal Deposit Insurance Corporation (FDIC) to temporarily raise the insurance limits on deposits from $100,000 to $250,000. While CBO estimates that this provision would boost insured deposits by 15%, community banks in my District have voiced the following concerns:

- FDIC insurance premium increases will create disincentives to protect customers' funds with safe CD programs
- FDIC premium increases will decrease the amount of funds that the bank has to lend to its customers in two ways: first, these funds would typically be leveraged at least six times, the belief exists that this cost would result in lost local loans; second, community banks allege that the adverse impact on FHLB advances could mean that it would be harder, and more costly, to fund loans in a responsible way.
- The expanded insurance facility will create huge pressure on all banks to offer this feature to large commercial depositors thus increasing the cost of funds and affecting liquidity for banks
- Insurance of Money Market Funds will make this product an attractive alternative to bank deposits.

I would like to respond to these concerns in the most adequate way possible, and I would appreciate any counsel or suggestions that you may have regarding the aforementioned issues. If my staff or I may be of any more assistance, please do not hesitate to contact us at (202)225-1640.

Sincerely,

Henry Cuellar, Ph.D.
U.S. Congressman
28th District of Texas

HC:jbr

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

November 19, 2008

Honorable Barney Frank
Chairman
Committee on Financial Services
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter concerning the impact of providing unlimited insurance coverage to non-interest bearing transaction accounts under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program (TLGP). We are looking at the concerns you and others have raised with respect to IOLTA accounts.

We have heard from many parties on this issue. I assure you that all views will be carefully considered as we work to finalize the TLGP.

Sincerely,

Sheila

Sheila C. Bair

LA08-601

BARNEY FRANK, MA, CHAIRMAN

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

SPENCER BACHUS, AL, RANKING MEMBER

November 13, 2008

VIA FACSIMILE

FDIC
NOV 13 2008
OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Sheila C. Bair
Chair, Federal Deposit Insurance Corporation
550 17th Street, NW
Room 6028
Washington, D.C. 20429

Comments RIN #3064-AD37

Dear Chairwoman Bair:

We are writing to provide comments on the FDIC's Interim Rule published on October 23 establishing the Temporary Liquidity Guarantee Program (TLGP). We believe that the FDIC's final rule should clarify that the Corporation will fully guarantee, in addition to noninterest-bearing accounts, Interest on Lawyer Trust Accounts (IOLTAs).

The IOLTA program represents a significant source of financial support to civil legal aid programs for the poor. These programs operate in all 50 states, the District of Columbia and the Virgin Islands, and in 37 states, they are mandatory. IOLTAs contain client funds held by a lawyer for a short period of time. Interest generated from these accounts is paid to charitable organizations, not the lawyer or the client. When state legislatures and state supreme courts created IOLTA, the FDIC carved out an exception to Regulation D that allowed the payment of interest on these demand accounts.

Because IOLTAs pay interest, the TLGP Interim Rule would seemingly not cover them, thereby excluding IOLTAs from unlimited FDIC insurance coverage. If so, then attorneys in the 37 states with IOLTA mandates, acting in accordance with their fiduciary duties to maintain the security of client funds, might transfer IOLTA accounts from local banks to larger "safer" institutions; and attorneys in other jurisdictions might transfer funds from IOLTA accounts to non-interest bearing accounts to qualify for unlimited FDIC coverage. If the final FDIC rules encourage lawyers to disadvantage community banks or reduce or eliminate the interest income generated on IOLTAs, this critical source of civil legal aid will unnecessarily and inappropriately shrink.

It is our view that because of the public good provided by IOLTA programs – and because the interest on these accounts exclusively benefits third parties – the FDIC should ensure that IOLTAs are eligible for unlimited deposit insurance coverage through TLGP.

Thank you for your consideration of our views.

Sincerely,

Barney Frank
Chairman

Spencer Bachus
Ranking Member

LA06-682

HERB KOHL
WISCONSIN

WASHINGTON OFFICE:
330 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510

United States Senate
WASHINGTON, DC 20510-4903

November 26, 2008

The Honorable Henry M. Paulson
Secretary of the Treasury
U.S. Department of Treasury
1500 Pennsylvania Ave., NW. Room 3434
Washington, DC 20220

Dear Secretary Paulson,

Recently, Congress learned about the progress of the Treasury Department's implementation of the Emergency Economic Stability Act of 2008 and the usage of the authorized funds. The Treasury has spent $250 billion to purchase preferred stock in healthy financial institutions and an additional $40 billion to AIG. However, none of the funds have been used to mitigate foreclosures or help homeowners refinance into more affordable mortgages-the area many experts and economists deem the heart of the financial crisis.

The goal of the legislation was to stabilize our financial markets, free up credit and help homeowners avoid foreclosure. Not only did the law authorize the Capital Purchase program, which you have fully utilized, but it allows the purchase of troubled mortgages. The foreclosure crisis' negative impact on our economy is dramatically visible and evident. FDIC Chairwoman Sheila Bair has warned that the country will see another wave of foreclosures in the next two years if no action is taken, resulting in an additional 3 million homes lost. Wisconsin has already seen record foreclosures and home values drop by 3.5%. Residents in my home state, along with the rest of the country, will not be able to weather another deluge of foreclosures.

It is time we start addressing the root of the problem afflicting our financial markets and not just its symptoms. I urge you to consider the proposal by the FDIC to help distressed homeowners refinance into more affordable mortgages. The FDIC model has worked for loans when it took over IndyMac Bancorp this past July. This proposal will allow families to stay in their homes and decrease potential foreclosures. Chairwoman Bair estimates this will cost approximately $25 billion and can easily be taken from the bailout money allocated to the Treasury Department. Most people would rather see the government spend $25 billion to help struggling homeowners instead of letting them lose an estimated $164 billion in home equity and life savings.

Sincerely,

Herb Kohl

Herb Kohl
U.S. Senate

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Durbin

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025
http://appropriations.senate.gov

November 20, 2008

The Honorable Sheila Bair
Chairman of the Board
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Chairman Bair:

I am writing to invite you or your designee to testify before the Senate Appropriations Subcommittee on Financial Services and General Government regarding the Department of the Treasury's implementation of the Emergency Economic Stabilization Act. In particular, the hearing will focus on the Department's efforts to mitigate mortgage foreclosures through the authorizations provided under that Act. The Subcommittee looks forward to hearing how your experience with mortgage foreclosures, especially your experience with IndyMac, can contribute to the prompt resolution of this nationwide crisis.

The hearing is scheduled for Thursday, December 4, 2008, at 10:00 a.m. in the James Benton Parsons Memorial Courtroom, Courtroom 2525, E.M. Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois. Please submit your testimony electronically, no later than 5 p.m. on Monday, December 1, 2008, to michael_bain@appro.senate.gov. All statements and accompanying materials that you wish to have printed in the hearing record should be typed single-spaced on one side of the paper and in Word format.

The Subcommittee would like to devote as much time as possible to discuss your views. We ask that your oral testimony be limited to no more than five minutes to allow ample time for dialogue. Your written testimony may contain additional details and will be included in the hearing record in its entirety.

If you have any questions regarding the hearing, please contact Melissa Petersen at (202) 224-9722. We look forward to your participation in this hearing.

Sincerely,

Dick Durbin

Richard J. Durbin
Chairman
Subcommittee on Financial Services and
General Government

RJD: mcb

LA08-679

APPROPRIATIONS COMMITTEE
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U.S. HOUSE OF REPRESENTATIVES

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FDIC
NOV 21 2008
OFFICE OF LEGISLATIVE AFFAIRS

November 21, 2008

Secretary Henry Paulson
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW, Room 3134
Washington, DC 20220

Dear Secretary Paulson,

With the collapse of IndyMac Bank, headquartered in Pasadena, California, and the median price of Southern California homes down almost thirty percent since last year, my constituents are being hard hit by the current housing and financial crisis.

For the first time since the slump began, repossessed properties accounted for more than half of residences sold in Los Angeles County last month. For many months I have pushed for strong action to stem the tide of foreclosures and prevent further decline in the housing market. I believe we can confront the epidemic of foreclosures by helping homeowners restructure their mortgages over longer or different terms.

I commend the efforts of the FDIC as the conservator of IndyMac Federal Bank in reaching out to delinquent mortgagors and instituting a comprehensive system to convert distressed loans into sustainable, performing loans. Focusing on practical measures such as interest rate reductions, extending amortization and deferring portions of the principal have proven to be an effective way to ensure loans remain affordable for many struggling families. I am pleased that the FDIC has taken such initiative and is aggressively aiding families that live in my district, and strongly believe we must extend these benefits to homeowners throughout the country.

I believe Chairwoman Sheila Bair's proposal to build on the model at IndyMac Federal and create a nationwide program to help homeowners avoid foreclosure is a step in the right direction and deserves serious consideration. While her proposal is still in its nascent stages, it has the promise of providing a real solution and real relief to struggling mortgage holders across the country while improving the value of loans for banks and investors and preventing further degradation of the housing market. With a systematic approach using practical methods of reducing monthly payments, the FDIC will be able to help many mortgagors quickly and effectively. As the government would share in losses from modifications under the program, I believe more financial institutions would find it in their interest to cooperate with the FDIC and homeowners to find solutions that work for all parties.

This approach -- starting with the local community and working up, rather than helping the financial institutions and working down -- far more directly addresses the underlying ills and puts far fewer taxpayer dollars at risk. I believe it would be every bit as reassuring to the markets as helping banks, and do more to deal with the root problem. If more homeowners stay out of foreclosure and have more realistic monthly payments, there will be more money in their pockets to help stimulate the rest of the economy. It would also save countless billions of taxpayer dollars on the front end, so we have the resources we need to deal with the additional problems that are most certainly heading our way.

I hope that any program to help prevent foreclosure makes every effort to ensure people do not take advantage of the system by intentionally defaulting or scamming the system. I also encourage you to look into proposals that would provide a return investment to the Treasury Department perhaps by requiring individuals share increased equity with the government at time of sale.

Congress clearly provided the authority to the Treasury Department to help homeowners prevent foreclosure when it passed the Emergency Economic Stabilization Act and I believe you have the duty to take action to help American families as you have the financial industry. I ask that you implement more aggressive foreclosure mitigation efforts as quickly as possible and work with Chairwoman Bair on finalizing and funding her proposal. Families struggling to pay their mortgages cannot wait.

Sincerely,

ADAM B. SCHIFF
Member of Congress

Cc: Chairwoman Sheila Bair, FDIC

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

November 25, 2008

Honorable Carolyn McCarthy
Committee on Financial Services
House of Representatives
Washington, D.C. 20515

Dear Congresswoman McCarthy:

Thank you for the opportunity to respond to the questions you submitted subsequent to my testimony at the hearing on "The Implementation of the HOPE for Homeowners Program and A Review of Foreclosure Mitigation Efforts" before the Financial Services Committee on September 17, 2008.

Enclosed is my response. If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C. Bair

Sheila C. Bair

Enclosure

Response to questions from the Honorable Carolyn McCarthy
from Sheila C. Bair, Chairman,
Federal Deposit Insurance Corporation

Q1: In the case of delinquent mortgages for multi-unit dwellings held by IndyMac that cannot be modified, how does the FDIC deal with tenants? How much time do they have to vacate property once foreclosure proceedings have begun? Are they notified that they must vacate the property? When is notification given?

A1: For loans that IndyMac services, IndyMac adheres to the criteria specified in the servicing agreement and provides the tenant with a 30-day eviction notice or the timeframe specified by state law if it differs.

For loans that IndyMac owns, IndyMac recently revised its processes for working with tenants, regardless of whether the property is a single unit or a multi-unit dwelling, as follows:

- IndyMac does not initiate the eviction process until after it receives legal control of a property.

- After the foreclosure sale is finalized, IndyMac sends tenants an informational letter informing them that the property has been foreclosed. The letter advises that IndyMac is providing the tenants with a 60-day holding period to arrange their relocation prior to initiating the eviction process, and IndyMac may be able to financially assist the tenants with their move.

- Upon expiration of the 60-day holding period, IndyMac sends the tenants a second notice informing them that the eviction process will be initiated. Depending on where the property is located, the eviction process typically takes between 30 to 60 days.

Q2. Is it time to increase the amount insured by the FDIC on individual and retirement accounts?

A2. The Emergency Economic Stabilization Act (EESA) of 2008 has already temporarily raised the general coverage limit from $100,000 to $250,000, which is also the existing coverage limit for retirement accounts. The increase will last until the end of 2009. The EESA directs us not to consider the temporary coverage increase to $250,000 in setting assessments. Therefore, we do not include the additional insured deposits in calculating the fund reserve ratio, which guides our assessment planning. If Congress were to decide to leave the $250,000 coverage level in place indefinitely, however, it would be necessary to account for the increase in insured deposits to determine the appropriate level of the fund.

Q3. Of the 20,000 of IndyMac loans in delinquency that are not owned by IndyMac or with servicing agreements with[out] sufficient flexibility for modification, how do you expect to obtain approval to apply new modification programs to these loans?

A3. Since the streamlined loan modification program was launched on August 20th, IndyMac has been modifying securitized loans according to the servicing agreements' terms. In general, modifications are permitted by the servicing agreements so long as the borrower is delinquent and the modification provides better value than foreclosure.

Some of the loans that IndyMac services are not securitized, but owned as 'whole' loans by investors. The servicing agreements for these 'whole' loans do require consent before modifications can be implemented. IndyMac has obtained approval from the investors for the majority of the 'whole' loans and is implementing the modification approach for those loans.

Q4. How many of the 60,000 delinquent IndyMac mortgages do you expect you will not be able to modify?

A4. Of the more than 60,000 first lien mortgage loans that were delinquent when the FDIC became the conservator for IndyMac in July 2008, not all are eligible for modification. The total delinquent loans includes loans to borrowers who are less than 60 days past due, in bankruptcy, whose foreclosure sale is imminent, or where there are various legal issues that preclude application of our modification approach. This total also includes borrowers who have a modification in process or recently completed a modification, but who IndyMac has to reflect as delinquent until the borrowers pay according to the modified terms for six months. Excluding these loans reduces the potential number of loans eligible for modification by about a third.

The remaining pool of approximately 40,000 loans must then be reviewed under the criteria for the loan modification program to determine if an affordable payment can be achieved for the borrower. IndyMac also must determine that the proposed modification will achieve a better value than foreclosure. Once these criteria are applied, a substantial proportion (about 40 percent) cannot be modified under the streamlined approach. However, even if a loan cannot be modified under the streamlined approach, IndyMac will still review the loan to determine if some alternative to foreclosure is possible. To date, IndyMac has mailed more than 23,000 modification offers to borrowers. In the coming weeks, we anticipate mailing out thousands more modification offers. To date, more than 5,000 borrowers have completed all income verification requirements and thousands more are in process. While we cannot yet determine how many of the borrowers will accept the proposed modifications, we hope that many thousands of borrowers will avoid foreclosure while the FDIC maximizes its recoveries on the IndyMac loans and servicing rights.

Q5. Beyond calls and mailers, what other outreach methods are used by the FDIC? Is the FDIC using in-person outreach methods?

A5. IndyMac and the FDIC have proactively enlisted the help of community newspapers to reach borrowers in their local area. In addition to maintaining its relationship with the HOPE Now Alliance, IndyMac also partnered with local HUD-approved counseling agencies that are affiliated with NeighborWorks. These agencies were specifically chosen to obtain their assistance to contact borrowers in states (California, Florida, New York, and New Jersey) that have a majority of the past due loans. Southern California, and Los Angeles County in particular, represent the highest concentration of delinquent borrowers. As a result, the FDIC is partnering with Los Angeles Mayor Villaraigosa's office and certain local non-profit organizations to sponsor the IndyMac Loan Modification Day on November 22nd. A similar event is planned for the Inland Empire (Riverside and San Bernardino Counties). IndyMac plans to use "in-person" outreach methods at these functions, as our representatives will directly work with borrowers on loan modifications.

Congresswoman McCarthy:
Questions Submitted for the Record

9.17.08 FSC Hearing: A Review of Mortgage Servicing Practices and Foreclosure Mitigation

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PANEL ONE

1. **Chairwoman Bair:** In the case of delinquent mortgages for multi-unit dwellings held by IndyMac that cannot be modified, how does the FDIC deal with tenants? How much time do they have to vacate property once foreclosure proceedings have begun? Are they notified that they must vacate the property? When is notification given?

2. **Chairwoman Bair:** Is it time to increase the amount insured by the FDIC on individual and retirement accounts?

3. **Chairwoman Bair:** Of the 20,000 of IndyMac loans in delinquency that are not owned by IndyMac or with servicing agreements with sufficient flexibility for modification, how do you expect to obtain approval to apply new modification programs to these loans?

4. **Chairwoman Bair:** How many of the 60,000 delinquent IndyMac mortgages do you expect you will not be able to modify?

5. **Chairwoman Bair:** Beyond calls and mailers, what other outreach methods are used by the FDIC? Is the FDIC using in-person outreach methods?

U.S. House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

October 8, 2008

FDIC
OCT 17 2008
OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Chairman Bair:

Thank you for testifying at the September 17, 2008, Committee on Financial Services hearing entitled, "The Implementation of the HOPE for Homeowners Program and a Review of Foreclosure Mitigation Efforts."

A copy of your transcript has been provided should you wish to make any corrections. Please indicate these corrections directly on the transcript. **Due to the disruption of mail service to the House of Representatives we ask that you fax the transcript in lieu of mailing it. Please fax only the pages on which you have made corrections, within (15) business days upon receipt to:**

Committee on Financial Services
ATTN: Terrie Allison
Fax (202) 225-4254

Rule XI, clause 2(e)(1)(A) of the Rules of the House and Rule 8(a)(1) of the Rules of the Committee state that the transcript of any meeting or hearing shall be "a substantially verbatim account of the remarks actually made during the proceedings, subject only to technical, grammatical, and typographical corrections authorized by the person making the remarks involved." We therefore ask that you keep your corrections to a minimum.

Also included are questions submitted by Representative McCarthy. We ask that you respond to these questions in writing for the hearing record. Your responses may be faxed to the above number, along with your transcript corrections.

Please contact Terrie Allison at (202) 225-4548 if there are no corrections to your transcript.

If during the hearing you: (1) offered to submit additional material; or (2) were requested to submit additional material; please submit this material via electronic mail by sending it to fsctestimony@mail.house.gov. If you are unable to submit the material electronically, please contact the Committee staff to arrange for submission.

Thank you for your cooperation, and again for your testimony.

Yours truly,

Thomas G. Duncan

Thomas G. Duncan
General Counsel

TGD/ta

Enclosure

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

November 26, 2008

Honorable Hillary Rodham Clinton
United States Senate
Washington, D.C. 20510

Dear Senator Clinton:

Thank you for your kind words commending the Federal Deposit Insurance Corporation for our efforts to stabilize housing markets and for your interest in this shared goal through your support of the HOME initiative and other actions to prevent foreclosures.

As part of our continuing work to address ongoing mortgage-related issues including foreclosure prevention, we have researched many potential solutions, including the Home Owners' Loan Corporation (HOLC) model, for ways to deal effectively with unaffordable loans and unnecessary foreclosures. Like you, we want to place responsible yet at-risk homeowners in sustainable mortgages that are based on affordability. To that end, we recently proposed a loan modification program with a loss sharing component that establishes a consistent affordability standard for homeowners as well as incentives for banks and other lenders to participate in the program. I have enclosed a summary of our proposal for your information. In addition, the FDIC recently issued a loan modification guide we are calling "Mod in a Box" to provide information that enables others to duplicate the FDIC's program at IndyMac Federal Bank. A copy of this guide also is enclosed. We share your goal of creating a uniform, systematic approach to reach a broad pool of at-risk homeowners.

Thank you again for sharing your counsel on these important issues. I look forward to continuing to work with Congress to provide effective relief for homeowners, stabilize our communities, revitalize our financial markets, and improve our economy.

Sincerely,

Sheila

Sheila C. Bair

Congratulations on your upcoming nomination.

Enclosures

FDIC Loss Sharing Proposal to Promote Affordable Loan Modifications

Background
Basic Structure and Scope of Proposal
Details on Program Design
Impact of the Program
Loan Modification Program Guide -- "Mod in a Box"

Background
Although foreclosures are costly to lenders, borrowers and communities, the pace of loan modifications continues to be extremely slow (around 4 percent of seriously delinquent loans each month). It is imperative to provide incentives to achieve a sufficient scale in loan modifications to stem the reductions in housing prices and rising foreclosures.

Modifications should be provided using a systematic and sustainable process. The FDIC has initiated a systematic loan modification program at IndyMac Federal Bank to reduce first lien mortgage payments to as low as 31% of monthly income. Modifications are based on interest rate reductions, extension of term, and principal forbearance. A loss share guarantee on redefaults of modified mortgages can provide the necessary incentive to modify mortgages on a sufficient scale, while leveraging available government funds to affect more mortgages than outright purchases or specific incentives for every modification. The FDIC would be prepared to serve as contractor for Treasury and already has extensive experience in the IndyMac modification process.

Basic Structure and Scope of Proposal
This proposal is designed to promote wider adoption of such a systematic loan modification program:

1. by paying servicers $1,000 to cover expenses for each loan modified according to the required standards; and
2. sharing up to 50% of losses incurred if a modified loan should subsequently re-default

We envision that the program can be applied to the estimated 1.4 million non-GSE mortgage loans that were 60 days or more past due as of June 2008, plus an additional 3 million non-GSE loans that are projected to become delinquent by year-end 2009. Of this total of approximately 4.4 million problem loans, we expect that about half can be modified, resulting in some 2.2 million loan modifications under the plan.

Details on Program Design

- **Eligible Borrowers:** The program will be limited to loans secured by owner-occupied properties.
- **Exclusion for Early Payment Default:** To promote sustainable mortgages, government loss sharing would be available only after the borrower has made six payments on the modified mortgage.
- **Standard NPV Test:** In order to promote consistency and simplicity in implementation and audit, a standard test comparing the expected net present value (NPV) of modifying past due loans compared to the strategy of foreclosing on them will be applied. Under this NPV test, standard assumptions will be used to ensure that a consistent standard for affordability is provided based on a 31% borrower mortgage debt-to-income ratio.
- **Systematic Loan Review by Participating Servicers:** Participating servicers would be required to undertake a systematic review of all of the loans under their management, to subject each loan to a standard NPV test to determine whether it is a suitable candidate for modification, and to

modify all loans that pass this test. The penalty for failing to undertake such a systematic review and to carry out modifications where they are justified would be disqualification from further participation in the program until such a systematic program was introduced.

- **Reduced Loss Share Percentage for "Underwater Loans":** For LTVs above 100%, the government loss share will be progressively reduced from 50% to 20% as the current LTV rises.[1] If the LTV for the first lien exceeds 150%, no loss sharing would be provided.

- **Simplified Loss Share Calculation:** In order to ensure the administrative efficiency of this program, the calculation of loss share basis would be as simple as possible. In general terms, the calculation would be based on the difference between the net present value of the modified loan and the amount of recoveries obtained in a disposition by refinancing, short sale or REO sale, net of disposal costs as estimated according to industry standards. Interim modifications would be allowed.

- ***De minimis* Test:** To lower administrative costs, a *de minimis* test excludes from loss sharing any modification that did not lower the monthly payment at least 10 percent.

- **Eight-year Limit on Loss Sharing Payments:** The loss sharing guarantee ends eight years of the modification.

Impact of the Program
The table below outlines some of the basic assumptions behind the scale of the plan and its expected costs.[2] To summarize, we expect that about half of the projected 4.4 million problem loans between now and year-end 2009 can be modified. Assuming a redefault rate of 33 percent, this plan could reduce the number of foreclosures during this period by some 1.5 million at a projected program cost of $24.4 billion.

Projected Number and Cost of Loan Modifications Under FDIC Loss Sharing Proposal
1.6 million total loans 60+/90+ past due now
GSE loans make up about 13% of problem loans at present
Net: 1.4 million non-GSE problem loans at present
3.8 million new total loans 60+/90+ past due by y.e. 2009
Assume: GSE loans make up 20% of new prob. loans through y.e. 2009
Net: 3.04 million new non-GSE problem loans through y.e. 2009
Total non-GSE problem loans through y.e. 2009: **4.44 million**
Modify 1/2, or **2.22 million loans**
Avg. loan size $200,000
Total book value of loans modified = **$444 billion**
Avg. program cost (FDIC assumptions) = **5.5%**
Est. total program cost = **$24.4 billion**
Assuming redefault rate of 33%, **almost 1.5 million foreclosures avoided**

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1 Current LTV can be demonstrated by a Broker Price opinion, or BPO.

2 Note: These figures have been updated from previous summaries to reflect a narrower application of the program to non-GSE loans that become delinquent through year-end 2009.

FDIC

FDIC Loan Modification Program

A message from FDIC Chairman Sheila Bair

Chairman Sheila C. Bair
Federal Deposit Insurance Corporation

I have long supported a systematic and streamlined approach to loan modifications that puts borrowers into affordable, long-term mortgages while achieving an improved return for bankers and investors compared to foreclosure. Using this type of approach, we can help stabilize the U.S. financial markets by minimizing foreclosures on the 6.4 million loans that are currently past due or are projected to become delinquent by mid-2010. Avoiding foreclosure, when it is financially prudent to do so, reduces the downward pressure on the price of nearby homes and helps communities to maintain the services they provide to neighborhoods. Unnecessary foreclosures perpetuate the cycle of financial distress and risk aversion, which potentially could cause housing prices to overcorrect and create even larger losses for both borrowers and the financial industry.

At IndyMac Federal Bank, the FDIC initiated a systematic and streamlined loan modification program for delinquent borrowers who occupy their home. These distressed mortgages are being rehabilitated into performing loans while avoiding unnecessary and costly foreclosures. By achieving mortgage payments for borrowers that are both affordable and sustainable, we expect to reduce future defaults, improve the value of the underlying mortgages, and cut servicing costs. This approach makes good business sense and creates a 'win-win' solution for everyone. I strongly encourage bankers, servicers, and investors to implement systematic and streamlined loan modifications that result in monthly mortgage payments that borrowers can afford over the long term.

To assist bankers, servicers, and investors in this process, this guide provides an overview of the FDIC's loan modification program. It outlines our program terms at IndyMac Federal Bank, offers insight into the specific portfolio characteristics that drive modification modeling at that bank, and provides a framework for developing and implementing a similar program at your institution. While the final program each of you implements will be based on the characteristics specific to your respective portfolios, I am confident that the value of such a program will benefit both your institution and your investors while helping many troubled borrowers remain in their homes. Your support in this industry-wide effort will help avoid unnecessary foreclosures and bring stability to the housing and mortgage markets during this time of unprecedented economic turmoil.

Sincerely,

Sheila Bair

[redacted]

Loan Modification

FDIC

As indicated in the summary table below, the FDIC's Loan Modification Program is primarily based on two principals:

1) Determining a payment the borrower can afford by multiplying the borrower's gross monthly income times the appropriate housing-to-income (HTI) ratio, less taxes and insurance to achieve a minimum payment reduction of 10 percent, and
2) Protecting investors' interests by requiring that the cost of the modification is less than the estimated cost of foreclosure (the Net Present Value (NPV) floor).

FDIC Loan Modification Program		
	Strategy	**Process**
Borrower Affordability Determination	▪ Offer proactive workout solutions designed to address borrowers who have the willingness but limited capacity to pay.	▪ Return the loan to a current status. ▪ Capitalize delinquent interest and escrow. ▪ Modify the loan terms based on waterfalls, starting at a front-end 38 percent HTI ratio down to a 31 percent HTI ratio, subject to a formal NPV floor. ▪ Reduce interest rate to as low as 3 percent. ▪ Extend, if necessary, the amortization and/or term of the loan to 40 years. ▪ Forbear principal if necessary.
	▪ Provide borrowers the opportunity to stay in their home while making an affordable payment for the life of the loan.	▪ Require the borrower to make one payment at the time of the modification. ▪ Cap the interest rate at the Freddie Mac Weekly Survey rate effective at the time of the modification. ▪ Lower the interest rate as required to meet the target HTI ratio, fixing the adjusted rate and monthly payment amount for 5 years. ▪ Step up the initial interest rate gradually starting in year 6 by increasing it one percentage point each year until reaching the Freddie Mac Weekly Survey rate cap.
Investor Protection Via NPV Tool	▪ Use a financial model with supportable assumptions to ensure investor interests are protected.	▪ Input borrower specific income information into the NPV Tool, which provides a real-time workout solution. ▪ Perform automated loan level underwriting across large segments of the portfolio to support pre-approved bulk mailings. ▪ Verify income information the borrower provided via check stubs, tax returns, and/or bank statements. ▪ Compare the cost of the modified concessions to the estimated cost of foreclosure to mitigate losses. ▪ Mandate that the cost of the modification must be less than the estimated foreclosure loss.

[redacted]

Overview

I. Philosophy

Modification improves the value of distressed mortgages by achieving long-term sustainable cash flows for lenders and investors that exceed the value achievable through foreclosure.

Modification provides an affordable payment and eliminates payment shock for the life of the loan.

Modification minimizes loss to the investor.

II. Program

Affordable payment is achieved through interest rate reduction, amortization term extension, and/or principal forbearance.

Net present value (NPV) test confirms modification minimizes loss to the investor.

III. Process

Program uses a scalable process which can be applied across a broad range of investors.

Streamlined process provides custom modification offers and minimal borrower paperwork.

IV. Promotion

Inclusion of customized modified payment amounts in bulk mailings significantly increases customer response and completed modifications. For bulk modification offer mailings, the initial letter includes a pre-approved modification offer with the modified payment amount.

The program uses a combination of existing origination/sales marketing to contact borrowers via direct mail and innovative point of sale approach via the call center. Call center staff have the capability to gather financial information and make a modification offer during the initial call.

This document provides a framework for establishing and implementing these standards.

[redacted]

Philosophy

I. Philosophy

Key objectives

- Keep borrowers in their homes when the borrower is willing and has the capacity to make an affordable mortgage payment.
- Provide borrowers with immediate payment relief and stable long term mortgage payments.
- Modification must always result in a positive NPV outcome for the investor, *i.e.*, the cost of the modification must be less than the estimated cost of foreclosure.

Determine what type of modification is most appropriate

The FDIC Loan Modification Program targets distressed borrowers who are currently having financial difficulty with the scheduled mortgage payment, but have the capacity to make a loan payment. It uses a streamlined approach to identify modification candidates and to provide a customized modification offer when the modification minimizes loss. If a borrower does not qualify for a streamlined modification, an individual loan review may result in a personalized modification that still maximizes value.

This approach is just one of many loss mitigation strategies that a prudent servicer must consider when dealing with a distressed borrower. Refinance is an alternative as well as traditional loss mitigation practices such as repayment plans. However, many borrowers are unable to refinance their loans in the current economic environment and repayment plans typically do not provide long- term solutions to borrowers' financial problems. In cases where the borrower cannot afford the lowest payment allowed by the NPV Tool, a short sale or deed-in-lieu of foreclosure with "cash for keys" assistance are preferred methods to avoid foreclosure.

Immediate relief and long term stability

Loan modification will result in a "life of loan" solution by capping interest rates at current market rates, requiring immediate principal amortization, and setting an initial interest rate subsidy to provide immediate relief. A predictable payment schedule after the fifth year will step the initial interest rate up to the market rate. Modification replaces adjustable-rate and interest-only mortgages with stable rate loans, and eliminates the possibility of future negative amortization.

[redacted]

Philosophy

Minimizes Losses on Distressed Mortgages

Once the borrower-specific modification is determined, the servicer must perform a valuation test between the cost of modification and the estimated cost of foreclosure to ensure modification results in a lower cost to the investor. By providing a transparent valuation comparing the cost of the modification and the estimated cost of foreclosure, the servicer fulfills the terms of most servicing agreements.

[redacted]

II. Program

Key objectives

- Systematic determination of borrower specific modification terms using a standardized NPV test to minimize losses on distressed mortgages.
- Target distressed borrowers. Modifications may be available for loans that are at least 60 days delinquent or where default is reasonably foreseeable.[1]
- Implement modification program that can be used across a broad range of investors.

Step 1: Determine Eligibility

Servicers typically manage loans for other investors, including Government Sponsored Enterprises (GSEs), private investors owning securities collateralized by the mortgages, and whole loan investors. Each investor type has different standards for approving loan modification. The GSEs have authorized loss mitigation programs for seriously delinquent loans, however some loans owned by the GSEs may be modified based on eligibility standards similar to those used for private investors. The GSEs recently announced the adoption of more streamlined modification plans that apply many of the features of the FDIC Loan Modification Program model.

Loans serviced for private investors are governed by servicing contracts which often contain a standard clause allowing the servicer to modify seriously delinquent or defaulted mortgages, or mortgages where default is "reasonably foreseeable".[2] This even holds true for complex private label securitizations with many tranches and investors.

Loans subject to these contracts are typically eligible for modification given:

- The loan is at least 60 days delinquent where the loan is considered one day delinquent on the day following the next payment due date.
- Foreclosure sale is not imminent and the borrower is currently not in bankruptcy, or has not been discharged from Chapter 7 bankruptcy since the loan was originated.
- The loan was not originated as a second home or an investment property.

Loans sold whole to individual investors often require a case-by-case approach. These loans are subject to both servicing and securitization contracts. The Appendix contains guidelines on how to evaluate whole loan servicing agreements.

[1] Due to contractual restrictions in IndyMac's pooling and servicing agreements, IndyMac Federal Bank has not modified securitized loans where default is reasonably foreseeable. Most other agreements do allow modification of such loans.
[2] See the *American Securitization Forum's Streamlined Foreclosure and Loss Avoidance Framework for Securitized Mortgage Loans*, Issued Dec. 6, 2007 and revised July 8, 2008.

[redacted]

Program (Continued)

Step 2: Calculate an "Affordable" Payment

In order to calculate an affordable payment, recent financial income information must be available for the borrower. Efforts to contact the borrower via special mailings, calling campaigns, email, and other outreach methods are used.

The FDIC Loan Modification Program calculates the modified principal, interest, taxes, and insurance (PITI) payment per a borrower specific HTI ratio of no more than 38 percent. Housing expenses on a PITI basis may include:

- The modified principal and interest payment for the subject loan, as applicable,
- Real estate taxes,
- Property hazard, flood, and mortgage insurance premiums,
- Leasehold estate payments, and
- Homeowners' association (HOA) dues.

Industry standards set forth by certain FHA lending programs indicate a mortgage payment based on a 31 percent to 38 percent HTI ratio is affordable. The FDIC Loan Modification Program follows these origination standards as illustrated below.

Example of HTI ratio calculation

Monthly Gross Income
$3,618 - Borrower 1
$2,756 - Borrower 2
$6,374 - Total Monthly Gross Income

PITI Payment Determination
$6,374 x **38%** = $2,422

Monthly Housing Expense
$2,422 - Maximum Total Monthly Housing Expense
$ - 364 - Taxes, hazard, flood, and mortgage insurance, etc.
$ - 85 - HOA dues
$1,973 - Maximum modified principal and interest payment

Total HTI Ratio
$2,422 / $6,374 = **38%**

[redacted]

Program (Continued)

If the initial modification calculation at 38 percent does not decrease the borrower's payment by 10 percent or more, the HTI ratio is lowered to 35 percent and then lowered to 31 percent to achieve the 10 percent savings. In cases where a 10 percent reduction can not be achieved, the 31 percent HTI ratio is used for affordability.

Step 3: Determine the "Total Debt" by capitalizing certain costs in the unpaid principal balance

- Delinquent interest, taxes, and insurance escrows and
- Third party fees such as foreclosure attorney or trustee fees and property preservation costs.

Step 4: Solve for "Affordable Payment" through a three step waterfall process

1) **Interest Rate Reduction**: Cap the life-of-loan interest rate at the Freddie Mac Weekly Survey rate as of the week of the modification offer, then reduce the interest rate incrementally to as low as 3 percent to achieve the "affordable" payment per the adjusted unpaid principal balance (UPB) and remaining amortization term. An interest rate floor of 3 percent will enable the borrower to maintain approximately a 38 percent HTI ratio throughout the life of the loan, assuming modest borrower earnings growth commensurate with the inflation rate. The reduced rate remains in effect for 5 years. After this period, the interest rate increases by not more than one percent annually until the Freddie Mac Weekly Survey rate is achieved. If the "affordable" modified PITI payment amount has not been achieved, proceed to the next step.

2) **Extend Amortization Term**: For loans with an original term of 30 years, re-amortize the adjusted UPB at the reduced interest rate (3 percent floor) over an extended amortization term of 40 years from the original first payment date. For securitized loans, the amortization will be extended to 40 years from the original first payment date, but the maturity date will not change, resulting in a balloon payment. For loans with an original term of less than 30 years, extend the amortization period for only 10 years. If the modified PITI payment amount has not been achieved, proceed to the next step.

3) **Partial Principal Forbearance**: Reduce the adjusted UPB for amortization purposes and amortize over a 40 year period at the reduced interest rate (3 percent floor). This process splits the debt into an interest-bearing, amortizing portion and a zero percent, zero payment portion of the loan. The repayment of the "postponed" principal will be due when the loan is paid in full. For loans within securitizations, this principal forbearance should be passed as a write-off of principal to the trust, with any future collections at time of pay-off submitted to the trust as a recovery.

[redacted]

Step 5: Apply the NPV Tool

Run the modified loans through the NPV Tool in order to ensure that the modified payment creates a positive economic scenario for the investor.

Step 6: Market via systematic "bulk" approach

A bulk modification model processes large segments of delinquent loans with recent borrower financial information on file. The model performs automated loan-level underwriting based on the existing loan terms and recent financial information obtained from the customer, which is verified prior to completing the modification. The bulk modification process establishes modification eligibility and modification terms as detailed in the previous steps, then uses a traditional marketing approach to provide the borrower with an easy to follow, pre-populated modification offer. The marketing materials also instruct the borrower to either contact the servicer with questions or just send in the signed documents and the first payment to complete the modification offer. The modification offer explicitly states the amount of the borrower's new monthly principal and interest payment as follows:

Reduce your monthly payment of principal and interest to $x,xxx.xx and bring your loan current!

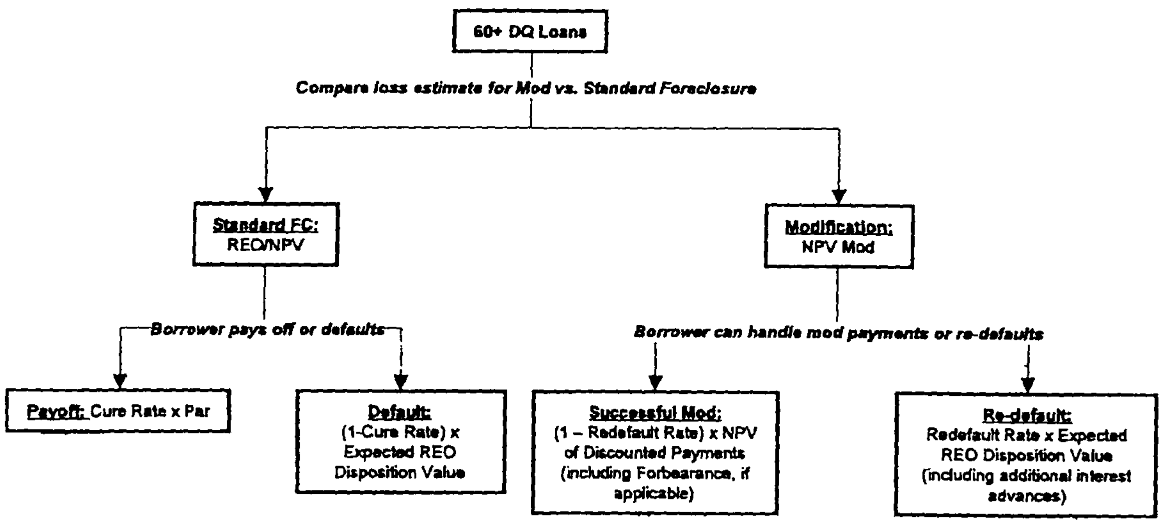
While some borrowers may appear to have the capacity to pay, their ability to do so may be inhibited by other debt obligations. Bankers and servicers should consider establishing relationships with community groups willing to contact and provide credit counseling to these borrowers. Entering into compensation agreements with local non-profit organizations with HUD-approved counselors also may assist in contacting borrowers, obtaining the requisite financial information, and completing the modification. Compensation should be based on a borrower contact and modification completion. For example, IndyMac Federal Bank pays participating community groups $150 for borrower contact and counseling services, and an additional $350 once the loan modification is completed. A copy of a counseling compensation agreement is provided in the Appendix.

[redacted]

NPV Test

NPV Test

Once the modification terms are established, the impact of the modification concessions to the investor are compared to the estimated loss given foreclosure. If the modification is less costly than foreclosure, it is approved. This test ensures that modifications mitigate the loss for investors. This diagram illustrates the NPV test:



[redacted]

NPV Test

FDIC

- **The formula used to estimate the cost of foreclosure is:**

Loan Value = Cure Rate * Par +   **(1 – Cure Rate) * Expected REO Disposition Value**

Description of the formula terms:

- **Cure rate** is based on recent industry or servicer data. It is based on a combination of delinquency status, combined loan-to-value (LTV), FICO and original income documentation. A 12 month cure period is used.
- **Expected REO Disposition Value:**

Liquidation value – Interest Adv/Accrual – Corporate Advances – Escrow Advances – Future Cost to Collect + MI Recovery

  - **Liquidation Value:**

Forecasted Liquidation Value of property at REO =   ***Current Property Value * (1 - Forecasted Depreciation - "REO Stigma" Discount – Selling Costs)***

  - **Forecasted Depreciation** is based on an industry standard such as Moody's Economy.com metropolitan statistical area (MSA) level data. Depreciation timeline is one year in the future or case-specific.
  - **Current Property Value** is determined by an interior appraisal, Broker Price Opinion (BPO), Automated Valuation Model (AVM), or original appraisal value adjusted by MSA level home price change to date. This value is then adjusted by forecasted MSA level home price changes.
  - **REO Stigma Discount** reflects differences in experienced liquidation values versus estimated property values.
  - **Selling Costs** include 10 percent for broker commission, potential repairs and maintenance costs.
  - **Interest Advances/Accruals** includes delinquent interest advanced (securitized/sold loans) or accrued (owned loans).
  - **Corporate Advances** include non-escrow advances already made on the borrowers behalf.
  - **Escrow Advances** already made on the borrowers behalf.
  - **Future Cost to Collect** is an estimate of future interest accruals, T&I payments, and FC expenses.
  - **MI Recovery (if applicable)** is estimated based on MI coverage percentage adjusted for possible MI claim denial.

[redacted]

NPV Test (Continued)

- **The formula used to estimate the cost of modification is:**

Loan Value = (1 – Redefault Rate) x NPV of Discounted Payments + Redefault Rate x (REO Disposition Value + Additional Accrued Costs)

Description of the formula terms:

- **Re-default rate** is estimated per historical re-default experience for other modification programs and a program specific projection.
- **NPV of discounted payments** is the net present value of the adjusted UPB (cash outflow) and the modified payment stream (cash inflow) discounted at the Freddie Mac Weekly Survey rate as of the week of the modification offer. An NPV example is provided in the Appendix.
- **REO disposition value** (see above).
- **Additional costs** include 9 additional months of accrued interest, taxes, and insurance payments plus additional forecasted home price depreciation, as applicable.[3]

3 Currently, the Case-Shiller forecast provided by Moody's Economy.com projects that home prices will reach their trough in about one year from today, which also is equivalent to the base case timetable for REO disposition in the NPV Tool. This means that delaying foreclosure will not lead to further home price declines at REO disposition for most geographical areas.

[redacted]

NPV Test (Continued)

FDIC

In Addition to Updated Liquidation Value, a Servicer must Formally Backtest Servicer and/or Portfolio Specific Assumptions and Regularly Update Assumptions Based on Industry Standards

1. **Forecasted Depreciation** (industry standard)
   - Updated monthly to incorporate latest home price data.
2. **Cure Rates** (servicer and/or portfolio specific)
   - Updated quarterly and based on 12 month history (to adjust for current credit environment). Suggested cure factors include the current delinquency status of the loan, combined LTV, borrower FICO, and original income documentation.
3. **REO Stigma** (servicer and/or portfolio specific)
   - Updated monthly to incorporate latest experience by region.
4. **Re-default Rate** (servicer and/or portfolio specific)
   - Based on past re-default experience for other modification programs and a program specific projection. The servicer should carefully monitor and incorporate the program's actual re-default rate.
5. **Discount Rate** (both industry standard and servicer and/or portfolio specific)
   - Freddie Mac Weekly Survey rate as of the week of the modification offer is used to discount the [redacted] modified payment cashflow. A required return methodology is used to discount the estimated foreclosure value.
6. **Prepayment rate** (servicer and/or portfolio specific)
   - The model assumes a voluntary prepayment rate of zero.

[redacted]

Process

III. Process

Key Objectives

- Leverage large scale modification offer/delivery process.
- Give collections and loss mitigation staff the ability to offer tailored solutions based on borrower need, willingness and ability to pay, balanced with investor guidelines and a formal NPV test.
- Streamline paperwork and income verification process.
- Establish a protocol for community group referrals.

Once eligibility is established, the loan modification offer is based on the borrowers income information. For borrowers with recent income information on file, a firm offer may be extended, contingent on income verification. However, verified income may be different from that on file and tolerance for some variation should be established. For borrowers with no recent income information on file, a conditional offer may be extended, contingent on income verification. This type of offer should use a more rigorous verification process requiring both tax returns and recent pay stub information.

For both firm and conditional modification offers, the key to program success is a scalable offer delivery process, which immediately provides the borrower with modification terms and instructions.

[redacted]

Process (Continued)

Offer/Delivery process – Two-Tiered Approach:

1. **Bulk Approach:** Loans processed through the bulk modification process are sent a pre-approved offer with pre-populated modification documents, income verification forms and informational material. This modification package provides the borrower with a custom modification offer and instructions to complete the modification with a quick one-touch close. Modification paperwork is handled via an automated process. The modification agreement is pre-populated and the loans are pre-qualified; as a result, the operations process is simplified to collecting the modification agreements, verifying income documentation, and completing system updates to ensure the borrower receives modified terms on the next statement.

2. **Point of Sale Approach:** Use of traditional inbound and outbound customer service and collection staff should allow borrowers to obtain fast and customized solutions. Loss mitigation staff require access to a modification tool which allows the collector to discuss all viable workout options before proceeding with an offer. For example, a delinquent borrower calls collections and is unable to afford the current mortgage payment. The collector enters the borrower's information into a desktop tool which immediately provides the collector with possible workout solutions such as modification, short sale, and cash for keys programs. If the modification is NPV positive, the collector informs the borrower of modification eligibility, collects the first modified payment, updates the system, and either generates the modification documents from the system, or includes borrower in the next bulk mailing.

One of the Benefits: Saying "Yes" to the borrower and providing the reduced modified payment amount motivates the borrower to finish submitting the final documentation needed to complete the modification. Once the borrower verbally accepts the modified payment, the collector initiates a 60-day payment plan at the new amount and takes the paperwork off the foreclosure path. When the documents are received and income is verified, modification changes are processed permanently in the system.

Community group referrals should be prioritized through a dedicated hotline and email address. Groups with a relationship with the servicer should be trained on the specific information required to complete the modification. This provides another venue to streamline the paperwork processing.

[redacted]

Process (Continued)

Income Verification

Income verification minimizes re-default and ensures the affordability standard is uniformly implemented. The gross monthly income for all borrowers who have signed the mortgage note must be supported by either last years tax returns or recent pay stubs. A dedicated underwriting group reconciles verbal financial information on file to documented income.

[redacted]

IV. Promotion

Key objectives

- Stimulate response and acceptance rates for all borrowers, including those who have not made recent contact with the servicing group.
- Leverage community group resources to contact unresponsive borrowers and to provide financial counseling.
- Establish reporting procedures to track program effectiveness.

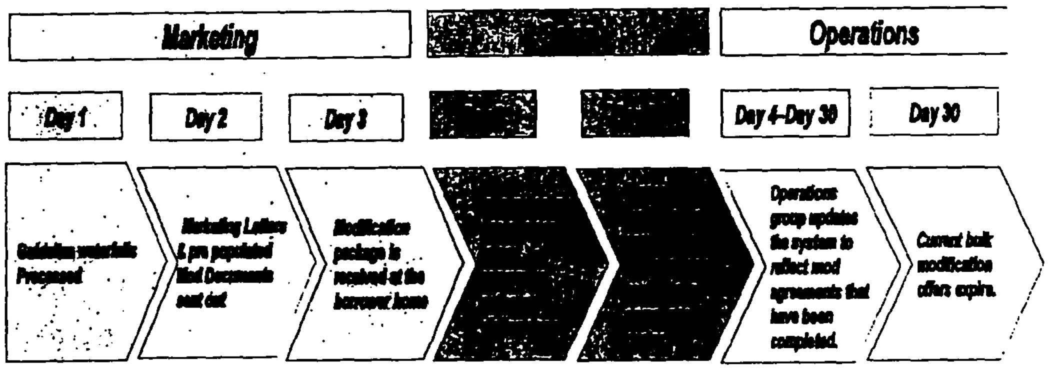
The modification offer is sent to borrowers using either priority or overnight mail to stimulate open rates for all borrowers, particularly those who have not made recent contact with the servicing group. The offer is designed to have the look and feel of a traditional origination/sales marketing letter with the additional aspect of a pre-approved modification offer and a simple pre-populated agreement. This allows the borrower to complete the agreement without having to call the servicing group. See the Appendix for examples of marketing materials and the simplified loan modification documents.

Inbound and outbound call efforts are designed around a sales approach, not a traditional collections approach, to ease borrowers' concerns about foreclosure. The servicer should promote a "No borrower left behind" mentality, which gives even no contact customers an offer that can be completed without needing to call. Campaigns are supported by a dedicated "direct to consumer" marketing team.

Community groups are a valuable resource and the servicer should integrate national and local groups into the modification process. These groups can be contracted for outbound calling to unresponsive modification candidates and financial counseling for distressed borrowers. The modification offer may also offer an incentive for borrowers to seek financial counseling through these groups. A sample contract and compensation structure is included in the Appendix.

[redacted]

Promotion (Continued)



Modification Reporting

Accurate and up to date data on the loan modification program requires an integrated servicing platform and business unit. Internal and external reporting needs include:

Internal

- Responsiveness to modification campaigns: establish specific phone lines for each modification campaign, track inbound and outbound calling and contact rates.
- Process effectiveness: create one servicing template for all modifications which requires the loss mitigation staff to track all contact made with the borrower. The servicer should analyze timelines for mailing to borrower contact, contact to document return, and document return to modification completion.
- Delinquency and re-default rate: success is measured by performance following modification. These metrics are also important to the NPV Tool model.

External

- Investors require detailed modification tracking. This enhances program credibility and proves that modification is the least cost strategy. A sample investor reporting template is found in the Appendix.

[redacted]

LA08-654

HILLARY RODHAM CLINTON
NEW YORK
SENATOR

RUSSELL SENATE OFFICE BUILDING
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COMMITTEES:
ARMED SERVICES
ENVIRONMENT AND PUBLIC WORKS
HEALTH, EDUCATION, LABOR, AND PENSIONS
SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-3204

November 6, 2008

FDIC
NOV 19 2008
OFFICE OF THE CHAIRMAN

Ms. Sheila Bair
Chairman
Federal Deposit Insurance Corporation
550 17th St., NW
Washington, D.C. 20429

Dear Chairman Bair:

I would like to commend you for your efforts at addressing what I believe to be the underlying challenge in this current market and economic turmoil, the foreclosure crisis and its dramatic impact on the value of residential homes. You have been a consistent and prescient voice in sounding the alarm over the consequences of inaction and have led the way for other federal agencies in responding to this crisis.

As your testimony to my colleagues in the Senate Banking Committee outlined, we have been behind the curve for too long in addressing this mortgage crisis, the progress made thus far has not been enough, and time is of the essence if we are going to prevent a new wave of mortgage defaults and foreclosures from deepening our current economic troubles even further. I am encouraged by your efforts thus far and I urge you to remain vigilant in putting forth a responsible and effective plan that will meet the scale of the mortgage and housing market challenges ahead of us.

For nearly two years, I have been sounding the alarm bell about the housing crisis and the need to tackle the problem immediately. Urgent action was and is needed given the dire consequences that waves of foreclosures would have not only on our markets and our economy but also on the families who would be displaced from their homes while having their most valuable asset wiped out. As one of the first to support a temporary foreclosure moratorium to stabilize the housing market, I appreciate your commitment to this issue. Additionally, I proposed allowing mortgage workouts to take hold and introduced legislation two years ago to promote the role of the Federal Housing Administration in offering alternatives to subprime mortgages. I have also voiced my skepticism about the effectiveness of the Administration's response to crisis. I agree with you that at this stage our response to the current crisis needs to be "dramatic" or at least proportional to the significant risks that a further depression in housing prices and waves of new defaults and foreclosures would pose to the economy.

We both see the benefit of creating a uniform standard for safe, fair and stable mortgages. I recently unveiled my support for a new federal initiative called the Home Owners' Mortgage Enterprise (HOME) with a mandate similar to that of the Home Owners' Loan Corporation created by President Roosevelt during the Great Depression. It would identify the non-performing mortgages within mortgage pools and purchase them directly with bonds, direct cash or insure them at a level that would provide a greater return for banks and investors than foreclosure. A HOLC could rewrite the terms of the mortgage and provide at-risk homeowners a fixed monthly payment not subject to change based on their ability to pay. Additionally, my proposal would provide flexibility to account for any unforeseen event, such as job loss or a health emergency by enabling the extension of the loan terms which would in effect ensure that the mortgage is self-amortizing. Ultimately, a program like the one I am proposing would provide the homeowner with the certainty of knowing precisely how much their monthly liability is. I urge you to look at the model of the HOLC as a way to ensure that our foreclosure prevention efforts are effective.

As you finalize your plans, I hope that you will to continue to push for a fair plan that offers effective relief to homeowners and places accountability on banks and other lenders participating in the program. Restoring value to distressed mortgage assets and non-performing mortgage through the workout and modification of unreasonable terms will prove to be a significant incentive for them to work with you and the FDIC. You and the FDIC have demonstrated your ability to create a framework for mortgage modifications as evidenced by your efforts to rework the mortgages held by IndyMac, and I hope that you will continue to be successful as you move towards this larger challenge. Indeed, preventing the next foreclosure crisis is one of the most critical components of addressing this current economic turmoil.

Thank you for your attention to my concerns, and please do not hesitate to contact me if I can be helpful to the FDIC's ongoing efforts.

Sincerely,

Hillary Rodham Clinton

Hillary Rodham Clinton

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

November 26, 2008

Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510

Dear Senator Feinstein:

Thank you for your letter expressing support for the Federal Deposit Insurance Corporation's efforts to promote a more systematic approach to modifying problem mortgage loans.

As you point out in your letter, foreclosure represents an increasingly self-defeating response to the problem of delinquent mortgage loans. In the present environment, this approach only adds to an overhang of excess vacant homes that has been estimated to exceed one million units nationally. To help us get ahead of this problem, we need a program that encourages mortgage lenders and servicers to modify loans on a sustainable basis, and that does so efficiently on a large scale.

As you are aware, the FDIC has initiated a systematic loan modification program at IndyMac Federal Bank, where it is conservator. This program identifies loans with high monthly payments relative to income and makes offers to borrowers to reduce the monthly payment to as low as 31 percent of monthly income. Modifications are undertaken according to a standard protocol based on interest rate reductions, extensions of term, and principal forbearance. Like any mortgage servicer, the FDIC must undertake a net present value, or NPV, test for every modified loan to ensure that this strategy will maximize the returns for the Deposit Insurance Fund or the investors that own the troubled mortgages. The FDIC also takes steps to verify the occupancy status and current income of the borrower.

Based on this experience, the FDIC discussed with the Treasury Department implementation of a partial loss guaranty program, as authorized under the Emergency Economic Stabilization Act (EESA), that would provide financial incentives for a wide range of mortgage servicers to modify high-cost mortgage loans according to the IndyMac standard. One of the advantages of this approach is the ability to modify loans that have been securitized, leaving them in place under private management. While those discussions have not led to adoption of the program by Treasury under the authority provided by the EESA, we believe that the rapid implementation of such a guaranty program would be the best way to achieve a significant impact on the distressed housing market.

I believe that this approach offers a way forward to improve the affordability of mortgage loans for distressed households, reducing the number of unnecessary foreclosures, and helping to stabilize U.S. housing markets. But given the immense scale of the challenge before us, our approach can make a dent in the problem only if it is implemented in a comprehensive manner. It will not be without costs. But we feel that to the extent that declining home prices and mortgage credit distress are at the heart of the present crisis, this program will more directly address it. Under this proposal, there is hope that we will finally stop falling behind this problem and begin to stabilize our housing markets and our financial system.

I appreciate your interest in this issue and support of our efforts to address it. If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C Bair

Sheila C. Bair

Thank you

This is very frustrating

We are not tackling the core problem.

LA08-541

DIANNE FEINSTEIN
CALIFORNIA

United States Senate
WASHINGTON, DC 20510-0504

October 30, 2008

FDIC
OCT 30 2008
OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, D.C. 20429

Dear Chairman Bair:

I write to express my strong support for your efforts to prevent foreclosures and expedite loan modifications through federal loan guarantees and standardized procedures for mortgage workout agreements. These are prudent and cost-effective steps to improve assistance for homeowners while also limiting foreclosures and stabilizing home values.

Foreclosures have had a devastating impact on our national economy, and the damage to my state has been particularly severe. California has the third highest foreclosure rate in the Nation, with one in every 189 homes in foreclosure—more than twice the national average of one foreclosure per every 475 homes. At this rate, more than 300,000 foreclosures may be filed on California properties this year, a roughly 75 percent increase over 2007. Six of the top ten high foreclosure U.S. metropolitan areas are in California and local communities are struggling to cope with the economic fallout.

It is critical that a portion of the funds provided in the recently enacted economic rescue legislation be immediately directed towards addressing the foreclosure problem. Utilizing the Federal Deposit Insurance Corporation model to standardize procedures for mortgage workout agreements based upon an appropriate debt-to-income ratio for borrowers will help expedite loan modifications. Moreover, I believe that providing federal loan guarantees will help incentivize lenders to offer more loan modifications to qualified borrowers while ensuring that taxpayer dollars are used efficiently.

Foreclosures are in the best interest of no one. Neighborhoods are decimated when homes are repossessed or left vacant, property values decline, local economies suffer, and crime often increases in blighted areas. Lenders must sustain the cost of foreclosure and are left with the burden of reselling properties in a distressed market. Homeowners are forced to give up on the American dream, and in some cases, tenants are forced out of homes they have been renting.

I know that you recognize the importance of this issue and I appreciate all of your hard work in developing practical solutions to assist struggling homeowners. Please keep my office closely advised of your progress. If I can be of any assistance, please do not hesitate to call me. I look forward to discussing further steps that can be taken to reduce foreclosures.

Thank you very much for your time and consideration.

Sincerely,

Dianne Feinstein
United States Senator

cc: The Honorable Henry Paulson Jr. – Secretary of the Treasury

DF:at

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

November 26, 2008

Honorable Hillary Rodham Clinton
United States Senate
Washington, D.C. 20510

Dear Senator Clinton:

Thank you for your kind words commending the Federal Deposit Insurance Corporation for our efforts to stabilize housing markets and for your interest in this shared goal through your support of the HOME initiative and other actions to prevent foreclosures.

As part of our continuing work to address ongoing mortgage-related issues including foreclosure prevention, we have researched many potential solutions, including the Home Owners' Loan Corporation (HOLC) model, for ways to deal effectively with unaffordable loans and unnecessary foreclosures. Like you, we want to place responsible yet at-risk homeowners in sustainable mortgages that are based on affordability. To that end, we recently proposed a loan modification program with a loss sharing component that establishes a consistent affordability standard for homeowners as well as incentives for banks and other lenders to participate in the program. I have enclosed a summary of our proposal for your information. In addition, the FDIC recently issued a loan modification guide we are calling "Mod in a Box" to provide information that enables others to duplicate the FDIC's program at IndyMac Federal Bank. A copy of this guide also is enclosed. We share your goal of creating a uniform, systematic approach to reach a broad pool of at-risk homeowners.

Thank you again for sharing your counsel on these important issues. I look forward to continuing to work with Congress to provide effective relief for homeowners, stabilize our communities, revitalize our financial markets, and improve our economy.

Sincerely,

Sheila

Sheila C. Bair

Congratulati on your up nomination

Enclosures

FDIC Loss Sharing Proposal to Promote Affordable Loan Modifications

Background
Basic Structure and Scope of Proposal
Details on Program Design
Impact of the Program
Loan Modification Program Guide – "Mod in a Box"

Background

Although foreclosures are costly to lenders, borrowers and communities, the pace of loan modifications continues to be extremely slow (around 4 percent of seriously delinquent loans each month). It is imperative to provide incentives to achieve a sufficient scale in loan modifications to stem the reductions in housing prices and rising foreclosures.

Modifications should be provided using a systematic and sustainable process. The FDIC has initiated a systematic loan modification program at IndyMac Federal Bank to reduce first lien mortgage payments to as low as 31% of monthly income. Modifications are based on interest rate reductions, extension of term, and principal forbearance. A loss share guarantee on redefaults of modified mortgages can provide the necessary incentive to modify mortgages on a sufficient scale, while leveraging available government funds to affect more mortgages than outright purchases or specific incentives for every modification. The FDIC would be prepared to serve as contractor for Treasury and already has extensive experience in the IndyMac modification process.

Basic Structure and Scope of Proposal

This proposal is designed to promote wider adoption of such a systematic loan modification program:

1. by paying servicers $1,000 to cover expenses for each loan modified according to the required standards; and
2. sharing up to 50% of losses incurred if a modified loan should subsequently re-default

We envision that the program can be applied to the estimated 1.4 million non-GSE mortgage loans that were 60 days or more past due as of June 2008, plus an additional 3 million non-GSE loans that are projected to become delinquent by year-end 2009. Of this total of approximately 4.4 million problem loans, we expect that about half can be modified, resulting in some 2.2 million loan modifications under the plan.

Details on Program Design

- **Eligible Borrowers:** The program will be limited to loans secured by owner-occupied properties.

- **Exclusion for Early Payment Default:** To promote sustainable mortgages, government loss sharing would be available only after the borrower has made six payments on the modified mortgage.

- **Standard NPV Test:** In order to promote consistency and simplicity in implementation and audit, a standard test comparing the expected net present value (NPV) of modifying past due loans compared to the strategy of foreclosing on them will be applied. Under this NPV test, standard assumptions will be used to ensure that a consistent standard for affordability is provided based on a 31% borrower mortgage debt-to-income ratio.

- **Systematic Loan Review by Participating Servicers:** Participating servicers would be required to undertake a systematic review of all of the loans under their management, to subject each loan to a standard NPV test to determine whether it is a suitable candidate for modification, and to modify all loans that pass this test. The penalty for failing to undertake such a systematic review and to carry out modifications where they are justified would be disqualification from further participation in the program until such a systematic program was introduced.

- **Reduced Loss Share Percentage for "Underwater Loans":** For LTVs above 100%, the government loss share will be progressively reduced from 50% to 20% as the current LTV rises.[1] If the LTV for the first lien exceeds 150%, no loss sharing would be provided.
- **Simplified Loss Share Calculation:** In order to ensure the administrative efficiency of this program, the calculation of loss share basis would be as simple as possible. In general terms, the calculation would be based on the difference between the net present value of the modified loan and the amount of recoveries obtained in a disposition by refinancing, short sale or REO sale, net of disposal costs as estimated according to industry standards. Interim modifications would be allowed.
- ***De minimis* Test:** To lower administrative costs, a *de minimis* test excludes from loss sharing any modification that did not lower the monthly payment at least 10 percent.
- **Eight-year Limit on Loss Sharing Payments:** The loss sharing guarantee ends eight years of the modification.

Impact of the Program

The table below outlines some of the basic assumptions behind the scale of the plan and its expected costs.[2] To summarize, we expect that about half of the projected 4.4 million problem loans between now and year-end 2009 can be modified. Assuming a redefault rate of 33 percent, this plan could reduce the number of foreclosures during this period by some 1.5 million at a projected program cost of $24.4 billion.

Projected Number and Cost of Loan Modifications Under FDIC Loss Sharing Proposal
1.6 million total loans 60+/90+ past due now
GSE loans make up about 13% of problem loans at present
Net: 1.4 million non-GSE problem loans at present
3.8 million new total loans 60+/90+ past due by y.e. 2009
Assume: GSE loans make up 20% of new prob. loans through y.e. 2009
Net: 3.04 million new non-GSE problem loans through y.e. 2009
Total non-GSE problem loans through y.e. 2009: **4.44 million**
Modify 1/2, or **2.22 million loans**
Avg. loan size $200,000
Total book value of loans modified = **$444 billion**
Avg. program cost (FDIC assumptions) = **5.5%**
Est. total program cost = **$24.4 billion**
Assuming redefault rate of 33%, **almost 1.5 million foreclosures avoided**

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1 Current LTV can be demonstrated by a Broker Price opinion, or BPO.

2 Note: These figures have been updated from previous summaries to reflect a narrower application of the program to non-GSE loans that become delinquent through year-end 2009.

FDIC

FDIC Loan Modification Program

FDIC

A message from FDIC Chairman Sheila Bair

Chairman Sheila C. Bair
Federal Deposit Insurance Corporation

I have long supported a systematic and streamlined approach to loan modifications that puts borrowers into affordable, long-term mortgages while achieving an improved return for bankers and investors compared to foreclosure. Using this type of approach, we can help stabilize the U.S. financial markets by minimizing foreclosures on the 6.4 million loans that are currently past due or are projected to become delinquent by mid-2010. Avoiding foreclosure, when it is financially prudent to do so, reduces the downward pressure on the price of nearby homes and helps communities to maintain the services they provide to neighborhoods. Unnecessary foreclosures perpetuate the cycle of financial distress and risk aversion, which potentially could cause housing prices to overcorrect and create even larger losses for both borrowers and the financial industry.

At IndyMac Federal Bank, the FDIC initiated a systematic and streamlined loan modification program for delinquent borrowers who occupy their home. These distressed mortgages are being rehabilitated into performing loans while avoiding unnecessary and costly foreclosures. By achieving mortgage payments for borrowers that are both affordable and sustainable, we expect to reduce future defaults, improve the value of the underlying mortgages, and cut servicing costs. This approach makes good business sense and creates a 'win-win' solution for everyone. I strongly encourage bankers, servicers, and investors to implement systematic and streamlined loan modifications that result in monthly mortgage payments that borrowers can afford over the long term.

To assist bankers, servicers, and investors in this process, this guide provides an overview of the FDIC's loan modification program. It outlines our program terms at IndyMac Federal Bank, offers insight into the specific portfolio characteristics that drive modification modeling at that bank, and provides a framework for developing and implementing a similar program at your institution. While the final program each of you implements will be based on the characteristics specific to your respective portfolios, I am confident that the value of such a program will benefit both your institution and your investors while helping many troubled borrowers remain in their homes. Your support in this industry-wide effort will help avoid unnecessary foreclosures and bring stability to the housing and mortgage markets during this time of unprecedented economic turmoil.

Sincerely,

Sheila Bair

[redacted]

Loan Modification

As indicated in the summary table below, the FDIC's Loan Modification Program is primarily based on two principals:

1) Determining a payment the borrower can afford by multiplying the borrower's gross monthly income times the appropriate housing-to-income (HTI) ratio, less taxes and insurance to achieve a minimum payment reduction of 10 percent, and
2) Protecting investors' interests by requiring that the cost of the modification is less than the estimated cost of foreclosure (the Net Present Value (NPV) floor).

FDIC Loan Modification Program		
	Strategy	**Process**
Borrower Affordability Determination	▪ Offer proactive workout solutions designed to address borrowers who have the willingness but limited capacity to pay.	▪ Return the loan to a current status. ▪ Capitalize delinquent interest and escrow. ▪ Modify the loan terms based on waterfalls, starting at a front-end 38 percent HTI ratio down to a 31 percent HTI ratio, subject to a formal NPV floor. ▪ Reduce interest rate to as low as 3 percent. ▪ Extend, if necessary, the amortization and/or term of the loan to 40 years. ▪ Forbear principal if necessary.
Borrower Affordability Determination	▪ Provide borrowers the opportunity to stay in their home while making an affordable payment for the life of the loan.	▪ Require the borrower to make one payment at the time of the modification. ▪ Cap the interest rate at the Freddie Mac Weekly Survey rate effective at the time of the modification. ▪ Lower the interest rate as required to meet the target HTI ratio, fixing the adjusted rate and monthly payment amount for 5 years. ▪ Step up the initial interest rate gradually starting in year 6 by increasing it one percentage point each year until reaching the Freddie Mac Weekly Survey rate cap.
Investor Protection Via NPV Tool	▪ Use a financial model with supportable assumptions to ensure investor interests are protected.	▪ Input borrower specific income information into the NPV Tool, which provides a real-time workout solution. ▪ Perform automated loan level underwriting across large segments of the portfolio to support pre-approved bulk mailings. ▪ Verify income information the borrower provided via check stubs, tax returns, and/or bank statements. ▪ Compare the cost of the modified concessions to the estimated cost of foreclosure to mitigate losses. ▪ Mandate that the cost of the modification must be less than the estimated foreclosure loss.

[redacted]

Overview

FDIC

I. Philosophy

Modification improves the value of distressed mortgages by achieving long-term sustainable cash flows for lenders and investors that exceed the value achievable through foreclosure.

Modification provides an affordable payment and eliminates payment shock for the life of the loan.

Modification minimizes loss to the investor.

II. Program

Affordable payment is achieved through interest rate reduction, amortization term extension, and/or principal forbearance.

Net present value (NPV) test confirms modification minimizes loss to the investor.

III. Process

Program uses a scalable process which can be applied across a broad range of investors.

Streamlined process provides custom modification offers and minimal borrower paperwork.

IV. Promotion

Inclusion of customized modified payment amounts in bulk mailings significantly increases customer response and completed modifications. For bulk modification offer mailings, the initial letter includes a pre-approved modification offer with the modified payment amount.

The program uses a combination of existing origination/sales marketing to contact borrowers via direct mail and innovative point of sale approach via the call center. Call center staff have the capability to gather financial information and make a modification offer during the initial call.

This document provides a framework for establishing and implementing these standards.

[redacted]

Philosophy

FDIC

I. Philosophy

Key objectives

- Keep borrowers in their homes when the borrower is willing and has the capacity to make an affordable mortgage payment.
- Provide borrowers with immediate payment relief and stable long term mortgage payments.
- Modification must always result in a positive NPV outcome for the investor, *i.e.*, the cost of the modification must be less than the estimated cost of foreclosure.

Determine what type of modification is most appropriate

The FDIC Loan Modification Program targets distressed borrowers who are currently having financial difficulty with the scheduled mortgage payment, but have the capacity to make a loan payment. It uses a streamlined approach to identify modification candidates and to provide a customized modification offer when the modification minimizes loss. If a borrower does not qualify for a streamlined modification, an individual loan review may result in a personalized modification that still maximizes value.

This approach is just one of many loss mitigation strategies that a prudent servicer must consider when dealing with a distressed borrower. Refinance is an alternative as well as traditional loss mitigation practices such as repayment plans. However, many borrowers are unable to refinance their loans in the current economic environment and repayment plans typically do not provide long- term solutions to borrowers' financial problems. In cases where the borrower cannot afford the lowest payment allowed by the NPV Tool, a short sale or deed-in-lieu of foreclosure with "cash for keys" assistance are preferred methods to avoid foreclosure.

Immediate relief and long term stability

Loan modification will result in a "life of loan" solution by capping interest rates at current market rates, requiring immediate principal amortization, and setting an initial interest rate subsidy to provide immediate relief. A predictable payment schedule after the fifth year will step the initial interest rate up to the market rate. Modification replaces adjustable-rate and interest-only mortgages with stable rate loans, and eliminates the possibility of future negative amortization.

[redacted]

Philosophy

Minimizes Losses on Distressed Mortgages

Once the borrower-specific modification is determined, the servicer must perform a valuation test between the cost of modification and the estimated cost of foreclosure to ensure modification results in a lower cost to the investor. By providing a transparent valuation comparing the cost of the modification and the estimated cost of foreclosure, the servicer fulfills the terms of most servicing agreements.

[redacted]

Program

II. Program

Key objectives

- Systematic determination of borrower specific modification terms using a standardized NPV test to minimize losses on distressed mortgages.
- Target distressed borrowers. Modifications may be available for loans that are at least 60 days delinquent or where default is reasonably foreseeable.[1]
- Implement modification program that can be used across a broad range of investors.

Step 1: Determine Eligibility

Servicers typically manage loans for other investors, including Government Sponsored Enterprises (GSEs), private investors owning securities collateralized by the mortgages, and whole loan investors. Each investor type has different standards for approving loan modification. The GSEs have authorized loss mitigation programs for seriously delinquent loans, however some loans owned by the GSEs may be modified based on eligibility standards similar to those used for private investors. The GSEs recently announced the adoption of more streamlined modification plans that apply many of the features of the FDIC Loan Modification Program model.

Loans serviced for private investors are governed by servicing contracts which often contain a standard clause allowing the servicer to modify seriously delinquent or defaulted mortgages, or mortgages where default is "reasonably foreseeable".[2] This even holds true for complex private label securitizations with many tranches and investors.

Loans subject to these contracts are typically eligible for modification given:

- The loan is at least 60 days delinquent where the loan is considered one day delinquent on the day following the next payment due date.
- Foreclosure sale is not imminent and the borrower is currently not in bankruptcy, or has not been discharged from Chapter 7 bankruptcy since the loan was originated.
- The loan was not originated as a second home or an investment property.

Loans sold whole to individual investors often require a case-by-case approach. These loans are subject to both servicing and securitization contracts. The Appendix contains guidelines on how to evaluate whole loan servicing agreements.

[1] Due to contractual restrictions in IndyMac's pooling and servicing agreements, IndyMac Federal Bank has not modified securitized loans where default is reasonably foreseeable. Most other agreements do allow modification of such loans.

[2] See the *American Securitization Forum's Streamlined Foreclosure and Loss Avoidance Framework for Securitized Mortgage Loans*, issued Dec. 6, 2007 and revised July 8, 2008.

[redacted]

Program (Continued)

Step 2: Calculate an "Affordable" Payment

In order to calculate an affordable payment, recent financial income information must be available for the borrower. Efforts to contact the borrower via special mailings, calling campaigns, email, and other outreach methods are used.

The FDIC Loan Modification Program calculates the modified principal, interest, taxes, and insurance (PITI) payment per a borrower specific HTI ratio of no more than 38 percent. Housing expenses on a PITI basis may include:

- The modified principal and interest payment for the subject loan, as applicable,
- Real estate taxes,
- Property hazard, flood, and mortgage insurance premiums,
- Leasehold estate payments, and
- Homeowners' association (HOA) dues.

Industry standards set forth by certain FHA lending programs indicate a mortgage payment based on a 31 percent to 38 percent HTI ratio is affordable. The FDIC Loan Modification Program follows these origination standards as illustrated below.

Example of HTI ratio calculation

Monthly Gross Income
$3,618 - Borrower 1
$2,756 - Borrower 2
$6,374 - Total Monthly Gross Income

PITI Payment Determination
$6,374 x 38% = $2,422

Monthly Housing Expense
$2,422 - Maximum Total Monthly Housing Expense
$ - 364 - Taxes, hazard, flood, and mortgage insurance, etc.
$ - 85 - HOA dues
$1,973 - Maximum modified principal and interest payment

Total HTI Ratio
$2,422 / $6,374 = 38%

[redacted]

Program (Continued)

If the initial modification calculation at 38 percent does not decrease the borrower's payment by 10 percent or more, the HTI ratio is lowered to 35 percent and then lowered to 31 percent to achieve the 10 percent savings. In cases where a 10 percent reduction can not be achieved, the 31 percent HTI ratio is used for affordability.

Step 3: Determine the "Total Debt" by capitalizing certain costs in the unpaid principal balance

- Delinquent interest, taxes, and insurance escrows and
- Third party fees such as foreclosure attorney or trustee fees and property preservation costs.

Step 4: Solve for "Affordable Payment" through a three step waterfall process

1) **Interest Rate Reduction:** Cap the life-of-loan interest rate at the Freddie Mac Weekly Survey rate as of the week of the modification offer, then reduce the interest rate incrementally to as low as 3 percent to achieve the "affordable" payment per the adjusted unpaid principal balance (UPB) and remaining amortization term. An interest rate floor of 3 percent will enable the borrower to maintain approximately a 38 percent HTI ratio throughout the life of the loan, assuming modest borrower earnings growth commensurate with the inflation rate. The reduced rate remains in effect for 5 years. After this period, the interest rate increases by not more than one percent annually until the Freddie Mac Weekly Survey rate is achieved. If the "affordable" modified PITI payment amount has not been achieved, proceed to the next step.

2) **Extend Amortization Term:** For loans with an original term of 30 years, re-amortize the adjusted UPB at the reduced interest rate (3 percent floor) over an extended amortization term of 40 years from the original first payment date. For securitized loans, the amortization will be extended to 40 years from the original first payment date, but the maturity date will not change, resulting in a balloon payment. For loans with an original term of less than 30 years, extend the amortization period for only 10 years. If the modified PITI payment amount has not been achieved, proceed to the next step.

3) **Partial Principal Forbearance:** Reduce the adjusted UPB for amortization purposes and amortize over a 40 year period at the reduced interest rate (3 percent floor). This process splits the debt into an interest-bearing, amortizing portion and a zero percent, zero payment portion of the loan. The repayment of the "postponed" principal will be due when the loan is paid in full. For loans within securitizations, this principal forbearance should be passed as a write-off of principal to the trust, with any future collections at time of pay-off submitted to the trust as a recovery.

[redacted]

Step 5: Apply the NPV Tool

Run the modified loans through the NPV Tool in order to ensure that the modified payment creates a positive economic scenario for the investor.

Step 6: Market via systematic "bulk" approach

A bulk modification model processes large segments of delinquent loans with recent borrower financial information on file. The model performs automated loan-level underwriting based on the existing loan terms and recent financial information obtained from the customer, which is verified prior to completing the modification. The bulk modification process establishes modification eligibility and modification terms as detailed in the previous steps, then uses a traditional marketing approach to provide the borrower with an easy to follow, pre-populated modification offer. The marketing materials also instruct the borrower to either contact the servicer with questions or just send in the signed documents and the first payment to complete the modification offer. The modification offer explicitly states the amount of the borrower's new monthly principal and interest payment as follows:

Reduce your monthly payment of principal and interest to $x,xxx.xx and bring your loan current!

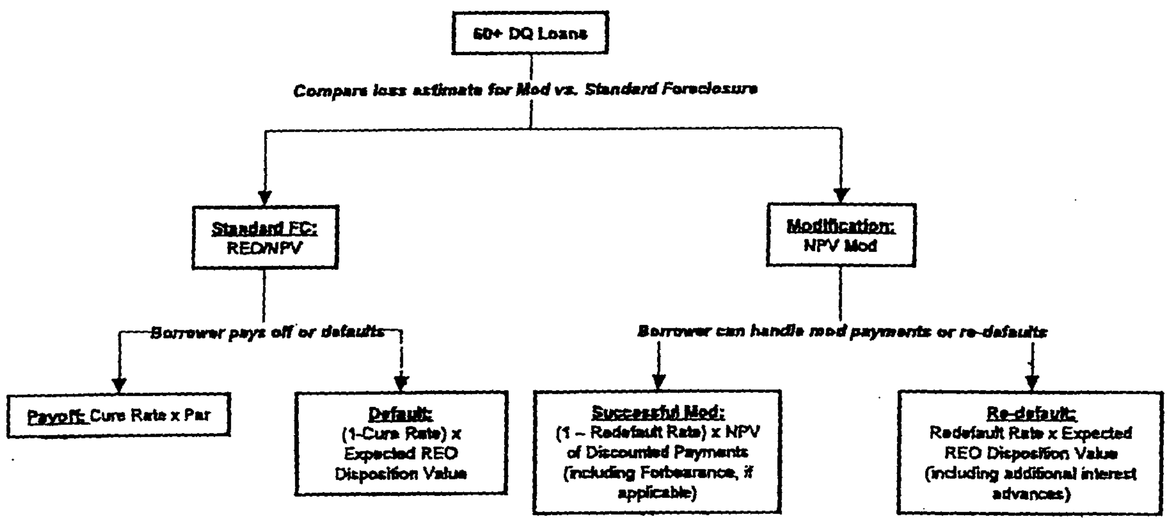
While some borrowers may appear to have the capacity to pay, their ability to do so may be inhibited by other debt obligations. Bankers and servicers should consider establishing relationships with community groups willing to contact and provide credit counseling to these borrowers. Entering into compensation agreements with local non-profit organizations with HUD-approved counselors also may assist in contacting borrowers, obtaining the requisite financial information, and completing the modification. Compensation should be based on a borrower contact and modification completion. For example, IndyMac Federal Bank pays participating community groups $150 for borrower contact and counseling services, and an additional $350 once the loan modification is completed. A copy of a counseling compensation agreement is provided in the Appendix.

[redacted]

FDIC

NPV Test

Once the modification terms are established, the impact of the modification concessions to the investor are compared to the estimated loss given foreclosure. If the modification is less costly than foreclosure, it is approved. This test ensures that modifications mitigate the loss for investors. This diagram illustrates the NPV test:



[redacted]

[redacted]

NPV Test

- **The formula used to estimate the cost of foreclosure is:**

> **Loan Value = Cure Rate * Par +**
> **(1 – Cure Rate) * Expected REO Disposition Value**

Description of the formula terms:

- **Cure rate** is based on recent industry or servicer data. It is based on a combination of delinquency status, combined loan-to-value (LTV), FICO and original income documentation. A 12 month cure period is used.
- **Expected REO Disposition Value:**

> **Liquidation value – Interest Adv/Accrual – Corporate Advances – Escrow Advances – Future Cost to Collect + MI Recovery**

  - **Liquidation Value:**

> **Forecasted Liquidation Value of property at REO =**
> ***Current Property Value * (1 - Forecasted Depreciation - "REO Stigma" Discount – Selling Costs)***

  - **Forecasted Depreciation** is based on an industry standard such as Moody's Economy.com metropolitan statistical area (MSA) level data. Depreciation timeline is one year in the future or case-specific.
  - **Current Property Value** is determined by an interior appraisal, Broker Price Opinion (BPO), Automated Valuation Model (AVM), or original appraisal value adjusted by MSA level home price change to date. This value is then adjusted by forecasted MSA level home price changes.
  - **REO Stigma Discount** reflects differences in experienced liquidation values versus estimated property values.
  - **Selling Costs** include 10 percent for broker commission, potential repairs and maintenance costs.
  - **Interest Advances/Accruals** includes delinquent interest advanced (securitized/sold loans) or accrued (owned loans).
  - **Corporate Advances** include non-escrow advances already made on the borrowers behalf.
  - **Escrow Advances** already made on the borrowers behalf.
  - **Future Cost to Collect** is an estimate of future interest accruals, T&I payments, and FC expenses.
  - **MI Recovery (if applicable)** is estimated based on MI coverage percentage adjusted for possible MI claim denial.

[redacted]

NPV Test (Continued)

FDIC

➢ **The formula used to estimate the cost of modification is:**

Loan Value = (1 – Redefault Rate) x NPV of Discounted Payments + Redefault Rate x (REO Disposition Value + Additional Accrued Costs)

Description of the formula terms:

➢ **Re-default rate** is estimated per historical re-default experience for other modification programs and a program specific projection.

➢ **NPV of discounted payments** is the net present value of the adjusted UPB (cash outflow) and the modified payment stream (cash inflow) discounted at the Freddie Mac Weekly Survey rate as of the week of the modification offer. An NPV example is provided in the Appendix.

➢ **REO disposition value** (see above).

➢ **Additional costs** include 9 additional months of accrued interest, taxes, and insurance payments plus additional forecasted home price depreciation, as applicable.[3]

[3] Currently, the Case-Shiller forecast provided by Moody's Economy.com projects that home prices will reach their trough in about one year from today, which also is equivalent to the base case timetable for REO disposition in the NPV Tool. This means that delaying foreclosure will not lead to further home price declines at REO disposition for most geographical areas.

[redacted]

NPV Test (Continued)

FDIC

In Addition to Updated Liquidation Value, a Servicer must Formally Backtest Servicer and/or Portfolio Specific Assumptions and Regularly Update Assumptions Based on Industry Standards

1. **Forecasted Depreciation** (industry standard)
   - Updated monthly to incorporate latest home price data.
2. **Cure Rates** (servicer and/or portfolio specific)
   - Updated quarterly and based on 12 month history (to adjust for current credit environment). Suggested cure factors include the current delinquency status of the loan, combined LTV, borrower FICO, and original income documentation.
3. **REO Stigma** (servicer and/or portfolio specific)
   - Updated monthly to incorporate latest experience by region.
4. **Re-default Rate** (servicer and/or portfolio specific)
   - Based on past re-default experience for other modification programs and a program specific projection. The servicer should carefully monitor and incorporate the program's actual re-default rate.
5. **Discount Rate** (both industry standard and servicer and/or portfolio specific)
   - Freddie Mac Weekly Survey rate as of the week of the modification offer is used to discount the modified payment cashflow. A required return methodology is used to discount the estimated foreclosure value.
6. **Prepayment rate** (servicer and/or portfolio specific)
   - The model assumes a voluntary prepayment rate of zero.

[redacted]

Process

III. **Process**

Key Objectives

- Leverage large scale modification offer/delivery process.
- Give collections and loss mitigation staff the ability to offer tailored solutions based on borrower need, willingness and ability to pay, balanced with investor guidelines and a formal NPV test.
- Streamline paperwork and income verification process.
- Establish a protocol for community group referrals.

Once eligibility is established, the loan modification offer is based on the borrowers income information. For borrowers with recent income information on file, a firm offer may be extended, contingent on income verification. However, verified income may be different from that on file and tolerance for some variation should be established. For borrowers with no recent income information on file, a conditional offer may be extended, contingent on income verification. This type of offer should use a more rigorous verification process requiring both tax returns and recent pay stub information.

For both firm and conditional modification offers, the key to program success is a scalable offer delivery process, which immediately provides the borrower with modification terms and instructions.

[redacted]

Process (Continued)

Offer/Delivery process – Two-Tiered Approach:

1. **Bulk Approach:** Loans processed through the bulk modification process are sent a pre-approved offer with pre-populated modification documents, income verification forms and informational material. This modification package provides the borrower with a custom modification offer and instructions to complete the modification with a quick one-touch close. Modification paperwork is handled via an automated process. The modification agreement is pre-populated and the loans are pre-qualified; as a result, the operations process is simplified to collecting the modification agreements, verifying income documentation, and completing system updates to ensure the borrower receives modified terms on the next statement.

2. **Point of Sale Approach:** Use of traditional inbound and outbound customer service and collection staff should allow borrowers to obtain fast and customized solutions. Loss mitigation staff require access to a modification tool which allows the collector to discuss all viable workout options before proceeding with an offer. For example, a delinquent borrower calls collections and is unable to afford the current mortgage payment. The collector enters the borrower's information into a desktop tool which immediately provides the collector with possible workout solutions such as modification, short sale, and cash for keys programs. If the modification is NPV positive, the collector informs the borrower of modification eligibility, collects the first modified payment, updates the system, and either generates the modification documents from the system, or includes borrower in the next bulk mailing.

   One of the Benefits: Saying "Yes" to the borrower and providing the reduced modified payment amount motivates the borrower to finish submitting the final documentation needed to complete the modification. Once the borrower verbally accepts the modified payment, the collector initiates a 60-day payment plan at the new amount and takes the paperwork off the foreclosure path. When the documents are received and income is verified, modification changes are processed permanently in the system.

   Community group referrals should be prioritized through a dedicated hotline and email address. Groups with a relationship with the servicer should be trained on the specific information required to complete the modification. This provides another venue to streamline the paperwork processing.

[redacted]

Process (Continued)

Income Verification

Income verification minimizes re-default and ensures the affordability standard is uniformly implemented. The gross monthly income for all borrowers who have signed the mortgage note must be supported by either last years tax returns or recent pay stubs. A dedicated underwriting group reconciles verbal financial information on file to documented income.

[redacted]

IV. Promotion

Key objectives

- Stimulate response and acceptance rates for all borrowers, including those who have not made recent contact with the servicing group.
- Leverage community group resources to contact unresponsive borrowers and to provide financial counseling.
- Establish reporting procedures to track program effectiveness.

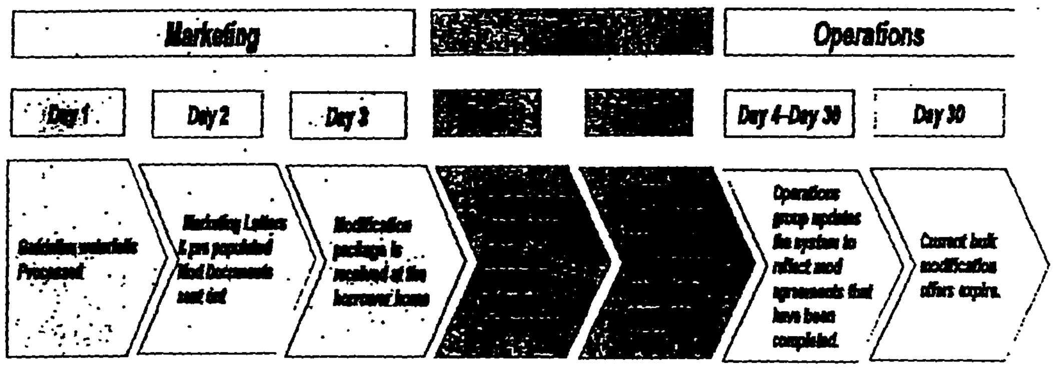
The modification offer is sent to borrowers using either priority or overnight mail to stimulate open rates for all borrowers, particularly those who have not made recent contact with the servicing group. The offer is designed to have the look and feel of a traditional origination/sales marketing letter with the additional aspect of a pre-approved modification offer and a simple pre-populated agreement. This allows the borrower to complete the agreement without having to call the servicing group. See the Appendix for examples of marketing materials and the simplified loan modification documents.

Inbound and outbound call efforts are designed around a sales approach, not a traditional collections approach, to ease borrowers' concerns about foreclosure. The servicer should promote a "No borrower left behind" mentality, which gives even no contact customers an offer that can be completed without needing to call. Campaigns are supported by a dedicated "direct to consumer" marketing team.

Community groups are a valuable resource and the servicer should integrate national and local groups into the modification process. These groups can be contracted for outbound calling to unresponsive modification candidates and financial counseling for distressed borrowers. The modification offer may also offer an incentive for borrowers to seek financial counseling through these groups. A sample contract and compensation structure is included in the Appendix.

[redacted]

Promotion (Continued)



Modification Reporting

Accurate and up to date data on the loan modification program requires an integrated servicing platform and business unit. Internal and external reporting needs include:

Internal

- Responsiveness to modification campaigns: establish specific phone lines for each modification campaign, track inbound and outbound calling and contact rates.
- Process effectiveness: create one servicing template for all modifications which requires the loss mitigation staff to track all contact made with the borrower. The servicer should analyze timelines for mailing to borrower contact, contact to document return, and document return to modification completion.
- Delinquency and re-default rate: success is measured by performance following modification. These metrics are also important to the NPV Tool model.

External

- Investors require detailed modification tracking. This enhances program credibility and proves that modification is the least cost strategy. A sample investor reporting template is found in the Appendix.

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COMMITTEES:
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ENVIRONMENT AND PUBLIC WORKS
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SPECIAL COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-3204

November 6, 2008

FDIC
NOV 19 2008
OFFICE OF THE CHAIRMAN

Ms. Sheila Bair
Chairman
Federal Deposit Insurance Corporation
550 17th St., NW
Washington, D.C. 20429

Dear Chairman Bair:

I would like to commend you for your efforts at addressing what I believe to be the underlying challenge in this current market and economic turmoil, the foreclosure crisis and its dramatic impact on the value of residential homes. You have been a consistent and prescient voice in sounding the alarm over the consequences of inaction and have led the way for other federal agencies in responding to this crisis.

As your testimony to my colleagues in the Senate Banking Committee outlined, we have been behind the curve for too long in addressing this mortgage crisis, the progress made thus far has not been enough, and time is of the essence if we are going to prevent a new wave of mortgage defaults and foreclosures from deepening our current economic troubles even further. I am encouraged by your efforts thus far and I urge you to remain vigilant in putting forth a responsible and effective plan that will meet the scale of the mortgage and housing market challenges ahead of us.

For nearly two years, I have been sounding the alarm bell about the housing crisis and the need to tackle the problem immediately. Urgent action was and is needed given the dire consequences that waves of foreclosures would have not only on our markets and our economy but also on the families who would be displaced from their homes while having their most valuable asset wiped out. As one of the first to support a temporary foreclosure moratorium to stabilize the housing market, I appreciate your commitment to this issue. Additionally, I proposed allowing mortgage workouts to take hold and introduced legislation two years ago to promote the role of the Federal Housing Administration in offering alternatives to subprime mortgages. I have also voiced my skepticism about the effectiveness of the Administration's response to crisis. I agree with you that at this stage our response to the current crisis needs to be "dramatic" or at least proportional to the significant risks that a further depression in housing prices and waves of new defaults and foreclosures would pose to the economy.

We both see the benefit of creating a uniform standard for safe, fair and stable mortgages. I recently unveiled my support for a new federal initiative called the Home Owners' Mortgage Enterprise (HOME) with a mandate similar to that of the Home Owners' Loan Corporation created by President Roosevelt during the Great Depression. It would identify the non-performing mortgages within mortgage pools and purchase them directly with bonds, direct cash or insure them at a level that would provide a greater return for banks and investors than foreclosure. A HOLC could rewrite the terms of the mortgage and provide at-risk homeowners a fixed monthly payment not subject to change based on their ability to pay. Additionally, my proposal would provide flexibility to account for any unforeseen event, such as job loss or a health emergency by enabling the extension of the loan terms which would in effect ensure that the mortgage is self-amortizing. Ultimately, a program like the one I am proposing would provide the homeowner with the certainty of knowing precisely how much their monthly liability is. I urge you to look at the model of the HOLC as a way to ensure that our foreclosure prevention efforts are effective.

As you finalize your plans, I hope that you will to continue to push for a fair plan that offers effective relief to homeowners and places accountability on banks and other lenders participating in the program. Restoring value to distressed mortgage assets and non-performing mortgage through the workout and modification of unreasonable terms will prove to be a significant incentive for them to work with you and the FDIC. You and the FDIC have demonstrated your ability to create a framework for mortgage modifications as evidenced by your efforts to rework the mortgages held by IndyMac, and I hope that you will continue to be successful as you move towards this larger challenge. Indeed, preventing the next foreclosure crisis is one of the most critical components of addressing this current economic turmoil.

Thank you for your attention to my concerns, and please do not hesitate to contact me if I can be helpful to the FDIC's ongoing efforts.

Sincerely,

Hillary Rodham Clinton

Hillary Rodham Clinton

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

December 1, 2008

Honorable John Conyers
Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Chairman Conyers:

Thank you for your letter regarding the Federal Deposit Insurance Corporation's role in the Emergency Economic Stabilization Act of 2008 (EESA) and the Troubled Asset Relief Program's (TARP) Capital Purchase Program (CPP). The FDIC agrees with you that funds received from the CPP primarily should be used to augment capital at insured depository institutions with a result of making credit available throughout the country. On this point, we joined the other federal banking agencies in issuing the *Interagency Statement on Meeting the Needs of Creditworthy Borrowers* on November 12 (copy enclosed). This Statement encourages banks to support the needs of creditworthy borrowers, strengthen capital, and engage in foreclosure prevention programs in view of the financial assistance provided under recent federal initiatives to promote financial stability which include the EESA and the CPP.

As you know, the U.S. Department of the Treasury (Treasury) instructed institutions to file CPP applications with their primary federal regulator. The primary federal regulator conducts a viability assessment and then forwards the application to Treasury with a recommendation for approval or denial. The FDIC, in its role as primary federal regulator for state non-member institutions, has implemented a comprehensive review process for CPP applications that results in a recommendation to Treasury. Treasury, which manages and funds the CPP, makes the program's final approval and denial decisions. As of November 18, 2008, the FDIC has received 1,214 CPP application requests. We expected to have a much greater number of applications by this time. However, Treasury has not yet finalized a feasible CPP subscription framework for the vast majority of community banks supervised by the FDIC.

I understand from your letter that you are particularly concerned about the PNC Financial Services, Inc.-National City Corporation merger transaction and a related CPP capital injection from Treasury. The FDIC is not the primary federal regulator for either of these companies. Therefore, the FDIC did not make a recommendation to Treasury on this CPP transaction.

Our responses to the specific questions presented in your letter are enclosed along with copies of relevant documents. I hope this information is helpful. If you have additional questions, please contact Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C Bair

Sheila C. Bair

Enclosure

Report prepared for the Honorable John Conyers by the Federal Deposit Insurance Corporation's Division of Supervision and Consumer Protection and Legal Division

Q1: Please detail what conditions have or will be imposed upon the use of the federal funds provided to PNC Financial Services Group or any other financial entity through the Emergency Economic Stabilization Act. Describe and explain any factors taken into account when federal tax dollars are being used to help fund an acquisition of another firm. Please provide a copy of all documents...from September 2008 onward relating to any aspect of the foregoing.

A1: The U.S. Department of Treasury (Treasury) issued the CPP Terms Sheet (attached) on October 14, 2008, which establishes the conditions imposed on institutions receiving federal funds. We do not believe that Treasury has mandated restrictions on the use of CPP funds (other than the executive compensation limitations in the EESA), however, the FDIC has an expectation that insured depository institutions and their holding companies will prudently use these funds to augment capital and make loans. Since Treasury is entering into a stock offering with participating institutions and imposing its own conditions to protect the taxpayers' interests, the FDIC will not be issuing separate restrictions on CPP subscriptions. In the normal course of supervisory activity, the FDIC will review each state nonmember institution's use of CPP funds, lending activities, and compliance with the executive compensation/golden parachute limitations mandated by the EESA. It should be noted that on November 12, the FDIC joined the other federal banking agencies in issuing the *Interagency Statement on Meeting the Needs of Creditworthy Borrowers* (copy attached). This Statement encourages banks to support the needs of creditworthy borrowers, strengthen capital, and engage in foreclosure prevention programs in view of the financial assistance provided under recent federal initiatives to promote financial stability which include the EESA and the CPP.

The FDIC does not have experience using federal tax dollars to facilitate private sector mergers. However, we suggest that such transactions should be predicated on reasonable assurances that the post-merger entity would: 1) be adequately capitalized and viable over the long term; 2) have positive future earnings and business prospects; 3) operate with satisfactory board and management oversight; 4) present an appropriate plan for making credit and banking services available in its community; and 5) recapture the taxpayers' investment and provide a suitable return.

Q2: Please detail the methodology and criteria that were considered in connection with the possible transfer of federal funds through the Emergency Economic Stabilization Act to National City Corporation as compared to the other regional banks for which you recently approved funding. Also, please describe the extent to which any impact on National City Corp.'s customers and employees as well as the relevant local economy was taken into consideration with regard to approval or denial of funds to National City and the proposed acquisition of National City by

PNC. Please provide a copy of all documents...from September 2008 onward relating to any aspect of the foregoing.

A2: As mentioned above, the FDIC is not the primary federal regulator for PNC Financial or National City Corp. While the FDIC does not comment publicly on the condition of specific open and operating institutions, the FDIC believes that, under certain circumstances, it is appropriate to require institutions to raise additional private capital or seek a strategic partner in order to receive funds through the CPP program. This can help strengthen weaker institutions and ensure that they can continue providing financial services to their communities. With respect to the merger of these two firms, the FDIC does not have specific knowledge of the methodology and criteria used in the CPP transaction.

Q3: As noted above, the press has recently reported that the banking industry "has no intention of using the [bailout] money to make new loans;" the Treasury has acknowledged that one of their principal motives in allocating the funds is to "drive consolidation;" and a JP Morgan official acknowledged that the bailout funds would allow them to be "more active on the acquisition side." Please detail any knowledge by your departments or agencies of these matters, as well as any discussions or understandings you may have regarding the use of the funds the government is providing and their possible use with regard to mergers and consolidations. Please provide a copy of all documents...from September 2008 onward relating to any aspect of the foregoing.

A3: In the FDIC's discussions with state non-member institutions interested in participating in the TARP CPP, we find that many applicants are planning to use awarded monies prospectively to support their lending business. The FDIC strongly advocates the use of CPP funds for capital augmentation and prudent lending as envisioned by the EESA. We articulated this position in our October 20, 2008, Financial Institution Letter titled "*Applications to the Troubled Asset Relief Program's Capital Purchase Program*" (see attachment).

The FDIC believes, in certain circumstances, that CPP injections can be used effectively by applicants to provide additional funding for acquisitions, particularly if the applicant acquires a weakened institution. Importantly, such acquisitions may reduce the potential for market disruption, including reduced lending avenues and bank failures. Particularly for community banks, their inability to obtain capital, or their demise can have a devastating effect on their local communities. In many smaller communities, banking services and credit availability are heavily dependent on the financial health of their local bank. Over the long term, acquisitions pursued by CPP awardees could save taxpayer dollars and restore capital and lending capacities at banking institutions. As indicated in the Financial Institution Letter referenced above, the FDIC believes that participation in the CPP can bolster an institution's financial strength or potentially support acquisitions, both of which allow for prudent lending that currently may be constrained by capital levels.

Q4: Please detail the manner in which antitrust considerations generally have been and are being taken into account in recent consolidations, particularly in the proposed acquisition of National City Corp. by PNC Financial Services Group. Please detail how the antitrust review is impacted by the fact that the Treasury or Federal Reserve, their employees and/or representatives may have participated in discussion involving the possible acquisition of one financial entity by another financial entity. Please provide a copy of all documents...relating to any aspect of the foregoing.

A4: Anti-trust considerations are a significant aspect of merger transactions involving FDIC-supervised state non-member institutions. All merger transactions require a regulatory application process which includes analysis of potential anti-trust issues. Section 18(c)(5) of the Federal Deposit Insurance Act prohibits the FDIC from approving any merger which would result in a monopoly or whose effect in any part of the country may substantially lessen competition. Our overall process for considering merger applications is guided by the FDIC's Statement of Policy on Bank Merger Transactions (see attachment).

In our analysis of the competitive effects of a proposed merger transaction, the FDIC focuses on the type and extent of competition that exists within the relevant geographic market(s) and the degree to which that competition will be eliminated, reduced, or enhanced by the proposed merger. We rely heavily on conclusions from the Department of Justice's review of the proposed merger, including its Competitive Effects Report. We also focus on the respective shares of total deposits held by the merging institutions and the various other participants in the relevant markets.

As the FDIC did not have a supervisory role in the PNC Financial Services Group, Inc.-National City Corporation transaction, we do not have information to provide relative to the regulatory antitrust analysis.

Attachments

TARP Capital Purchase Program

Senior Preferred Stock and Warrants

<u>Summary of Senior Preferred Terms</u>

Issuer:	Qualifying Financial Institution ("QFI") means (i) any U.S. bank or U.S. savings association not controlled by a Bank Holding Company ("BHC") or Savings and Loan Holding Company ("SLHC"); (ii) any U.S. BHC, or any U.S. SLHC which engages only in activities permitted for financial holdings companies under Section 4(k) of the Bank Holding Company Act, and any U.S. bank or U.S. savings association controlled by such a qualifying U.S. BHC or U.S. SLHC; and (iii) any U.S. BHC or U.S. SLHC whose U.S. depository institution subsidiaries are the subject of an application under Section 4(c)(8) of the Bank Holding Company Act; except that QFI shall not mean any BHC, SLHC, bank or savings association that is controlled by a foreign bank or company. For purposes of this program, "U.S. bank", "U.S. savings association", "U.S. BHC" and "U.S. SLHC" means a bank, savings association, BHC or SLHC organized under the laws of the United Sates or any State of the United States, the District of Columbia, any territory or possession of the United States, Puerto Rico, Northern Mariana Islands, Guam, American Samoa, or the Virgin Islands. **The United States Department of the Treasury will determine eligibility and allocation for QFIs after consultation with the appropriate Federal banking agency.**
Initial Holder:	United States Department of the Treasury (the "UST").
Size:	QFIs may sell preferred to the UST subject to the limits and terms described below. Each QFI may issue an amount of Senior Preferred equal to not less than 1% of its risk-weighted assets and not more than the lesser of (i) $25 billion and (ii) 3% of its risk-weighted assets.
Security:	Senior Preferred, liquidation preference $1,000 per share. (Depending upon the QFI's available authorized preferred shares, the UST may agree to purchase Senior Preferred with a higher liquidation preference per share, in which case the UST may require the QFI to appoint a depositary to hold the Senior Preferred and issue depositary receipts.)
Ranking:	Senior to common stock and pari passu with existing preferred shares other than preferred shares which by their terms rank junior to any existing preferred shares.

Regulatory Capital Status: Tier 1.

Term: Perpetual life.

Dividend: The Senior Preferred will pay cumulative dividends at a rate of 5% per annum until the fifth anniversary of the date of this investment and thereafter at a rate of 9% per annum. For Senior Preferred issued by banks which are not subsidiaries of holding companies, the Senior Preferred will pay non-cumulative dividends at a rate of 5% per annum until the fifth anniversary of the date of this investment and thereafter at a rate of 9% per annum. Dividends will be payable quarterly in arrears on February 15, May 15, August 15 and November 15 of each year.

Redemption: Senior Preferred may not be redeemed for a period of three years from the date of this investment, except with the proceeds from a Qualified Equity Offering (as defined below) which results in aggregate gross proceeds to the QFI of not less than 25% of the issue price of the Senior Preferred. After the third anniversary of the date of this investment, the Senior Preferred may be redeemed, in whole or in part, at any time and from time to time, at the option of the QFI. All redemptions of the Senior Preferred shall be at 100% of its issue price, plus (i) in the case of cumulative Senior Preferred, any accrued and unpaid dividends and (ii) in the case of non-cumulative Senior Preferred, accrued and unpaid dividends for the then current dividend period (regardless of whether any dividends are actually declared for such dividend period), and shall be subject to the approval of the QFI's primary federal bank regulator.

"Qualified Equity Offering" shall mean the sale by the QFI after the date of this investment of Tier 1 qualifying perpetual preferred stock or common stock for cash.

Following the redemption in whole of the Senior Preferred held by the UST, the QFI shall have the right to repurchase any other equity security of the QFI held by the UST at fair market value.

Restrictions on Dividends: For as long as any Senior Preferred is outstanding, no dividends may be declared or paid on junior preferred shares, preferred shares ranking pari passu with the Senior Preferred, or common shares (other than in the case of pari passu preferred shares, dividends on a pro rata basis with the Senior Preferred), nor may the QFI repurchase or redeem any junior preferred shares, preferred shares ranking pari passu with the Senior Preferred or common shares, unless (i) in the case of cumulative Senior Preferred all accrued and unpaid dividends for all past dividend periods on the Senior Preferred are fully paid or (ii) in the case of non-cumulative Senior Preferred the full dividend for the latest completed dividend period has been declared and paid in full.

Common dividends: The UST's consent shall be required for any increase in common dividends per share until the third anniversary of the date of this investment unless prior to such third anniversary the Senior Preferred is redeemed in whole or the UST has transferred all of the Senior Preferred to third parties.

Repurchases: The UST's consent shall be required for any share repurchases (other than (i) repurchases of the Senior Preferred and (ii) repurchases of junior preferred shares or common shares in connection with any benefit plan in the ordinary course of business consistent with past practice) until the third anniversary of the date of this investment unless prior to such third anniversary the Senior Preferred is redeemed in whole or the UST has transferred all of the Senior Preferred to third parties. In addition, there shall be no share repurchases of junior preferred shares, preferred shares ranking pari passu with the Senior Preferred, or common shares if prohibited as described above under "Restrictions on Dividends".

Voting rights: The Senior Preferred shall be non-voting, other than class voting rights on (i) any authorization or issuance of shares ranking senior to the Senior Preferred, (ii) any amendment to the rights of Senior Preferred, or (iii) any merger, exchange or similar transaction which would adversely affect the rights of the Senior Preferred.

If dividends on the Senior Preferred are not paid in full for six dividend periods, whether or not consecutive, the Senior Preferred will have the right to elect 2 directors. The right to elect directors will end when full dividends have been paid for four consecutive dividend periods.

Transferability: The Senior Preferred will not be subject to any contractual restrictions on transfer. The QFI will file a shelf registration statement covering the Senior Preferred as promptly as practicable after the date of this investment and, if necessary, shall take all action required to cause such shelf registration statement to be declared effective as soon as possible. The QFI will also grant to the UST piggyback registration rights for the Senior Preferred and will take such other steps as may be reasonably requested to facilitate the transfer of the Senior Preferred including, if requested by the UST, using reasonable efforts to list the Senior Preferred on a national securities exchange. If requested by the UST, the QFI will appoint a depositary to hold the Senior Preferred and issue depositary receipts.

Executive Compensation: As a condition to the closing of this investment, the QFI and its senior executive officers covered by the EESA shall modify or terminate all benefit plans, arrangements and agreements (including golden parachute agreements) to the extent necessary to be in compliance with, and following the closing and for so long as UST holds any equity or debt securities of the QFI, the QFI shall agree to be bound by, the executive compensation and corporate governance requirements of Section 111 of the EESA and any guidance or regulations issued by the Secretary of the Treasury on or prior to the date of this investment to carry out the provisions of such subsection. As an additional condition to closing, the QFI and its senior executive officers covered by the EESA shall grant to the UST a waiver releasing the UST from any claims that the QFI and such senior executive officers may otherwise have as a result of the issuance of any regulations which modify the terms of benefits plans, arrangements and agreements to eliminate any provisions that would not be in compliance with the executive compensation and corporate governance requirements of Section 111 of the EESA and any guidance or regulations issued by the Secretary of the Treasury on or prior to the date of this investment to carry out the provisions of such subsection.

Summary of Warrant Terms

Warrant: The UST will receive warrants to purchase a number of shares of common stock of the QFI having an aggregate market price equal to 15% of the Senior Preferred amount on the date of investment, subject to reduction as set forth below under "Reduction". The initial exercise price for the warrants, and the market price for determining the number of shares of common stock subject to the warrants, shall be the market price for the common stock on the date of the Senior Preferred investment (calculated on a 20-trading day trailing average), subject to customary anti-dilution adjustments. The exercise price shall be reduced by 15% of the original exercise price on each six-month anniversary of the issue date of the warrants if the consent of the QFI stockholders described below has not been received, subject to a maximum reduction of 45% of the original exercise price.

Term: 10 years

Exercisability: Immediately exercisable, in whole or in part

Transferability: The warrants will not be subject to any contractual restrictions on transfer, provided that the UST may only transfer or exercise an aggregate of one-half of the warrants prior to the earlier of (i) the date on which the QFI has received aggregate gross proceeds of not less than 100% of the issue price of the Senior Preferred from one or more Qualified Equity Offerings and (ii) December 31, 2009. The QFI will file a shelf registration statement covering the warrants and the common stock underlying the warrants as promptly as practicable after the date of this investment and, if necessary, shall take all action required to cause such shelf registration statement to be declared effective as soon as possible. The QFI will also grant to the UST piggyback registration rights for the warrants and the common stock underlying the warrants and will take such other steps as may be reasonably requested to facilitate the transfer of the warrants and the common stock underlying the warrants. The QFI will apply for the listing on the national exchange on which the QFI's common stock is traded of the common stock underlying the warrants and will take such other steps as may be reasonably requested to facilitate the transfer of the warrants or the common stock.

Voting: The UST will agree not to exercise voting power with respect to any shares of common stock of the QFI issued to it upon exercise of the warrants.

Reduction: In the event that the QFI has received aggregate gross proceeds of not less than 100% of the issue price of the Senior Preferred from one or more Qualified Equity Offerings on or prior to December 31, 2009, the number of shares of common stock underlying the warrants then held by the UST shall be reduced by a number of shares equal to the product of (i) the number of shares originally underlying the warrants (taking into account all adjustments) and (ii) 0.5.

Consent: In the event that the QFI does not have sufficient available authorized shares of common stock to reserve for issuance upon exercise of the warrants and/or stockholder approval is required for such issuance under applicable stock exchange rules, the QFI will call a meeting of its stockholders as soon as practicable after the date of this investment to increase the number of authorized shares of common stock and/or comply with such exchange rules, and to take any other measures deemed by the UST to be necessary to allow the exercise of warrants into common stock.

Substitution: In the event the QFI is no longer listed or traded on a national securities exchange or securities association, or the consent of the QFI stockholders described above has not been received within 18 months after the issuance date of the warrants, the warrants will be exchangeable, at the option of the UST, for senior term debt or another economic instrument or security of the QFI such that the UST is appropriately compensated for the value of the warrant, as determined by the UST.

FDIC

Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-109-2008
October 20, 2008

APPLICATIONS TO THE TROUBLED ASSET RELIEF PROGRAM'S CAPITAL PURCHASE PROGRAM

Summary: State nonmember institutions are encouraged to participate in the Troubled Asset Relief Program's (TARP) Capital Purchase Program (CPP) to strengthen their capital positions and ability to prudently make credit available in their lending markets. All financial institutions are eligible to apply for a capital injection from the U.S. Department of Treasury. Applications should be filed with the FDIC according to the instructions in this letter and on the FDIC's Web site at www.fdic.gov.

Distribution:
All FDIC-Supervised Institutions

Suggested Routing:
Chief Executive Officer
Chief Financial Officer

Attachment:
"Instructions for Applying to the Troubled Asset Relief Program's Capital Purchase Program for State Nonmember Institutions"

Contact:
Institution's contact person (Case Manager or Field Supervisor) at applicable FDIC Regional Office

Note:
FDIC financial institution letters (FILs) may be accessed from the FDIC's Web site at www.fdic.gov/news/news/financial/2008/index.html.

To receive FILs electronically, please visit http://www.fdic.gov/about/subscriptions/fil.html.

Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226.

Highlights:

The FDIC strongly encourages state nonmember institutions to consider applying for infusions of capital under the CPP. The following summarizes the application process:

- Interested state nonmember institutions should contact their appropriate FDIC Regional Office to express interest in the program and file an application with that office using the instructions at www.fdic.gov. The deadline for applying is 5:00 p.m. EST, November 14, 2008.
- The FDIC will review all state nonmember institution applications and make a recommendation to the U.S. Department of Treasury (which will approve or deny program participation).
- Participation in this low-cost capital program can bolster financial strength, or potentially support acquisitions, both of which ultimately allow for prudent lending that may currently be constrained by capital levels.
- For those institutions controlled by a holding company, Treasury will make capital injections at the holding company level. Applications should be submitted to the Federal Reserve and the FDIC if the company's largest institution is a state nonmember charter.
- Institutions with less than $1 billion in assets that serve low- to moderate-income populations and underserved communities *and* that have been impacted by Fannie Mae or Freddie Mac stock depreciation may apply (under certain conditions) for consideration under the CPP.
- Minority Depository Institutions requiring technical assistance should contact their appropriate FDIC Regional Office.

Instructions for Applying to the Troubled Asset Relief Program's Capital Purchase Program for State Nonmember Institutions

On October 14, 2008, the U.S. Treasury Department announced a Capital Purchase Program (CPP) under the Troubled Asset Relief Program mandated by the Emergency Economic Stabilization Act of 2008. The CPP is designed to encourage U.S. financial institutions to build capital to increase the flow of financing to U.S. businesses and consumers and support the U.S. economy. Under this program, the Treasury will purchase up to $250 billion of senior preferred shares in financial institutions on standardized terms as described in the program's term sheet available at http://www.treas.gov/press/releases/hp1207.htm. The Treasury's investment agreement and associated documents will be posted on the Treasury Web site soon.

How to Apply

Any state nonmember institution may apply to the FDIC for a CPP capital infusion using the application materials and frequently asked questions posted on the Internet at http://www.treas.gov/initiatives/eesa/docs/application-guidelines.pdf, http://www.treas.gov/initiatives/eesa/docs/faq-cpp.pdf, and www.fdic.gov. Although the U.S. Treasury ultimately will make decisions regarding capital injections, applications should be submitted through an institution's primary federal regulator. Applications must be received by the FDIC by 5:00 p.m. EST on November 14, 2008, to receive consideration.

Interested institutions should submit their applications to the appropriate FDIC Regional Office via e-mail or U.S. mail. If interested in electronic submission, applying institutions should contact their FDIC Regional Office. Once applications are considered complete, they will be formally accepted for processing by the FDIC Regional Office, and applicants will be advised in writing. Applications will then be forwarded to the FDIC's Washington Office for final consideration and submitted to the Treasury for action. At any time during this process, an applicant may withdraw its request to participate in the CPP.

Prospective applicants are encouraged to begin a dialogue immediately with their FDIC Regional Office to express interest in participating in the program and discuss any corporate structure obstacles or other challenges. The FDIC Regional Office staff is available to answer questions and provide consultation on program requirements.

State Nonmember Institutions Within a Bank Holding Company Structure

Treasury will be making CPP injections at the bank holding company level for institutions controlled by a bank holding company. Therefore, state nonmember institutions controlled by a bank holding company will apply to the Federal Reserve for a CPP injection. The holding company should provide a copy of the application to the appropriate FDIC Regional Office. The Federal Reserve will make a recommendation on the application to Treasury in consultation with the FDIC.

Institutions with a Non-Public, Subchapter S, or Mutual Corporate Structure

Treasury is aware of potential legal and tax obstacles in these corporate structures in relation to the terms of the CPP senior perpetual preferred shares and warrants. Accordingly, Treasury is investigating possible alternatives. State nonmember institutions with these non-public structures that are interested in applying should submit their CPP application to their FDIC Regional Office by November 14, 2008, and describe any structural conditions that may not comply with the Treasury's guidelines.

Participation

The FDIC encourages all state nonmember institutions to seriously consider applying for CPP injections. Participation in this low-cost capital program can bolster financial strength, or potentially support acquisitions, both of which ultimately allow for prudent lending that may currently be constrained by capital levels. Any questions on the application process should be directed to the institution's FDIC Regional Office.

Institutions Serving Low- to Moderate-Income or Underserved Communities

Institutions with less than $1 billion in assets that serve low- to moderate-income populations and other underserved communities that were well or adequately capitalized as of June 30, 2008, and will drop one or more regulatory capital levels because of depreciation in Fannie Mae or Freddie Mac equity securities, are identified for specified consideration for a CPP injection under Section 103 of the Emergency Economic Stabilization Act of 2008. The FDIC encourages such institutions to apply for a CPP capital injection; these institutions should note their status under Section 103 in application materials.

Minority Depository Institutions

If state nonmember minority-owned or -operated depository institutions require technical assistance in completing CPP applications, they should contact their FDIC Regional Office.

Notification of Treasury's Determinations

Institutions will be advised in writing by the U.S. Treasury of their decisions by year-end 2008.

FDIC Statement of Policy on Bank Merger Transactions

I. Introduction

Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), popularly known as the "Bank Merger Act," requires the prior written approval of the FDIC before any insured depository institution may:

(1) Merge or consolidate with, purchase or otherwise acquire the assets of, or assume any deposit liabilities of, another insured depository institution if the resulting institution is to be a state nonmember bank, or
(2) Merge or consolidate with, assume liability to pay any deposits or similar liabilities of, or transfer assets and deposits to, a noninsured bank or institution.

Institutions undertaking one of the above described "merger transactions" must file an application with the FDIC. Transactions that do not involve a transfer of deposit liabilities typically do not require prior FDIC approval under the Bank Merger Act, unless the transaction involves the acquisition of all or substantially all of an institution's assets.

The Bank Merger Act prohibits the FDIC from approving any proposed merger transaction that would result in a monopoly, or would further a combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States. Similarly, the Bank Merger Act prohibits the FDIC from approving a proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade. An exception may be made in the case of a merger transaction whose effect would be to substantially lessen competition, tend to create a monopoly, or otherwise restrain trade, if the FDIC finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. For example, the FDIC may approve a merger transaction to prevent the probable failure of one of the institutions involved.

In every proposed merger transaction, the FDIC must also consider the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the community to be served, and the effectiveness of each insured depository institution involved in the proposed merger transaction in combating money-laundering activities, including in overseas branches.

II. Application Procedures

1. *Application filing.* yApplication forms and instructions may be obtained from the appropriate FDIC office. Completed applications and any other pertinent materials should be filed with the appropriate FDIC office. The application and related materials will be reviewed by the FDIC for compliance with applicable laws and FDIC rules and regulations. When all necessary information has been received, the application will be processed and a decision rendered by the FDIC.

2. *Expedited processing.* Section 303.64 of the FDIC rules and regulations (12 CFR 303.64) provides for expedited processing, which the FDIC will grant to eligible applicants. In addition to the eligible institution criteria provided for in § 303.2 (12 CFR 303.2), § 303.64 provides expedited processing criteria specifically applicable to proposed merger transactions.

3. *Publication of notice.* The FDIC will not take final action on a merger application until notice of the proposed merger transaction is published in a newspaper or newspapers of general circulation in accordance with the requirements of section 18(c)(3) of the Federal Deposit Insurance Act. See § 303.65 of the FDIC rules and regulations (12 CFR 303.65). The applicant must furnish evidence of publication of the notice to the appropriate FDIC office following compliance with the publication requirement. See § 303.7(b) of the FDIC rules and regulations (12 CFR 303.7(b)).

4. *Reports on competitive factors.* As required by law, the FDIC will request reports on the competitive factors involved in a proposed merger transaction from the Attorney General, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision. These reports must ordinarily be furnished within 30 days, and the applicant upon request will be given an opportunity to submit comments to the FDIC on the contents of the competitive factors reports.

5. *Notification of the Attorney General.* After the FDIC approves any merger transaction, the FDIC will immediately notify the Attorney General. Generally, unless it involves a probable failure or an emergency exists requiring expeditious action, a merger transaction may not be consummated until 30 calendar days after the date of the FDIC's
{{2-28-03 p.5146}}approval. However, the FDIC may prescribe a 15-day period, provided the Attorney General concurs with the shorter period.

6. *Merger decisions available.* Applicants for consent to engage in a merger transaction may find additional guidance in the reported bases for FDIC approval or denial in prior merger transaction cases compiled in the FDIC's annual ``Merger Decisions" report. Reports may be obtained from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226. Reports may also be viewed at *http://www.fdic.gov.*

III. Evaluation of Merger Applications

The FDIC's intent and purpose is to foster and maintain a safe, efficient, and competitive banking system that meets the needs of the communities served. With these broad goals in mind, the FDIC will apply the specific standards outlined in this Statement of Policy when evaluating and acting on proposed merger transactions.

Competitive Factors

In deciding the competitive effects of a proposed merger transaction, the FDIC will consider the extent of existing competition between and among the merging institutions, other depository institutions, and other providers of similar or equivalent services in the relevant product market(s) within the relevant geographic market(s).

1. *Relevant geographic market.* The relevant geographic market(s) includes the areas in which the offices to be acquired are located and the areas from which those offices derive the predominant portion of their loans, deposits, or other business. The relevant geographic market also includes the areas where existing and potential customers impacted by the proposed merger transaction may practically turn for alternative sources of banking services. In delineating the relevant geographic market, the FDIC will also consider the location of the acquiring institution's offices in relation to the offices to be acquired.

2. *Relevant product market.* The relevant product market(s) includes the banking services currently offered by the merging institutions and to be offered by the resulting institution. In addition, the product market may also include the functional equivalent of such services offered by other types of competitors, including other depository institutions, securities firms, or finance companies. For example, share draft accounts offered by credit unions may be the functional equivalent of demand deposit accounts. Similarly, captive finance companies of automobile manufacturers may compete directly with depository institutions for automobile loans, and mortgage bankers may complete directly with depository institutions for real estate loans.

3. *Analysis of competitive effects.* In its anlaysis of the competitive effects of a proposed merger transaction, the FDIC will focus particularly on the type and extent of competition that exists and that will be eliminated, reduced, or enhanced by the proposed merger transaction. The FDIC will also consider the competitive impact of providers located outside a relevant geographic market where it is shown that such providers individually or collectively influence materially the nature, pricing, or quality of services offered by the providers currently operating within the geographic market.

The FDIC's analysis will focus primarily on those services that constitute the largest part of the businesses of the merging institutions. In its analysis, the FDIC will use whatever analytical proxies are available that reasonably reflect the dynamics of the market, including deposit and loan totals, the number and volume of transactions, contributions to net income, or other measures. Initially, the FDIC will focus on the respective shares of total deposits [1] held by the merging institutions and the various other participants with offices in the relevant geographic market(s), unless the other participants' loan, deposit, or other business varies markedly from that of the merging institutions. Where it is clear, based on market share considerations alone, that the proposed merger transaction would not significantly increase concentration in an unconcentrated market, a favorable finding will be made on the competitive factor.
{{2-28-03 p.5147}}

Where the market shares of the merging institutions are not clearly insignificant, the FDIC will also consider the degree of concentration within the relevant geographic market(s) using the Herfindahl-Hirschman Index (HHI) [2] as a primary measure of market concentration. For purposes of this test, a reasonable approximation for the relevant geographic market(s) consisting of one or more predefined areas may be used. Examples of such predefined areas include counties, the Bureau of the Census Metropolitan-Statistical Areas (MSAs), or Rand-McNally Ranally Metro Areas (RMAs).

The FDIC normally will not deny a proposed merger transaction on antitrust grounds (absent objection from the Department of Justice) where the post-merger HHI in the relevant geographic market(s) is 1,800 points or less or, if it is more than 1,800, it reflects an increase of less than 200 points from the pre-merger HHI. Where a proposed merger transaction fails this initial concentration test, the FDIC will consider more closely the various competitive dynamics at work in the market, taking into account a variety of factors that may be especially relevant and important in a particular proposal, including:

• The number, size, financial strength, quality of management, and aggressiveness of the various participants in the market;

• The likelihood of new participants entering the market based on its attractiveness in terms of population, income levels, economic growth, and other features;

• Any legal impediments to entry or expansion; and

• Definite entry plans by specifically identified entities.

In addition, the FDIC will consider the likelihood that new entrants might enter the market by less direct means; for example, electronic banking with local advertisement of the availability of such services. This consideration will be particularly important where there is evidence that the mere possibility of such entry tends to encourage competitive pricing and to maintain the quality of services offered by the existing competitors in the market.

The FDIC will also consider the extent to which the proposed merger transaction likely would create a stronger, more efficient institution able to compete more vigorously in the relevant geographic markets.

4. *Consideration of the public interest.* The FDIC will deny any proposed merger transaction whose overall effect likely would be to reduce existing competition substantially by limiting the service and price options available to the public in the relevant geographic market(s), unless the anticompetitive effects of the proposed merger transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. For this purpose, the applicant must show by clear and convincing evidence that any claimed public benefits would be both substantial and incremental and generally available to seekers of banking services in the relevant geographic market(s) and that the expected benefits cannot reasonably be achieved through other, less anticompetitive means.

Where a proposed merger transaction is the least costly alternative to the probable failure of an insured depository institution, the FDIC may approve the merger transaction even if it is anticompetitive.

Prudential Factors

The FDIC does not wish to create larger weak institutions or to debilitate existing institutions whose overall condition, including capital, management, and earnings, is generally satisfactory. Consequently, apart from competitive considerations, the FDIC normally will not approve a proposed merger transaction where the resulting institution would fail to meet existing capital standards, continue with weak or unsatisfactory management, or whose earnings prospects, both in terms of quantity and quality, are weak, suspect, or doubtful. In assessing capital adequacy and earnings prospects, particular attention will be paid to the adequacy of the allowance for loan and lease losses. In {{2-28-03 p.5148}}evaluating management, the FDIC will rely to a great extent on the supervisory histories of the institutions involved and of the executive officers and directors that are proposed for the resultant institution. In addition, the FDIC may review the adequacy of management's disclosure to shareholders of the material aspects of the merger transaction to ensure that management has properly fulfilled its fiduciary duties.

Convenience and Needs Factor

In assessing the convenience and needs of the community to be served, the FDIC will consider such elements as the extent to which the proposed merger transaction is likely to benefit the general public through higher lending limits, new or expanded services, reduced prices, increased convenience in utilizing the services and facilities of the resulting institution, or other means. The FDIC, as required by the Community Reinvestment Act, will also note and consider each institution's Community Reinvestment Act performance evaluation record. An unsatisfactory record may form the basis for denial or conditional approval of an application.

Anti-Money Laundering Record

In every case, the FDIC will take into consideration the effectiveness of each insured depository institution involved in the proposed merger transaction in combating money-laundering activities, including in overseas branches. In this regard, the FDIC will consider the adequacy of each institution's programs, policies, and procedures relating to anti-money laundering activities; the relevant supervisory history of each participating institution, including their compliance with anti-money laundering laws and regulations; and the effectiveness of any corrective program outstanding. The FDIC's assessment may also incorporate information made available to the FDIC by the Department of the Treasury, other Federal or State authorities, and/or foreign governments. Adverse findings may warrant correction of identified problems before consent is granted, or the imposition of conditions. Significantly adverse findings in this area may form the basis for denial of the application.

Special Information requirement if applicant is affiliated with or will be affiliated with an insurance company.

If the institution that is the subject of the application is, or will be, affiliated with a company engaged in insurance activities that is subject to supervision by a state insurance regulator, the applicant must submit the following information as part of its application: (1) The name of insurance company; (2) a description of the insurance activities that the company is engaged in and has plans to conduct; and (3) a list of each state and the lines of business in that state which the company holds, or will hold, an insurance license. Applicant must also indicate the state where the company holds a resident license or charter, as applicable.

IV. Related Considerations

1. ***Interstate bank merger transactions.*** Where a proposed transaction is an interstate merger transaction between insured banks, the FDIC will consider the additional factors provided for in

section 44 of the Federal Deposit Insurance Act, 12 U.S.C. 1831u.

2. *Interim merger transactions.* An interim institution is a state- or federally-chartered institution that does not operate independently, but exists, normally for a very short period of time, solely as a vehicle to accomplish a merger transaction. In cases where the establishment of a new or interim institution is contemplated in connection with a proposed merger transaction, the applicant should contact the FDIC to discuss any relevant deposit insurance requirements. In general, a merger transaction (other than a purchase and assumption) involving an *insured* depository institution and a *federal* interim depository institution will not require an application for deposit insurance, even if the federal interim depository institution will be the surviving institution.

3. *Optional conversion.* Section 5(d)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1815(d)(3), provides for "optional conversions" (commonly known as Oakar transactions) which, in general, are merger transactions that involve a member of the Bank Insurance Fund and a member of the Savings Association Insurance Fund. These transactions are subject to specific rules regarding deposit insurance coverage and premiums. Applicants may find additional guidance in § 327.31 of the FDIC rules and regulations (12 CFR 327.31).
{{2-28-03 p.5149}}

4. *Branch closings.* Where banking offices are to be closed in connection with the proposed merger transaction, the FDIC will review the merging institutions' conformance to any applicable requirements of section 42 of the FDI Act concerning notice of branch closings as reflected in the Interagency Policy Statement Concerning Branch Closing Notices and Policies. See 2 FDIC Law, Regulations, Related Acts 5391.

5. *Legal fees and other expenses.* The commitment to pay or payment of unreasonable or excessive fees and other expenses incident to an application reflects adversely upon the management of the applicant institution. The FDIC will closely review expenses for professional or other services rendered by present or prospective board members, major shareholders, or other insiders for any indication of self-dealing to the detriment of the institution. As a matter of practice, the FDIC expects full disclosure to all directors and shareholders of any arrangement with an insider. In no case will the FDIC approve an application where the payment of a fee, in whole or in part, is contingent upon any act or forbearance by the FDIC or by any other federal or state agency or official.

6. *Trade names.* Where an acquired bank or branch is to be operated under a different trade name than the acquiring bank, the FDIC will review the adequacy of the steps taken to minimize the potential for customer confusion about deposit insurance coverage. Applicants may refer to the Interagency Statement on Branch Names for additional guidance. See FDIC, Financial Institution Letter, 46--98 (May 1, 1998).

By Order of the Board of Directors, December 19, 2007.

[Source: 63 Fed. Reg. 44762, August 20, 1998, effective October 1, 1998; amended at 67 Fed. Reg. 48178, July 23, 2002; 67 Fed. Reg. 79278, December 27, 2002.; 73 FR 8870, February 15, 2008.]

Press Releases

Joint Release

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Office of Thrift Supervision

For Immediate Release November 12, 2008

Interagency Statement on Meeting the Needs of Creditworthy Borrowers

The Department of the Treasury, the Federal Deposit Insurance Corporation, and the Federal Reserve have recently put into place several programs designed to promote financial stability and to mitigate procyclical effects of the current market conditions. These programs make new capital widely available to U.S. financial institutions, broaden and increase the guarantees on bank deposit accounts and certain liabilities, and provide backup liquidity to U.S. banking organizations. These efforts are designed to strengthen the capital foundation of our financial system and improve the overall functioning of credit markets.

The ongoing financial and economic stress has highlighted the crucial role that prudent bank lending practices play in promoting the nation's economic welfare. The recent policy actions are designed to help support responsible lending activities of banking organizations, enhance their ability to fund such lending, and enable banking organizations to better meet the credit needs of households and business. At this critical time, it is imperative that all banking organizations and their regulators work together to ensure that the needs of creditworthy borrowers are met. As discussed below, to support this objective, consistent with safety and soundness principles and existing supervisory standards, each individual banking organization needs to ensure the adequacy of its capital base, engage in appropriate loss mitigation strategies and foreclosure prevention, and reassess the incentive implications of its compensation policies.

Lending to creditworthy borrowers
The agencies expect all banking organizations to fulfill their fundamental role in the economy as intermediaries of credit to businesses, consumers, and other creditworthy borrowers. Moreover, as a result of problems in financial markets, the economy will likely become increasingly reliant on banking organizations to provide credit formerly provided or facilitated by purchasers of securities. Lending to creditworthy borrowers provides sustainable returns for the lending organization and is constructive for the economy as a whole.

It is essential that banking organizations provide credit in a manner consistent with prudent lending practices and continue to ensure that they consider new lending opportunities on the basis of realistic asset valuations and a balanced assessment of borrowers' repayment capacities. However, if underwriting standards tighten excessively or banking organizations retreat from making sound credit decisions, the current market conditions may be exacerbated, leading to slower growth and potential damage to the economy as well as the long-term interests and profitability of individual banking organizations. Banking organizations should strive to maintain healthy credit relationships with businesses, consumers, and other creditworthy borrowers to enhance their own financial well-being as well as to promote a sound economy. The agencies have directed supervisory staffs to be mindful of the procyclical effects of an excessive tightening of credit availability and to encourage banking organizations to practice economically viable and appropriate lending activities.

Strengthening capital
Maintaining a strong capital position complements and facilitates a banking organization's capacity and willingness to lend and bolsters its ability to withstand uncertain market conditions. Banking

organizations should focus on effective and efficient capital planning and longer-term capital maintenance. An effective capital planning process requires a banking organization to assess both the risks to which it is exposed and the risk management processes in place to manage and mitigate those risks; evaluate its capital adequacy relative to its risks; and consider the potential impact on earnings and capital from economic downturns. Further, an effective capital planning process requires a banking organization to recognize losses on bank assets and activities in a timely manner; maintain adequate loan loss provisions; and adhere to prudent dividend policies.

In particular, in setting dividend levels, a banking organization should consider its ongoing earnings capacity, the adequacy of its loan loss allowance, and the overall effect that a dividend payout would have on its cost of funding, its capital position, and, consequently, its ability to serve the expected needs of creditworthy borrowers,. Banking organizations should not maintain a level of cash dividends that is inconsistent with the organization's capital position, that could weaken the organization's overall financial health, or that could impair its ability to meet the needs of creditworthy borrowers. Supervisors will continue to review the dividend policies of individual banking organizations and will take action when dividend policies are found to be inconsistent with sound capital and lending policies.

Working with mortgage borrowers
The agencies expect banking organizations to work with existing borrowers to avoid preventable foreclosures, which can be costly to both the organizations and to the communities they serve, and to mitigate other potential mortgage-related losses. To this end, banking organizations need to ensure that their mortgage servicing operations are sufficiently funded and staffed to work with borrowers while implementing effective risk-mitigation measures.

Given escalating mortgage foreclosures, the agencies urge all lenders and servicers to adopt systematic, proactive, and streamlined mortgage loan modification protocols and to review troubled loans using these protocols. Lenders and servicers should first determine whether a loan modification would enhance the net present value of the loan before proceeding to foreclosure, and they should ensure that loans currently in foreclosure have been subject to such analysis. Such practices are not only consistent with sound risk management but are also in the long-term interests of lenders and servicers, as well as borrowers.

Systematic efforts to address delinquent mortgages should seek to achieve modifications that result in mortgages that borrowers will be able to sustain over the remaining maturity of their loan. Supervisors will fully support banking organizations as they work to implement effective and sound loan modification programs. Banking organizations that experience challenges in implementing loss mitigation efforts on their mortgage portfolios or in making new loans to borrowers should work with their primary supervisors to address specific situations.

Structuring compensation
Poorly-designed management compensation policies can create perverse incentives that can ultimately jeopardize the health of the banking organization. Management compensation policies should be aligned with the long-term prudential interests of the institution, should provide appropriate incentives for safe and sound behavior, and should structure compensation to prevent short-term payments for transactions with long-term horizons. Management compensation practices should balance the ongoing earnings capacity and financial resources of the banking organization, such as capital levels and reserves, with the need to retain and provide proper incentives for strong management. Further, it is important for banking organizations to have independent risk management and control functions.

The agencies expect banking organizations to regularly review their management compensation policies to ensure they are consistent with the longer-run objectives of the organization and sound lending and risk management practices.

The agencies will continue to take steps to promote programs that foster financial stability and mitigate procyclical effects of the current market conditions. However, regardless of their participation in particular programs, all banking organizations are expected to adhere to the principles in this statement. We will work with banking organizations to facilitate their active participation in those programs, consistent with safe and sound banking practices, and thus to support their central role in providing credit to support the health of the U.S. economy.

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Media Contacts

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FDIC-PR-115-2008

Last Updated 11/12/2008 communications@fdic.gov

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

December 1, 2008

Honorable Betty Sutton
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Sutton:

Thank you for your letter regarding the Federal Deposit Insurance Corporation's role in the Emergency Economic Stabilization Act of 2008 (EESA) and the Troubled Asset Relief Program's (TARP) Capital Purchase Program (CPP). The FDIC agrees with you that funds received from the CPP primarily should be used to augment capital at insured depository institutions with a result of making credit available throughout the country. On this point, we joined the other federal banking agencies in issuing the *Interagency Statement on Meeting the Needs of Creditworthy Borrowers* on November 12 (copy enclosed). This Statement encourages banks to support the needs of creditworthy borrowers, strengthen capital, and engage in foreclosure prevention programs in view of the financial assistance provided under recent federal initiatives to promote financial stability which include the EESA and the CPP.

As you know, the U.S. Department of the Treasury (Treasury) instructed institutions to file CPP applications with their primary federal regulator. The primary federal regulator conducts a viability assessment and then forwards the application to Treasury with a recommendation for approval or denial. The FDIC, in its role as primary federal regulator for state non-member institutions, has implemented a comprehensive review process for CPP applications that results in a recommendation to Treasury. Treasury, which manages and funds the CPP, makes the program's final approval and denial decisions. As of November 18, 2008, the FDIC has received 1,214 CPP application requests. We expected to have a much greater number of applications by this time. However, Treasury has not yet finalized a feasible CPP subscription framework for the vast majority of community banks supervised by the FDIC.

I understand from your letter that you are particularly concerned about the PNC Financial Services, Inc.-National City Corporation merger transaction and a related CPP capital injection from Treasury. The FDIC is not the primary federal regulator for either of these companies. Therefore, the FDIC did not make a recommendation to Treasury on this CPP transaction.

Our responses to the specific questions presented in your letter are enclosed along with copies of relevant documents. I hope this information is helpful. If you have additional questions, please contact Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C. Bair

Enclosure

Report prepared for the Honorable Betty Sutton by the Federal Deposit Insurance Corporation's Division of Supervision and Consumer Protection and Legal Division

Q1: Please detail what conditions have or will be imposed upon the use of the federal funds provided to PNC Financial Services Group or any other financial entity through the Emergency Economic Stabilization Act. Describe and explain any factors taken into account when federal tax dollars are being used to help fund an acquisition of another firm. Please provide a copy of all documents...from September 2008 onward relating to any aspect of the foregoing.

A1: The U.S. Department of Treasury (Treasury) issued the CPP Terms Sheet (attached) on October 14, 2008, which establishes the conditions imposed on institutions receiving federal funds. We do not believe that Treasury has mandated restrictions on the use of CPP funds (other than the executive compensation limitations in the EESA), however, the FDIC has an expectation that insured depository institutions and their holding companies will prudently use these funds to augment capital and make loans. Since Treasury is entering into a stock offering with participating institutions and imposing its own conditions to protect the taxpayers' interests, the FDIC will not be issuing separate restrictions on CPP subscriptions. In the normal course of supervisory activity, the FDIC will review each state nonmember institution's use of CPP funds, lending activities, and compliance with the executive compensation/golden parachute limitations mandated by the EESA. It should be noted that on November 12, the FDIC joined the other federal banking agencies in issuing the *Interagency Statement on Meeting the Needs of Creditworthy Borrowers* (copy attached). This Statement encourages banks to support the needs of creditworthy borrowers, strengthen capital, and engage in foreclosure prevention programs in view of the financial assistance provided under recent federal initiatives to promote financial stability which include the EESA and the CPP.

The FDIC does not have experience using federal tax dollars to facilitate private sector mergers. However, we suggest that such transactions should be predicated on reasonable assurances that the post-merger entity would: 1) be adequately capitalized and viable over the long term; 2) have positive future earnings and business prospects; 3) operate with satisfactory board and management oversight; 4) present an appropriate plan for making credit and banking services available in its community; and 5) recapture the taxpayers' investment and provide a suitable return.

Q2: Please detail the methodology and criteria that were considered in connection with the possible transfer of federal funds through the Emergency Economic Stabilization Act to National City Corporation as compared to the other regional banks for which you recently approved funding. Also, please describe the extent to which any impact on National City Corp.'s customers and employees as well as the relevant local economy was taken into consideration with regard to approval or denial of funds to National City and the proposed acquisition of National City by

PNC. Please provide a copy of all documents...from September 2008 onward relating to any aspect of the foregoing.

A2: As mentioned above, the FDIC is not the primary federal regulator for PNC Financial or National City Corp. While the FDIC does not comment publicly on the condition of specific open and operating institutions, the FDIC believes that, under certain circumstances, it is appropriate to require institutions to raise additional private capital or seek a strategic partner in order to receive funds through the CPP program. This can help strengthen weaker institutions and ensure that they can continue providing financial services to their communities. With respect to the merger of these two firms, the FDIC does not have specific knowledge of the methodology and criteria used in the CPP transaction.

Q3: As noted above, the press has recently reported that the banking industry "has no intention of using the [bailout] money to make new loans;" the Treasury has acknowledged that one of their principal motives in allocating the funds is to "drive consolidation;" and a JP Morgan official acknowledged that the bailout funds would allow them to be "more active on the acquisition side." Please detail any knowledge by your departments or agencies of these matters, as well as any discussions or understandings you may have regarding the use of the funds the government is providing and their possible use with regard to mergers and consolidations. Please provide a copy of all documents...from September 2008 onward relating to any aspect of the foregoing.

A3: In the FDIC's discussions with state non-member institutions interested in participating in the TARP CPP, we find that many applicants are planning to use awarded monies prospectively to support their lending business. The FDIC strongly advocates the use of CPP funds for capital augmentation and prudent lending as envisioned by the EESA. We articulated this position in our October 20, 2008, Financial Institution Letter titled "*Applications to the Troubled Asset Relief Program's Capital Purchase Program*" (see attachment).

The FDIC believes, in certain circumstances, that CPP injections can be used effectively by applicants to provide additional funding for acquisitions, particularly if the applicant acquires a weakened institution. Importantly, such acquisitions may reduce the potential for market disruption, including reduced lending avenues and bank failures. Particularly for community banks, their inability to obtain capital, or their demise can have a devastating effect on their local communities. In many smaller communities, banking services and credit availability are heavily dependent on the financial health of their local bank. Over the long term, acquisitions pursued by CPP awardees could save taxpayer dollars and restore capital and lending capacities at banking institutions. As indicated in the Financial Institution Letter referenced above, the FDIC believes that participation in the CPP can bolster an institution's financial strength or potentially support acquisitions, both of which allow for prudent lending that currently may be constrained by capital levels.

Q4: Please detail the manner in which antitrust considerations generally have been and are being taken into account in recent consolidations, particularly in the proposed acquisition of National City Corp. by PNC Financial Services Group. Please detail how the antitrust review is impacted by the fact that the Treasury or Federal Reserve, their employees and/or representatives may have participated in discussion involving the possible acquisition of one financial entity by another financial entity. Please provide a copy of all documents...relating to any aspect of the foregoing.

A4: Anti-trust considerations are a significant aspect of merger transactions involving FDIC-supervised state non-member institutions. All merger transactions require a regulatory application process which includes analysis of potential anti-trust issues. Section 18(c)(5) of the Federal Deposit Insurance Act prohibits the FDIC from approving any merger which would result in a monopoly or whose effect in any part of the country may substantially lessen competition. Our overall process for considering merger applications is guided by the FDIC's Statement of Policy on Bank Merger Transactions (see attachment).

In our analysis of the competitive effects of a proposed merger transaction, the FDIC focuses on the type and extent of competition that exists within the relevant geographic market(s) and the degree to which that competition will be eliminated, reduced, or enhanced by the proposed merger. We rely heavily on conclusions from the Department of Justice's review of the proposed merger, including its Competitive Effects Report. We also focus on the respective shares of total deposits held by the merging institutions and the various other participants in the relevant markets.

As the FDIC did not have a supervisory role in the PNC Financial Services Group, Inc.-National City Corporation transaction, we do not have information to provide relative to the regulatory antitrust analysis.

Attachments

1A08-536

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

October 29, 2008

Secretary Henry Paulson, Jr.
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20530

Chairwoman Sheila C. Blair
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Chairman Benjamin S. Bernanke
Board of Governors of the Federal
Reserve System
20th and C Streets, NW
Washington, DC 20551

Comptroller John C. Dugan
Office of the Comptroller of the Currency
Administrator of National Banks
250 E Street, SW
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Mr. Thomas O. Barnett
Assistant Attorney General for Antitrust
Department of Justice, Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Director John M. Reich
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Dear Messrs. Paulson, Bernanke, Barnett, Dugan, Reich, and Chairwoman Blair:

We are writing regarding recent disclosures that funds approved by Congress pursuant to the Emergency Economic Stabilization Act of 2008 are not being used to acquire troubled assets or facilitate lending in these troubled times, but largely to facilitate acquisitions by preferred banks of other, smaller banks. While we certainly understand and appreciate the fact that difficult financial times may lead to some industry-wide consolidation, it is unusual, if not unprecedented, for the federal government not only to arbitrate the consolidations, but to affirmatively take sides by funding specific acquisitions. Furthermore, we are concerned that the antitrust laws may be ignored in the rush to consolidate and that antitrust enforcement may be prejudiced by the government's actions.

Under the Troubled Asset Relief Program, Congress authorized $700 billion for the Treasury to buy troubled assets to prevent disruption in the economy.[1] A little over one week

[1] Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765 (2008).

after the Act was passed, the Administration decided that it would use some of these funds to recapitalize some banks by buying shares in the Nation's leading banks. As stated by President Bush, "This new capital will help healthy banks continue making loans to businesses and consumers. And this new capital will help struggling banks fill the hole created by losses during the financial crisis, so they can resume lending and help spur job creation and economic growth."[2]

Despite this stated intention, it has been reported that the banking industry "has no intention of using the money to make new loans"[3] and that one of the principal purposes of providing funds under the bailout legislation was to drive consolidation. Having obtained access to a conference call among JP Morgan employees and executives on October 17, *New York Times* reported that a JP Morgan executive said the cash infusion would "help us ... be a little bit more active on the acquisition side or opportunistic side for some banks who [sic] are still struggling ... I think there are going to be some great opportunities for us to grow in this environment, and I think we have an opportunity to use that $25 billion in that way and obviously depending on whether recession turns into depression or what happens in the future, you know, we have that as a backstop."[4] Anonymous sources in the Treasury confirmed that "[o]ne purpose of this plan is to drive consolidation,"[5] while yesterday's *Wall Street Journal* reported that banks had acknowledged that "only a small chunk of [bailout] money would be funneled into loans."[6]

In particular, it appears that the Federal government may be picking which banks will survive and which will either fail or be primed for a buyout by a larger bank. Last Friday, PNC Financial Services Group Inc. announced that it would purchase National City Corp and is using $7.7 billion of the bailout fund to help make the acquisition. Media accounts have revealed that "some of that $7.7 billion would have gone to NatCity if the government had deemed it worth saving."[7] National City Corp. reportedly agreed to the deal because it feared "it could not survive

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[2]President George W. Bush, Address at the Rose Garden Regarding the Economy, (Oct.14, 2008).

[3]Joe Nocera, *So When Will Banks Give Loans?*, N.Y. TIMES, Oct. 25, 2008, at B1.

[4]*Id.*

[5]Mark Landler, *U.S. Is Said to Be Urging New Mergers in Banking*, N.Y. TIMES, Oct. 21, 2008, at B1.

[6]David Enrich, *et al.*, *Much Bank Aid May Not Go to Loans*, WALL ST. J., Oct. 28, 2008, at C1.

[7]Joe Nocera, *So When Will Banks Give Loans?*, N.Y. TIMES, Oct. 25, 2008, at B1.

the stigma of the government's rejection."[8] The Mayor of Cleveland, Frank G. Jackson, stated that "if the government had agreed to invest in National City, 'we would not be having this conversation.'"[9]

This acquisition could prove economically problematic for Ohio. In northeastern Ohio, where National City Corp. has 8,000 employees, thousands of jobs may be cut.[10] Cleveland Mayor Jackson likened the departure of National City to "the loss of a steel mill or other major employer, as well as a stalwart corporate citizen that has been engaged in almost every philanthropic endeavor in the city."[11]

Of particular concern to the Judiciary Committee is the potential anticompetitive consequences of these matters – namely, that large national banks could use taxpayer money to entrench their dominant positions while eliminating competition and reducing consumer choice. Under the Bank Merger Acts of 1960 and 1966[12] and the Bank Holding Company Act,[13] banks seeking to merge require preliminary approval from the federal entity (Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve, the FDIC, or the Office of Thrift Supervision) overseeing that category of banks. The federal entity is instructed to take into account Section 7 of the Clayton Act (prohibiting mergers and acquisitions that tend to lessen competition). Each regulatory agency is required to obtain a report from the Department of Justice before approving a commercial bank merger and the Federal Reserve obtains similar reports when reviewing banking holding company mergers. After preliminary approval has been granted, the Attorney General typically has thirty days in which to file an injunction to block the merger; if no injunction is filed, the merger is immunized from further antitrust suit. These laws were passed assuming that the banks were operating under free market conditions. They did not anticipate that the federal government would be providing billions of dollars in spending money

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[8]Michael A. Fletcher, *Takeover by PNC Heralds Fall of a Cleveland Institution*, WASH. POST., Oct. 25, 2008, at A01.

[9]*Id.*

[10]Chris Knape, *PNC Financial purchase of National City banks expected to have minimal impact in Michigan*, GRAND RAPIDS PRESS, Oct. 24, 2008.

[11]*Id.*

[12]Bank Merger Act, Pub. L. No. 86-463, 74 Stat. 129 (1960), amended by Act of Feb. 21, 1966, Pub. L. No. 89-356, 80 Stat. 7 (1966) (codified as amended at 12. U.S.C. § 1828).

[13]Bank Holding Company Act of 1956, Pub. L. No. 109-41, 70 Stat. 133 (codified as amended at 12 U.S.C. §§ 1971-78, 1841-1850).

to the largest market players at the expense of smaller competitors, and potentially to the detriment of bank customers.

Because of the concerns detailed above, we request the following information from you:

<u>Questions for the Federal Reserve, Department of Treasury, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision</u>

1. Please detail what conditions have or will be imposed upon the use of the federal funds provided to PNC Financial Services Group or any other financial entity through the Emergency Economic Stabilization Act. Describe and explain any factors taken into account when federal tax dollars are being used to help fund an acquisition of another firm. Please provide a copy of all documents (including, but not limited to, records, memoranda, correspondence, recorded messages, charts, graphs, notes, studies, reports, other writings, and electronic media such as emails, instant messages, and texts) from September 2008 onward relating to any aspect of the foregoing.

2. Please detail the methodology and criteria that were considered in connection with the possible transfer of federal funds through the Emergency Economic Stabilization Act to National City Corporation as compared to the other regional banks for which you recently approved funding. Also, please describe the extent to which any impact on National City Corp.'s customers and employees as well as the relevant local economy was taken into consideration with regard to approval or denial of funds to National City and the proposed acquisition of National City by PNC. Please provide a copy of all documents (including, but not limited to, records, memoranda, correspondence, recorded messages, charts, graphs, notes, studies, reports, other writings, and electronic media such as emails, instant messages, and texts) from September 2008 onward relating to any aspect of the foregoing.

DSC
(Frith)

3. As noted above, the press has recently reported that the banking industry "has no intention of using the [bailout] money to make new loans"; the Treasury has acknowledged that one of their principal motives in allocating the funds is to "drive consolidation"; and a JP Morgan official acknowledged that the bailout funds would allow them to be "more active on the acquisition side." Please detail any knowledge by your departments or agencies of these matters, as well as any discussions or understandings you may have regarding the use of the funds the government is providing and their possible use with regard to mergers and consolidations. Please provide a copy of all documents (including, but not limited to, records, memoranda, correspondence, recorded messages, charts, graphs, notes, studies, reports, other writings, and electronic media such as emails, instant messages, and texts) from September 2008 onward relating to any aspect of the foregoing.

Question for Department of Justice, the Federal Reserve, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision

4. Please detail the manner in which antitrust considerations generally have been and are being taken into account in recent consolidations, and particularly in the proposed acquisition of National City Corp. by PNC Financial Services Group. Please detail how the antitrust review is impacted by the fact that the Treasury or Federal Reserve, their employees and/or representatives may have participated in discussions involving the possible acquisition of one financial entity by another financial entity. Please provide a copy of all documents (including, but not limited to, records, memoranda, correspondence, recorded messages, charts, graphs, notes, studies, reports, other writings, and electronic media such as emails, instant messages, and texts) relating to any aspect of the foregoing.

We ask that you provide the requested documentary materials and other information to us by Monday, November 10, 2008. Responses and any questions should be directed to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680). Thank you for your cooperation in this matter.

Sincerely,

John Conyers, Jr.
Chairman

Betty Sutton
Member of Congress

cc: The Honorable Lamar S. Smith
The Honorable Barney Frank
The Honorable Spencer Bachus

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

December 1, 2008

Honorable Betty Sutton
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Sutton:

Thank you for your letter regarding the Federal Deposit Insurance Corporation's role in the Emergency Economic Stabilization Act of 2008 (EESA) and the Troubled Asset Relief Program's (TARP) Capital Purchase Program (CPP). The FDIC agrees with you that funds received from the CPP primarily should be used to augment capital at insured depository institutions with a result of making credit available throughout the country. On this point, we joined the other federal banking agencies in issuing the *Interagency Statement on Meeting the Needs of Creditworthy Borrowers* on November 12 (copy enclosed). This Statement encourages banks to support the needs of creditworthy borrowers, strengthen capital, and engage in foreclosure prevention programs in view of the financial assistance provided under recent federal initiatives to promote financial stability which include the EESA and the CPP.

As you know, the U.S. Department of the Treasury (Treasury) instructed institutions to file CPP applications with their primary federal regulator. The primary federal regulator conducts a viability assessment and then forwards the application to Treasury with a recommendation for approval or denial. The FDIC, in its role as primary federal regulator for state non-member institutions, has implemented a comprehensive review process for CPP applications that results in a recommendation to Treasury. Treasury, which manages and funds the CPP, makes the program's final approval and denial decisions. As of November 18, 2008, the FDIC has received 1,214 CPP application requests. We expected to have a much greater number of applications by this time. However, Treasury has not yet finalized a feasible CPP subscription framework for the vast majority of community banks supervised by the FDIC.

I understand from your letter that you are particularly concerned about the PNC Financial Services, Inc.-National City Corporation merger transaction and a related CPP capital injection from Treasury. The FDIC is not the primary federal regulator for either of these companies. Therefore, the FDIC did not make a recommendation to Treasury on this CPP transaction.

Our responses to the specific questions presented in your letter are enclosed along with copies of relevant documents. I hope this information is helpful. If you have additional questions, please contact Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C. Bair

Sheila C. Bair

Enclosure

Report prepared for the Honorable Betty Sutton by the Federal Deposit Insurance Corporation's Division of Supervision and Consumer Protection and Legal Division

Q1: Please detail what conditions have or will be imposed upon the use of the federal funds provided to PNC Financial Services Group or any other financial entity through the Emergency Economic Stabilization Act. Describe and explain any factors taken into account when federal tax dollars are being used to help fund an acquisition of another firm. Please provide a copy of all documents...from September 2008 onward relating to any aspect of the foregoing.

A1: The U.S. Department of Treasury (Treasury) issued the CPP Terms Sheet (attached) on October 14, 2008, which establishes the conditions imposed on institutions receiving federal funds. We do not believe that Treasury has mandated restrictions on the use of CPP funds (other than the executive compensation limitations in the EESA), however, the FDIC has an expectation that insured depository institutions and their holding companies will prudently use these funds to augment capital and make loans. Since Treasury is entering into a stock offering with participating institutions and imposing its own conditions to protect the taxpayers' interests, the FDIC will not be issuing separate restrictions on CPP subscriptions. In the normal course of supervisory activity, the FDIC will review each state nonmember institution's use of CPP funds, lending activities, and compliance with the executive compensation/golden parachute limitations mandated by the EESA. It should be noted that on November 12, the FDIC joined the other federal banking agencies in issuing the *Interagency Statement on Meeting the Needs of Creditworthy Borrowers* (copy attached). This Statement encourages banks to support the needs of creditworthy borrowers, strengthen capital, and engage in foreclosure prevention programs in view of the financial assistance provided under recent federal initiatives to promote financial stability which include the EESA and the CPP.

The FDIC does not have experience using federal tax dollars to facilitate private sector mergers. However, we suggest that such transactions should be predicated on reasonable assurances that the post-merger entity would: 1) be adequately capitalized and viable over the long term; 2) have positive future earnings and business prospects; 3) operate with satisfactory board and management oversight; 4) present an appropriate plan for making credit and banking services available in its community; and 5) recapture the taxpayers' investment and provide a suitable return.

Q2: Please detail the methodology and criteria that were considered in connection with the possible transfer of federal funds through the Emergency Economic Stabilization Act to National City Corporation as compared to the other regional banks for which you recently approved funding. Also, please describe the extent to which any impact on National City Corp.'s customers and employees as well as the relevant local economy was taken into consideration with regard to approval or denial of funds to National City and the proposed acquisition of National City by

PNC. Please provide a copy of all documents...from September 2008 onward relating to any aspect of the foregoing.

A2: As mentioned above, the FDIC is not the primary federal regulator for PNC Financial or National City Corp. While the FDIC does not comment publicly on the condition of specific open and operating institutions, the FDIC believes that, under certain circumstances, it is appropriate to require institutions to raise additional private capital or seek a strategic partner in order to receive funds through the CPP program. This can help strengthen weaker institutions and ensure that they can continue providing financial services to their communities. With respect to the merger of these two firms, the FDIC does not have specific knowledge of the methodology and criteria used in the CPP transaction.

Q3: As noted above, the press has recently reported that the banking industry "has no intention of using the [bailout] money to make new loans;" the Treasury has acknowledged that one of their principal motives in allocating the funds is to "drive consolidation;" and a JP Morgan official acknowledged that the bailout funds would allow them to be "more active on the acquisition side." Please detail any knowledge by your departments or agencies of these matters, as well as any discussions or understandings you may have regarding the use of the funds the government is providing and their possible use with regard to mergers and consolidations. Please provide a copy of all documents...from September 2008 onward relating to any aspect of the foregoing.

A3: In the FDIC's discussions with state non-member institutions interested in participating in the TARP CPP, we find that many applicants are planning to use awarded monies prospectively to support their lending business. The FDIC strongly advocates the use of CPP funds for capital augmentation and prudent lending as envisioned by the EESA. We articulated this position in our October 20, 2008, Financial Institution Letter titled "*Applications to the Troubled Asset Relief Program's Capital Purchase Program*" (see attachment).

The FDIC believes, in certain circumstances, that CPP injections can be used effectively by applicants to provide additional funding for acquisitions, particularly if the applicant acquires a weakened institution. Importantly, such acquisitions may reduce the potential for market disruption, including reduced lending avenues and bank failures. Particularly for community banks, their inability to obtain capital, or their demise can have a devastating effect on their local communities. In many smaller communities, banking services and credit availability are heavily dependent on the financial health of their local bank. Over the long term, acquisitions pursued by CPP awardees could save taxpayer dollars and restore capital and lending capacities at banking institutions. As indicated in the Financial Institution Letter referenced above, the FDIC believes that participation in the CPP can bolster an institution's financial strength or potentially support acquisitions, both of which allow for prudent lending that currently may be constrained by capital levels.

Q4: Please detail the manner in which antitrust considerations generally have been and are being taken into account in recent consolidations, particularly in the proposed acquisition of National City Corp. by PNC Financial Services Group. Please detail how the antitrust review is impacted by the fact that the Treasury or Federal Reserve, their employees and/or representatives may have participated in discussion involving the possible acquisition of one financial entity by another financial entity. Please provide a copy of all documents...relating to any aspect of the foregoing.

A4: Anti-trust considerations are a significant aspect of merger transactions involving FDIC-supervised state non-member institutions. All merger transactions require a regulatory application process which includes analysis of potential anti-trust issues. Section 18(c)(5) of the Federal Deposit Insurance Act prohibits the FDIC from approving any merger which would result in a monopoly or whose effect in any part of the country may substantially lessen competition. Our overall process for considering merger applications is guided by the FDIC's Statement of Policy on Bank Merger Transactions (see attachment).

In our analysis of the competitive effects of a proposed merger transaction, the FDIC focuses on the type and extent of competition that exists within the relevant geographic market(s) and the degree to which that competition will be eliminated, reduced, or enhanced by the proposed merger. We rely heavily on conclusions from the Department of Justice's review of the proposed merger, including its Competitive Effects Report. We also focus on the respective shares of total deposits held by the merging institutions and the various other participants in the relevant markets.

As the FDIC did not have a supervisory role in the PNC Financial Services Group, Inc.-National City Corporation transaction, we do not have information to provide relative to the regulatory antitrust analysis.

Attachments

TARP Capital Purchase Program

Senior Preferred Stock and Warrants

<u>Summary of Senior Preferred Terms</u>

Issuer:	Qualifying Financial Institution ("QFI") means (i) any U.S. bank or U.S. savings association not controlled by a Bank Holding Company ("BHC") or Savings and Loan Holding Company ("SLHC"); (ii) any U.S. BHC, or any U.S. SLHC which engages only in activities permitted for financial holdings companies under Section 4(k) of the Bank Holding Company Act, and any U.S. bank or U.S. savings association controlled by such a qualifying U.S. BHC or U.S. SLHC; and (iii) any U.S. BHC or U.S. SLHC whose U.S. depository institution subsidiaries are the subject of an application under Section 4(c)(8) of the Bank Holding Company Act; except that QFI shall not mean any BHC, SLHC, bank or savings association that is controlled by a foreign bank or company. For purposes of this program, "U.S. bank", "U.S. savings association", "U.S. BHC" and "U.S. SLHC" means a bank, savings association, BHC or SLHC organized under the laws of the United Sates or any State of the United States, the District of Columbia, any territory or possession of the United States, Puerto Rico, Northern Mariana Islands, Guam, American Samoa, or the Virgin Islands. **The United States Department of the Treasury will determine eligibility and allocation for QFIs after consultation with the appropriate Federal banking agency.**
Initial Holder:	United States Department of the Treasury (the "UST").
Size:	QFIs may sell preferred to the UST subject to the limits and terms described below. Each QFI may issue an amount of Senior Preferred equal to not less than 1% of its risk-weighted assets and not more than the lesser of (i) $25 billion and (ii) 3% of its risk-weighted assets.
Security:	Senior Preferred, liquidation preference $1,000 per share. (Depending upon the QFI's available authorized preferred shares, the UST may agree to purchase Senior Preferred with a higher liquidation preference per share, in which case the UST may require the QFI to appoint a depositary to hold the Senior Preferred and issue depositary receipts.)
Ranking:	Senior to common stock and pari passu with existing preferred shares other than preferred shares which by their terms rank junior to any existing preferred shares.

Regulatory Capital Status: Tier 1.

Term: Perpetual life.

Dividend: The Senior Preferred will pay cumulative dividends at a rate of 5% per annum until the fifth anniversary of the date of this investment and thereafter at a rate of 9% per annum. For Senior Preferred issued by banks which are not subsidiaries of holding companies, the Senior Preferred will pay non-cumulative dividends at a rate of 5% per annum until the fifth anniversary of the date of this investment and thereafter at a rate of 9% per annum. Dividends will be payable quarterly in arrears on February 15, May 15, August 15 and November 15 of each year.

Redemption: Senior Preferred may not be redeemed for a period of three years from the date of this investment, except with the proceeds from a Qualified Equity Offering (as defined below) which results in aggregate gross proceeds to the QFI of not less than 25% of the issue price of the Senior Preferred. After the third anniversary of the date of this investment, the Senior Preferred may be redeemed, in whole or in part, at any time and from time to time, at the option of the QFI. All redemptions of the Senior Preferred shall be at 100% of its issue price, plus (i) in the case of cumulative Senior Preferred, any accrued and unpaid dividends and (ii) in the case of non-cumulative Senior Preferred, accrued and unpaid dividends for the then current dividend period (regardless of whether any dividends are actually declared for such dividend period), and shall be subject to the approval of the QFI's primary federal bank regulator.

"Qualified Equity Offering" shall mean the sale by the QFI after the date of this investment of Tier 1 qualifying perpetual preferred stock or common stock for cash.

Following the redemption in whole of the Senior Preferred held by the UST, the QFI shall have the right to repurchase any other equity security of the QFI held by the UST at fair market value.

Restrictions on Dividends: For as long as any Senior Preferred is outstanding, no dividends may be declared or paid on junior preferred shares, preferred shares ranking pari passu with the Senior Preferred, or common shares (other than in the case of pari passu preferred shares, dividends on a pro rata basis with the Senior Preferred), nor may the QFI repurchase or redeem any junior preferred shares, preferred shares ranking pari passu with the Senior Preferred or common shares, unless (i) in the case of cumulative Senior Preferred all accrued and unpaid dividends for all past dividend periods on the Senior Preferred are fully paid or (ii) in the case of non-cumulative Senior Preferred the full dividend for the latest completed dividend period has been declared and paid in full.

Common dividends: The UST's consent shall be required for any increase in common dividends per share until the third anniversary of the date of this investment unless prior to such third anniversary the Senior Preferred is redeemed in whole or the UST has transferred all of the Senior Preferred to third parties.

Repurchases: The UST's consent shall be required for any share repurchases (other than (i) repurchases of the Senior Preferred and (ii) repurchases of junior preferred shares or common shares in connection with any benefit plan in the ordinary course of business consistent with past practice) until the third anniversary of the date of this investment unless prior to such third anniversary the Senior Preferred is redeemed in whole or the UST has transferred all of the Senior Preferred to third parties. In addition, there shall be no share repurchases of junior preferred shares, preferred shares ranking pari passu with the Senior Preferred, or common shares if prohibited as described above under "Restrictions on Dividends".

Voting rights: The Senior Preferred shall be non-voting, other than class voting rights on (i) any authorization or issuance of shares ranking senior to the Senior Preferred, (ii) any amendment to the rights of Senior Preferred, or (iii) any merger, exchange or similar transaction which would adversely affect the rights of the Senior Preferred.

If dividends on the Senior Preferred are not paid in full for six dividend periods, whether or not consecutive, the Senior Preferred will have the right to elect 2 directors. The right to elect directors will end when full dividends have been paid for four consecutive dividend periods.

Transferability: The Senior Preferred will not be subject to any contractual restrictions on transfer. The QFI will file a shelf registration statement covering the Senior Preferred as promptly as practicable after the date of this investment and, if necessary, shall take all action required to cause such shelf registration statement to be declared effective as soon as possible. The QFI will also grant to the UST piggyback registration rights for the Senior Preferred and will take such other steps as may be reasonably requested to facilitate the transfer of the Senior Preferred including, if requested by the UST, using reasonable efforts to list the Senior Preferred on a national securities exchange. If requested by the UST, the QFI will appoint a depositary to hold the Senior Preferred and issue depositary receipts.

Executive Compensation: As a condition to the closing of this investment, the QFI and its senior executive officers covered by the EESA shall modify or terminate all benefit plans, arrangements and agreements (including golden parachute agreements) to the extent necessary to be in compliance with, and following the closing and for so long as UST holds any equity or debt securities of the QFI, the QFI shall agree to be bound by, the executive compensation and corporate governance requirements of Section 111 of the EESA and any guidance or regulations issued by the Secretary of the Treasury on or prior to the date of this investment to carry out the provisions of such subsection. As an additional condition to closing, the QFI and its senior executive officers covered by the EESA shall grant to the UST a waiver releasing the UST from any claims that the QFI and such senior executive officers may otherwise have as a result of the issuance of any regulations which modify the terms of benefits plans, arrangements and agreements to eliminate any provisions that would not be in compliance with the executive compensation and corporate governance requirements of Section 111 of the EESA and any guidance or regulations issued by the Secretary of the Treasury on or prior to the date of this investment to carry out the provisions of such subsection.

Summary of Warrant Terms

Warrant:	The UST will receive warrants to purchase a number of shares of common stock of the QFI having an aggregate market price equal to 15% of the Senior Preferred amount on the date of investment, subject to reduction as set forth below under "Reduction". The initial exercise price for the warrants, and the market price for determining the number of shares of common stock subject to the warrants, shall be the market price for the common stock on the date of the Senior Preferred investment (calculated on a 20-trading day trailing average), subject to customary anti-dilution adjustments. The exercise price shall be reduced by 15% of the original exercise price on each six-month anniversary of the issue date of the warrants if the consent of the QFI stockholders described below has not been received, subject to a maximum reduction of 45% of the original exercise price.
Term:	10 years
Exercisability:	Immediately exercisable, in whole or in part
Transferability:	The warrants will not be subject to any contractual restrictions on transfer; provided that the UST may only transfer or exercise an aggregate of one-half of the warrants prior to the earlier of (i) the date on which the QFI has received aggregate gross proceeds of not less than 100% of the issue price of the Senior Preferred from one or more Qualified Equity Offerings and (ii) December 31, 2009. The QFI will file a shelf registration statement covering the warrants and the common stock underlying the warrants as promptly as practicable after the date of this investment and, if necessary, shall take all action required to cause such shelf registration statement to be declared effective as soon as possible. The QFI will also grant to the UST piggyback registration rights for the warrants and the common stock underlying the warrants and will take such other steps as may be reasonably requested to facilitate the transfer of the warrants and the common stock underlying the warrants. The QFI will apply for the listing on the national exchange on which the QFI's common stock is traded of the common stock underlying the warrants and will take such other steps as may be reasonably requested to facilitate the transfer of the warrants or the common stock.
Voting:	The UST will agree not to exercise voting power with respect to any shares of common stock of the QFI issued to it upon exercise of the warrants.

Reduction: In the event that the QFI has received aggregate gross proceeds of not less than 100% of the issue price of the Senior Preferred from one or more Qualified Equity Offerings on or prior to December 31, 2009, the number of shares of common stock underlying the warrants then held by the UST shall be reduced by a number of shares equal to the product of (i) the number of shares originally underlying the warrants (taking into account all adjustments) and (ii) 0.5.

Consent: In the event that the QFI does not have sufficient available authorized shares of common stock to reserve for issuance upon exercise of the warrants and/or stockholder approval is required for such issuance under applicable stock exchange rules, the QFI will call a meeting of its stockholders as soon as practicable after the date of this investment to increase the number of authorized shares of common stock and/or comply with such exchange rules, and to take any other measures deemed by the UST to be necessary to allow the exercise of warrants into common stock.

Substitution: In the event the QFI is no longer listed or traded on a national securities exchange or securities association, or the consent of the QFI stockholders described above has not been received within 18 months after the issuance date of the warrants, the warrants will be exchangeable, at the option of the UST, for senior term debt or another economic instrument or security of the QFI such that the UST is appropriately compensated for the value of the warrant, as determined by the UST.

FDIC

Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-109-2008
October 20, 2008

APPLICATIONS TO THE TROUBLED ASSET RELIEF PROGRAM'S CAPITAL PURCHASE PROGRAM

Summary: State nonmember institutions are encouraged to participate in the Troubled Asset Relief Program's (TARP) Capital Purchase Program (CPP) to strengthen their capital positions and ability to prudently make credit available in their lending markets. All financial institutions are eligible to apply for a capital injection from the U.S. Department of Treasury. Applications should be filed with the FDIC according to the instructions in this letter and on the FDIC's Web site at www.fdic.gov.

Distribution:
All FDIC-Supervised Institutions

Suggested Routing:
Chief Executive Officer
Chief Financial Officer

Attachment:
"Instructions for Applying to the Troubled Asset Relief Program's Capital Purchase Program for State Nonmember Institutions"

Contact:
Institution's contact person (Case Manager or Field Supervisor) at applicable FDIC Regional Office

Note:
FDIC financial institution letters (FILs) may be accessed from the FDIC's Web site at www.fdic.gov/news/news/financial/2008/index.html.

To receive FILs electronically, please visit http://www.fdic.gov/about/subscriptions/fil.html.

Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226.

Highlights:

The FDIC strongly encourages state nonmember institutions to consider applying for infusions of capital under the CPP. The following summarizes the application process:

- Interested state nonmember institutions should contact their appropriate FDIC Regional Office to express interest in the program and file an application with that office using the instructions at www.fdic.gov. The deadline for applying is 5:00 p.m. EST, November 14, 2008.
- The FDIC will review all state nonmember institution applications and make a recommendation to the U.S. Department of Treasury (which will approve or deny program participation).
- Participation in this low-cost capital program can bolster financial strength, or potentially support acquisitions, both of which ultimately allow for prudent lending that may currently be constrained by capital levels.
- For those institutions controlled by a holding company, Treasury will make capital injections at the holding company level. Applications should be submitted to the Federal Reserve and the FDIC if the company's largest institution is a state nonmember charter.
- Institutions with less than $1 billion in assets that serve low- to moderate-income populations and underserved communities *and* that have been impacted by Fannie Mae or Freddie Mac stock depreciation may apply (under certain conditions) for consideration under the CPP.
- Minority Depository Institutions requiring technical assistance should contact their appropriate FDIC Regional Office.

Instructions for Applying to the Troubled Asset Relief Program's Capital Purchase Program for State Nonmember Institutions

On October 14, 2008, the U.S. Treasury Department announced a Capital Purchase Program (CPP) under the Troubled Asset Relief Program mandated by the Emergency Economic Stabilization Act of 2008. The CPP is designed to encourage U.S. financial institutions to build capital to increase the flow of financing to U.S. businesses and consumers and support the U.S. economy. Under this program, the Treasury will purchase up to $250 billion of senior preferred shares in financial institutions on standardized terms as described in the program's term sheet available at http://www.treas.gov/press/releases/hp1207.htm. The Treasury's investment agreement and associated documents will be posted on the Treasury Web site soon.

<u>How to Apply</u>

Any state nonmember institution may apply to the FDIC for a CPP capital infusion using the application materials and frequently asked questions posted on the Internet at http://www.treas.gov/initiatives/eesa/docs/application-guidelines.pdf, http://www.treas.gov/initiatives/eesa/docs/faq-cpp.pdf, and www.fdic.gov. Although the U.S. Treasury ultimately will make decisions regarding capital injections, applications should be submitted through an institution's primary federal regulator. Applications must be received by the FDIC by 5:00 p.m. EST on November 14, 2008, to receive consideration.

Interested institutions should submit their applications to the appropriate FDIC Regional Office via e-mail or U.S. mail. If interested in electronic submission, applying institutions should contact their FDIC Regional Office. Once applications are considered complete, they will be formally accepted for processing by the FDIC Regional Office, and applicants will be advised in writing. Applications will then be forwarded to the FDIC's Washington Office for final consideration and submitted to the Treasury for action. At any time during this process, an applicant may withdraw its request to participate in the CPP.

Prospective applicants are encouraged to begin a dialogue immediately with their FDIC Regional Office to express interest in participating in the program and discuss any corporate structure obstacles or other challenges. The FDIC Regional Office staff is available to answer questions and provide consultation on program requirements.

State Nonmember Institutions Within a Bank Holding Company Structure

Treasury will be making CPP injections at the bank holding company level for institutions controlled by a bank holding company. Therefore, state nonmember institutions controlled by a bank holding company will apply to the Federal Reserve for a CPP injection. The holding company should provide a copy of the application to the appropriate FDIC Regional Office. The Federal Reserve will make a recommendation on the application to Treasury in consultation with the FDIC.

Institutions with a Non-Public, Subchapter S, or Mutual Corporate Structure

Treasury is aware of potential legal and tax obstacles in these corporate structures in relation to the terms of the CPP senior perpetual preferred shares and warrants. Accordingly, Treasury is investigating possible alternatives. State nonmember institutions with these non-public structures that are interested in applying should submit their CPP application to their FDIC Regional Office by November 14, 2008, and describe any structural conditions that may not comply with the Treasury's guidelines.

<u>Participation</u>

The FDIC encourages all state nonmember institutions to seriously consider applying for CPP injections. Participation in this low-cost capital program can bolster financial strength, or potentially support acquisitions, both of which ultimately allow for prudent lending that may currently be constrained by capital levels. Any questions on the application process should be directed to the institution's FDIC Regional Office.

Institutions Serving Low- to Moderate-Income or Underserved Communities

Institutions with less than $1 billion in assets that serve low- to moderate-income populations and other underserved communities that were well or adequately capitalized as of June 30, 2008, and will drop one or more regulatory capital levels because of depreciation in Fannie Mae or Freddie Mac equity securities, are identified for specified consideration for a CPP injection under Section 103 of the Emergency Economic Stabilization Act of 2008. The FDIC encourages such institutions to apply for a CPP capital injection; these institutions should note their status under Section 103 in application materials.

Minority Depository Institutions

If state nonmember minority-owned or -operated depository institutions require technical assistance in completing CPP applications, they should contact their FDIC Regional Office.

<u>Notification of Treasury's Determinations</u>

Institutions will be advised in writing by the U.S. Treasury of their decisions by year-end 2008.

FDIC Statement of Policy on Bank Merger Transactions

I. Introduction

Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), popularly known as the "Bank Merger Act," requires the prior written approval of the FDIC before any insured depository institution may:

(1) Merge or consolidate with, purchase or otherwise acquire the assets of, or assume any deposit liabilities of, another insured depository institution if the resulting institution is to be a state nonmember bank, or
(2) Merge or consolidate with, assume liability to pay any deposits or similar liabilities of, or transfer assets and deposits to, a noninsured bank or institution.

Institutions undertaking one of the above described "merger transactions" must file an application with the FDIC. Transactions that do not involve a transfer of deposit liabilities typically do not require prior FDIC approval under the Bank Merger Act, unless the transaction involves the acquisition of all or substantially all of an institution's assets.

The Bank Merger Act prohibits the FDIC from approving any proposed merger transaction that would result in a monopoly, or would further a combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States. Similarly, the Bank Merger Act prohibits the FDIC from approving a proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade. An exception may be made in the case of a merger transaction whose effect would be to substantially lessen competition, tend to create a monopoly, or otherwise restrain trade, if the FDIC finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. For example, the FDIC may approve a merger transaction to prevent the probable failure of one of the institutions involved.

In every proposed merger transaction, the FDIC must also consider the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the community to be served, and the effectiveness of each insured depository institution involved in the proposed merger transaction in combating money-laundering activities, including in overseas branches.

II. Application Procedures

1. *Application filing.* yApplication forms and instructions may be obtained from the appropriate FDIC office. Completed applications and any other pertinent materials should be filed with the appropriate FDIC office. The application and related materials will be reviewed by the FDIC for compliance with applicable laws and FDIC rules and regulations. When all necessary information has been received, the application will be processed and a decision rendered by the FDIC.

2. *Expedited processing.* Section 303.64 of the FDIC rules and regulations (12 CFR 303.64) provides for expedited processing, which the FDIC will grant to eligible applicants. In addition to the eligible institution criteria provided for in § 303.2 (12 CFR 303.2), § 303.64 provides expedited processing criteria specifically applicable to proposed merger transactions.

3. *Publication of notice.* The FDIC will not take final action on a merger application until notice of the proposed merger transaction is published in a newspaper or newspapers of general circulation in accordance with the requirements of section 18(c)(3) of the Federal Deposit Insurance Act. See § 303.65 of the FDIC rules and regulations (12 CFR 303.65). The applicant must furnish evidence of publication of the notice to the appropriate FDIC office following compliance with the publication requirement. See § 303.7(b) of the FDIC rules and regulations (12 CFR 303.7(b)).

4. *Reports on competitive factors.* As required by law, the FDIC will request reports on the competitive factors involved in a proposed merger transaction from the Attorney General, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision. These reports must ordinarily be furnished within 30 days, and the applicant upon request will be given an opportunity to submit comments to the FDIC on the contents of the competitive factors reports.

5. *Notification of the Attorney General.* After the FDIC approves any merger transaction, the FDIC will immediately notify the Attorney General. Generally, unless it involves a probable failure or an emergency exists requiring expeditious action, a merger transaction may not be consummated until 30 calendar days after the date of the FDIC's {{2-28-03 p.5146}} approval. However, the FDIC may prescribe a 15-day period, provided the Attorney General concurs with the shorter period.

6. *Merger decisions available.* Applicants for consent to engage in a merger transaction may find additional guidance in the reported bases for FDIC approval or denial in prior merger transaction cases compiled in the FDIC's annual "Merger Decisions" report. Reports may be obtained from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226. Reports may also be viewed at *http://www.fdic.gov.*

III. Evaluation of Merger Applications

The FDIC's intent and purpose is to foster and maintain a safe, efficient, and competitive banking system that meets the needs of the communities served. With these broad goals in mind, the FDIC will apply the specific standards outlined in this Statement of Policy when evaluating and acting on proposed merger transactions.

Competitive Factors

In deciding the competitive effects of a proposed merger transaction, the FDIC will consider the extent of existing competition between and among the merging institutions, other depository institutions, and other providers of similar or equivalent services in the relevant product market(s) within the relevant geographic market(s).

1. *Relevant geographic market.* The relevant geographic market(s) includes the areas in which the offices to be acquired are located and the areas from which those offices derive the predominant portion of their loans, deposits, or other business. The relevant geographic market also includes the areas where existing and potential customers impacted by the proposed merger transaction may practically turn for alternative sources of banking services. In delineating the relevant geographic market, the FDIC will also consider the location of the acquiring institution's offices in relation to the offices to be acquired.

2. *Relevant product market.* The relevant product market(s) includes the banking services currently offered by the merging institutions and to be offered by the resulting institution. In addition, the product market may also include the functional equivalent of such services offered by other types of competitors, including other depository institutions, securities firms, or finance companies. For example, share draft accounts offered by credit unions may be the functional equivalent of demand deposit accounts. Similarly, captive finance companies of automobile manufacturers may compete directly with depository institutions for automobile loans, and mortgage bankers may complete directly with depository institutions for real estate loans.

3. *Analysis of competitive effects.* In its anlaysis of the competitive effects of a proposed merger transaction, the FDIC will focus particularly on the type and extent of competition that exists and that will be eliminated, reduced, or enhanced by the proposed merger transaction. The FDIC will also consider the competitive impact of providers located outside a relevant geographic market where it is shown that such providers individually or collectively influence materially the nature, pricing, or quality of services offered by the providers currently operating within the geographic market.

The FDIC's analysis will focus primarily on those services that constitute the largest part of the businesses of the merging institutions. In its analysis, the FDIC will use whatever analytical proxies are available that reasonably reflect the dynamics of the market, including deposit and loan totals, the number and volume of transactions, contributions to net income, or other measures. Initially, the FDIC will focus on the respective shares of total deposits [1] held by the merging institutions and the various other participants with offices in the relevant geographic market(s), unless the other participants' loan, deposit, or other business varies markedly from that of the merging institutions. Where it is clear, based on market share considerations alone, that the proposed merger transaction would not significantly increase concentration in an unconcentrated market, a favorable finding will be made on the competitive factor.
{{2-28-03 p.5147}}

Where the market shares of the merging institutions are not clearly insignificant, the FDIC will also consider the degree of concentration within the relevant geographic market(s) using the Herfindahl-Hirschman Index (HHI) [2] as a primary measure of market concentration. For purposes of this test, a reasonable approximation for the relevant geographic market(s) consisting of one or more predefined areas may be used. Examples of such predefined areas include counties, the Bureau of the Census Metropolitan-Statistical Areas (MSAs), or Rand-McNally Ranally Metro Areas (RMAs).

The FDIC normally will not deny a proposed merger transaction on antitrust grounds (absent objection from the Department of Justice) where the post-merger HHI in the relevant geographic market(s) is 1,800 points or less or, if it is more than 1,800, it reflects an increase of less than 200 points from the pre-merger HHI. Where a proposed merger transaction fails this initial concentration test, the FDIC will consider more closely the various competitive dynamics at work in the market, taking into account a variety of factors that may be especially relevant and important in a particular proposal, including:

• The number, size, financial strength, quality of management, and aggressiveness of the various participants in the market;

• The likelihood of new participants entering the market based on its attractiveness in terms of population, income levels, economic growth, and other features;

• Any legal impediments to entry or expansion; and

• Definite entry plans by specifically identified entities.

In addition, the FDIC will consider the likelihood that new entrants might enter the market by less direct means; for example, electronic banking with local advertisement of the availability of such services. This consideration will be particularly important where there is evidence that the mere possibility of such entry tends to encourage competitive pricing and to maintain the quality of services offered by the existing competitors in the market.

The FDIC will also consider the extent to which the proposed merger transaction likely would create a stronger, more efficient institution able to compete more vigorously in the relevant geographic markets.

4. *Consideration of the public interest.* The FDIC will deny any proposed merger transaction whose overall effect likely would be to reduce existing competition substantially by limiting the service and price options available to the public in the relevant geographic market(s), unless the anticompetitive effects of the proposed merger transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. For this purpose, the applicant must show by clear and convincing evidence that any claimed public benefits would be both substantial and incremental and generally available to seekers of banking services in the relevant geographic market(s) and that the expected benefits cannot reasonably be achieved through other, less anticompetitive means.

Where a proposed merger transaction is the least costly alternative to the probable failure of an insured depository institution, the FDIC may approve the merger transaction even if it is anticompetitive.

Prudential Factors

The FDIC does not wish to create larger weak institutions or to debilitate existing institutions whose overall condition, including capital, management, and earnings, is generally satisfactory. Consequently, apart from competitive considerations, the FDIC normally will not approve a proposed merger transaction where the resulting institution would fail to meet existing capital standards, continue with weak or unsatisfactory management, or whose earnings prospects, both in terms of quantity and quality, are weak, suspect, or doubtful. In assessing capital adequacy and earnings prospects, particular attention will be paid to the adequacy of the allowance for loan and lease losses. In {{2-28-03 p.5148}} evaluating management, the FDIC will rely to a great extent on the supervisory histories of the institutions involved and of the executive officers and directors that are proposed for the resultant institution. In addition, the FDIC may review the adequacy of management's disclosure to shareholders of the material aspects of the merger transaction to ensure that management has properly fulfilled its fiduciary duties.

Convenience and Needs Factor

In assessing the convenience and needs of the community to be served, the FDIC will consider such elements as the extent to which the proposed merger transaction is likely to benefit the general public through higher lending limits, new or expanded services, reduced prices, increased convenience in utilizing the services and facilities of the resulting institution, or other means. The FDIC, as required by the Community Reinvestment Act, will also note and consider each institution's Community Reinvestment Act performance evaluation record. An unsatisfactory record may form the basis for denial or conditional approval of an application.

Anti-Money Laundering Record

In every case, the FDIC will take into consideration the effectiveness of each insured depository institution involved in the proposed merger transaction in combating money-laundering activities, including in overseas branches. In this regard, the FDIC will consider the adequacy of each institution's programs, policies, and procedures relating to anti-money laundering activities; the relevant supervisory history of each participating institution, including their compliance with anti-money laundering laws and regulations; and the effectiveness of any corrective program outstanding. The FDIC's assessment may also incorporate information made available to the FDIC by the Department of the Treasury, other Federal or State authorities, and/or foreign governments. Adverse findings may warrant correction of identified problems before consent is granted, or the imposition of conditions. Significantly adverse findings in this area may form the basis for denial of the application.

Special Information requirement if applicant is affiliated with or will be affiliated with an insurance company.

If the institution that is the subject of the application is, or will be, affiliated with a company engaged in insurance activities that is subject to supervision by a state insurance regulator, the applicant must submit the following information as part of its application: (1) The name of insurance company; (2) a description of the insurance activities that the company is engaged in and has plans to conduct; and (3) a list of each state and the lines of business in that state which the company holds, or will hold, an insurance license. Applicant must also indicate the state where the company holds a resident license or charter, as applicable.

IV. Related Considerations

1. *Interstate bank merger transactions.* Where a proposed transaction is an interstate merger transaction between insured banks, the FDIC will consider the additional factors provided for in

section 44 of the Federal Deposit Insurance Act, 12 U.S.C. 1831u.

2. *Interim merger transactions.* An interim institution is a state- or federally-chartered institution that does not operate independently, but exists, normally for a very short period of time, solely as a vehicle to accomplish a merger transaction. In cases where the establishment of a new or interim institution is contemplated in connection with a proposed merger transaction, the applicant should contact the FDIC to discuss any relevant deposit insurance requirements. In general, a merger transaction (other than a purchase and assumption) involving an *insured* depository institution and a *federal* interim depository institution will not require an application for deposit insurance, even if the federal interim depository institution will be the surviving institution.

3. *Optional conversion.* Section 5(d)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1815(d)(3), provides for "optional conversions" (commonly known as Oakar transactions) which, in general, are merger transactions that involve a member of the Bank Insurance Fund and a member of the Savings Association Insurance Fund. These transactions are subject to specific rules regarding deposit insurance coverage and premiums. Applicants may find additional guidance in § 327.31 of the FDIC rules and regulations (12 CFR 327.31).
{{2-28-03 p.5149}}

4. *Branch closings.* Where banking offices are to be closed in connection with the proposed merger transaction, the FDIC will review the merging institutions' conformance to any applicable requirements of section 42 of the FDI Act concerning notice of branch closings as reflected in the Interagency Policy Statement Concerning Branch Closing Notices and Policies. See 2 FDIC Law, Regulations, Related Acts 5391.

5. *Legal fees and other expenses.* The commitment to pay or payment of unreasonable or excessive fees and other expenses incident to an application reflects adversely upon the management of the applicant institution. The FDIC will closely review expenses for professional or other services rendered by present or prospective board members, major shareholders, or other insiders for any indication of self-dealing to the detriment of the institution. As a matter of practice, the FDIC expects full disclosure to all directors and shareholders of any arrangement with an insider. In no case will the FDIC approve an application where the payment of a fee, in whole or in part, is contingent upon any act or forbearance by the FDIC or by any other federal or state agency or official.

6. *Trade names.* Where an acquired bank or branch is to be operated under a different trade name than the acquiring bank, the FDIC will review the adequacy of the steps taken to minimize the potential for customer confusion about deposit insurance coverage. Applicants may refer to the Interagency Statement on Branch Names for additional guidance. See FDIC, Financial Institution Letter, 46--98 (May 1, 1998).

By Order of the Board of Directors, December 19, 2007.

[Source: 63 Fed. Reg. 44762, August 20, 1998, effective October 1, 1998; amended at 67 Fed. Reg. 48178, July 23, 2002; 67 Fed. Reg. 79278, December 27, 2002.; 73 FR 8870, February 15, 2008.]

Press Releases

Joint Release

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Office of Thrift Supervision

For Immediate Release November 12, 2008

Interagency Statement on Meeting the Needs of Creditworthy Borrowers

The Department of the Treasury, the Federal Deposit Insurance Corporation, and the Federal Reserve have recently put into place several programs designed to promote financial stability and to mitigate procyclical effects of the current market conditions. These programs make new capital widely available to U.S. financial institutions, broaden and increase the guarantees on bank deposit accounts and certain liabilities, and provide backup liquidity to U.S. banking organizations. These efforts are designed to strengthen the capital foundation of our financial system and improve the overall functioning of credit markets.

The ongoing financial and economic stress has highlighted the crucial role that prudent bank lending practices play in promoting the nation's economic welfare. The recent policy actions are designed to help support responsible lending activities of banking organizations, enhance their ability to fund such lending, and enable banking organizations to better meet the credit needs of households and business. At this critical time, it is imperative that all banking organizations and their regulators work together to ensure that the needs of creditworthy borrowers are met. As discussed below, to support this objective, consistent with safety and soundness principles and existing supervisory standards, each individual banking organization needs to ensure the adequacy of its capital base, engage in appropriate loss mitigation strategies and foreclosure prevention, and reassess the incentive implications of its compensation policies.

Lending to creditworthy borrowers
The agencies expect all banking organizations to fulfill their fundamental role in the economy as intermediaries of credit to businesses, consumers, and other creditworthy borrowers. Moreover, as a result of problems in financial markets, the economy will likely become increasingly reliant on banking organizations to provide credit formerly provided or facilitated by purchasers of securities. Lending to creditworthy borrowers provides sustainable returns for the lending organization and is constructive for the economy as a whole.

It is essential that banking organizations provide credit in a manner consistent with prudent lending practices and continue to ensure that they consider new lending opportunities on the basis of realistic asset valuations and a balanced assessment of borrowers' repayment capacities. However, if underwriting standards tighten excessively or banking organizations retreat from making sound credit decisions, the current market conditions may be exacerbated, leading to slower growth and potential damage to the economy as well as the long-term interests and profitability of individual banking organizations. Banking organizations should strive to maintain healthy credit relationships with businesses, consumers, and other creditworthy borrowers to enhance their own financial well-being as well as to promote a sound economy. The agencies have directed supervisory staffs to be mindful of the procyclical effects of an excessive tightening of credit availability and to encourage banking organizations to practice economically viable and appropriate lending activities.

Strengthening capital
Maintaining a strong capital position complements and facilitates a banking organization's capacity and willingness to lend and bolsters its ability to withstand uncertain market conditions. Banking

organizations should focus on effective and efficient capital planning and longer-term capital maintenance. An effective capital planning process requires a banking organization to assess both the risks to which it is exposed and the risk management processes in place to manage and mitigate those risks; evaluate its capital adequacy relative to its risks; and consider the potential impact on earnings and capital from economic downturns. Further, an effective capital planning process requires a banking organization to recognize losses on bank assets and activities in a timely manner; maintain adequate loan loss provisions; and adhere to prudent dividend policies.

In particular, in setting dividend levels, a banking organization should consider its ongoing earnings capacity, the adequacy of its loan loss allowance, and the overall effect that a dividend payout would have on its cost of funding, its capital position, and, consequently, its ability to serve the expected needs of creditworthy borrowers,. Banking organizations should not maintain a level of cash dividends that is inconsistent with the organization's capital position, that could weaken the organization's overall financial health, or that could impair its ability to meet the needs of creditworthy borrowers. Supervisors will continue to review the dividend policies of individual banking organizations and will take action when dividend policies are found to be inconsistent with sound capital and lending policies.

Working with mortgage borrowers
The agencies expect banking organizations to work with existing borrowers to avoid preventable foreclosures, which can be costly to both the organizations and to the communities they serve, and to mitigate other potential mortgage-related losses. To this end, banking organizations need to ensure that their mortgage servicing operations are sufficiently funded and staffed to work with borrowers while implementing effective risk-mitigation measures.

Given escalating mortgage foreclosures, the agencies urge all lenders and servicers to adopt systematic, proactive, and streamlined mortgage loan modification protocols and to review troubled loans using these protocols. Lenders and servicers should first determine whether a loan modification would enhance the net present value of the loan before proceeding to foreclosure, and they should ensure that loans currently in foreclosure have been subject to such analysis. Such practices are not only consistent with sound risk management but are also in the long-term interests of lenders and servicers, as well as borrowers.

Systematic efforts to address delinquent mortgages should seek to achieve modifications that result in mortgages that borrowers will be able to sustain over the remaining maturity of their loan. Supervisors will fully support banking organizations as they work to implement effective and sound loan modification programs. Banking organizations that experience challenges in implementing loss mitigation efforts on their mortgage portfolios or in making new loans to borrowers should work with their primary supervisors to address specific situations.

Structuring compensation
Poorly-designed management compensation policies can create perverse incentives that can ultimately jeopardize the health of the banking organization. Management compensation policies should be aligned with the long-term prudential interests of the institution, should provide appropriate incentives for safe and sound behavior, and should structure compensation to prevent short-term payments for transactions with long-term horizons. Management compensation practices should balance the ongoing earnings capacity and financial resources of the banking organization, such as capital levels and reserves, with the need to retain and provide proper incentives for strong management. Further, it is important for banking organizations to have independent risk management and control functions.

The agencies expect banking organizations to regularly review their management compensation policies to ensure they are consistent with the longer-run objectives of the organization and sound lending and risk management practices.

The agencies will continue to take steps to promote programs that foster financial stability and mitigate procyclical effects of the current market conditions. However, regardless of their participation in particular programs, all banking organizations are expected to adhere to the principles in this statement. We will work with banking organizations to facilitate their active participation in those programs, consistent with safe and sound banking practices, and thus to support their central role in providing credit to support the health of the U.S. economy.

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Media Contacts

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OCC	Bob Garsson	(202) 874-5770

FDIC-PR-115-2008

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

December 2, 2008

Honorable Mel Martinez
United States Senate
Washington, D.C. 20510

Dear Senator Martinez:

It was a pleasure meeting with you recently to discuss the important issues facing the banking industry and its credit customers during these challenging economic times. I assure you the Federal Deposit Insurance Corporation is sensitive to the critical role that credit availability plays in the Florida and national economies, and we are balancing those considerations with prudential safety and soundness requirements.

The FDIC and our counterparts at the other federal banking agencies are concerned about the availability of credit because of the rapid slowdown in the nation's real estate sector and serious disruptions in the credit market. Through published guidance and in discussions with the industry, we have encouraged banks to continue extending credit. On November 12, 2008, the federal banking agencies issued the *Interagency Statement on Meeting the Needs of Creditworthy Borrowers* (copy enclosed) that encourages depository institutions to continue making loans to creditworthy borrowers. Furthermore, the FDIC is actively engaged with the Department of the Treasury and the other federal banking agencies in considering capital subscriptions under the Temporary Asset Relief Program's Capital Purchase Program. There is a significant expectation from the FDIC that banks will use these federal monies to provide credit to individuals and businesses. In our transmittal of the November 12 Statement to state non-member institutions, we articulated this expectation and advised banks that our examiners will be reviewing their performance in this regard. We are encouraged that over 1,200 state nonmember institutions have already applied to participate in the Capital Purchase Program.

FDIC examiners have considerable flexibility in conducting field examinations where they assess overall risk and evaluate compliance with applicable laws and regulations. Our examiners serve solely in a federal oversight role and do not instruct banks to make business decisions on individual credit relationships. Our policies recognize that a customer can have a problem and the bank can work with them to return the loan to performing status. For example, on consumer loans, if a bank "re-ages" a delinquent loan and it subsequently performs adequately for 120 days, we do not subject it to criticism. In other words, the FDIC understands that consumer and businesses run into financial obstacles in slowdowns and we give banks flexibility to work with these customers.

In the normal course of examinations, FDIC examiners may offer recommendations relative to asset or business line diversification, or the write-down/provisioning for weakened assets. However, we do not tell institutions what loans to make, how to deploy their capital or how to manage their operations. In addition, we do not direct institutions to take specific actions regarding customer relationships. In practice, bank management has great latitude in dealing with its loan customers. We leave the business of banking to bankers, who are in the best position to know their customers and communities. However, it is important to recognize that regardless of how banks deal with individual borrowers, the banks' financial statements must accurately reflect their financial condition.

As federal supervisor for more than 5,000 institutions, most of which are community banks, the FDIC uniquely understands the vital role of bank lending on Main Street. The banks we supervise are often the lifeblood of credit in their communities, and these institutions have a tradition of working with local customers when times get tough. The FDIC recognizes the importance of financial institutions to the economy, and our practices as a bank supervisor reflect those priorities.

Again, I enjoyed meeting with you and please contact me if you have additional questions.

Sincerely,

Sheila

Sheila C. Bair

Enclosure

Press Releases

Joint Release

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Office of Thrift Supervision

For Immediate Release November 12, 2008

Interagency Statement on Meeting the Needs of Creditworthy Borrowers

The Department of the Treasury, the Federal Deposit Insurance Corporation, and the Federal Reserve have recently put into place several programs designed to promote financial stability and to mitigate procyclical effects of the current market conditions. These programs make new capital widely available to U.S. financial institutions, broaden and increase the guarantees on bank deposit accounts and certain liabilities, and provide backup liquidity to U.S. banking organizations. These efforts are designed to strengthen the capital foundation of our financial system and improve the overall functioning of credit markets.

The ongoing financial and economic stress has highlighted the crucial role that prudent bank lending practices play in promoting the nation's economic welfare. The recent policy actions are designed to help support responsible lending activities of banking organizations, enhance their ability to fund such lending, and enable banking organizations to better meet the credit needs of households and business. At this critical time, it is imperative that all banking organizations and their regulators work together to ensure that the needs of creditworthy borrowers are met. As discussed below, to support this objective, consistent with safety and soundness principles and existing supervisory standards, each individual banking organization needs to ensure the adequacy of its capital base, engage in appropriate loss mitigation strategies and foreclosure prevention, and reassess the incentive implications of its compensation policies.

Lending to creditworthy borrowers
The agencies expect all banking organizations to fulfill their fundamental role in the economy as intermediaries of credit to businesses, consumers, and other creditworthy borrowers. Moreover, as a result of problems in financial markets, the economy will likely become increasingly reliant on banking organizations to provide credit formerly provided or facilitated by purchasers of securities. Lending to creditworthy borrowers provides sustainable returns for the lending organization and is constructive for the economy as a whole.

It is essential that banking organizations provide credit in a manner consistent with prudent lending practices and continue to ensure that they consider new lending opportunities on the basis of realistic asset valuations and a balanced assessment of borrowers' repayment capacities. However, if underwriting standards tighten excessively or banking organizations retreat from making sound credit decisions, the current market conditions may be exacerbated, leading to slower growth and potential damage to the economy as well as the long-term interests and profitability of individual banking organizations. Banking organizations should strive to maintain healthy credit relationships with businesses, consumers, and other creditworthy borrowers to enhance their own financial well-being as well as to promote a sound economy. The agencies have directed supervisory staffs to be mindful of the procyclical effects of an excessive tightening of credit availability and to encourage banking organizations to practice economically viable and appropriate lending activities.

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organizations should focus on effective and efficient capital planning and longer-term capital maintenance. An effective capital planning process requires a banking organization to assess both the risks to which it is exposed and the risk management processes in place to manage and mitigate those risks; evaluate its capital adequacy relative to its risks; and consider the potential impact on earnings and capital from economic downturns. Further, an effective capital planning process requires a banking organization to recognize losses on bank assets and activities in a timely manner; maintain adequate loan loss provisions; and adhere to prudent dividend policies.

In particular, in setting dividend levels, a banking organization should consider its ongoing earnings capacity, the adequacy of its loan loss allowance, and the overall effect that a dividend payout would have on its cost of funding, its capital position, and, consequently, its ability to serve the expected needs of creditworthy borrowers,. Banking organizations should not maintain a level of cash dividends that is inconsistent with the organization's capital position, that could weaken the organization's overall financial health, or that could impair its ability to meet the needs of creditworthy borrowers. Supervisors will continue to review the dividend policies of individual banking organizations and will take action when dividend policies are found to be inconsistent with sound capital and lending policies.

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Given escalating mortgage foreclosures, the agencies urge all lenders and servicers to adopt systematic, proactive, and streamlined mortgage loan modification protocols and to review troubled loans using these protocols. Lenders and servicers should first determine whether a loan modification would enhance the net present value of the loan before proceeding to foreclosure, and they should ensure that loans currently in foreclosure have been subject to such analysis. Such practices are not only consistent with sound risk management but are also in the long-term interests of lenders and servicers, as well as borrowers.

Systematic efforts to address delinquent mortgages should seek to achieve modifications that result in mortgages that borrowers will be able to sustain over the remaining maturity of their loan. Supervisors will fully support banking organizations as they work to implement effective and sound loan modification programs. Banking organizations that experience challenges in implementing loss mitigation efforts on their mortgage portfolios or in making new loans to borrowers should work with their primary supervisors to address specific situations.

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Poorly-designed management compensation policies can create perverse incentives that can ultimately jeopardize the health of the banking organization. Management compensation policies should be aligned with the long-term prudential interests of the institution, should provide appropriate incentives for safe and sound behavior, and should structure compensation to prevent short-term payments for transactions with long-term horizons. Management compensation practices should balance the ongoing earnings capacity and financial resources of the banking organization, such as capital levels and reserves, with the need to retain and provide proper incentives for strong management. Further, it is important for banking organizations to have independent risk management and control functions.

The agencies expect banking organizations to regularly review their management compensation policies to ensure they are consistent with the longer-run objectives of the organization and sound lending and risk management practices.

The agencies will continue to take steps to promote programs that foster financial stability and mitigate procyclical effects of the current market conditions. However, regardless of their participation in particular programs, all banking organizations are expected to adhere to the principles in this statement. We will work with banking organizations to facilitate their active participation in those programs, consistent with safe and sound banking practices, and thus to support their central role in providing credit to support the health of the U.S. economy.

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FDIC-PR-115-2008

FDIC

Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

December 4, 2008

Honorable Michael R. McNulty
Representative, U.S. Congress
827 O'Brien Federal Building
Albany, New York 12207

(b)(6)

Dear Congressman McNulty:

Thank you for your letter on behalf of Mr. [redacted], Vice President of Informed Marketing Services, Incorporated.

(b)(6)

Mr. [redacted] sent a letter to our procurement staff on October 17, 2008, providing information on his company and its capabilities, which was used to add his firm to our Contractor Resource List (CRL). He was advised on October 24, 2008, that his corporation had been added to the CRL. There are a large number of firms that are now aggressively marketing to do business with the FDIC. We cannot guarantee that Informed Marketing Services, Inc. or any other potential contractor that submits a corporate capabilities statement will be included on future source lists. However, since Mr. [redacted] firm has been added to the CRL, his information is available for consideration.

When the FDIC begins the procurement process for goods and/or services, we use market research data to identify potential contractors that can provide the needed goods or services. A repository for this market information is our CRL. This system organizes and maintains corporate capability statements submitted by firms seeking business with the FDIC, and our program managers and contracting officers use this system to identify sources for solicitation.

Your interest in this matter is appreciated. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

Eric J. Spitler

Eric J. Spitler
Director
Office of Legislative Affairs

LA08-667

COMMITTEE ON WAYS AND MEANS

CHAIR
SUBCOMMITTEE ON SOCIAL SECURITY

SUBCOMMITTEE ON INCOME SECURITY AND FAMILY SUPPORT

MAJORITY WHIP AT-LARGE

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November 13, 2008

Ms. Alice C. Goodman
Director, Office of Legislative Affairs
FDIC
550-17th Street, NW, Room 6076
Washington, D.C. 20429

(b)(6)

Dear Ms. Goodman:

The attached correspondence from Mr. [redacted] is sent for your review.

I would appreciate it if you would investigate the enclosed statements and forward me the necessary information for reply.

Please send your reply to my Albany office, Leo O'Brien Federal Building, Albany, New York 12207.

Thank you for your consideration in this matter.

Sincerely,

Michael R. McNulty
Member of Congress

MRM/mjs
Enclosure

FDIC
NOV 20 2008
OFFICE OF LEGISLATIVE AFFAIRS

PRINTED ON RECYCLED PAPER

LA08-735

COMMITTEE ON APPROPRIATIONS
Subcommittee on Defense
Subcommittee on Transportation, HUD, and Related Agencies
Subcommittee on Agriculture, Rural Development, FDA and Related Agencies
COMMITTEE ON THE BUDGET
DEMOCRATIC STEERING AND POLICY

U.S. HOUSE OF REPRESENTATIVES

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December 5, 2008

The Honorable Sheila Bair
Chairwoman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429-9990

OFFIC

Dear Chairwoman Bair:

Thank you for all you are doing to secure our nation's financial system during this time of economic crisis. In particular, your focus on restructuring mortgages for struggling homeowners is one of few effective efforts addressing the root of this crisis. It is my hope that more of our policies will follow the direction you have taken at the FDIC. Unfortunately, the Washington-focus of the TARP to date is making the situation in our region worse. To this end, I would like to offer our region of Toledo and northern Ohio, which has been particularly hard hit by the rise in foreclosures, as a test bed against which to measure how well, or how poorly, the federal government's efforts to deal with this crisis are working.

In Lucas County, OH, the most populous county I represent, an estimated 4,100 foreclosures will occur in 2008 alone. If nothing changes, another 600 families will lose their homes in the Toledo area in the next 60 days. Based on recent foreclosure rates, this translates into 10% of our housing stock over the past 2.5 years – an astounding figure. Thus, our urgency is apparent. On the eastern side of our district, Lorain County has experienced 2,089 foreclosures this year to date. The pace of foreclosures continues unabated and is projected to rise next year.

What is most troubling is that despite several bills passing Congress and being signed by the Bush Administration, the mortgage situation at the local level grows worse. Though foreclosures are increasing, workouts are the exception rather than the rule. Wall Street banks that hold or sold these mortgages often do not manage their property holdings while they are frequently stripped of copper, electrical wiring, etc. Wall Street banks arrange for auction of properties before local communities are aware this will be occurring. Thus, they are largely unprepared to bid on their own behalf. The HUD funds that were to be available for such bidding have not arrived. Homes are auctioned for as little as $4,500. For that amount, we could have put the original occupants back in.

Something is very wrong with the manner in which the U.S. government is allowing equity to be bled from local communities. With declining property values, local banks find their books out of balance, and the downward spiral continues. Your authority at the FDIC as well as that of the SEC's is not being exercised as in former times to resolve inter-bank credit confidence and achieve mortgage workouts.

I am working with the Treasury Department to set up a tele-video conference between key Washington based agency officials responsible for TARP, FDIC, SEC, HUD, and any other appropriate parties. Your participation in such a conference would be most beneficial. By convening government leaders and our local Ohio experts, our region will serve as an important source of experience regarding the impact of this continuing equity hemorrhage on our economy. Our goal is to inform and impact more positively those responsible for alleviating this growing housing and credit crisis.

With the team we assemble, and those local experts who come to the table, we wish to answer the question: "What is it that the U.S. Government could be doing better to make a difference in the housing foreclosure crisis?" We stand ready to conduct this discussion at your earliest convenience.

Attached is the 2008 foreclosure listing for the counties in our district. I value your time and attention to this critical matter.

Sincerely,

Marcy Kaptur

MARCY KAPTUR
Member of Congress

MK:ja

Attachment: 2007 and 2008 Lucas, Lorain, Erie, and Ottawa Counties foreclosure listings

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

December 8, 2008

Honorable Christopher J. Dodd
Chairman
Committee on Banking, Housing, and
Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter to Chairman Bair concerning the impact of providing unlimited insurance coverage to noninterest-bearing transaction accounts under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program (TLGP). The FDIC received a number of similar comments during the rulemaking process.

The Final Rule governing the TLGP, issued on November 20, 2008, provides that, assuming the other requirements of the Transaction Account Guarantee Program are met by a participating entity and irrespective of the standard maximum deposit insurance amount defined in the FDIC's regulations (presently $250,000), IOLTAs will be guaranteed by the FDIC in full as noninterest-bearing transaction accounts.

Your interest in this matter is appreciated. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

Eric J. Spitler

Eric J. Spitler
Director
Office of Legislative Affairs

LA08-691

BARNEY FRANK, MA, CHAIRMAN

SPENCER BACHUS, AL, RANKING MEMBER

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

November 21, 2008

The Honorable Henry M. Paulson, Jr.
Secretary
Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

The Honorable Steve Preston
Secretary
Department of Housing and Urban Development
451 7th St. SW
Washington, DC 20410

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve
20th Street and Constitution Ave. NW
Washington DC 20551

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Directors of the Board of the Hope for Homeowners Program:

I am writing to express my appreciation for the changes that were just announced to the FHA "Hope for Homeowners" program, and to suggest some additional modifications which I believe could further enhance the program and make it more user-friendly.

Since the passage of Hope for Homeowners in July, we have learned some things about the program and about the challenges the program was designed to address. This week's announced changes represent improvements to the program as originally established.

In particular, the Board's increase in the maximum loan to value (LTV) to 96.5% for borrowers with no more than a 31% mortgage debt to income (DTI) ratio and no more than a 43% total DTI ratio should be helpful in incentivizing greater program participation. I believe this goal could be enhanced by further action by the Board to raise the maximum LTV above 90% to some extent for those borrowers who are above these DTI levels but below the maximum DTI program ceilings of 38% and 50% respectively.

The announcement that the trial modification requirement will be eliminated for this latter class of borrowers is also a good change, which should expedite loan closings. I also believe the Board should act to provide some flexibility to exceed DTI ceilings on a case by case basis based on compensating factors, consistent with general FHA practice.

I also commend the Board for utilizing authority granted under the TARP bill to authorize immediate payments to subordinate lien holders, to induce such holders to extinguish these liens, as the program requires. And, the extension of the maximum loan term to 40 years is a helpful step in making program loans more financially viable.

The effectiveness of these changes could be enhanced by other administrative changes which I believe the Board should make to make the program more user-friendly:

First Payment Default Liability. Hope for Homeowners establishes full liability for loan originators for loan losses to any borrower that misses their first payment. The Board's implementation of this provision seems unnecessarily harsh, as it denies insurance in the case of a borrower who makes the first payment, but subsequently has a rolling 30 day delinquency for subsequent months. If such delinquent loan has not yet been endorsed and remains 30 days delinquent by the fourth month, the loan can never be insured. This is contrary to existing FHA endorsement policy which allows a loan to be eligible for endorsement once the loan becomes current even if this takes 2 years. In contrast, the Board has shortened this period to four months. There seems to be some confusion over the statutory requirement concerning first payment defaults and subsequent defaults which are not covered by the statute. As a result, the Board's policy provides an unnecessary disincentive for potential loan originators to participate. I believe the intent of the statutory provision could be maintained while making its implementation more consistent with current FHA policy for endorsements.

HOEPA and TILA Compliance. The equity and appreciation sharing transactions under Hope for Homeowners loans raise unresolved questions about the applicability of HOEPA, TILA, and other consumer lending laws that may place unnecessary legal risk on loan originators. I believe it would be helpful for the Federal Reserve to provide guidance regarding compliance with such laws in the execution of the federal government's equity and appreciation notes and mortgages. In this respect, it may be necessary or appropriate to make clear that such equity and appreciation share components are a separate transaction from the underlying first mortgage. Of course, there should be clear disclosures to the borrower about the equity and appreciation sharing requirements of these loans.

HUD has issued instruments for use by lenders in executing Hope for Homeowners loans. However, these instruments require originators to warrant that HUD-created instruments comply with state law. This shifts the research cost and legal burden of the sufficiency of HUD's own instruments to the lenders, which may be inhibiting the origination of loans. I suggest that the HUD remove this warranty requirement.

2- to 4-unit Properties. Hope for Homeowners made qualifying single family properties eligible for these FHA loans. FHA single family loans by definition include 2-, 3-, and 4-unit properties. Unfortunately, the Board limited eligibility to 1-unit properties. Not only does the statutory legislation not restrict eligibility in such fashion, the section on the maximum loan amount refers to "a property of the applicable size" – with the clear implication that 2- to 4-unit properties should be eligible to participate in the program. I suggest the Board change the implementing regulations to make such properties eligible.

Thank you for consideration of these recommendations.

Barney Frank

BARNEY FRANK
Chairman

THE BOARD OF DIRECTORS OF THE
HOPE FOR HOMEOWNERS PROGRAM
451 7th Street, SW, Suite 9100
Washington, DC 20410-8000

DEC 24 2008

The Honorable Barney Frank
Chairman, Committee on Financial Services
U. S. House of Representatives
Washington, DC 20515-6052

Dear Mr. Chairman:

On behalf of the Board of Directors (Board) of the HOPE for Homeowners Program (Program), thank you for your November 21, 2008, letter in which you expressed support for recently announced Program changes and suggested additional changes for the Board's consideration.

The Board is committed to implementing the Program and achieving its objectives, consistent with the language and intent of the authorizing legislation, Title IV of the Housing and Economic Recovery Act of 2008 (HERA). This statute, while authorizing the Board to "establish requirements and standards for the Program," is very specific on many aspects of implementation, including requirements for appreciation- and equity-sharing and the fact that participation in the Program is voluntary for both homeowners and existing loan holders. As you note in your letter, the Board recently approved several changes to the Program, such as increasing the maximum loan-to-value (LTV) ratio for certain borrowers. These flexibilities were made possible by passage of the Emergency Economic Stabilization Act of 2008, and will likely qualify additional borrowers for the Program. Further, they may provide the necessary incentive for lenders to participate in the Program. I think we can all agree that our joint goals are to promote sustainable homeownership and avoid the social and economic costs of foreclosure for as many families as possible.

The Board will certainly take your suggestions for the Program under consideration. The Board also has received comments and recommendations from lenders, servicers, counselors and homeowners through the outreach activities conducted for the Program. I am pleased to note that at its most recent meeting on December 17, 2008, the Board approved the following changes to the Program:

- **2-4 Unit Properties.** The types of properties eligible for the Program have been expanded to include 2- to 4-unit owner-occupied properties. That change should allow more borrowers to participate in the Program, especially in certain geographic areas like the Northeast, where 2-4 unit properties are more common.

- **Endorsement Timeframe.** The timeframe for lenders to obtain endorsement for Program loans has been expanded so that it is consistent with other FHA programs. To ensure that lenders comply with the first payment default provision established in the law, the Board will continue to require the lender to include in the file, evidence that the borrower has made the first payment within 120 days of loan closing.

- **Equity Sharing.** The equity sharing requirements of the Program have been modified to eliminate the potential for a borrower to be required to share any existing equity the borrower may already have in the home with HUD through the Program.

The Board has directed staff to make the appropriate changes to the Program regulations and guidance and forward them to the Office of Management and Budget for review and clearance. As soon as that process is complete, the Board will vote on publishing the regulations in the Federal Register and issuing the finalized guidance documents. We will let you know as soon as that has occurred.

In your letter, you also suggested that it would be helpful for the Board of Governors of the Federal Reserve System (FRB) to provide guidance on the treatment of the statutory equity and appreciation sharing provisions of the Program under the Truth in Lending Act (TILA), the Home Owners Equity Protection Act (HOEPA), and other consumer laws administered by the FRB. The FRB's Division of Consumer and Community Affairs, which is responsible for issuing interpretive guidance under TILA and HOEPA, has informed the Board that it plans to provide interpretive guidance on these issues shortly. This guidance will be posted on the Program's website.

You also raised concerns about how the model Program instruments reflect compliance with state law. The Board notes that those instruments merely advise lenders of their responsibility to modify the documents as may be necessary for compliance with state law. In addition, we understand that well-established document preparation services have modified, or are in the process of modifying, the FHA model instruments for the Program to the extent necessary to ensure compliance with state law. FHA lenders have long used these services. The Board is monitoring the development and availability of state-compliant Program documentation and will take appropriate steps if such documentation is not reasonably available to lenders.

You further recommended that the Board consider: (i) raising the maximum loan-to-value (LTV) ratio above 90 percent for borrowers with debt-to-income (DTI) ratios above 31 percent for mortgage-related debt and 43 percent for total debt; and (ii) allowing the DTI ratios to be exceeded on a case-by-case basis based on compensating factors, consistent with other FHA single family loan programs. As noted above, the Board recently amended the Program's LTV and DTI thresholds after carefully considering both the desire to make the Program available to borrowers and the need to ensure that the new loans are sustainable. The Board will monitor the number and performance of Program loans and may adjust Program requirements as appropriate based on this monitoring. The Board will update you on any future Program changes.

The Board appreciates your recommendations and shares your goal of making the Program an attractive refinancing option for both lenders and borrowers, one that will help avoid foreclosures and provide for sustainable homeownership.

Sincerely,

Brian D. Montgomery
Chairman

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

December 9, 2008

Honorable Richard J. Durbin
United States Senate
Washington, D.C. 20510

Dear Senator Durbin:

Thank you for your letter and your concern for the thousands of homeowners and families at risk of losing their home through foreclosure.

As you know, I have been a strong advocate for systematic approaches that enable owners and servicers of mortgage loans to provide affordable and sustainable modifications to the largest possible number of homeowners in distress. Beginning in April 2007, the Federal Deposit Insurance Corporation hosted a series of forums to address the growing problem of mortgage defaults and foreclosures. These forums were attended by a broad spectrum of participants from the mortgage finance and securitization industry as well as financial regulators and senior representatives from the Federal Reserve and Treasury Department. Following these forums, the FDIC urged lenders and servicers to implement systematic approaches to modify mortgages for homeowners at risk of default and foreclosure. While many have been helped, I have been disappointed that too little has been achieved. As we have all seen, the rapid rise in foreclosoures has had a dramatic effect on mortgage finance, credit availability, and our economy.

During 2008, I have advocated stronger steps to achieve the needed help for homeowners. The FDIC was designated by Congress as member of the Oversight Board for the FHA's Hope for Homeowners program. We strongly support this approach to helping homeowners, but recognize that it alone will not be sufficient to address the problems in our housing markets. Other tools are needed.

That is why the FDIC, after appointment as conservator of IndyMac Bank in July 2008, implemented a loan modification program designed to help as many IndyMac delinquent borrowers as quickly as possible. The program is designed to achieve affordable and sustainable mortgage payments for borrowers and increase the value of distressed mortgages by rehabilitating them into performing loans. This in turn will maximize value for the FDIC as well as improve returns to the creditors of the former IndyMac Bank and to investors in those mortgages.

Under the IndyMac program, modifications are designed to achieve sustainable payments for the first mortgage at no greater than a 38 percent housing debt-to-income ratio (DTI), including monthly principal, interest, taxes, and insurance and as low as a 31 percent debt-to-income ratio. If a borrower's existing monthly payments are unaffordable, IndyMac will propose a modification of the loan using the following three tools:

1. A mortgage interest rate reduction. The modified mortgage will be permanently capped at the Freddie Mac Weekly Primary Mortgage Market Survey Rate (Freddie Mac Rate) for conforming mortgages in effect when the modification is proposed. Interest rate reductions below the current Freddie Mac Rate may be made for a period of five years. The mortgage interest rate will remain at this lower rate for five years. After five years, the interest rate will increase by no more than 1 percent per year until it reaches the Freddie Mac Rate where it will remain for the balance of the loan term.

2. If an interest rate reduction is insufficient to achieve an affordable payment, IndyMac may offer to extend the term for amortization of the mortgage to a maximum of 40 years from the original date of the mortgage.

3. If an affordable payment is not achievable through interest rate reduction or an extension of the amortization term, then payments on a portion of the principal amount can be deferred. Payments are calculated on the balance of the mortgage that is not deferred to achieve an affordable mortgage payment. The repayment of the deferred principal will be due only upon payoff of the loan. No interest will accrue on the deferred principal amount.

As of the end of November, IndyMac Bank had completed over 5,554 modifications with many more in process.

Based on this experience, the FDIC has discussed with the Treasury the implementation of a credit guaranty program, as authorized under the Emergency Economic Stabilization Act (EESA), which would provide financial incentives for a wide range of mortgage lenders and servicers to modify high-cost mortgage loans using streamlined protocols similar to those we are applying at IndyMac. The purpose of the proposed credit guaranty program would be to focus the net present value calculation away from immediate foreclosure and toward an analysis of whether a loan modification is a less costly alternative. The credit guaranty would protect mortgage lenders and servicers for up to half of the downside risk of a redefault, a risk made less likely due to the requirement that mortgage payments under modified loans be affordable under a clear, objective standard. As at IndyMac, the FDIC has proposed that loans modified under this process would be subject to verification of borrower income and occupancy status, and the modification would be available only for loans on owner-occupied properties.

The FDIC also has incorporated loan modification concepts into several actions involving troubled banks. In its sale of loans from banks placed into receivership, the FDIC has long used loss sharing agreements to improve its return on the sale and has required that acquirers of failed banks engage in loss mitigation activities to reduce the loss exposure. Because loan modifications reduce losses by converting troubled loans into affordable, sustainable loans, the FDIC is now requiring that purchasers of residential mortgages under loss sharing agreements engage in loan modifications consistent with the FDIC protocols developed at IndyMac Federal Bank. The FDIC also recently required that Citigroup apply the FDIC Loan Modification Program for mortgages subject to the eligible asset guarantee provided to Citigroup. The FDIC intends to continue to include loan modifications as an integral part of future loss sharing agreements.

We appreciate your continued interest in this matter. If you have further questions, please contact me at 898-6974 or Eric Spitler, Director of our Office of Legislative Affairs, at 898-3837.

Sincerely,

Sheila C Bair

Sheila C. Bair

RICHARD J. DURBIN
ILLINOIS

COMMITTEE ON APPROPRIATIONS

COMMITTEE ON THE JUDICIARY

COMMITTEE ON RULES
AND ADMINISTRATION

ASSISTANT MAJORITY
LEADER

United States Senate

WASHINGTON, DC 20510–1304

LA08-461

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durbin.senate.gov

October 3, 2008

FDIC
OCT - 8 2008
OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Sheila Bair
Chairperson
Federal Deposit Insurance Corporation
3501 Fairfax Drive
Arlington, VA 22226

Dear Chairperson Bair:

I am writing to urge you to take all necessary steps to systemically address the most immediate cause of our current economic crisis: the huge number of home mortgage foreclosures that continue to put hard-working families and their surrounding neighborhoods at risk. I am sending a similar letter to Chairman Bernanke, Secretary Paulson, and Director Lockhart.

Because of recent events involving Bear Stearns, IndyMac, Fannie Mae, Freddie Mac, and other institutions, the federal government now owns or has a controlling interest in a large percentage of the outstanding mortgages in America. After the President signs into law the Emergency Economic Stabilization Act, which was passed by the Congress today, an even larger share of the U.S. mortgage market will be controlled directly or indirectly by you and your colleagues.

With that control and influence comes responsibility. You are responsible for handling your portion of those mortgages in a manner that assists homeowners, protects taxpayers, and promotes the public good.

Foreclosures generally benefit no one: not the family that is uprooted; not the mortgage owners who lose expected income and take a loss when the property is sold; and certainly not the surrounding community whose nearby properties lose market value. You are in a position to reverse the rapid increase in foreclosures that is devastating local housing markets and countless local communities. By facilitating a systemic restructuring of the hundreds of thousands of mortgages that currently cannot be paid – replacing them with modified mortgages that reflect the underlying value of the home and that are affordable to the homeowners – you can bring greater stability to the housing markets, the affected families, and the surrounding communities.

The new stabilization bill requires you, as well as each of your colleagues, to "implement a plan that seeks to maximize assistance for homeowners." The bill encourages you to make modifications that include "(A) reduction in interest rates; (B) reduction of loan principal; and (C) other similar modifications." You are required within 60 days of the bill's enactment to "report to Congress specific information on the number and types of loan modifications made and the number of actual foreclosures occurring during the reporting period." I strongly encourage you to use this authority aggressively and quickly, so that as many families as possible can stay in their homes and return to making timely payments to their lenders.

I look forward to your eventual reports to Congress regarding the number of loans you have modified, but more immediately I would like to know what policies you will put in place, or are considering putting in place, to maximize assistance for homeowners through mortgage modifications, which in turn will benefit taxpayers and the public good. I would appreciate your timely response.

Sincerely,

Dick Durbin

Richard J. Durbin
United States Senator

LA08-795

United States Senate

WASHINGTON, DC 20510-4103

December 16, 2008

FDIC

DEC 17 2008

OFFICE OF LEGISLATIVE AFFAIR

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: FDIC Notice of Proposed Rulemaking RIN 3064-AD35

Dear Chairman Bair:

Thank you for the opportunity to provide comments to the Federal Deposit Insurance Corporation's (FDIC) specific request on the appropriateness of treating reciprocal deposits placed through a network differently than traditional "brokered" deposits.

I have heard from numerous community banks in our districts, our states, and nationally that FDIC's proposed rulemaking would make it materially more difficult for community banks to attract needed funding for local loans from local sources. I understand that you have received about 3000 comments from bankers and banking organizations who raise serious concerns about the proposal, which would impose a higher insurance assessment on deposits that are currently included in the definition of "brokered deposits," even though these deposits are not invested by a traditional deposit broker, but rather are exchanged among banks on a reciprocal basis. The bankers argue that reciprocal deposits placed through a banking network comprehensively differ from traditional brokered deposits in significant and meaningful ways and should not be subject to special premiums placed on volatile brokered deposits. In light of those concerns, this proposal should be weighed carefully.

As you may know, networks, like the Promontory Interfinancial Network, provide such reciprocal placement through the Certificate of Deposit Account Registry Service (CDARS). We are informed that ninety-nine (99) percent of the Network's 2,700 members are community banks, defined as banks with less than $5 billion in assets.

I am supportive of the role that community banks play locally and in the economy generally. Community banks make needed loans to households, small businesses, and other local borrowers that are the engines of economic growth in our communities. To make these loans, community banks need to be able to attract stable large-dollar deposits available locally.

Consumer uncertainty and fear is a major factor to weigh in these troubled times. We need to do all that we can to build consumer confidence. The CDARS program provides a safe method to appropriately extend deposit insurance coverage to a broader range of deposit institution customers. This confidence translates into higher levels of liquidity at participating financial institutions. The CDARS program is no different than a long established banking practice of granting broader deposit insurance coverage where bank holding companies have multiple charters and leverage each of those charters to multiply the deposit insurance coverage for their customers.

Thank you for your consideration.

Sincerely,

Tim Johnson

Tim Johnson
U.S. Senator

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

December 17, 2008

Honorable Carolyn Maloncy
Chairman
Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
Housc of Representatives
Washington, D.C. 20515

Dear Madam Chairman:

Thank you for your comments concerning the Federal Deposit Insurance Corporation's Proposed Rule on Risk-Based Assessments. I can assure you we will carefully consider your concerns and those of the other commenters.

We appreciate for your interest in this important issue. If you have further questions, the Office of Legislativc Affairs can be reached at (202) 898-7055.

Sincerely,

Eric J. Spitler
Dircctor
Office of Legislative Affairs

LA08-797

Congress of the United States
Washington, DC 20515

December 12, 2008

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: FDIC Notice of Proposed Rulemaking RIN 3064-AD35

Dear Chairman Bair:

We welcome the opportunity to provide this letter in response to the Federal Deposit Insurance Corporation's (FDIC) specific request for comments on the appropriateness of treating reciprocal deposits placed through a network differently than traditional "brokered" deposits.

We have heard from numerous community banks in our districts, our states, and nationally that FDIC's proposed rulemaking could make it materially more difficult for community banks to attract needed funding for local loans from local sources. We understand that you have received about 3,000 comments from bankers and banking organizations who raise serious concerns about the proposal, which could impose a higher insurance assessment on deposits that are currently included in the definition of "brokered deposits," even though these deposits are not invested by a traditional deposit broker, but rather are exchanged among banks on a reciprocal basis. The bankers argue that reciprocal deposits placed through a banking network comprehensively differ from traditional brokered deposits in significant and meaningful ways and should not be subject to special premiums placed on volatile brokered deposits. In light of those concerns, this proposal should be weighed carefully.

We are deeply supportive of the role that community banks play locally and in the economy generally. Community banks make needed loans to households, to the small businesses that are the engines of economic growth, to houses of worship and to other local borrowers. To make these loans, community banks need to be able to attract stable large-dollar deposits available locally. Reciprocal deposit placement services that enable them to do so should not be treated or stigmatized as "hot money."

The bankers' concerns should be taken seriously when the FDIC Board of Directors weighs the proposal.

Sincerely,

Carolyn B. Maloney

Carolyn Maloney
Chair
Subcommittee on Financial Institutions
and Consumer Credit
Committee on Financial Services
U.S. House of Representatives

Judy Biggert

Judy Biggert
Ranking Member
Subcommittee on Financial Institutions
and Consumer Credit
Committee on Financial Services
U.S. House of Representatives

PRINTED ON RECYCLED PAPER

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

December 17, 2008

Honorable Tim Johnson
United States Senate
Washington, D.C. 20510

Dear Senator Johnson:

Thank you for your comments concerning the Federal Deposit Insurance Corporation's Proposed Rule on Risk-Based Assessments. I can assure you we will carefully consider your concerns and those of the other commenters.

We appreciate for your interest in this important issue. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

Eric J. Spitler

Eric J. Spitler
Director
Office of Legislative Affairs

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

December 17, 2008

Honorable Mike Thompson
House of Representatives
Washington, D.C. 20515

Dear Congressman Thompson:

Thank you for your letter regarding the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program (TLGP). Since the announcement of the TLGP on October 13, 2008, the FDIC has refined the program to address industry concerns and has implemented a Final Rule as well as internal policies and procedures.

The Final Rule regarding the TLGP became effective on November 21, 2008. The Preamble addresses the over 700 comments that the FDIC received regarding the TLGP Interim Rule and Amended Interim Rule. The FDIC made numerous changes to the Final Rule to address the greatest concerns and problems identified with the TLGP as first proposed.

The Final Rule provides that the FDIC will publish a list on its website of the eligible banks, thrifts, and holding companies that opt-out of the TLGP. A number of bankers who commented on the Amended Interim Rule expressed the view that the FDIC's website publication of institutions that are not participating in the TLGP will "cast a shadow" on such institutions as not having full FDIC insurance and will result in a marketing disadvantage for those institutions. One of the bankers noted that this result would be unfair to institutions that had no liquidity issues.

The FDIC continues to believe, however, that it is important that both lenders and depositors be able to ascertain, from one central source (the FDIC's website), whether entities eligible to participate in the TLGP are participating in either or both components of the Program. The FDIC further believes that any customer confusion that might otherwise disadvantage some institutions could be addressed in customer disclosures provided by the institutions. Thus, the Final Rule concluded that the public interest is best served by publication of such a list.

Additionally, you expressed concern regarding the November 12, 2008 deadline for eligible entitles to decide whether to participate in the TLGP. The FDIC addressed these concerns in the Amended Interim Rule that was published on November 7, 2008. The Amended Interim Rule extended the deadline to opt-out of the TLGP until December 5, 2008. The FDIC believes that this new deadline provides eligible entities sufficient time to evaluate the Final Rule that was published on November 21, 2008, and make an educated decision regarding the TLGP.

Under the Interim Rule, if an entity decided to opt out by November 12, 2008, it would not be charged an assessment for participation in the TLGP during this initial period. Under the

Amended Interim Rule, an eligible entity that chooses to opt out of the TLGP by the new deadline of December 5, 2008, would not be assessed for its participation in the program. However, if an eligible entity chooses to remain in the program after December 5, 2008, the entity will be subject to certain assessments retroactive to November 13, 2008. This is unchanged in the Final Rule.

You also noted that some bankers expressed concern about the fee for guaranteeing federal funds under the TLGP. In response to many comments, the FDIC excluded all debt with a maturity of 30 days or less (including overnight fed funds) from the debt guarantee program effective December 6, 2008. We realized that the 75 basis point guarantee fee was probably too high for short-term money market instruments such as overnight federal funds or Eurodollars in relation to prevailing overnight interest rates. Furthermore, recent market data has suggested less significant disruption in short-term money markets, particularly as the Federal Reserve Board lowers short-term interest rates and actively provides liquidity.

The FDIC recognizes that the TLGP can only succeed if it is implemented properly and is understood by the industry. Since the announcement of the TLGP, the FDIC has taken a number of actions to educate all necessary parties about its operation. The FDIC has created a dedicated webpage at www.fdic.gov/regulations/resources/TLGP/ to house all the TLGP information including a "Frequently Asked Questions" page that is updated routinely. These questions include updates from the many emails and phone calls that FDIC has answered since the program's inception. In addition, the FDIC has held industry-wide question and answer phone calls to educate the industry as to the parameters of the TLGP. The FDIC will continue these education efforts to assure that participating entities understand the FDIC's expectations for participants under the program and to continue to monitor the safety and soundness of the institutions utilizing the program.

I appreciate your sharing the concerns of community banks regarding the initial details published in the Interim Rule. I believe that the Final Rule resolves many of the industry's concerns and presents a more complete program to encourage liquidity in the markets. If you have additional questions, please contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C. Bair

Sheila C. Bair

LA08-684

MIKE THOMPSON
1ST DISTRICT, CALIFORNIA

COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON HEALTH
SUBCOMMITTEE ON SELECT REVENUE MEASURES

PERMANENT SELECT COMMITTEE ON INTELLIGENCE
CHAIRMAN, SUBCOMMITTEE ON TERRORISM, HUMAN INTELLIGENCE, ANALYSIS AND COUNTERINTELLIGENCE
SUBCOMMITTEE ON INTELLIGENCE COMMUNITY MANAGEMENT

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

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FDIC
NOV 24 '
OFFICE OF LEGISLATIVE AFFAIRS

October 31, 2008

The Honorable Ben S. Bernanke
Chairman
Federal Reserve
Twentieth and Constitution Avenue, NW
Washington, DC 20551

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 Seventeenth Street, NW, Room 6076
Washington, DC 20429

Dear Chairman Bernanke and Chairwoman Bair:

Community banks and bankers' banks in my district have expressed concern that some recent actions by the Federal Reserve and the Federal Deposit Insurance Corporation (FDIC) may actually restrict liquidity in their sector of the banking industry. It is critical that as the federal government examines ways to put the banking sector back on firm footing that you consider the needs of community banks.

First, they have questions regarding the reporting requirements for the Interim Final Rule to Federal Reserve Regulation D that was issued on October 9th. They support allowing pass-through interest to be paid on excess reserves by correspondent banks, but are unclear how this must be reported. What steps are you going to take to clarify this and how quickly will a solution be in place so that community banks can be fully informed prior to taking advantage of this provision?

Second, the community banks and bankers' banks in my district have expressed concern that the FDIC Temporary Liquidity Guarantee Program publicly lists banks that opt out of the program on the FDIC website. There are a number of strong community banks that have maintained more than adequate capital levels and therefore may wish to opt out of this program. Concern has been expressed among these institutions that opting out of the program may be interpreted negatively by depositors and local investors. This could lead to an outflow of otherwise stable deposits. Have you considered the impact that publicly listing banks that opt out of the program may have on those financial institutions and what steps will you take to mitigate any negative impact?

Third, the community banks strongly support the FDIC guarantee of overnight Federal Funds in the event of failure through November 12. However, they believe that the changes to the guarantee program and the requirements for banks that opt-in after November 12 are overly complex. These banks are rapidly approaching the November 12th deadline but are unable to make a decision on future participation due to the complexity of the program as well as the high fee (which is currently barely below the current Target Fed Funds rate.) Can you please explain why the guarantee program is scheduled to change after November 12 instead of continuing under the same parameters in place today? Additionally, what steps are you taking to ensure community banks have all of the information they need to properly evaluate this program?

Thank you for your attention to these issues and I look forward to your response.

Sincerely,

MIKE THOMPSON
Member of Congress

cc: Rep. Barney Frank

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

December 17, 2008

Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
House of Representatives
Washington, D.C. 20515

Dear Congressman Bachus:

Thank you for your comments concerning the Federal Deposit Insurance Corporation's Proposed Rule on Risk-Based Assessments. I can assure you we will carefully consider your concerns and those of the other commenters.

We appreciate for your interest in this important issue. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

Eric J. Spitler

Eric J. Spitler
Director
Office of Legislative Affairs

LA08-796

BARNEY FRANK, MA, CHAIRMAN

U.S. House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

SPENCER BACHUS, AL RANKING MEMBER

December 17, 2008

FDIC
DEC 17 [illegible]
OFFICE OF LEGISLATIVE AFFAIRS

VIA FACSIMILE

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 Seventeenth Street, N.W.
Washington, D.C. 29429

Re: RIN No. 3064-AD35, Deposit Insurance Assessments

Dear Mr. Feldman:

In 2006, Congress passed and the President signed into law deposit insurance reform legislation that, together with other recent statutory changes, underpins the FDIC's proposed rule to update its deposit premium assessment system. I am writing to express my concern that part of the FDIC's proposal may adversely affect Federal Home Loan Bank (FHLBank) member institutions and customers.

Among other things, the FDIC's proposed rule would impose higher assessments on institutions that hold certain levels of FHLBank advances. This aspect of the proposal was not specifically authorized by the deposit insurance reform legislation and, in fact, was the subject of Congressional concern. During congressional debate on the House version of deposit insurance reform legislation, which I authored, I voiced my concern that the FDIC's "development and implementation of a new risk-based assessment system not negatively impact the cost of homeownership or community credit by charging higher premiums to prudently managed and sufficiently capitalized institutions simply because they fund mortgages and other types of lending through advances from Federal Home Loan Banks." Cong. Record, Dec. 19, 2005, p. E2624.

The FDIC proposal would charge progressively higher premiums to institutions with FHLB advances that equal or exceed 15% of their domestic deposits. Such a system assumes that the more advances an institution may hold, the higher the risk it poses to the Deposit Insurance Fund. Advances are authorized under a 1932 law, the Federal Home Loan Bank Act, to provide funding for housing and related credit. The Gramm-Leach-Bliley Act of 1999 affirmed that mandate with regard to smaller community institutions by expanding their access to advances.

The idea that asset growth through advances is risky and, therefore, should be the subject of increased assessments seems questionable. Some banks may not need advances but others, especially community banks, rely on advances to fund their appropriate lending activities because they simply do not have access to sufficient deposits.

Mr. Robert E. Feldman
Page 2
December 17, 2008

In the current economic crisis, the legitimate use of advances should not be unnecessarily discouraged or penalized. Reasonably priced advances with short-, medium- and long-term maturities are stable sources of liabilities for FHLBank members. In many cases institutions are better able to match loan maturities to advances than they are to deposits.

For all of these reasons, I would urge you to reconsider the wisdom of imposing higher deposit insurance premiums on institutions based upon their reliance on FHLB advances.

Thank you for considering my views in this matter.

Sincerely,

Spencer Bachus

Spencer Bachus
Ranking Member

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

December 17, 2008

Honorable Charles A. Gonzalez
House of Representatives
Washington, D.C. 20515

Dear Congressman Gonzalez:

Thank you for your letter to Chairman Bair concerning the impact of providing unlimited insurance coverage to noninterest-bearing transaction accounts under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program (TLGP). The FDIC received a number of similar comments during the rulemaking process.

The Final Rule governing the TLGP, issued on November 20, 2008, provides that, assuming the other requirements of the Transaction Account Guarantee Program are met by a participating entity and irrespective of the standard maximum deposit insurance amount defined in the FDIC's regulations (presently $250,000), IOLTAs will be guaranteed by the FDIC in full as noninterest-bearing transaction accounts.

Your interest in this matter is appreciated. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

Eric J. Spitler

Eric J. Spitler
Director
Office of Legislative Affairs

LA08-791

Congress of the United States
Washington, DC 20515

November 12, 2008

Sheila C. Bair
Chair
Federal Deposit Insurance Corporation
550 Seventeenth St, NW
Washington, D.C. 20429

Dear Chairman Bair:

We are writing to respectfully request you review the Temporary Liquidity Guarantee Program's (TLGP) inclusion and coverage for Interest on Lawyer Trust Accounts (IOLTA).

Created by various state supreme courts and state legislatures, and made possible by cha ,es in federal banking and IRS laws, IOLTA programs provide an essential public good at no cc ' to taxpayers. These programs currently operate in all fifty states and in the District of Columoia and the Virgin Islands, and they are mandated in 37 states. Client funds that are too small in amount or held for too brief a period to earn interest for the client, net of bank charges or administrative fees, are placed in a pooled interest-bearing trust account, termed an IOLTA.

Bank fees are paid from the interest earned on these pooled accounts, and the remainder of the interest generated by IOLTA accounts is distributed through local grant processes to not-for-profit organizations in each state, funding invaluable legal aid services for victims of domestic violence, families facing foreclosure, those affected by consumer fraud, and others, as well as legal education programs. According to the American Bar Association, IOLTA grants totaled $240 million in 2007.

However, because IOLTAs do pay interest, the TLGP Interim Rule as issued on October 23 would not extend unlimited FDIC insurance to these accounts. We believe however, that the public benefit generated by IOLTAs, and the fact that the interest they pay is dedicated only to third-party non-profit IOLTA programs, rather than to attorney account holders or their clients, merits an exception in the final rule.

We are concerned that should the interim final rule not be modified to guarantee IOLTAs under TLGP, lawyers would instead place their client funds exceeding $250,000 in non-interest bearing deposit transaction accounts in order to secure FDIC insurance, and that the much-needed public service activities funded by IOLTA-generated interest would suffer.

To preserve the benefits of the IOLTA program, we strongly urge you to provide an exception in the Final Rule specifying that IOLTA accounts are guaranteed unlimited deposit insurance through TLGP.

Thank you for your consideration of this matter.

Sincerely,

Charles A. Gonzalez
Member of Congress

Peter Welch
Member of Congress

CAG: gp

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429
Office of Legislative Affairs

December 18, 2008

Honorable Luis V. Gutierrez
Chairman
Subcommittee on Domestic and International
Monetary Policy, Trade and Technology
Committee on Financial Services
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your comments concerning the Federal Deposit Insurance Corporation's Proposed Rule on Risk-Based Assessments. I can assure you we will carefully consider your concerns and those of the other commenters.

We appreciate for your interest in this important issue. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

Eric J. Spitler

Eric J. Spitler
Director
Office of Legislative Affairs

LA08-801

LUIS V GUTIERREZ
MEMBER OF CONGRESS
4TH DISTRICT ILLINOIS
2266 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

DISTRICT OFFICES:
3456 WEST NORTH AVENUE
CHICAGO, IL 60647

Congress of the United States
House of Representatives
Washington, DC 20515–1304

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FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
OVERSIGHT AND INVESTIGATIONS
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IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

December 17, 2008

FDIC
DEC 17 2008
OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: FDIC Notice of Proposed Rulemaking RIN 3064-AD35

Dear Chairman Bair:

I am writing to express my concerns about an FDIC proposal to impose a higher insurance assessment on deposits currently included in the definition of "brokered deposits." As currently written, the proposal has the potential to undermine the efforts of community development banks to improve the quality of life for people in credit-starved neighborhoods throughout the country.

One type of deposit being currently defined as a "brokered deposit" is a deposit received through a network of banks on a reciprocal basis. This type of reciprocal deposit has proven to be essential in providing funds needed by community development banks to make loans in underserved communities. In no functional way is this type of reciprocal deposit similar to brokered deposits, which can be described as volatile "hot money" chasing the highest interest rates in a national market.

As written, the FDIC's proposal could make it significantly more difficult for community development banks to attract needed funding. It is my understanding that the Community Development Bankers Association (CDBA) has already conveyed its concerns to the FDIC. Three of the association's 25 members are banks in Illinois, including ShoreBank in Chicago, the country's oldest and largest community development bank. ShoreBank has also written the FDIC individually to express its specific concerns.

The Promontory Interfinancial Network provides reciprocal deposit placement through the Certificate of Deposit Account Registry Service, (CDARS). The Network has 2,725 member banks across the nation. Almost all of its members are community banks, and nearly all the members of the CDBA are members of the Promontory Network as well.

The CDBA letter noted that community development banks "make a difference – perhaps the difference – in the lives of tens of thousands of people in the communities we serve. Our members are often the only source of credit and financial services in these communities. We make loans to build and renovate housing so that people have a decent place to live. Our housing lending, in turn, sparks revitalization of other housing in our neighborhoods. We make loans to small businesses so that people will have jobs."

The CDBA letter also explained that, to fund themselves, community development banks must frequently raise deposits from civic-minded and socially-motivated individuals and institutions and that these investors invest much larger deposits when they are assured the deposits are secured. The CDBA stressed the following: "CDARS provides that assurance...Without CDARS as a magnet for attracting socially motivated investors, we will not be able to originate loans at a scale sufficient to have a positive social impact."

ShoreBank wrote of its experience: "Defining CDARS Reciprocal deposits as brokered deposits is illogical. Traditional brokered deposits, in contrast to our CDARS Reciprocal funds, originate from third parties whose customers are seeking to place funds at the highest rates available. Brokered deposits are a national market and banks must "pay up" to play. In contrast, no one is standing between us and our customers that choose to use CDARS. In addition, our CDARS deposits are priced at or below market rates of interest....Since CDARS deposits act like core deposits, they should be treated as core deposits, not brokered deposits."

In asking whether a deposit received through a network of banks on a reciprocal basis should be excluded from the definition of "brokered deposit" for the purposes of the proposed rule, the proposal pointed out that call reports do not distinguish between CDARS Reciprocal deposits and brokered deposits. To that point, ShoreBank noted: "It would be a simple matter for our bank to separately report its CDARS holdings if this would facilitate an exemption of CDARS Reciprocal deposits from the brokered deposit definition."

I strongly urge you to exempt CDARS Reciprocal deposits from the definition of "brokered deposits" in this rule. If the FDIC is able to exclude CDARS Reciprocal deposits from the definition of brokered deposits, CDARS can continue to play its significant role in providing credit to neighborhoods that are starved for it, across the country and in my district, and community development banks could continue to serve as engines of economic inclusion.

Thank you for your attention to this matter.

Sincerely,

LUIS V. GUTIÉRREZ
Chairman
Financial Services Subcommittee on
Domestic and International Monetary Policy,
Trade and Technology

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

December 18, 2008

Honorable Dennis Moore
House of Representatives
Washington, D.C. 20515

Dear Congressman Moore:

Thank you for your comments concerning the Federal Deposit Insurance Corporation's Proposed Rule on Risk-Based Assessments. I can assure you we will carefully consider your concerns and those of the other commenters.

We appreciate for your interest in this important issue. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

Eric J. Spitler

Eric J. Spitler
Director
Office of Legislative Affairs

COMMITTEE ON THE BUDGET

COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE AND GOVERNMENT SPONSORED ENTERPRISES
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SUBCOMMITTEE ON DOMESTIC AND INTERNATIONAL MONETARY POLICY TRADE AND TECHNOLOGY

COMMITTEE ON SMALL BUSINESS
(on leave of absence, 110th Congress)

Congress of the United States
House of Representatives

DENNIS MOORE
Third District, Kansas
http://moore.house.gov

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LAWRENCE, KS 66044
PHONE: 785-842-9313
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TDD: (hearing/speech impaired constituents)
1-800-766-3777

December 17, 2008

THE HONORABLE SHEILA C. BAIR
CHAIRMAN
FEDERAL DEPOSIT INSURANCE CORPORATION
550 17TH STREET, NW
WASHINGTON, DC 20429-0002

Re: FDIC Notice of Proposed Rulemaking RIN 3064-AD35

Dear Chairman Bair:

As you know, the Federal Deposit Insurance Corporation (FDIC) has proposed imposing a higher insurance assessment on deposits that are currently included in the definition of brokered deposits. Some of these deposits are not placed by a traditional deposit broker, but rather are exchanged among banks in a network on a fully reciprocal basis.

Deposits reciprocally exchanged among a network would be considered brokered deposits for the purposes of the FDIC proposal, which would create a new system of deposit insurance premiums. The new system would impose a premium surcharge on banks using brokered deposits in certain circumstances. The Promontory Interfinancial Network provides reciprocal placement of deposits through the Certificate of Deposit Account Registry Service. More than 80 Kansas banks are members of the Promontory Network. I understand that the FDIC has received thousands of letters, including letters from more than 30 Kansas bankers, on the proposal urging the agency to exclude Certificate of Deposit Account Registry Service (CDARS) Reciprocal deposits from the brokered deposit definition. In addition, the Kansas Bankers Association wrote a letter that expressed its support for excluding CDARS from the definition.

If imposed, the proposal could make it significantly more difficult for banks, and particularly for local community banks, to obtain much-needed funding for local loans. And it would make it more difficult for depositors – including municipal depositors – to keep money in their local communities. The proposal, as written, does not distinguish CDARS Reciprocal deposits from standard brokered funds, even though they behave nothing like standard brokered deposits. CDARS deposits come from local, not national, depositors. In fact, 80 percent of all CDARS placements are made by customers within 25 miles of their bank's location. Also, the cost to bank for CDARS Reciprocal deposits is substantially less than standard brokered funding. CDARS deposits have a high reinvestment rate – – more than 83 percent across the Promontory Network – unlike a standard brokered deposit.

Finally, I hope the FDIC also will take into account today's extraordinary economic circumstances when finalizing its rule on deposit assessments. As you are well aware, several of our nation's largest financial institutions have failed or have almost failed. Depositors are fearful and are seeking secure options like CDARS Reciprocal in a difficult time. I would encourage the FDIC to reconsider this proposal, and exclude reciprocal deposit services such as CDARS from the definition of brokered deposits.

Very truly yours,

DENNIS MOORE
Member of Congress

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

December 19, 2008

Honorable Mel Martinez
United States Senate
Washington, D.C. 20510

Dear Senator Martinez:

Thank you for your letter to Chairman Bair regarding an application for deposit insurance filed on behalf of [redacted] Florida.

As you know, the FDIC is required to assess each application for deposit insurance relative to the seven statutory factors enumerated in section 6 of the Federal Deposit Insurance Act. Although this assessment must consider the unique nature and complexity of each proposal, please be assured the FDIC strives to process applications within a reasonable time, given the facts and circumstances of the application.

Your interest in this matter is appreciated. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

Eric J. Spitler

Eric J. Spitler
Director
Office of Legislative Affairs

MEL MARTINEZ
FLORIDA
(202) 224-3041

COMMITTEES:
ARMED SERVICES
ENERGY AND NATURAL RESOURCES
SPECIAL COMMITTEE ON AGING
BANKING, HOUSING, AND URBAN AFFAIRS

United States Senate

WASHINGTON, DC 20510-0906

November 24, 2008

The Honorable Shelia Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Chairman Bair:

I am writing in regards to an application submitted to the FDIC by [redacted] filed a charter for a State of Florida chartered community bank on March 24, 2007, and was granted conditional approval. [redacted] is currently awaiting approval by the FDIC and has been informed by a case manager that the earliest that approval may come is December 31, 2008 [redacted] Offering Circular expires on January 31, 2009. Given the statutory requirement to provide ten days notice prior to a shareholder's meeting, the latest the bank could receive approval without running the risk of their Offering failing would be January 19, 2009.

I would appreciate any information you could provide on the status of [redacted] application. I understand the extraordinary circumstances the FDIC is currently operating under, and I know we share the common goal of ensuring a safe and sound banking system. I look forward to your update.

Sincerely,

Mel Martinez

Mel Martinez
United States Senator

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

December 30, 2008

Honorable Vernon J. Ehlers
House of Representatives
Washington, D.C. 20515

(b)(4)
(b)(8)

Dear Congressman Ehlers:

Thank you for contacting me about [redacted] application to the Troubled Asset Relief Program's (TARP) Capital Purchase Program. As you may know, the Federal Deposit Insurance Corporation is actively engaged with the U.S. Department of Treasury (Treasury) and the other federal banking agencies in considering TARP applications filed by banking institutions. In our role as primary federal supervisor for state nonmember institutions, the FDIC makes a recommendation on each TARP application it receives to the Treasury which ultimately determines if an institution may participate in the Program.

(b)(4)
(b)(8)

The FDIC has received a TARP application from [redacted] which is being processed by our Chicago Regional Office. Our Chicago staff is evaluating the application and has been in communication with Bank management. However, we have not completed our review or arrived at a recommendation to forward to Treasury. When our Chicago staff completes its analysis of the Bank's application, the results of this analysis will be considered by the FDIC's Washington Office which makes a recommendation to the Treasury. Once a determination has been reached, the Bank will be notified of the disposition of its application.

I agree with you that TARP program capital subscriptions are necessary during this challenging time to keep credit available for consumers and businesses in Michigan and across the nation. The FDIC expects banks will use these funds to augment capital and responsibly make loans in their communities as a means of stimulating economic growth.

The FDIC's executive coordinator of our TARP project, Steven Fritts, met with the Michigan Bankers on December 5, 2008 in Dearborn, Michigan. I understand that Mr. Fritts had a good dialogue with your constituent banks and provided useful information about this program.

If you have additional questions, please contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C Bair

Sheila C. Bair

12-04 08;03:27PM; #` 2/ 3

LA08-720

Congress of the United States of America
House of Representatives

FDIC
DEC - 4 2008
OFFICE OF LEGISLATIVE AFFAIRS

Vernon J. Ehlers Michigan

December 4, 2008

Henry M. Paulson, Jr.
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220-0002
VIA FACSIMILIE

Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW, MB-6028
Washington, D.C. 20429
VIA FACSIMILIE

Dear Secretary Paulson and Chairman Bair,

(b)(6) [redacted] Chairman and Chief Executive Officer of [redacted] (b)(4) (b)(8) (b)(6) located in [redacted] filed an application with the Federal Deposit Insurance Corporation (FDIC) for assistance from the Capital Purchase Plan (CPP) under the Troubled Asset Recovery Plan (TARP). The application was denied. I write to respectfully request this application be reconsidered.

(b)(6)

The FDIC provided a verbal response to Mr. [redacted] about the denial of his application. I understand one of the reasons for [redacted] denial is concern about the Michigan economy. I certainly understand the FDIC concerns, because the Michigan economy is indeed in dire straights. However, if institutions are denied the credit they need to operate in Michigan, there will be unintended consequences. In fact, one of the stated purposes of TARP is to provide stability to and prevent disruption in the economy and financial system. (b)(4) (b)(8) (b)(6)

[redacted] is primarily a commercial lending institution and, as such, a number of small businesses in West Michigan rely upon [redacted] for their lines of credit and business loans. Many banks in Michigan have already called in lines of credit and loans for small businesses. [redacted] remains the final life line for many small businesses. The failure of more small businesses will not improve Michigan's economic situation. I urge you to consider this argument in reviewing [redacted] application. (b)(4) (b)(8) (b)(6)

[redacted] (b)(8)

Henry M. Paulson, Jr.
December 4, 2008
Page 2

(b)(4)
(b)(8)

Smaller, locally focused banks are in dire need of assistance from the TARP program. I hope we can work together to provide the necessary liquidity to [redacted] and the businesses it services to prevent further disruption in the Michigan economy.

I look forward to your reply.

Sincerely,

Vernon J. Ehlers
Member of Congress

VJE:jd

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

December 30, 2008

Honorable Vernon J. Ehlers
House of Representatives
Washington, D.C. 20515

Dear Congressman Ehlers:

Thank you for contacting me about [redacted] of Michigan's application to the Troubled Asset Relief Program's (TARP) Capital Purchase Program. As you may know, the Federal Deposit Insurance Corporation is actively engaged with the U.S. Department of Treasury (Treasury) and the other federal banking agencies in considering TARP applications filed by banking institutions. In our role as primary federal supervisor for state nonmember institutions, the FDIC makes a recommendation on each TARP application it receives to the Treasury which ultimately determines if an institution may participate in the Program.

The FDIC has received a TARP application from [redacted] of Michigan which is being processed by our Chicago Regional Office. Our Chicago staff is evaluating the application and has been in communication with Bank management. However, we have not completed our review or arrived at a recommendation to forward to Treasury. When our Chicago staff completes its analysis of the Bank's application, the results of this analysis will be considered by the FDIC's Washington Office which makes a recommendation to the Treasury. Once a determination has been reached, the Bank will be notified of the disposition of its application.

I agree with you that TARP program capital subscriptions are necessary during this challenging time to keep credit available for consumers and businesses in Michigan and across the nation. The FDIC expects banks will use these funds to augment capital and responsibly make loans in their communities as a means of stimulating economic growth.

The FDIC's executive coordinator of our TARP project, Steven Fritts, met with the Michigan Bankers on December 5, 2008 in Dearborn, Michigan. I understand that Mr. Fritts had a good dialogue with your constituent banks and provided useful information about this program.

If you have additional questions, please contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C Bair

Sheila C. Bair

LA08-720

Congress of the United States of America
House of Representatives

FDIC
DEC - 4 2008
OFFICE OF LEGISLATIVE AFFAIRS

Vernon J. Ehlers | December 4, 2008 | Michigan

Henry M. Paulson, Jr.
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220-0002
VIA FACSIMILIE

Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW, MB-6028
Washington, D.C. 20429
VIA FACSIMILIE

Dear Secretary Paulson and Chairman Bair,

[redacted] Chairman and Chief Executive Officer of [redacted] located in [redacted] Michigan, filed an application with the Federal Deposit Insurance Corporation (FDIC) for assistance from the Capital Purchase Plan (CPP) under the Troubled Asset Recovery Plan (TARP). The application was denied. I write to respectfully request this application be reconsidered.

The FDIC provided a verbal response to [redacted] about the denial of his application. I understand one of the reasons for [redacted] denial is concern about the Michigan economy. I certainly understand the FDIC concerns, because the Michigan economy is indeed in dire straights. However, if institutions are denied the credit they need to operate in Michigan, there will be unintended consequences. In fact, one of the stated purposes of TARP is to provide stability to and prevent disruption in the economy and financial system.

[redacted] is primarily a commercial lending institution and, as such, a number of small businesses in West Michigan rely upon [redacted] for their lines of credit and business loans. Many banks in Michigan have already called in lines of credit and loans for small businesses. [redacted] remains the final life line for many small businesses. The failure of more small businesses will not improve Michigan's economic situation. I urge you to consider this argument in reviewing [redacted] application.

The FDIC also mentioned three other reasons for the denial of [redacted] application. These include a concern about high level of brokered deposits. It is my understanding the examinations by the FDIC of [redacted] has been consistently positive. Further, the FDIC was concerned with [redacted] asset quality. [redacted] currently has non-performing assets approximately totaling 2.25%. Please elaborate on the criteria used to determine asset quality and how it applies to the decision FDIC has made in this instance. The final matter concerns [redacted] profitability. [redacted] indicated he expects a profit for the third and fourth quarters of this year.

2182 Rayburn House Office Building, Washington, DC 20515 • 202-225-3831 • Fax: 202-225-5144 • www.house.gov/ehlers

Henry M. Paulson, Jr.
December 4, 2008
Page 2

Smaller, locally focused banks are in dire need of assistance from the TARP program. I hope we can work together to provide the necessary liquidity to [redacted] and the businesses it services to prevent further disruption in the Michigan economy.

I look forward to your reply.

Sincerely,

Vernon J. Ehlers
Member of Congress

VJE:jd

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

December 31, 2008

Honorable Randy Neugebauer
House of Representatives
Washington, D.C. 20515

Dear Congressman Neugebauer:

Thank you for your letter regarding the potential taxpayer exposure arising from the federal government's recent efforts to stabilize the financial system. I appreciate your concern about the very serious problems facing the economy and financial markets and about the need for the government to fully and clearly account for actual and potential costs to taxpayers.

Your letter asked for information on seven items. Four of the seven requests concerned issues that would be most appropriately answered by the Treasury Department or Federal Reserve (items 1, 2, 3, and 6). This letter provides information on the remaining items in your letter.

Q4. Exposure to the FDIC for the increase in the deposit insurance limit in the EESA, as well as exposure from the Temporary Liquidity Guarantee Program as it is implemented.

A4: The FDIC roughly estimates that the Emergency Economic Stabilization Act (EESA) provision raising the general coverage limit to $250,000 through the end of 2009 will temporarily increase insured deposits by about 15 percent (or about $680 billion, based on September 30, 2008 data). As you know, EESA, also prohibits the FDIC from considering this temporary increase in deposit insurance when setting risk-based assessments for the Deposit Insurance Fund (DIF).

With regard to the FDIC's Temporary Liquidity Guarantee Program (TLGP), the program has two key features. The first feature is a guarantee for new, senior unsecured debt issued by banks, thrifts, bank holding companies, and most thrift holding companies that will help institutions fund their operations. Eligible entities include: 1) FDIC-insured depository institutions; 2) U.S. bank holding companies; and 3) U.S. savings and loan holding companies that either engage only in activities that are permissible for financial holding companies under section 4(k) of the Bank Holding Company Act (BHCA) or have an insured depository institution subsidiary that is the subject of an application under section 4(c)(8) of the BHCA regarding activities closely related to banking. Bank and savings and loan holding companies must own at least one insured and operating depository institution. The FDIC may allow other affiliates of an insured depository institution to be eligible on a case-by-case basis, after written request and positive recommendation by the appropriate federal banking agency.

The guarantee applies to all senior unsecured debt issued by participating entities on or after October 14, 2008, through and including June 30, 2009. Short-term debt issued for one month or less, including overnight federal funds, will not be eligible for the program. Issuers will be limited in the amount of guaranteed debt they raise, which generally may not exceed 125 percent of senior unsecured debt that was outstanding as of September 30, 2008, and scheduled to mature before June 30, 2009. For eligible debt issued on or before June 30, 2009, coverage is only provided until the earlier of the date of maturity of the debt or June 30, 2012.

The second feature of the new program provides insurance coverage for all deposits in non-interest-bearing transaction accounts, as well as NOW accounts that pay minimal interest, at insured depository institutions unless they choose to opt out. These accounts are mainly payment processing accounts such as payroll accounts used by businesses. Frequently, such accounts exceed the current maximum insurance limit of $250,000. Many smaller, healthy banks had expressed concerns about deposit outflows based on market conditions.

Our current estimate of the temporary increase in deposits covered by the TLGP's guarantee of non-interest bearing transaction deposits is $400 billion to $500 billion. Our current estimate of senior unsecured debt that could be covered under the TLGP is $500 billion to $700 billion. The current estimate is based on the amount of senior unsecured debt outstanding as of September 30, 2008, as reported by entities that have opted into the debt guarantee program and the information the FDIC has gathered through discussions with participating entities.

It is important to note that FDIC-insured institutions, not taxpayers, bear the costs of bank failures through the premiums that they pay to the DIF. Furthermore, the TLGP does not rely either on taxpayer funding or on the DIF. Instead, program costs will be paid for by direct user fees and, if necessary, systemic risk assessments on the industry.

Premiums for the debt guarantee are charged on a sliding scale depending on the length of the debt maturity. The range will be 50 basis points on debt of 180 days or less, and a maximum of 100 basis points for debt with maturities of one year or longer, on an annualized basis.

With regard to the temporary increase in coverage for deposits in non-interest bearing accounts, a 10 basis point surcharge will be applied to deposits in non-interest bearing transaction deposit accounts not otherwise covered by the existing deposit insurance limit of $250,000. This surcharge will be added to the participating banks' existing risk-based deposit insurance premium paid on those deposits.

Q5. Costs to the FDIC for resolving failed institutions this year.

A5. As of December 15, 25 institutions have failed this year. These institutions had assets just prior to their failure totaling $372 billion. Their estimated cost to the DIF is approximately $16 billion.

Q7. Are there any further initiatives planned by [the Treasury, the Fed, and] the FDIC?

A7: The FDIC believes that the credit guarantee provisions of EESA can and should be used to create a program to promote systematic loan modifications, along the lines of those the FDIC is currently undertaking at IndyMac Federal Bank.

The FDIC has proposed a loss sharing guarantee program whereby the government will share up to 50 percent of the losses with lenders or investors if a mortgage--modified under the sustainable guidelines used at IndyMac Federal--later redefaults. With the government sharing the risk of future redefaults, we propose to reduce this risk even further by modifying the mortgages to an even more affordable 31 percent ratio of first mortgage debt to gross income. We are open to discussion of other approaches to implementation with a loss sharing guarantee program, but believe that strong incentives are now necessary to achieve the level of modifications needed to stem the growth in unnecessary foreclosures.

Over the next two years, an estimated 4 to 5 million mortgage loans will enter foreclosure if nothing is done. We believe that this program has the potential to reduce the number of foreclosures by up to 1.5 million, thereby helping to reduce the overhang of excess vacant homes that is driving down U.S. home prices. In addition, this approach keeps modified mortgages within existing securitization transactions, does not require approval by second lienholders, ensures that lenders and investors retain some risk of loss, and protects servicers from the putative risks of litigation by providing a clear benefit from the modifications.

We estimate that the cost of this program would be just under $25 billion. However, if this program can keep home prices from falling by just three percentage points less than would otherwise be the case, over half a trillion dollars would remain in homeowners' pockets. Even a conservative estimate of the "wealth effect" this could have on consumer spending would exceed *$40 billion*, resulting in a significant stimulus for the economy and nearly double the investment in the program.

We appreciate your concern regarding these important efforts. If you have additional questions, please contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

Sheila C Bair

Sheila C. Bair

LA08-680

RANDY NEUGEBAUER
19TH DISTRICT, TEXAS

ROOM 429
CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4319
PHONE: (202) 225-4005
FAX: (202) 225-9615
www.randy.house.gov
randy@mail.house.gov

Congress of the United States
House of Representatives

811 UNIVERSITY AVENUE
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LUBBOCK, TX 79401
(806) 763-1611

1510 SCURRY STREET
SUITE B
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(432) 264-0722

500 CHESTNUT
SUITE 819
ABILENE, TX 79602
(325) 675-9779

November 14, 2008

The Honorable Henry Paulson
Secretary of the Treasury
Washington, DC 20220

The Honorable Ben Bernanke
Chairman, Federal Reserve Board of Governors
Washington, DC 20551

The Honorable Shelia Bair
Chairman, Federal Deposit Insurance Corporation
Washington, DC 20429

Dear Secretary Paulson, Chairman Bernanke and Chairman Bair:

As I prepare for the House Financial Services Committee hearing next week regarding oversight of the Emergency Economic Stabilization Act (EESA), I ask for your assistance in accounting for the total exposure taxpayers now face due to the federal government's interventions in our nation's financial markets during the past year.

Taxpayers I represent are extremely concerned about the level of debt their government has taken on and financial commitments their government has made, which go far beyond the $700 billion authorized in the EESA. With debate in Congress regarding further spending "stimulus," costs could increase further. We owe it to taxpayers to present a thorough accounting of the exposure they face due to federal actions in an easily accessible and understandable format.

Certainly our financial markets and our economy are facing troubling times, and our markets are not functioning normally. However, our government's interventions in the marketplace have created a situation in which future generations will pay a significant price and a situation in which a large portion of our country's economic activity is now backstopped by the federal government.

I ask for your assistance in compiling a full accounting of the actual costs and taxpayer exposure created by the increased federal involvement in our economy, including:

1) Average daily amount outstanding through the Federal Reserve's lending facilities, including the Discount Window, Term Auction Facility, Term Securities Lending Facility, Primary Dealer Credit Facility, Commercial Paper Funding Facility, Money Market Investor Funding Facility, actions related to the former Bear Stearns and lending to American International Group;

2) Projected amount outstanding by the end of calendar year 2008 through the Federal Reserve's lending facilities listed above;

3) Costs and potential liabilities to the Treasury Department related to Fannie Mae and Freddie Mac with regard to purchases of their mortgage backed securities, purchase of senior preferred stock, and the credit facility;

4) Exposure to the FDIC for the increase in the deposit insurance limit in the EESA, as well as exposure from the Temporary Liquidity Guarantee Program as it is implemented;

5) Costs to the FDIC for resolving failed financial institutions this year;

6) Treasury's plans for using the uncommitted $410 billion from the EESA; and

7) Any further initiatives planned by Treasury, the Fed and the FDIC.

While we may have different views on the best policies to support our financial markets and economy, I think we can agree America's taxpayers must have all the information about the current costs and future liabilities these policies have created. Moving forward, we must all work together on an effective strategy to extricate the federal government from these commitments and empower the marketplace to again function without a government backstop.

Thank you for you assistance in providing a full accounting of the costs of our actions.

Sincerely,

Randy Neugebauer
Member of Congress

LA 09-001

BARNEY FRANK, MA, CHAIRMAN

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

SPENCER BACHUS, AL, RANKING MEMBER

December 31, 2008

FDIC
Jan 02, 2009
OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Chairman Bair:

The Committee on Financial Services will hold a meeting to discuss "Priorities for the Next Administration: Use of TARP Funds under EESA" at 10 a.m. on Wednesday, January 7, 2009, in room 2128 Rayburn House Office Building. I am writing to confirm your invitation to participate at this public proceeding.

The meeting will examine the lessons learned from the Bush Administration's use of TARP funds, and how those lessons can inform decisions on TARP deployment by the incoming Administration. The meeting will focus on the need to use TARP funds to prevent mortgage foreclosures; the need to focus TARP recipients on using federal funds to increase lending activity to boost the economy; proposals to provide greater accountability in the use of TARP funding; and the need for additional taxpayer protections such as more comprehensive executive compensation restrictions.

Please address the following in your testimony, as appropriate:

1. What additional measures should be taken, through administrative action or legislatively if need be, to ensure that TARP funds facilitate economic recovery?
2. Please provide specifics regarding how the next Administration might most effectively use TARP funding to mitigate foreclosures and help struggling homeowners.
3. Which additional accountability measures should be employed to ensure that TARP recipients are using federal funds for the purposes intended by Congress?
4. What additional conditions (such as more comprehensive restrictions on executive compensation and other corporate activities) should be placed on TARP funding to ensure that the interests of taxpayers are adequately protected?

Please read the following material carefully. It is intended as a guide to your rights and obligations as a witness under the rules of the Committee on Financial Services.

The Form of your Testimony. Under the Rules of the Committee on Financial Services, each witness who is to testify before the Committee or its subcommittees must file with the Clerk of the Committee a written statement of proposed testimony of any reasonable length. Please also include with the testimony a current resume summarizing education, experience and affiliations pertinent to the subject matter of the hearing. This must be filed at least two business days before your appearance. Please note that changes to the written statement will not be permitted after the meeting begins. Failure to comply with this requirement may result in the exclusion of your written testimony from the record. Your oral testimony should not exceed five minutes and should summarize your written remarks. The Chair reserves the right to exclude from the printed record any supplemental materials submitted with a written statement due to space limitations or printing expense.

Submission of your Testimony. Please submit at least 100 copies of your proposed written statement to the Clerk of the Committee not less than two business days in advance of your appearance. These copies should be delivered to: Clerk, Committee on Financial Services, 2129 Rayburn House Office Building, Washington, D.C. 20515.

Due to heightened security restrictions, many common forms of delivery experience significant delays in delivery to the Committee. This includes packages sent via the U.S. Postal Service, Federal Express, UPS, and other similar carriers, which typically arrive 3 to 5 days later than normal. The United States Capitol Police have specifically requested that the Committee refuse deliveries by courier. The best method for delivery of your testimony is to have an employee from your organization deliver your testimony in an unsealed package to the address above. If you are unable to comply with this procedure, please contact the Committee to discuss alternative methods for delivery of your testimony.

The Rules of the Committee require, to the extent practicable, that you also submit your written testimony in electronic form. The preferred method of submission of testimony in electronic form is to send it via electronic mail to fsctestimony@mail.house.gov. The electronic copy of your testimony may be in any major file format, including WordPerfect, Microsoft Word, or ASCII text for either Windows or Macintosh. Your electronic mail message should specify in the subject line the date and the Committee or subcommittee before which you are scheduled to testify. You may also submit testimony in electronic form on a disk or CD-ROM at the time of delivery of the copies of your written testimony. Submission of testimony in electronic form facilitates the production of the printed hearing record and posting of your testimony on the Committee's Internet site.

Your Rights as a Witness. Under the Rules of the House, witnesses may be accompanied by their own counsel to advise them concerning their constitutional rights. I reserve the right to place any witness under oath. Finally, a witness may obtain a transcript copy of his testimony given in open, public session, or in a closed session only when authorized by the Committee or subcommittee. However, by appearing before the Committee or its subcommittees, you authorize the Committee to make technical, grammatical, and typographical corrections to the transcript in accordance with the rules of the Committee and the House.

The Rules of the Committee on Financial Services, and the applicable rules of the House, are available on the Committee's website at http://financialservices.house.gov. Copies can also be sent to you upon request.

The Committee on Financial Services endeavors to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, or have any questions regarding special accommodations generally, please contact the Committee in advance of the scheduled event (4 business days notice is requested) at (202) 225-4247; TTY: 202-226-1591; or write to the Committee at the address above.

Please note that space in the Committee's hearing room is extremely limited. Therefore, the Committee will only reserve 1 seat for staff accompanying you during your appearance (a total of 2 seats). In order to maintain our obligation under the Rules of the House to ensure that Committee hearings are open to the public, we cannot deviate from this policy.

Should you or your staff have any questions or need additional information, please contact Michael Beresik at (202) 225-4247.

Sincerely,

BARNEY FRANK
Chairman

BF/mb

cc: The Honorable Spencer Bachus

FDIC

Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

December 31, 2008

Honorable Carl Levin
United States Senate
Washington, D.C. 20510

Dear Senator Levin:

Thank you for your letter to Chairman Bair regarding [redacted] application to the Troubled Asset Relief Program's (TARP) Capital Purchase Program. As you know, the Federal Deposit Insurance Corporation is actively engaged with the U.S. Department of Treasury (Treasury) and the other federal banking agencies in considering TARP applications filed by banking institutions.

[redacted] headquartered in Troy, Michigan, is a federally chartered savings bank, which is regulated by the Office of Thrift Supervision. As the OTS will process this TARP application, we have taken the liberty of forwarding your inquiry to the OTS.

Sincerely,

Eric J. Spitler
Director
Office of Legislative Affairs

cc: Congressional Affairs
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

CARL LEVIN
MICHIGAN

United States Senate

WASHINGTON, DC 20510-2202

December 4, 2008

FDIC
DEC - 5 2008
OF LEGISLATIVE AFFAIRS

The Honorable Sheila Bair
Chairwoman
Federal Deposit Insurance Corporation
550 17th St. NW
Washington, DC 20429-9990

VIA Facsimile (202-898-3745)

Dear Chairwoman Bair:

I understand that the FDIC will be evaluating the application submitted by [redacted] Inc requesting participation in the Treasury's Capital Purchase Program ("CPP"). Founded i[redacted] is headquartered in[redacted] Michigan. At a time when Michigan's economy is in dire need of investment and access to capital, it is critical that financial institutions that serve our state receive support from the CPP.

Community banks such as [redacted] play a critical role in Michigan's economy by supporting small business ventures and individual entrepreneurs who are key to our economic rebound. The CPP should treat all financial institutions equitably, regardless of their size or geographic location. For the program to be a success, it should provide stability and liquidity to a large number of smaller financial institutions, not just to the larger banks. That also means prompt action should be given to their requests and that they not be put at the end of the line behind the bigger banks. I urge you to give [redacted] application all due and prompt consideration.

Sincerely,

Carl Levin

Carl Levin

FDIC

Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Office of Legislative Affairs

December 31, 2008

Honorable Carl Levin
United States Senate
Washington, D.C. 20510

(b)(4)
(b)(8)

Dear Senator Levin:

Thank you for your letter to Chairman Bair regarding [redacted] application to the Troubled Asset Relief Program's (TARP) Capital Purchase Program. As you know, the Federal Deposit Insurance Corporation is actively engaged with the U.S. Department of Treasury (Treasury) and the other federal banking agencies in considering TARP applications filed by banking institutions.

(b)(4)
(b)(8)

[redacted], is a federally chartered savings bank, which is regulated by the Office of Thrift Supervision. As the OTS will process this TARP application, we have taken the liberty of forwarding your inquiry to the OTS.

Sincerely,

[signature] for

Eric J. Spitler
Director
Office of Legislative Affairs

cc: Congressional Affairs
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

DEC. 9. 2008 5:39PM

NO. 0032 P. 1

LA08-769

CARL LEVIN
MICHIGAN

United States Senate

WASHINGTON, DC 20510-2202

FDIC
DEC 10 2008
OFFICE OF LEGISLATIVE AFFAIRS

December 9, 2008

The Honorable Sheila Bair
Chairwoman
Federal Deposit Insurance Corporation
550 17th St. NW
Washington, DC 20429-9990

VIA Facsimile (202-898-3745)

Dear Chairwoman Bair:

I understand that the FDIC may be involved in reviewing an application submitted by [redacted] requesting participation in the Treasury Capital Purchase Program (CPP). Founded in [redacted]

(b)(4)
(b)(8)

Community banks such as [redacted] play a critical role in Michigan's economy. The CPP should treat all financial institutions equitably, regardless of their size or geographic location. For the program to be a success, it should provide stability and liquidity to a large number of smaller financial institutions, not just to the larger banks. That also means prompt action should be given to their requests and that they not be put at the end of the line behind the bigger banks. I urge you to give [redacted] application all due and prompt consideration.

(b)(4)
(b)(8)

Sincerely,

Carl Levin

Carl Levin

LA08-708

United States Senate

November 26, 2008

FDIC
DEC - 11 2008
OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW,
Washington, DC 20429

Dear Ms. Bair:

Thank you for testifying before the Committee on Banking, Housing, and Urban Affairs on October 23, 2008. In order to complete the hearing record, we would appreciate your answers to the enclosed questions as soon as possible.

Please repeat the question, then your answer, single spacing both question and answer. Please do not use all capitals.

Send your reply to Ms. Dawn L. Ratliff, the committee's Chief Clerk. She will transmit copies to the appropriate offices, including the committee's publications office. Due to current procedures regarding Senate mail, it is recommended that you send replies via e-mail in a MS Word, WordPerfect or .pdf attachment to Dawn_Ratliff@banking.senate.gov.

If you have any questions about this letter, please contact Ms. Ratliff at (202)224-3043.

Sincerely,

Chris Dodd

CHRISTOPHER J. DODD
Chairman

CJD/dr

Questions for the Hearing on "Turmoil in the U.S. Credit Markets: Examining Recent Regulatory Responses"
October 23, 2008

Questions for The Honorable Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation, from Senator Enzi:

1. I was happy to note in your testimony that you discussed the need to stop unnecessary foreclosures. You mentioned the FDIC's work as conservator of IndyMac and your participation in the Hope for Homeownership program as recent examples of your effort. Does the FDIC plan to develop a new program to extend loan modifications to a broader pool of mortgages than those held by IndyMac? How would such a program work and what would its impact be on mortgage investors? Where would the FDIC derive authority for such a program?

2. Has the FDIC given any further consideration to the FDIC's own Home Ownership Preservation Loan program? I believe this program is a good way to avoid foreclosures and severe mortgage modifications at the same time. If this program is no longer being considered, why?

Questions for the Hearing on "Turmoil in the U.S. Credit Markets: Examining Recent Regulatory Responses"
October 23, 2008

Questions for The Honorable Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation, from Senator Dodd:

1. Please provide the legal justification for establishing the Temporary Liquidity Guarantee Program under the systemic risk exception in the Federal Deposit Insurance Act.

2. According to press reports, the emergency actions taken by the FDIC to guarantee unsecured senior debt issued by FDIC-insured depository institutions has had the unintended consequence of driving up the costs of borrowing for Fannie Mae, Freddie Mac and the Federal Home Loan Banks (FHLBs). Was this taken into account as a possible consequence as you formulated this course of action?

3. The FFIEC has proposed a rule that would lower the capital risk weighting that banks assign to Fannie Mae and Freddie Mac debt from 20 to 10 percent, but does not change the treatment for FHLB debt. Has any consideration been given to giving the same treatment to FHLB debt? Will FDIC-guaranteed unsecured bank debt have a comparable risk weight?

4. I commend you for aggressively pursuing loan modifications of the IndyMac loans that the FDIC now services. Please elaborate on the following three points that you make in your testimony that I want to explore further:

   - You state that you have established a program to systematically modify troubled loans that IndyMac serviced. Please give us more details about this approach and how it differs from modifying loans on a case-by-case basis. Is there really such a thing as a systematic approach to loan modification, or do you have to touch every loan as you would on a case-by-case basis?

   - Your testimony says that modifications are only offered where they are profitable to IndyMac or investors in securitized or whole loans. Are you finding that most modifications are profitable, and if so, please explain how you determine that they are more profitable than foreclosures?

   - You state that securitization agreements typically provide servicers with sufficient flexibility to apply the modification approach you are taking for the IndyMac loans. Given this flexibility, why are so few loan modifications being made?

Questions for the Hearing on "Turmoil in the U.S. Credit Markets: Examining Recent Regulatory Responses"
October 23, 2008

5. Each agency represented at the hearing has aggressively used the tools at their disposal in dealing with the crisis. However, sometimes the use of those tools has led to unintended consequences. For instance, when the Treasury Department guaranteed money market funds, it led to a concern on deposit insurance and bank accounts. When the FDIC guaranteed bank debt, it had an effect on GSE borrowing costs, which in turn directly affects mortgage rates.

   Acknowledging that there is often a need to act quickly in these circumstances, please explain what steps and processes you have employed to inform other agencies about significant actions you undertake to ensure that there are not serious adverse unintended consequences and that your actions are working in concert with theirs.