FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429
Office of Legislative Affairs

January 24, 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 the opportunity to respond to questions submitted by Senator Shelby and Senator Crapo subsequent to recent testimony before the Committee by John Bovenzi, Chief Operating Officer and Deputy to the Chairman, on "Examining the Regulation and Supervision of Industrial Loan Companies."

The Federal Deposit Insurance Corporation's answers to the questions are enclosed. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

[redacted]

Eric J. Spitler
Director
Office of Legislative Affairs

Enclosure

Response to Questions posed by Senator Shelby
from John Bovenzi
Deputy to the Chairman and Chief Operating Officer
Federal Deposit Insurance Corporation

Q1. A 2006 report from the FDIC's Office of Inspector General detailed the widespread use of non-standard conditions in granting deposit insurance. The State of Utah also includes certain conditions in its orders approving new industrial loan company or industrial bank (collectively, ILC) charters.

- **Is there any question regarding the enforceability of these conditions in a legal context?**
- **Could the FDIC simply withdraw its deposit insurance if the ILC does not honor the conditions?**

A1. When an insured state nonmember bank, including an ILC, violates a condition imposed in writing in connection with a grant of deposit insurance, the FDIC may pursue various types of enforcement actions under section 8 of the Federal Deposit Insurance Act (FDI Act). The criteria for use of the FDIC's enforcement authorities are specified by the various subsections of section 8. The most common criteria include violations of law, rule, or regulation; unsafe or unsound banking practices; and *violations of written agreements, orders, or conditions imposed in writing in the granting of applications or other requests*. The statute does not distinguish between "standard" and "non-standard" conditions.

The criteria are prerequisites for the pursuit of a cease-and-desist action under section 8(b), a removal and prohibition action under section 8(e) (if evidence satisfies the effect and culpability prongs of the statute as well), and a civil money penalty action under section 8(i). These enforcement actions can be pursued directly against the depository institution, including ILCs, and their institution-affiliated parties (IAPs). In some circumstances, the FDIC may pursue an action against an institution's parent company, that is not a bank or thrift holding company, as a result of its status as an IAP. Those parent companies that are established bank or thrift holding companies may be subject to actions by the Federal Reserve Board or Office of Thrift Supervision, respectively.

Historically, the enforcement authorities described above have been sufficient to ensure compliance with the conditions imposed in connection with the grant of deposit insurance. However, a depository institution's insured status also may be terminated by the FDIC Board of Directors under section 8(a)(2) of the FDI Act after a hearing if the institution is found to have engaged in violations of a condition imposed in writing in connection with the approval of any application or other request by the depository institution or written agreements entered into with the FDIC.

For insured depository institutions for which the FDIC is not the primary federal regulator, the primary federal regulator can enforce conditions imposed by the FDIC in connection with deposit insurance approvals. In such situations, the FDIC also has the authority to either terminate deposit insurance or exercise its backup enforcement authority under section 8(t) of the FDI Act.

Q2. In a 2006 hearing before the House Financial Services Committee, the FDIC appeared to qualify its previous position on the adequacy of the bank-centric regulatory approach from a safety and soundness perspective.

- ***Please explain the rationale for this apparent reversal.***

A2. The FDIC's response to the Government Accountability Office's (GAO) September 2005 report on ILCs (GAO-05-621) noted that the bank-centric approach to supervision of ILCs has been a proven model for protecting the Deposit Insurance Fund. The authorities available to the FDIC to supervise ILCs have been adequate thus far for the size and types of ILCs that currently exist.

However, the number, size, and types of non-financial ILC applicants have changed significantly in recent years, causing the FDIC to carefully examine this new environment. The business plans for ILCs controlled by non-financial companies tend to be more complex and differ substantially from the consumer lending focus of the original ILCs. In many instances, these ILCs directly support one or more affiliate's non-financial activities or serve a particular lending, funding, or processing function within the larger organizational structure. Some observers, including the GAO, have raised concerns that the supervisory infrastructure may not provide sufficient safeguards to identify and avoid or control all safety and soundness risks and risks to the Deposit Insurance Fund. Although our experience to date indicates that these risks are not unique to the ILC charter, the FDIC determined that it was appropriate to provide Congress with a reasonable period to consider these developments and, if necessary, to make revisions to existing statutory authority.

Since 2006 when the FDIC imposed its moratorium, applications for deposit insurance and change in control have been on hold.

- **What is the legal basis for the FDIC's moratorium?**

The FDIC imposed a moratorium to evaluate (i) developments in the industrial bank industry; (ii) the various issues, facts, and arguments raised with respect to the industrial bank industry; (iii) whether there were emerging safety and soundness issues or policy issues involving industrial banks or other risks to the Deposit Insurance Fund; and (iv) whether any changes should be made in the FDIC's oversight of industrial banks in order to protect the Deposit Insurance Fund or achieve other congressional objectives. In summary, the moratorium was administratively necessary to achieve or preserve the FDIC's broader statutory objectives to promote safety and soundness and maintain the public's confidence in the nation's banking system.

Courts have upheld an agency's authority to impose a moratorium when administratively necessary to achieve or preserve the agency's broader statutory objectives. This has occurred when emerging or changed circumstances prompted an agency to reevaluate its standards for decision making. *See, e.g., Western Coal Traffic League v. Surface Transportation Board*, 216 F.3d 1168 (D.C. Cir. 2000) (upholding the agency's 15-month moratorium on processing railroad merger applications in order to reevaluate standards for approval when the agency was required by statute to consider the effect of a proposed merger on competition and approve mergers that were consistent with the public interest; recent mergers had increased consolidation in the industry and caused service disruptions). The legal reasoning of *Western Coal* and other cases provide legal support for the FDIC's decision to impose its moratorium.

- **On what grounds was the change in control application for GMAC Automotive Bank exempted from the moratorium?**

On May 31, 2006 a consortium of investors headed by Stephen A. Feinberg, the founder of Cerberus Capital Management, L.P., filed a change in control notice for the acquisition of GMAC Automotive Bank (Bank), an industrial loan company that specializes in the purchase of automobile loan and lease contracts. The change in control notice was required due to the consortium's planned acquisition of 51 percent of GMAC, a parent company of the Bank. GMAC is a $310 billion financial services subsidiary of General Motors Corporation (GM).

On July 28, 2006 the FDIC Board of Directors imposed a moratorium on ILC applications for deposit insurance and change in control notices with respect to ILC. The moratorium (as modified in January 2007) expires on January 31, 2008.

On November 15, 2006 the FDIC Board approved the Cerberus change in control. The FDIC acted on this change in control notice prior to the expiration of the moratorium because of the unique circumstances of the case. The FDIC Board wanted to avoid the potential for substantial interference with a major restructuring by GM, and waiting to act until after the expiration of the moratorium could have had a significant adverse impact on GM's restructuring and GM's subsidiaries.

The action was conditioned on the consortium entering into a written agreement with the FDIC ensuring that the Bank will be subject to whatever changes the FDIC might make to the regulation and supervision of ILCs going forward. Specifically, the consortium committed to the FDIC that within two years after the date of approval they will divest control of the bank; terminate the bank's insured status; become a registered bank or thrift holding company; or be subject to the same applicable laws and regulations as other similarly situated companies at that time.

The Board's action permitted GM's broader corporate restructuring to go forward while preserving the purposes and goals of the moratorium.

Following its moratorium, the FDIC sought comment on a number of issues related to ILCs. Did these comments or the FDIC's own internal review suggest any inadequacies with the FDIC's existing regulatory powers over ILCs?

In its Notice and Request for Comment on issues related to industrial banks, the FDIC posed the following question: "Given that Congress has expressly excepted owners of ILCs from consolidated bank holding company regulation under the Bank Holding Company Act, what are the limits on the FDIC's authority to impose such regulation absent further congressional action?" Commenters filing substantive responses to this question consistently noted that, while the FDIC could not impose restrictions that would effectively repeal the exemption of ILCs from the BHCA, it might impose conditions in the application approval process to ensure the safety and soundness of the ILC. In fact, the FDIC has used such conditions for a number of years to achieve that result.

The FDIC's proposed regulation, Part 354, is intended to provide, in a more systematic fashion, safeguards to identify and avoid or control any safety and soundness risks and risks to the Deposit Insurance Fund that may result from ownership by a financial company not subject to consolidated federal bank supervision. The proposed rule would provide enhanced transparency and a system of controls to address the potential risks posed by such ownership structures.

What percentage of the total insured deposits in the United States are held by ILCs? What percentage of the total insured deposits are held by ILCs not already subject to the consolidated supervision of either the Federal Reserve Board or the Office of Thrift Supervision? What percentage of the total insured deposits are held by ILCs owned by commercial firms?

The volume of total insured deposits in the United States held by ILCs was approximately $163 billion as of September 30, 2007, constituting about 2 percent of total insured deposits. Approximately $58 billion or 0.7 percent of total insured deposits are held by ILCs not already subject to consolidated supervision by either the Federal Reserve Board or the Office of Thrift Supervision. Approximately $25 billion or 0.3 percent of total insured deposits are held by ILCs owned by firms that engage in activities that are not permissible for a financial holding company or a thrift holding company.

Q3. Is the key issue in the ILC debate the commercial ownership of a banking charter or the commercial ownership of a federally-insured entity?

A3. Both issues have been raised and argued frequently by various interested parties during the course of the long-running debate over ILCs. From the FDIC's perspective, the threshold issue in all cases is that subsidiary institutions operate in a safe and sound manner without undue risk to the Deposit Insurance Fund.

Response to Questions posed by Senator Crapo
from John Bovenzi
Deputy to the Chairman and Chief Operating Officer
Federal Deposit Insurance Corporation

Q1. As I said in the opening statement, I am hearing a lot of praise about Britain's approach to regulation as a model for an effective but not onerous system to oversee banks, brokers and investment funds, and one that could improve the competitive position of U.S. financial markets globally. When was the last time Congress did a thorough evaluation of our financial services regulatory structure answering these types of questions?

- **Does our financial services regulatory structure correspond to the needs and problems? *(Relevance)***
- **Does our financial services regulatory structure achieve its objectives? *(Effectiveness)***
- **Does our financial services regulatory structure achieve its objectives at reasonable costs? *(Efficiency/cost-effectiveness)***

A1. The Government Accountability Office (GAO) issued a report (*Financial Regulation: Industry Changes Prompt Need to Reconsider U.S. Regulatory Structure*, GAO-05-61 (Oct. 6, 2004)) responding to a request by the Chairman of the Senate Committee on Banking, Housing, and Urban Affairs to analyze the existing financial services regulatory structure. In that report the GAO suggested that Congress might want to consider some consolidation or modification of the existing regulatory structure to (1) better address the risks posed by large, complex, internationally active firms and their consolidated risk management approaches; (2) promote competition domestically and internationally; and (3) contain systemic risk.

In response to a mandate in the *Financial Services Regulatory Relief Act of 2006*, Pub. L. No. 109-351, §1002, the GAO conducted a study of the regulatory structure for financial services and trends in the financial services industry. In October 2007, the GAO submitted its report (*Financial Regulation: Industry Trends Continue to Challenge the Federal Regulatory Structure*, GAO-08-32 (Oct. 12, 2007)). The report:

- describes measurements of the costs and benefits of financial regulation in general and current efforts to avoid excessive regulatory burden;
- describes financial industry trends and the challenges that these pose to the federal financial regulatory structure; and
- discusses various options to enhance the efficiency and effectiveness of the federal financial regulatory structure.

Although the report did not offer any new recommendations, it suggests a critical first step to modernizing the regulatory system and enhancing its ability to meet the challenges of the dynamic financial services industry includes clearly defining regulatory agencies' goals and objectives. The GAO believes such goals and objectives could help establish agency priorities as well as define responsibility and accountability for identifying risks, including those that cross markets and industries.

With regard to the Financial Services Authority (FSA) in the United Kingdom, the FSA and other regulators in the United Kingdom currently are reviewing aspects of their regulatory system in light of the questions raised by the turmoil surrounding a troubled bank, Northern Rock, which experienced a depositor run earlier this year. The FSA and the Bank of England had to step in to provide extraordinary liquidity support and broadly guarantee deposits for Northern Rock – in part due to questions about the effectiveness of the U.K.'s deposit guarantee system and the processes available to protect depositors in the event of a bank failure. Since then, the FSA in concert with the Bank of England and the Treasury have been reviewing whether the FSA or the deposit insurer, the Financial Services Compensation Scheme, should have powers similar to those provided under U.S. law to the FDIC in conducing bank resolutions. In particular, the U.K. authorities are examining whether stronger legal powers are necessary to better protect the public while minimizing losses. The FSA also has been reviewing its risk and liquidity monitoring processes to enable it to better respond to future issues.

Q2. It is my understanding that the Financial Services Authority in the United Kingdom not only requires a cost-benefit analysis for proposals before going forward, but it is required to report annually on its costs relative to the cost of regulations in other countries. How does this contrast with our system?

A2. Although the FDIC is required by the FDI Act, 12 U.S.C. § 1827(a), to submit an annual report of its operations to Congress, there is no corresponding requirement that the FDIC compare the cost of its regulations with those imposed by agencies in other countries. However, the federal banking agencies are subject to a number of federal laws that address the impact of their regulations:

- The appropriated agencies file cost/benefit analyses of their regulations with the Office of Management and Budget (OMB) for inclusion in an annual report issued by OMB in compliance with section 624 of the Treasury and General Government Appropriations Act, 131 U.S.C. § 1105 note.
- The federal banking agencies are subject to the Administrative Procedures Act, 5 U.S.C. §§ 551, *et seq*., which requires certain rules to be published in the *Federal Register* for comment prior to implementation. The proposed rules typically are accompanied by an explanation of the reasons for the proposed rule.
- When rules contemplated by a federal banking agency involve a collection of information, the agency considers the implications of the Paperwork Reduction Act, 44 U.S.C.§§ 3501, *et seq*. The Paperwork Reduction Act was enacted to minimize the burden on individuals, small businesses and other regulated entities, as well as the cost to the federal government, while ensuring the greatest public benefit of the information collected by federal agencies.
- Like other banking agencies, the FDIC also complies with the Regulatory Flexibility Act, 5 U.S.C. §§ 601, *et seq*., as amended by the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. § 801, *et seq*., to ensure that the impact of its proposed rules on small businesses, including banking organizations, is considered and minimized.

- The FDIC and the other federal banking agencies invite comments on the use of "plain language" in their rulemaking, as required by the provisions of the Gramm-Leach-Bliley Act, 12 U.S.C. § 4809.
- In addition, the FDIC, like other federal banking regulators, is subject to provisions of the Economic Growth and Regulatory Paperwork Reduction Act. That Act, in relevant part, requires federal banking regulators not less frequently than every ten years to review their existing regulations to identify and eliminate those that are outdated, unnecessary, or unduly burdensome on insured depository institutions. 12 U.S.C. § 3311(a).

In addition to complying with the federal laws that govern its rulemaking, the FDIC also is guided by an internal statement of policy that addresses the development of its regulations and policies, *Development and Review of FDIC Regulations and Policies*, 63 *Fed. Reg.* 25157 (May 7, 1998). The statement of policy emphasizes the FDIC's commitment to improving the quality of its regulations while minimizing regulatory burden on the public and the banking industry. It states that, prior to issuance, the FDIC will weigh the potential benefits associated with a regulation or statement of policy against the potential costs.

Q3. I am very appreciative of all the hard work and cooperation of your agencies in reviewing and preparing a matrix of all the regulatory relief recommendations and positions for this committee. In order to get this legislation signed into law, all sides compromised and didn't let the perfect stand in the way of what was possible. I would appreciate if each agency would get back to me and the Banking Committee with a list of their top two or three priorities from this list that would meaningfully reduce regulatory burden for institutions they regulate.

A3. Attached is the FDIC's letter dated November 8, 2007, wherein the FDIC responded to Senator Crapo's previous request for recommendations for legislative changes that we believe would increase regulatory efficiency without compromising safety and soundness or important consumer protections.

Attachment

FDIC

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

Office of Legislative Affairs

February 13, 2008

Honorable Christopher Shays
Representative, U.S. Congress
10 Middle Street, 11th Floor
Bridgeport, Connecticut 06604

Dear Congressman Shays:

Thank you for your letter on behalf of [redacted] regarding an application for deposit insurance filed on behalf of [redacted] Connecticut. [redacted] raised several concerns regarding the duration of the Federal Deposit Insurance Corporation's review of the application.

As you are aware, the FDIC is required to assess each application for deposit insurance relative to the seven statutory factors enumerated in section 6 of the FDI Act. While this assessment must consider the unique nature and complexity of each proposal, please be assured that the FDIC strives to process applications within a reasonable time, given the facts and circumstances of the application. The FDIC is actively reviewing this case and will inform the applicant of our decision as soon as it is complete.

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,

[redacted]

Eric J. Spitler
Director
Office of Legislative Affairs

LA 08-032

CONGRESS OF THE UNITED STATES

U.S. HOUSE OF REPRESENTATIVES

February 4, 2008

Mr. Eric Spitler,
Director of the Office of Legislative Affairs
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429-0001

FDIC
FEB - 5 2008
OFFICE OF LEGISLATIVE AFF

Dear Mr. Spitler:

Enclosed is correspondence from [redacted] Chairman of the Board of [redacted], [redacted], who has contacted my office regarding [redacted] application for federal deposit insurance.

According t[redacted] applied for a national thrift charter on May 25, 2007 and received preliminary approval from the Office of Thrift Supervision on November 19, 2007. On July 9, 2007, the bank also submitted an application to the Federal Deposit Insurance Corporation (FDIC). The bank's senior officers and organizers were interviewed by FDIC field personnel during September, 2007. After numerous meetings with FDIC personnel, the FDIC area office in Braintree and the FDIC regional office in New York City forwarded bank's application with a recommendation for approval to the FDIC in Washington, DC during the week of January 7, 2008.

[redacted] is hoping for a February 20, 2008 opening and would probably be happy with a February 27 or March 5 opening. The bank was told last summer that the FDIC would complete the field review on their application in four months and then make a decision on their application in approximately six weeks. The bank will experience significant expense if they cannot open their doors within the next few weeks. The bank has been hiring staff and incurring costs for facilities and computer equipment.

Congressman Christopher Shays, Fourth District Connecticut
1126 Longworth House Office Building, Washington, DC 20515-0704
Bridgeport: 579-5870 • Norwalk: 866-6469 • Ridgefield: 438-5953 • Shelton: 402-0426
Stamford: 357-8277 • Washington, DC: 202/225-5541
E-mail: rep.shays@mail.house.gov • Internet: www.house.gov/shays

[redacted] was told last summer that the FDIC would complete the review on their application in four months and then make a decision on the application six weeks subsequent to that. I would appreciate your review of the enclosed correspondence and any assistance you can provide to assist my constituent.

Please direct your reply to:

Congressman Christopher Shays
Attention: Vincent Chase
Reference: #114223
10 Middle Street, 11th Floor
Bridgeport, Connecticut 06604-4223

Thank you for your time and attention to this matter.

Sincerely,

[redacted]

Christopher Shays
Member of Congress

CS:jvc

Enclosure

FOIA Redaction/Fact Sheet

At this point in this document 7 page(s) have/has been withheld totally because of the following:

[X] The information was withheld pursuant to the following subsection of the Freedom of Information Act:

[X] (b) (4)
[ ] (b) (5)
[X] (b) (6)
[ ] (b) (7) (A) (B) (C) (D) (E) (F)
[X] (b) (8)
[ ] ______

The page(s) being withheld may be referred to as:

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COMMENTS: ______

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LA08-046

Congress of the United States
Washington, DC 20515

February 20, 2008

FDIC
FEB 26 2008
OFFICE OF LEGISLATIVE AFFAIRS

Mr. James H. Freis, Jr.
Director
Department of Treasury
Financial Crimes Enforcement Network
2070 Chain Bridge Road
Vienna, VA 22182

Dear Director Freis,

We, as Chair of the House Financial Institutions and Consumer Credit subcommittee and as a Member of the House Committee on Foreign Affairs respectively, and as co-chairs of the Americans Abroad Caucus, are very concerned over the reports that American citizens living abroad are being denied access to United States banks.

According to different organizations representing Americans abroad, a large number of American citizens residing abroad have been denied new accounts with American banks and in some instances accounts that have existed for some time are being terminated by the bank over the objections of the account holder. The banks involved reportedly attribute their activities to the Know Your Customer requirements of the Patriot Act.

It is our view that neither the Patriot Act nor the regulations thereunder preclude an American citizen living abroad from having an account with an American bank. That view is apparently shared by the State Department which has issued a letter for American citizens living abroad to give to their bank stating that the Patriot Act does not explicitly prohibit American banks from having American clients who reside overseas. Apparently, several overseas residents have shared this letter with their banks but the banks still close their accounts citing regulatory guidance.

We would very much appreciate your guidance on how we can resolve this issue. As the agency responsible for coordinating regulatory implementation of the Know Your Customer provisions, the Financial Crimes Enforcement Network should be working with the other federal banking regulators to make sure their guidance does not prevent Americans living abroad from having United States bank accounts. We look forward to your timely response.

Sincerely,

[redacted]

CAROLYN B. MALONEY
Member of Congress

[redacted]

JOE WILSON
Member of Congress

CC: Secretary Henry M. Paulson (Department of the Treasury)
Chairman Ben Bernanke (Federal Reserve Board)
Comptroller John C. Dugan (Office of the Comptroller of the Currency)
Chairwoman Sheila C. Bair (Federal Deposit Insurance Corporation)

CARL LEVIN
MICHIGAN

RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510-2202
(202) 224-6221

LA08-049

COMMITTEES:
ARMED SERVICES
GOVERNMENTAL AFFAIRS
SMALL BUSINESS
INTELLIGENCE

United States Senate

WASHINGTON, DC 20510-2202

February 26, 2008

Eric J. Spitler, Director
Office of Legislative Affairs
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

FDIC
FEB 27 2008
OFFICE OF LEGISLATIVE AFFAIRS

Dear Mr. Spitler:

The Fair Trade Commission has designated the week of March 2 through 8 as National Consumer Protection Week and is seeking every opportunity to bring vital information to the general public, but more specifically, to those communities at greatest risk of falling pry to unethical financial solicitations. Our residents are prime targets of some of these credit and loan opportunity schemes. With our high unemployment and mortgage foreclosure rates, residents are responding to many of these solicitations as an answer to their indebtedness and financial debacle. I believe it is imperative that the community be armed with information that will help them to make sound decisions when it comes to their finances. This is an opportunity for us to do that.

I am writing to invite F.D.I.C. to participate as a partner and cosponsor of the financial literacy workshop for residents of the Greater Metropolitan Detroit Area. I have invited and received commitments from the Federal Trade Commission and several local relevant organizations including the Detroit Alliance for Fair Banking, the Michigan Poverty Law Program, ELE Wealth Management and Wayne County Community College District. FTC suggests that the Corporation would have significant resources and information to contribute to this effort.

The half-day, free workshop will be held on Saturday, March 8 from 9:00 am – 12 noon, at the downtown campus of the Wayne County Community College District. I hope you will join me in this community education opportunity. Please contact Cassandra Woods, in my Detroit office for further discussion or questions. She can be reached at 313-226-6020.

Thank you in advance for your attention and cooperation.

Sincerely,

[redacted]

Carl Levin

cc. Kathleen S. Brueger

DETROIT ALLIANCE
FOR FAIR BANKING

WCCCD Wayne County Community College District

Draft

U.S. SENATOR CARL LEVIN

IN PARTNERSHIP WITH

THE FEDERAL TRADE COMMISSION, F.D.I.C.,
THE DETROIT ALLIANCE FOR FAIR BANKING
AND
WAYNE COUNTY COMMUNITY COLLEGE DISTRICT

Present

A Continuing Education Opportunity for Residents of Southeast Michigan

A Free Financial Literacy Seminar

PREVENTING A FINANCIAL CRISIS!

An Informational Forum on how to Identify and Avoid Credit and Financial Fraud, Predatory Lending, Student Loan, Business Opportunity, Credit Card Scams and other unscrupulous investment activities millions of Michigan consumers fall prey to every day.

$$$$$$$

SATURDAY, MARCH 8, 2008
9:00 AM – 12 NOON
WAYNE COUNTY COMMUNITY COLLEGE DISTRICT
DOWNTOWN CAMPUS
1001 W. FORT STREET
DETROIT, MI 48226
(Free Campus Parking)

General Public Invited – Participation is Free

Special Guest Speakers: Ellis Liddell, CEO, ELE Family of Companies
Lorray Brown, Atty, Michigan Poverty Law Program
A Representative from the FDIC
John Steiger, Federal Trade Commission

RSVP by calling: 313-226-6020 or 313-871-9050

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FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

March 27, 2008

Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Senator Reid:

Thank you for your letter regarding the upcoming seminars being developed by the Federal Deposit Insurance Corporation and NeighborWorks America to provide information to agencies and community organizations working with borrowers to avoid foreclosure. The FDIC shares your concern about the rapid rise of foreclosures in Nevada and we plan to hold the first seminar in this series in Las Vegas in May 2008.

I have asked Mr. Robert W. Mooney, Deputy Director, Division of Supervision and Consumer Protection, to coordinate these efforts. He has been in contact with your staff and will continue discussions with them as plans progress. Mr. Mooney can be reached at (202) 898-3911.

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

Sincerely,

[redacted]

Sheila C. Bair

LA08-048

HARRY REID
NEVADA

MAJORITY LEADER

United States Senate

WASHINGTON, DC 20510-7012
February 25, 2008

FDIC
FEB 26 2008
OFFICE OF LEGISLATIVE AFFAIRS

Chairman Sheila Bair
Federal Deposit Insurance Corporation
550 Seventeenth Street, NW, Room 6076
Washington, DC 20429

Dear Chairman Bair:

I understand that the Federal Deposit Insurance Corporation and NeighborWorks America are planning a series of conference seminars for housing counseling agencies that assist borrowers in avoiding foreclosure. I am writing to urge you to select Nevada as one of the first sites for a conference.

Nevada has been hit particularly hard by foreclosures in the past year. According to RealtyTrac data, Nevada had the highest foreclosure rate in the nation last year, with 3.4 percent of its households receiving foreclosure filings. That was more than three times the national average. In addition, Las Vegas posted the third highest metro foreclosure rate among the 100 largest metropolitan areas in 2007, with 4.228 percent of its households entering some stage of foreclosure during the year. A total of 59,983 foreclosure filings on 30,375 properties were reported in the metro area during 2007, up 169 percent from 2006.

What's more, the Center for Responsible Lending has predicted that foreclosures on subprime loans originated in Nevada in the last ten years could result in a total loss of $3.7 billion in home equity statewide. That includes not just Nevada homes that have gone *through foreclosure proceedings, but neighboring homes as well.* Clearly, Nevada neighborhoods, communities, and – given the significant, economic ripple effects – our country all have a stake in our responding aggressively to buffet the expected tide of future foreclosures.

The program that I understand is being developed by the FDIC and NeighborWorks would provide information and training for agencies seeking to assist troubled borrowers in avoiding foreclosure. This program would be particularly valuable in Nevada, where foreclosure filings have reached crisis proportions, and an important complement to the funds that Congress appropriated for foreclosure counseling.

My office would be happy to assist you in scheduling the program and ensuring that it reaches as many Nevada residents as possible. Please have your staff contact Mark Wetjen of my office to discuss this matter at the earliest possible date at (202) 224-6964.

My best wishes to you.

Sincerely,

[redacted]

HARRY REID
United States Senator
Nevada

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

March 27, 2008

Honorable Tom A. Coburn, M.D.
United States Senate
Washington, D.C. 20510

Dear Senator Coburn:

Thank you for your letter requesting information regarding any "continuing earmarks" that might be required under the Federal Deposit Insurance Corporation's funding.

With two minor exceptions discussed below, the FDIC does not receive annual appropriations that govern its operations or budget. The FDIC derives its income principally from earnings on investments in U.S. Treasury obligations and insurance assessments paid by insured banks and savings institutions. These funds are aggregated in the Deposit Insurance Fund (DIF) which is administered by the FDIC. The FDIC operates on a calendar year basis and its budget is approved annually by the FDIC Board of Directors. Therefore, there are no continuing earmarks that apply to the FDIC's funding.

One area where the FDIC has been subject to the appropriations process is for the Federal Savings and Loan Insurance Corporation (FSLIC) Resolution Fund (FRF), which fulfills the obligations of the former FSLIC and the Resolution Trust Corporation. The FRF is authorized to receive and utilize appropriated funds only to the extent that its other sources of funds are insufficient to satisfy its liabilities. Public Law 103-327 provided $827 million in funding for the FRF in a multi-year appropriation to be available until expended. Currently, the amount of the appropriation still available is $602.2 million. There are no continuing earmarks that apply to this funding.

In addition to the FRF, the FDIC's annual budget includes planned expenditures for the FDIC Office of Inspector General (FDIC OIG). However, the FDIC OIG operates pursuant to the authority of the Inspector General Act. The FDIC OIG is funded by DIF through an appropriation under the Financial Services and General Government Appropriations Act. No earmarks are associated with the FDIC OIG appropriation.

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,

[redacted]

Sheila C. Bair

COMMITTEE ON INDIAN AFFAIRS

COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS

RANKING MEMBER
SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT,
GOVERNMENT INFORMATION AND
INTERNATIONAL SECURITY

United States Senate

Senator Tom Coburn, MD
Russell Senate Office Building, Room 172
Washington, DC 20510-3604
Phone: 202-224-5754
Fax: 202-224-6008

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

COMMITTEE ON THE JUDICIARY

RANKING MEMBER
SUBCOMMITTEE ON HUMAN RIGHTS
AND THE LAW

February 28, 2008

FDIC
MAR 6 2008
OFFICE OF THE CHAIRMAN

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

Dear Chairman Bair,

Congress spent more than $18 billion on earmarked projects in the current fiscal year. Many of these are new projects but this number also includes "continuing earmarks," that is Congressional spending initiatives that receive funding over a period of years.

Please provide the following information regarding your agency's/department's annual appropriations:

1) A list of all "continuing earmarks," defined as earmarks funded in at least three of the last five fiscal years, including FY 2008;

2) The name and location of the recipient of each of the "continuing earmarks" identified;

3) The total dollar amount spent to date and by fiscal year for each of the continuing earmarks identified;

4) A summary of the specific objectives and goals that are expected to be achieved for each continuing earmarks identified;

5) A list of notable accomplishments, if there are any, that can be directly attributed to each of the continuing earmarks;

6) A list of any grant programs within your agency/departments that provide federal assistance for purposes similar to the activities being funded for each of the continuing earmarks;

7) A determination as to whether or not the recipient of each of the continuing earmarks applied for any of the available grants.

3310 Mid-Continent Tower
401 South Boston
Tulsa, OK 74103-4007
Phone: 918-581-7651

100 North Broadway
Suite 1820
Oklahoma City, OK 73102
Phone: 405-231-4941

www.coburn.senate.gov

711 SW D Avenue
Suite 202
Lawton, OK 73501
Phone: 580-357-5578

Thank you for you assistance with this request. Please do not hesitate to contact me or Drew Berky of my staff at (202) 225-5754 if you have any questions.

Sincerely,

[redacted]

United States Senator

FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429
Office of Legislative Affairs

March 27, 2008

Honorable Eleanor Holmes Norton
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Norton:

Thank you for your invitation to participate in the Access to Capital Fair scheduled to be held on April 8 at the Washington Convention Center.

We are pleased to accept your invitation. Ms. Velda Fludd of the Federal Deposit Insurance Corporation's Minority and Women Outreach Program in the Office of Diversity and Economic Opportunity completed the required registration process for the FDIC's participation in this event. Ms. Fludd can be reached at (703) 562-6071 or VFludd@fdic.gov.

If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

[redacted]

Eric J. Spitler
Director
Office of Legislative Affairs

LA08-085

ELEANOR HOLMES NORTON
DISTRICT OF COLUMBIA

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
SUBCOMMITTEES:
CHAIRWOMAN
ECONOMIC DEVELOPMENT,
PUBLIC BUILDINGS, AND EMERGENCY
MANAGEMENT
AVIATION
WATER RESOURCES AND ENVIRONMENT

Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEE ON
OVERSIGHT AND
GOVERNMENT REFORM
SUBCOMMITTEES:
FEDERAL WORKFORCE, POSTAL
SERVICE, AND DISTRICT OF COLUMBIA
* COVERS DISTRICT OF COLUMBIA ISSUES

COMMITTEE ON
HOMELAND SECURITY
SUBCOMMITTEES:
TRANSPORTATION SECURITY, AND
INVESTMENT PROTECTION
EMERGENCY COMMUNICATION,
PREPAREDNESS, AND RESPONSE

March 5, 2008

Ms. Linda D. Washington
Minority and Women Outreach Program Specialist
Office of Diversity and Economic Opportunity
Federal Deposit Insurance Corporation
3501 FAIRFAX DR RM E2016
Arlington, VA 22226

Dear Ms. Washington:

On **Tuesday, April 8, 2008**, I will host an all-day "**Access to Capital Fair**" from 8:00 a.m. to 4:00 p.m. in the Washington Convention Center (801 Mount Vernon Place, NW) for D.C. residents and small businesses. The Fair responds to the two issues D.C. businesses most often have raised with me – the inability to gain access to sufficient capital and the problems associated with access to Federal government procurement opportunities.

Because the issue of gaining capital is perhaps the single most important challenge for small businesses, I want to personally ask you to participate in my Fair to give D.C. small businesses the opportunity to learn about the contracting opportunities available with your agency. **I am asking you to participate in one-on-one counseling sessions, which will begin at 1:45 pm, with D.C. small businesses. <u>I also ask that you bring with you the various contracts that your agency is attempting to let so that these small businesses can be aware of these opportunities and learn from you the requirements for successfully bidding on and winning such contracts.</u>** This event has been very well attended in the past – almost 400 small business people attended last year. We expect, this year, to repeat this success and build upon it.

Attached are the Exhibitor Registration Form and Tentative Agenda for the day. If you agree to participate, as I sincerely hope you will, **please plan to arrive no later than 1:00 p.m. in order to set up your table.** Please reply to and address your questions to Gwen Benson-Walker at Gwen.BensonWalker@Mail.House.Gov or (202) 783-5065.

I look forward to seeing you on April 8th.

Sincerely,

[redacted]

Eleanor Holmes Norton
Member of Congress

ehn:ls
Enclosures: Exhibitor Registration Form
Tentative Agenda

This Mailing was Prepared, Published, and Mailed at Taxpayer Expense.

CONGRESSWOMAN ELEANOR HOLMES NORTON'S
Small Business Access to Capital Fair

Tentative Agenda

Time	***Activity***	***Comments***
8:00 am – 9:00 am	Check-in/On-site Registration	Arrive early for check-in to avoid last minute seating delays.
9:00 am – 10:45 am	GENERAL SESSION **"ACCESS TO CAPITAL"**	Opening Remarks: Congresswoman Eleanor Holmes Norton; Keynote Address *Additional questions will be addressed individually at the Exhibitor Tables from 1:45 pm to 4:00 pm (following the final workshop).
10:45 am – 11:00 am	BREAK/Networking	
11:00 am – 12 noon	Concurrent Morning Workshops	
12 noon – 12:30 pm	LUNCH **(on your own)**	
12:45 pm – 1:45 pm	Concurrent Afternoon Workshops	*Additional questions will be addressed individually at the Exhibitor Tables from 1:45 pm to 4:00 pm (following the final workshop).
1:45 pm – 4:00 pm	**One-on-One meetings** with bank, credit union and contracting officer officials to discuss loan deals and contracts	
4:00 pm	Fair Concludes	

CONGRESSWOMAN ELEANOR HOLMES NORTON'S

Small Business Access to Capital Fair

Exhibitor Registration Form

Date: April 8, 2008

Time: **1:45 pm – 4:00 pm**

Place: Washington Convention Center
801 Mount Vernon Place, NW
Washington, DC 20001

Please Affix Your Business Card Here.

Type or Print Clearly. Incomplete Forms Cannot Be Accepted.

Name: ☐ Mr. ☐ Ms. ☐ Other: ______________

(First) ______________________ (Middle Initial) ______ (Last) ______________________

Business Title: ______________________________

Business Name: ______________________________

Address: ______________________________

State: ______________________ **Zip Code:** ______________

Phone: Voice: ______________________ Fax: ______________

Email: ______________________@______________

Type of Business: ______________________________

	Action to Take	*Comments*
Step 1	**Complete this Registration Form.**	
Step 2	Immediately **fax or mail** this completed Form to register.	Fax to: (202) 783-5211 Mail to: Cong. Eleanor Holmes Norton ATTN: Gwen Benson-Walker 529 14TH ST NW STE 900 Washington, DC 20045-1928 **Registration Form must be received by 5 pm on 4/2/08.**
Step 3	Direct your inquiries to: Gwen Benson-Walker at (202) 783-5065.	

*****Tentative Agenda on Reverse*****

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

Late.

Division of Supervision and Consumer Protection

Mr. Aaron Santa Anna
Assistant General Counsel
Regulations Division, Office of the General Counsel
Department of Housing and Urban Development
451 Seventh Street, S.W., Room 10276
Washington, D.C. 20410

Re: **FR-5180-P-01** – Request for Comment on the Real Estate Settlement Procedures Act (RESPA) Proposed Rule

Dear Mr. Anna:

On behalf of the Federal Deposit Insurance Corporation, I commend the Department of Housing and Urban Development for proposing revisions to the RESPA regulations to address certain consumer protection concerns that have arisen in the context of the residential mortgage lending and settlement process.

Expanding consumer protections at this time is crucial. Over the past two years, poor underwriting and abuses in the subprime mortgage market have led to significant negative impacts on consumers, housing markets, and the U.S. economy. As large numbers of subprime adjustable rate mortgages continue to reset to higher interest rates, and a growing number of homeowners face foreclosures, we have overwhelming evidence of the effects of inadequate disclosures. It is therefore critically important, going forward, to ensure that consumers are informed in a clear and simple manner of how the financial products they use work, and what the costs and tradeoffs of different options are.

Overall, we believe that HUD's proposal would result in consumers receiving more effective information about settlement and other third-party charges than they do under the current rule. The proposed revisions also should help consumers better understand how origination and other fees can impact the cost of a mortgage loan. The earlier availability of and more relevant information on the Good Faith Estimate (GFE) should promote comparative shopping that will enable consumers to make more informed financing decisions. Finally, the revisions should assist consumers in identifying differences between the estimates provided on the GFE and actual costs charged at closing.

However, as discussed in more detail below, we have concerns about the length of the proposed GFE and the fact that it does not contain important information about certain loan costs. In addition, the proposed GFE does not explain that yield spread premiums (YSPs) are lender payments to brokers that encourage brokers to place consumers into loans with higher interest rates. We believe that the interests of consumers would be best protected if HUD bans YSPs and allows brokers to be fairly compensated by alternative means.

1. Proposed GFE Forms

We commend HUD for testing the proposed standard GFE with consumers, and we consider it to be an improvement over the current model form. However, we are concerned about whether the proposed GFE truly provides information that consumers need in an easily understandable format.

This observation is primarily a result of our involvement in an interagency project to develop model privacy notices for consumers. We tested model forms through a variety of methods – focus groups, preference testing, and diagnostic utility testing. These different methods enabled the agencies to explore how and why consumers understand and make sense of information provided to them. We learned that additional information often makes a form less useful because the basic concepts are overlooked, and that items of interest to policy experts often do not convey information that consumers use. At four pages, the proposed GFE may be too long and provide too much information for it to be understood and appropriately used by consumers.

In addition, at least two important facts related to the cost of a loan are not communicated by the proposed GFE. The first omission is information regarding payment shock – a significant increase in the amount of the monthly payment that generally occurs as the interest rate adjusts to a fully indexed basis or when principal begins to be amortized. Given the potential for payment shock embedded in nontraditional and subprime adjustable rate products, the GFE should explain when an initial rate expires and when monthly payments can or will increase. As proposed, the GFE lists the initial interest rate and monthly payment, and states whether they can rise, and the maximum to which they can rise. However, there is no information about when this can happen.

The second important omission is that the proposed GFE does not inform borrowers that there are additional costs associated with "low-doc" or "no-doc" loans. Typically, these additional costs are reflected in a higher annual percentage rate (APR) than what is available for a comparable "full documentation" loan. It is essential for consumers to be aware of the true cost of "low-doc" or "no-doc" loans.

2. Ten Percent and Zero Tolerances

At settlement, the proposed rule prohibits loan originators from increasing certain settlement charges that exceed the sum of 10 percent of the charges first identified on the GFE, absent unforeseeable circumstances. Certain other settlement charges may not exceed the amount provided on the GFE, absent unforeseeable circumstances. Failure to comply with tolerances would be a violation of Section 5 of RESPA.

These provisions may help prevent some consumers from being surprised by higher costs at closing; however, they will not go far enough if the final rule does not provide a mechanism to enforce the applicable tolerance. Accordingly, the sample closing scripts also should provide information about what will be done to remedy the overcharge or where to file a complaint about the overcharge.

The proposal states that HUD is considering including in the final rule a provision that allows a loan originator to be in compliance with Section 5 if, within a specified period (such as 14 business days) after the closing, a loan originator repays the excess amount to the consumer. We suggest that the most effective and direct way of enforcing the tolerance requirements would be to require the settlement agent to subtract from the lender's service charge at closing any amounts that exceed the tolerance. This would provide an incentive for the lender to provide accurate estimates about third party charges and serve as a sufficient remedy for consumers.

Certainly, a monetary remedy to consumers for excess charges needs to be a part of the regulation. If the only remedy is for a consumer to walk away from the settlement table after the loan has been processed and the consumer is about to be given the keys to the house, the 10 percent tolerance requirement will not accomplish HUD's objectives.

3. Closing Script

HUD's proposal to add a "closing script" addendum to the HUD-1 form is an innovative approach for informing consumers about their mortgage at closing. The proposal would require a settlement agent to orally apprise a borrower of the mortgage loan terms at settlement. This type of approach could encourage borrowers to ask questions and help inform them of the costs and terms of the loan before consummating the transaction. For example, one good feature of the closing script is the requirement to have the settlement agent disclose and explain any inconsistencies between the GFE and HUD-1 disclosures. This will help a borrower understand why there might be any variations between prices quoted on a GFE and prices quoted at settlement. The script is especially helpful in making plain the negative financial consequences for a consumer of entering into an unconventional loan product such as an interest-only loan.

However, as discussed previously, one major shortcoming is that there is no information in the script or other materials about what a consumer can do if the loan originator exceeds the permissible tolerance.

4. Average Cost Pricing/Negotiated Discounts

The FDIC understands HUD's intent to facilitate arrangements that benefit consumers by interpreting RESPA requirements to permit the use by lenders of pricing mechanisms such as average cost pricing and volume-based discounts. We agree with the HUD Secretary's determination that the agency's implementation of RESPA should permit greater flexibility for cost pricing formulas that bring more innovation and increased price competition to the settlement process. We recognize the value of HUD's proposal to amend the definition of the term "thing of value" for purposes of section 3500.14 to exclude discounts among settlement service providers. The FDIC particularly supports the proviso to the revised definition that no more than the discounted price may be charged to a borrower and disclosed on the HUD-1 form.

We are concerned generally, however, with the use of mechanisms such as average cost pricing on the following grounds:

1. We are not aware of an appropriate means of evaluating whether overall consumer costs would decline as a result of average cost pricing.
2. Even if the practice should result in reduced overall costs for mortgage settlement services for some borrowers, other borrowers will pay more for a service than is warranted by the circumstances of their particular loan.
3. The proposal does not include controls to ensure fairness, for example, to ensure that lenders calculate average costs appropriately.

5. Yield Spread Premiums (YSP)

We support HUD's objective to provide information about lender payments to mortgage brokers known as YSPs. The proposal would require brokers to disclose such payments as a credit for the specific interest rate chosen by a borrower. However, as explained below, the FDIC has some fundamental concerns about the proposal's approach to YSPs.

First, the proposed GFE does not clarify that a YSP is a payment made by a lender to a mortgage broker in exchange for referring a borrower willing to pay an above par interest rate. Nor does the GFE state the amount of the YSP to be paid to a broker. Instead, the GFE seems to presume that the lender will apply the YSP as a "credit" that will lower settlement costs by a corresponding amount. However, the proposal does not impose the condition that a YSP must actually function as a credit to a borrower as a requirement on lenders or brokers. While the proposal's effort to provide borrowers with more information about the tradeoff between interest rates and settlement costs is positive, this information alone does not provide borrowers with an understanding of the economic incentives motivating the lenders and brokers with whom they are dealing.

The inherent conflicts presented by a broker compensation system that rewards increasing the cost to the borrower have been debated for years. To be sure, mortgage brokers can provide valuable services and should receive fair compensation. However, there are alternative means of compensation available, such as flat fees or fees based on the total principal amount of the mortgage, that would not present skewed incentives to increase borrower costs and which would be much more transparent and understandable to borrowers. The same can be said for commissions paid to loan officers.

Borrowers should continue to have the option to finance the broker's compensation. However, a ban on YSPs will ensure that broker compensation will not be based on steering the consumer to a loan that is more expensive than one for which he or she would otherwise qualify. HUD should modify its longstanding interpretation that YSPs are not prohibited under RESPA. Accordingly, HUD should ban any amount of compensation based on increasing the cost of credit, including compensation that is tied to the APR, or that is not a flat or point-based fee.

If YSPs continue to be permitted, their purpose and cost should be disclosed clearly. The disclosure should inform the consumer that the broker is receiving a payment from the lender for placing the consumer in a loan with a higher interest rate. A YSP should not be identified as a "credit" on the GFE form because such language would tend to make consumers believe that they are deriving a financial benefit from a YSP. In addition, the statement, "This credit reduces your upfront charge" should be deleted because it is not balanced by a corresponding statement that informs consumers that the YSP will result in them paying a substantially higher interest rate over the life of the loan.

6. Increased Enforcement Authority

The FDIC recognizes the value of the proposal to seek legislative changes that would provide HUD with uniform enforcement authority and protect consumers in the real estate settlement process. The lack of enforcement authority and clear remedies for violations of RESPA negatively impacts consumers and diminishes the effectiveness of the statute. HUD's proposed legislative changes would provide additional protections for consumers in the mortgage origination and real estate settlement process, and would level the playing field between federally regulated banks and thrifts and other lenders.

We appreciate the opportunity to comment and encourage HUD to consider the FDIC's recommendations to help clarify the settlement process for consumers.

Sincerely,

[redacted]

Sandra Thompson
Director
Division of Supervision and Consumer Protection