FDIC

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

Office of Legislative Affairs

April 2, 2009

Honorable Pete Sessions
House of Representatives
Washington, D.C. 20515

Dear Congressman Sessions:

Thank you for your letter to Thomas Dujenski, Dallas Regional Director, on behalf of Protiviti Inc. regarding the Federal Deposit Insurance Corporation's process for soliciting outside contractors to help us manage and resolve troubled financial institutions. We apologize for the delay in our response.

Mr. Martin Breheny, Associate Director at Protiviti, contacted our procurement staff on October 17, 2008, requesting to be added to our Contractor Resource List (CRL). FDIC staff responded by email on October 24, 2008, indicating that Protiviti 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 any potential contractor that submits a corporate capabilities statement that they will be included on future source lists. However, we can confirm that Protiviti Inc. has been added to the CRL, and that its information is available for consideration. This system organizes and maintains corporate capability statements submitted by firms seeking future business with the FDIC. Our program managers and contracting officers use this system to identify sources for solicitation.

If Protiviti staff has further questions, they may contact Elizabeth Walker in our Acquisition Services Branch on 703-562-6295.

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

LA09-173

Congress of the United States
Washington, DC 20515

FDIC
FEB 13 2009
OFFICE OF LEGISLATIVE AFFAIRS

November 24, 2008

Thomas J. Dujenski
Regional Director, Division of Supervision and Consumer Protection
Federal Deposit Insurance Corporation
1601 Bryan St.
Dallas, TX 75201

Dear Director Dujenski:

We thank you for your service in providing the heightened oversight that our banking system needs during this time of turmoil. Your diligent attention to this important task on behalf of American depositors and taxpayers is greatly appreciated.

It has been brought to our attention that the Federal Deposit Insurance Corporation (FDIC) is reaching out to contractors for assistance in its efforts to manage and resolve troubled banking institutions. Protiviti, a Dallas-based company, has requested that we inform the FDIC of the risk management and bank closing asset management services they provide and their interest in participating in this contracting process.

Protiviti has a history of providing resolution services for failed institutions. Their personnel have Resolution Trust Corporation (RTC) experience and provide top-tier financial institution risk management services. As you may know, Protiviti was founded in 2002 with 650 individuals from a risk consulting practice and now has more than 3,300 professionals in more than 60 offices worldwide. Protiviti can access skilled professionals, on location, throughout the United States through its parent, Robert Half International (RHI). RHI has access to 2 million finance and accounting executives. Its staffing services are used in support of Protiviti engagements or can be provided independently.

In interest of finding the most efficient use of taxpayer dollars and the safety of our domestic financial system, we encourage the FDIC to look beyond its traditional contracting partners to solicit additional proposals for risk management, audit and other services. While we understand the need for discretion in the solicitation of assistance to avoid unnecessarily amplifying heightened concerns about the banking system, we believe that it is vital that the FDIC is aware of and gives full and fair consideration to firms like Protiviti and RHI.

While this is not to suggest that we endorse the award of any particular contracts to Protiviti or RHI, we believe that competition is important to ensuring the efficient use of taxpayer funds and we hope that this information is useful to you going forward.

Respectfully,

[redacted] [redacted] [redacted]

Cong. Pete Sessions	Cong. Jeb Hensarling	Cong. Kenny Marchant
32nd District of Texas	5th District of Texas	24th District of Texas

Cc: Ronald F. Bieker, Deputy Director

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 7, 2009

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 requesting the assistance of the Federal Deposit Insurance Corporation in assigning Matthew Green as a detailee to the Senate Banking Committee for one year.

This is to confirm that Matt will begin his detail to the Committee on April 20, 2009 and will complete his detail by April 19, 2010.

I agree that Matt will be a valuable asset to the Committee. We look forward to his return in April 2010.

Sincerely,

[redacted]

Sheila C. Bair

United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

April 2, 2009

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

Dear Chairman Bair:

I am writing to request the Federal Deposit Insurance Corporation's (FDIC) assistance in detailing Matthew Green to the Senate Banking Committee through the end of April, 2010. As you know, the Committee has a very full schedule of pending issues involving the financial services industry, including systemic risk, resolution authority for large financial service companies, borrowing authority for the FDIC and the NCUA, TARP oversight and numerous important consumer lending issues. I realize that all of the agencies are working hard during this economic crisis and we appreciate your consideration of this request. Matt's substantive expertise and experience will be invaluable to the Committee and the public as we work through these important issues.

We would like Matt to begin working at the Committee on April 20, 2009 and complete his detail by April 19, 2010. Again, I appreciate your consideration of sharing the FDIC's valuable expertise with the Committee.

Sincerely,

[redacted]

CHRISTOPHER J. DODD
Chairman

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 13, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable Pete Olson
House of Representatives
Washington, D.C. 20515

Dear Congressman Olson:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

As you are aware, recent and anticipated failures of FDIC-insured institutions resulting from deterioration in banking and economic conditions have significantly increased losses to the Deposit Insurance Fund (DIF). The reserve ratio of the DIF declined from 1.22 percent as of December 31, 2007, to 0.40 percent (preliminary) as of December 31, 2008.

Because the fund reserve ratio had fallen below 1.15 percent as of June 30, 2008, and was expected to remain below 1.15 percent, applicable law required the FDIC to establish and implement a restoration plan that would restore the reserve ratio to at least 1.15 percent within five years, absent extraordinary circumstances. On October 7, 2008, the FDIC established a restoration plan for the DIF that called for the FDIC to set assessment rates such that the reserve ratio would return to 1.15 percent within five years and proposed assessment rates in accordance with the plan.

In February 2009, the FDIC Board of Directors made several very difficult decisions intended to ensure that our nation's deposit insurance system remains sound. First, in recognition of the severe stress facing banks and the financial system, the FDIC extended the period of the restoration plan from five to seven years. Second, the FDIC adopted assessment rates effective beginning the second quarter of 2009 that are only slightly higher than those proposed in October 2008, despite a large increase in projected losses. Finally, the FDIC adopted an interim rule that sets a special assessment at 20 basis points to be collected on September 30, 2009.

The FDIC realizes that these assessments are a significant expense, particularly during a financial crisis and recession where bank earnings are under pressure. Banks face tremendous challenges right now even without having to pay higher assessments. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy.

However, because of rapidly deteriorating economic conditions, a large number of projected bank failures are likely to occur this year and next. These assessments are essential to maintaining the industry funded reserves of the DIF.

Recent experience has shown that bank failures are difficult to predict and the possibility of additional, unforeseen failures is significant. The size of the special assessment reflects the FDIC's need to maintain adequate resources to cover potential unforeseen losses. The FDIC has a thin margin for error in this regard because its $30 billion borrowing authority from Treasury for losses from bank failures has not increased since 1991, although industry assets have more than tripled.

As you know, the FDIC has requested that Congress increase our authority to borrow from Treasury to $100 billion. In addition, the FDIC is seeking a temporary increase in borrowing authority above $100 billion (but not to exceed $500 billion) based on a process that would require the concurrence of the FDIC, the Federal Reserve Board, and the Treasury Department, in consultation with the President. This temporary authority would expire on December 31, 2010.

An increase in the FDIC's borrowing authority of this magnitude would give the FDIC a sufficient margin for unforeseen bank failures and allow it to reduce the size of the special assessment while still assessing institutions at a level that maintains the DIF through industry funding. Although the industry would still pay assessments to cover projected losses and rebuild the fund over time, a lower special assessment would mitigate the pro-cyclical effects.

The FDIC continues to consider other ways to alleviate the pressure on the DIF that are consistent with our statutory authority. We recently imposed a surcharge on guaranteed bank debt under the Temporary Liquidity Guarantee Program and will use the money raised through this surcharge to reduce the proposed special assessment. In addition, a portion of the fee for the recently announced Legacy Loan Program also will be allocated to the DIF. Finally, the FDIC will carefully review comments regarding using an assessment base other than deposits for the special assessment.

Deposit Insurance provides valuable benefits to banks. While many sources of bank funding have dried up in the past six months, deposits have not. In fact, deposits are growing and remain a reliable source of funding because depositors know that their insured deposits are absolutely safe.

We have included your letter in the public comment file for consideration in the development of the final rule on the emergency special assessment. If you have further questions, 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

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 13, 2009

Honorable Mac Thornberry
House of Representatives
Washington, D.C. 20515

Dear Congressman Thornberry:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

As you are aware, recent and anticipated failures of FDIC-insured institutions resulting from deterioration in banking and economic conditions have significantly increased losses to the Deposit Insurance Fund (DIF). The reserve ratio of the DIF declined from 1.22 percent as of December 31, 2007, to 0.40 percent (preliminary) as of December 31, 2008.

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 13, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable Pete Sessions
House of Representatives
Washington, D.C. 20515

Dear Congressman Sessions:

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 13, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable Lamar Smith
House of Representatives
Washington, D.C. 20515

Dear Congressman Smith:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 13, 2009

Honorable Jeb Hensarling
House of Representatives
Washington, D.C. 20515

Dear Congressman Hensarling:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 13, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable Michael McCaul
House of Representatives
Washington, D.C. 20515

Dear Congressman McCaul:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 13, 2009

Honorable Kevin Brady
House of Representatives
Washington, D.C. 20515

Dear Congressman Brady:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

As you are aware, recent and anticipated failures of FDIC-insured institutions resulting from deterioration in banking and economic conditions have significantly increased losses to the Deposit Insurance Fund (DIF). The reserve ratio of the DIF declined from 1.22 percent as of December 31, 2007, to 0.40 percent (preliminary) as of December 31, 2008.

Because the fund reserve ratio had fallen below 1.15 percent as of June 30, 2008, and was expected to remain below 1.15 percent, applicable law required the FDIC to establish and implement a restoration plan that would restore the reserve ratio to at least 1.15 percent within five years, absent extraordinary circumstances. On October 7, 2008, the FDIC established a restoration plan for the DIF that called for the FDIC to set assessment rates such that the reserve ratio would return to 1.15 percent within five years and proposed assessment rates in accordance with the plan.

In February 2009, the FDIC Board of Directors made several very difficult decisions intended to ensure that our nation's deposit insurance system remains sound. First, in recognition of the severe stress facing banks and the financial system, the FDIC extended the period of the restoration plan from five to seven years. Second, the FDIC adopted assessment rates effective beginning the second quarter of 2009 that are only slightly higher than those proposed in October 2008, despite a large increase in projected losses. Finally, the FDIC adopted an interim rule that sets a special assessment at 20 basis points to be collected on September 30, 2009.

The FDIC realizes that these assessments are a significant expense, particularly during a financial crisis and recession where bank earnings are under pressure. Banks face tremendous challenges right now even without having to pay higher assessments. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy.

However, because of rapidly deteriorating economic conditions, a large number of projected bank failures are likely to occur this year and next. These assessments are essential to maintaining the industry funded reserves of the DIF.

Recent experience has shown that bank failures are difficult to predict and the possibility of additional, unforeseen failures is significant. The size of the special assessment reflects the FDIC's need to maintain adequate resources to cover potential unforeseen losses. The FDIC has a thin margin for error in this regard because its $30 billion borrowing authority from Treasury for losses from bank failures has not increased since 1991, although industry assets have more than tripled.

As you know, the FDIC has requested that Congress increase our authority to borrow from Treasury to $100 billion. In addition, the FDIC is seeking a temporary increase in borrowing authority above $100 billion (but not to exceed $500 billion) based on a process that would require the concurrence of the FDIC, the Federal Reserve Board, and the Treasury Department, in consultation with the President. This temporary authority would expire on December 31, 2010.

An increase in the FDIC's borrowing authority of this magnitude would give the FDIC a sufficient margin for unforeseen bank failures and allow it to reduce the size of the special assessment while still assessing institutions at a level that maintains the DIF through industry funding. Although the industry would still pay assessments to cover projected losses and rebuild the fund over time, a lower special assessment would mitigate the pro-cyclical effects.

The FDIC continues to consider other ways to alleviate the pressure on the DIF that are consistent with our statutory authority. We recently imposed a surcharge on guaranteed bank debt under the Temporary Liquidity Guarantee Program and will use the money raised through this surcharge to reduce the proposed special assessment. In addition, a portion of the fee for the recently announced Legacy Loan Program also will be allocated to the DIF. Finally, the FDIC will carefully review comments regarding using an assessment base other than deposits for the special assessment.

Deposit Insurance provides valuable benefits to banks. While many sources of bank funding have dried up in the past six months, deposits have not. In fact, deposits are growing and remain a reliable source of funding because depositors know that their insured deposits are absolutely safe.

We have included your letter in the public comment file for consideration in the development of the final rule on the emergency special assessment. If you have further questions, 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

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 13, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable Kay Granger
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Granger:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 13, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable Ted Poe
House of Representatives
Washington, D.C. 20515

Dear Congressman Poe:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 13, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable John Carter
House of Representatives
Washington, D.C. 20515

Dear Congressman Carter:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 13, 2009

Honorable Louie Gohmert
House of Representatives
Washington, D.C. 20515

Dear Congressman Gohmert:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 13, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable Sam Johnson
House of Representatives
Washington, D.C. 20515

Dear Congressman Johnson:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 13, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable Kenny Marchant
House of Representatives
Washington, D.C. 20515

Dear Congressman Marchant:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 13, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable Randy Neugebauer
House of Representatives
Washington, D.C. 20515

Dear Congressman Neugebauer:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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The FDIC realizes that these assessments are a significant expense, particularly during a financial crisis and recession where bank earnings are under pressure. Banks face tremendous challenges right now even without having to pay higher assessments. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy.

However, because of rapidly deteriorating economic conditions, a large number of projected bank failures are likely to occur this year and next. These assessments are essential to maintaining the industry funded reserves of the DIF.

Recent experience has shown that bank failures are difficult to predict and the possibility of additional, unforeseen failures is significant. The size of the special assessment reflects the FDIC's need to maintain adequate resources to cover potential unforeseen losses. The FDIC has a thin margin for error in this regard because its $30 billion borrowing authority from Treasury for losses from bank failures has not increased since 1991, although industry assets have more than tripled.

As you know, the FDIC has requested that Congress increase our authority to borrow from Treasury to $100 billion. In addition, the FDIC is seeking a temporary increase in borrowing authority above $100 billion (but not to exceed $500 billion) based on a process that would require the concurrence of the FDIC, the Federal Reserve Board, and the Treasury Department, in consultation with the President. This temporary authority would expire on December 31, 2010.

An increase in the FDIC's borrowing authority of this magnitude would give the FDIC a sufficient margin for unforeseen bank failures and allow it to reduce the size of the special assessment while still assessing institutions at a level that maintains the DIF through industry funding. Although the industry would still pay assessments to cover projected losses and rebuild the fund over time, a lower special assessment would mitigate the pro-cyclical effects.

The FDIC continues to consider other ways to alleviate the pressure on the DIF that are consistent with our statutory authority. We recently imposed a surcharge on guaranteed bank debt under the Temporary Liquidity Guarantee Program and will use the money raised through this surcharge to reduce the proposed special assessment. In addition, a portion of the fee for the recently announced Legacy Loan Program also will be allocated to the DIF. Finally, the FDIC will carefully review comments regarding using an assessment base other than deposits for the special assessment.

Deposit Insurance provides valuable benefits to banks. While many sources of bank funding have dried up in the past six months, deposits have not. In fact, deposits are growing and remain a reliable source of funding because depositors know that their insured deposits are absolutely safe.

We have included your letter in the public comment file for consideration in the development of the final rule on the emergency special assessment. If you have further questions, 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

Congress of the United States
Washington, DC 20515

March 27, 2009

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

Dear Chairman Bair:

Considering the current state of the economy, we have concerns about the impact on community banks from the FDIC Board's proposal to levy a special assessment of up to 20 basis points later this year, with the possibility of a further assessment of an additional 10 basis points. We have also heard concerns from many community bankers throughout Texas. While they support a sound insurance fund, they also want the FDIC to know the impact these assessments will have on lending in Texas and ensure the FDIC has considered all alternatives.

Community bankers we represent have advised us of the potential earnings and capital impact on their financial institutions and, more importantly, the resulting loss of funds necessary to lend to small business customers and consumers in Texas. Our community banks estimated that assessments on Texas banks, if implemented as proposed, will remove nearly $1 billion from available capital. When that amount is leveraged, it results in $8 to $12 billion that will no longer be available for lending activity throughout Texas alone. At a time when responsible lending is critical to ameliorating the recession, this sort of reduction in local lending has the potential to extend our economic recovery unnecessarily.

The vast majority of community bankers in our Districts and throughout the country did not participate in the irresponsible lending that has led to the erosion of the FDIC fund. Community banks in our district are the lifeblood of the communities they serve. We believe they can help stimulate our economy back to health if allowed to do as they have always done, looking after the needs of local citizens and communities.

We are aware of your statements that any special assessments banks may be reduced to roughly half (10 basis points) should Congress provide the FDIC an increase its current Treasury borrowing authority from $30 billion to $100 billion. Recognizing the importance of protecting the deposit insurance fund, the House of Representatives has already acted to provide this authority. While this is a positive step in the right direction, we also ask the FDIC Board to consider a full range of alternatives that could also help sustain the balance of and confidence in the insurance fund.

Community banks in Texas have suggested the following alternatives to us:

- Base assessments on assets with an adjustment for capital rather than total insured deposits;

Chairman Shelia Bair
March 27, 2009
Page 2

- Impose a systemic risk premium, which would place a heavier burden on financial institutions that pose the greatest risk to the deposit insurance fund;

- Use a combination of the line of credit and a reduced or postponed special assessment; or

- Allow banks to amortize this new expense over several years.

We appreciate your efforts and your resolve to ensure that the FDIC fund is properly funded and fiscally sound in order to assure consumers that their funds are protected up to the prescribed limits by the full faith and backing of the United States government. We agree it is imperative to maintain consumer confidence in our banking system, and sound deposit insurance is the cornerstone of their confidence level.

These are unprecedented times which call for unprecedented measures. As such, we believe there are a number of options available to you to ensure the fund's stability while minimizing the impact on community banks' ability to keep money working in communities throughout Texas.

Thank you for the opportunity to weigh in on this important issue.

Sincerely,

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Chairman Shelia Bair
March 27, 2009
Page 3

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 13, 2009

Honorable Michael E. Capuano
House of Representatives
Washington, D.C. 20515

Dear Congressman Capuano:

Thank you for your letter regarding the recently announced Legacy Loans Program (LLP). Many share your concern over the unprecedented actions that have been required as a result of the current economic crises. While I support the Financial Accounting Standard Board's efforts to fix many of the problems with mark-to-market accounting, we need to cleanse bank balance sheets of problem assets so that we can attract private capital investment that is needed to support the long-term health of our banking system. I would like to share with you some thoughts as to how the LLP was designed to ensure that the Federal Deposit Insurance Corporation is protected while we work with other federal agencies to respond to the challenges facing the nation's financial system.

As you are aware, the LLP is intended to remove troubled loans and other assets from FDIC-insured institutions and attract private capital to purchase the loans. The LLP will combine an FDIC guarantee of debt financing with equity capital from the private sector and the Department of the Treasury. The partnerships will purchase assets from the banks and place them into public-private investment funds (PPIFs). While the FDIC will oversee the formation, funding, and operation of the PPIFs and establish the criteria for participation, we will be paid a fee for providing the guarantee under this program (a portion of which will be allocated to the Deposit Insurance Fund), and we will be protected against losses by the equity in the pool, the newly established value of the pool's assets and the fees collected. The FDIC also will be reimbursed for any expenses incurred in the oversight of the PPIFs under an agreement with the Department of the Treasury allocating costs.

This program is designed to provide taxpayers with benefits associated with the public-private partnerships. By applying market-based pricing to the asset purchases, the PPIFs will ensure that purchases are at prices that give taxpayers and private investors substantial opportunities to benefit. In addition, by offering a structure that allows banks to clear these assets off their books, the PPIFs will complement other government programs designed to enable greater lending and restore economic growth. These programs will help open lending channels by facilitating a market for the distressed assets currently clogging the system. The equity contribution from the Department of the Treasury provides the foundation for this program and the benefits to taxpayers. The financing support provided by the FDIC, under the LLP, will provide the liquidity that has been missing from the market so far to achieve these purchases for the public.

I want to assure you that the FDIC is approaching these issues carefully and insisting on appropriate safeguards to protect taxpayers and the Corporation. Thank you again for providing your thoughts on these important issues. If we can provide further information, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director, Office of Legislative Affairs at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

Committee on Financial Services

Committee on Transportation and Infrastructure

Committee on House Administration

Democratic Steering & Policy Committee

Democratic Caucus; Chair, Committee on Organization, Study & Review

www.house.gov/capuano

Congress of the United States

House of Representatives

Michael E. Capuano
8th District, Massachusetts

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ROXBURY COMMUNITY COLLEGE
CAMPUS LIBRARY
ROOM 211

March 24, 2009

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, NW
Washington, DC 20551

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

Dear Secretary Geithner, Chairman Bernanke and Chairman Bair:

Thus far, I have voted to support every major action taken by the current and past administrations to address the economic crisis. I have expressed some reservations about certain actions and inactions and made suggestions that I believe would have strengthened our response to the problems and enhanced the safety of taxpayer funds. Thus far, with regard to each concerned raised, I have certainly felt myself a *vox clamantis in deserto*.

Regardless, I am compelled to raise my voice in the wilderness one more time to express my grave concern about the action you are taking this week – purchasing toxic assets (renamed "legacy assets" by an inventive PR staff) with taxpayer funds and transferring the risk associated with those assets from the people who made these risky purchases to the taxpayers. The potential risk of default is too high and the potential payout is too indeterminate in terms of time and incalculable in terms of money to put taxpayers' money on the line. I am deeply concerned about this action. In addition, I am particularly concerned about using the FDIC to finance this endeavor. Their mission is to insure deposits, not finance collateralized toxic assets for the benefit of private investors.

I agree that some additional steps may be needed to relieve financial institutions from the impact of carrying those toxic assets on their books. However, there is currently no market for these assets and no way to value them. If there were no other way to "get these assets off the books in order to free up credit", I would understand and grudgingly support your action, as I have done with past actions. However, that is not the case.

FDIC
MAR 25 2009
OFFICE OF LEGISLATIVE AFFAIRS

For example, some well regarded economists have suggested that these toxic assets can remain on the books of financial institutions without serious negative impact if the mark-to-market rules were temporarily suspended or adjusted for these assets. (Please see the attached copy of my March 11, 2009 letter to you which details this idea.) I am convinced that this approach or something similar is much preferable to transferring virtually all the risk to taxpayers with little benefit.

I have long advocated for more stringent requirements and conditions on TARP recipients, such as prohibiting bank mergers funded by taxpayers and allowing for claw-backs in case of the misuse of funds. I have pushed for adding independence to the TARP oversight process. I have urged officials not to swap taxpayer-owned preferred stock for unprotected common stock. I have repeatedly called for regulating unregulated financial institutions that have played a role in creating this financial crisis. I have expressed concern and demanded greater transparency in the many new Federal Reserve lending facilities. In addition, I have publicly stated that I believe government regulators had the legal authority to oversee the exotic investment vehicles and the strategies used to create this mess. I have also stated that I believe the Fed has taken certain actions that exceed its legal authority, but did not press that opinion because I judged those actions as are necessary during this crisis.

Despite my many concerns, I have supported the general approach taken so far because I believe that the government must take dramatic action to contain and reverse the economic crisis. Our differences, though important, have not caused me to withhold my general support. This time is different. This time, the amount of taxpayer funds committed and the lack of adequate protection for those funds leads me to oppose your actions.

I realize that Congress will probably not reverse your decision. Nonetheless, I find it is important to inform you that, as one member of Congress, I do not support this action. Given the chance, I will do what I can to reverse it or limit its impact.

I regret that we must part ways on this action. I believe that you are both honest, intelligent men trying to save our economy, and I respect you personally and professionally. Nonetheless, I believe this step is wrong, and I am compelled to go on record in opposition. For the sake of our economy, I hope that my concerns prove to be unfounded.

Regardless of my feelings on this matter, I look forward to continuing to work with you.

Respectfully,

[redacted]

Michael E. Capuano

Enclosure

cc: Speaker Nancy Pelosi
Chairman Barney Frank, U.S. House Committee on Financial Services

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 13, 2009

Honorable Ginny Brown-Waite
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Brown-Waite:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

As you are aware, recent and anticipated failures of FDIC-insured institutions resulting from deterioration in banking and economic conditions have significantly increased losses to the Deposit Insurance Fund (DIF). The reserve ratio of the DIF declined from 1.22 percent as of December 31, 2007, to 0.40 percent (preliminary) as of December 31, 2008.

Because the fund reserve ratio had fallen below 1.15 percent as of June 30, 2008, and was expected to remain below 1.15 percent, applicable law required the FDIC to establish and implement a restoration plan that would restore the reserve ratio to at least 1.15 percent within five years, absent extraordinary circumstances. On October 7, 2008, the FDIC established a restoration plan for the DIF that called for the FDIC to set assessment rates such that the reserve ratio would return to 1.15 percent within five years and proposed assessment rates in accordance with the plan.

In February 2009, the FDIC Board of Directors made several very difficult decisions intended to ensure that our nation's deposit insurance system remains sound. First, in recognition of the severe stress facing banks and the financial system, the FDIC extended the period of the restoration plan from five to seven years. Second, the FDIC adopted assessment rates effective beginning the second quarter of 2009 that are only slightly higher than those proposed in October 2008, despite a large increase in projected losses. Finally, the FDIC adopted an interim rule that sets a special assessment at 20 basis points to be collected on September 30, 2009.

The FDIC realizes that these assessments are a significant expense, particularly during a financial crisis and recession where bank earnings are under pressure. Banks face tremendous challenges right now even without having to pay higher assessments. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy.

However, because of rapidly deteriorating economic conditions, a large number of projected bank failures are likely to occur this year and next. These assessments are essential to maintaining the industry funded reserves of the DIF.

Recent experience has shown that bank failures are difficult to predict and the possibility of additional, unforeseen failures is significant. The size of the special assessment reflects the FDIC's need to maintain adequate resources to cover potential unforeseen losses. The FDIC has a thin margin for error in this regard because its $30 billion borrowing authority from Treasury for losses from bank failures has not increased since 1991, although industry assets have more than tripled.

As you know, the FDIC has requested that Congress increase our authority to borrow from Treasury to $100 billion. In addition, the FDIC is seeking a temporary increase in borrowing authority above $100 billion (but not to exceed $500 billion) based on a process that would require the concurrence of the FDIC, the Federal Reserve Board, and the Treasury Department, in consultation with the President. This temporary authority would expire on December 31, 2010.

An increase in the FDIC's borrowing authority of this magnitude would give the FDIC a sufficient margin for unforeseen bank failures and allow it to reduce the size of the special assessment while still assessing institutions at a level that maintains the DIF through industry funding. Although the industry would still pay assessments to cover projected losses and rebuild the fund over time, a lower special assessment would mitigate the pro-cyclical effects.

The FDIC continues to consider other ways to alleviate the pressure on the DIF that are consistent with our statutory authority. We recently imposed a surcharge on guaranteed bank debt under the Temporary Liquidity Guarantee Program and will use the money raised through this surcharge to reduce the proposed special assessment. In addition, a portion of the fee for the recently announced Legacy Loan Program also will be allocated to the DIF. Finally, the FDIC will carefully review comments regarding using an assessment base other than deposits for the special assessment.

Deposit Insurance provides valuable benefits to banks. While many sources of bank funding have dried up in the past six months, deposits have not. In fact, deposits are growing and remain a reliable source of funding because depositors know that their insured deposits are absolutely safe.

We have included your letter in the public comment file for consideration in the development of the final rule on the emergency special assessment. If you have further questions, 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

LA09-461

GINNY BROWN-WAITE
5TH DISTRICT, FLORIDA

COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON SOCIAL SECURITY
SUBCOMMITTEE ON HEALTH

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

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March 19, 2009

FDIC
OFFICE OF LEGISLATIVE AFFAI

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

Dear Chairwoman Bair:

Let me take this opportunity to reinforce the concerns of many small independent community bankers in my district who are absolutely livid about the special assessment announced by the FDIC on March 2, 2009. I understand that then FDIC Chair Powell asked Congress to raise the required capital in the FDIC's insurance fund to a range of $1.15 – 1.50 per hundred dollars of insured deposits. At the same time, Chairman Powell opposed raising the $100,000 cap too aggressively citing moral hazard concerns.

While I understand that the FDIC is required to keep the fund in this range, and it makes tremendous sense not to put the taxpayers on the hook for bank failures, I cannot rationalize spending hundreds of billions of taxpayer dollars to recapitalize banks, just to turn around and hit them with a special assessment. Surely there must be an alternative. I would also suggest that your assertion that using appropriated money to shore up the fund would, "paint all banks with the 'bailout' brush".

I cannot speak for all Americans, but the residents of Florida's 5th Congressional District certainly feel that all of the banks have certainly been painted with the "bailout brush". If this concern is influencing the decision not to seek alternative options, I would suggest that the FDIC work with Congress to find another solution. I believe that my constituents could support far more aggressively a plan that would use taxpayer money to protect their deposits. What they cannot support is blindly throwing money at the financial markets in the hope that the money is not abused and that the problem works itself out.

Sincerely,

[redacted]

Ginny Brown-Waite
Member of Congress

GBW:HL

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 13, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable Jim Bunning
United States Senate
Washington, D.C. 20515

Dear Senator Bunning:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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The FDIC realizes that these assessments are a significant expense, particularly during a financial crisis and recession where bank earnings are under pressure. Banks face tremendous challenges right now even without having to pay higher assessments. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy.

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As you know, the FDIC has requested that Congress increase our authority to borrow from Treasury to $100 billion. In addition, the FDIC is seeking a temporary increase in borrowing authority above $100 billion (but not to exceed $500 billion) based on a process that would require the concurrence of the FDIC, the Federal Reserve Board, and the Treasury Department, in consultation with the President. This temporary authority would expire on December 31, 2010.

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The FDIC continues to consider other ways to alleviate the pressure on the DIF that are consistent with our statutory authority. We recently imposed a surcharge on guaranteed bank debt under the Temporary Liquidity Guarantee Program and will use the money raised through this surcharge to reduce the proposed special assessment. In addition, a portion of the fee for the recently announced Legacy Loan Program also will be allocated to the DIF. Finally, the FDIC will carefully review comments regarding using an assessment base other than deposits for the special assessment.

Deposit Insurance provides valuable benefits to banks. While many sources of bank funding have dried up in the past six months, deposits have not. In fact, deposits are growing and remain a reliable source of funding because depositors know that their insured deposits are absolutely safe.

We have included your letter in the public comment file for consideration in the development of the final rule on the emergency special assessment. If you have further questions, 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

JIM BUNNING
KENTUCKY

COMMITTEES:
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March 30, 2009

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

Dear Chairman Bair:

I am writing to continue the discussion we had at the hearing of the Senate Banking Committee on March 19, regarding assessments to replenish the Deposit Insurance Fund (DIF).

As I explained to you at the hearing, the proposed special assessment would be devastating to community banks in Kentucky. As originally proposed, the 20 basis point assessment would cost Kentucky banks approximately $132 million. Of that total, $80 million would come from state-chartered banks. Combined with the increased regular assessment, taxes, and other payments, the special assessment will consume the entire projected earnings for many banks in the Commonwealth.

While it is not your job or mine to ensure the profitability of the banking industry, as policymakers we must take into account the total effect of our actions. We are in the middle of a financial crisis caused in large part by major financial institutions and some irresponsible smaller firms, not community banks. Yet the special assessment would hit those community banks the hardest and have the perverse effect of punishing those who acted responsibly for the sins of those who did not.

Also, one of the consequences of the financial crisis is a reduction of credit, which is prolonging and deepening the recession. Many of the nation's largest financial institutions are under severe pressure and have restricted lending as they build capital and shrink their balance sheets. The secondary market and so-called "shadow banking sector" have all but disappeared. But community banks continue to be a source of capital for Kentucky and the nation, and it makes little sense to remove a source of precious capital at this time. However, that would be the effect of a 20 basis point special assessment, and doing so will only delay the recovery.

I urge you to reconsider the assessment and its impact on banks and lending. Some alternatives that have been suggested are 1) borrowing from TARP for the DIF shortfall, to be repaid by premiums over time; 2) extending the assessments over a longer period of time; 3) borrowing from the Treasury using the existing line of credit; and 4) risk weighting the assessments. Please consider these and other options to reduce the penalty on Kentucky's community banks and their customers. Thank you for your attention to this matter.

Best personal regards,

[redacted]

JIM BUNNING
United States Senator

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 13, 2009

Honorable Mike Coffman
House of Representatives
Washington, D.C. 20515

Dear Congressman Coffman:

Thank you for sharing your suggestions for improving the effectiveness of the Troubled Asset Relief Program (TARP). As you know, the Federal Deposit Insurance Corporation is actively working with the Department of the Treasury and the other federal banking agencies in considering TARP applications filed by banking institutions. The FDIC believes it is very important that community banks participate in the TARP, and we support requests from viable, well-managed institutions. Although community banks as a sector continue to be sound, the TARP offers an opportunity for individual institutions to strengthen balance sheets and continue providing banking services and credit to their communities.

I share your belief that community banks should not be regulated the same as large systemically important institutions. Instead, we need to reduce systemic risk by limiting the size, complexity, and concentration of our financial institutions. For example, we should consider imposing higher capital requirements to help ensure these institutions have adequate capital buffers in times of stress.

With regard to the supervision of community banks, regulatory agencies have provided clear guidance to banks about lending. Community banks are vitally important to our nation's economy as a significant source of credit for consumers and small businesses. As you may know, in November 2008, the FDIC, along with the other federal financial institution regulatory agencies, issued the *Interagency Statement on Meeting the Needs of Creditworthy Borrowers,* which encourages the banks we supervise to continue making loans to creditworthy borrowers. In addition, the FDIC recently hosted a roundtable discussion focusing on how regulators and financial institutions can work together to improve credit availability. Community bankers were invited to share their concerns and insights with the federal bank regulators and representatives from state banking agencies. The attendees agreed that open, two-way communication between the regulators and the industry was vital to ensuring that safety and soundness considerations are balanced with the critical need of providing credit to businesses and consumers.

I believe this was a very productive meeting and look forward to working with the industry and our colleagues at the other agencies to ensure credit remains available during this challenging period. The FDIC also is creating a new senior level office to expand community bank outreach. In conjunction with this action, the FDIC plans to establish an advisory committee to address the unique concerns of this segment of the banking community.

Regarding fair value accounting, we support the efforts of the U.S. Securities and Exchange Commission and the Financial Accounting Standards Board (FASB) to provide additional guidance on the measurement of fair value when markets are illiquid and enhance fair value disclosures. We expect to maintain our dialogue with the standard setters and participate in FASB efforts to strengthen fair value accounting guidance.

Thank you again for providing your thoughts on these important issues. If we can provide further information, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director, Office of Legislative Affairs at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

LA09-338

MIKE COFFMAN
6TH DISTRICT, COLORADO

ARMED SERVICES COMMITTEE

NATURAL RESOURCES COMMITTEE

SMALL BUSINESS COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515–0606

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MAR 11 2009

February 13, 2009

President Barack Obama
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear ~~Mr. President~~: Chairwoman Bair

In these trying economic times a great deal of debate has emerged regarding what we as the Federal Government should do in an attempt to arrest this downturn. I have become increasingly skeptical over conditions placed on financial institutions in the Trouble Asset Relief Program. I believe that with a few modifications this program would be much more effective in bringing about the end to our current predicament.

Regulation of the banking industry has become one of the main concerns of legislators during the ongoing debate over the effectiveness of TARP. While it is easy and politically convenient to adopt sweeping regulatory reform, I believe that certain considerations should first be taken into account. I have no issue with establishing clearly defined regulations for large banks that pose systematic risks to our economy. We should be careful to avoid lumping small community run banks with these giants of Wall Street. These smaller institutions should be exempt from some of the more stringent regulations recently placed upon the larger financial institutions. While some institutions may be considered too large to fail, we must not condemn our smaller banks as to small to succeed. That is exactly what will happen if we continue to apply the same regulations on all banks regardless of size.

Conflicting instructions from the Federal Government and its representatives in the field is another issue I think we should strive to rectify. Since the allocation of TARP funds began, the White House, Congress and the Treasury have been imploring banks to lend more money to small businesses and thus help jump start the economy. While this idea is well intentioned it is not possible due to the guidance given to banks by regulators. In a time where they are implored to lend more money, regulators are advising banks to increase their capital reserves from 10% to 12%. Coupled with the regulators reclassifications of performing real estate loans at lower rates, it is little wonder that many banks have decided to hold onto their funds at the expense of new lending. I would urge you, along with your Secretary of the Treasury, Members of Congress, and the appropriate regulatory agencies to come together and offer clear guidance to banks regarding lending. If we do not address this problem of dual directives, banks will be stuck in limbo, continuing to accrue capital, but failing to make new loans.

I am also concerned about the use of fair value accounting for community banks, which are in the business of creating and holding non-traded, illiquid assets. While they must hold some readily marketable securities for liquidity purposes, they are generally not in the business of creating or purchasing assets or liabilities for quick resale. They fund their operations primarily by deposits and hold loans that are not readily marketable, including small business, agricultural and even certain residential mortgage loans. Therefore, it is my opinion that full fair accounting should not be applied to institutions such as community banks as it is more likely to mislead regulators, investors and other financial statement users than provide them a clearer picture of financial condition.

I appreciate your time and thank you in advance for your consideration.

Sincerely,

[redacted]

Mike Coffman
Member of Congress

CC: Timothy Geithner, Secretary of the Treasury
CC: John Dugan, Comptroller of the Currency
CC: Sheila Bair, Chairwoman, Federal Deposit Insurance Corporation
CC: Ben Bernanke, Chairman, Federal Reserve System
CC: John Reich, Director, Office of Thrift Supervision

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 13, 2009

Honorable Timothy J. Walz
House of Representatives
Washington, D.C. 20515

Dear Congressman Walz:

Thank you for your letter regarding deposit insurance assessment rates and the recently announced Public-Private Investment Program and Legacy Loans Program (LLP). As you may know, in February the Federal Deposit Insurance Corporation adopted a final rule regarding regular quarterly assessments and an interim rule on a 20 basis point special assessment with a request for public comments. The comment period on the interim rule closed April 2, 2009. The FDIC will consider all the comments received before adopting a final rule. The FDIC also issued a request for comment on critical aspects of the LLP. That comment period closes April 10, 2009.

Recent and anticipated failures of FDIC-insured institutions resulting from deterioration in banking and economic conditions have significantly increased losses to the Deposit Insurance Fund (DIF). The reserve ratio of the DIF declined from 1.22 percent as of December 31, 2007, to 0.40 percent as of December 31, 2008. Because the fund reserve ratio had fallen below 1.15 percent as of June 30, 2008, and was expected to remain below 1.15 percent, applicable law required the FDIC to establish and implement a restoration plan that would restore the reserve ratio to at least 1.15 percent within five years, absent extraordinary circumstances. On October 7, 2008, the FDIC established a restoration plan for the DIF that called for the FDIC to set assessment rates such that the reserve ratio would return to 1.15 percent within five years and proposed assessment rates in accordance with the plan.

In February 2009, the FDIC's Board of Directors made several very difficult decisions intended to ensure that the deposit insurance system remains sound. First, in recognition of the severe stress facing banks and the financial system, the FDIC extended the period of the restoration plan from five to seven years. Second, the FDIC adopted assessment rates effective beginning the second quarter of 2009 that are slightly higher than those proposed in October 2008, despite a large increase in projected losses. Finally, the FDIC adopted an interim rule that sets a special assessment at 20 basis points to be collected September 30, 2009.

The FDIC realizes that these assessments are a significant expense, particularly during a financial crisis and recession where bank earnings are under pressure. Banks face tremendous challenges right now even without having to pay higher assessments. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy. For that reason, the FDIC continues to consider alternative ways to alleviate the pressure on the Deposit Insurance Fund if they are consistent with our statutory authority. We recently imposed a surcharge on guaranteed bank debt under the Temporary Liquidity Guarantee Program and will use the money raised by the surcharge to reduce the proposed special assessment. In addition, the FDIC has made significant changes to the regular quarterly assessment system to ensure that riskier institutions bear a greater share of the assessment burden. The FDIC also will carefully review the comments regarding using an assessment base other than deposits for the special assessment.

Because of rapidly deteriorating economic conditions, a large number of projected bank failures are likely to occur this year and next. These assessments are essential to maintaining the industry funded reserves of the DIF.

Recent experience has shown that bank failures are difficult to predict and the possibility of additional, unforeseen failures is significant. The size of the special assessment reflects the FDIC's need to maintain adequate resources to cover potential unforeseen losses. The FDIC has a thin margin for error in this regard because its $30 billion borrowing authority from Treasury for losses from bank failures has not increased since 1981, although industry assets have more than tripled.

The FDIC has requested that Congress increase our authority to borrow from Treasury from $30 billion to $100 billion. In addition, the FDIC is seeking a temporary increase in borrowing authority above $100 billion (but not to exceed $500 billion) based on a process that would require the concurrence of the FDIC, the Federal Reserve Board, and the Treasury Department, in consultation with the President. This temporary authority would expire on December 31, 2010.

An increase in the FDIC's borrowing authority of this magnitude would give the FDIC a sufficient margin for unforeseen bank failures to allow it to reduce the size of the special assessment, while still maintaining assessments at a level that will support the DIF through industry funding. Although the industry would still pay assessments to cover projected losses and rebuild the fund over time, a lower special assessment would mitigate the pro-cyclical effects of assessments. The special assessment currently is set at 20 basis points, as provided in the interim rule. For an increase in the FDIC's borrowing authority to affect the size of the special assessment, it would have to be enacted before the FDIC Board votes on a final rule on the special assessment, which I anticipate will occur in mid-May 2009.

You also requested information on the FDIC's role in the recently announced Public-Private Investment Program and the Legacy Loans Program. The LLP is part of a coordinated effort of the FDIC and the Department of the Treasury to remove troubled loans and other assets from the balance sheet of FDIC-insured institutions. While the FDIC has requested comment on critical aspects of the LLP program, it is important to recognize that the FDIC and the Treasury will be governed by a cost sharing arrangement under the program under which the FDIC will be reimbursed for expenses incurred in oversight of the program and its ongoing administration fees will be paid. Additionally, a portion of debt guarantee fees collected by the FDIC under the program will be allocated to the DIF to reduce the amount of needed assessments.

Thank you for your comments on these very important issues. I am taking the liberty of including your comments in the public comment files on the LLP and the special assessment interim rule. If we can provide further information, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director, Office of Legislative Affairs at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

CAPITOL OFFICE:
1722 Longworth House Office Building
Washington, DC 20515
(202) 225-2472

MANKATO OFFICE:
227 East Main Street
Suite 220
Mankato, MN 56001
(507) 388-2149

ROCHESTER OFFICE:
1134 7th Street NW
Rochester, MN 55901
(507) 206-0643

Timothy J. Walz

Congress of the United States
First District, Minnesota
www.walz.house.gov

Agriculture
Conservation, Credit, Energy, and Research
General Farm Commodities and Risk Management

Transportation & Infrastructure
Economic Development, Public Buildings, and Emergency Management
Highways and Transit
Rail, Pipelines, and Hazardous Materials

Veterans' Affairs
Oversight

March 25, 2009

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

Dear Chairman Bair:

I am writing seeking clarification on some of the recent actions the Federal Deposit Insurance Corporation (FDIC) has taken with respect to the fees or premiums it assesses on banks whose deposits are insured by the FDIC.

The district I represent in southern Minnesota has an unusually high concentration of both community banks and credit unions. These are institutions that have been largely conservative in their practices, avoiding the irresponsible lending that contributed mightily to the current financial crisis.

I have heard quite a bit of concern, and not a little anger, from our community banks at the prospect of a sudden, substantial increase in the assessments, fees or premiums they may be compelled to pay by the FDIC in order to ensure that the FDIC continues to be able to provide deposit insurance.

The deposit insurance that the FDIC provides is a truly invaluable service to our financial system and to the millions of Americans who depend on it as a guarantee for the money they have in the bank. I also appreciate that the current financial crisis, including a spate of bank failures, has left the FDIC at one of the most difficult points in its history.

However, I am puzzled and troubled at some of the actions the FDIC has taken or contemplated to address the challenge it faces and ensure that it has sufficient funds to continue providing effective deposit insurance. The recently announced increased quarterly assessments and the one-time assessment slated for later this year – even after it was reduced from 20 to 10 basis points - will hit our community banks particularly hard. That in turn will damage their ability to provide crucial services to the community at precisely the moment they are most needed.

It is also difficult to understand exactly how the new assessments embody principles of fairness.

Therefore, I respectfully request that you address the following questions about the FDIC's assessments on banks:

- Since it is clear the FDIC's plan for assessing fees has been evolving, can you clarify the current state of the FDIC's plans for its assessments on federally-insured banks? What has the FDIC decided, and what decisions are being contemplated for the near future?

- Can you explain how the changes in the fees you assess banks embody principles of fairness to the affected institutions?

- More specifically, would it make sense to base the assessments on banks not on the size of deposits that a given bank holds but rather on the risks and losses of a given institution? If not, why not? If so, what would have to happen to make such an alternative basis for the assessment of fees a reality?

- If Congress provides the FDIC temporary authority to borrow more money – reportedly as much as $500 million – from the U.S. Treasury, how would that impact either the amount of fees the FDIC would be collecting from federally-insured institutions, and/or the way or timeframe in which the institutions would be able to pay the assessed fees?

- Given the integral role the FDIC will be playing in the Obama administration's recently announced Public-Private Investment Program (PPIP) designed to address the financial crisis, and more particularly in the Legacy Loans portion of the PPIP, what assurances can you provide that the new fees the FDIC is assessing on community and other banks will not in effect subsidize the PPIP and its efforts to salvage those financial institutions that took excessive risk and effectively failed, imperiling the financial system, as a consequence?

I am hoping to be able to provide my constituents with answers in the next couple of weeks, so I would very much appreciate replies from you by April 8, 2009. I look forward to your responses, and I thank you for your service to our nation in this difficult time.

Sincerely,

[redacted]

Tim Walz
MEMBER OF CONGRESS

CC: Congressman Barney Frank, Chairman, House Financial Services Committee

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

April 16, 2009

Honorable Arlen Specter
United States Senate
Washington, D.C. 20510

Dear Senator Specter:

Thank you for your letter on behalf of CreditVest regarding their ability to assist the Federal Deposit Insurance Corporation in analyzing, reviewing, and overseeing commercial real estate loans. The Acquisition Services Branch (ASB) in our Division of Administration is currently compiling an FDIC Contractor Resource List (CRL). This system organizes and maintains corporate capability statements submitted by firms seeking future business with the FDIC. Our program managers and contracting officers use this system to identify sources for solicitation.

There are a large number of firms that are now aggressively marketing to do business with the FDIC. We cannot guarantee any potential contractor that submits a corporate capabilities statement that they will be included on future source lists. However, we can confirm that CreditVest will be added to the CRL.

If CreditVest staff or J.J. Wilson have further questions, they may contact David Manion, ASB Senior Contract Specialist, at (703) 562-2211, or by email at dmanion@fdic.gov.

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

LA09-458

ARLEN SPECTER
PENNSYLVANIA

COMMITTEES:
JUDICIARY
APPROPRIATIONS
ENVIRONMENT AND PUBLIC WORKS
VETERANS' AFFAIRS
AGING

United States Senate

WASHINGTON, DC 20510-3802
specter.senate.gov

March 23, 2009

Mr. Chris Rosello
Acting Assistant Secretary for Legislative Affairs
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW, Room 3134
Washington, DC 20220

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

Dear Mr. Rosello and Mr. Spitler:

I am writing today to bring to your attention CreditVest, Inc., a Pittsburgh, PA firm, seeking opportunities to assist the Department of the Treasury, the Federal Deposit Insurance Corporation (FDIC), and other agencies involved in the analysis, review, and oversight of commercial real estate loans or assets.

I am told that CreditVest's approach could potentially produce many benefits for Treasury and FDIC, such as reducing waste, fraud, and abuse. CreditVest was founded as a government contractor for the Resolution Trust Corporation (RTC)/FDIC and has a long history of government contracts.

I would appreciate your staff taking the time to review CreditVest's capabilities and evaluate whether it has applicability within Treasury or FDIC. To assist in your request, I have attached CreditVest's capabilities statement. Please have your staff contact a member of my staff, J.J. Wilson at 202-224-9006 to follow up or if you have any questions.

[redacted]

Arlen Specter

AS/jw

CreditVest, Inc.

Objective
CreditVest. Inc. is seeking opportunities to assist the Treasury, FDIC or other agencies involved in the analysis, review and oversight of commercial real estate loans or assets. Opportunities may result from the need to monitor institutions in distress, the takeover of a failed institution, TARP investments, or oversight of stimulus spending.

Meet CreditVest, Inc.
Established in 1991 in Pittsburgh, PA, CreditVest has over 17 years of experience in commercial real estate analysis. CreditVest has performed over $31 billion of real estate underwriting nationwide for investment banks, insurance companies, and private equity investors with loan sizes or investments ranging from less than $1 million to $400 million. The CreditVest team has an average of more than 19 years of real estate underwriting and financial analysis experience and the ability to manage the overall due diligence process. Functions vary depending upon client needs but include tasks such as:

- site inspections nationally with emphasis on the property's competitive viability
- complete file review, cash flow analysis and spreadsheet modeling
- asset management of owned properties with third party managers to accomplish successful asset sales
- ordering and reviewing appraisals, environmental reports, surveys, and title work
- analysis of the financial strength, creditworthiness and experience of the Borrower/Sponsor based upon financial statements, tax returns, credit reports, records searches, litigation documents, lending references and resumes

Proven Government Contractor
CreditVest was founded as a government contractor for the RTC/FDIC and has a long history of government contracts.

RTC/FDIC – Prepared overall risk ratings for the RTC/FDIC's sale of underperforming assets, successfully resolving $4 billion of real estate assets under its seller-financing program

HUD - Underwrote and restructured debt on 430 low-income housing complexes during the past 8 years. In 2008, CreditVest was retained as one of three Participating Administrative Entities (out of eighteen) selected by HUD to continue the Mark-to-Market program and HUD green initiative.

In addition to the specific tasks above, CreditVest has previously held qualifications as a GSA Contractor for Financial Advisory Services (SIN 520.1) and Due Diligence Support Services (SIN 520.3).

CreditVest's breadth of experience and capabilities insures that it can perform a number of roles relating to: (1) property/loan level due diligence and; (2) management and oversight of the due diligence, asset management and sales processes for commercial real estate loans/assets.

Contact: Alan C. Patterson at 412-263-5694 or email apatterson@creditvest.com

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

Office of Legislative Affairs

April 16, 2009

Honorable Jack Reed
United States Senator
Washington, D.C. 20510

Dear Senator Reed:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you may know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

As you are aware, recent and anticipated failures of FDIC-insured institutions resulting from deterioration in banking and economic conditions have significantly increased losses to the Deposit Insurance Fund (DIF). The reserve ratio of the DIF declined from 1.22 percent as of December 31, 2007, to 0.40 percent (preliminary) as of December 31, 2008.

Because the fund reserve ratio had fallen below 1.15 percent as of June 30, 2008, and was expected to remain below 1.15 percent, applicable law required the FDIC to establish and implement a restoration plan that would restore the reserve ratio to at least 1.15 percent within five years, absent extraordinary circumstances. On October 7, 2008, the FDIC established a restoration plan for the DIF that called for the FDIC to set assessment rates such that the reserve ratio would return to 1.15 percent within five years and proposed assessment rates in accordance with the plan.

In February 2009, the FDIC Board of Directors made several very difficult decisions intended to ensure that our nation's deposit insurance system remains sound. First, in recognition of the severe stress facing banks and the financial system, the FDIC extended the period of the restoration plan from five to seven years. Second, the FDIC adopted assessment rates effective beginning the second quarter of 2009 that are slightly higher than those proposed in October 2008, despite a large increase in projected losses. Finally, the FDIC adopted an interim rule that sets a special assessment at 20 basis points to be collected on September 30, 2009.

The FDIC realizes that these assessments are a significant expense, particularly during a financial crisis and recession where bank earnings are under pressure. Banks face tremendous challenges right now even without having to pay higher assessments. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy.

However, because of rapidly deteriorating economic conditions, a large number of projected bank failures are likely to occur this year and next. These assessments are essential to maintaining the industry funded reserves of the DIF.

Recent experience has shown that bank failures are difficult to predict and the possibility of additional, unforeseen failures is significant. The size of the special assessment reflects the FDIC's need to maintain adequate resources to cover potential unforeseen losses. The FDIC has a thin margin for error in this regard because its $30 billion borrowing authority from Treasury for losses from bank failures has not increased since 1991, although industry assets have more than tripled.

The FDIC has requested that Congress increase our authority to borrow from Treasury to $100 billion. In addition, the FDIC is seeking a temporary increase in borrowing authority above $100 billion (but not to exceed $500 billion) based on a process that would require the concurrence of the FDIC, the Federal Reserve Board, and the Treasury Department, in consultation with the President. This temporary authority would expire on December 31. 2010.

An increase in the FDIC's borrowing authority of this magnitude would give the FDIC a sufficient margin for unforeseen bank failures and allow it to reduce the size of the special assessment while still assessing institutions at a level that maintains the DIF through industry funding. Although the industry would still pay assessments to cover projected losses and rebuild the fund over time, a lower special assessment would mitigate the pro-cyclical effects of assessments.

The FDIC continues to consider other ways to alleviate the pressure on the DIF that are consistent with our statutory authority. We recently imposed a surcharge on guaranteed bank debt under the Temporary Liquidity Guarantee Program and will use the money raised through this surcharge to reduce the proposed special assessment.

Deposit Insurance provides valuable benefits to banks. While many sources of bank funding have dried up in the past six months, deposits have not. In fact, deposits are growing and remain a reliable source of funding because depositors know that their insured deposits are absolutely safe.

We have included your letter in the public comment file for consideration in the development of the final rule on the emergency special assessment. If you have further questions, please do not hesitate to contact me at (202) 898-3837.

Sincerely,

[redacted]

Eric J. Spitler
Director
Office of Legislative Affairs

JACK REED
RHODE ISLAND

COMMITTEES

APPROPRIATIONS
ARMED SERVICES
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS

United States Senate

WASHINGTON, DC 20510-3903

Washington, DC:

728 Hart Senate Office Building
Washington, DC 20510-3903
(202) 224-4642

Rhode Island:

1000 Chapel View Boulevard, Suite 290
Cranston, RI 02920-3074
(401) 943-3100

One Exchange Terrace, Room 408
Providence, RI 02903-1773
(401) 528-5200

1 (800) 284-4200

TDD Relay Rhode Island
1 (800) 745-5555

http://reed.senate.gov

April 1, 2009

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

Dear Mr. Spitler:

I write on behalf of a number of my constituents who recently contacted my office with concerns regarding the announcement of a special assessment on insured institutions.

For your review, I have enclosed an example of the correspondence I have received on this matter. So that I can more fully respond to such inquiries, I would greatly appreciate any information you may be able to provide my office about this matter.

Thank you in advance for your attention to this request, and I look forward to your response.

Sincerely,

[redacted]

Jack Reed
United States Senator

Enclosure

March 6, 2009

The Honorable Jack Reed
United States Senate
728 Hart Senate Office Building
Washington, DC 20510-3903

Dear Senator Reed:

I appreciate the opportunity to comment on the FDIC's interim rule that would impose a special assessment of 20 basis points in the second quarter.

I have serious concerns about this proposal, but first wanted to emphasize that I fully support the view of the FDIC that we need a strong, financial secure fund in order to maintain the confidence depositors have in the system. However, how this is done is very important to my bank and my community.

The special assessment is a significant and unexpected cost to my bank that will devastate earnings.

We are already dealing with a deepening recession, accounting rules that overstate economic losses and unfairly reduce capital, regulatory pressure to classify assets that continue to perform, and a significant increase in regular quarterly FDIC premiums.

Each of these is a big challenge on its own - but collectively, they are a nightmare.

Banks like mine that never made a subprime loan and have served our communities in a responsible way for years and years are being unfairly penalized.

The reduction in earnings will make it harder to build capital when it is needed the most.

We will also be forced to look at ways to lower the cost of other expenses, which may limit our ability to sponsor community activities or make charitable donations - something that we have done year after year.

The implications for this significant FDIC charge will impact every corner of my community. It is patently unfair and harmful to burden a healthy bank like mine that is best positioned to help the economy recover.

Given the impact that the proposed assessment will have on my bank and my community, I strongly urge you to consider alternatives that would reduce our burden and provide the FDIC the funding its needs in the short term.

Making these modifications will ensure that the fund remains secure and will allow my bank to continue to lend in our community. I urge you to take these suggestions into consideration when the Board meets in April to finalize the special assessment rule.

Sincerely,

OKU59 LA09-621

ELIJAH E. CUMMINGS
7TH DISTRICT, MARYLAND

COMMITTEE ON
TRANSPORTATION AND INFRASTRUCTURE
CHAIRMAN, SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS

COMMITTEE ON
GOVERNMENT REFORM
SUBCOMMITTEE ON DOMESTIC POLICY
SUBCOMMITTEE ON FEDERAL WORKFORCE, POST OFFICE AND THE DISTRICT OF COLUMBIA

COMMITTEE ON ARMED SERVICES
SUBCOMMITTEE ON READINESS

JOINT ECONOMIC COMMITTEE

SENIOR WHIP

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

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FAX: (410) 685-9399

☐ 754 FREDERICK ROAD
CATONSVILLE, MD 21228-4504
(410) 719-8777
FAX: (410) 455-0110

☐ 8267 MAIN STREET
ROOM 102
ELLICOTT CITY, MD 21043-9903
(410) 465-8259
FAX: (410) 465-8740

www.house.gov/cummings

April 16, 2009

Mr. Eric Spitler
Federal Deposit Insurance Corporation
Office of Legislative Affairs - 6078
550 17th St., NW
Washington, DC 20429

Dear Mr. Spitler:

I am writing to ask for your participation in the 7th District Maryland Financial Summit, to be held at The Theater (Building Q), Community College of Baltimore County, Catonsville, MD on May 5, 2009.

As you know, small businesses have been the mobilizing force behind our past economic growth. The future stability of our nation's economy is dependent on the long-term success of the small business network across the country. As such, I have made a commitment to empower the small, minority, women-owned, and disadvantaged entities in my district by providing them access to the agencies, people, and information that can help make their firms more successful.

The primary goal of this summit is to assist the diverse pool of industry sectors readily available in the 7th District of Maryland in meeting the needs of your agency. The focus is to ensure small business entities are aware of specific contracting opportunities available as a result of American Recovery and Reinvestment Act funds provided to your agency and to equip these valuable businesses with the knowledge to market their expertise as they develop long-standing relationships with you and prime contractors.

Your agency is a necessary partner in achieving a successful conference. Please indicate your availability to participate no later than April 20, 2009 by contacting Racquel Gallman, Legislative Fellow, Office of Congressman Elijah E. Cummings, at (202) 225-4741 or racquel.gallman@mail.house.gov. An agenda and further details will follow.

Again, thank you for your commitment to the small, minority, women-owned, and disadvantaged entities in the 7th District. We look forward to working with you to maximize opportunities for small businesses to compete for agency contracts and to participate on government projects as subcontractors as they continue on the pathway to success.

Sincerely,

[redacted]

Elijah E. Cummings
Member of Congress

FDIC

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

Office of Legislative Affairs

April 16, 2009

Honorable Saxby Chambliss
Representative, U.S. Congress
100 Galleria Parkway, Suite 1340
Atlanta, Georgia 30339

Dear Congressman Chambliss:

b6

Thank you for your letter on behalf of [redacted].

The Federal Deposit Insurance Corporation will continue to actively recruit for a variety of positions at multiple grade levels in the Atlanta area and many other locations across the country. We currently have posted or will post in the near future, opportunities for: accountants, attorneys, bank examiners, financial analysts, loan review specialists, financial institution specialists, resolutions and receivership specialists, administrative specialists, and information technology experts.

Vacancy announcements for these positions will be posted on our website. We encourage [redacted] to regularly visit our website for current vacancy information and to apply for positions in the future. The website address is http://www.fdic.gov/about/jobs/index.html.

Please be assured that [redacted] and all applicants for FDIC positions, will receive full and fair consideration.

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

LA09-418

SAXBY CHAMBLISS
GEORGIA

COMMITTEES:
AGRICULTURE
RANKING MEMBER

ARMED SERVICES

INTELLIGENCE

RULES

United States Senate

WASHINGTON, DC 20510-1007

MH

March 2, 2009

2009 MAR 17 AM 11:06

Mr. Mark S. Schmidt
Regional Director
Federal Deposit Insurance Corporation
10 Tenth Street, NE, Suite 800
Atlanta, GA 30309-3906

Dear Mark:

I am writing on behalf of [redacted] who is applying for a position with the FDIC in Atlanta. I have known [redacted] for many years and hope you will consider her for the position, commensurate with her qualifications and your existing guidelines.

[redacted] has been a commercial lender in Atlanta for almost 30 years. She has extensive experience in portfolio management, credit, and underwriting, and has an understanding of lending to a wide variety of industries. She was most recently with The Buckhead Community Bank as the Vice President for Commercial Lending. [redacted] holds a number of education and training certificates, including the Advanced Commercial Lending Certificate, Corporate Cash Management Certificate, Omega Commercial Lending Certificate, and the American Institute of Banking/Retail Banking Diploma.

Thank you for your consideration of [redacted]. If I may provide you with additional information, please do not hesitate to let me know.

b6

Very truly yours,

[redacted]

Saxby Chambliss

SC:kb

cc: Eric Spitler, OLA Washington

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 16, 2009

Honorable Dana Rohrabacher
Representative, U.S. Congress
101 Main Street, Suite 380
Huntington Beach, California 92648

Dear Congressman Rohrabacher:

Thank you for your letter concerning the Federal Deposit Insurance Corporation's use of contractors to assist in the disposal of owned real estate (ORE) assets acquired as a result of financial institution failures. Consistent with our general policies, the Federal Deposit Insurance Corporation's Board of Directors is not involved in contracting decisions, which are made by professional staff.

I have asked Arleas Kea, Director of the Division of Administration to respond to your questions directly. A copy of Ms. Kea's letter is enclosed.

If you have further questions, 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

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

Division of Administration

April 3, 2009

Honorable Dana Rohrabacher
Representative, U.S. Congress
101 Main Street, Suite 380
Huntington Beach, California 92648

Dear Congressman Rohrabacher:

Chairman Bair asked me to respond to your letter regarding the Federal Deposit Insurance Corporation's use of contractors to assist in the disposal of owned real estate (ORE) assets acquired as a result of financial institution failures. As we have done in the past, the FDIC will use contractors to the extent practical to leverage the capabilities of our expert, in-house staff and to address the current workload demands of the banking crisis.

In November 2008, we competitively awarded contracts to two firms, C.B. Richard Ellis and Prescient, Incorporated, to manage and market owned real estate assets. These firms submitted proposals that were determined to be the "best value" for the FDIC considering their price, technical capabilities, and other qualitative factors listed in our Request for Proposals (RFP). Both firms offered well developed management plans with the resources necessary to immediately manage a large volume of diverse assets and market to a global pool of buyers. Both companies submitted subcontracting plans that indicate they intend to substantially utilize subcontractors to provide the wide range of expertise and services required.

Further, they intend to conform to the FDIC policy that strongly encourages prime contractors to subcontract with minority and women owned businesses to fulfill requirements under FDIC contracts. Both firms' "point of contact" information is included on the www.fdic.gov website so that potential subcontractors can contact them directly about future opportunities.

This procurement was performed in accordance with the FDIC Acquisition Policy Manual. The source list for the solicitation was compiled after reviewing responses to advertisements posted in the *Wall Street Journal*, *New York Times*, and the FedBizOps website. Over 35 firms were invited to submit proposals and 18 responded. An evaluation panel comprised of FDIC technical experts followed a thorough review and rating process to determine the successful offerors.

The FDIC continuously reviews the need for future resource requirements. At present, we plan to issue another RFP in the near future for additional firms to assist with managing and marketing ORE assets. Firms who are interested in doing business with the FDIC should register their company profiles in our Contractor Resource List (CRL), which can be accessed along with all of our policies, procedures, and forms under the procurement section of our website.

Please be assured that we will select qualified firms with subcontracting plans that effectively address our performance requirements.

Sincerely,

[redacted]

Arleas Upton Kea
Director

DANA ROHRABACHER
48th District, California

Committees:
FOREIGN AFFAIRS
Ranking Republican, Subcommittee on International Organizations, Human Rights and Oversight
Subcommittee on Asia, the Pacific, and the Global Environment
SCIENCE AND TECHNOLOGY
Subcommittee on Space and Aeronautics
Subcommittee on Investigations and Oversight

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http://rohrabacher.house.gov

February 19, 2009

Hon. Sheila C. Bair

Chairman

Federal Deposit Insurance Corporation

550 17th Street, NW
Washington, DC 20429

FDIC
MAR 31 2009
OFFICE OF LEGISLATIVE AFFAIRS

Dear Ms. Bair:

I recently became aware of difficulties faced by California-based asset management companies and real estate brokers regarding their inability to participate as FDIC contractors for Owned Real Estate (ORE). I was informed that only two companies have been awarded contracts to assist in the management and marketing of FDIC-owned real estate. Those companies are Texas-based CB Richard Ellis, Inc., and Florida-based Prescient, Inc.

I question the logic of assigning an income stream and jobs derived from California real estate to an entity in another state. California-based asset management and real estate companies have a unique understanding of our state's real estate market and our city and county codes. Furthermore, California-based companies have an inherent vested interest in selling California properties at market value.

I have been contacted by constituent business people that have attempted to contact the FDIC satellite office adjacent to my district in Irvine, California in order to offer their services. None of them have been successful in making contact with anyone at this location.

I trust you will appreciate my concern about the inability of property businesses in California to competitively participate with the FDIC as outlined in this letter. May I hear from you soon at my district office at 101 Main Street, Suite 380, Huntington Beach, CA. 92648? My district director Kathleen Hollingsworth is my point of contact for this enquiry and her telephone number is 714-960-6483.

Yours sincerely,

[redacted]

Dana Rohrabacher, M.C.

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

Attachment B
FDIC Comment Letters on Proposed Regulations

The FDIC regularly comments on proposed rules, regulations and legislation. Highlighted below are key changes we proposed in recent comment letters to the agencies issuing regulations. The complete comment letters also are attached.

FDIC Comments to the Department of Housing and Urban Development
Re: Real Estate Settlement Procedures Act (RESPA)

- Ban yield spread premiums and allow brokers to be fairly compensated by alternative means.
- Include a mechanism to provide a monetary remedy to consumers for excess charges on final settlement costs.
- Suggested instead of allowing a loan originator to refund an overcharge within a specified time period, the settlement agent subtracts any overcharge from the lender's service charge at the closing.
- Noted concerns on the length of the proposed GFE (four pages) and the lack of important information about payment shock from certain loan products, as well as a lack of information about additional costs associated with "low-doc" or "no doc" loans.

FDIC Comments to the Board of Governors of the Federal Reserve System
Re: Credit Card and Overdraft rules – Regulation Z, Regulation DD, and Unfair or Deceptive Acts or Practices (UDAP)

- Require issuers of high fee credit cards to disclose all fees up front as a total amount in all solicitations and subsequent disclosures.
- Require advertised and offered credit limits to reflect the actual "useable" amounts of credit available for use by consumers.
- Restrict marketing of high fee credit cards to consumers as credit repair products.
- Limit the amount of fees that can be financed in the first year to 25 percent of the initial credit limit (instead of a majority, as proposed).
- Prohibit issuers from assessing multiple fees based on a single event (such as a late payment where the late payment fee that results in an overlimit charge).
- Extend the limitations on APR increases to cover future card balances that are incurred through the expiration date of the current credit card for cardholders who are meeting their payment obligations.
- Require that overdraft protection services be covered under Truth in Lending Act disclosures.
- Require banks to only pay overdrafts if consumers have affirmatively selected to participate in overdraft coverage, after a limited volume (e.g., 5) of overdrafts in a given time period.

- Prohibit stated income underwriting outright for higher priced as well as for nontraditional mortgage loans that do not qualify as higher-priced mortgage loans.
- Prohibit underwriting based solely on initial teaser rates for all nontraditional mortgages and ban prepayment penalties outright for higher cost loans.
- Prohibit the use of yield spread premiums to compensate mortgage brokers instead of merely providing that additional disclosures be made.
- Do not make prohibition contingent on establishing a "pattern or practice" of unaffordable lending standards.
- Affirmatively require lenders to consider a borrower's debt-to-income ratio in determining repayment ability.
- Require disclosure to borrowers (and potential investors) of debt to income ratios that exceed 50% of a borrower's income.
- Apply the prohibitions against extending credit without considering a borrower's ability to repay, stated income underwriting, and teaser rate underwriting to exotic products such as interest-only and payment-option adjustable rate mortgages, regardless of whether they meet an interest rate or fee trigger.
- Cover reverse mortgages under the proposal.

Attachment C
Enforcement Actions

The FDIC uses a variety of methods to ensure financial institutions follow both the technical requirements and the spirit of all rules, regulations and laws. Information is provided for some of the more significant, and precedent setting, enforcement actions over the last several years followed by a table of all enforcement actions taken since 1999. Additional information is then shown that provides the volume of referrals to the Department of Justice and the volume of truth-in-lending restitution sought based on examination findings.

CompuCredit (2008)

- Three FDIC-supervised institutions, First Bank of Delaware, Columbus Bank & Trust, and First Bank and Trust (Brookings, South Dakota), offered high fee subprime credit cards through third-party vendor CompuCredit Corporation. CompuCredit and the banks were cited for unfair and deceptive practices (UDAP) in violation of Section 5 of the FTC Act for inadequately disclosed fees and restrictions. Restitution of approximately $114 million was ordered in cash and credits to customer accounts.
- The banks and CompuCredit were assessed Civil Money Penalties totaling in excess of $5 million.

American Express Centurion Bank (2009)

- Two complaints were filed with the FDIC's Consumer Response Center regarding dishonored credit card convenience checks. The Bank declined to pay some convenience checks sent to card members despite available credit on the card members' credit lines, causing the consumers monetary losses from the returned check fees. The Bank was cited for unfair practices under Section 5 of the FTC Act. The Bank paid restitution to 10,000 affected customers of $160 per dishonored check.
- The Bank was assessed a Civil Money Penalty of $250,000.

Advanta Bank Corporation (2009)

- The bank's "Cash Back reward" program advertised a percentage of cash back on certain purchases by business credit card accountholders; however, due to the tiered structure of that program the advertised percentage was not available for all purchases. The Bank was cited for deceptive practices under Section 5 of the FTC Act and the bank was ordered to make restitution of $14 million to affected accountholders.
- Advanta's substantial annual percentage rate (APR) increases on the accounts of small business owners and professionals, who had not exceeded their credit limits nor were delinquent in their payments, generated hundreds of complaints to the Consumer Response Center. The FDIC determined that the rate increases were implemented in an unfair manner in violation of Section 5 of the FTC Act and the bank was ordered to make restitution of $21 million to affected accountholders.
- The Bank was assessed a Civil Money Penalty of $150,000.

First Mariner Bank (2009)

- As the result of the FDIC's HMDA Outlier Review, it was alleged that First Mariner had engaged in a pattern or practice of discrimination in charging higher discretionary interest rate and point "overages" to certain Hispanic, Black and female borrowers.
- Also, as a result of complaints concerning the payment-option adjustable-rate mortgage program, the FDIC determined that the disclosures for these loans contained misleading information regarding the costs of the loans. The bank was cited for deceptive practices under Section 5 of the FTC Act.
- The Bank will provide restitution of approximately $720,000 to those impacted by the fair lending violation and approximately $230,000 to those impacted by the Section 5 violation.
- The Bank was assessed a Civil Money Penalty of $50,000.

Bank of Agriculture and Commerce (2009)

- The Bank entered into a third-party arrangement to receive Social Security Administration payments and then have the payments distributed by a third party to payday lenders who sometimes require repayment of payday loans prior to releasing funds. The Bank was required to terminate this practice and ensure that no harm was caused to consumers.
- A Cease and Desist Order was issued by the FDIC to unwind the arrangement and have better oversight.
- The Bank was assessed a Civil Money Penalty of $100,000.

Cornerstone Community Bank (2009)

- The Bank entered into a third-party arrangement to receive Social Security Administration payments and then have the payments distributed by a third party to payday lenders who sometimes require repayment of payday loans prior to releasing funds. The Bank began terminating this program prior to the FDIC investigation.
- The Bank was assessed a Civil Money Penalty of $25,000.

Enforcement Actions by the FDIC January 1999 to August 31, 2009							
	Enforcement Actions						
Year	**BBR**	**MOU**	**Orders**	**CMP**	**Total**	**Informal**	**Formal**
2009	28	23	12	87	150	51	99
2008	39	43	11	89	182	82	100
2007	54	30	2	85	171	84	87
2006	53	25	2	56	136	78	58
2005	48	28	2	34	112	76	36
2004	49	28	3	33	113	77	36
2003	41	25	1	24	91	66	25
2002	51	29	0	40	120	80	40
2001	78	27	2	53	160	105	55
2000	80	34	3	5	122	114	8
1999	63	30	2	15	110	93	17
Total	**584**	**322**	**40**	**521**	**1,467**	**906**	**561**

Informal written agreements include Bank Board Resolutions (BBR) and Memoranda of Understanding (MOU). Formal actions take the form of Orders to Cease and Desist (Orders) and Civil Money Penalties (CMP).

Year	**Fair Lending Referrals to DOJ**	**Truth in Lending Reimbursement Actions**
2009	12	70
2008	12	94
2007	15	91
2006	29	110
2005	35	78
2004	42	73
2003	29	96
2002	33	106
2001	5	89
2000	0	127
1999	1	Unavailable

Attachment D
FDIC Final Rules, 1999-2009

2009 Final

FR Date	Citation	Effective Date	Description
07/01/09	Procedures To Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under §312 of the Fair and Accurate Credit Transactions Act; Guidelines for Furnishers of Information to Consumer Reporting Agencies; 12 CFR Part 334	07/01/10	In an interagency rulemaking, the FDIC amended its regulations identifying the circumstances under which furnishers of information to Consumer Reporting Agencies (CRAs) must reinvestigate disputes about the accuracy of information in a consumer report based on a consumer's direct request. The FDIC and agencies also established guidelines for use by furnishers of information to CRAs regarding the accuracy and integrity of information reported to CRAs about consumers.

2008 Final

FR Date	Citation	Effective Date	Description
09/25/08	Financial Education Programs that Include the Provision of Bank Products and Services. 12 CFR Part 303	09/25/08	The FDIC amended its regulations to permit state nonmember banks to participate or assist in certain financial education programs conducted on school premises where, in connection with the program, deposits are received, checks are paid, or money is lent, without the need to submit a branch application to, and receive prior approval from, the FDIC subject to certain conditions.
12/22/08	Community Reinvestment Act Regulations. 12 CFR Part 345	01/01/09	The FDIC and other agencies amended Community Reinvestment Act (CRA) regulations to implement the annual adjustment to the asset-size threshold used to define the following categories: "small bank" or "small savings association" and "intermediate small bank" or "intermediate small savings association." The adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index.

2007 Final

FR Date	Citation	Effective Date	Description
11/07/07	Fair Credit Reporting Affiliate Marketing Regulations; §214 of the Fair and Accurate Credit Transactions Act of 2003, which amends the Fair Credit Reporting Act; 12 CFR Part 334.	01/01/08; mandatory compliance 10/01/08	In an interagency rulemaking, the FDIC amended its regulations to implement affiliate marketing provisions. The final rules generally prohibit a person from using information received from an affiliate to make a solicitation for marketing purposes to a consumer, unless the consumer is given notice and a reasonable opportunity and a reasonable and simple method to opt out of the making of such solicitations.
11/09/07	Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003 (§114 and §315 of the FACT Act); 12 CFR Parts 334 and 364	01/01/08	In an interagency rulemaking, the FDIC amended its regulations to require each financial institution or creditor to develop and implement a written Identity Theft Prevention Program to detect, prevent, and mitigate identity theft in connection with new or existing accounts. Guidelines were issued to assist financial institutions and creditors in the formulation and maintenance of a Program. The final rules also

			provide requirements and guidance implementing practices for users of consumer report information in determining consumer address changes and address discrepancies.

2005 Final

FR Date	Citation	Effective Date	Description
03/28/05	Community Reinvestment Act Regulations. 12 CFR Part 345	3/28/05	The FDIC and other agencies adopted a joint final rule conforming Community Reinvestment Act (CRA) regulations to standards for Metropolitan Statistical Areas published by the U.S. Office of Management and Budget; census tracts designated by the U.S. Census Bureau; and the Board's Regulation C, which implements the Home Mortgage Disclosure Act (HMDA). This joint final rule does not make substantive changes to the requirements of the CRA regulations. This final rule is identical to the interim final rule published in the Federal Register on July 8, 2004.
03/29/05	Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice. 12 CFR Part 364, app. B	N/A	The FDIC and other agencies issued jointly an interpretation of the Gramm-Leach-Bliley Act and Interagency Guidelines Establishing Information Security Standards (Security Guidelines). The final Guidance describes the appropriate elements of a financial institution's response program to address unauthorized access to or use of customer information that could result in substantial harm or inconvenience to a customer.
06/10/05	Fair Credit Reporting Medical Information Regulations implementing §411 of the FACT Act (interim final rules and request for comment). 12 CFR Part 334.	3/7/06	The FDIC and other agencies issued jointly interim rules regarding the general prohibition on creditors obtaining or using medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit. The rules create exceptions consistent with the Congressional intent to restrict the use of medical information for inappropriate purposes. The interim final rules also create limited exceptions to permit affiliates to share medical information with each other without becoming consumer reporting agencies.
10/14/05	Real Estate Appraisal Exceptions in Major Disaster Areas. 12 CFR Part 323.	10/14/05	The FDIC and other agencies jointly issued orders granting 3-year exceptions from agency appraisal requirements for certain real estate transactions, including making loans, to aid in reconstruction and rehabilitation areas affected by Hurricanes Katrina and Rita. The exceptions are authorized under the Depository Institutions Disaster Relief Act of 1992.

2004 Final

FR Date	Citation	Effective Date	Description
12/28/04	Proper Disposal of Consumer Information Under the Fair and Accurate Credit Transactions Act of 2003 (§216). 12 CFR Parts 334 & 364.	07/01/05	The FDIC and other agencies amended jointly the "Interagency Guidelines Establishing Standards for Safeguarding Customer Information" to require

			financial institutions to have practices for disposal of consumer information derived from consumer reports to address the risks associated with identity theft.

2001 Final

FR Date	Citation	Effective Date	Description
02/01/01	Interagency Guidelines Establishing Standards for Safeguarding Customer Information and Rescission of Year 2000 Standards for Safety and Soundness. 12 CFR Parts 308 and 364	07/01/01 Applicability date	The FDIC and other agencies issued jointly final rules establishing standards for safeguarding customer information implementing provisions of the Gramm-Leach-Bliley Act. The standards require financial institutions to insure the security and confidentiality of customer records and information and to protect against anticipated threats and unauthorized access to such information that could result in substantial harm or inconvenience to a customer. The rulemaking also rescinded, effective March 5, 2001, Year 2000 standards for safety and soundness that were no longer necessary.

2000 Final

FR Date	Citation	Effective Date	Description
06/01/00	Privacy of Consumer Financial Information. 12 CFR Part 332	11/13/00 Compliance optional until 7/1/01.	The FDIC and other agencies issued jointly final rules implementing provisions of the Gramm-Leach-Bliley Act requiring notifications and establishing restrictions regarding disclosure of nonpublic personal information of a consumer by a depository institution.
12/04/00	Consumer Protections for Depository Institution Sales of Insurance. 12 CFR Part 343	04/01/01 (changed to 10/01/01 in March 2001)	The FDIC and other agencies issued jointly final rules implementing provisions of the Federal Deposit Insurance Act (added by the Gramm-Leach-Bliley Act) to regulate retail sales practices, solicitations, advertising, and offers of insurance products by depository institutions or by persons at their offices or on their behalf.

Attachment E
New/Revised Examination Procedures
Memoranda to Regional Directors (RD Memos)

FDIC consumer compliance examiners review financial institution adherence to a wide range of laws and regulations designed to protect consumers from financial harm. Examiners use a flexible process that is designed to focus their review on the areas of bank operations that are at greatest risk of harming consumers or violating the law. That process is described in the FDIC Compliance Examination Manual. New and revised examination procedures are typically distributed to FDIC examiners through Memoranda to Regional Directors (RD Memos).

The procedures and policies that examiners follow to ensure institution compliance change periodically in response to emerging issues. Notable activities by the FDIC during the past ten years include:

UDAP Examinations: The FDIC assesses substantial penalties and requires consumer reimbursement where unfair or deceptive acts or practices (UDAP) are identified that relate to credit cards, overdraft protection programs, ATM usage of debit cards, rewards accounts, and other lending practices. For example, in late December 2008, the FDIC and the Federal Trade Commission won a major settlement against CompuCredit for misleading subprime credit card users. As a result, the company will correct its practices and provide $114 million in cash and credits to consumers who were improperly assessed fees as a result of inadequate and misleading disclosures. The FDIC also pursued enforcement actions against three banks that used this same firm's services. The banks have settled with the FDIC, are correcting their practices and substantially improving their compliance management systems and their oversight of third-party affiliates. In addition, the FDIC assessed civil money penalties of totaling in excess of $5 million..

UDAP training: In 2001 the FDIC gave presentations about predatory lending and how the FDIC was addressing it to examiners in the Advanced Compliance Examination School (ACES). Beginning in February 2003 the FDIC began providing training to compliance examiners through a module in the Commissioned Compliance Examiner Workshop, which all compliance examiners attended. The FDIC also made presentations at regional training conferences, many in conjunction with risk management discussions of subprime lending. The FDIC now has a module in ACES on UDAP, incorporating lessons learned from examination findings and corrective actions.

Mortgages: Risk Analysis Center Mortgage Credit Trends Project - Residential Mortgage Review Program. This FDIC review project provided the basis for our position in the interagency discussion resulting first in the non-traditional mortgage guidance and then the subprime guidance. (See RD Memo 05-041, 10/14/05.)

Once the interagency guidance was issued, the FDIC provided supplemental guidance to our examiners in: RD Memo 06-031, 6314 Interagency Guidance on Nontraditional

Mortgage Product Risks (10/04/06). The interagency guidance referenced earlier guidance on subprime lending that includes a statement about predatory lending:

In January 2007, the FDIC issued the Supervisory Policy on Predatory Lending (RD Memo 07-001, 01/23/07) as both a financial institution letter (FIL) and an RD Memo. The RD Memo includes a list of resources that were provided separately on the FDIC's public website. The resources provide insight on the history of how the FDIC has addressed these issues.

Other: There are numerous other examination procedures that have been added or revised over the last ten years. A list of these follows and the complete procedures and information can be found on the enclosed disk.

- **99-007 6436 Guidance for Assessing Compliance with Disclosure of Hazard Insurance Premiums Under the Real Estate Settlement Procedures Act (RESPA) (07/20/1999)**
- **99-010 6430.12 Joint Statement of Policy on the Administrative Enforcement of the Truth in Lending (TIL) Act (09/02/1999)**
- **99-011 6487 Questions and Answers Regarding the Homeowners Protection Act of 1998 (10/08/1999)**
- **00-001 6610.3 Revisions to the Compliance and CRA Examination Frequency Schedule (9/19/2000)**
- **00-002 6436.2 Real Estate Settlement Procedures Act (RESPA): HUD Clarification (03/21/2000)**
- **00-004 6420.1 Procedures for Sharing Consumer Complaint Information Involving Safety and Soundness Issues (03/24/2000)**
- **00-008 6487.1 Interagency Examination Procedures for the Homeowners Protection Act of 1998 (05/12/2000)**
- **01-005 Insurance and Nondeposit Investment Products: Transfer of Supervisory Responsibilities from DOS to DCA (9/6/2001)**
- **01-012 6422 Distribution of DCA's Complaint and Inquiry Manual (02/01/2001)**
- **02-001 6530.1 Repeal of TISA Civil Liability and Impact on General Enforcement Authority (02/22/02)**
- **03-005 6300 Subprime Lending Update on CD-ROM (2/25/03)**
- **03-008 6400 Revised Discrimination Complaint Investigation Procedures (2/25/03)**
- **03-024 6300 Guidelines for Payday Lending (7/2/03)**
- **03-047 6400 Interagency Examination Procedures for Homeownership Counseling Notification (10/16/03)**
- **04-016 6400 Revised FFIEC Examination Procedures for RESPA Servicing Rights Notice (5/3/04)**
- **04-031 6400 Compliance Examination Procedures in Multi-Bank Holding Company Environments (6/30/04)**
- **05-006 6400 Considering the New Home Mortgage Disclosure Act (HMDA) Pricing Information when Conducting Fair Lending Examinations of Institutions Subject to HMDA (03/02/05)**

- **05-013 6400 Examiner Guidance Joint Guidance for Overdraft Protection Programs (04/18/05)**
- **05-015 6100 FDIC's New Deposit Insurance Coverage Products (04/18/05)**
- **05-029 6486 Revised Guidance About Civil Money Penalties for Flood Insurance Violations (07/29/05)**
- **05-035 6400 Revised Compliance Examination Procedures (08/18/05)**
- **05-041 6300 Risk Analysis Center Mortgage Credit Trends Project - Residential Mortgage Review Program (10/14/05)**
- **06-007 6400 Revised Compliance Examination Documents (03/20/06)**
- **06-029 6400 Procedures for Handling Consumer Compliance-Related Investigations of FDIC-Supervised Banks by Local, State, or Federal Authorities (09/20/06)**
- **06-030 6314 Addendum to Credit Risk Management Guidance for Home Equity Lending (10/04/06)**
- **06-031 6314 Interagency Guidance on Nontraditional Mortgage Product Risks (10/04/06)**
- **06-033 6400 Response to Requests from Federal Home Loan Banks for FDIC Examination Information About Predatory Lending (10/04/06)**
- **06-034 6400 Compliance Examination Handbook (11/15/06)**
- **07-001 6400 Supervisory Policy on Predatory Lending (01/23/07)**
- **07-002 6400 Advertisement of Membership – Final Rule Amending FDIC Part 328 (02/02/07)**
- **07-008 6314 Supervisory Guidance for Nontraditional Mortgage Products (03/14/07)**
- **07-010 6400 Deceptive Practices: Customer Access to Overdraft Protection (03/27/07)**
- **07-011 2600 Updated Examiner Continuing Education Program (ECEP) (04/20/07)**
- **07-019 6314 Statement on Subprime Mortgage Lending (06/28/07)**

11/21/07	6400	Regulation DD - Truth in Savings Interagency Examination Procedures	11/20/07	07-031
12/27/07	6410	Joint Examination Procedures for the Telephone Consumer Protection Act of 1991 (TCPA) and Junk Fax Prevention Act	12/27/07	07-034
03/18/08	6310	Applicability of Guidance to Modified or Refinanced Loans	03/17/08	08-003
06/06/08	6300	Guidance for Managing Third-Party Risk	06/06/08	08-020
09/12/08	6600	Identity Theft Red Flags, Address Discrepancies, and Change of Address Examination Procedures	09/12/08	08-029
09/17/08	6400	Regulations M and Z – Amended Interagency Examination Procedures	09/16/08	08-030
09/17/08	6400	Regulation DD – Truth in Savings Interagency Examination Procedures	09/16/08	08-031
09/17/08	6400	Fair Credit Reporting Act – Affiliate Marketing Opt Out Examination Procedures	09/17/08	08-032
09/19/08	6400	Fair Lending Reviews of Institutions Designated as "Outliers" Through the HMDA Data Screening Process	09/19/08	08-033
10/08/08	6400	Regulation E - Amended Interagency Examination Procedures	10/06/08	08-035
10/31/08	6400	Consumer Deposit Account Disclosures	10/31/08	08-038

12/05/08	6400	Regulation B - Amended Technical Compliance Examination Procedures	12/05/08	08-040
01/13/09	6400	Talent Amendment Examination Procedures: Limitations on Terms of Consumer Credit Extended to Service Members and Dependents	01/09/09	09-002
04/17/09	6400	Servicemembers Civil Relief Act of 2003 (SCRA) Interagency Examination Procedures	04/16/09	09-015
07/07/09	6400	Interest on Deposits (Part 329) – Examination Procedures	07/07/09	09-025
07/24/09	6410	Implementation of the Gramm-Leach-Bliley Act of 1999 (GLBA) "Broker" Exceptions and Regulation R	07/23/09	09-030
07/31/09	6400	Rules and Guidelines to Promote the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies – Interim Guidance	07/31/09	09-033
08/27/09	6200	Deposit Insurance Application Processing and De Novo Institution Supervision and Examination Guidance	08/26/09	09-035
09/18/09	6430	Revised FFIEC Interagency Fair Lending Examination Procedures	09/18/09	09-039
09/14/09	6400	Compliance Examination Manual Update	09/11/09	09-038

Attachment F
Formal Guidance and Policies
(Financial Institution Letters)

This list provides the formal guidance related to consumer protection issues that the FDIC has provided to FDIC-supervised institutions. These Financial Institution Letters (FILs) are available on our public website.

2009

- FIL-54-2009 FDIC Launches Foreclosure Prevention Initiative on Foreclosure Rescue Scams
- (Revised) FIL-44-2009 Regulation Z - Open-End Consumer Credit Changes: Notice of Immediate and 90-Day Changes
- FIL-32-2009 Third-Party Referrals Promising Above-Market Rates on Certificates of Deposit
- FIL-30-2009 Identity Theft Red Flags, Address Discrepancies, And Change of Address Regulations: Frequently Asked Questions
- FIL-26-2009 Regulation Z (Truth in Lending): Early Disclosure Requirements
- FIL-6-2009 Community Reinvestment Act: Issuance of Final Interagency Questions and Answers on CRA; Request for Comment on Two Proposed Revised and One New Question and Answer

2008

- FIL-134-2008 Regulation Z (Truth in Lending) and Regulation C (Home Mortgage Disclosure) Amendments to the Regulations: Amendments to the Regulations
- FIL-128-2008 Interagency Statement on Meeting the Needs of Creditworthy Borrowers
- FIL-105-2008 Identity Theft Red Flags, Address Discrepancies, and Change of Address Regulations: Examination Procedures
- FIL-88-2008 Best Practices from the FDIC'S Forum on Mortgage Lending for Low- and Moderate-Income Households
- FIL-58-2008 Home Equity Lines of Credit: Consumer Protection and Risk Management Considerations When Changing Credit Limits and Suggested Best Practices
- FIL-40-2008 Subprime Mortgage Products: Interagency Illustrations of Consumer Information for Hybrid Adjustable Rate Mortgage Products
- FIL-17-2008 FDIC Statement on Reporting of Securitized Subprime Adjustable Rate Residential Mortgages

2007

- FIL-115-2007 Fair And Accurate Credit Transactions Act: Proposed Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies
- FIL-100-2007 Identity Theft Red Flags: Interagency Final Regulation and Guidelines
- FIL-98-2007 Fair and Accurate Credit Transactions Act: Final Interagency Regulations on Affiliate Marketing
- FIL-83-2007 Consumer Protection: Service Members

- FIL-77-2007 Servicing for Mortgage Loans: Supplemental Information for Loss Mitigation Strategies
- FIL-76-2007 Servicing for Mortgage Loans: Loss Mitigation Strategies
- FIL-63-2007 Community Reinvestment Act: Proposed Interagency Questions and Answers
- FIL-62-2007 Subprime Mortgage Lending: Interagency Statement Addresses Safety and Soundness and Consumer Protection Standards
- FIL-51-2007 Nontraditional Mortgage Products: Interagency Final Illustrations of Consumer Information for Nontraditional Mortgage Products
- FIL-50-2007 Affordable Small-Dollar Loan Products: Final Guidelines
- FIL-46-2007 Financial Education: Survey Shows FDIC's *Money Smart* Program Improves Consumers' Money-Management Practices and Financial Confidence
- FIL-35-2007 Working With Residential Borrowers: FDIC Encourages Institutions to Consider Workout Arrangements for Borrowers Unable to Make Mortgage Payments
- FIL-34-2007 Privacy of Consumer Financial Information: Proposed Model Privacy Form
- FIL-32-2007 Identity Theft: FDIC's Supervisory Policy on Identity Theft
- FIL-15-2007 Financial Education: New FDIC Guide Features Simple Strategies for Managing Money
- FIL-6-2007 Predatory Lending: FDIC's Supervisory Policy on Predatory Lending
- FIL-5-2007 Volunteer Income Tax Assistance (VITA): A Reminder and Update About Potential CRA and Business Opportunities
- FIL-4-2007 Mortgage Loan Fraud: Industry Assessment Based on Suspicious Activity Report Analysis
- FIL-3-2007 Complex Structured Finance Activities: Interagency Statement on Sound Practices for Activities With Elevated Risk

2006

- FIL-90-2006 Nontraditional Mortgage Products: Interagency Proposed Illustrations of Consumer Information for Nontraditional Mortgage Products
- FIL-89-2006 Interagency Guidance: Guidance on Nontraditional Mortgage Product Risks, and Addendum to Credit Risk Management Guidance for Home Equity Lending
- FIL-77-2006 Authentication in an Internet Banking Environment: Frequently Asked Questions
- FIL-52-2006 Foreign-Based Third-Party Service Providers: Guidance on Managing Risks in These Outsourcing Relationships
- FIL-33-2006 Community Reinvestment Act: Interagency Examination Procedures
- FIL-31-2006 Fair and Accurate Credit Transactions Act: Procedures for Enhancing the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies
- FIL-23-2006 Community Reinvestment Act: New Interagency Questions and Answers
- FIL-22-2006 Consumer Credit Protection Act and Fair Lending: Prohibition Against Discrimination in Credit Transactions
- FIL-1-2006 Financial Education: FDIC Guides for Senior Citizens and Young Adults

2005

- FIL-79-2005 Community Reinvestment Act: Joint Final Rules
- FIL-66-2005 Spyware: Guidance on Mitigating Risks From Spyware
- FIL-64-2005 "Pharming": Guidance on How Financial Institutions Can Protect Against Pharming Attacks

- FIL-59-2005 Identity Theft: Study Supplement on "Account-Hijacking" Identity Theft

- FIL-27-2005 Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice
- FIL-14-2005 Payday Lending Programs Revised Examination Guidance
- FIL-11-2005 Overdraft Protection Programs Joint Agency Guidance
- FIL-7-2005 Guidelines Requiring the Proper Disposal of Consumer Information

2004

- FIL-132-2004 Study on "Account-Hijacking" Identity Theft and Suggestions for Reducing Online Fraud
- FIL-130-2004 Fair and Accurate Credit Transactions Act Effective Dates
- FIL-116-2004 Final Amendments to the Federal Reserve Board's Regulation CC
- FIL-27-2004 Guidance on Safeguarding Customers Against E-Mail and Internet-Related Fraudulent Schemes
- FIL-26-2004 Unfair or Deceptive Acts or Practices Under Section 5 of the Federal Trade Commission Act
- FIL-6-2004 Spousal Signature Provisions of Regulation B

2003

- FIL-100-2003: Steps to Help Rebuild Areas in California Affected by Major Earthquakes
- FIL-98-2003: Bank Enterprise Awards Application Period for 2003 Qualified Activities Closes February 25, 2004
- FIL-33-2003: Bank Enterprise Awards Are Being Offered to Eligible FDIC-Insured Institutions Making Grants, Investments and Deposits in and Loans to Community Development Financial Institutions

2002

- FIL-73-2002: Centralizing the Consumer Affairs Function
- FIL-57-2002: Unfair or Deceptive Acts or Practices: Applicability of the Federal Trade Commission Act
- FIL-43-2002: Homeownership Counseling
- FIL-9-2002: Spousal Signature Provisions of Regulation B

2001

- FIL-106-2001: Privacy of Consumer Financial Information
- FIL-84-2001: Consumer Protections for Bank Sales of Insurance
- FIL-68-2001: 501(b) Examination Guidance
- FIL-39-2001: Identity Theft And Pretext Calling
- FIL-26-2001: Fair Credit Reporting Act
- FIL-22-2001: Security Standards For Customer Information
- FIL-17-2001: Community Reinvestment Act
- FIL-9-2001: Subprime Lending
- FIL-3-2001: Privacy of Consumer Financial Information

2000

- FIL-84-2000: Consumer Protections for Bank Sales of Insurance
- FIL-45-2000: Real Estate Settlement Procedures Act
- FIL-34-2000: Privacy of Consumer Financial Information
- FIL-5-2000: Consumer Credit Reporting Practices

1999

- FIL-103-99: Real Estate Settlement Procedures Act
- FIL-100-99: Identity Theft
- FIL-94-99: High Loan-to-Value Residential Real Estate Lending
- FIL-21-99: Real Estate Settlement Procedures Act
- FIL-20-99: Guidance on Subprime Lending

Attachment G
Consumer Complaint Program

Mission and Mandate

Through responses to consumer complaints and inquiries, the FDIC's Consumer Affairs Program promotes and ensures compliance with numerous consumer protection laws and regulations including complaints alleging illegal discrimination and those involving unfair and deceptive practices.

Program Organization

- Until 1999, all consumer complaints about FDIC supervised institutions were investigated through FDIC Regional Offices, with oversight by FDIC Headquarters.
- To address the growing volume and complexity of complaints involving credit cards, in 1999 the FDIC established the Kansas City Credit Card Center (CCC) to centralize the analysis and investigation of complaints involving credit card specialty banks. The CCC worked closely with the appropriate regions on supervisory issues raised in complaints.
- In July 2002, the FDIC further centralized the consumer affairs function by expanding the mandate of the CCC and renaming it the Consumer Response Center (CRC). The CRC has responsibility for investigating all complaints involving institutions supervised by the FDIC. The CRC reports to the Associate Director for Consumer Protection in the Washington Office.

- Primary responsibilities of the Washington Office include:
  - Monitoring the operations of the CRC, including: ensuring achievement of established performance measures; reviewing and analyzing consumer complaint investigations; analyzing and evaluating complaint and inquiry performance data in the complaint and inquiry database; and conducting on-site advisory visits of the CRC and regional work sites;
  - Developing Consumer Affairs program policies and procedures;
  - Providing guidance and direction to the CRC and regional staff on discrimination complaint investigations;
  - Conducting data and trends analysis for use in monitoring banking practices;
  - Managing the complaint and inquiry database, including analyzing data integrity;
  - Planning and providing training conferences for Consumer Affairs staff;
  - Conducting outreach events for consumers and bankers, including the preparation of educational materials such as the FDIC Consumer News;
  - Participating in interagency initiatives related to emerging consumer protection issues.

Consumer Response Center

- Primary responsibilities of the CRC include:
  - Investigating all consumer complaints involving FDIC supervised banks (compliance examiners are responsible for conducting the on-site investigations

of fair lending complaints, in consultation with the CRC and under the guidance and direction of the WO Consumer Affairs staff);

- Coordinating with Washington Office and examination staff in the Regional Offices, including the Regional Directors, Deputy Directors (Compliance), and Field Supervisors, as appropriate, on fair lending complaint investigation matters and on supervisory issues raised in complaints;
- Answering written consumer and banker inquiries on consumer protection matters, and referring correspondence to other agencies and divisions as appropriate;
- Responding to telephone calls from consumers and bankers on consumer protection matters;
- Meeting regularly with financial institutions regarding their volume of complaints or significant issues that are raised during the investigation process;
- Analyzing trends in the complaint and inquiry data;
- Planning and conducting outreach activities.

Coordination with the Examination Function

- Each year the CRC receives thousands of written consumer complaints and inquiries. The Pre-Exam Planning Report is provided to examiners prior to the start of a bank examination. This report outlines all complaints that were received against the bank that is being examined, and helps facilitate the integration of consumer complaints and inquiries into the examination process.

Attachment H
Consumer Outreach and Financial Education

The FDIC's Community Affairs Program, created in 1991, actively supports the FDIC's consumer protection mission. The FDIC works closely with financial industry representatives and community-based stakeholders on a broad range of community development initiatives, including initiatives that meet local needs for mainstream financial products and services, support affordable housing, and facilitate financial education. For example, Community Affairs staff assist financial institutions in developing strategies that are responsive to the credit, service and investment needs of their communities by:

- Promoting community development partnerships and access to capital in historically underserved markets;
- Working with financial institutions, national, regional, and local non-profit/community-based organizations, and state and local governments by collaborating on community development and asset-building projects;
- Developing products and presenting training programs on financial education;
- Serving as subject matter experts at industry and community conference and meetings; and
- Providing technical assistance, as necessary, to financial institutions and compliance staff.

The FDIC's community development work is extensive. Two key areas, financial education and economic inclusion, are highlighted below.

Financial Education

One of the best ways to prevent consumers from becoming victims of predatory or deceptive practices is by helping them to become informed and able to understand financial services. Education enables the consumer to carefully evaluate the full spectrum of advertisements and products – including those in the unregulated underground – to avoid making decisions that do not make financial sense.

Financial education is a critical component of consumer protection efforts. Consumers who master financial basics can better make prudent financial decisions and are aware of how to report to law enforcement or regulators potential scams or troublesome practices in the marketplace.

The FDIC's Money Smart program is a comprehensive financial education curriculum designed to help students enhance their money management and wealth building skills by learning the benefits of saving money, effectively managing credit, and securing home ownership. The FDIC's award-winning Money Smart financial education curriculum, launched in 2001, has now reached more than 2.4 million individuals. The curriculum provides information on critical consumer protection-related topics such as predatory lending, elder financial abuse, and identity theft prevention. Money Smart also helps consumers learn the true costs of using alternative financial services.

To help better reach underserved audiences, the curriculum has been translated into seven languages. Also:

- An mp3 (audio) version of Money Smart was released on May 27, 2009. It is compatible for use with virtually all mp3 players so that consumers of all ages can learn to make informed and prudent financial decisions while "on the go." In addition to being a resource that consumers can access independently, educators can use the mp3 version of Money Smart as an innovative way to supplement traditional classroom instruction. The site has had over 172,000 hits and approximately 4,900 sessions (individual visitors).

- The Money Smart for Young Adults curriculum was released in April of 2008 for students in grades 7-12. Showing the demand for youth financial education, more than 45,000 copies for instructors have been ordered and distributed since its launch, and two national and several dozen regional partnerships have been signed specifically to facilitate the use of Money Smart for Young Adults.

The FDIC's Money Smart curriculum is effective. Findings from a longitudinal survey of consumers who have taken the FDIC's Money Smart financial education program show that Money Smart can positively influence how people manage their finances: those who took the Money Smart course were more likely to open deposit accounts, save money, use and adhere to a budget, and have increased confidence in their financial abilities when contacted 6 to 12 months after completing the course.

FDIC's other consumer education initiatives include the FDIC Consumer News (35,000 mail and electronic subscribers and an average of about 28,000 Internet visits monthly), a free quarterly publication that provides a variety of financial tips for consumers of any age. Every edition provides practical guidance on how to become a smarter, safer user of financial services. FDIC Consumer News offers helpful hints, quick tips, and common-sense strategies to protect and stretch hard-earned dollars.

Additionally, FDIC's other consumer resources help consumers avoid foreclosure rescue scams, avoid identity theft, etc. For example, the FDIC's foreclosure prevention initiative includes outreach, a referral service for consumers to find legitimate foreclosure prevention counselors or contact law enforcement to report scams, and an information tool kit of resources for consumers and community stakeholders. FDIC's activities are designed to help consumers avoid foreclosure "rescue" scams and ultimately help prevent avoidable foreclosures.

Underserved

One of the most effective ways to protect consumers is to integrate unbanked and underbanked consumers into the financial mainstream. Consumers who routinely turn to check-cashing services for transactional banking needs and payday lenders or pawn shops for lending needs pay substantially more for basic financial needs than those who use mainstream financial services effectively.

The Alliance for Economic Inclusion (AEI) is the FDIC's national initiative to establish broad-based coalitions of financial institutions, community-based organizations and other partners in several markets across the country to bring unbanked and underserved populations into the financial mainstream. The focus is on expanding basic retail financial services for underserved populations, including savings accounts, affordable remittance products, small-dollar loan programs, targeted financial education programs, alternative delivery channels and other asset-building programs. Nearly 1,000 banks and organizations have joined AEI nationwide, more than 116,895 new bank accounts have been opened for the underserved, and more than 107,000 consumers have been provided financial education.

The FDIC has also provided key support to "Bank On" initiatives to help the underserved find affordable mainstream deposit products in communities across the country. For example, because of FDIC's success in banking the unbanked, FDIC was asked for assistance in helping the State of California develop a statewide "Bank on California" initiative. The initiative has successfully launched programs in five California cities: Fresno, Los Angeles, Sacramento, Oakland, and San Jose.

Attachment I
Reviews, Audits & Assessments

A. FDIC Office of Inspector General

The FDIC's Office of Inspector General (OIG) regularly conducts audits of FDIC programs and operations in an effort to promote economy, efficiency, and effectiveness. FDIC compliance management and staff regularly participate in and provide information in connection with those audits, and respond appropriately if recommendations stem from an OIG inquiry. Some inquiries involve both risk management and consumer protection issues. Compliance inquiries generally fall into two categories: 1) compliance examination and enforcement programs and processes more generally, and 2) subject-specific inquiries, such as fair lending, Community Reinvestment Act, mortgage or consumer privacy regulation.

In some cases, the OIG finds that Compliance programs and operations are adequate, and has no recommendations. In other cases, where recommendations are made, offices that handle consumer protection issues consider or work to implement those recommendations. For example, since the beginning of 2007, we found three OIG audits conducted and reports issued that materially involved consumer protection regulation. In the case of an audit involving Implementation of the FDIC's Supervisory Guidance for Nontraditional Mortgage Products, and an audit regarding the Division of Supervision and Consumer Protection's (DSC) Examination Assessment of Financial Institutions' Compliance Management Systems, the OIG found satisfactory implementation and examination assessment and had no recommendations.

With regard to the third consumer protection audit topic in the last few years, FDIC's Implementation of the 2005 Amendments to the Community Reinvestment Act Regulations, the resulting OIG report recommended that the DSC Director work to enhance and develop examiner guidance and guidelines in certain areas, and develop a strategy to better measure CRA activities to assist in determining whether regulatory amendments achieved desired goals. In response to the recommendations, DSC management agreed to implement a recommendation to enhance internal examiner guidance, and to raise other recommendations with the other federal banking agencies with whom we regularly coordinate on such issues, for interagency discussion and consideration. The OIG then found management's planned actions responsive to their recommendations.

A complete list of and links to FDIC and OIG audit reports can be found at: http://www.fdicoig.gov/reports.shtml.

B. U.S. Government Accountability Office

The General Accounting Office (GAO) is the investigative arm of Congress, and its purpose to support the Congress in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the benefit of the American people. It further supports congressional oversight by performing policy analyses and outlining options for congressional consideration; as well as issuing legal decisions and opinions, such as reports on agency rules.

The GAO has issued a number of reports involving consumer protection matters, many that focus on existing rules, such as regulations issued by the Federal Reserve Board, as well as the effectiveness of agency action in responding to concerns such as predatory lending, adequacy of disclosures for loan and deposit products, fees for various bank products and services, and products that could have a detrimental effect on financially unsophisticated or vulnerable segments of the population, like credit cards marketed to college students and reversed mortgages targeted to the elderly.

The GAO usually looks at consumer protection enforcement issues across the banking agencies. The FDIC routinely provides significant amounts of information and assistance to the GAO as part of its investigation of various topics, and takes appropriate action in response to GAO's recommendations. For example, the agency increased the scrutiny of prime credit card issuers following the GAO's report on credit cards in 2006, consistent with the agencies efforts to address unfair or deceptive acts and practices among certain subprime credit card issuers.

The GAO makes its reports available at: www.gao.gov. GAO reports related to consumer protection activities at the FDIC are listed below.

Bank Fees/Truth in Savings

Bank Fees: Federal Banking Regulators Could Better Ensure That Consumers Have Required Disclosure Documents Prior to Opening Checking or *Savings* Accounts
GAO-08-281, January 31, 2008

Truth in Lending

Federal Reserve System: *Truth* in *Lending*
GAO-09-544R, April 2, 2009

Board of Governors of the Federal Reserve System: *Truth* in *Lending*
GAO-09-945R, August 11, 2009

Mortgages

Department of Housing and Urban Development: Real Estate Settlement Procedures Act (RESPA): Rule To Simplify and Improve the Process of Obtaining *Mortgages* and Reduce Consumer Settlement Costs
GAO-09-209R, December 1, 2008

Reverse *Mortgages*: Product Complexity and Consumer Protection Issues Underscore Need for Improved Controls over Counseling for Borrowers
GAO-09-606, June 29, 2009

Reverse *Mortgages*: Product Complexity and Consumer Protection Issues Underscore Need for Improved Controls over Counseling for Borrowers
GAO-09-812T, June 29, 2009

Characteristics and Performance of Nonprime *Mortgages*
GAO-09-848R, July 28, 2009

Home *Mortgages*: Recent Performance of Nonprime Loans Highlights the Potential for Additional Foreclosures
GAO-09-922T, July 28, 2009

Home Mortgages: Provisions in a 2007 Mortgage Reform Bill (H.R. 3915) Would Strengthen Borrower Protections, but Views on Their Long-term Impact Differ
GAO-09-741, July 31, 2009

Credit and Debit Cards

Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers
GAO-06-929, September 12, 2006

Consumer Finance: College Students and *Credit Cards*
GAO-01-773, June 20, 2001

Credit Card Minimum Payment Disclosures Cardholder Interview Results
GAO-06-611SP, April 21, 2006

Credit and Debit Cards: *Federal* Entities Are Taking Actions to Limit Their Interchange Fees, but Additional Revenue Collection Cost Savings May Exist
GAO-08-558, May 15, 2008

Predatory Lending

Consumer Protection: *Federal* and State *Agencies* Face Challenges in Combating Predatory Lending
GAO-04-280, January 30, 2004

Payday and Refund Anticipation Loans

Military Personnel: DOD's Tools for Curbing the Use and Effects of Predatory *Lending* Not Fully Utilized
GAO-05-349, April 26, 2005

Refund Anticipation Loans
GAO-08-800R, June 5, 2008

Fair Lending

***Fair Lending*:** Federal Oversight and Enforcement Improved but Some Challenges Remain
GGD-96-145, August 13, 1996

Large Bank Mergers: *Fair Lending* Review Could be Enhanced With Better Coordination
GGD-00-16, November 3, 1999

***Fair Lending*:** Race and Gender Data Are Limited for Nonmortgage *Lending*
GAO-08-1023T, July 17, 2008

***Fair Lending*:** Data Limitations and the Fragmented U.S. Financial Regulatory Structure Challenge Federal Oversight and Enforcement Efforts
GAO-09-704, July 15, 2009

Electronic Banking

Electronic Banking: Enhancing Federal Oversight of Internet Banking Activities
T-GGD-99-152, August 3, 1999

Automated Teller Machines: Issues Related to Real-time Fee Disclosure
GGD/AIMD-00-224, July 11, 2000

Miscellaneous

Federal Deposit Insurance Act: FTC Best Among Candidates to Enforce Consumer Protection Provisions
GAO-03-971, August 20, 2003

International Remittances: Information on Products, Costs, and Consumer Disclosures
GAO-06-204, November 17, 2005

Personal Information: Data Breaches Are Frequent, but Evidence of Resulting Identity Theft Is Limited; However, the Full Extent Is Unknown
GAO-07-737, June 4, 2007

Consumer Credit: Limited Information Exists on Extent of Credit Report Errors and Their Implications for Consumers
GAO-03-1036T, July 31, 2003

Internet Gambling: An Overview of the Issues
GAO-03-89, December 2, 2002

Risk-Focused Bank Examinations: Regulators of Large *Banking* Organizations Face Challenges
GGD-00-48, January 24, 2000

OCC Consumer Assistance: Process Is Similar to That of Other Regulators but Could Be Improved by Enhanced Outreach
GAO-06-293, February 23, 2006

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 22, 2009

Honorable Mitchell McConnell
United States Senate
Washington, D.C. 20510

Dear Senator McConnell:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

As you are aware, recent and anticipated failures of FDIC-insured institutions resulting from deterioration in banking and economic conditions have significantly increased losses to the Deposit Insurance Fund (DIF). The reserve ratio of the DIF declined from 1.22 percent as of December 31, 2007, to 0.40 percent (preliminary) as of December 31, 2008.

Because the fund reserve ratio had fallen below 1.15 percent as of June 30, 2008, and was expected to remain below 1.15 percent, applicable law required the FDIC to establish and implement a restoration plan that would restore the reserve ratio to at least 1.15 percent within five years, absent extraordinary circumstances. On October 7, 2008, the FDIC established a restoration plan for the DIF that called for the FDIC to set assessment rates such that the reserve ratio would return to 1.15 percent within five years and proposed assessment rates in accordance with the plan.

In February 2009, the FDIC Board of Directors made several very difficult decisions intended to ensure that our nation's deposit insurance system remains sound. First, in recognition of the severe stress facing banks and the financial system, the FDIC extended the period of the restoration plan from five to seven years. Second, the FDIC adopted assessment rates effective beginning the second quarter of 2009 that are only slightly higher than those proposed in October 2008, despite a large increase in projected losses. Finally, the FDIC adopted an interim rule that sets a special assessment at 20 basis points to be collected on September 30, 2009.

The FDIC realizes that these assessments are a significant expense, particularly during a financial crisis and recession where bank earnings are under pressure. Banks face tremendous challenges right now even without having to pay higher assessments. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy.

However, because of rapidly deteriorating economic conditions, a large number of projected bank failures are likely to occur this year and next. These assessments are essential to maintaining the industry funded reserves of the DIF.

Recent experience has shown that bank failures are difficult to predict and the possibility of additional, unforeseen failures is significant. The size of the special assessment reflects the FDIC's need to maintain adequate resources to cover potential unforeseen losses. The FDIC has a thin margin for error in this regard because its $30 billion borrowing authority from Treasury for losses from bank failures has not increased since 1991, although industry assets have more than tripled.

As you know, the FDIC has requested that Congress increase our authority to borrow from Treasury to $100 billion. In addition, the FDIC is seeking a temporary increase in borrowing authority above $100 billion (but not to exceed $500 billion) based on a process that would require the concurrence of the FDIC, the Federal Reserve Board, and the Treasury Department, in consultation with the President. This temporary authority would expire on December 31, 2010.

An increase in the FDIC's borrowing authority of this magnitude would give the FDIC a sufficient margin for unforeseen bank failures and allow it to reduce the size of the special assessment while still assessing institutions at a level that maintains the DIF through industry funding. Although the industry would still pay assessments to cover projected losses and rebuild the fund over time, a lower special assessment would mitigate the pro-cyclical effects.

The FDIC continues to consider other ways to alleviate the pressure on the DIF that are consistent with our statutory authority. We recently imposed a surcharge on guaranteed bank debt under the Temporary Liquidity Guarantee Program and will use the money raised through this surcharge to reduce the proposed special assessment. In addition, a portion of the fee for the recently announced Legacy Loan Program also will be allocated to the DIF. Finally, the FDIC will carefully review comments regarding using an assessment base other than deposits for the special assessment.

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We have included your letter in the public comment file for consideration in the development of the final rule on the emergency special assessment. If you have further questions, 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

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 22, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable Geoff Davis
House of Representatives
Washington, D.C. 20515

Dear Congressman Davis:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 22, 2009

Honorable Ben Chandler
House of Representatives
Washington, D.C. 20515

Dear Congressman Chandler:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 22, 2009

Honorable Brett Guthrie
House of Representatives
Washington, D.C. 20515

Dear Congressman Guthrie:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 22, 2009

Honorable Harold Rogers
House of Representatives
Washington, D.C. 20515

Dear Congressman Rogers:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 22, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable Ed Whitfield
House of Representatives
Washington, D.C. 20515

Dear Congressman Whitfield:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 22, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable John Yarmuth
House of Representatives
Washington, D.C. 20515

Dear Congressman Yarmuth:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

[redacted]

Sheila C. Bair

LA09-523

Congress of the United States
Washington, DC 20515

OFFICE OF LEGISLAT... AFFAIRS

March 30, 2009

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

Dear Chairman Bair:

We are writing to express our concerns about current proposals to replenish the FDIC insurance fund and the potential repercussions they may have on Kentucky's banking industry.

We recognize the importance of ensuring the FDIC insurance fund is fully prepared to address any future issues. Consumers have come to trust and expect the government's protection of their hard earned savings and we appreciate your efforts to continually earn that trust.

The banking demographic in Kentucky is fairly unique in that all of the banks headquartered in the Commonwealth are considered "community banks." Kentucky has only two State chartered banks with deposits in excess of $2 billion, with the vast majority of banks having less than $200 million in deposits. These banks are safe and strong because they have conducted banking business in a consistently conservative manner despite the economic ups and downs over the years.

It is estimated that the new emergency 20 basis point special assessment fee will cost Kentucky chartered banks approximately $80 million. The number increases to $132 million when including all banks in Kentucky.

When regular quarterly assessments are already at historic highs, adding an additional fee may wipe out the entire earnings for many community banks. This will deplete banks' liquidity at a time when it is needed most so that they can help Kentucky's communities weather the economic downturn. Instead, excessive assessments will put many community banks in a position where they have limited or no ability to invest in bonds or community projects; make charitable contributions to local organizations; or offer loan modifications to Kentuckians.

A number of alternatives have been suggested, including 1) Using TARP funds to be repaid through bank premiums over time; 2) Extending payment of assessments over a longer period of time; 3) The FDIC utilizing their $30 Billion line of credit; and 4) mandating risk weighting on all assessments.

We respectfully urge you to consider a variety of alternatives to maintain the necessary stability of the FDIC insurance fund while protecting the community bank sector when its strength is needed more than ever in our communities.

Sincerely,

[redacted]
MITCH McCONNELL
UNITED STATES SENATOR

[redacted]
JIM BUNNING
UNITED STATES SENATOR

[redacted]
BEN CHANDLER
MEMBER OF CONGRESS

[redacted]
GEOFF DAVIS
MEMBER OF CONGRESS

[redacted]
BRETT GUTHRIE
MEMBER OF CONGRESS

[redacted]
HAROLD ROGERS
MEMBER OF CONGRESS

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ED WHITFIELD
MEMBER OF CONGRESS

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JOHN YARMUTH
MEMBER OF CONGRESS

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 22, 2009

Honorable Ruben Hinojosa
House of Representatives
Washington, D.C. 20515

Dear Congressman Hinojosa:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

As you are aware, recent and anticipated failures of FDIC-insured institutions resulting from deterioration in banking and economic conditions have significantly increased losses to the Deposit Insurance Fund (DIF). The reserve ratio of the DIF declined from 1.22 percent as of December 31, 2007, to 0.40 percent (preliminary) as of December 31, 2008.

Because the fund reserve ratio had fallen below 1.15 percent as of June 30, 2008, and was expected to remain below 1.15 percent, applicable law required the FDIC to establish and implement a restoration plan that would restore the reserve ratio to at least 1.15 percent within five years, absent extraordinary circumstances. On October 7, 2008, the FDIC established a restoration plan for the DIF that called for the FDIC to set assessment rates such that the reserve ratio would return to 1.15 percent within five years and proposed assessment rates in accordance with the plan.

In February 2009, the FDIC Board of Directors made several very difficult decisions intended to ensure that our nation's deposit insurance system remains sound. First, in recognition of the severe stress facing banks and the financial system, the FDIC extended the period of the restoration plan from five to seven years. Second, the FDIC adopted assessment rates effective beginning the second quarter of 2009 that are only slightly higher than those proposed in October 2008, despite a large increase in projected losses. Finally, the FDIC adopted an interim rule that sets a special assessment at 20 basis points to be collected on September 30, 2009.

The FDIC realizes that these assessments are a significant expense, particularly during a financial crisis and recession where bank earnings are under pressure. Banks face tremendous challenges right now even without having to pay higher assessments. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy.

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We have included your letter in the public comment file for consideration in the development of the final rule on the emergency special assessment. If you have further questions, 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

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 22, 2009

Honorable Eddie Bernice Johnson
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Johnson:

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Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 22, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable Chet Edwards
House of Representatives
Washington, D.C. 20515

Dear Congressman Edwards:

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

April 22, 2009

SHEILA C. BAIR
CHAIRMAN

Honorable Solomon Ortiz
House of Representatives
Washington, D.C. 20515

Dear Congressman Ortiz:

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Sincerely,

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Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 22, 2009

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

Dear Congressman Cuellar:

Thank you for your letter regarding the emergency special assessment recently approved by the Federal Deposit Insurance Corporation's Board of Directors. As you know, the special assessment was adopted as an interim rule with a request for public comments. The comment period closed April 2, 2009. The Board of Directors will consider all the comments received before adopting a final rule.

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Sincerely,

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Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 22, 2009

Honorable Gene Green
House of Representatives
Washington, D.C. 20515

Dear Congressman Green:

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FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

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CHAIRMAN

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Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 22, 2009

Honorable Sheila Jackson Lee
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Jackson Lee:

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In February 2009, the FDIC Board of Directors made several very difficult decisions intended to ensure that our nation's deposit insurance system remains sound. First, in recognition of the severe stress facing banks and the financial system, the FDIC extended the period of the restoration plan from five to seven years. Second, the FDIC adopted assessment rates effective beginning the second quarter of 2009 that are only slightly higher than those proposed in October 2008, despite a large increase in projected losses. Finally, the FDIC adopted an interim rule that sets a special assessment at 20 basis points to be collected on September 30, 2009.

The FDIC realizes that these assessments are a significant expense, particularly during a financial crisis and recession where bank earnings are under pressure. Banks face tremendous challenges right now even without having to pay higher assessments. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy.

However, because of rapidly deteriorating economic conditions, a large number of projected bank failures are likely to occur this year and next. These assessments are essential to maintaining the industry funded reserves of the DIF.

Recent experience has shown that bank failures are difficult to predict and the possibility of additional, unforeseen failures is significant. The size of the special assessment reflects the FDIC's need to maintain adequate resources to cover potential unforeseen losses. The FDIC has a thin margin for error in this regard because its $30 billion borrowing authority from Treasury for losses from bank failures has not increased since 1991, although industry assets have more than tripled.

As you know, the FDIC has requested that Congress increase our authority to borrow from Treasury to $100 billion. In addition, the FDIC is seeking a temporary increase in borrowing authority above $100 billion (but not to exceed $500 billion) based on a process that would require the concurrence of the FDIC, the Federal Reserve Board, and the Treasury Department, in consultation with the President. This temporary authority would expire on December 31, 2010.

An increase in the FDIC's borrowing authority of this magnitude would give the FDIC a sufficient margin for unforeseen bank failures and allow it to reduce the size of the special assessment while still assessing institutions at a level that maintains the DIF through industry funding. Although the industry would still pay assessments to cover projected losses and rebuild the fund over time, a lower special assessment would mitigate the pro-cyclical effects.

The FDIC continues to consider other ways to alleviate the pressure on the DIF that are consistent with our statutory authority. We recently imposed a surcharge on guaranteed bank debt under the Temporary Liquidity Guarantee Program and will use the money raised through this surcharge to reduce the proposed special assessment. In addition, a portion of the fee for the recently announced Legacy Loan Program also will be allocated to the DIF. Finally, the FDIC will carefully review comments regarding using an assessment base other than deposits for the special assessment.

Deposit Insurance provides valuable benefits to banks. While many sources of bank funding have dried up in the past six months, deposits have not. In fact, deposits are growing and remain a reliable source of funding because depositors know that their insured deposits are absolutely safe.

We have included your letter in the public comment file for consideration in the development of the final rule on the emergency special assessment. If you have further questions, 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

LA09-528

Congress of the United States
Washington, DC 20515

April 2, 2009

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

Dear Chairman Bair:

We the undersigned Texans are concerned about the pro-cyclical impact the FDIC Board's February 27, 2009 proposal to levy special assessments on insured depository institutions would have on banks in general, and Texas community banks in particular, especially in this extremely stressful economic environment. We believe that the imposition of a 20 basis points special assessment on June 30, 2009 – due September 30, 2009 – and the FDIC Board's proposal to have the authority to impose up to an additional 10 basis points emergency special assessment at the end of any calendar quarter– could have the unintended consequence of reducing the capital classification of Texas community banks, thereby resulting in enforcement actions or possibly eventual failures.

Texas community banks did not contribute in any meaningful way to the massive economic crisis that we confront. Most can serve a customer base rooted in individual communities and are not too big to manage, too big to fail, nor too big to resolve. Almost all of the Texas community banks are still in place meeting the credit-related needs of their communities, stepping up in many instances to fill markets vacated by their larger competitors.

Texas community banks have sound underwriting standards, are more than capable of managing their reliance on counterparties, and know their customers' needs and capabilities. Taxing Texas community banks with a special assessment of this magnitude when the banking industry is already under siege would have a negative impact on their lending capacity. Each dollar of special assessments they would pay to the Deposit Insurance Fund would result in a twelve dollar reduction in their lending capacity.

If the special assessment were implemented as proposed, it would eliminate approximately $1 billion of capital available to Texas community banks, and consequently small businesses, customers, and consumers in Texas. If that amount were leveraged, it would result in a loss of $12 billion in capital available for lending activity throughout Texas. At a time when responsible lending is critical to ameliorating the recession, this sort of reduction in local lending has the potential to extend our economic recovery unnecessarily.

We acknowledge that it is of the utmost importance that the Deposit Insurance Fund remain funded and be replenished to its designated reserve ratio of 1.15 percent over the next 5 to 7 years as proposed. But the vast majority of community bankers in the United States, especially Texas community banks, did not participate in the irresponsible lending that has led to the erosion of the FDIC's Deposit Insurance Fund. Texas community banks are the lifeblood of our communities they serve. They can continue to stimulate our Texas economy and nurse it back to health if required in the future. They will continue looking after the needs of local citizens and communities.

We are aware of the agreement between the FDIC and the Congress that the FDIC will reduce the proposed 20 basis points special emergency assessment up to 10 basis points provided we increase the FDIC's borrowing authority from the Department of Treasury from $30 billion to $100 billion. Recognizing the importance of ensuring the FDIC has all the authority it needs to protect the Deposit Insurance Fund should its Designated Reserve Ratio fall even more, possibly below zero, the House of Representatives passed legislation that would grant the FDIC an additional $70 billion in borrowing authority. We are also aware that the Senate intends to move legislation that would include language providing the FDIC with emergency borrowing authority at the Department of Treasury up to, but not to exceed, $500 billion with very strong checks and balances.

We support these initiatives.

While these are positive steps in the right direction, we think it necessary for the FDIC Board to consider a full range of alternatives to levying an assessment on Texas community banks that could also help sustain the balance of, and confidence in, the Deposit Insurance Fund.

The alternatives to imposing any special assessment on Texas community banks include, but are not limited to, the following:

- Base assessments on assets with an adjustment for capital rather than total insured deposits;

- Impose a systemic risk premium, which would place a heavier burden on financial institutions that pose the greatest risk to the deposit insurance fund;

- Use a combination of the line of credit and a reduced or postponed special assessment; and/or,

- Allow banks to amortize this new expense over several years.

We appreciate the efforts and resolve of the FDIC Board to ensure that the Deposit Insurance Fund is properly funded and fiscally sound in order to assure consumers that their funds are protected up to the prescribed limits by the United States government. We agree with the FDIC and its Board that it is imperative to maintain consumer confidence in our banking system, and sound deposit insurance is one of the cornerstones of their confidence level.

However, we remain opposed to any assessment on Texas community banks and believe we have provided the FDIC Board with a number of options to ensure the Deposit Insurance Fund's stability while minimizing the impact on Texas community banks' ability to keep money working in our communities.

We hope the Board will take our recommendations into consideration.

Sincerely,

[redacted]

Rubén Hinojosa
Member of Congress

[redacted]

Eddie Bernice Johnson
Member of Congress

[redacted]

Chet Edwards
Member of Congress

[redacted]

Solomon Ortiz
Member of Congress

[redacted]

Henry Cuellar
Member of Congress

[redacted]

Gene Green
Member of Congress

[redacted]

Al Green
Member of Congress

[redacted]

Sheila Jackson Lee
Member of Congress

Cc: Members of the FDIC Board:

John Dugan
Martin Gruenberg
Thomas Curry
Scott Polakoff

LHU7-084

Committee on Financial Services

Committee on Transportation and Infrastructure

Committee on House Administration

Democratic Steering & Policy Committee

Democratic Caucus; Chair, Committee on Organization, Study & Review

www.house.gov/capuano

Congress of the United States

House of Representatives

Michael E. Capuano

8th District, Massachusetts

WASHINGTON OFFICE:
1414 LONGWORTH BUILDING
WASHINGTON, DC 20515-2108
(202) 225-5111
FAX: (202) 225-9322

DISTRICT OFFICES:
110 FIRST STREET
CAMBRIDGE, MA 02141
(617) 621-6208
FAX: (617) 621-8628

ROXBURY COMMUNITY COLLEGE
CAMPUS LIBRARY
ROOM 211

April 22, 2009

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Geithner:

I write to you to request that you clarify the specific policies regarding requirements that Troubled Asset Relief Program (TARP) recipients must meet in order to repay their TARP funds. Do TARP recipients first need the approval of their federal banking regulators in order to be considered eligible for repayment? If this is not accurate and federal banking regulators will not decide if TARP recipients are eligible to repay the funds, please clarify how this determination will be made. If federal banking regulators will be making this decision, it is my hope and expectation that they will not base this assessment on discretionary measures but, instead, will base it on set measurements which are fully disclosed and transparent to the public.

Please provide the factors which regulators will consider in making this assessment, including any specific capital requirements and other quantitative measurements. In addition, if more subjective factors will be used, please describe how they will be measured.

Sincerely,.

[redacted]

Michael E. Capuano
Member of Congress

Cc: Chairman Ben S. Bernanke, Board of Governors of the Federal Reserve System
Chairman Sheila Bair, Federal Deposit Insurance Corporation
Comptroller John C. Dugan, Office of the Comptroller of the Currency
Acting Director John E. Bowman, Office of Thrift Supervision
Chairman Michael E. Fryzel, National Credit Union Administration Board
Chairman Barney Frank, House Financial Services Committee

Dodd

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

April 28, 2009

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 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 entitled: "Regulating and Resolving Institutions Considered 'Too Big to Fail'." The hearing is scheduled for **Wednesday, May 6, 2009 at 9:30 am in Room 538 of the Senate Dirksen Office Building.**

The Banking Committee is conducting a series of hearings on the regulation of banking, securities, and insurance to identify recommendations for a modernized regulatory framework. This framework must be based on lessons learned from the current crisis and designed to safeguard consumers and investors, provide for the safe and sound operation of our financial institutions, and foster a robust economy.

The Committee would find it helpful for your testimony and written statement to address:

- whether a new regulatory framework is desirable or feasible to prevent institutions from becoming "too big to fail" and posing the risk of systemic harm to the economy and financial system;

- whether existing financial organizations considered "too big to fail" should be broken up;

- what requirements under a new regulatory framework are necessary to prevent or mitigate risks associated with institutions considered "too big to fail;" for example, new capital and disclosure requirements, as well as restrictions on size, affiliations, transactions, and leverage; and

- how to improve the current framework for resolving systemically important non-bank financial companies.

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 the Committee's Chief Counsel, Amy Friend, at (202) 224-7391.

Thank you for your cooperation.

Sincerely,

[redacted]

CHRISTOPHER J. DODD
Chairman

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 29, 2009

Honorable John Ensign
United States Senate
Washington, D.C. 20510

Dear Senator Ensign:

Thank you for your letter regarding [redacted] request for federal financial assistance under the Troubled Asset Relief Program's (TARP) Capital Purchase Program (CPP). As you may know, the Federal Deposit Insurance Corporation is actively engaged with the Department of 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.

The FDIC received a TARP CPP application from [redacted] Nevada on October 27, 2008. The application remains open before the FDIC. On March 5, 2009, several FDIC executives met with members of the Bank's board and senior management to discuss the institution's TARP CPP application and the FDIC's Temporary Liquidity Guaranty Program. Our staff advised me that they engaged in a very constructive dialogue concerning [redacted] business strategy and plans for 2009. We suggested the Bank discuss these strategic plans with our San Francisco Regional Office once our on-going risk management examination has been completed.

We understand the challenges facing insured depository institutions in Nevada and across the country. The FDIC is aware of the significant role community banks play in local economies and the importance of the financial services they provide on Main Street.

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

LA04 517

JOHN ENSIGN
NEVADA

COMMITTEES:
BUDGET
COMMERCE, SCIENCE, AND TRANSPORTATION
FINANCE
RULES AND ADMINISTRATION

United States Senate

WASHINGTON, DC 20510-2805

118 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510-2805
(202) 224-6244

333 LAS VEGAS BOULEVARD, SOUTH
SUITE 8203
LAS VEGAS, NV 89101
(702) 388-6605

400 SOUTH VIRGINIA STREET
SUITE 738
RENO, NV 89501
(775) 686-5770

600 EAST WILLIAM STREET
SUITE 304
CARSON CITY, NV 89701
(775) 885-9111

website: ensign.senate.gov

March 19, 2009

FDIC
APR -7 2009
OFFICE OF LEGISLATIVE AFFAIRS

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

Dear Chairwoman Bair:

I am writing you about the application that [redacted] and [redacted] submitted for the Troubled Asset Relief Program/Capital Purchase Program (TARP). As you know, Nevada has been one of the hardest hit states in the country in both foreclosures and unemployment. An important part of recovering from this economic crisis will be the ability for lending institutions to make capital available to deserving businesses and homeowners, and [redacted] can be instrumental in putting that capital on the market.

(b)(4)
(b)(8)

It has come to my attention that [redacted] and [redacted] submitted a TARP application to the Federal Deposit Insurance Corporation in October, 2008. I hope that you will carefully review this application to determine if federal assistance that is available to qualifying institutions.

(b)(4)
(b)(8)

[redacted]

JOHN ENSIGN
United States Senator

LA09-517

JOHN ENSIGN
NEVADA

COMMITTEES:
BUDGET
COMMERCE, SCIENCE, AND TRANSPORTATION
FINANCE
RULES AND ADMINISTRATION

United States Senate
WASHINGTON, DC 20510-2805

119 RUSSELL SENATE OFFICE BUILDING
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333 LAS VEGAS BOULEVARD, SOUTH
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(702) 388-6605

400 SOUTH VIRGINIA STREET
SUITE 738
RENO, NV 89501
(775) 686-5770

600 EAST WILLIAM STREET
SUITE 304
CARSON CITY, NV 89701
(775) 885-9111

website: ensign.senate.gov

March 19, 2009

FDIC
APR - 7 2009
OFFICE OF LEGISLATIVE AFFAIRS

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

Dear Chairwoman Bair:

I am writing you about the application that [redacted] and [redacted] submitted for the Troubled Asset Relief Program/Capital Purchase Program (TARP). As you know, Nevada has been one of the hardest hit states in the country in both foreclosures and unemployment. An important part of recovering from this economic crisis will be the ability for lending institutions to make capital available to deserving businesses and homeowners, and [redacted] can be instrumental in putting that capital on the market.

It has come to my attention that [redacted] submitted a TARP application to the Federal Deposit Insurance Corporation in October, 2008. I hope that you will carefully review this application to determine if federal assistance that is available to qualifying institutions.

Sincerely,

[redacted]

JOHN ENSIGN
United States Senator

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 29, 2009

Honorable Barney Frank
Chairman
Committee on Financial Services
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter stressing the importance that institutions participating in the Troubled Asset Relief Program (TARP) Capital Purchase Program continue their lending activities under the Community Reinvestment Act (CRA). As you know, the Federal Deposit Insurance Corporation is actively engaged with the U.S. Department of Treasury and the other federal banking agencies in considering TARP applications filed by banking institutions. In our role as primary federal supervisor for state non-member institutions, the FDIC makes a recommendation on each TARP application it receives to the Treasury, which ultimately determines if an institution may participate.

The FDIC understands banks' significant role in serving the needs of communities across America, particularly low- and moderate-income and underserved communities. The FDIC uses a robust process for evaluating CRA performance at the 5,100 state non-member institutions we supervise, and we strongly advocate for programs that encourage economic inclusion and promote banking services for unbanked and underbanked populations. Since the creation of the TARP Capital Purchase Program, CRA performance has been a component of the criteria for determining if an applicant institution should be recommended for participation.

The FDIC expects banks will use TARP subscriptions to expand lending activity and support the credit needs of underserved communities. Our internal guidance for bank examiners reviewing institutions that have received TARP funds requires an evaluation of the institution's success in meeting its community's credit needs based, in part, on the results of CRA reviews. Furthermore, as part of the FDIC's issuance of the November 12, 2008, *Interagency Statement on Meeting the Needs of Creditworthy Borrowers* (Statement) to state non-member institutions, we encourage all institutions to lend prudently and responsibly to creditworthy borrowers and work with borrowers to avoid unnecessary foreclosures. Through this issuance we advise FDIC-supervised institutions that adherence to the Statement guidelines will be reflected in CRA examination ratings.

I share your concern that institutions participating in the TARP Capital Purchase Program or any other federal financial stability initiative should use these funds to meet the needs of their community in the spirit of the CRA. If you have further questions or comments, please do not hesitate to contact me at (202) 898-6794 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

Thanks for contacting us on this.

BARNEY FRANK, MA, CHAIRMAN

April 17, 2009

The Honorable Ben S. Bernanke
Chairman
Federal Reserve Board
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable John C. Dugan
Comptroller
Office of the Comptroller of the Currency
250 E Street SW
Washington, DC 20219

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

The Honorable John E. Bowman
Acting Director
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Dear Chairman Bernanke, Comptroller Dugan, Chairman Bair and Acting Director Bowman:

I am writing about the use of TARP funds by federally-regulated financial institutions in order to stress the importance that such institutions should continue their CRA-related lending activities. Given that one of the goals of the TARP was to help stabilize communities, including traditionally under-served communities, I urge you to make it clear to banks that they should continue their CRA-related lending activities, including philanthropy.

FDIC
APR 17 2009
OFFICE OF LEGISLATIVE AFFAIRS

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

April 29, 2009

Honorable Barney Frank
Chairman
Committee on Financial Services
House of Representatives
Washington, DC 20515

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Sincerely,

[redacted]

Sheila C. Bair

Thanks for contacting us on this.

LA09-595

BARNEY FRANK, MA, CHAIRMAN

[illegible]

April 17, 2009

The Honorable Ben S. Bernanke
Chairman
Federal Reserve Board
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable John C. Dugan
Comptroller
Office of the Comptroller of the Currency
250 E Street SW
Washington, DC 20219

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

The Honorable John E. Bowman
Acting Director
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

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BARNEY FRANK
Chairman

FDIC
APR 17 2009
OFFICE OF LEGISLATIVE AFFAIRS

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

May 1, 2009

FDIC
MAY 1 2009
OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Ben Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Dear Mr. Chairman:

We are concerned about reports that credit card companies may be using consumer transactional information, such as the type of items purchased or the geographical location where a credit transaction take places, as a basis for reducing the line of available credit to a consumer, increasing a consumer's interest rate or accelerating a consumer's repayments. Recently, we heard about another troubling practice of denying an application for new credit based on the economic conditions of the area in which the applicant resides. As a result of these practices, consumers may suddenly be constricted to a lower credit limit, even though they have been paying their bills on time, or perhaps even worse simply denied access to credit because they live in an area the credit card company considers to be less than desirable. Therefore, we ask the Federal Reserve to conduct a study on the extent to which credit card companies may be using these practices and on the impact these practices may be having on consumers, particularly minority or low-income consumers.

We have seen communications from credit card companies to individual borrowers informing them that the company considered these factors in its decisions regarding their credit limit. In one notice, dated in October 2008, the company cited, among other factors, that "[o]ther customers who have used their card at establishments where you recently shopped have a poor repayment history" with the company as one reason that the company considered in deciding to lower the customer's credit limit. In a more recent notice, dated in March 2009, the same company pointed to the fact that "a credit risk associated with customers who previously had residential loan(s) with lender(s) as indicated" in the customer's consumer report as the reason the customer's request for an increase in their credit limit was being denied.

Despite the information contained in these notices, the credit card company assured Congresswoman Waters in a letter dated in April 2009 that the company "had decided to stop using information about where customers shop as a consideration to reduce someone's credit line. . .[and they] also no longer consider which lender extends or holds a customer's mortgage in [its] credit decisions" several months ago. We have attached copies of the notices and the credit card company letter referenced above for your information.

We have also heard about a credit card company denying an application for new credit based on the poor economic conditions in the region where the applicant resides. We do not believe it is appropriate for a credit card company to assess a person's creditworthiness based simply on where they live and would like the agency to examine the extent to which the industry may be using this as a factor to determine whether, and on what terms, to extend credit to someone.

The Honorable Ben Bernanke
Page two

As you know, the House Financial Services Committee favorably reported to the full House H.R. 627, the "Credit Cardholders' Bill of Rights Act of 2009" on April 22, 2009. During Committee consideration of the bill, the Committee adopted an amendment offered by Congresswoman Waters that would direct the Federal Reserve, in consultation with the federal banking agencies and the Federal Trade Commission, to conduct a study on these practices and to report back to the House Financial Services and Senate Banking, Housing, and Urban Affairs Committees within 6 months after the enactment of the bill. We have enclosed a copy of the Waters amendment for your information. Despite the passage of the Waters' amendment, we believe this issue is too important to wait until credit card legislation is enacted.

We are confident that the Federal Reserve is well-positioned to study this issue given its extended history implementing consumer discrimination statutes such as the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act and because of the report issued by the Federal Reserve Bank of Boston in February 2008 on credit card redlining. For these reasons, we urge the Federal Reserve to lead a review immediately in order for the agency to be able to report back to the House Financial Services Committee as soon as is reasonably possible.

We look forward to working with the Federal Reserve on this matter.

[redacted]

BARNEY FRANK
Chairman

[redacted]

MAXINE WATERS
Chairwoman
Subcommittee on Housing and Community Opportunity

[redacted]

CAROLYN B. MALONEY
Member of Congress

[redacted]

LUIS V. GUTIERREZ
Chairman
Subcommittee on Financial Institutions and Consumer Credit

cc: The Honorable Jon Leibowitz, Chairman, FTC; The Honorable Sheila Bair, Chairman, FDIC; The Honorable John C. Dugan, Comptroller, OCC; Mr. John E. Bowman, Acting Director of OTS; and The Honorable Michael E. Fryzel, Chairman, NCUA

Enclosures: Notices to Existing Credit Cardholders
Letter from the Credit Card Company
Waters' Amendment

[redacted]

American Express
PO Box 30374
Salt Lake City, UT 84130

March 02, 2009

[redacted]

Reference:
Reference:

Dear [redacted]:

Thank you for your recent request for a line of credit increase on your American Express® Card Account.

We regret to inform you that your request has been declined for the following reason(s):

We have found there is a credit risk associated with customers who previously had residential loan(s) with lender(s) as indicated in your Credit Bureau report.

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed in this letter. Please understand that the reporting agency played no part in our decision and cannot supply you with specific reasons why we denied credit to you. You have a right under the Fair Credit Reporting Act to obtain a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. If you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

An important notice concerning your rights is included. The creditor is American Express Bank, FSB.

Thank you for your interest in our service.

Sincerely,

[redacted]

Robert Garinger
Business Leader New Accounts

RG/ag

UGNEJGNX0001001

American Express
P.O. Box 297879
Ft. Lauderdale, FL 33329-7879

www.americanexpress.com

October 07, 2008

[redacted]

02336

Re: Account Ending [redacted] Blue from American Express

Dear [redacted]

We are writing to let you know that recently we reviewed your account referenced above. As a result of our careful review, we have lowered the credit limit on that account.

Your revised credit limit for purchases is now $3,800.00. The new cash advance limit is $200.00. Please ensure that any additional cardmembers on the account are also aware of this change.

Our decision involved a thorough review of your account, including an assessment of information obtained from consumer reporting agencies, your history with us and other factors. As part of that assessment, we may have used one or more credit scoring systems to evaluate the information. The specific reasons that factored most in our decision to reduce your credit limit were as follows:

- Your total debt is too high relative to your payment history with us and other creditors, and other information in your credit bureau report.
- Your repayment history with us and others is not sufficient to support your spending activity or outstanding balance.
- Other customers who have used their card at establishments where you recently shopped have a poor repayment history with American Express.
- The short length of time you have been on file with a consumer reporting agency, in relation to your overall credit profile.

You can obtain a copy of your credit bureau report directly from Experian free of charge if you ask for it within 60 days after you receive this notice. We have included their contact information on the next page.

Please know that we understand that this decision may cause difficulties for you, and that we took the action only after a careful and thorough review of your account.

Sincerely,

[redacted]

Vernon Marshall
Senior Vice President
American Express Company

Please note that the creditor is American Express Centurion Bank.

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agencies listed below. Be aware that the reporting agency played no part in our decision and cannot supply you with the specific reasons for our decision. Please know that you have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. It can be obtained by contacting them directly. You also have a right to a free copy of your report from the reporting agency, if you request it within 60 days after you receive this notice. If you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter directly with the reporting agency.

Please see important information enclosed about your rights.

IMPORTANT NOTICE CONCERNING YOUR RIGHTS

Notice to U.S. Residents.

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning American Express Centurion Bank is the Federal Deposit Insurance Corporation, FDIC Consumer Response Center, 2345 Grand Boulevard, Suite 100, Kansas City, MO 64108. The federal agency that administers compliance with this law concerning American Express Bank, FSB is the Office of Thrift Supervision, P.O. Box 7165, San Francisco, California 94120-7165. The federal agency that administers compliance with this law concerning American Express Travel Related Services Company, Inc. is the Federal Trade Commission, Equal Credit Opportunity, Washington D.C. 20580.

Notice to Ohio Residents.

The Ohio state laws against discrimination require that all creditors make credit equally available to all creditworthy customers and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law.

Notice to Washington Residents.

The Washington state laws against discrimination prohibit discrimination in credit transactions because of race, creed, color, national origin, sex, or marital status. The Washington State Human Rights Commission administers compliance with this law.

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington DC 20429

OFFICE OF THE VICE CHAIRMAN

May 6, 2009

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

Dear Mr. Chairman:

Thank you for the opportunity to respond to questions submitted by Congressman Erik Paulsen and Congressman Alan Grayson subsequent to my recent testimony at the hearing on "Exploring the Balance between Increased Credit Availability and Prudent Lending Standards" before the Financial Services Committee on March 25, 2009.

Enclosed are my responses for the hearing record. If you have further questions or comments, please do not hesitate to contact me at (202) 898-3888 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

[redacted]

Martin J. Gruenberg
Vice Chairman

Enclosure

Response to questions from the Honorable Erik Paulsen
by Martin J. Gruenberg, Vice Chairman,
Federal Deposit Insurance Corporation

It is my understanding that discussions are underway between the FDIC and the SEC staffs seeking to resolve issues associated with the ability of broker-dealers to invest client cash held in Special Reserve Accounts in the Temporary Liquidity Guarantee Program (TLGP) Notes. This type of multi-agency collaboration can result in constructive solutions so critical as we address the economic challenges facing our nation. For instance, the SEC affirming that TLGP Notes are qualified securities and eligible for investment of Broker-Dealers' Special Reserve Accounts will provide additional earning with minimal risk for these financial institutions while enhancing the market for insured institutions' debt. I believe this is consistent with the FDIC's ongoing stabilization initiatives.

I am hopeful [the FDIC and the SEC] can quickly expedite a favorable resolution on this matter.
Q1: Do you concur? When do you think we could expect a resolution on this matter?
Q2: What other steps need to be taken/who else needs to be involved?
Q3: Could you please keep me apprised as this issue progresses?

Answer: Thank you for your interest in the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program (TLGP). As you noted, staff members from both the FDIC and the SEC have been discussing whether debt securities guaranteed by the FDIC under the TLGP constitute a "qualified security" for purposes of SEC Rule 15c3-3 under the Securities Exchange Act of 1934. Our understanding, based on discussions with staff of the SEC's Division of Trading and Markets, is that registered broker-dealers are required to maintain special reserve accounts (SRAs) for the benefit of their customers, and that such SRAs are required to consist of cash and "qualified securities." Qualified securities include securities issued by the United States and securities "in respect of which principal and interest are guaranteed by the United States."

The FDIC has been responding to the SEC's questions concerning the TLGP, including questions concerning the operation of the FDIC's guarantee, the risk-based capital treatment afforded to FDIC-guaranteed debt, and how payment would be made in the event of default. While the FDIC recognizes that it is up to the SEC to interpret its own statute and regulations, the FDIC is hopeful that the SEC and the Financial Industry Regulatory Authority, the self-regulatory organization for securities firms, will agree that FDIC-guaranteed debt constitutes a qualified security and that broker-dealers will therefore be permitted to keep a significant percentage of their SRAs in FDIC-guaranteed debt.

Response to questions from the Honorable Alan Grayson
by Martin J. Gruenberg, Vice Chairman,
Federal Deposit Insurance Corporation

Q1. How many new bank charters have you issued since January 1, 2009?

A1. While the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the various State Authorities hold the authority to grant bank or thrift charters, the FDIC is solely authorized to make determinations regarding deposit insurance. The table below presents the number of deposit insurance applications approved during 2006, 2007, 2008, and through March 31, 2009. The table also includes information regarding the number of approved applications that have consummated since approval; for ease of comparison, the number of applications consummated is attributed to the year the respective applications were approved rather than the year consummated.

	Deposit Insurance Applications			
	2006	2007	2008	3/31/2009
Approved	183	191	101	7
Consummated	183	186	79	2

Q2. What are you doing to make sure that developers who hold land loans and inventory and are current on all their interest charges are not forced to pay down principal before the properties are sold or developed?

A2. The FDIC understands the strain that builders and developers are under during this challenging environment, and we have encouraged banks to work with these borrowers given the sluggish demand for real estate at this time. Over the past year, we have issued guidance to FDIC-supervised institutions encouraging them to continue making loans available to creditworthy borrowers and to work with borrowers experiencing difficulty. The following directives issued to FDIC-supervised institutions are attached to this document:

FDIC Financial Institution Letter 128-08, *Interagency Statement on Meeting the Needs of Creditworthy Borrowers*
http://www.fdic.gov/news/news/financial/2008/fil08128.html

FDIC Financial Institution Letter 22-08, *Managing Commercial Real Estate Concentrations in a Challenging Environment*
http://www.fdic.gov/news/news/financial/2008/fil08022.html

FDIC

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

Financial Institution Letter
FIL-128-2008
November 12, 2008

INTERAGENCY STATEMENT ON MEETING THE NEEDS OF CREDITWORTHY BORROWERS

Summary: The FDIC joined the other federal banking agencies in issuing the attached "Interagency Statement on Meeting the Needs of Creditworthy Borrowers" on November 12, 2008.

Distribution:
FDIC-Supervised Institutions

Suggested Routing:
Chief Executive Officer
Senior Credit Officer

Attachment:
"Interagency Statement on Meeting the Needs of Creditworthy Borrowers"

Contact:
Institution's contact person (Case Manager or Field Supervisor) at applicable FDIC Regional Office, or Associate Director Steven D. Fritts in Washington at 202-898-3723 and sfritts@fdic.gov

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:

Several federal programs have recently been instituted to promote financial stability and mitigate the effects of current market conditions on insured depository institutions. These efforts are designed to improve the functioning of credit markets and strengthen capital in our financial system to improve banks' capacity to engage in prudent lending during these times of economic distress.

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. Lending to creditworthy borrowers provides sustainable returns for the organization and is constructive for the economy as a whole.

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.

In implementing this Statement, the FDIC encourages institutions it supervises to:

- lend prudently and responsibly to creditworthy borrowers;
- work with borrowers to preserve homeownership and avoid preventable foreclosures;
- adjust dividend policies to preserve capital and lending capacity; and
- employ compensation structures that encourage prudent lending.

State nonmember institutions' adherence to these expectations will be reflected in examination ratings the FDIC assigns for purposes of assessing safety and soundness, their compliance with laws and regulations, and their performance in meeting the requirements of the Community Reinvestment Act (CRA).

FDIC

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

Financial Institution Letter
FIL-22-2008
March 17, 2008

MANAGING COMMERCIAL REAL ESTATE CONCENTRATIONS IN A CHALLENGING ENVIRONMENT

Summary: The Federal Deposit Insurance Corporation (FDIC) is re-emphasizing the importance of strong capital and loan loss allowance levels, and robust credit risk-management practices for state nonmember institutions with significant commercial real estate (CRE) and construction and development (C&D) loan concentrations.

Distribution:
FDIC-Supervised Institutions (Commercial and Savings)

Suggested Routing:
Chief Executive Officer
Chief Lending Officer

Related Topics:
Guidance on Concentrations in CRE Lending
Interagency Statement on the ALLL

Attachment:
Appendix

Contact:
Sr. Examination Specialist William R. Baxter
wbaxter@fdic.gov, 202.898.8514

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:

- The FDIC is issuing this FIL to re-emphasize the importance of strong capital and loan loss allowance levels, and robust credit risk-management practices for institutions with concentrated CRE exposures, consistent with the December 6, 2006, interagency guidance on CRE lending and the December 13, 2006, interagency policy statement on the allowance for loan and lease losses (ALLL).
- Institutions with significant CRE concentrations should consult the 2006 CRE and ALLL guidance and should maintain or implement processes to:
  - Increase or maintain strong capital levels,
  - Ensure that loan loss allowances are appropriately strong ,
  - Manage C&D and CRE loan portfolios closely,
  - Maintain updated financial and analytical information, and
  - Bolster the loan workout infrastructure.
- Institutions are encouraged to continue making C&D and CRE credit available in their communities using prudent lending standards.

Financial Institution Letter
FIL-22-2008
March 17, 2008

Managing Commercial Real Estate Concentrations in a Challenging Environment

Recent weakness in the housing and the construction and development (C&D) markets have increased the FDIC's overall concern for state nonmember institutions with concentrations in commercial real estate (CRE) loans, and in particular, C&D loans. The purpose of this Financial Institution Letter is to re-emphasize the importance of strong capital and loan loss allowance levels, robust credit risk-management practices, and to recommend several key risk-management processes to help institutions manage CRE loan concentrations in this challenging environment.

On December 6, 2006, the FDIC joined the Federal Reserve Board and the Office of the Comptroller of the Currency (the agencies) in issuing final guidance on CRE entitled *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices* (CRE Guidance). It was intended to help ensure that institutions pursuing a significant commercial real estate lending strategy remain healthy and profitable while continuing to serve the credit needs of the community. The CRE Guidance provided a framework for assessing CRE concentrations; risk management, including board and management oversight, portfolio management, management information systems, market analysis and stress testing, underwriting and credit risk review; and supervisory oversight, including CRE concentration management and an assessment of capital adequacy. The CRE Guidance was issued at a time when there was abundant liquidity in the credit markets, a strong global economy, and a number of what became known as "hot real estate markets" in major metropolitan areas. These factors led to a significant increase in CRE lending, especially in the C&D sector. The favorable market conditions led to relatively low borrowing costs, an overall boom in construction and sales activity, particularly in the residential and condominium sectors, and many institutions chose to relax loan terms and covenants to compete in the CRE mortgage market.

In addition, on December 13, 2006, the agencies and the Office of Thrift Supervision issued an *Interagency Policy Statement on the Allowance for Loan and Lease Losses* (ALLL Policy Statement) to revise and replace a 1993 policy statement on this subject. The ALLL Policy Statement reiterates key concepts and requirements pertaining to the allowance for loan and lease losses (ALLL) included in generally accepted accounting principles (GAAP) and existing supervisory guidance. It describes the nature and purpose of the ALLL; the responsibilities of boards of directors, management, and examiners; factors to be considered in the estimation of the ALLL; and the objectives and elements of an effective loan review system, including a sound credit grading system. The ALLL Policy Statement notes that determining the appropriate level for the ALLL is inevitably imprecise and requires a high degree of management judgment. An institution's process for determining the ALLL should be based on a comprehensive, well-documented, and consistently applied analysis of its loan portfolio that considers all significant factors that affect collectibility. That analysis should include an assessment of changes in economic conditions and collateral values and their direct impact on credit quality. If declining credit quality trends relevant to the types of loans in an institution's portfolio are evident, the ALLL level as a percentage of the portfolio should generally increase, barring unusual charge-off activity.

Since the CRE Guidance and ALLL Policy Statement were issued, market conditions have weakened, most notably in the C&D sector. The housing market is experiencing a slowdown, credit market liquidity has deteriorated, lending terms have tightened, and certain residential markets in the United States are overbuilt. While the vast majority of FDIC-insured institutions are well-capitalized, some institutions have significant CRE concentrations in areas with surplus housing units amid declining home prices. In addition, examiners have noted a few instances of potential underwriting weakness whereby institutions are inappropriately adding extra interest reserves on loans where the underlying real estate project is not performing as expected. This practice can erode collateral protection and mask loans that would otherwise be reported as delinquent.

The FDIC is increasingly concerned that institutions with concentrated CRE exposures may be vulnerable to a sustained downturn in real estate and should ensure that capital and ALLL levels are strong, and that credit risk management and workout processes are robust. It is strongly recommended that, as market conditions warrant, institutions with CRE concentrations (particularly in C&D lending) should increase capital to provide ample protection from unexpected losses if market conditions deteriorate further.

Recommendations for Managing CRE Concentrations

Institutions with significant CRE concentrations are reminded that strong capital and ALLL levels are needed, and that overall credit risk-management processes should reflect the principles of the 2006 CRE Guidance. Institutions with significant CRE concentrations are described in the CRE Guidance as those institutions reporting loans for construction, land development, and other land representing 100 percent or more of Total Capital; or institutions reporting total CRE loans representing 300 percent or more of Total Capital where the outstanding balance of CRE has increased by 50 percent or more during the prior 36 months.[1]

The FDIC suggests five key risk management processes to help institutions with significant C&D and CRE concentrations manage through changes in market conditions:

1. **Increase or Maintain Strong Capital Levels** – Capital provides institutions with protection against unexpected losses, particularly in stressed markets. Institutions with significant C&D and CRE exposures may require more capital because of uncertainty about market conditions, causing an elevated risk of unexpected losses. As market conditions warrant, directorates and management should take steps to increase capital levels to support significant CRE concentrations. Capital protection for C&D and CRE concentrations should be a strategic priority when contemplating the declaration of cash dividends.

2. **Ensure that Loan Loss Allowances are Appropriately Strong** – Institutions are expected to determine their ALLL in accordance with GAAP, their stated policies and procedures, management's best judgment, and relevant supervisory guidance. At least quarterly, institutions should analyze the collectibility of CRE and all other exposures and maintain an ALLL at a level that is appropriate to cover estimated credit losses on individually evaluated loans that are determined to be impaired as well as estimated credit losses in

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[1] For the purposes of this FIL, C&D and CRE concentrations have the same meaning as stated in the CRE Guidance.

the remainder of the loan portfolio. In reviewing their ALLL methodology, institutions with significant C&D and CRE concentrations should consult recent supervisory guidance.[2]

3. **Manage C&D and CRE Loan Portfolios Closely** – Institutions should maintain prudent, time-tested lending policies and understand C&D and CRE concentrations. Management information systems should provide the board and management with effective data resources on concentrations levels and market conditions. A strong credit review and risk rating system that identifies deteriorating credit trends early should be enhanced or implemented. Institutions should also effectively manage interest reserve and loan extension accommodations, reflecting the borrower's condition accurately in loan ratings and documented reviews.

4. **Maintain Updated Financial and Analytical Information** – Institutions with CRE concentrations should maintain recent borrower financial statements, including property cash flow statements, rent rolls, guarantor personal statements, tax return data, global builder and other income property performance information. Global financial analysis of obligors should be emphasized, as well as the concentration of individual builders or developers in a loan portfolio. As real estate market conditions change, management should consider the continued relevance of appraisals performed during high growth periods, and update appraisal reports as necessary.[3]

5. **Bolster the Loan Workout Infrastructure** – Institutions should ensure they have sufficient staff and appropriate skill sets to properly manage an increase in problem loans and workouts. Management should develop a ready network of legal, appraisal, real estate brokerage, and property management professionals to handle additional prospective workouts.

The FDIC believes that CRE can be a profitable business line for institutions; however, as with any asset exposure, significant concentrations can lead to losses and capital deficiencies in a stressed environment. The Corporation's examiners recognize the challenges facing institutions in the current CRE environment, and will expect each board of directors and management team to strive for strong capital and loan loss allowance levels, and implement robust credit risk-management practices. Institutions are encouraged to continue making C&D and CRE credit available in their communities using prudent, time-tested lending standards that rely on strong underwriting and loan administration practices.

Sandra L. Thompson
Director
Division of Supervision and Consumer Protection

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[2] Institutions should refer to the ALLL Policy Statement, and the July 6, 2001, *Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Institutions and Savings Institutions.*
[3] All appraisals should be consistent with the FDIC's appraisal rules in Part 323 of the FDIC's Rules and Regulations, 12 CFR 323.

APPENDIX

The following guidance and information should be consulted for additional details about matters discussed in this Financial Institution Letter.

Supervision

- *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices*, December 6, 2006, http://www.fdic.gov/news/news/press/2006/pr06114.html
- *Interagency Policy Statement on the Allowance for Loan and Lease Losses*, December 13, 2006, http://www.fdic.gov/news/news/press/2006/pr06115.html
- *Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Institutions and Savings Institutions*, July 6, 2001, http://www.fdic.gov/news/news/financial/2001/fil0163.html

LA09-521

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

April 3, 2009

FDIC
APR - 7 2009
OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Martin J. Gruenberg
Vice Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Vice Chairman Gruenberg:

Thank you for testifying at the March 25, 2009, Committee on Financial Services hearing entitled, "Exploring the Balance Between Increased Credit Availability and Prudent Lending Standards."

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 Representatives Paulsen and Grayson. 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,

[redacted]

Thomas G. Duncan
General Counsel

TGD/ta

Enclosure

Congressman Erik Paulsen
Financial Services Committee
Hearing entitled "Exploring the Balance between Increased Credit Availability and Prudent Lending Standards
March 25, 2009

This question is for Mr. Gruenberg and Mr. Kroeker.

OIR
Lisa
Ryu
or
OSC
Nancy
Hunt

It is my understanding that discussions are underway between the FDIC and the SEC staffs seeking to resolve issues associated with the ability of broker-dealers to invest client cash held in Special Reserve Accounts in the Temporary Liquidity Guarantee Program (TLGP) Notes. This type of multi-agency collaboration can result in constructive solutions so critical as we address the economic challenges facing our nation. For instance, the SEC affirming that TGLP Notes are qualified securities and eligible for investment of Broker-Dealers' Special Reserve Accounts will provide additional earnings with minimal risk for these financial institutions while enhancing the market for insured institutions' debt. I believe this is consistent with the FDIC's ongoing stabilization initiatives.

Mr. Gruenberg and Mr. Kroker; I am hopeful your two agencies can quickly expedite a favorable resolution on this matter. Do you concur? When do you think we could expect a resolution on this matter?

What other steps need to be taken/who else needs to be involved?

Could you please keep me apprised as this issue progresses?

Questions from Representative Alan Grayson

For the Honorable Martin J. Gruenberg, Vice Chairman, Federal Deposit Insurance Corporation:

1) How many new bank charters have you issued since January 1, 2009? OSC

2) What are you doing to make sure that developers who hold land loans and inventory and are current on all their interest charges are not forced to pay down principal before the properties are sold or developed? OSC

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

May 8, 2009

Honorable John Lewis
House of Representatives
Washington, D.C. 20515

Dear Congressman Lewis:

Thank you for your letter regarding the Omni National Bank receivership.

On March 27, 2009, the Office of the Comptroller of the Currency closed Omni National Bank, Atlanta, Georgia, and the Federal Deposit Insurance Corporation was appointed receiver. To protect the depositors, the FDIC entered into an agreement with SunTrust Bank, Atlanta, Georgia, to act as paying agent for the insured deposits of Omni National Bank. The assets of Omni National Bank, including the loans and real estate owned from the bank's redevelopment lending program, were retained by the FDIC for later disposition.

As receiver, the FDIC has a statutory responsibility to the depositors and creditors of a failed bank to minimize losses by obtaining the maximum recovery from the assets of the receivership. We exercise those responsibilities in a way that balances our obligation to maximize recoveries and minimize losses to the Deposit Insurance Fund, thereby providing the greatest level of protection to the taxpayers, with the desire to limit as much as possible any economic disruption to the local community. Please rest assured that we do seek to resolve failed banks and their assets in a way that benefits the community consistent with our statutory duties.

The FDIC has engaged a national contractor, Prescient Asset Management, to manage and market the foreclosed properties of Omni Bank's defaulted redevelopment loans. A key member of the Prescient Asset Management team is Mr. Boris Whiteside, the former chief of the real estate owned division of the U.S. Department of Housing and Urban Development's Atlanta Home Ownership Center. Mr. Whiteside is actively involved in the management of the renovated and leased properties in the Omni National Bank portfolio.

The FDIC intends to maintain the leases of all foreclosed properties that are currently leased and in the event the tenants vacate these properties, they will be re-leased. Prescient Asset Management has a twenty-four hour hotline (877-520-1112) to handle tenant emergencies. Further, the FDIC will make every effort to work with local housing authorities to market these properties with tenants in place.

Your interest in this matter is appreciated. If you have other questions or if we can be of assistance in any way, please do not hesitate to contact me at (202) 898-6974 or Eric J. Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

LA09-563

JOHN LEWIS
5TH DISTRICT, GEORGIA

SENIOR CHIEF DEPUTY
DEMOCRATIC WHIP

COMMITTEE ON
WAYS AND MEANS

CHAIRMAN,
OVERSIGHT SUBCOMMITTEE

INCOME SECURITY
AND FAMILY SUPPORT

Congress of the United States
House of Representatives
Washington, DC 20515-1005

WASHINGTON OFFICE:
343 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-1005
(202) 225-3801
FAX: (202) 225-0351

DISTRICT OFFICE:
THE EQUITABLE BUILDING
100 PEACHTREE STREET, N.W.
SUITE # 1920
ATLANTA, GA 30303
(404) 659-0116
FAX: (404) 331-0947

April 3, 2009

Chairwoman Sheila Blair
Federal Deposit Insurance Corporation
550 17th Street NW, Room MB-6028
Washington, DC 20249

Dear Chairwoman Blair:

As I am sure you are well aware, Omni National Bank entered into receivership under the Federal Deposit Insurance Corporation (FDIC) last Friday, March 27, 2009. I write you today to respectfully request that, in disposing of the bank's assets, the FDIC take consideration of the role that Omni National Bank played in the Atlanta area, particularly in redeveloping often overlooked working class neighborhoods of the city.

Omni National Bank played a special role in Atlanta, actively lending to support and encourage the renewal and redevelopment of neighborhoods that struggled to get financial support from larger, national banks. The bank's commitment to these neighborhoods financed the construction and development of affordable housing in the city, including supporting Section 8 rental properties, for hardworking Americans that toil every day to make a better life for their families. As a result, these citizens could live inside the city where they had access to public transportation to travel to work every day and to local businesses where they could purchase goods and services. It has been brought to my attention, however, that there is a growing concern that Omni National Bank's failure has created a void that will not be filled.

Since your appointment, I understand that you have worked tirelessly to ensure that the FDIC does what is best for the American people. Moreover, I understand and appreciate the role the FDIC has played in working to restore faith in our nation's economy. As such, I hope and trust that the FDIC will use its best efforts to ensure that it disposes of the assets of Omni National Bank in a manner that is consistent with the bank's principles and commitment to Atlanta's working class neighborhoods.

Sincerely,

[redacted]

John Lewis
Member of Congress

MEL MARTINEZ
FLORIDA
(202) 224-3041

COMMITTEES:
ARMED SERVICES
SPECIAL COMMITTEE ON AGING
BANKING, HOUSING, AND URBAN AFFAIRS
COMMERCE, SCIENCE AND TRANSPORTATION

United States Senate

WASHINGTON, DC 20510-0906

May 8, 2009

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Geithner:

I am writing today on behalf of the constituents in my state who are struggling with the ongoing effects of our current financial crisis. As you know, Florida remains at the epicenter of the housing crisis, and mounting foreclosures continue to drive down real estate values and take a hard toll on communities, families, and businesses across my state.

I support the actions your Department has taken in response to this crisis, but I remain concerned that Florida businesses are not fully benefiting from the various programs implemented in recent months. The Troubled Assets Relief Program (TARP) and the Term Asset-Backed Securities Loan Facility (TALF) were created to strengthen our financial sector and improve credit market conditions. Unfortunately, I continue to hear that many of my constituents are ineligible to participate in the programs, denied assistance, or simply hear conflicting messages coming from federal regulators.

As you continue to develop and implement various programs aimed at economic recovery, I would appreciate your due consideration of Florida's unique challenges and needs. I understand the extraordinary circumstances the Treasury Department is currently operating under, and I know we share the common goal of ensuring a safe, sound, and vibrant marketplace.

Sincerely,

[redacted]

Mel Martinez
United States Senator

cc: The Honorable Sheila Bair

FDIC

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

Office of Legislative Affairs

May 14, 2009

Honorable Carolyn B. Maloney
Representative, U.S. Congress
1651 Third Avenue, Suite 311
New York, New York 10128

Dear Congresswoman Maloney:

Thank you for your letter regarding the relocation of the Federal Deposit Insurance Corporation New York Regional Office (NYRO) from Lower Manhattan. Our Regional Office has leased space at 20 Exchange Place for the past nine years. The lease expires at the end of January 2010.

The FDIC is near completion of our competitive lease acquisition process. After consultation with NYRO management and employees, FDIC contracting staff defined the geographic area of consideration for the competition to be in close proximity to Penn Station and the Grand Central Terminal to better support business operations, as well as the daily commute of our staff. The boundaries for the new lease competition include Midtown Manhattan and a portion of Midtown South. An advertisement for Expressions of Interest from landlords in this geographic area was published on November 13, 2008. A solicitation was issued to interested landlords on December 4th, and proposals were received by December 19, 2008. The professional staff has recently completed the evaluation of the offers and expects to recommend a site to the Board of Directors by the end of this month.

In accordance with our Leasing Policy, we will award the lease to the landlord that offers the best value for the FDIC. A best value decision will take into consideration the FDIC's mission, the costs, and the qualitative criteria listed in our solicitation. A business case will be presented to the FDIC Board of Directors for their consideration and approval.

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

SEN. SQUADRON Fax:

LA09-687

CAROLYN B. MALONEY

Congress of the United States

House of Representatives

Washington, DC 20515-3214

April 24, 2009

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

Dear Mr. Spitler:

I have heard that the Federal Deposit Insurance Corporation (FDIC) is considering moving the New York Regional Office, currently housed at 20 Exchange Place, to a new location that might not be in lower Manhattan. I understand that a request for Expressions of Interest was issued in or about late November 2008, and that landlords as far north as midtown were invited to respond. In my opinion, it would send a terrible signal for the FDIC to abandon lower Manhattan.

As the representative for New York's 14th Congressional District, I know that Lower Manhattan is the heart and soul of New York's financial center. The FDIC's central role in the financial industry makes it a key element of the continued strength and cohesiveness of the Financial District. In this economic climate, the FDIC's moves are being watched by the entire world. For the FDIC to leave our financial center would send a devastating signal about the continued strength of the institutions in Lower Manhattan. It could also prompt other institutions to consider a similar move, which would have a terrible impact on an area of the city still struggling to recover from 9/11.

I am told that moving from this area could be extremely costly. Rents in midtown have been significantly higher than in Lower Manhattan. Over time, higher rents would place an unnecessary financial burden on the FDIC. In austere times, such a move would not be favorably received by my cost-conscience colleagues or constituents.

I hope that the FDIC will choose to continue to make Lower Manhattan its home. I would appreciate it if you would advise me as to the FDIC's current thinking on this matter, consistent with all applicable rules and regulations. Thank you for your thoughtful consideration of these concerns.

Very truly yours,

[redacted]

CAROLYN B. MALONEY
Member of Congress

CBM/mrc

Please reply to: 1651 Third Avenue, Suite 311, New York, NY 10128

Kohl

FDIC
MAY 14 2009
OFFICE OF LEGISLATIVE A...

United States Senate

WASHINGTON, DC 20510

May 14, 2009

The Honorable Timothy F. Geithner
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Geithner:

We are writing to urge you to issue a much-needed rule clarification protecting Social Security, Supplemental Security Income (SSI), and Veterans' benefit funds from creditors. Such a rule is especially necessary at this time in light of your April 9 call for more seniors to enroll in direct deposit. Our position is that until adequate protections are in place, the Treasury should not be promoting a payout system that puts seniors and veterans benefits at risk.

Congress intended for Social Security, SSI, and Veterans' benefits to ensure a minimum existence for our nation's veterans, elderly and disabled. The law currently states that no Social Security funds paid or payable shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. We believe that the clear intent and spirit of this law is to protect these exempted funds for their vulnerable beneficiaries.

In 2007, the Senate Finance Committee held a hearing reviewing bank treatment of Social Security benefits. At this hearing, Waverly Taliaferro, a Social beneficiary who had his account frozen, testified that he lost more than forty pounds during the twenty three days he was denied access to his social security funds, his only source of income. Each month, thousands of other low-income recipients of Social Security and SSI payments are left temporarily destitute when banks allow attachments and garnishments to freeze their only assets.

The House Ways and Means Subcommittee on Social Security also held a hearing last June during which the Department of Treasury stated that a coordinated effort between Treasury, the bank regulating agencies, and the Social Security Administration to address the garnishment and freezing problem was well underway. We understand that while some progress in crafting a partial solution was made, the effort has since stalled.

AARP recently released a report detailing the rise in bankruptcies among seniors. During these tough economic times, we are hearing more and more stories about illegal garnishments from concerned constituents. In 2007, we requested that the Social Security Administration's Inspector General to survey a sample of banks in order to document how widespread the practice has become. Their research, released in July 2008, showed that two-thirds of America's 12 largest banks are violating federal law by garnishing over $30 million from accounts that contain government benefits. Unfortunately, this only represents a small portion of the problem, as the report did not detail how many seniors, like Mr. Taliaferro, were denied access to their funds for extensive periods of time without an actual garnishment taking place.

We know that the Treasury Department is dealing with many difficult problems at present, and we applaud you and your staff for the important work you are doing to get our economy back on track. The effects of the economic downturn can be particularly difficult for Social Security, SSI, and Veterans beneficiaries, especially those who are illegally denied access to their government benefits. We urge you to act immediately on their behalf to draft a rule to safeguard their direct deposit benefits.

We appreciate your attention to this very important matter.

Sincerely,

[redacted] [redacted]

Senator Herb Kohl Senator Claire McCaskill

cc: The Honorable Michael Astrue, Commissioner of Social Security
The Honorable Ben Bernanke, Chairman, Federal Reserve Board
The Honorable Sheila C. Blair, Chair, Federal Deposit Insurance Corporation
The Honorable John Dugan, Comptroller of the Currency
The Honorable John E. Bowman, Acting Director, Office of Thrift Supervision
The Honorable Michael E. Fryzel, Chairman, National Credit Union Administration

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

May 18, 2009

Honorable Maria Cantwell
United States Senate
Washington, D.C. 20510

Dear Senator Cantwell:

Thank you for your letter regarding the activities of the Federal Deposit Insurance Corporation to sell assets from failed banks.

When a bank fails, the FDIC acquires the loans and other assets from the institution. It is essential to the orderly resolution of these institutions that these loans are returned to the private sector as quickly and efficiently as possible. Often, the bank acquiring the deposits of the failed institution also will acquire some or all of the loans and other assets as well. When the acquiring bank does not take the assets, the FDIC must sell them back to the private sector to reduce the ultimate cost of the bank failure.

The FDIC follows accepted industry standards in marketing and selling loans to the secondary market. Loans acquired by the FDIC are evaluated and offered for sale through an authorized loan sale advisor under contract with the FDIC. The loans are marketed on secure websites and sold in pools through sealed bid sale. Each original loan file acquired from a failed institution is imaged and made available to prospective, qualified purchasers so they can evaluate the quality and market value of the loan offered for sale. Each loan file contains typical loan application information supplied by the borrower as well as related underwriting and legal documentation. This often includes confidential personal and financial information such as credit reports, tax returns, and W-2's. This information was required by the institution in order to analyze, fund, and manage the loan, and it is likewise needed by prospective purchasers of the loans in order to estimate their value and develop their bids.

Access to this information by prospective purchasers is part of the due diligence process, and full disclosure minimizes risk and helps to ensure that the maximum sale price is paid to the FDIC. Disclosure of this information also complies with the Privacy Act of 1974. Finally, access to the information is restricted to prospective purchasers that meet strict eligibility requirements and agree to maintain complete confidentiality.

The FDIC's use of secure websites to market failed bank assets has been carefully designed to operate in a manner that protects personally identifiable information from unauthorized use, access, or disclosure. It incorporates state of the art encryption and intrusion detection protection. In addition, the FDIC consistently reviews the security of the system and updates security as necessary. The FDIC will continue to take appropriate steps to ensure that borrower financial and personal information is protected.

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

MARIA CANTWELL
WASHINGTON

United States Senate

WASHINGTON, DC 20510–4705

April 29, 2009

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

Dear Chairman Bair:

I write today to share with you concerns raised by one of my constituents regarding the level of protection afforded to consumer's private information while the FDIC is undertaking the resolution of a failed financial institution. I urge the FDIC to ensure that appropriate and stringent safeguards are in place to protect the privacy of banking customers.

The exponential rise in the number of failed institutions and the value of their assets presents the FDIC with ever-growing challenges. While I understand the gravity and complexity of selling these institutions' assets, I believe the FDIC should place a premium on protecting consumer privacy. Most importantly, these protections must extend to assets being managed by the FDIC's contractors and agents.

The mortgage of one of my constituents, a customer of the Bank of Clark County Washington, which is now in FDIC receivership, is part of a loan package sent to potential investors by FDIC subcontractor DebtX. My constituent has noted that personally sensitive data is included among the information given to potential investors. He believes this information provides no additional value to potential investors in valuating the loan package they are considering to bid on, but that it does increase significantly the risk that he may be subject to identity theft. He contends that the DebtX's consumer privacy safeguards fail to provide a strong enough deterrent to those with malicious intentions, and he is advocating for the redaction of data fields in a borrower's banking records if that data is not necessary for potential bidders to do their due diligence. For example, he questions the usefulness of providing potential bidders the social security numbers and birthdates of the borrower's children.

I pass along his concerns because I believe it is important to prevent unscrupulous actors from accessing this vast database of personal customer information, which could quickly turn the process of selling assets into a gold mine for identity thieves.

Clearly, there is a need to provide investors the data they need to make a bid on a loan package. The question, however, is whether investors gain added insight from every piece of personally sensitive data included in these reports.

Because we need to be vigilant against the threat of identity theft, I request that the FDIC conduct an audit of the safeguards that its contractors and agents have in place for protecting a borrower's personally identifiable and sensitive information, so that it can determine if these safeguards are adequate. In addition, the FDIC should consider appropriate limitations on the scope of borrower information that is released as part of the resolution process.

Please do not hesitate to contact me if you have any questions. Thank you for your attention to these issues.

Sincerely,

[redacted]

Maria Cantwell
United States Senator

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

May 18, 2009

Honorable Sheldon Silver
Speaker
State Assembly
Albany, New York 12247

Dear Mr. Speaker:

Thank you for your letter regarding the relocation of the Federal Deposit Insurance Corporation New York Regional Office (NYRO) from Lower Manhattan. Our Regional Office has leased space at 20 Exchange Place for the past nine years. The lease expires at the end of January 2010.

The FDIC is near completion of our competitive lease acquisition process. After consultation with NYRO management and employees, FDIC contracting staff defined the geographic area of consideration for the competition to be in close proximity to Penn Station and the Grand Central Terminal to better support business operations, as well as the daily commute of our staff. The boundaries for the new lease competition include Midtown Manhattan and a portion of Midtown South. An advertisement for Expressions of Interest from landlords in this geographic area was published on November 13, 2008. A solicitation was issued to interested landlords on December 4th, and proposals were received by December 19, 2008. The professional staff has recently completed the evaluation of the offers and expects to recommend a site to the Board of Directors by the end of this month.

In accordance with our Leasing Policy, we will award the lease to the landlord that offers the best value for the FDIC. A best value decision will take into consideration the FDIC's mission, the costs, and the qualitative criteria listed in our solicitation.

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

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

May 18, 2009

Honorable David L. Squadron
New York State Senator
State Capitol
Albany, New York 12247

Dear Senator Squadron:

Thank you for your letter regarding the relocation of the Federal Deposit Insurance Corporation New York Regional Office (NYRO) from Lower Manhattan. Our Regional Office has leased space at 20 Exchange Place for the past nine years. The lease expires at the end of January 2010.

The FDIC is near completion of our competitive lease acquisition process. After consultation with NYRO management and employees, FDIC contracting staff defined the geographic area of consideration for the competition to be in close proximity to Penn Station and the Grand Central Terminal to better support business operations, as well as the daily commute of our staff. The boundaries for the new lease competition include Midtown Manhattan and a portion of Midtown South. An advertisement for Expressions of Interest from landlords in this geographic area was published on November 13, 2008. A solicitation was issued to interested landlords on December 4th, and proposals were received by December 19, 2008. The professional staff has recently completed the evaluation of the offers and expects to recommend a site to the Board of Directors by the end of this month.

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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

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

May 18, 2009

Honorable Jerrold Nadler
Representative, U.S. Congress
201 Varick Street, Suite 669
New York, New York 10014

Dear Congressman Nadler:

Thank you for your letter regarding the relocation of the Federal Deposit Insurance Corporation New York Regional Office (NYRO) from Lower Manhattan. Our Regional Office has leased space at 20 Exchange Place for the past nine years. The lease expires at the end of January 2010.

The FDIC is near completion of our competitive lease acquisition process. After consultation with NYRO management and employees, FDIC contracting staff defined the geographic area of consideration for the competition to be in close proximity to Penn Station and the Grand Central Terminal to better support business operations, as well as the daily commute of our staff. The boundaries for the new lease competition include Midtown Manhattan and a portion of Midtown South. An advertisement for Expressions of Interest from landlords in this geographic area was published on November 13, 2008. A solicitation was issued to interested landlords on December 4th, and proposals were received by December 19, 2008. The professional staff has recently completed the evaluation of the offers and expects to recommend a site to the Board of Directors by the end of this month.

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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

May 6, 2009

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

Dear Chairman Bair:

We understand that as the FDIC looks for a new lease for its New York Regional Office, it is considering locations based on an RFP that explicitly excluded Lower Manhattan. We urge in the strongest terms that no site for the FDIC regional office be selected through a process that excludes Lower Manhattan.

In a troubled time, a move by the FDIC out of Lower Manhattan raises the potential for significant cost increases, an inappropriate burden when government at all levels must exercise extraordinary fiscal discipline. It would also send the wrong message about the health of our country's financial industry, centered in Lower Manhattan, whose recovery is vital to the future of New York and the nation as a whole.

A more inclusive search would expand the universe of possible applicants, likely save money for the FDIC and better serve New York's, and the region's, interests. We urge the FDIC to reject the results of a flawed search and issue a revised RFP with broader geographic eligibility including Lower Manhattan.

Sincerely,

[redacted]	[redacted]	[redacted]
Jerrold Nadler Congress Member	Daniel Squadron State Senator	Sheldon Silver State Assembly Speaker

LA09-925

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

May 19, 2009

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

Dear Ms. Bair:

Please see the enclosed correspondence sent to me by one of my constituents, Mr. John Hairston. As a courtesy to me, I would appreciate your consideration of his invitation for you to speak at the annual Leadership Summit at Mississippi State University on September 29-30, 2009.

Though this is only the third year for this Leadership Summit, I have been extremely proud of its rapid development and the strong local interest. Last year's summit was especially well attended with over 4,500 Mississippians turning out to listen to the keynote address by retired General Colin Powell. The stated goal of the summit is to increase awareness of the challenges that face leaders in both Mississippi and nationally, and the organizers have stated that this year's theme will be "Creating a New Economy."

Mississippi State University and the people of Mississippi would be honored to have you as a guest at this year's Leadership Summit. I appreciate your attention to this request and thank you for your service.

Sincerely,

[redacted]

THAD COCHRAN
United States Senator

TC/wt

JOHN M. HAIRSTON
Chief Executive Officer

Hancock Bank.

May 18, 2009

Hon. Thad Cochran, U. S. Senator
Dirksen Senate Office Bldg SD 113
Washington, DC 20510-2402

Dear Senator Cochran:

As always, we appreciate your continued service to Mississippi. I don't know what we would do without you.

You may be aware of the annual Leadership Summit conducted by Mississippi State. The last summit was exceptionally well attended, with over 4,500 Mississippians in attendance. General Colin Powell provided the keynote address with many talented economists and leaders on the various panels. This year we have another great line-up of speakers, including James Carville, Mary Matalin (co-authors of *All's Fair: Love, War, and Running for President*) and Ali Velshi (CNN's Chief Business Correspondent). We would like to have FDIC Chairman Sheila Bair speak at this year's conference, which will be held in Starkville on September 29th and 30th, 2009. Optimally, she would speak in the general timeframe of the morning of September 30th. We will flex to her schedule, including moving the time between the days or early/late. We would, of course, cover any incidentals of lodging, transportation, etc. if needed. We would sincerely appreciate your assistance by requesting Chairman Bair's attendance to speak at the Summit.

Chairman Bair was especially supportive to the banking industry in Mississippi in the aftermath of Hurricane Katrina. She is also considered one of the 100 most powerful people in the world, given her influence in the economy during this recession. A sitting FDIC Chairman has never spoken at a Mississippi forum. We would be honored to have the Chairman as our guest.

Her speaking assignment would be exactly the same message she delivers on a routine basis in Washington. I was with her and John Dugan (Comptroller of the Currency) two weeks ago in DC. Her message was an expectation of progress with the economy, the status of the banking industry, how it impacts American businesses and individuals, and FDIC/governmental roles in setting us on the right path.

Please find attached a fact-sheet describing the Leadership Summit. Should you have any questions, please call Dr. Mark Keenum or myself. Our contact data may be found below. We look forward to hearing back from you soon.

Again, we appreciate all you do for our State and Nation.

With warmest regards,

[redacted]

John Hairston

Cc: Hugh Gamble

Hancock Bank / Post Office Box 4019 / Gulfport, MS 39502
228-868-4726 / Fax 228-868-4627 / 1-800-522-6542
E-mail john_hairston@hancockbank.com

LA09-926
Meeks

CBCPAC
CONGRESSIONAL BLACK CAUCUS

227 Massachusetts Ave., NE Suite 201
Washington, DC 20002
202-544-6242(phone)/202-544-6243 (fax)

May 27, 2009

FDIC
JUN - 5 2009
OFFICE OF THE CHAIRMAN

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

Dear Chairman Bair:

On behalf of the Congressional Black Caucus, the Congressional Black Caucus PAC (CBC PAC) and its Board of Directors, I would like to extend to you a formal invitation to present the keynote address at our upcoming CBC PAC Retreat.

This will be the first annual retreat hosted by the CBC PAC and it will be held at the Millenium Hilton Hotel in New York City, July 10-12, 2009. The keynote address is currently scheduled to take place on Saturday, July 11 from 12:00 to 1:00 pm.

The goal of the retreat is to provide a forum for members of Congress, business leaders and donors of the CBC PAC to discuss several of the important domestic issues facing our nation, including healthcare, climate change, the economy and the state of the financial services industry. Throughout the morning of July 11, the CBC PAC will convene panel discussions featuring members of Congress and business leaders who are experts on the aforementioned issues. It is our hope that your keynote address will provide a capstone for our discussions.

We would be pleased and honored if you would agree to speak at our inaugural retreat. We are expecting a strong turnout from members of the CBC, other members of Congress from the New York delegation, business leaders and CEOs and we believe your speech would provide wonderful insight for our attendees.

I will have CBC PAC Executive Director Jessica Knight contact you within the next week to follow up on our invitation and provide you with additional details. At this time, please find enclosed the tentative schedule for our Saturday program.

Yours sincerely,

Rep. Gregory W. Meeks
CBC PAC, Chairman

Enclosure

CBCPAC
CONGRESSIONAL BLACK CAUCUS

The Congressional Black Caucus PAC
and
CBC PAC Chairman
Rep. Gregory W. Meeks (D-NY)
cordially invite you to attend the

2009 CBC PAC Retreat

July 10-13, 2009
Millenium Hilton
55 Church Street
New York, NY

Suggested Contribution Levels:
Sponsor: $2,500
Individual: $1,000

>>>Maxed Out CBC PAC Donors Receive Complimentary Attendance<<<

For additional information, questions or to RSVP, please contact CBC PAC Executive Director, Jessica Knight at 202-544-6242 or via e-mail at jknight@cbcpac.org.

CBCPAC
CONGRESSIONAL BLACK CAUCUS

CBC PAC 1st Annual Retreat
July 10-13, 2009

HOTEL INFORMATION:

Hilton

Millenium Hilton Hotel
55 Church Street
New York, NY 10007

Guaranteed Group Room Rates*
- King Deluxe - $149.00/night
- Double - $169.00/night

DEADLINE EXTENDED

* To reserve a room at the room rates listed above, your room must be booked no later than **MONDAY, June 8, 2009** in the **Congressional Black Caucus PAC** room block.

Please choose one of the following options to make your reservation:

✓Phone: 212-693-2001
✓Fax: 212-571-2316
✓Web: www.hilton.com

CBCPAC
CONGRESSIONAL BLACK CAUCUS

2009 CBC PAC Retreat

Rep. Gregory Meeks (NY)-CBC PAC Chairman
Members of the Congressional Black Caucus

Tentative Schedule

Friday, July 10, 2009:

- Guest Arrival and Check-In
- (7:00pm) Registration and Hospitality Suite for CBC PAC Retreat Attendees

Saturday, July 11, 2009:

- (8:30am-9:00am) Continental Breakfast, Registration and Check-In
- (9:00am-9:15am) Program Opening and Welcome
- (9:15am-9:45am) Political Landscape and Overview
- (9:45am-10:30am) PANEL 1 - Environment and Climate Change
- (10:30am-11:15am) PANEL 2 - Healthcare
- (11:15am-12:00pm) PANEL 3 - Financial Services and the Economy
- (12:00pm-1:00pm) Lunch and Keynote Address
- (6:00pm) Happy Hour, Location TBD

Sunday, July 12, 2009:

- (8:30am) Religious Service-Optional
- (11am-2pm) Sunday Brunch, Location TBD

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

May 28, 2009

Honorable Bill Nelson
United States Senate
Washington, D.C. 20510

Dear Senator Nelson:

Thank you for contacting me about the serious effects of the downturn in the U.S. economy and housing sector on Florida's homeowners and financial institutions. We understand your concerns about the economy and the impact of foreclosures on American communities and families. I agree with you that federal financial stability programs for banks and homeowners are critical to recovery efforts, and that banking regulators must consider the constraints of the current environment as they supervise individual institutions.

As you may be aware, the Federal Deposit Insurance Corporation has strongly advocated for foreclosure prevention programs during the past several years. Through a variety of public and private sector initiatives, the FDIC has worked to help families stay in their homes by encouraging lenders to engage in loan modification efforts whenever possible. The FDIC, in its role as receiver of IndyMac Bank, FSB, initiated a large scale loan modification program to help borrowers of this failed institution modify mortgage loans through a combination of reduced interest rates, extended maturities, and adjustments to payment terms. These efforts assisted nearly 13,000 families modify their mortgage loans. A similar initiative was implemented as part of the Administration's Homeowners Affordability and Stability Plan, known as the *Making Home Affordable* program which seeks to bring relief to responsible homeowners struggling to make their mortgage payments. We anticipate that the *Making Home Affordable* program has the potential to assist three to four million at-risk homeowners avoid unnecessary foreclosure. The FDIC continues to encourage banks to work with borrowers during this difficult time to seek mutually advantageous solutions for homeowners and lenders.

With regard to your concerns about the Troubled Asset Relief Program, the FDIC, as primary federal supervisor for state non-member institutions, processes applications for the Troubled Asset Relief Program's Capital Purchase Program (CPP). After analyzing the application, the institution's financial condition, and other supervisory information, we make a recommendation to the U.S. Department of the Treasury (Treasury) which ultimately determines if an institution may participate. The FDIC has received 87 CPP applications from Florida banking institutions. A total of 19 Florida institutions that applied to the FDIC have been awarded CPP subscriptions from Treasury as of May 12, 2009, while 60 applicants have withdrawn from the process. Our Atlanta Regional Office strives to be responsive to bankers' questions about their CPP applications and has provided updates for a significant number of inquiries since the Program's inception.

Finally, I share your concern that regulators should provide clear guidance to banks encouraging them to make credit available to creditworthy borrowers. 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 and our counterparts at the other federal banking agencies have been concerned about the availability of credit because of the rapid and prolonged economic slowdown. Through published guidance and in discussions with the industry, we continue to encourage banks to extend credit. On November 12, 2008, the federal banking agencies issued the *Interagency Statement on Meeting the Needs of Creditworthy Borrowers* (copy enclosed) that urges depository institutions to continue making loans to creditworthy borrowers. The FDIC recognizes the importance of financial institutions to the economy, and our supervisory practices reflect those priorities.

Thank you again for sharing your concerns with me. 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

FDIC

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

Financial Institution Letter
FIL-128-2008
November 12, 2008

INTERAGENCY STATEMENT ON MEETING THE NEEDS OF CREDITWORTHY BORROWERS

Summary: The FDIC joined the other federal banking agencies in issuing the attached "Interagency Statement on Meeting the Needs of Creditworthy Borrowers" on November 12, 2008.

Distribution:
FDIC-Supervised Institutions

Suggested Routing:
Chief Executive Officer
Senior Credit Officer

Attachment:
"Interagency Statement on Meeting the Needs of Creditworthy Borrowers"

Contact:
Institution's contact person (Case Manager or Field Supervisor) at applicable FDIC Regional Office, or Associate Director Steven D. Fritts in Washington at 202-898-3723 and sfritts@fdic.gov

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:

Several federal programs have recently been instituted to promote financial stability and mitigate the effects of current market conditions on insured depository institutions. These efforts are designed to improve the functioning of credit markets and strengthen capital in our financial system to improve banks' capacity to engage in prudent lending during these times of economic distress.

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. Lending to creditworthy borrowers provides sustainable returns for the organization and is constructive for the economy as a whole.

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.

In implementing this Statement, the FDIC encourages institutions it supervises to:

- lend prudently and responsibly to creditworthy borrowers;
- work with borrowers to preserve homeownership and avoid preventable foreclosures;
- adjust dividend policies to preserve capital and lending capacity; and
- employ compensation structures that encourage prudent lending.

State nonmember institutions' adherence to these expectations will be reflected in examination ratings the FDIC assigns for purposes of assessing safety and soundness, their compliance with laws and regulations, and their performance in meeting the requirements of the Community Reinvestment Act (CRA).

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

EMBARGOED for release at 10 a.m. EST 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

(more)

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. **FDIC-115-2007**

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LA09-734

United States Senate

WASHINGTON, DC 20510–0905

BILL NELSON
FLORIDA

April 24, 2009

Timothy F. Geithner
Secretary
United States Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Shaun Donovan
Secretary
United States Department of Housing and Urban Development
451 7th Street S.W.
Washington, D.C. 20410

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

Dear Secretary Geithner, Secretary Donovan and Chairman Bair:

I write today to draw your attention to some of the grave concerns that my constituents are facing and to ask your assistance in addressing these problems. For the last several months, Florida has had one of the highest foreclosure rates in the country. As a consequence, most Florida banks have troubled assets on their books. It is against this backdrop that I provide below a description of the concerns regarding the implementation of the banking and housing programs that I am hearing from my individual and business constituents in the state of Florida:

1) The Making Home Affordable Refinancing plan does not help most of the homeowners in Florida. Housing values in Florida have fallen thirty to forty percent (30-40%) from just one year ago. Therefore, even if there was a first mortgage that was originally financed a 50% loan-to-value ratio, and the homeowner took a home equity loan for 20-30% of the value the homeowner now has a mortgage that is either underwater or is 100% of the current value. If the

homeowner's first mortgage had a 70-80% loan-to-value ratio the homeowner is ineligible for the refinancing program because of the loss in home values.

2) Florida banks are not receiving TARP Even though Florida is the fourth largest state in the country and has a tremendous need for TARP funding, only eighteen (18) of the five hundred thirty-two (532) banks that have been approved so far for TARP funds are Florida banks. In addition, those banks that do submit TARP applications are concerned that they do not receive regular communication from Treasury or the relevant regulatory authority regarding the status of their applications.

3) Bank regulators in the field are emphasizing capitalization which discourages banks from lending to small businesses and to consumers. Given the current credit crisis, this focus by regulators in the field incentivizes banks to increase capitalization levels by minimizing the liabilities on their balance sheet and not lending, in contradiction to the direction that we in Washington are providing. Smaller banks are also bearing the brunt of larger bank failures by having to pay larger fees and premiums to the FDIC, and not being encouraged to lend.

We should make every effort to avoid mixed messages which hurt the banks, the small businesses, and the individuals and families that we are trying to help. Because of the acute real estate challenges that we face in Florida, many Florida banks will need both the time and the opportunity to re-build their capitalization levels without discouraging lending. Likewise, many homeowners will need time to see their home values improve. The real estate crisis that we face in Florida should not preclude eligibility for much needed TARP funds nor should it preclude homeowners from obtaining much needed relief by being able to refinance their homes.

Thank you for your attention to this matter. I look forward to your response to these concerns. If you, or your staff, have any questions, please contact Stephanie Mickle in my office at (202) 224-1554.

Sincerely,

[redacted]

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

May 29, 2009

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 Crapo, Senator Kohl, Senator Hutchison, Senator Reed, and Senator Shelby subsequent to my testimony at the hearing on "Modernizing Bank Supervision and Regulation" before the Senate Banking Committee on March 19, 2009.

Enclosed are my responses for the hearing record. 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

Enclosure

Response to questions from the Honorable Mike Crapo
by Sheila C. Bair, Chairman,
Federal Deposit Insurance Corporation

Q1: The convergence of financial services providers and financial products has increased over the past decade. Financial products and companies may have insurance, banking, securities, and futures components. One example of this convergence is AIG. Is the creation of a systemic risk regulator the best method to fill in the gaps and weaknesses that AIG has exposed, or does Congress need to reevaluate the weaknesses of federal and state functional regulation for large, interconnected, and large firms like AIG?

A1: The activities that caused distress for AIG were primarily those related to its credit default swap (CDS) and securities lending businesses. The issue of lack of regulation of the credit derivatives market had been debated extensively in policy circles since the late 1990s. The recommendations contained in the 1999 study by the President's Working Group on Financial Markets, "Over-the-Counter Derivatives Markets and the Commodity Exchange Act," were largely adopted in the Commodity Futures Modernization Act of 2000, where credit derivatives contracts were exempted from CFTC and SEC regulations other than those related to SEC antifraud provisions. As a consequence of the exclusions and environment created by these legislative changes, there were no major coordinated U.S. regulatory efforts undertaken to monitor CDS trading and exposure concentrations outside of the safety and soundness monitoring that was undertaken on an intuitional level by the primary or holding company supervisory authorities.

AIG chartered AIG Federal Savings Bank in 1999, an OTS supervised institution. In order to meet European Union (EU) Directives that require all financial institutions operating in the EU to be subject to consolidated supervision, the OTS became AIG's consolidated supervisor and was recognized as such by the Bank of France on February 23, 2007 (the Bank of France is the EU supervisor with oversight responsibility for AIG's EU operations). In its capacity as consolidated supervisor of AIG, the OTS had the authority and responsibility to evaluate AIG's CDS and securities lending businesses. Even though the OTS had supervisory responsibility for AIG's consolidated operations, the OTS was not organized or staffed in a manner that provided the resources necessary to evaluate the risks underwritten by AIG.

The supervision of AIG demonstrates that reliance solely on the supervision of these institutions is not enough. We also need a "fail-safe" system where if any one large institution fails, the system carries on without breaking down. Financial firms that pose systemic risks should be subject to regulatory and economic incentives that require these institutions to hold larger capital and liquidity buffers to mirror the heightened risk they pose to the financial system. In addition, restrictions on leverage and the imposition of risk-based premiums on institutions and their activities would act as disincentives to growth and complexity that raise systemic concerns.

In addition to establishing disincentives to unchecked growth and increased complexity of institutions, two additional fundamental approaches could reduce the likelihood that an institution will be too big to fail. One action is to create or designate a supervisory framework for regulating systemic risk. Another critical aspect to ending too big to fail is to establish a comprehensive resolution authority for systemically significant financial companies that makes the failure of any systemically important institution both credible and feasible.

Q2: Recently there have been several proposals to consider for financial services conglomerates. One approach would be to move away from functional regulation to some type of single consolidated regulator like the Financial Services Authority model. Another approach is to follow the Group of 30 Report which attempts to modernize functional regulation and limit activities to address gaps and weaknesses. An in-between approach would be to move to an objectives-based regulation system suggested in the Treasury Blueprint. What are some of the pluses and minuses of these three approaches?

A2: Financial firms that pose systemic risks should be subject to regulatory and economic incentives that require these institutions to hold larger capital and liquidity buffers to mirror the heightened risk they pose to the financial system. In addition, the supervisory structure should include both the direct supervision of systemically significant financial firms and the oversight of developing risks that may pose risks to the overall U.S. financial system. Effective institution-specific supervision is needed by functional regulators focused on safety and soundness as well as consumer protection. Finally, there should be a legal mechanism for quick and orderly resolution of these institutions similar to what we use for FDIC insured banks.

Whatever the approach to regulation and supervision, any system must be designed to facilitate coordination and communication among supervisory agencies and the relevant safety-net participants.

In response to your question:

Single Consolidated Regulator. This approach regulates and supervises a total financial organization. It designates a single supervisor to examine all of an organization's operations. Ideally, it must appreciate how the integrated organization works and bring a unified regulatory focus to the financial organization. The supervisor can evaluate risk across product lines and assess the adequacy of capital and operational systems that support the organization as a whole. Integrated supervisory and enforcement actions can be taken, which will allow supervisors to address problems affecting several different product lines. If there is a single consolidated regulator, the potential for overlap and duplication of supervision and regulation is reduced with fewer burdens for the organization and less opportunity for regulatory arbitrage. By centralizing supervisory authority over all subsidiaries and affiliates that comprise a financial organization, the single consolidated regulator model should increase regulatory and supervisory efficiency (for example through economies of scale) and accountability.

With regard to disadvantages, a financial system characterized by a handful of giant institutions with global reach and a single regulator is making a huge bet that those few banks and their regulator over a long period of time will always make the right decisions at the right time. Another disadvantage is the potential for an unwieldy structure and a very cumbersome and bureaucratic organization. It may work best in financial systems with few financial organizations. Especially in larger systems, it may create the risk of a single point of regulatory failure.

The U.S. has consolidated supervision, but individual components of financial conglomerates are supervised by more than one supervisor. For example, the Federal Reserve functions as the consolidated supervisor for bank holding companies, but in most cases it does not supervise the activities of the primary depository institutions. Similarly, the Securities and Exchange was the consolidated supervisor for many internationally active investment banking groups, but these institutions often included depository institutions that were regulated by a banking supervisor.

Functional Regulation. Functional regulation and supervision applies a common set of rules to a line of business or product irrespective of the type of institution involved. It is designed to level the playing field among financial firms by eliminating the problem of having different regulators govern equivalent products and services. It may, however, artificially divide a firm's operations into departments by type of financial activity or product. By separating the regulation of the products and services and assigning different regulators to supervise them, absent a consolidated supervisor, no functional supervisor has an overall picture of the firm's operations and how those operations may affect the safety and soundness of the individual pieces. To be successful, this approach requires close coordination among the relevant supervisors. Even then, it is unclear how these alternative functional supervisors can be organized to efficiently focus on the overall safety and soundness of the enterprise.

Functional regulation may be the most effective means of supervising highly sophisticated and emerging aspects of finance that are best reviewed by teams of examiners specializing in such technical areas

Objectives-based Regulation. This approach attempts to garner the benefits of the single consolidated regulator approach, but with a realization that the efficacy of safety-and-soundness regulation and supervision may benefit if it is separated from consumer protection supervision and regulation. This regulatory model maintains a system of multiple supervisors, each specializing in the regulation of a particular objective—typically safety and soundness and consumer protection (there can be other objectives as well). The model is designed to bring uniform regulation to firms engaged in the same activities by regulating the entire entity. Arguments have been put forth that this model may be more adaptable to innovation and technological advance than functional regulation because it does not focus on a particular product or service. It also may not be as unwieldy as the consolidated regulator model in large financial systems. It may, however, produce a certain amount of duplication and overlap or could lead to regulatory voids since multiple regulators are involved.

Another approach to organize a system-wide regulatory monitoring effort is through the creation of a systemic risk council (SRC) to address issues that pose risks to the broader financial system. Based on the key roles that they currently play in determining and addressing systemic risk, positions on this council should be held by the U.S. Treasury, the FDIC, the Federal Reserve Board, and the Securities and Exchange Commission. It may be appropriate to add other prudential supervisors as well.

The SRC would be responsible for identifying institutions, practices, and markets that create potential systemic risks, implementing actions to address those risks, ensuring effective information flow, completing analyses and making recommendations on potential systemic risks, setting capital and other standards, and ensuring that the key supervisors with responsibility for direct supervision apply those standards. The standards would be designed to provide incentives to reduce or eliminate potential systemic risks created by the size or complexity of individual entities, concentrations of risk or market practices, and other interconnections between entities and markets.

The SRC could take a more macro perspective and have the authority to overrule or force actions on behalf of other regulatory entities. In order to monitor risk in the financial system, the SRC also should have the authority to demand better information from systemically important entities and to ensure that information is shared more readily.

The creation of comprehensive systemic risk regulatory regime will not be a panacea. Regulation can only accomplish so much. Once the government formally establishes a systemic risk regulatory regime, market participants may assume that the likelihood of systemic events will be diminished. Market participants may incorrectly discount the possibility of sector-wide disturbances and avoid expending private resources to safeguard their capital positions. They also may arrive at distorted valuations in part because they assume (correctly or incorrectly) that the regulatory regime will reduce the probability of sector-wide losses or other extreme events.

To truly address the risks posed by systemically important institutions, it will be necessary to utilize mechanisms that once again impose market discipline on these institutions and their activities. For this reason, improvements in the supervision of systemically important entities must be coupled with disincentives for growth and complexity, as well as a credible and efficient structure that permits the resolutions of these entities if they fail while protecting taxpayers from exposure.

Q3: If there are institutions that are too big to fail, how do we identify that? How do we define the circumstance where a single company is so systemically significant to the rest of our financial circumstances and our economy that we must not allow it to fail?

A3: At present, the federal banking regulatory agencies likely have the best information regarding which large, complex, financial organizations (LCFO) would be "systemically significant" institutions if they were in danger of failing. Whether an institution is systemically important, however, would depend on a number of factors, including economic conditions. For example, if markets are functioning normally, a large institution could fail without systemic repercussions. Alternatively, in times of severe financial sector distress, much smaller institutions might well be judged to be systemic. Ultimately, identification of what is systemic will have to be decided within the structure created for systemic risk regulation.

Even if we could identify the "too big to fail" (TBTF) institutions, it is unclear that it would be prudent to publicly identify the institutions or fully disclose the characteristics that identify an institution as systemic. Designating a specific firm as TBTF would have a number of undesirable consequences: market discipline would be fully suppressed and the firm would have a competitive advantage in raising capital and funds. Absent some form of regulatory cost associated with systemic status, the advantages conveyed by such status create incentives for other firms to seek TBTF status—a result that would be counterproductive.

Identifying TBTF institutions, therefore, must be accompanied by legislative and regulatory initiatives that are designed to force TBTF firms to internalize the costs of government safety-net benefits and other potential costs to society. TBTF firms should face additional capital charges based on both size and complexity, higher deposit insurance related premiums or systemic risk surcharges, and be subject to tighter Prompt Corrective Action (PCA) limits under U.S. laws.

Q4: We need to have a better idea of what this notion of too big to fail is – what it means in different aspects of our industry and what our proper response to it should be. How should the federal government approach large, multinational and systemically significant companies?

A4: "Too-Big-to-Fail" implies that an organization is of such importance to the financial system that its failure will impose widespread costs on the economy and the financial system either by causing the failure of other linked financial institutions or by seriously disrupting intermediation in banking and financial markets. In such cases, the failure of the organization has potential spillover effects that could lead to widespread depositor runs, impair public confidence in the broader financial system, or cause serious disruptions in domestic and international payment and settlement systems that would in turn have negative and long lasting implications for economic growth.

Although TBTF is generally associated with the absolute size of an organization, it is not just a function of size, but also of the complexity of the organization and its position in national and international markets (market share). Systemic risk may also arise when organizations pose a significant amount of counterparty risk (for example, through derivative market exposures of direct guarantees) or when there is risk of important contagion effects when the failure of one institution is interpreted as a negative signal to the market about the condition of many other institutions.

As described above, a financial system characterized by a handful of giant institutions with global reach and a single regulator is making a huge bet that those few banks and their regulator over a long period of time will always make the right decisions at the right time. There are three key elements to addressing the problem of too big to fail.

First, financial firms that pose systemic risks should be subject to regulatory and economic incentives that require these institutions to hold larger capital and liquidity buffers to mirror the heightened risk they pose to the financial system. In addition, restrictions on leverage and the imposition of risk-based assessments on institutions and their activities would act as disincentives to the types of growth and complexity that raise systemic concerns.

The second important element in addressing too big to fail is an enhanced structure for the supervision of systemically important institutions. This structure should include both the direct supervision of systemically significant financial firms and the oversight of developing risks that may pose risks to the overall U.S. financial system. Centralizing the responsibility for supervising these institutions in a single systemic risk regulator would bring clarity and accountability to the efforts needed to identify and mitigate the buildup of risk at individual institutions. In addition, a systemic risk council could be created to address issues that pose risks to the broader financial system by identifying cross-cutting practices, and products that create potential systemic risks.

The third element to address systemic risk is the establishment of a legal mechanism for quick and orderly resolution of these institutions similar to what we use for FDIC insured banks. The purpose of the resolution authority should not be to prop up a failed entity indefinitely or to insure all liabilities, but to permit a timely and orderly resolution and the absorption of assets by the private sector as quickly as possible. Done correctly, the effect of the resolution authority will be to increase market discipline and protect taxpayers.

Q5: What does "fail" mean? In the context of AIG, we are talking about whether we should have allowed an orderly Chapter 11 bankruptcy proceeding to proceed. Is that failure?

A5: A firm fails when it becomes insolvent; the value of its assets is less than the value of its liabilities or when its regulatory capital falls below required regulatory minimum values. Alternatively, a firm can fail when it has insufficient liquidity to meet its payment obligations which may include required payments on liabilities or required transfers of cash-equivalent instruments to meet collateral obligations.

According to the above definition, AIG's initial liquidity crisis qualifies it as a failure. AIG's need for cash arose as a result of increases in required collateral obligations triggered by a ratings downgrade, increases in the market value of the CDS protection AIG sold, and by mass redemptions by counterparties in securities lending agreements where borrowers returned securities and demand their cash collateral. At the same time, AIG was unable to raise capital or renew commercial paper financing to meet increased need for cash.

Subsequent events suggest that AIG's problems extended beyond a liquidity crisis to insolvency. Large losses AIG has experienced depleted much of its capital. For instance, AIG reported a net loss in the fourth quarter 2008 of $61.7 billion bringing its net loss for the full year (2008) to $99.3 billion. Without government support, which is in excess of $180 billion, AIG would be insolvent and a bankruptcy filing would have been unavoidable.

Response to questions from the Honorable Herb Kohl
by Sheila C. Bair, Chairman,
Federal Deposit Insurance Corporation

Q1: Two approaches to systemic risk seem to be identified, (1) monitoring institutions and taking steps to reduce the size/activities of institutions that approach a "too large to fail" or "too systemically important to fail" or (2) impose an additional regulator and additional rules and market discipline on institutions that are considered systemically important.

Qa. Which approach do you endorse?

Qb. If you support approach (1) how you would limit institution size and how would you identify new areas creating systemic importance.

Qc. If you support approach (2) how would you identify systemically important institutions and what new regulations and market discipline would you recommend?

A1: There are three key elements to addressing the problem of systemic risk and too big to fail.

First, financial firms that pose systemic risks should be subject to regulatory and economic incentives that require these institutions to hold larger capital and liquidity buffers to mirror the heightened risk they pose to the financial system. In addition, restrictions on leverage and the imposition of risk-based assessments on institutions and their activities would act as disincentives to the types of growth and complexity that raise systemic concerns.

The second important element in addressing too big to fail is an enhanced structure for the supervision of systemically important institutions. This structure should include both the direct supervision of systemically significant financial firms and the oversight of developing risks that may pose risks to the overall U.S. financial system. Centralizing the responsibility for supervising these institutions in a single systemic risk regulator would bring clarity and accountability to the efforts needed to identify and mitigate the buildup of risk at individual institutions. In addition, a systemic risk council could be created to address issues that pose risks to the broader financial system by identifying cross-cutting practices, and products that create potential systemic risks. Based on the key roles that they currently play in determining and addressing systemic risk, positions on this council should be held by the U.S. Treasury, the FDIC, the Federal Reserve Board, and the Securities and Exchange Commission. It may be appropriate to add other prudential supervisors as well.

The creation of comprehensive systemic risk regulatory regime will not be a panacea. Regulation can only accomplish so much. Once the government formally establishes a systemic risk regulatory regime, market participants may assume that the likelihood of systemic events will be diminished. Market participants may incorrectly discount the possibility of sector-wide disturbances and avoid expending private resources to safeguard their capital positions. They also may arrive at distorted valuations in part because they assume (correctly or incorrectly) that the regulatory regime will reduce the probability of sector-wide losses or other extreme events.

To truly address the risks posed by systemically important institutions, it will be necessary to utilize mechanisms that once again impose market discipline on these institutions and their activities. This leads to the third element to address systemic risk -- the establishment of a legal mechanism for quick and orderly resolution of these institutions similar to what we use for FDIC insured banks. The purpose of the resolution authority should not be to prop up a failed entity indefinitely or to insure all liabilities, but to permit a timely and orderly resolution and the absorption of assets by the private sector as quickly as possible. Done correctly, the effect of the resolution authority will be to increase market discipline and protect taxpayers.

Q2: Please identify all regulatory or legal barriers to the comprehensive sharing of information among regulators including insurance regulators, banking regulators, and investment banking regulators. Please share the steps that you are taking to improve the flow of communication among regulators within the current legislative environment.

A2: Through the Federal Financial Institutions Examination Council (FFIEC), the federal and state bank regulatory agencies have adopted a number of information-sharing protocols and joint operational work streams to promote consistent information flow and reasonable access to supervisory activities among the agencies. The FFIEC's coordination efforts and joint examination process (when necessary) is an efficient means to conduct joint federal and state supervision efforts at banking organizations with multiple lines of business. The FFIEC initiates projects regularly to enhance our supervision processes, examination policies and procedures, examiner training, and outreach to the industry.

The FFIEC collaboration process for bank supervision works well. However, for the larger and more complex institutions, the layering of insurance and securities/capital markets units on a traditional banking organization increases the complexity of the overall federal supervisory process. This complexity is most pronounced within the small universe of systemically important institutions which represent a concentration of risk to the FDIC's Deposit Insurance Fund. The banking regulators generally do not have jurisdiction over securities and insurance activities which are vested in the U.S. Securities and Exchange Commission (SEC) and the U.S. Commodity Futures Trading Commission (CFTC) for securities activities, and state insurance regulators for insurance operations.

In some cases, large banking organizations have significant involvement in securities and capital markets-related activities supervised by the SEC. The FFIEC agencies do have information-sharing protocols with the securities regulators and rely significantly on the SEC's examination findings when evaluating a company's overall financial condition. In fact, the FDIC has signed information-sharing agreements with the SEC as well as the state securities and insurance commissioners. Prospectively, it may be appropriate to integrate the securities regulators' activities more closely with the FFIEC's processes to enhance information sharing and joint supervisory analyses.

Finally, as mentioned in the previous question, an additional way to improve information sharing would be through the creation of a systemic risk council (SRC) to address issues that pose risks to the broader financial system. The SRC would be responsible for identifying institutions, practices, and markets that create potential systemic risks, implementing actions to address those risks, ensuring effective information flow, completing analyses and making recommendations on potential systemic risks, setting capital and other standards and ensuring that the key supervisors with responsibility for direct supervision apply those standards. In order to monitor risk in the financial system, the SRC also should have the authority to demand better information from systemically important entities and to ensure that information is shared among regulators more readily.

Q3: If Congress charged the FDIC with the responsibility for the "special resolution regime" that you discuss in your written testimony, what additional regulatory authorities would you need and what additional resources would you need to be successful? Can you describe the difference in treatment for the shareholders of Bear Sterns under the current situation verses the situation if the "special resolution regime" was already in place?

A3: Additional Regulatory Authorities

Resolution authority for both (1) systemically significant financial companies and (2) non-systemically significant depository institution holding companies, including:

- Powers and authorities similar to those provided in the Federal Deposit Insurance Act for resolving failed insured depository institutions;
- funding mechanisms, including potential borrowing from and repayment to the Treasury;
- separation from bankruptcy proceedings for all holding company affiliates, including those directly controlling the IDI, when necessary to address the interdependent enterprise carried out by the insured depository institution and the remainder of the organization; and
- powers and authorities similar to those provided in the Federal Deposit Insurance Act for assistance to open entities in the case of systemically important entities, conservatorships, bridge institutions, and receiverships.

Additional Resources

The FDIC seeks to rely on in-house expertise to the extent possible. Thus, for example, the FDIC's staff has experts in capital markets, including securitizations. When pertinent expertise is not readily available in-house, the FDIC contracts out to complement its resources. If the FDIC identifies a longer-term need for such expertise, it will bring the necessary expertise in-house.

Difference in the Treatment for the Shareholders of Bear Sterns

With the variety of liquidation options now proposed, the FDIC would have had a number of tools at its disposal that would have enhanced its ability to effect an orderly resolution of Bear

Stearns. In particular, the appointment of the FDIC as receiver would have essentially terminated the rights of the shareholders. Any recovery on their equity interests would be limited to whatever net proceeds of asset liquidations remained after the payment in full of all creditors. This prioritization of recovery can assist to establish greater market discipline.

Q4: Your testimony recommends that "any new plan ensure that consumer protection activities are aligned with other bank supervisory information, resources, and expertise, and that enforcement of consumer protection rules be left to bank regulators."

Can you please explain how the agency currently takes into account consumer complaints and how the agency reflects those complaints when investigating the safety and soundness of an institution? Do you feel that the FDIC has adequate information sharing between the consumer protection examiners and safety and soundness examiners? If not, what are your suggestions to increase the flow of information between the different types of examiners?

A4: Consumer complaints can indicate potential safety-and-soundness or consumer protection issues. Close cooperation among FDIC Consumer Affairs, compliance examination, and safety-and-soundness examination staff in the Field Office, Regional Office, and Washington Office is essential to addressing issues raised by consumer complaints and determining the appropriate course of action.

Consumer complaints are received by the FDIC and financial institutions. Complaints against non FDIC-supervised institutions are forwarded to the appropriate primary regulator. The FDIC's Consumer Affairs staff receives the complaints directed to the FDIC and responds to and maintains files on these complaints. Consumer Affairs may request that examiners assist with a complaint investigation if an on-site review at a financial institution is deemed necessary.

Consumer complaints received by the FDIC, as well as the complaints received by a financial institution (or by third party service providers), are reviewed by compliance examiners during the pre-examination planning phase of a compliance examination. In addition, information obtained from the financial institution pertaining to consumer-related litigation, investigations by other government entities, and any institution management reports on the type, frequency, and distribution of consumer complaints are also reviewed. Compliance examiners consider this information, along with other types of information about the institution's operations, when establishing the scope of a compliance examination, including issues to be investigated and regulatory areas to be assessed during the examination. During the on-site compliance examination, examiners review the institution's complaint response processes as part of a comprehensive evaluation of the institution's compliance management system.

During risk management examinations, examiners will review information about consumer complaints and determine the potential for safety-and-soundness concerns. This, along with other types of information about the institution's operations, is used to determine the scope of a safety-and-soundness examination. Examples of complaints that may raise such concerns include allegations that the bank is extending poorly underwritten loans, a customer's account is being fraudulently manipulated, or insiders are receiving benefits not available to other bank customers. Where feasible, safety-and- soundness and compliance examinations may be conducted concurrently. At times, joint examination teams have been formed to evaluate and address risks at institutions offering complex products or services that prompted an elevated level of supervisory concern.

Apart from examination-related activity, the Consumer Affairs staff forwards to regional management all consumer complaints that appear to raise safety-and-soundness concerns as quickly as possible. Regional management will confirm that a consumer complaint raises safety-and-soundness issues and determine the appropriate course of action to investigate the complaint under existing procedures and guidance. If the situation demonstrates safety-and soundness issues, a Case Manager will assume responsibility for coordinating the investigation and, in certain situations, may prepare the FDIC's response to the complaint or advise the Consumer Affairs staff in their efforts to respond to the complaint. The Case Manager determines whether the complaint could be an indicator of a larger, more serious issue within the institution.

Quarterly, the Consumer Affairs staff prepares a consumer complaint summary report from its Specialized Tracking and Reporting System for institutions identified on a regional office's listing of institutions that may generate a higher number of complaints. These types of institutions may include, but are not limited to, banks with composite ratings of "4" and "5," subprime lenders, high loan-to-value lenders, consumer lenders, and credit card specialty institutions. This report provides summary data on the number and nature of consumer complaints received during the previous quarter. The Case Manager reviews the consumer complaint information for trends that may indicate a safety-and-soundness issue and documents the results of the review.

We believe FDIC examination staff effectively communicates, coordinates, and collaborates. Safety-and-soundness and compliance examiners work in the same field offices, and therefore, the regular sharing of information is commonplace. To ensure that pertinent examination or other relevant information is shared between the two groups of examiners, field territories hold quarterly meetings where consumer protection/compliance and risk management issues are discussed. In addition, Relationship Managers, Case Managers, and Review Examiners in every region monitor institutions and facilitate communication about compliance and risk management issues and develop cohesive supervisory plans. Both compliance examination and risk management examination staff share the same senior management. Effective information sharing ensures the FDIC is consistent in its examination approach, and compliance and risk management staffs are working hand in hand.

Although some suggest that an advantage of a separate agency for consumer protection would be its single-focus mission, this position may not acknowledge the reality of the interconnectedness of safety-and-soundness and consumer protection concerns, as well as the value of using existing expertise and examination infrastructure, noted above. Thus, even if such an agency only were tasked with rule-writing responsibilities, it would not be in a position to fully consider the safety-and-soundness dimensions of consumer protection issues. Moreover, if the agency also were charged with enforcing those rules, replicating the uniquely comprehensive examination and supervisory presence to which federally regulated financial institutions are currently subject would involve creating an extremely large new federal bureaucracy. Just providing enforcement authority, without examination or supervision, would simply duplicate the Federal Trade Commission.

Placing consumer compliance examination activities in a separate organization, apart from other supervisory responsibilities, ultimately will limit the effectiveness of both programs. Over time, staff at both agencies would lose the expertise and understanding of how consumer protection and the safe and sound conduct of a financial institution's business operations interrelate.

Q5: In your written testimony you state that "failure to ensure that financial products were appropriate and sustainable for consumers has caused significant problems, not only for those consumers, but for the safety and soundness of financial institutions. Do you believe that there should be a suitability standard placed on lending institutions?

A5: Certainly, as a variety of non-traditional mortgage products became widely available, a growing number of consumers began to receive mortgage loans that were unlikely to be affordable in the long term. This was a major precipitating factor in the current financial crisis.

With regard to mortgage lending, lenders should apply an affordability standard to ensure that a borrower has the ability to repay the debt according to the terms of the contract. Loans should be affordable and sustainable over the long-term and should be underwritten to the fully indexed rate. Such a standard would also be valuable if applied across all credit products, including credit cards, and should help eliminate practices that do not provide financial benefits to consumers.

However, an affordability standard will serve its intended purpose only if it is applied to all originators of home loans, including financial institutions, mortgage brokers, and other third parties.

Q6: Deposit Insurance question:
Recently, the FDIC has asked Congress to increase their borrowing authority from the Treasury up to $100 billion, citing that this would be necessary in order avoid imposing significant increases in assessments on insured financial institutions. Currently, the FDIC provides rebates to depository financial institutions when the DIF reaches 1.5%. Given the increase in bank closings over the past 12 months, do you believe the rebate policy should be reviewed or eliminated? What do you think is an appropriate level for the insurance fund in order to protect depositors at the increased amount of $250,000?

A6: While the Federal Deposit Insurance Reform Act of 2005 provided the FDIC with greater flexibility to base insured institutions' assessments on risk, it restricted the growth of the DIF. Under the Reform Act, when the DIF reserve ratio is above 1.35 percent, the FDIC is required to dividend half of the amount in excess of the amount required to maintain the reserve ratio at 1.35

percent. In addition, when the DIF reserve ratio is above 1.50 percent, the FDIC is required to dividend all amounts above the amount required to maintain the reserve ratio at 1.5 percent. The result of these mandatory dividends is to effectively cap the size of the DIF and to limit the ability of the fund to grow in good times.

A deposit insurance system should be structured with a counter-cyclical bias—that is, funds should be allowed to accumulate during strong economic conditions when deposit insurance losses may be low, as a cushion against future needs when economic circumstances may be less favorable and losses higher. However, the current restrictions on the size of the DIF limit the ability of the FDIC to rebuild the fund to levels that can offset the pro-cyclical effect of assessment increases during times of economic stress. Limits on the size of the DIF of this nature inevitably mean that the FDIC will have to charge higher premiums when economic conditions cause significant numbers of bank failures. As part of the consideration of broader regulatory restructuring, Congress may want to consider the impact of the mandatory rebate requirement or the possibility of providing for greater flexibility to permit the DIF to grow to levels in good times that will establish a sufficient cushion against losses in the event of an economic downturn.

Although the process of weighing options against the backdrop of the current crisis is only starting, taking a look at what might have occurred had the DIF reserve ratio been higher at its onset may be instructive.

The reserve ratio of the DIF declined from 1.22 percent as of December 31, 2007, to 0.36 percent as of December 31, 2008, a decrease of 86 basis points. If at the start of the current economic downturn the reserve ratio of the DIF had been 2.0 percent, allowing for a similar 86 basis point decrease, the reserve ratio would have been 1.14 percent at the end of the first quarter of 2009. At that level, given the current economic climate and the desire to structure the deposit insurance system in a counter-cyclical manner, it is debatable whether the FDIC would have found either the special assessment or an immediate increase in deposit insurance premiums necessary.

An increase in the deposit insurance level will increase total insured deposits. While increasing the coverage level to $250,000 will decrease the *actual* DIF reserve ratio (which is the ratio of the fund to estimated insured deposits), it will not necessarily change the *appropriate* reserve ratio. As noted in the response to the previous question, building reserve ratios to higher levels during good times may obviate the need for higher assessments during downturns.

Response to questions from the Honorable Kay Bailey Hutchison
by Sheila C. Bair, Chairman,
Federal Deposit Insurance Corporation

I have concerns about the recent decision by the Federal Deposit Insurance Corporation (FDIC) Board of Directors to impose a special assessment on insured institutions of 20 basis points, with the possibility of assessing an additional 10 basis points at any time as may be determined by the Board.

Since this decision was announced, I have heard from many Texas community bankers, who have advised me of the potential earnings and capital impact on their financial institutions, and more importantly, the resulting loss of funds necessary to lend to small business customers and consumers in Texas communities. It is estimated that assessments on Texas banks, if implemented as proposed, will remove nearly one billion dollars from available capital. When leveraged, this results in nearly eight to twelve billion dollars that will no longer be available for lending activity throughout Texas. At a time when responsible lending is critical to pulling our nation out of recession, this sort of reduction in local lending has the potential to extend our economic downturn.

I understand you believe that any assessments on the banking industry may be reduced by roughly half, or 10 basis points, should Congress provide the FDIC an increase in its line of credit at the Department of Treasury from $30 billion to $100 billion. That is why I have signed on as a cosponsor of The Depositor Protection Act of 2009, which accomplishes that goal.

However, my banking community informs me that even this modest proposed reduction in the special assessments will still disproportionately penalize community banks, the vast majority of which neither participated nor contributed to the irresponsible lending tactics that have led to the erosion of the FDIC deposit insurance fund (DIF).

I understand that there are various alternatives to ensure the fiscal stability of the DIF without adversely affecting the community banking industry, such as imposing a systemic risk premium, basing assessments on assets with an adjustment for capital rather than total insured deposits, or allowing banks to amortize the expenses over several years.

Q1. I respectfully request the following:

- **Could you outline several proposals to improve the soundness of the DIF while mitigating the negative effects on the community banking industry?**
- **Could you outline whether the FDIC has the authority to implement these policy proposals, or whether the FDIC would need additional authorities?**
- **If additional authority is needed, from which entity (i.e. Congress? Treasury? Would the FDIC need those additional authorities?**

A1. The FDIC realizes that assessments are a significant expense for the banking industry. For that reason, we continue to consider alternative ways to alleviate the pressure on the DIF. In the proposed rule on the special assessment (adopted in final on May 22, 2009), we specifically sought comment on whether the base for the special assessment should be total assets or some other measure that would impose a greater share of the special assessment on larger institutions. The Board also requested comment on whether the special assessment should take into account the assistance that has been provided to systemically important institutions. The final rule reduced the proposed special assessment to five basis points on each insured depository institutions assets, minus its Tier 1 capital, as of June 30, 2009. The assessment is capped at 10 basis points of an institution's domestic deposits so that no institution will pay an amount greater than they would have paid under the proposed interim rule.

The FDIC has taken several other actions under its existing authority in an effort to alleviate the burden of the special assessment. On February 27, 2009, the Board of Directors finalized new risk-based rules to ensure that riskier institutions bear a greater share of the assessment burden. We also imposed a surcharge on guaranteed bank debt under the Temporary Liquidity Guarantee Program (TLGP) and will use the money raised by the surcharge to reduce the proposed special assessment.

Several other steps to improve the soundness of the DIF would require congressional action. One such step would be for Congress to establish a statutory structure giving the FDIC the authority to resolve a failing or failed depository institution holding company (a bank holding company supervised by the Federal Reserve Board or a savings and loan holding company, including a mutual holding company, supervised by the Office of Thrift Supervision) with one or more subsidiary insured depository institutions that are failing or have failed.

As the corporate structures of bank holding companies, their insured depository and other affiliates continue to become more complex, an insured depository institution is likely to be dependent on affiliates that are subsidiaries of its holding company for critical services, such as loan and deposit processing and loan servicing. Moreover, there are many cases in which the affiliates are dependent for their continued viability on the insured depository institution. Failure and the subsequent resolution of an insured depository institution whose key services are provided by affiliates present significant legal and operational challenges. The insured depository institutions' failure may force its holding company into bankruptcy and destabilize its subsidiaries that provide indispensable services to the insured depository institution. This phenomenon makes it extremely difficult for the FDIC to effectuate a resolution strategy that preserves the franchise value of the failed insured depository institution and protects the DIF. Bankruptcy proceedings, involving the parent or affiliate of an insured depository institution, are time-consuming, unwieldy, and expensive. The threat of bankruptcy by the bank holding company or its affiliates is such that the Corporation may be forced to expend considerable sums propping up the bank holding company or entering into disadvantageous transactions with the bank holding company or its subsidiaries in order to proceed with an insured depository institution's resolution. The difficulties are particularly extreme where the Corporation has established a bridge depository institution to preserve franchise value, protect creditors (including uninsured depositors), and facilitate disposition of the failed institution's assets and liabilities.

Certainty regarding the resolution of large, complex financial institutions would also help to build confidence in the strength of the DIF. Unlike the clearly defined and proven statutory powers that exist for resolving insured depository institutions, the current bankruptcy framework available to resolve large complex non-bank financial entities and financial holding companies was not designed to protect the stability of the financial system. Without a system that provides for the orderly resolution of activities outside of the depository institution, the failure of a systemically important holding company or non-bank financial entity will create additional instability. This problem could be ameliorated or cured if Congress provided the necessary authority to resolve a large, complex financial institution and to charge systemically important firms fees and assessments necessary to fund such a systemic resolution system.

In addition, financial firms that pose systemic risks should be subject to regulatory and economic incentives that require these institutions to hold larger capital and liquidity buffers to mirror the heightened risk they pose to the financial system. Restrictions on leverage and the imposition of risk-based assessments on institutions and their activities also would act as disincentives to the types of growth and complexity that raise systemic concerns.

Q2: I commend you for your tireless efforts in helping our banking system survive this difficult environment, and I look forward to working closely with you to arrive at solutions to support the community banking industry while ensuring the long-term stability of the DIF to protect insured depositors against loss.

Will each of you commit to do everything within your power to prevent performing loans from being called by lenders? Please outline the actions you plan to take.

A2: The FDIC understands the tight credit conditions in the market and is engaged in a number of efforts to improve the current situation. Over the past year, we have issued guidance to the institutions we regulate to encourage banks to maintain the availability of credit. Moreover, our examiners have received specific instructions on properly applying this guidance to FDIC supervised institutions.

On November 12, 2008, we joined the other federal banking agencies in issuing the *Interagency Statement on Meeting the Needs of Creditworthy Borrowers* (FDIC FIL-128-2008). This statement reinforces the FDIC's view that the continued origination and refinancing of loans to creditworthy borrowers is essential to the vitality of our domestic economy. The statement encourages banks to continue making loans in their markets, work with borrowers who may be encountering difficulty during this challenging period, and pursue initiatives such as loan modifications to prevent unnecessary foreclosures.

In light of the present challenges facing banks and their customers, the FDIC hosted in March a roundtable discussion focusing on how regulators and financial institutions can work together to improve credit availability. Representatives from the banking industry were invited to share their concerns and insights with the federal bank regulators and representatives from state banking agencies. The attendees agreed that open, two-way communication between the regulators and the industry was vital to ensuring that safety and soundness considerations are well balanced with the critical need of providing credit to businesses and consumers.

One of the important points that came out of the session was the need for ongoing dialog between bankers and their regulators as they work jointly toward a solution to the current financial crisis. Toward this end, the FDIC created a new senior level position to expand community bank outreach. In conjunction with this office, the FDIC plans to establish an advisory committee to address the unique concerns of this segment of the banking community.

As part of our ongoing supervisory evaluation of banks that participate in federal financial stability programs, the FDIC also is taking into account how available capital is deployed to make responsible loans. It is necessary and prudent for banking organizations to track the use of the funds made available through federal programs and provide appropriate information about the use of these funds. On January 12, 2009, the FDIC issued a Financial Institution Letter titled *Monitoring the Use of Funding from Federal Financial Stability and Guarantee Programs* (FDIC FIL-1-2009), advising insured institutions that they should track their use of capital injections, liquidity support, and/or financing guarantees obtained through recent financial stability programs as part of a process for determining how these federal programs have improved the stability of the institution and contributed to lending to the community. Equally important to this process is providing this information to investors and the public. This Financial Institution Letter advises insured institutions to include information about their use of the funds in public reports, such as shareholder reports and financial statements.

Internally at the FDIC, we have issued guidance to our bank examiners for evaluating participating banks' use of funds received through the TARP Capital Purchase Program and the Temporary Liquidity Guarantee Program, as well as the associated executive compensation restrictions mandated by the Emergency Economic Stabilization Act. Examination guidelines for the new Public-Private Investment Fund will be forthcoming. During examinations, our supervisory staff will be reviewing banks' efforts in these areas and will make comments as appropriate to bank management. We will review banks' internal metrics on the loan origination activity, as well as more broad data on loan balances in specific loan categories as reported in Call Reports and other published financial data. Our examiners also will be considering these issues when they assign CAMELS composite and component ratings. The FDIC will measure and assess participating institutions' success in deploying TARP capital and other financial support from various federal initiatives to ensure that funds are used in a manner consistent with the intent of Congress, namely to support lending to U.S. businesses and households.

Response to questions from the Honorable Jack Reed
by Sheila C. Bair, Chairman,
Federal Deposit Insurance Corporation

It is clear that our current regulatory structure is in need of reform. At my subcommittee hearing on risk management, March 18th, 2009, GAO pointed out that regulators often did not move swiftly enough to address problems they had identified in the risk management systems of large, complex financial institutions.

Chair Bair's written testimony for today's hearing put it very well: "...the success of any effort at reform will ultimately rely on the willingness of regulators to use their authorities more effectively and aggressively."

My questions may be difficult, but please answer the following:

Q1a: If this lack of action is a persistent problem among the regulators, to what extent will changing the structure of our regulatory system really get at the issue?

A1a: It is unclear whether a change in the U.S. regulatory structure would have made a difference in mitigating the outcomes of this crisis. Countries that rely on a single financial regulatory body are experiencing the same financial stress the U.S. is facing now. Therefore, it is not certain that a single powerful federal regulator would have acted aggressively to restrain risk taking during the years leading up to the crisis.

For this reason, the reform of the regulatory structure also should include the creation of a systemic risk council (SRC) to address issues that pose risks to the broader financial system. The SRC would be responsible for identifying institutions, practices, and markets that create potential systemic risks, implementing actions to address those risks, ensuring effective information flow, completing analyses and making recommendations on potential systemic risks, setting capital and other standards and ensuring that the key supervisors with responsibility for direct supervision apply those standards. The macro-prudential oversight of system-wide risks requires the integration of insights from a number of different regulatory perspectives -- banks, securities firms, holding companies, and perhaps others. Only through these differing perspectives can there be a holistic view of developing risks to our system.

In the long run it is important to develop a "fail-safe" system where the failure of any one large institution will not cause the financial system to break down—that is, a system where firms are not systemically large and are not too-big-to fail. In order to move in this direction, we need to create incentives that limit the size and complexity of institutions whose failure would otherwise pose a systemic risk.

Finally, a key element to address systemic risk is the establishment of a legal mechanism for quick and orderly resolution of these institutions similar to what we use for FDIC insured banks. The purpose of the resolution authority should not be to prop up a failed entity indefinitely or to insure all liabilities, but to permit a timely and orderly resolution and the absorption of assets by the private sector as quickly as possible. Done correctly, the effect of the resolution authority will be to increase market discipline and protect taxpayers.

Q1b: Along with changing the regulatory structure, how can Congress best ensure that regulators have clear responsibilities and authorities, and that they are accountable for exercising them "effectively and aggressively"?

A1b: History shows that banking supervisors are reluctant to impose wholesale restrictions on bank behavior when banks are making substantial profits. Regulatory reactions to safety and soundness risks are often delayed until actual bank losses emerge from the practices at issue. While financial theory suggests that above average profits are a signal that banks have been taking above average risk, bankers often argue otherwise and regulators are all too often reluctant to prohibit profitable activities, especially if the activities are widespread in the banking system and do not have a history of generating losses. Supervision and regulation must become more proactive and supervisors must develop the capacity to intervene before significant losses are realized.

In order to encourage proactive supervision, Congress could require semi-annual hearings in which the various regulatory agencies are required to: (1) report on the condition of their supervised institutions; (2) comment on the sustainability of the most profitable business lines of their regulated entities; (3) outline emerging issues that may engender safety and soundness concerns within the next three years; (4) discuss specific weaknesses or gaps in regulatory authorities that are a source of regulatory concern and, when appropriate, propose legislation to attenuate safety and soundness issues. This requirement for semi-annual testimony on the state of regulated financial institutions is similar in concept to the Humphrey-Hawkins testimony requirement on Federal Reserve Board monetary policy.

Q2: How do we overcome the problem that in the boom times no one wants to be the one stepping in to tell firms they have to limit their concentrations of risk or not trade certain risky products?

Q2a: What thought has been put into overcoming this problem for regulators overseeing the firms?

A2a: During good times and bad, regulators must strike a balance between encouraging prudent innovation and strong bank supervision. Without stifling innovation, we need to ensure that banks engage in new activities in a safe-and-sound manner and originate responsible loans using prudent underwriting standards and loan terms that borrowers can reasonably understand and have the capacity to repay.

Going forward, the regulatory agencies should be more aggressive in good economic times to contain risk at institutions with high levels of credit concentrations, particularly in novel or untested loan products. Increased examination oversight of institutions exhibiting higher-risk characteristics is needed in an expanding economy, and regulators should have the staff expertise and resources to vigilantly conduct their work.

Q2b: Is this an issue that can be addressed through regulatory restructure efforts?

A2b: Reforming the existing regulatory structure will not directly solve the supervision of risk concentration issues going forward, but may play a role in focusing supervisory attention on areas of emerging risk. For example, a more focused regulatory approach that integrates the supervision of traditional banking operations with capital markets business lines supervised by a non-banking regulatory agency will help to address risk across the entire banking company.

Q3: As Mr. Tarullo and Mrs. Bair noted in their testimony, some financial institution failures emanated from institutions that were under federal regulation. While I agree that we need additional oversight over and information on unregulated financial institutions, I think we need to understand why so many regulated firms failed.

Q3a: Why is it the case that so many regulated entities failed, and many still remain struggling, if our regulators in fact stand as a safety net to rein in dangerous amounts of risk-taking?

A3a: Since 2007, the failure of community banking institutions was caused in large part by deterioration in the real estate market which led to credit losses and a rapid decline in capital positions. The causes of such failures are consistent with our receivership experience in past crises, and some level of failures is not totally unexpected with the downturn in the economic cycle. We believe the regulatory environment in the U.S. and the implementation of federal financial stability programs has actually prevented more failures from occurring and will assist weakened banks in ultimately recovering from current conditions. Nevertheless, the bank regulatory agencies should have been more aggressive earlier in this decade in dealing with institutions with outsized real estate loan concentrations and exposures to certain financial products.

For the larger institutions that failed, unprecedented changes in market liquidity had a significant negative effect on their ability to fund day-to-day operations as the securitization and inter-bank lending markets froze. The rapidity of these liquidity-related failures was without precedent and will require a more robust regulatory focus on large bank liquidity going forward.

Q3b: While we know that certain hedge funds, for example, have failed, have any of them contributed to systemic risk?

A3b: Although hedge funds are not regulated by the FDIC, they can comprise large asset pools, are in many cases highly leveraged, and are not subject to registration or reporting requirements. The opacity of these entities can fuel market concern and uncertainty about their activities. In times of stress these entities are subject to heightened redemption requests, requiring them to sell assets into distressed markets and compounding downward pressure on asset values.

Q3c: Given that some of the federal banking regulators have examiners on-site at banks, how did they not identify some of these problems we are facing today?

A3c: As stated above, the bank regulatory agencies should have been more aggressive earlier in this decade in dealing with institutions with outsized real estate loan concentrations and exposures to certain financial products. Although the federal banking agencies identified concentrations of risk and a relaxation of underwriting standards through the supervisory process, we could have been more aggressive in our regulatory response to limiting banks' risk exposures.

Q4: From your perspective, how dangerous is the "too big to fail" doctrine and how might it be addressed?

Q4a: Is it correct that deposit limits have been in place to avoid monopolies and limit risk concentration for banks?

A4a: While there is no formal "too big to fail" (TBTF) doctrine, some financial institutions have proven to be too large to be resolved within our traditional resolution framework. Many argued that creating very large financial institutions that could take advantage of modern risk management techniques and product and geographic diversification would generate high enough returns to assure the solvency of the firm, even in the face of large losses. The events of the past year have convincingly proven that this assumption was incorrect and is why the FDIC has recommended the establishment of resolution authority to handle the failure of large financial firms. There are three key elements to addressing the problem of systemic risk and too big to fail.

First, financial firms that pose systemic risks should be subject to regulatory and economic incentives that require these institutions to hold larger capital and liquidity buffers to mirror the heightened risk they pose to the financial system. In addition, restrictions on leverage and the imposition of risk-based assessments on institutions and their activities would act as disincentives to the types of growth and complexity that raise systemic concerns.

The second important element in addressing too big to fail is an enhanced structure for the supervision of systemically important institutions. This structure should include both the direct supervision of systemically significant financial firms and the oversight of developing risks that may pose risks to the overall U.S. financial system. Centralizing the responsibility for supervising these institutions in a single systemic risk regulator would bring clarity and accountability to the efforts needed to identify and mitigate the buildup of risk at individual institutions. In addition, a systemic risk council could be created to address issues that pose risks to the broader financial system by identifying cross-cutting practices, and products that create potential systemic risks.

The third element to address systemic risk is the establishment of a legal mechanism for quick and orderly resolution of these institutions similar to what we use for FDIC insured banks. The purpose of the resolution authority should not be to prop up a failed entity indefinitely or to insure all liabilities, but to permit a timely and orderly resolution and the absorption of assets by the private sector as quickly as possible. Done correctly, the effect of the resolution authority will be to increase market discipline and protect taxpayers.

With regard to statutory limits on deposits, there is a 10 percent nationwide cap on domestic deposits imposed in the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. While this regulatory limitation has been somewhat effective in preventing concentration in the U.S. system, the Riegle-Neal constraints have some significant limitations. First, these limits only apply to interstate bank mergers. Also, deposits in savings and loan institutions generally are not counted against legal limits. In addition, the law restricts only domestic deposit concentration and is silent on asset concentration, risk concentration or product concentration. The four largest banking organizations have slightly less than 35 percent of the domestic deposit market, but have over 45 percent of total industry assets. As we have seen, even with these deposit limits, banking organizations have become so large and interconnected that the failure of even one can threaten the financial system.

Q4b: Might it be the case that for financial institutions that fund themselves less by deposits and more by capital markets activities that they should be subject to concentration limits in certain activities? Would this potentially address the problem of too big to fail?

A4b: A key element in addressing TBTF would be legislative and regulatory initiatives that are designed to force firms to internalize the costs of government safety-net benefits and other potential costs to society. Firms should face additional capital charges based on both size and complexity, higher deposit insurance related premiums or systemic risk surcharges, and be subject to tighter Prompt Corrective Action (PCA) limits under U.S. laws.

In addition, we need to end investors' perception that TBTF continues to exist. This can only be accomplished by convincing the institutions (their management, their shareholders, and their creditors) that they are at risk of loss should the institution become insolvent. Although limiting concentrations of risky activities might lower the risk of insolvency, it would not change the presumption that a government bailout would be forthcoming to protect creditors from losses in a bankruptcy proceeding.

An urgent priority in addressing the TBTF problem is the establishment of a special resolution regime for non-bank financial institutions and for financial and bank holding companies -- with powers similar to those given to the FDIC for resolving insured depository institutions. The FDIC's authority to act as receiver and to set up a bridge bank to maintain key functions and sell assets as market conditions allow offers a good model for such a regime. A temporary bridge bank allows the government time to prevent a disorderly collapse by preserving systemically critical functions. It also enables losses to be imposed on market players who should appropriately bear the risk.

Q5: It appears that there were major problems with these risk management systems, as I heard in GAO testimony at my subcommittee hearing on March 18th, 2009, so what gave the Fed the impression that the models were ready enough to be the primary measure for bank capital?

A5: Throughout the development and implementation of Basel II, large U.S. commercial and investment banks touted their sophisticated systems for measuring and managing risks, and urged regulators to align regulatory capital requirements with banks' own risk measurements. The FDIC consistently expressed concerns that the U.S. and international regulatory communities collectively were putting too much reliance on financial institutions' representations about the quality of their risk measurement and management systems.

Q6: Moreover, how can the regulators know what "adequately capitalized" means if regulators rely on models that we now know had material problems?

A6: The FDIC has had long-standing concerns with Basel II's reliance on model-based capital standards. If Basel II had been implemented prior to the recent financial crisis, we believe capital requirements at large institutions would have been far lower going into the crisis and our financial system would have been worse off as a result. Regulators are working internationally to address some weaknesses in the Basel II capital standards and the Basel Committee has announced its intention to develop a supplementary capital requirement to complement the risk based requirements.

Q7: Can you tell us what main changes need to be made in the Basel II framework so that it effectively calculates risk? Should it be used in conjunction with a leverage ratio of some kind?

A7: The Basel II framework provides a far too pro-cyclical capital approach. It is now clear that the risk mitigation benefits of modeling, diversification and risk management were overestimated when Basel II was designed to set minimum regulatory capital requirements for large, complex financial institutions. Capital must be a solid buffer against unexpected losses, while modeling by its very nature tends to reflect expectations of losses looking back over relatively recent experience.

- The risk-based approach to capital adequacy in the Basel II framework should be supplemented with an international leverage ratio. Regulators should judge the capital adequacy of banks by applying a leverage ratio that takes into account off-balance-sheet assets and conduits as if these risks were on-balance-sheet.

- Institutions should be required to hold more capital through the cycle and we should require better quality capital. Risk-based capital requirements should not fall so dramatically during economic expansions only to increase rapidly during a downturn.

The Basel Committee is working on both of these concepts as well as undertaking a number of initiatives to improve the quality and level of capital. That being said, however, the Committee and the U.S. banking agencies do not intend to increase capital requirements in the midst of the current crisis. The plan is to develop proposals and implement these when the time is right, so that the banking system will have a capital base that is more robust in future times of stress.

Response to questions from the Honorable Richard Shelby
by Sheila C. Bair, Chairman,
Federal Deposit Insurance Corporation

Consumer Protection Regulation

Some have advocated that consumer protection and prudential supervision should be divorced, and that a separate consumer protection regulation regime should be created. They state that one source of the financial crisis emanated from the lack of consumer protection in the underwriting of loans in the originate-to-distribute space.

Q1: What are the merits of maintaining it in the same agency? Alternatively, what is the best argument each of you can make for a new consumer protection agency?

A1: As I said in my testimony, there can no longer be any doubt about the link between protecting consumers from abusive products and practices and the safety and soundness of the financial system. Products and practices that strip individual and family wealth undermine the foundation of the economy. As the current crisis demonstrates, increasingly complex financial products combined with frequently opaque marketing and disclosure practices result in problems not just for consumers, but for institutions and investors as well.

To protect consumers from potentially harmful financial products, a case has been made for a new independent financial product safety commission. Certainly, more must be done to protect consumers. The FDIC could support the establishment of a new entity to establish consistent consumer protection standards for banks and non-banks. However, we believe that such a body should include the perspective of bank regulators as well as non-bank enforcement officials such as the FTC. However, as Congress considers the options, we recommend that any new plan ensure that consumer protection activities are aligned and integrated with other bank supervisory information, resources, and expertise, and that enforcement of consumer protection rules for banks be left to bank regulators.

The current bank regulation and supervision structure allows the banking agencies to take a comprehensive view of financial institutions from both a consumer protection and safety-and-soundness perspective. Banking agencies' assessments of risks to consumers are closely linked with and informed by a broader understanding of other risks in financial institutions. Conversely, assessments of other risks, including safety and soundness, benefit from knowledge of basic principles, trends, and emerging issues related to consumer protection. Separating consumer protection regulation and supervision into different organizations would reduce information that is necessary for both entities to effectively perform their functions. Separating consumer protection from safety and soundness would result in similar problems. Our experience suggests that the development of policy must be closely coordinated and reflect a broad understanding of institutions' management, operations, policies, and practices -- and the bank supervisory process as a whole.

One of the fundamental principles of the FDIC's mission is to serve as an independent agency focused on maintaining consumer confidence in the banking system. The FDIC plays a unique role as deposit insurer, federal supervisor of state nonmember banks and savings institutions, and receiver for failed depository institutions. These functions contribute to the overall stability of and consumer confidence in the banking industry. With this mission in mind, if given additional rulemaking authority, the FDIC is prepared to take on an expanded role in providing consumers with stronger protections that address products posing unacceptable risks to consumers and eliminate gaps in oversight.

<u>Regulatory Gaps or Omissions</u>

During a recent hearing, the Committee has heard about massive regulatory gaps in the system. These gaps allowed unscrupulous actors like AIG to exploit the lack of regulatory oversight. Some of the counterparties that AIG did business with were institutions under your supervision.

Q1: Why didn't your risk management oversight of the AIG counterparties trigger further regulatory scrutiny? Was there a flawed assumption that AIG was adequately regulated, and therefore no further scrutiny was necessary?

A1: The FDIC did not have supervisory authority over AIG. However, to protect taxpayers the FDIC recommends that a new resolution regime be created to handle the failure of large non-banks such as AIG. This special receivership process should be outside bankruptcy and be patterned after the process we use for bank and thrift failures.

Q2: Was there dialogue between the banking regulators and the state insurance regulators? What about the SEC?

A2: The FDIC did not have supervisory authority for AIG and did not engage in discussions regarding the entity. However, the need for improved interagency communication demonstrates that the reform of the regulatory structure also should include the creation of a systemic risk council (SRC) to address issues that pose risks to the broader financial system. The SRC would be responsible for identifying institutions, practices, and markets that create potential systemic risks, implementing actions to address those risks, ensuring effective information flow, completing analyses and making recommendations on potential systemic risks, setting capital and other standards and ensuring that the key supervisors with responsibility for direct supervision apply those standards. The macro-prudential oversight of system-wide risks requires the integration of insights from a number of different regulatory perspectives -- banks, securities firms, holding companies, and perhaps others. Only through these differing perspectives can there be a holistic view of developing risks to our system.

Q3: If the credit default swap contracts at the heart of this problem had been traded on an exchange or cleared through a clearinghouse, with requirement for collateral and margin

payments, what additional information would have been available? How would you have used it?

A3: As with other exchange traded instruments, by moving the contracts onto an exchange or central counterparty, the overall risk to any counterparty and to the system as a whole would have been greatly reduced. The posting of daily variance margin and the mutuality of the exchange as the counterparty to market participants would almost certainly have limited the potential losses to any of AIG's counterparties.

For exchange traded contracts, counterparty credit risk, that is, the risk of a counterparty not performing on the obligation, would be substantially less than for bilateral OTC contracts. That is because the exchange becomes the counterparty for each trade.

The migration to exchanges or central clearinghouses of credit default swaps and OTC derivatives in general should be encouraged and perhaps required. The opacity of CDS risks contributed to significant concerns about the transmission of problems with a single credit across the financial system. Moreover, the customized mark to model values associated with OTC derivatives may encourage managements to be overly optimistic in valuing these products during economic expansions, setting up the potential for abrupt and destabilizing reversals.

The FDIC or other regulators could use better information derived from exchanges or clearinghouses to analyze both individual and systemic risk profiles. For those contracts which are not standardized, we urge complete reporting of information to trade repositories so that information would be available to regulators. With additional information, regulators may better analyze and ascertain concentrated risks to the market participants. This is particularly true for large counterparty exposures that may have systemic ramifications if the contracts are not well collateralized among counterparties.

Liquidity Management

A problem confronting many financial institutions currently experiencing distress is the need to roll-over short-term sources of funding. Essentially these banks are facing a shortage of liquidity. I believe this difficulty is inherent in any system that funds long-term assets, such as mortgages, with short-term funds. Basically the harm from a decline in liquidity is amplified by a bank's level of "maturity-mismatch."

Q1: I would like to ask each of the witnesses, should regulators try to minimize the level of a bank's maturity-mismatch? And if so, what tools would a bank regulator use to do so?

A1: The funding of illiquid assets, whose cash flows are realized over time and with uncertainty, with shorter-maturity volatile or credit sensitive funding, is at the heart of the liquidity problems facing some financial institutions. If a regulator determines that a bank is assuming amounts of liquidity risk that are excessive relative to its capital structure, then the regulator should require the bank to address this issue.

In recognition of the significant role that liquidity risks have played during this crisis, regulators the world over are considering ways to enhance supervisory approaches. There is better recognition of the need for banks to have an adequate cushion of liquid assets, supported by pro forma cash flow analysis under stressful scenarios, well diversified and tested funding sources, and a liquidity contingency plan. The FDIC issued supervisory guidance on liquidity risk in August of 2008.

<u>Too-Big-To-Fail</u>

Chairman Bair stated in her written testimony that "the most important challenge is to find ways to impose greater market discipline on systemically important institutions. The solution must involve, first and foremost, a legal mechanism for the orderly resolution of those institutions similar to that which exists for FDIC-insured banks. In short we need to end too big to fail. I would agree that we need to address the too-big-to-fail issue, both for banks and other financial institutions.

Q1: Could each of you tell us whether putting a new resolution regime in place would address this issue?

A1: There are three key elements to addressing the problem of systemic risk and too big to fail.

First, financial firms that pose systemic risks should be subject to regulatory and economic incentives that require these institutions to hold larger capital and liquidity buffers to mirror the heightened risk they pose to the financial system. In addition, restrictions on leverage and the imposition of risk-based assessments on institutions and their activities would act as disincentives to the types of growth and complexity that raise systemic concerns.

The second important element in addressing too big to fail is an enhanced structure for the supervision of systemically important institutions. This structure should include both the direct supervision of systemically significant financial firms and the oversight of developing risks that may pose risks to the overall U.S. financial system. Centralizing the responsibility for supervising these institutions in a single systemic risk regulator would bring clarity and accountability to the efforts needed to identify and mitigate the buildup of risk at individual institutions. In addition, a systemic risk council could be created to address issues that pose risks to the broader financial system by identifying cross-cutting practices, and products that create potential systemic risks.

The third element to address systemic risk is the establishment of a legal mechanism for quick and orderly resolution of these institutions similar to what we use for FDIC insured banks. The purpose of the resolution authority should not be to prop up a failed entity indefinitely or to insure all liabilities, but to permit a timely and orderly resolution and the absorption of assets by the private sector as quickly as possible. Done correctly, the effect of the resolution authority will be to increase market discipline and protect taxpayers.

Q2: How would we be able to convince the market that these systemically important institutions would not be protected by taxpayer resources as they had been in the past?

A2: Given the long history of government bailouts for economically and systemically important firms, it will be extremely difficult to convince market participants that current practices have changed. Still, it is critical that we dispel the presumption that some institutions are "too big to fail".

As outlined in my testimony, it is imperative that we undertake regulatory and legislative reforms that force TBTF institutions to internalize the social costs of bailouts and put shareholders, creditors, and managers at real risk of loss. Capital and other requirements should be put in place to provide disincentives for institutions to become too large or complex. This must be linked with a legal mechanism for the orderly resolution of systemically important non-bank financial firms—a mechanism similar to that which currently exists for FDIC-insured depository institutions.

Pro-Cyclicality

I have some concerns about the pro-cyclical nature of our present system of accounting and bank capital regulation. Some commentators have endorsed a concept requiring banks to hold more capital when good conditions prevail, and then allow banks to temporarily hold less capital in order not to restrict access to credit during a downturn. Advocates of this system believe that counter cyclical policies could reduce imbalances within financial markets and smooth the credit cycle itself.

Q1: What do you see as the costs and benefits of adopting a more counter-cyclical system of regulation?

A1: The FDIC would be supportive of a capital and accounting framework for insured depository institutions that avoids the unintended pro-cyclical outcomes we have experienced in the current crisis. Capital and other appropriate buffers should be built up during more benign parts of the economic cycle so that they are available during more stressed periods. The FDIC firmly believes that financial statements should present an accurate depiction of an institution's capital position, and we strongly advocate robust capital levels during both prosperous and adverse economic cycles. Some features of existing capital regimes, and certainly the Basel II Advanced Approaches, lead to reduced capital requirements during good times and increased capital requirements during more difficult economic periods. Some part of capital should be risk sensitive, but it must serve as a cushion throughout the economic cycle. We believe a minimum leverage capital ratio is a critical aspect of our regulatory process as it provides a buffer against unexpected losses and the vagaries of models-based approaches to assessing capital adequacy.

Adoption of banking guidelines that mitigate the effects of pro-cyclicality could potentially lessen the government's financial risk arising from the various federal safety nets. In addition, they would help financial institutions remain sufficiently reserved against loan losses and adequately capitalized during good and bad times. In addition, some believe that counter-cyclical approaches would moderate the severity of swings in the economic cycle as banks would have to set aside more capital and reserves for lending, and thus take on less risk during economic expansions.

Q2: Do you see any circumstances under which your agencies would take a position on the merits of counter-cyclical regulatory policy?

A2: The FDIC would be supportive of a capital and accounting framework for insured depository institutions that avoids the unintended pro-cyclical outcomes we have experienced in the current crisis. Again, we are strongly supportive of robust capital standards for banks and thrifts as well as conservative accounting guidelines which accurately represent the financial position of insured institutions.

G20 Summit and International Coordination

Many foreign officials and analysts have said that they believe the upcoming G20 summit will endorse a set of principles agreed to by both the Financial Stability Forum and the Basel Committee, in addition to other government entities. There have also been calls from some countries to heavily re-regulate the financial sector, pool national sovereignty in key economic areas, and create powerful supranational regulatory institutions. [Examples are national bank resolution regimes, bank capital levels, and deposit insurance.] Your agencies are active participants in these international efforts.

Q1: What do you anticipate will be the result of the G20 summit?

A1: The G20 summit communiqué addressed a long list of principles and actions that were originally presented in the so-called Washington Action Plan. The communiqué provided a full progress report on each of the 47 actions in that plan. The major reforms included expansion and enhancement of the Financial Stability Board (formerly the Financial Stability Forum). The FSB will continue to assess the state of the financial system and promote coordination among the various financial authorities. To promote international cooperation, the G20 countries also agreed to establish supervisory colleges for significant cross-border firms, implement cross-border crisis management, and launch an Early Warning Exercise with the IMF. To strengthen prudent financial regulation, the G20 endorsed a supplemental non-risk based measure of capital adequacy to complement the risk-based capital measures, incentives for improving risk management of securitizations, stronger liquidity buffers, regulation and oversight of systemically important financial institutions, and a broad range of compensation, tax haven, and accounting provisions.

Q2: Do you see any examples or areas where supranational regulation of financial services would be effective?

A2: If we are to restore financial health across the globe and be better prepared for the next global financial situation, we must develop a sound basis of financial regulation both in the U.S. and internationally. This is particularly important in the area of cross-border resolutions of systemically important financial institutions. Fundamentally, the focus must be on reforms of national policies and laws in each country. Among the important requirements in many laws are on-site examinations, a leverage ratio as part of the capital regime, an early intervention system like prompt corrective action, more flexible resolution powers, and a process for dealing with troubled financial companies. This last reform also is needed in this country. However, we do not see any appetite for supranational financial regulation of financial services among the G20 countries at this time.

Q3: How far do you see your agencies pushing for or against such supranational initiatives?

A3: At this time and until the current financial situation is resolved, I believe the FDIC should focus its efforts on promoting an international leverage ratio, minimizing the pro-cyclicality of the Basel II capital standards, cross-border resolutions, and other initiatives that the Basel Committee is undertaking. In the short run, achieving international cooperation on these issues will require our full attention.

<u>Regulatory Reform</u>

Chairman Bair, Mr. Tarullo noted in his testimony the difficulty of crafting a workable resolution regime and developing an effective systemic risk regulation scheme.

Q1: Are you concerned that there could be unintended consequences if we do not proceed with due care?

A1: Once the government formally appoints a systemic risk regulator (SRR), market participants may assume that the likelihood of systemic events will be diminished going forward. By explicitly accepting the task of ensuring financial sector stability and appointing an agency responsible for discharging this duty, the government could create expectations that weaken market discipline. Private sector market participants may incorrectly discount the possibility of sector-wide disturbances. Market participants may avoid expending private resources to safeguard their capital positions or arrive at distorted valuations in part because they assume (correctly or incorrectly) that the SRR will reduce the probability of sector-wide losses or other extreme events. In short, the government may risk increasing moral hazard in the financial system unless an appropriate system of supervision and regulation is in place. Such a system must anticipate and mitigate private sector incentives to attempt to profit from this new form of government oversight and protection at the expense of taxpayers.

When establishing a SRR, it is also important for the government to manage expectations. Few if any existing systemic risk monitors were successful in identifying financial sector risks prior to the current crisis. Central banks have, for some time now, acted as systemic risk monitors and few if any institutions anticipated the magnitude of the current crisis or the risk exposure concentrations that have been revealed. Regulators and central banks have mostly had to catch up with unfolding events with very little warning about impending firm and financial market failures.

The need for and duties of a SRR can be reduced if we alter supervision and regulation in a manner that discourages firms from forming institutions that are systemically important or too-big-to fail. Instead of relying on a powerful SSR, we need instead to develop a "fail-safe" system where the failure of any one large institution will not cause the financial system to break down. In order to move in this direction, we need to create disincentives that limit the size and complexity of institutions whose failure would otherwise pose a systemic risk.

In addition, the reform of the regulatory structure also should include the creation of a systemic risk council (SRC) to address issues that pose risks to the broader financial system. The SRC would be responsible for identifying institutions, practices, and markets that create potential systemic risks, implementing actions to address those risks, ensuring effective information flow, completing analyses and making recommendations on potential systemic risks, setting capital and other standards and ensuring that the key supervisors with responsibility for direct supervision apply those standards. The macro-prudential oversight of system-wide risks requires the integration of insights from a number of different regulatory perspectives -- banks, securities firms, holding companies, and perhaps others. Only through these differing perspectives can there be a holistic view of developing risks to our system.

It also is essential that these reforms be time to the establishment of a legal mechanism for quick and orderly resolution of these institutions similar to what we use for FDIC insured banks. The purpose of the resolution authority should not be to prop up a failed entity indefinitely or to insure all liabilities, but to permit a timely and orderly resolution and the absorption of assets by the private sector as quickly as possible. Done correctly, the effect of the resolution authority will be to increase market discipline and protect taxpayers.

<u>Credit Rating Agencies</u>

Ms. Bair, you note the role of the regulatory framework, including capital requirements, in encouraging blind reliance on credit ratings. You recommend pre-conditioning ratings-based capital requirements on wide availability of the underlying data.

Q1: Wouldn't the most effective approach be to take ratings out of the regulatory framework entirely?

A1: We need to consider a range of options for prospective capital requirements based on the lessons we are learning from the current crisis. Data from credit rating agencies can be a valuable component of a credit risk assessment process, but capital and risk management should not rely on credit ratings. This issue will need to be explored further as regulatory capital guidelines are considered.

Systemic Regulator

Ms. Bair, you observed that many of the failures in this crisis were failures of regulators to use authority that they had.

Q1: In light of this, do you believe layering a systemic risk regulator on top of the existing regime is the optimal way to proceed with regulatory restructuring?

A1: A distinction should be drawn between the direct supervision of systemically-significant financial firms and the macro-prudential oversight of developing risks that may pose systemic risks to the U.S. financial system. The former appropriately calls for a single regulator for the largest, most systemically-significant firms, including large bank holding companies. The macro-prudential oversight of system-wide risks requires the integration of insights from a number of different regulatory perspectives -- banks, securities firms, holding companies, and perhaps others. Only through these differing perspectives can there be a holistic view of developing risks to our system. As a result, for this latter role, the FDIC would suggest creation of a systemic risk council (SRC) to provide analytical support, develop needed prudential policies, and have the power to mitigate developing risks.

LA09-546

United States Senate

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

WASHINGTON, DC 20510-6075

April 9, 2009

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

Dear Chairman Bair:

Thank you for testifying before the Committee on Banking, Housing, and Urban Affairs on March 19, 2009. 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,

[redacted]

CHRISTOPHER J. DODD
Chairman

CJD/dr

Questions for the Hearing on "Modernizing Bank Supervision and Regulation"
March 19, 2009

Questions for The Honorable Sheila Bair, Chairman, Federal Deposit Insurance Corporation, from Senator Crapo:

The convergence of financial services providers and financial products has increased over the past decade. Financial products and companies may have insurance, banking, securities, and futures components. One example of this convergence is AIG. Is the creation of a systemic risk regulator the best method to fill in the gaps and weaknesses that AIG has exposed, or does Congress need to reevaluate the weaknesses of federal and state functional regulation for large, interconnected, and large firms like AIG? DIR

Recently there have been several proposals to consider for financial services conglomerates. One approach would be to move away from functional regulation to some type of single consolidated regulator like the Financial Services Authority model. Another approach is to follow the Group of 30 Report which attempts to modernize functional regulation and limit activities to address gaps and weaknesses. An in-between approach would be to move to an objectives-based regulation system suggested in the Treasury Blueprint. What are some of the pluses and minuses of these three approaches? DIR/DSC

If there are institutions that are too big to fail, how do we identify that? How do we define the circumstance where a single company is so systemically significant to the rest of our financial circumstances and our economy that we must not allow it to fail? DIR

We need to have a better idea of what this notion of too big to fail is -- what it means in different aspects of our industry and what our proper response to it should be. How should the federal government approach large, multinational and systemically significant companies? DIR

What does "fail" mean? In the context of AIG, we are talking about whether we should have allowed an orderly Chapter 11 bankruptcy proceeding to proceed. Is that failure? DIR

Questions for the Hearing on "Modernizing Bank Supervision and Regulation"
March 19, 2009

Questions for The Honorable Sheila Bair, Chairman, Federal Deposit Insurance Corporation, from Senator Kohl:

Two approaches to systemic risk seem to be identified, (1) monitoring institutions and taking steps to reduce the size/activities of institutions that approach a "too large to fail" or "too systemically important to fail" or (2) impose an additional regulator and additional rules and market discipline on institutions that are considered systemically important. Which approach do you endorse? If you support approach (1) how you would limit institution size and how would you identify new areas creating systemic importance. If you support approach (2) how would you identify systemically important institutions and what new regulations and market discipline would you recommend? - DIR

Please identify all regulatory or legal barriers to the comprehensive sharing of information among regulators including insurance regulators, banking regulators, and investment banking regulators. Please share the steps that you are taking to improve the flow of communication among regulators within the current legislative environment. - DSC

If congress charged the FDIC with the responsibility for the "special resolution regime" that you discuss in your written testimony, what additional regulatory authorities would you need and what additional resources would you need to be successful? Can you describe the difference in treatment for the shareholders of Bear Sterns under the current situation verses the situation if the "special resolution regime" was already in place? Legal

Your testimony recommends that "any new plan ensure that consumer protection activities are aligned with other bank supervisory information, resources, and expertise, and that enforcement of consumer protection rules be left to bank regulators." - DSC

Can you please explain how the agency currently takes into account consumer complaints and how the agency reflects those complaints when investigating the safety and soundness of an institution? Do you feel that the FDIC has adequate information sharing between the consumer protection examiners and safety and soundness examiners? If not, what are your suggestions to increase the flow of information between the different types of examiners?

In your written testimony you state that "failure to ensure that financial products were appropriate and sustainable for consumers has caused significant problems, not only for those consumers, but for the safety and soundness of financial institutions. Do you believe that there should be a suitability standard placed on lending institutions? - DSC

Questions for the Hearing on "Modernizing Bank Supervision and Regulation"
March 19, 2009

Deposit Insurance question:
Recently, the FDIC has asked Congress to increase their borrowing authority from the Treasury up to $100 billion, citing that this would be necessary in order avoid imposing significant increases in assessments on insured financial institutions. Currently, the FDIC provides rebates to depository financial institutions when the DIF reaches 1.5%. Given the increase in bank closings over the past 12 months, do you believe the rebate policy should be reviewed or eliminated? What do you think is an appropriate level for the insurance fund in order to protect depositors at the increased amount of $250,000?

DIR

Questions for the Hearing on "Modernizing Bank Supervision and Regulation"
March 19, 2009

Questions for The Honorable Sheila Bair, Chairman, Federal Deposit Insurance Corporation, from Senator Hutchison:

I have concerns about the recent decision by the Federal Deposit Insurance Corporation (FDIC) Board of Directors to impose a special assessment on insured institutions of 20 basis points, with the possibility of assessing an additional 10 basis points at any time as may be determined by the Board.

Since this decision was announced, I have heard from many Texas community bankers, who have advised me of the potential earnings and capital impact on their financial institutions, and more importantly, the resulting loss of funds necessary to lend to small business customers and consumers in Texas communities. It is estimated that assessments on Texas banks, if implemented as proposed, will remove nearly one billion dollars from available capital. When leveraged, this results in nearly eight to twelve billion dollars that will no longer be available for lending activity throughout Texas. At a time when responsible lending is critical to pulling our nation out of recession, this sort of reduction in local lending has the potential to extend our economic downturn.

I understand you believe that any assessments on the banking industry may be reduced by roughly half, or 10 basis points, should Congress provide the FDIC an increase in its line of credit at the Department of Treasury from $30 billion to $100 billion. That is why I have signed on as a cosponsor of The Depositor Protection Act of 2009, which accomplishes that goal.

However, my banking community informs me that even this modest proposed reduction in the special assessments will still disproportionately penalize community banks, the vast majority of which neither participated nor contributed to the irresponsible lending tactics that have led to the erosion of the FDIC deposit insurance fund (DIF).

I understand that there are various alternatives to ensure the fiscal stability of the DIF without adversely affecting the community banking industry, such as imposing a systemic risk premium, basing assessments on assets with an adjustment for capital rather than total insured deposits, or allowing banks to amortize the expenses over several years.

I respectfully request the following:

- Could you outline several proposals to improve the soundness of the DIF while mitigating the negative effects on the community banking industry?
- Could you outline whether the FDIC has the authority to implement these policy proposals, or whether the FDIC would need additional authorities?
- If additional authority is needed, from which entity (ie. Congress? Treasury?) would the FDIC need those additional authorities?

DIR

Questions for the Hearing on "Modernizing Bank Supervision and Regulation"
March 19, 2009

I commend you for your tireless efforts in helping our banking system survive this difficult environment, and I look forward to working closely with you to arrive at solutions to support the community banking industry while ensuring the long-term stability of the DIF to protect insured depositors against loss.

- Will each of you commit to do everything within your power to prevent performing loans from being called by lenders? Please outline the actions you plan to take. DSC

Questions for the Hearing on "Modernizing Bank Supervision and Regulation"
March 19, 2009

Questions for The Honorable Sheila Bair, Chairman, Federal Deposit Insurance Corporation, from Senator Reed:

1. It is clear that our current regulatory structure is in need of reform. At my subcommittee hearing on risk management, March 18th, 2009, GAO pointed out that regulators often did not move swiftly enough to address problems they had identified in the risk management systems of large, complex financial institutions.

   Chair Bair's written testimony for today's hearing put it very well: "...the success of any effort at reform will ultimately rely on the willingness of regulators to use their authorities more effectively and aggressively."

   My questions may be difficult, but please answer the following:

   - If this lack of action is a persistent problem among the regulators, to what extent will changing the structure of our regulatory system really get at the issue? DIR/DSC
   - Along with changing the regulatory structure, how can Congress best ensure that regulators have clear responsibilities and authorities, and that they are accountable for exercising them "effectively and aggressively"? DIR

2. How do we overcome the problem that in the boom times no one wants to be the one stepping in to tell firms they have to limit their concentrations of risk or not trade certain risky products?

   - What thought has been put into overcoming this problem for regulators overseeing the firms?
   - Is this an issue that can be addressed through regulatory restructure efforts? DSC

3. As Mr. Tarullo and Mrs. Bair noted in their testimony, some financial institution failures emanated from institutions that were under federal regulation. While I agree that we need additional oversight over and information on unregulated financial institutions, I think we need to understand why so many regulated firms failed.

   - Why is it the case that so many regulated entities failed, and many still remain struggling, if our regulators in fact stand as a safety net to rein in dangerous amounts of risk-taking? DSC
   - While we know that certain hedge funds, for example, have failed, have any of them contributed to systemic risk? DSC
   - Given that some of the federal banking regulators have examiners on-site at banks, how did they not identify some of these problems we are facing today? DSC

Questions for the Hearing on "Modernizing Bank Supervision and Regulation"
March 19, 2009

4. From your perspective, how dangerous is the "too big to fail" doctrine and how might it be addressed? DIR

   - Is it correct that deposit limits have been in place to avoid monopolies and limit risk concentration for banks? DIR
   - Might it be the case that for financial institutions that fund themselves less by deposits and more by capital markets activities that they should be subject to concentration limits in certain activities? DIR
   - Would this potentially address the problem of too big to fail? DIR

5. It appears that there were major problems with these risk management systems, as I heard in GAO testimony at my subcommittee hearing on March 18th, 2009, so what gave the Fed the impression that the models were ready enough to be the primary measure for bank capital? DSC

6. Moreover, how can the regulators know what "adequately capitalized" means if regulators rely on models that we *now* know had material problems? DSC

7. Can you tell us what main changes need to be made in the Basel II framework so that it effectively calculates risk? Should it be used in conjunction with a leverage ratio of some kind? DSC

Questions for the Hearing on "Modernizing Bank Supervision and Regulation"
March 19, 2009

Questions for The Honorable Sheila Bair, Chairman, Federal Deposit Insurance Corporation, from Ranking Member Shelby:

Consumer Protection Regulation
Some have advocated that consumer protection and prudential supervision should be divorced, and that a separate consumer protection regulation regime should be created. They state that one source of the financial crisis emanated from the lack of consumer protection in the underwriting of loans in the originate-to-distribute space.

- What are the merits of maintaining it in the same agency? Alternatively, what is the best argument each of you can make for a new consumer protection agency? DSC

Regulatory Gaps or Omissions
During a recent hearing, the Committee has heard about massive regulatory gaps in the system. These gaps allowed unscrupulous actors like AIG to exploit the lack of regulatory oversight. Some of the counterparties that AIG did business with were institutions under your supervision.

- Why didn't your risk management oversight of the AIG counterparties trigger further regulatory scrutiny? Was there a flawed assumption that AIG was adequately regulated, and therefore no further scrutiny was necessary? DSC

- Was there dialogue between the banking regulators and the state insurance regulators? What about the SEC? DSC

- If the credit default swap contracts at the heart of this problem had been traded on an exchange or cleared through a clearinghouse, with requirement for collateral and margin payments, what additional information would have been available? How would you have used it? DSC

Liquidity Management
A problem confronting many financial institutions currently experiencing distress is the need to roll-over short-term sources of funding. Essentially these banks are facing a shortage of liquidity. I believe this difficulty is inherent in any system that funds long-term assets, such as mortgages, with short-term funds. Basically the harm from a decline in liquidity is amplified by a bank's level of "maturity-mismatch."

- I would like to ask each of the witnesses, should regulators try to minimize the level of a bank's maturity-mismatch? And if so, what tools would a bank regulator use to do so? DSC

**Questions for the Hearing on "Modernizing Bank Supervision and Regulation"
March 19, 2009**

Regulatory Conflict of Interest

Federal Reserve Banks which conduct bank supervision are run by bank presidents that are chosen in part by bankers that they regulate.

N/A

- Mr. Tarullo, do you see the potential for any conflicts of interest in the structural characteristics of the Fed's bank supervisory authorities?

- Mr. Dugan and Mr. Polakoff, does the fact that your agencies' funding stream is affected by how many institutions you are able to keep under your charters affect your ability to conduct supervision?

Too-Big-To-Fail

Chairman Bair stated in her written testimony that "the most important challenge is to find ways to impose greater market discipline on systemically important institutions. The solution must involve, first and foremost, a legal mechanism for the orderly resolution of those institutions similar to that which exists for FDIC-insured banks. In short we need to end too big to fail. I would agree that we need to address the too-big-to-fail issue, both for banks and other financial institutions.

- Could each of you tell us whether putting a new resolution regime in place would address this issue? DIR

- How would we be able to convince the market that these systemically important institutions would not be protected by taxpayer resources as they had been in the past? DIR

Pro-Cyclicality

I have some concerns about the pro-cyclical nature of our present system of accounting and bank capital regulation. Some commentators have endorsed a concept requiring banks to hold more capital when good conditions prevail, and then allow banks to temporarily hold less capital in order not to restrict access to credit during a downturn. Advocates of this system believe that counter cyclical policies could reduce imbalances within financial markets and smooth the credit cycle itself.

- What do you see as the costs and benefits of adopting a more counter-cyclical system of regulation? DSC

- Do you see any circumstances under which your agencies would take a position on the merits of counter-cyclical regulatory policy? DSC

G20 Summit and International Coordination

Many foreign officials and analysts have said that they believe the upcoming G20 summit will endorse a set of principles agreed to by both the Financial Stability Forum and the Basel

Committee, in addition to other government entities. There have also been calls from some countries to heavily re-regulate the financial sector, pool national sovereignty in key economic areas, and create powerful supranational regulatory institutions. **[Examples are national bank resolution regimes, bank capital levels, and deposit insurance.]** Your agencies are active participants in these international efforts.

- What do you anticipate will be the result of the G20 summit?] - DSC
- Do you see any examples or areas where supranational regulation of financial services would be effective? - DSC
- How far do you see your agencies pushing for or against such supranational initiatives? - DSC

Regulatory Reform

Chairman Bair, Mr. Tarullo noted in his testimony the difficulty of crafting a workable resolution regime and developing an effective systemic risk regulation scheme.

- Are you concerned that there could be unintended consequences if we do not proceed with due care?] - DIR

Credit Rating Agencies

Ms. Bair, you note the role of the regulatory framework, including capital requirements, in encouraging blind reliance on credit ratings. You recommend pre-conditioning ratings-based capital requirements on wide availability of the underlying data.

- Wouldn't the most effective approach be to take ratings out of the regulatory framework entirely? } - DSC

Systemic Regulator

Ms. Bair, you observed that many of the failures in this crisis were failures of regulators to use authority that they had.

- In light of this, do you believe layering a systemic risk regulator on top of the existing regime is the optimal way to proceed with regulatory restructuring?] - DIR/DSC

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington DC 20429

OFFICE OF THE VICE CHAIRMAN

June 2, 2009

Honorable Bill Posey
House of Representatives
Washington, D.C. 20515

Dear Congressman Posey:

It was my pleasure to testify before the Committee at the March 20 hearing "Federal and State Enforcement of Consumer and Investor Protection Laws." Enclosed is my response to the questions you posed at the hearing.

If you have further questions or comments, please do not hesitate to contact me at (202) 898-3888 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

[redacted]

Martin J. Gruenberg
Vice Chairman

Enclosure

Response to questions from the Honorable Bill Posey
by Martin J. Gruenberg, Vice Chairman,
Federal Deposit Insurance Corporation

Q1(a). Provide a one page summary – not a book – but a one page summary describing what you think was the root cause of the crisis.

A1(a). The financial crisis was caused by a number of factors, but five key developments appear central. The first development was a dramatic shift in the U.S. mortgage market away from the traditional 30 year fixed rate mortgage toward subprime, Alt-A, and nontraditional mortgages, which include interest only and payment option adjustable rate mortgages. Prior to this decade, the 30 year fixed rate mortgage had dominated the U.S. mortgage market for years, but by 2006 its share had slipped to less than half of mortgage originations. Subprime mortgages, which accounted for less than 5 percent of mortgage originations in 2001, grew to account for over 20 percent in 2006. The rapid growth of these risky mortgages set the stage for the coming crisis.

The second development was the widespread deterioration of underwriting standards for mortgages that facilitated the rapid growth of subprime, Alt-A, and nontraditional mortgages. Lax underwriting standards were most apparent in subprime mortgages, where the most elementary notion of prudent lending – underwriting based on the borrower's ability to pay – was ignored. Most of the subprime mortgages originated during these years were 2/28 or 3/27 hybrid adjustable rate mortgages, characterized by a low fixed initial interest rate for 24 or 36 months followed by a significant increase in the monthly payment. Many of these loans were underwritten to the introductory rate, with prepayment penalties and no escrow for taxes and insurance. A significant share of subprime mortgages was also granted on a stated income basis, requiring no verification or documentation of ability to pay the loan.

The third development was the growth of mortgage-backed securities (MBS), particularly for the highly risky subprime, Alt-A, and nontraditional mortgages. Securitization of these mortgages largely took place in the private label MBS market which existed outside of the government sponsored enterprise securitization system. The private label MBS market led to new origination and funding channels that fell outside direct federal supervision and facilitated the expansion of risky lending. Securitization facilitated the poor underwriting since many institutions that underwrote the loans did not hold the loans. It further transmitted the poor underwriting of these mortgages to investors worldwide, many of whom, it is now clear, were unaware of the risk and failed to perform appropriate due diligence.

The fourth development was the growth of complex derivative instruments such as collateralized debt obligations (CDOs), through which subprime and nontraditional mortgages were bundled into senior and subordinate mortgage-backed securities, and credit default swaps (CDS) which were utilized by many investors to hedge the risk of these securities. The outstanding value of credit default swaps grew from less than $900 billion in 2001 to over $45 trillion in 2007. The complexity and lack of transparency of these structured finance vehicles, coupled with AAA quality ratings by credit rating agencies, created a false sense of comfort among a wide range of sophisticated global investors and led to enormous counterparty risks.

The fifth development was the collapse of home prices in 2007. Much of the mortgage lending of recent years was based on the assumption that home prices would grow indefinitely. When home prices collapsed, the underlying mortgages became unsustainable. Borrowers with little to no equity in their homes became trapped in unaffordable mortgages and delinquency, default, and foreclosures began to rise substantially. This caused the secondary market for subprime mortgage backed securities to break down in 2007 and ultimately the collapse of the entire private label MBS market. When the impact of declining home prices and the spreading crisis began to affect the performance of CDS and highly leveraged financial institutions, it escalated and adopted truly global proportions.

Q1(b). To what extent is Congress to blame? If your life depended on solving this puzzle, how would you do it, and what do all the indicators point to?

A1(b). A number of measures will be required to address this crisis and prevent similar crises from occurring in the future. First is the need to restore proper underwriting to the mortgage market, particularly subprime mortgage lending. The federal banking agencies have taken a number of actions to address this issue, including the issuance in 2007 of a final *Statement on Subprime Mortgage Lending* that identifies prudent safety and soundness and consumer protection standards that institutions should follow to ensure borrowers obtain loans they can afford to pay. These standards include qualifying borrowers on a fully indexed, fully amortizing repayment basis.

In addition, in 2008, the Board of Governors of the Federal Reserve System approved a final rule for home mortgage loans under the Home Ownership and Equity Protection Act (HOEPA) that applies to all lenders, not just federally supervised institutions. The rule is designed to protect consumers from unfair or deceptive acts and practices in mortgage lending. It also establishes advertising standards and greater mortgage disclosure requirements. With regard to subprime mortgages, the rule prohibits lenders from making loans without regard to borrowers' ability to repay the loan, requires verification of income and assets relied upon to determine repayment ability, restricts the use of prepayment penalties, and requires creditors to establish escrow accounts for property taxes and homeowner's insurance for all first-lien mortgage loans.

Second, a review of securitization markets should be conducted to ensure that appropriate incentives exist for lenders to properly underwrite securitized loans and that securitizers of mortgages and other assets conduct adequate due diligence on the underlying risks of the securities. The review of securitization markets should include examination of credit rating agencies, the role they played in the crisis, and the extent to which banks relied on credit rating agencies to assess the risks associated with securitized mortgages.

Third, statutory change is needed to address gaps in supervisory oversight for Over-The-Counter (OTC) derivatives and credit default swaps. The proposed framework put forward by the Administration calls for requiring clearing of all standardized OTC derivatives through regulated central counterparties, subjecting OTC derivatives dealers and other significant involved firms to a robust regime of prudential supervision and regulation; imposing recordkeeping and reporting requirements on all OTC trades; improving enforcement authorities for OTC market manipulation, fraud, and other market abuses; and providing greater protections for unsophisticated investors.

Finally, Congress and the Administration appropriately are undertaking a comprehensive review of the financial regulatory structure. Part of that effort will be focused on the need for a special resolution regime outside the bankruptcy process for large non-bank financial firms that pose a systemic risk, such as the regime that exists for insured commercial banks and thrifts. Unlike the special statutory powers that the FDIC has for resolving insured depository institutions, the current bankruptcy framework wasn't designed to protect the stability of the financial system. It will be important to create such a regime to avoid additional instability in times of economic crisis.

Q2. How many employees does the FDIC have–employees working on closed bank fraud, and employees working on open bank fraud?

A2. Closed Bank: In total, the FDIC has approximately 113 employees, as well as outside contractors, working on closed bank fraud. By mid-2009, the FDIC Legal Division will have increased staff in its professional liability and financial crimes unit from 21 in mid-2008 to 46. This includes 24 employees devoted to professional liability civil claims work arising out of recently-failed institutions (such as mortgage malpractice and fraud claims); 12 devoted to financial crimes work to support the United States Department of Justice in its prosecutions of criminal mortgage fraud claims; and ten employees having dual responsibilities in both these areas. We also have retained 17 outside law firms to date to assist with performing professional liability investigations and litigation as well as firms to handle residential mortgage fraud cases specifically. We anticipate retaining additional firms for both of these purposes during 2009. Our Division of Resolutions and Receiverships increased its civil and criminal investigations staff, bringing its total in-house investigations staff to 67, and also added contractors to support its investigations function.

Open Bank: In total, the FDIC has approximately 2,010 employees working on open bank fraud as part of their examination and enforcement responsibilities. In Washington, we have 22 employees in the Legal Division's open bank enforcement section. In addition, our regional legal offices have 58 attorneys and 32 other regional staff that assist with open bank enforcement and other open bank concerns. Our Division of Supervision and Consumer Protection includes both examination staff—responsible for identifying and investigating potential fraud—and supervisory staff who work with the Legal Division on enforcement actions. We have approximately 1,730 examiners who regularly review the activities of insured depository institutions to ensure compliance with state and federal laws and regulations, including all consumer protection laws and the safe and sound operation of FDIC-supervised institutions. Examiners are trained to identify situations in institutions where the risk of fraud is heightened and additional review procedures may be needed. Approximately 160 FDIC employees are designated Bank Secrecy Act/Anti-Money Laundering/Fraud Subject Matter Experts, and these individuals each spend a portion of their time reviewing primarily insider fraud incidents.

Q3. How many successful convictions?

A3. The FDIC does not have authority to prosecute criminal cases directly. This authority resides with the U.S. Department of Justice. The FDIC actively supports the Justice Department in its criminal prosecutions of defendants who have committed bank fraud, but the FDIC does not maintain data on numbers of convictions separately from the data maintained by the Justice Department.

Q4. You state that you have had 4,375 mortgage fraud claims filed, and they are expected to result in 900 additional civil mortgage fraud lawsuits over the next three years. What do you think the success rate will be? What justice will come to the American people? What amount of money do you think we will be able to recover from the people involved?

A4. To clarify, the 4,375 mortgage fraud matters referenced at the March 20 hearing are investigations, and are not yet filed claims. The likelihood of success on the merits of these claims is very high since they are fraud claims. These have a high likelihood of success because fraud, by its nature, consists of dishonest acts that are not difficult to prove. For example, liability is rarely in question in the typical mortgage fraud case once the fraudulent scheme that makes up the case is uncovered, such as in mortgage transactions involving falsified loan documents and/or the theft of loan proceeds.

However, based on experience, we expect to find in many of the claims that there is not a viable recovery source to make the claim cost-effective, and thus we will not pursue those claims. Many others will be settled before the need to file suit. Our best estimate is there will be 900 remaining claims on which we will file suit. We anticipate that the estimated 900 mortgage fraud lawsuits over the next several years will result in more than $150 million in monetary recoveries.

In terms of justice for the American people, we would suggest that it is through these cases that mortgage fraud is addressed, perpetrators forced to make reparations, and future fraud deterred.

Questions for the Record Submitted by Representative Bill Posey

Federal and State Enforcement of Financial Consumer and Investor Protections Laws

Questions to all members of panel one:

Please provide a one page summary – not a book – but a one page summary describing what you think was the root cause of the crisis. To what extent is Congress to blame? –DIR

If your life depended on solving this puzzle, how would you do it, and what do all the indicators point to?

The Honorable Martin J. Gruenberg, *Vice Chairman, Federal Deposit Insurance Corporation* –DSC

You state that you have had 4,375 mortgage fraud claims filed, and they are expected to result in 900 additional civil mortgage fraud lawsuits over the next 3 years. What do you think the success rate will be? What justice will come to the American public? What amount of money do you think we will be able to recover from the people involved?

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 3, 2009

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

Dear Chairman Frank:

Thank you for your letter concerning a proposal that seeks special tax treatment for repatriated foreign profits of U.S. companies. This proposal would provide U.S. multi-national firms with tax incentives for depositing repatriated profits at U.S. banking institutions in an effort to spur lending activity. I strongly agree that increasing banks' lending capacity could hasten an economic recovery, particularly in the case of community banks that traditionally provide a credit lifeline to small businesses and consumers.

In your letter, you inquire as to the minimum time that may be needed for repatriated profits to remain on deposit before a depository institution could convert the funds into loans. It is very difficult to identify a minimum holding period for lending purposes, but we agree with you that short term deposits would not generally contribute to lending output in a meaningful way. As you can imagine, it is very difficult to draw a causal relationship between a single deposit and a loan or group of loans and even more so if the deposit is relatively short term. It also is challenging to project credit activity intermediated by a given deposit, considering significant differences exist in each institution's funding structure and in-market loan demand. Also, as the anticipated large size of these deposits would generally not constitute what banks or regulators consider "core" or stable funding, deposits gathered from this proposal could potentially be volatile and higher cost. Moreover, the expected large size of repatriated profits could realistically preclude smaller banks from competing for these deposits, which could severely limit the ability to accept such deposits to very large depository institutions.

I would point out that if this proposal moves forward, the eligibility of these funds for federal deposit insurance coverage must be considered. If these funds were placed in transaction accounts, thereby earning less than 50 basis points of interest, they would be fully guaranteed by the FDIC until the sunset of the Temporary Liquidity Guarantee Program, which currently is December 31, 2009. Otherwise, they would be insured up to the federal deposit insurance limit. U.S. corporations contemplating incentives under this proposal should be aware of the rules and regulations governing deposit insurance coverage and be prepared to structure accounts accordingly.

Thank you again for allowing the FDIC to provide input on this matter, and I am happy to discuss it further at your convenience.

Sincerely,

[redacted]

Sheila C. Bair

LA09-773

BARNEY FRANK
4TH DISTRICT, MASSACHUSETTS

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F D I C
MAY 14 2009
OFFICE OF LEGISLATIVE AFFAIRS

April 30, 2009

Ms. Sheila Bair
Chairwoman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Dear Madam Chairwoman,

I was recently approached by the president of a major U.S. corporation which does significant overseas business, and has therefore a great deal of money that it has earned overseas. The company is proposing a change in tax policy that it believes would result in significant funds being made available for the banking system in the U.S. It is of course of jurisdiction of the Ways and Means Committee as to whether the tax policy change is made, but I did have a question when the matter was posed to me as to what would be necessary for the proposal to result in any significant addition to lending capacity of U.S. banks.

The proposal is that companies whose repatriated profits would now be subject to full U.S. taxation get a reduced tax rate if they repatriate them and put them on deposit with U.S. lending institutions for a period sufficient to make a significant difference in the capacity of those institutions. When I was asked about this, I of course noted that the policy decision would be Ways and Means' jurisdiction, but that I did have a question as to what the minimum time would be for those funds to remain on deposit. Clearly short-term deposits would not contribute in any significant way to lending capacity.

So I ask you a question that I hope you can answer, understanding that any decision as to whether or not there is some change in tax policy will come before the Ways and Means Committee, and is not something that the committee I chair would act on. But I would be interested in whether or not you have a view as to what the minimum amount of time you would think necessary for a deposit of funds to remain with the depository institution for it to be significant. I say that because funds that were specifically repatriated for the purpose of qualifying for a lower tax rate on the grounds that they would justify this in economic terms by the addition to U.S. bank lending capacity obviously means that there is a requirement that the funds be on deposit long enough to make such a difference. For this reason it seem to me this is different than the normal flow of deposits, where such a question might not necessarily be appropriate. If you are able to answer the question as to what the minimum time period you think would be necessary for funds to be on deposit to make a significant, positive decision in lending capacity, I would appreciate your letting me know.

[redacted]

BARNEY FRANK

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 5, 2009

Honorable Jack Reed
United States Senate
Washington, D.C. 20510

Dear Senator Reed:

Thank you for your letter expressing concerns regarding private equity purchases of banks. Your letter raises two very important considerations for the banking system and the Federal Deposit Insurance Corporation: the potential contribution that private equity can make to strengthening the capital position of domestic banks, and the need to ensure that the investments by private equity firms are fully consistent with the statutory and regulatory rules applicable to other similarly situated purchasers of banks, thrifts, or their holding companies. We are keenly aware of both critical considerations in making decisions on private equity transactions.

So far, the FDIC has completed two transactions with private equity investors that involved failed depository institutions. Based on the determination of the appropriate federal banking regulator that particular investor groups met its eligibility requirements to act as owners of a bank, the FDIC recently accepted the bids of two separate private equity groups to acquire two failed savings and loan associations. In early May 2009, the FDIC completed the sale of the IndyMac Federal Bank, FSB, Pasadena, California, to One West Bank, FSB, a newly formed federal savings bank controlled by IMB HoldCo LLC, a consortium of private equity investors that invested more than $1 billion in the capital of the new bank. On May 21, 2009, the FDIC, as receiver for BankUnited, FSB, Coral Gables, Florida, sold its banking operations to a newly chartered federal savings bank owned by a group of private equity investors, including WL Ross & Co. LLC, Carlyle Investment Management L.L.C., Blackstone Capital Partners V L.P., and Centerbridge Capital Partners, L.P., that invested $900 million in the bank. Both of these transactions were the least costly to the Deposit Insurance Fund (DIF) of all competing bids.

In addition, the FDIC added significant conditions to these two private equity transactions, including capital maintenance and resale restrictions. For example, we incorporated a condition on the purchasers of BankUnited intended to prevent the sale of a controlling interest in the new bank for a period of 18 months following the acquisition. This condition addresses the need for consistency in managing an institution that requires stabilization.

Due to the continuing interest of private equity firms in the purchase of depository institutions in receivership, the FDIC is evaluating the appropriate terms for such investments. In the near future, the FDIC will provide generally applicable policy guidance on eligibility and other terms and conditions for such investments to guide potential investors.

In developing the policy, we intend to look carefully at the laws and regulations applicable to the establishment of bank and thrift holding companies, the protection of the DIF, and the safety and soundness of insured depository institutions--including those concerned with the provision of credit by insured banks to affiliated parties. We also will work with the other federal banking agencies to address the concerns you have expressed about regulatory arbitrage. Once we have formulated our policy on this complex and important subject, we will be pleased to share the results of our work with you.

I appreciate the opportunity to address your concerns and look forward to further discussion with you on this matter. If you have further questions, please contact me at 202-898-6974 or Eric Spitler, Director of our Office of Legislative Affairs, at 202-898-3837.

Sincerely,

[redacted]

Sheila C. Bair

Good chatting with you. We will get this right.

LA09-821

JACK REED
RHODE ISLAND
COMMITTEES
APPROPRIATIONS
ARMED SERVICES
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS

United States Senate
WASHINGTON, DC 20510-3903

MAY 26 2009
OFFICE OF LEGISLATIVE

May 22, 2009

The Honorable Timothy F. Geithner
United States Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Ben Bernanke
Chairman of the Board of Governors
Federal Reserve System
20th and Constitution Avenue, NW
Washington, DC 20551

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

Acting Director John Bowman
Office of Thrift Supervision
Department of the Treasury
1700 G Street, NW
Washington, DC 20552

Dear Secretary Geithner, Chairman Bernanke, Chairman Bair, and Acting Director Bowman:

I am writing with serious concerns that a significant shift in regulatory policy may be occurring regarding private equity purchases of banks, without a consistent approach by regulators and with virtually no Congressional oversight.

The Federal Reserve, as I understand it, continues to prohibit acquisition of banks by private equity and other types of commercial entities, even if specific safeguards such as "silos" between commercial and banking divisions of the institutions, are provided. However, the Office of Thrift Supervision recently allowed MatlinPatterson, a private equity firm, to purchase the failing Flagstar Bank in Michigan, which appears to represent a reversal of decades of public policy prohibiting commercial entities from owning majority stakes in banks. And just yesterday the Federal Deposit Insurance Corporation allowed a group of private equity firms, none of which have majority ownership, to take over BankUnited, one of the largest financial institutions in Florida.

I believe these activities represent another, particularly dangerous example of regulatory arbitrage whereby institutions and firms are shopping around a potentially risky activity until they find a regulator who will allow it. Private equity and leveraged buyout firms, which hold billions of dollars in investment capital, may offer a potentially valuable source of funding that helps take pressure off of taxpayers in helping our financial institutions regain their strength. But as we consider the benefits and risks of such acquisitions, it is imperative that regulators approach this issue with a consistent, comprehensive policy that allows us to take advantage of the capital these institutions have to offer, while at the same time including strong protections to ensure that the commercial interests of private equity and other firms do not threaten the safety and soundness of banking institutions or the overall stability of our nation's financial system.

I request that each of you respond to me promptly with your current understanding of your agency's policy regarding private equity and other commercial firm acquisitions of financial institutions that you regulate. I appreciate your attention to this matter.

Sincerely,

[redacted]

Jack Reed
United States Senator

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 5, 2009

Honorable Jack Reed
United States Senate
Washington, D.C. 20510

Dear Senator Reed:

Thank you for your letter expressing concerns regarding private equity purchases of banks. Your letter raises two very important considerations for the banking system and the Federal Deposit Insurance Corporation: the potential contribution that private equity can make to strengthening the capital position of domestic banks, and the need to ensure that the investments by private equity firms are fully consistent with the statutory and regulatory rules applicable to other similarly situated purchasers of banks, thrifts, or their holding companies. We are keenly aware of both critical considerations in making decisions on private equity transactions.

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Sincerely,

[redacted]

Sheila C. Bair

Good chatting with you. We will get this right.

LA09-821

JACK REED
RHODE ISLAND
COMMITTEES
APPROPRIATIONS
ARMED SERVICES
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS

United States Senate

WASHINGTON, DC 20510-3903

FDIC
MAY 26 2009
OFFICE OF LEGISLATIVE AFFAIRS

May 22, 2009

The Honorable Timothy F. Geithner
United States Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Ben Bernanke
Chairman of the Board of Governors
Federal Reserve System
20th and Constitution Avenue, NW
Washington, DC 20551

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

Acting Director John Bowman
Office of Thrift Supervision
Department of the Treasury
1700 G Street, NW
Washington, DC 20552

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I request that each of you respond to me promptly with your current understanding of your agency's policy regarding private equity and other commercial firm acquisitions of financial institutions that you regulate. I appreciate your attention to this matter.

Sincerely,

[redacted]

Jack Reed
United States Senator

FDIC

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

Office of Legislative Affairs

June 11, 2009

Honorable Peter Welch
House of Representatives
Washington, D.C. 20515

Dear Congressman Welch:

Chairman Bair asked that I respond to your letter regarding Northeast Member Business Services' (Northeast) interest in managing and disposing loans from failed financial institutions. For your information, consistent with our general policies, the Federal Deposit Insurance Corporation's Board of Directors generally is not involved in contracting decisions, which are made by professional staff.

As you note in your letter, a competitive procurement is underway for SBA Loan Servicing and Consulting Services. We anticipate an award will be made in July or August after the competitive process is concluded.

At the Federal Deposit Insurance Corporation, competition is the preferred method for awarding contracts to the many qualified firms seeking to do business with the FDIC. Our procurement policy leverages a competitive, commercial marketplace to provide goods and services that represent the best value to the FDIC. Best value decisions are based on sound business judgment, considering a series of qualitative and quantitative assessments of such factors as capability, capacity, past performance, and price. Please be assured that Northeast will receive full and fair consideration under this competitive process.

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

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

June 11, 2009

Honorable Bernard Sanders
United States Senate
Washington, D.C. 20510

Dear Senator Sanders:

Chairman Bair asked that I respond to your letter regarding Northeast Member Business Services' (Northeast) interest in managing and disposing loans from failed financial institutions. For your information, consistent with our general policies, the Federal Deposit Insurance Corporation's Board of Directors generally is not involved in contracting decisions, which are made by professional staff.

As you note in your letter, a competitive procurement is underway for SBA Loan Servicing and Consulting Services. We anticipate an award will be made in July or August after the competitive process is concluded.

At the Federal Deposit Insurance Corporation, competition is the preferred method for awarding contracts to the many qualified firms seeking to do business with the FDIC. Our procurement policy leverages a competitive, commercial marketplace to provide goods and services that represent the best value to the FDIC. Best value decisions are based on sound business judgment, considering a series of qualitative and quantitative assessments of such factors as capability, capacity, past performance, and price. Please be assured that Northeast will receive full and fair consideration under this competitive process.

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

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

June 11, 2009

Honorable Patrick Leahy
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

Chairman Bair asked that I respond to your letter regarding Northeast Member Business Services' (Northeast) interest in managing and disposing loans from failed financial institutions. For your information, consistent with our general policies, the Federal Deposit Insurance Corporation's Board of Directors generally is not involved in contracting decisions, which are made by professional staff.

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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

LA09-817

Congress of the United States
Washington, DC 20515

FDIC
MAY 21 2009
OFFICE OF LEGISLATIVE AFFAIRS

May 20, 2009

Ms. Sheila C. Bair, Chairman
Federal Deposit Insurance Corporation
550 17th St., NW, Room 6028
Washington, DC 20429

Dear Chairman Bair:

As the Federal Deposit Insurance Corporation ("FDIC") considers proposals for contractors to help manage and dispose of loans assumed via Receivership of FDIC-insured financial institutions, we would like to bring to your attention a Vermont/New Hampshire based company that has submitted a proposal in response to the FDIC's April 3, 2009 solicitation (RECVR-09-R-0052 for SBA Loan Servicing and Consulting Services).

Northeast Member Business Services ("Northeast") is a credit-union owned loan consulting and servicing company interested in working with the FDIC. The company is well-established and presently provides its services to twelve credit unions, nationwide. Mr. Scott Anderson, CEO of Northeast, has been in contact with our offices and we are positively impressed by the potential benefits to the FDIC and the taxpayers should such a contract be awarded to Northeast.

In selecting organizations with which to partner we trust the FDIC will select our nation's most qualified and capable financial firms, particularly those with minimal financial interest in the outcomes. We believe that Northeast could be such a partner and we are pleased that the FDIC has recognized that potential, via its invitation to Northeast to submit the above noted proposal.

Thank you in advance for giving due and fair consideration to the Northeast proposal. Should you have any questions please contact Ted Brady in the office of Senator Leahy (802-229-0569), Philip Fiermonte in the office of Senator Sanders (802-862-0697), or Mary Sprayregen in the office of Congressman Welch (202-225-4115).

[redacted]

PATRICK LEAHY	BERNARD SANDERS	PETER WELCH
United States Senator	United States Senator	United States Representative

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

Office of Legislative Affairs

March 24, 2009

Honorable Peter Welch
House of Representatives
Washington, D.C. 20515

Dear Congressman Welch:

Thank you for your letter to Chairman Bair on behalf of the Vermont community bankers regarding the Federal Deposit Insurance Corporation's Proposed Interim Rule on Emergency Special Assessments.

We will include your letter in the public comment file for consideration in the development of the final rule on the emergency special assessment. I can assure you we will carefully consider your concerns and those of the other commenters.

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

LA09-372

PETER WELCH
AT-LARGE, VERMONT

COMMITTEE ON
ENERGY AND COMMERCE

COMMITTEE ON
OVERSIGHT AND GOVERNMENT
REFORM

COMMITTEE ON
STANDARDS OF OFFICIAL
CONDUCT

Congress of the United States
House of Representatives
Washington, DC 20515-4501

1404 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4501
202-225-4115

DISTRICT:
30 MAIN STREET
3RD FLOOR, SUITE 350
BURLINGTON, VT 05401
(802) 652-2450
(888) 605-7270

FDIC
MAR 12 2009
OFFICE OF LEGISLATIVE AFFAIRS

March 12, 2009

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

Dear Chairman Bair,

I was recently contacted by several Vermont community banks about the Federal Deposit Insurance Corporation (FDIC) interim rule imposing a special assessment of twenty basis points with the possibility of additional assessments to follow. The burden that the special assessment places on small banks is excessively onerous, and I request that you rescind the interim rule or reduce the assessment amount and pursue alternative policies that would restore FDIC to sound financial footing.

As you well know, community banks did not cause the financial crisis or economic recession that have resulted in, among other things, a depletion of FDIC funds. In Vermont, most community banks stayed away from the sub-prime mortgage fiasco. Due to prudent investment and responsible lending, many community banks have been able to weather the current storm. Indeed, Vermont's community banks are providing the loans that individuals and small businesses need to get our economy moving again.

Simply put, this special assessment could not come at a worse time for small banks and the communities they serve. If allowed to stand, the special assessment would triple and in some cases nearly quadruple what banks pay the FDIC, causing some banks to face the prospect of posting losses for the year. Clearly, the special assessment will lead to reduced lending – the last thing the economy needs right now.

I recognize – and Vermont banks would agree – that you have the right and responsibility to ensure that the FDIC is on sound financial footing, but I ask that you and your staff find a way to do so that does not so unfairly penalize small community banks and unnecessarily jeopardize our chances for economic recovery.

Sincerely,

[redacted]

PETER WELCH
Member of Congress

JIM COSTA
20TH DISTRICT, CALIFORNIA

EMAIL: congressmanjimcosta@mail.house.gov
WEB PAGE: www.house.gov/costa

COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES
CHAIRMAN
SUBCOMMITTEE ON
WATER AND POWER

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

COMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON
CONSERVATION, CREDIT, ENERGY AND RESEARCH
SUBCOMMITTEE ON
LIVESTOCK, DAIRY AND POULTRY

COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON
EUROPE
SUBCOMMITTEE ON
MIDDLE EAST AND SOUTH ASIA

June 9, 2009

The Honorable John C. Dugan
Comptroller of the Currency
Office of the Comptroller of the Currency
Independence Square, 250 E Street SW
Washington, DC 20219-0001

Dear Mr. Dugan:

This letter serves to express some of the concerns our local community banks and homebuilders have brought forth with regard to the financing of housing developments in California. It is our understanding that among the numerous challenges the homebuilding industry is currently facing is a lack of access to financing.

Many homebuilders in our area have enjoyed long successful relationships with our community banks, as they have historically provided both attentive service and attractive financing opportunities to the industry. However, recently our community banks have felt a clear bias from bank examiners in the field, who've urged them to get homebuilder loans off their books as soon as possible. These actions are not without merit, as the homebuilders have been caught in the perfect storm in the Valley. High rates of foreclosure, a three-year drought, and the nationwide recession have all dealt a crushing blow to the business. However, as the state and federal tax credits have taken effect earlier this year, the housing market in the Central Valley has seen increased purchasing activity in their developments, and a decline in developed lots waiting for sale.

As the community banks have attempted to continue lending at the best of their ability, especially in the housing sector as they are an integral player in our recovery efforts, they have faced many obstacles. Certainly, we understand that it is essential that both bankers and examiners make realistic assessments of borrower credibility. However, it is our hope that in evaluating the loan portfolios of these small community banks holding homebuilder loans, increased sensitivity and flexibility from the bank examiners is forthcoming. They have provided the mainstay of lending in our area, in large part without the aid of Federal funds or regulatory relaxations that have been afforded to the banks deemed "too big to fail." Thank you for your attention to this serious matter, and we look forward to your response.

Sincerely,

[redacted]

[redacted]

JIM COSTA
Member of Congress

DENNIS CARDOZA
Member of Congress

WASHINGTON OFFICE:
1314 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
PHONE: (202) 225-3341
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DISTRICT OFFICE:
855 M STREET, SUITE 940
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PHONE: (559) 495-1620
FAX: (559) 495-1027

DISTRICT OFFICE:
2700 M STREET, SUITE 225
BAKERSFIELD, CA 93301
PHONE: (661) 869-1620
FAX: (661) 869-1027

CC:

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, SW
Washington, DC 20220

The Honorable Ben S. Bernanke
Chairman of the Board
The Federal Reserve System
Washington, DC 20551

Mrs. Sheila C. Bair
Chairman of the Board
Federal Deposit Insurance Corporation
550 17th Street, NW Room # MB-6028
Washington, D.C. 20429-0002

LA09-820

FILE COPY

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 12, 2009

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 Vitter subsequent to my testimony at the hearing on "Regulating and Resolving Institutions Considered Too Big to Fail" before the Senate Banking Committee on May 6, 2009.

Enclosed are my responses for the hearing record. 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

Enclosure

Response to questions from the Honorable David Vitter
by Sheila C. Bair, Chairman,
Federal Deposit Insurance Corporation

Q1. Mr. Wallison testified that, "In a widely cited paper and a recent book, John Taylor of Stanford University concluded that the market meltdown and the freeze in interbank lending that followed the Lehman and AIG events in mid-September 2008 did not begin until the Treasury and Fed proposed the initial Troubled Asset Relief Program later in the same week, an action that implied that financial conditions were much worse than the markets had thought. Taylor's view, then, is that AIG and Lehman were not the cause of the meltdown that occurred later that week. Since neither firm was a bank or other depository institution, this analysis is highly plausible."

Do you agree or disagree with the above statement? Why, or why not?

A1. Professor Taylor argues that the data on the LIBOR-OIS spread indicate that the market had a stronger reaction to the testimony by Federal Reserve Board Chairman Ben Bernanke and Treasury Secretary Henry Paulson of September 23, 2008, on the government policy intervention that would become known as the TARP program than to the bankruptcy of Lehman Brothers on September 15. Professor Taylor's interpretation does not acknowledge that the events of the period happened so rapidly and in such short order that it is difficult to disentangle the effects of specific news and market events. Other evidence suggests that reserves held by banks jumped dramatically immediately after Lehman entered bankruptcy (Federal Reserve Statistical Release H-3), indicating that banks preferred the security of a deposit at the Federal Reserve over the risk-and-return profile offered by an interbank loan.

Following the Lehman Brothers bankruptcy filing, Primary Reserve—a large institutional money market fund—suffered losses on unsecured commercial paper it had bought from Lehman. The fund "broke the buck" on September 16. This "failure" instigated a run and subsequent collapse of the commercial paper market.

The events of the week may have had a compound effect on the market's perception of risk. For example, it is unclear whether AIG would have deteriorated as fast if Lehman had not entered bankruptcy. Indeed, TARP may not have even been proposed without the failure of Lehman. It also took time for markets to understand the size of the Lehman bankruptcy losses—which were larger than anticipated—and to use this new information to reassess the worthiness of all surviving counterparties.

In the FDIC's view, uncertainty about government action and interventions has been a source of systemic risk. As outlined in my testimony, the FDIC recommends a legal mechanism for the orderly resolution of systemically important institutions that is similar to what exists for FDIC insured banks. The purpose of the resolution authority should not be to prop up a failed entity, but to permit the swift and orderly dissolution of the entity and the absorption of its assets by the private sector as quickly as possible. Imposing losses on shareholders and other creditors will restore market discipline. A new legal mechanism also will permit continuity in key financial operations and reduce uncertainty. Such authority can preserve valuable business lines using an industry-paid fund when debtor-in-possession financing is unavailable because of market-wide liquidity shocks or strategic behavior by potential lenders who also are potential fire sale acquirers of key assets and businesses of the failing institution. Under a new resolution process, uninsured creditor claims could be liquefied much more quickly than can be done in a normal bankruptcy.

Q2. Do you believe that if Basel II had been completely implemented in the United States that the trouble in the banking sector would have been much worse? Some commentators have suggested that the stress tests conducted on banks by the federal government have replaced Basel II as the nation's new capital standards. Do you believe that is an accurate description? Is that good, bad, or indifferent for the health of the U.S. banking system?

A2. Throughout the course of its development, the advanced approaches of Basel II were widely expected to result in lower bank capital requirements. The results of U.S. capital impact studies, the experiences of large investment banks that increased their financial leverage during 2006 and 2007 under the Securities and Exchange Commission's version of the advanced approaches, and recent evidence from the European implementation of Basel II all demonstrated that the advanced approaches lowered bank regulatory capital requirements significantly. Throughout the interagency Basel II discussions, the record shows that the FDIC took the position that capital levels needed to be strengthened for the U.S. Basel II banks. If the advanced approaches of Basel II had been fully in place and relied upon in the United States, the FDIC believes that large banks would have entered the crisis period with significantly less capital, and would therefore have been even more vulnerable to the stresses they have experienced.

Supervisors have long encouraged banks to hold more capital than their regulatory minimums, and we view the stress tests as being squarely within that tradition. While stress testing is an important part of sound risk management practice, it is not expected to replace prudential regulatory minimum capital requirements. In many respects, the advanced approaches of Basel II do not constitute transparent regulatory minimum requirements, in that they depend for their operation on considerable bank and supervisory judgment. The FDIC supported the implementation of the advanced approaches only subject to considerable safeguards, including the retention of the leverage ratio and a regulatory commitment that the banking agencies would conduct a study after 2010 to identify whether the new approaches have material weaknesses, and if so, that the agencies would correct those weaknesses.

Q3. If there is an ordered resolution process, whether that's bankruptcy, a new structured bankruptcy or a new resolution authority—what can we do to generate the political will to use it?

A3. For a new resolution process to work efficiently, market expectations must adjust and investors must assume that the government will use the new resolution scheme instead of providing government support. It is not simply a matter of political will, but of having the necessary tools ready so that a resolution can be credibly implemented. A systemic resolution authority could step between a failing firm and the market to ensure that critical functions are maintained while an orderly unwinding takes place. The government could guarantee or provide financing for the unwinding if private financing is unavailable. Assets could be liquidated in an orderly manner rather than having collateral immediately dumped on the market. This would avoid the likelihood of a fire sale of assets, which depresses market prices and potentially weakens other firms as they face write-downs of their assets at below "normal" market prices.

Q4. Should we be limiting the size of companies in the future to prevent a "too big to fail" situation, or can we create a resolution process that only needs the political will to execute it that will eliminate the need to be concerned about a company's size?

A4. The FDIC supports the idea of providing incentives to financial firms that would cause them to internalize into their decision-making process the potential external costs that are imposed on society when large and complex financial firms become troubled. While fewer firms may choose to become large and complex as a result, there would be no prohibition on growing or adding complex activities.

Large and complex financial firms should be subject to regulatory and economic incentives that require these institutions to hold larger capital and liquidity buffers to mirror the heightened risk they pose to the financial system. Capital and regulatory requirements could increase as firms become larger so that firms must operate more efficiently if they become large. In addition, restrictions on leverage and the imposition of risk-based premiums on institutions and their activities should provide incentives for financial firms to limit growth and complexity that raise systemic concerns.

To address pro-cyclicality, capital standards should provide for higher capital buffers that increase during expansions and are drawn down during contractions. In addition, large and complex financial firms could be subject to higher Prompt Corrective Action limits under U.S. laws. Regulators also should take into account off-balance-sheet assets and conduits as if these risks were on-balance-sheet.

Q5. What role did the way financial contracts are treated in bankruptcy create in both the AIG and Lehman situations?

A5. In bankruptcy, current law allows market participants to terminate and net out derivatives and sell any pledged collateral to pay off the resulting net claim immediately upon a bankruptcy filing. In addition, since the termination right is immediate, and the bankruptcy process does not provide for a right of a trustee or debtor to transfer the contracts before termination, the bankruptcy filing leads to a rapid, uncontrolled liquidation of the derivatives positions. During normal market conditions, the ability of counterparties to terminate and net their exposures to bankrupt entities prevents additional losses flowing through the system and serves to improve market stability. However, when stability is most needed during a crisis, these inflexible termination and netting rights can increase contagion.

Without any option of a bridge bank or similar type of temporary continuity option, there is really no practical way to limit the potential contagion absent a pre-packaged transaction or arrangements by private parties. While this sometimes happens, and did to some degree in Lehman's bankruptcy, it raises significant questions about continuity and comparative fairness for creditors. During periods of market instability -- such as during the fall of 2008 -- the exercise of these netting and collateral rights can increase systemic risks. At such times, the resulting fire sale of collateral can depress prices, freeze market liquidity as investors pull back, and create risks of collapse for many other firms.

In effect, financial firms are more prone to sudden market runs because of the cycle of increasing collateral demands before a firm fails and collateral dumping after it fails. Their counterparties have every interest to demand more collateral and sell it as quickly as possible before market prices decline. This can become a self-fulfilling prophecy -- and mimics the depositor runs of the past.

The failure of Lehman and the instability and bail-out of AIG led investors and counterparties to pull back from the market, increase collateral requirements on other market participants, and dramatically de-leverage the system.

In the case of Lehman, the bankruptcy filing triggered the right of counterparties to demand an immediate close-out and netting of their contracts and to sell their pledged collateral. The immediate seizing and liquidation of the firm's assets left less value for the firm's other creditors.

In the case of AIG, the counterparties to its financial contracts demanded more collateral as AIG's credit rating dropped. Eventually, AIG realized it would run out of collateral and was forced to turn to the government to prevent a default in this market. Had AIG entered bankruptcy, the run on its collateral could have translated into a fire sale of assets by its counterparties.

In the case of a bank failure, by contrast, the FDIC has 24 hours after becoming receiver to decide whether to pass the contracts to a bridge bank, sell them to another party, or leave them in the receivership. If the contracts are passed to a bridge bank or sold, they are not considered to be in default and they remain in force. Only if the financial contracts are left in the receivership are they subject to immediate close-out and netting.

Q6. Chrysler's experience with the federal government and bankruptcy may prove a useful learning experience as to why bankruptcy despite some issues may still best protect the rights of various investors. A normal bankruptcy filing is straight forward – senior creditors get paid 100 cents on the dollar and everyone else gets in line. That imposes the losses on those who chose to take the risk. Indeed, the sanctity of a contract was paramount to our Founding Fathers. James Madison, in 1788, wrote in Federalist Papers Number 44 to the American people that, "laws impairing the obligation of contracts are contrary to the first principles of the social compact, and to every principle of sound legislation."

With that in mind, what changes can be made to bankruptcy to ensure an expedited resolution of a company that does not roil the financial markets and also keeps government from choosing winners and losers?

A6. Bankruptcy is designed to facilitate the smooth restructuring or liquidation of a firm. It is an effective insolvency process for most companies. However, it was not designed to protect the stability of the financial system. Large complex financial institutions play an important role in the financial intermediation function, and the uncertainties of the bankruptcy process can create 'runs' similar to depositor runs of the past in financial firms that depend for their liquidity on market confidence. Putting a bank holding company or other non-bank financial entity through the normal corporate bankruptcy process may create instability as was noted in the previous answer. In the resolution scheme for bank holding companies and other non-bank financial firms, the FDIC is proposing to establish a clear set of claims priorities just as in the bank resolution system. Under the bank resolution system, there is no uncertainty and creditors know the priority of their claims.

In bankruptcy, without a bridge bank or similar type of option, there is really no practical way to provide continuity for the holding company's or its subsidiaries' operations. Those operations are based principally on financial agreements dependent on market confidence and require continuity through a bridge bank mechanism to allow the type of quick, flexible action needed. A stay that prevents creditors from accessing their funds destroys financial relationships. Without a system that provides for the orderly resolution of activities outside of the depository institution, the failure of a large, complex financial institution includes the risk that it will become a systemically important event.

LA09-820

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

May 21, 2009

F D I C
MAY 22 2009
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 May 6, 2009. 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,

[redacted]

CHRISTOPHER J. DODD
Chairman

CJD/dr

Questions for the Hearing on "Regulating and Resolving Institutions Considered 'Too Big to Fail'"
May 6, 2009

Questions for The Honorable Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation, from Senator Vitter:

Mr. Wallison testified that, "In a widely cited paper and a recent book, John Taylor of Stanford University concluded that the market meltdown and the freeze in interbank lending that followed the Lehman and AIG events in mid-September 2008 did not begin until the Treasury and Fed proposed the initial Troubled Asset Relief Program later in the same week, an action that implied that financial conditions were much worse than the markets had thought. Taylor's view, then, is that AIG and Lehman were not the cause of the meltdown that occurred later that week. Since neither firm was a bank or other depository institution, this analysis is highly plausible."

Do you agree or disagree with the above statement? Why, or why not?

Do you believe that if Basel II had been completely implemented in the United States that the trouble in the banking sector would have been much worse?
Some commentators have suggested that the stress tests conducted on banks by the federal government have replaced Basel II as the nation's new capital standards. Do you believe that is an accurate description? Is that good, bad, or indifferent for the health of the U.S. banking system?

If there is an ordered resolution process, whether that's bankruptcy, a new structured bankruptcy or a new resolution authority – what can we do to generate the political will to use it?

Should we be limiting the size of companies in the future to prevent a "too big to fail" situation, or can we create a resolution process that only needs the political will to execute it that will eliminate the need to be concerned about a company's size?

What role did the way financial contracts are treated in bankruptcy create in both the AIG and Lehman situations?

Chrysler's experience with the federal government and bankruptcy may prove a useful learning experience as to why bankruptcy despite some issues may still best protect the rights of various investors. A normal bankruptcy filing is straight forward – senior creditors get paid 100 cents on the dollar and everyone else gets in line. That imposes the losses on those who chose to take the risk.

Questions for the Hearing on "Regulating and Resolving Institutions Considered 'Too Big to Fail'"
May 6, 2009

Indeed, the sanctity of a contract was paramount to our Founding Fathers. James Madison, in 1788, wrote in Federalist Papers Number 44 to the American people that, "laws impairing the obligation of contracts are contrary to the first principles of the social compact, and to every principle of sound legislation."

With that in mind, what changes can be made to bankruptcy to ensure an expedited resolution of a company that does not roil the financial markets and also keeps government from choosing winners and losers?

LA04-740

FILE COPY

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 12, 2009

Honorable Mike Simpson
House of Representatives
Washington, D.C. 20515

Dear Congressman Simpson:

Thank you for your letter expressing your concerns relating to events surrounding the April 24, 2009, closure of First Bank of Idaho, Ketchum, Idaho.

Banks can fail for a number of reasons. In recent months, the main causes of bank failures have included asset quality problems attributed to high risk mortgage lending or excessive concentrations in commercial real estate lending, especially residential acquisition, development, and construction loans. Losses from these assets, combined with an undue reliance on brokered deposits, have resulted in depleted capital and liquidity strains that have required the chartering authorities to close banks and designate the Federal Deposit Insurance Corporation as receiver.

The decision to close an insured financial institution is always difficult and involves judgments about the viability of the institution. Institutions that are no longer viable and lack realistic prospects for obtaining new funding or capital need to be closed expeditiously to avoid increasing the ultimate cost of their failure. This action also serves to protect the industry-funded Deposit Insurance Fund from unnecessary losses.

As you know, the Office of Thrift Supervision (OTS) was the primary federal regulator and chartering authority for the First Bank of Idaho. Although the FDIC participated with the OTS in an on-site examination at the bank, the FDIC's main activity with the Bank has been since its designation as receiver following its failure. I have asked Mitchell Glassman, Director of the Division of Resolutions and Receiverships, to provide you with a more detailed response to the issues raised in your letter regarding the failure of the Bank.

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

FDIC

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

Division of Resolutions and Receiverships

June 12, 2009

Honorable Mike Simpson
House of Representatives
Washington, D.C. 20515

Dear Congressman Simpson:

Chairman Bair has asked me to respond to your concerns related to the receivership of First Bank of Idaho, Ketchum, Idaho.

In our role as receiver, the Federal Deposit Insurance Corporation has a statutory responsibility to the depositors and creditors of the failed bank to minimize losses by obtaining the maximum recovery from the assets of the receivership. We exercise those responsibilities in a way that balances our obligation to maximize recoveries and minimize losses to the Deposit Insurance Fund (DIF) with the desire to limit economic disruption to the local community. As you know, the DIF is not funded by taxpayers but by premiums that banks and savings associations pay for deposit insurance coverage and from earnings in investments in U.S. Treasury securities.

While the role of receiver generally precludes continuing the lending operations of the failed bank, the FDIC will consider advancing funds if it determines an advance is in the best interest of the receivership--for example, to protect or enhance collateral or ensure maximum recovery. The FDIC also has a long record of accommodating the needs of small business creditors. In certain circumstances, our procedures allow funds to be advanced to small businesses on existing lines of credit for operational needs, such as meeting payroll. Requests for such funding are evaluated on a case-by-case basis.

Contrary to the story enclosed with your letter, there were no banks interested in purchasing First Bank of Idaho in a whole bank transaction. At the time of closure, First Bank of Idaho had total assets of approximately $488.9 million of which only 3.6 percent or $17.8 million was acquired by the assuming institution, U.S. Bank of Minneapolis, Minnesota. The remaining 96.4 percent or $471.1 million in assets was retained by the FDIC as receiver for later disposition.

Immediately following the institution's closure, representatives of the FDIC began calling borrowers with unfunded commitments, near-term funding needs, or special circumstances. As of May 21, 2009, we received only one emergency funding request. The request, which was funded by the FDIC, was from a local restaurant located in Ketchum in the amount of $30,000 for rent, payroll, and operating cash flow. To date, there have been no other requests received for emergency funding of ongoing business operations. Three construction draw requests totaling $225,633.19 have been received and are under review, pending receipt of required financial information. Additionally, the FDIC has approved small balance principal compromises to facilitate the payment of closing costs on loans at local banks that are providing payoff funds for borrowers. To date, the FDIC has not denied any funding requests from borrowers nor repudiated any Lines of Credit (LOC).

As of May 21, 2009, representatives of the FDIC have spoken or met with 726 borrowers representing 96 percent of outstanding unfunded commitments across various categories including commercial, consumer, and mortgage. The balance of requests received by the FDIC has been from borrowers seeking extensions on matured LOCs and Home Equity Lines of Credit (HELOCs). As of today, there are 226 loans that have matured totaling $56,899,211. Efforts are underway to extend or modify these matured loans based on the updated information that is requested of the borrowers. Every case that has been received for an extension of a matured loan has been granted to date.

The markets represented by the failed institution have suffered serious decline in real property values and in many of the cases that have been reviewed by the receivership staff, the loan balances outweigh the current value of the collateral. These markets are overbuilt in many product types and, in some cases, bank credit policies were disregarded by previous lending officers and credit was granted to borrowers that had sub-standard credit and total debt to income ratios exceeding prudent and customary standards. The institution's portfolio is heavily weighted in the resort and construction real estate markets, which have suffered the greatest decline in valuations and credit quality. Many borrowers with numerous loans to the bank are highly leveraged and do not have the source of income from their businesses to support their debt payments to this institution and their other lenders.

The FDIC receivership staff has been willing to consider extensions of loan maturities, reduction in interest rates, and compromises of loan balances in order to provide some relief to the borrowers that are over extended. The solutions that are provided by the receivership staff are in many cases better than the borrowers would receive in the open market and will allow the borrowers to continue payments on their debt and allow them time to secure more permanent financing elsewhere. Although the FDIC cannot be the source of permanent financing for borrowers, we are willing to participate in all reasonable efforts to facilitate the transition to a new lender.

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

Sincerely,

[redacted]

Mitchell L. Glassman
Director
Division of Resolutions and Receiverships

FOIA Redaction/Fact Sheet

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

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

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

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

confidential financial information

COMMENTS:

05/07/2009 15:28 FAX 202 228 2290 LA09-740 002

Congress of the United States

Washington, DC 20515

May 7, 2008

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

Mr. John Bowman
Acting Director
Office of Thrift Supervision
1700 G St., NW
Washington, DC 20552

Dear Chairman Bair and Acting Director Bowman:

Our offices are concerned by the recent events surrounding the actions of the OTS and the FDIC in closing [redacted] of Idaho. While we recognize that in the current economic environment bank failures will happen and that the agencies have a responsibility to respond to institution problems quickly for the health of our financial system, we are concerned that in this case OTS, FDIC, and Federal Reserve actions may have caused or at least exacerbated a chain of events that led to the bank's closure.

In particular, we are concerned that the OTS and the FDIC did not give the bank enough time to capitalize properly, even though it is our understanding that they were nearing the end of negotiations with a willing investor and were on the road to meeting the goals of the MOU signed with the OTS in December. It is our understanding that the OTS was well aware of these efforts. In addition, we are concerned that during the time that the bank's board was actively seeking buyers and identifying potential investors, the Federal Reserve and the OTS took action to severely restrict the bank's liquidity by reducing their credit line and eliminating their access to the brokered CD markets and the Certificate of Deposit Account Registry (CDARS) program.

Without question this closure is negatively impacting our constituents. Not only have investors lost millions in personal investments, but many of the businesses that have banked with [redacted] of Idaho for years have found their credit lines frozen. These businesses, which operate in a resort community, are currently in the slack season between the winter and summer recreational seasons and are struggling to stay open without access to credit.

We have included a piece outlining the story behind the bank's closure, and we would like you to respond to this piece, specifically describing your communication with [redacted] of Idaho leading to its closure and outlining your reasons for acting in such a compressed timeframe. We want to know why the closure took place if the bank had a $10 million investor in line. Also, we would like clarification on your stated policies regarding bank closures and how they were implanted in the case of [redacted] of Idaho. Furthermore, we are interested to know if any of the actions your agencies have taken are reversible.

We look forward to hearing from you as soon as possible. If you have any questions, please don't hesitate to contact Malisah Small at (202) 225-5531 (Simpson) or Rob Ellsworth at (202) 225-6611 (Minnick).

Sincerely,

[redacted]

Mike Simpson
Member of Congress

[redacted]

Walt Minnick
Member of Congress

FDIC
MAY 11 2009
OFFICE OF LEGISLATIVE AFFAIRS

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 17, 2009

Honorable Tom Harkin
United States Senate
Washington, D.C. 20515

Dear Senator Harkin:

Thank you for your letter regarding the proposed special assessment to the Deposit Insurance Fund (DIF). As you noted, the original proposal was to charge a special assessment of 20 basis points on an institution's second quarter assessment base.

The FDIC recognizes that assessments are a significant expense, particularly during a financial crisis and recession when bank earnings are under pressure. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy. On the other hand, deposit insurance provides a benefit for which banks have always paid. Backed by deposit insurance, deposit funding costs have fallen significantly, approaching historic lows. Indeed, the unique ability of banks to access low-cost, government-backed deposits has contributed to the recent increased profitability of many banks. For these reasons, the FDIC has tried to strike the right balance between keeping the assessment low enough so that it does not unduly burden lending capacity with our longstanding commitment to cover all projected costs through industry assessments, not taxpayer borrowing.

The FDIC currently projects approximately $70 billion in losses as a result of insured depository institution failures over the next five years -- the great majority of which are expected to occur in 2009 and 2010. In order to ensure that the DIF ratio does not dip below zero, the FDIC needs to collect a special assessment. However, the increase in the FDIC's authority to borrow from the Department of the Treasury, which was included by Congress as part of the Helping Families Save Their Homes Act of 2009, gave the FDIC a sufficient cushion against unforeseen bank failures to allow it to reduce the size of the special assessment.

On May 22, the FDIC Board of Directors approved a final rule that significantly reduced the original proposed special assessment. The final rule establishes a special assessment of five basis points on each FDIC-insured depository institution's assets, minus its Tier 1 capital, as of June 30, 2009. The special assessment will be assessed against assets minus Tier 1 capital rather than domestic deposits. In addition, the assessment will be capped at 10 basis points of an institution's domestic deposits so that no institution would pay an amount higher than they would have paid under the interim rule. This hybrid approach -- using assets minus Tier 1 capital as the assessment base but with a cap based on domestic deposits -- will shift the allocation of the special assessment somewhat toward banks that rely more on non-deposit funding, which large banks tend to do. We believe this approach is equitable and provides the appropriate balance of competing interests in terms of fairness to all insured institutions.

With the implementation of the revised special assessment, the FDIC projects that the DIF will remain low but positive through 2009 and then begin to rise in 2010. However, given the inherent uncertainty in these projections and the importance of maintaining a positive fund balance and reserve ratio, it is probable that an additional special assessment will be necessary in the fourth quarter. At the same time, the FDIC has instructed its examiners that they should not downgrade an institution's supervisory ratings because of the effect of the special assessment.

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

Sincerely,

[redacted]

Sheila C. Bair

TOM HARKIN
IOWA

(202) 224-3254
FAX: (202) 224-9369
TTY (202) 224-4633
http://harkin.senate.gov

COMMITTEES:
AGRICULTURE
APPROPRIATIONS
HEALTH, EDUCATION, LABOR, AND PENSIONS
SMALL BUSINESS

United States Senate

WASHINGTON, DC 20510-1502

May 20, 2009

The Honorable Sheila Bair
Chairman
Federal Deposit Insurance Corporation
Washington, D.C. 20429

Dear Chairman Bair:

I am writing to express my concern about the impact of the Federal Deposit Insurance Corporation's (FDIC's) proposed 20 basis point special assessment on community banks and their millions of customers, including individual consumers, small and medium-sized businesses, and agricultural borrowers. In light of the enactment of S. 896, the Helping Families Save Their Homes Act of 2009, which increases the agency's borrowing authority, I urge the FDIC Board of Directors to use its meeting this Friday to take action to reduce the proposed special assessment from 20 basis points down to not more than 10 basis points, or lower if the Board deems appropriate. I also urge the FDIC to broaden the base for the special assessment which will allow FDIC to further reduce the level of impact of this special assessment on small and medium sized community banks.

If allowed to take effect, the special 20 basis point assessment, when combined with the regular assessment rate for 2009 (which is more than double the rate for 2008), will be detrimental to community banks' earnings and capital, and could adversely affect their ability to lend and serve their communities. Indeed, the FDIC itself estimates the 20-basis-point special assessment would reduce aggregate 2009 pre-tax income for profitable banking institutions by between 10 to 13 percent; would increase losses for non-profitable banks by between 3 and 6 percent; and would reduce the industry's aggregate year-end capital approximately 0.7 percent. By reducing this to 10 basis points or less, the FDIC can strike a more appropriate balance between the need to replenish the Deposit Insurance Fund and the need to encourage community banks to continue to make credit available within their communities.

In addition, broadening the assessment base would more fairly distribute the burden of the special assessment so that the larger institutions that are responsible for a disproportionate share of the economic difficulties facing the Deposit Insurance Fund pay a share that more fairly reflects their level of responsibility for the difficulties the fund faces. Currently, the FDIC assesses deposit insurance premiums against all domestic deposits in banks and thrifts. But bad assets, not deposits, cause bank failures, and all forms of liabilities, not just domestic deposits, fund a bank's assets. The amount of assets that a bank holds minus its capital is a more accurate gauge of an institution's risk to the FDIC than the amount of a bank's domestic deposits.

The current assessment base penalizes community banks by requiring community banks to pay a disproportionately higher share of deposit insurance assessments. Under the current system, community banks pay approximately 30 percent of FDIC premiums, although they only hold about 20 percent of bank assets. Community banks typically fund themselves 85-95 percent with domestic deposits, while larger banks – those with more than $10 billion in assets – typically fund themselves 52 percent with domestic deposits. Thus, while community banks pay assessments on nearly their entire balance sheets, much larger banks pay assessments on only half of their balance sheet. It would be more equitable if the FDIC were to use assets minus tangible equity as the assessment base instead of domestic deposits.

The FDIC Board of Directors has an obligation to maintain a strong, well-funded FDIC that protects the nation's depositors. However, the FDIC must maintain a balance between recapitalizing the Deposit Insurance Fund and ensuring assessments charged to banks for deposit insurance do not reach counterproductive levels that would divert capital needed for lending to promote economic recovery in our communities. If not significantly reduced, I believe that the proposed special assessment will be counterproductive and could actually result in further contraction of credit.

Thank you for your attention to this matter and I look forward to learning what the FDIC board of directors decides later this week.

Sincerely,

[redacted]

Tom Harkin
United States Senator

cc: Members of the FDIC Board:
Vice Chairman Martin J. Gruenberg
Director Thomas J. Curry
Comptroller of the Currency John C. Dugan
Acting Director of the Office of Thrift Supervision John E. Bowman

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 17, 2009

Honorable M. Jodi Rell
Governor
State of Connecticut
210 Capitol Avenue
Hartford, Connecticut 06106

Dear Governor Rell:

Thank you for your letter expressing the concern of Connecticut bankers about the special assessment proposed by the Federal Deposit Insurance Corporation in February 2009.

The FDIC recognizes that assessments can be a significant expense, particularly during a financial crisis and recession when bank earnings are under pressure. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy. On the other hand, deposit insurance provides a benefit for which banks have always paid. Backed by deposit insurance, deposit funding costs have fallen significantly, approaching historic lows. Indeed, the unique ability of banks to access low-cost, government-backed deposits has contributed to the recent increased profitability of many banks. For these reasons, the FDIC has tried to strike the right balance between keeping the assessment low enough so that it does not unduly burden lending capacity with our longstanding commitment to cover all projected costs through industry assessments, not taxpayer borrowing.

The FDIC currently projects approximately $70 billion in losses as a result of insured depository institution failures over the next five years -- the great majority of which are expected to occur in 2009 and 2010. In order to ensure that the DIF ratio does not fall below zero, the FDIC needs to collect a special assessment. However, the increase in the FDIC's authority to borrow from the Department of the Treasury, which was included by Congress as part of the Helping Families Save Their Homes Act of 2009, gave the FDIC a sufficient cushion against unforeseen bank failures to allow it to reduce the size of the special assessment.

On May 22, the FDIC Board of Directors approved a final rule that significantly reduced the original proposed special assessment. The final rule establishes a special assessment of five basis points on each FDIC-insured depository institution's assets, minus its Tier 1 capital, as of June 30, 2009. The special assessment will be assessed against assets minus Tier 1 capital rather than domestic deposits. In addition, the assessment will be capped at 10 basis points of an institution's domestic deposits so that no institution would pay an amount higher than they would have paid under the interim rule. This hybrid approach -- using assets minus Tier 1 capital as the assessment base but with a cap based on domestic deposits -- will shift the allocation of the special assessment somewhat toward banks that rely more on non-deposit funding, which large banks tend to do. We believe this approach is equitable and provides the appropriate balance of competing interests in terms of fairness to all insured institutions.

With the implementation of the revised special assessment, the FDIC projects that the DIF will remain low but positive through 2009 and then begin to rise in 2010. However, given the inherent uncertainty in these projections and the importance of maintaining a positive fund balance and reserve ratio, it is probable that an additional special assessment will be necessary in the fourth quarter.

Thank you for taking the time to relay the concerns of Connecticut bankers. If you have further questions, please do not hesitate to contact me at (202) 898-6974.

Sincerely,

[redacted]

Sheila C. Bair

0C09-742

M. Jodi Rell
GOVERNOR
STATE OF CONNECTICUT

April 3, 2009

FDIC
MAY 25 2009
OFFICE OF THE CHAIRMAN

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

Dear Chairwoman Bair,

As we are all too well aware, there has not been a sector of our national economy untouched by this recession, and the losses sustained by our financial industry have been extraordinary. These difficult times call for uncommon measures and I understand completely and appreciate the need to replenish the Federal Deposit Insurance Fund. It has been a hallmark of stability for decades and depositors have always been able to bank with confidence knowing their assets are protected by the Federal Deposit Insurance Corporation.

The Connecticut banking community, while historically sound and built on years of prudent lending, is not immune from the economic downturn. Connecticut banks did not make subprime mortgages; however, the impact of the disruption on Wall Street and the loose underwriting standards employed by other lenders are now affecting them.

I met recently with the top executives of dozens of Connecticut banks on March 26 and all expressed their concerns over the FDIC's planned increase in the special assessment needed to replenish the Deposit Insurance Fund. Based on the FDIC's proposed special assessment, Connecticut-based banks would pay an additional $87 million. This additional burden may affect their ability to keep credit flowing for Connecticut consumers and businesses. I respectfully ask that you consider action that would ultimately reduce the affects of the special assessment.

I appreciate your time and thoughtful consideration in this matter.

Sincerely,

[redacted]

M. Jodi Rell
Governor

EXECUTIVE CHAMBERS • STATE CAPITOL
210 CAPITOL AVENUE, HARTFORD, CONNECTICUT 06106
TEL (860) 566-4840 • FAX (860)524-7396 • WWW.CT.GOV
GOVERNOR.RELL@CT.GOV

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

Office of Legislative Affairs

June 19, 2009

Honorable Leonard L. Boswell
House of Representatives
Washington, D.C. 20515

Dear Congressman Boswell:

Thank you for your letter regarding the proposed special assessment to the Deposit Insurance Fund (DIF). Chairman Sheila Bair has asked me to respond on her behalf.

As you noted, the original proposal was to charge a special assessment of 20 basis points on an institution's second quarter assessment base. The FDIC recognizes that assessments are a significant expense, particularly during a financial crisis and recession when bank earnings are under pressure. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy. On the other hand, deposit insurance provides a benefit for which banks have always paid. Backed by deposit insurance, deposit funding costs have fallen significantly, approaching historic lows. Indeed, the unique ability of banks to access low-cost, government-backed deposits has contributed to the recent increased profitability of many banks. For these reasons, the FDIC has tried to strike the right balance between keeping the assessment low enough so that it does not unduly burden lending capacity with our longstanding commitment to cover all projected costs through industry assessments, not taxpayer borrowing.

The FDIC currently projects approximately $70 billion in losses as a result of insured depository institution failures over the next five years -- the great majority of which are expected to occur in 2009 and 2010. In order to ensure that the DIF ratio does not dip below zero, the FDIC needs to collect a special assessment. However, the increase in the FDIC's authority to borrow from the Department of the Treasury, which was included by Congress as part of the Helping Families Save Their Homes Act of 2009, gave the FDIC a sufficient cushion against unforeseen bank failures to allow it to reduce the size of the special assessment.

On May 22, the FDIC Board of Directors approved a final rule that significantly reduced the original proposed special assessment. The final rule establishes a special assessment of five basis points on each FDIC-insured depository institution's assets, minus its Tier 1 capital, as of June 30, 2009. The special assessment will be assessed against assets minus Tier 1 capital rather than domestic deposits. In addition, the assessment will be capped at 10 basis points of an institution's domestic deposits so that no institution would pay an amount higher than they would have paid under the interim rule. This hybrid approach -- using assets minus Tier 1 capital as the assessment base but with a cap based on domestic deposits -- will shift the allocation of the special assessment somewhat toward banks that rely more on non-deposit funding, which large banks tend to do. We believe this approach is equitable and provides the appropriate balance of competing interests in terms of fairness to all insured institutions.

With the implementation of the revised special assessment, the FDIC projects that the DIF will remain low but positive through 2009 and then begin to rise in 2010. However, given the inherent uncertainty in these projections and the importance of maintaining a positive fund balance and reserve ratio, it is probable that an additional special assessment will be necessary in the fourth quarter. At the same time, the FDIC has instructed its examiners that they should not downgrade an institution's supervisory ratings because of the effect of the special assessment.

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 09-976

LEONARD L. BOSWELL
3rd District, Iowa

Offices:
1427 Longworth House Office Building
Washington, DC 20515
(202) 225-3806

300 East Locust Street
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http://boswell.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515–1503

Committees:
AGRICULTURE
Chairman, Subcommittee on General Farm Commodities and Risk Management
Subcommittee on Livestock, Dairy and Poultry

TRANSPORTATION AND INFRASTRUCTURE
Subcommittee on Highways and Transit
Subcommittee on Aviation
Subcommittee on Railroads, Pipelines and Hazardous Materials

May 19, 2009

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

Dear Chairman Blair:

On behalf of the community banks in my district, I write to express my concern about the impact of the FDIC's proposed 20 basis point special assessment on community banks and the millions of customers they serve across the country, including individuals, small businesses, and farmers and ranchers. As such, I urge the FDIC to act and reduce the proposed special assessment from 20 basis points down to no more than 10 basis points, or lower if deemed appropriate by the Board of Directors during the proposed May 22, 2009 meeting.

Combined with the regular assessment rate for 2009, which is already more than double the rate from the previous year, a special 20 basis point assessment would be detrimental to community banks' earning and capital, adversely affecting their ability to lend and serve their communities, if allowed to take affect. Should the Board take action and reduce this special assessment to 10 basis points or less, the FDIC will strike a more appropriate balance between the need to encourage community banks to continue to make credit available to borrowers in their communities with the need to replenish the Deposit Insurance Fund.

Furthermore, the current assessment base penalizes community banks by requiring these institutions to pay a disproportionally higher share of deposit insurance assessments. The broadening of the assessment base would more fairly distribute the burden of the special assessment, ensuring larger institutions, many of whom are responsible for a disproportionate share of the economic difficulties facing the Deposit Insurance Fund, pay a share that more fairly reflects their level of responsibility for the difficulties the fund faces.

I thank you in advance for your attention to this matter, and look forward to hearing what actions the FDIC Board of Directors take in the upcoming meeting.

Sincerely,

[redacted]

Leonard L. Boswell
Member of Congress

LB:RM

FDIC

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

Office of Legislative Affairs

June 19, 2009

Honorable Robert C. Byrd
United States Senate
Washington, D.C. 20510

Dear Senator Byrd:

Thank you for your letter on behalf of several of your constituents regarding the proposed special assessment to the Deposit Insurance Fund (DIF). As you may be aware, the original proposal was to charge a special assessment of 20 basis points on an institution's second quarter assessment base.

The FDIC recognizes that assessments are a significant expense, particularly during a financial crisis and recession when bank earnings are under pressure. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy. On the other hand, deposit insurance provides a benefit for which banks have always paid. Backed by deposit insurance, deposit funding costs have fallen significantly, approaching historic lows. Indeed, the unique ability of banks to access low-cost, government-backed deposits has contributed to the recent increased profitability of many banks. For these reasons, the FDIC has tried to strike the right balance between keeping the assessment low enough so that it does not unduly burden lending capacity with our longstanding commitment to cover all projected costs through industry assessments, not taxpayer borrowing.

The FDIC currently projects approximately $70 billion in losses as a result of insured depository institution failures over the next five years -- the great majority of which are expected to occur in 2009 and 2010. In order to ensure that the DIF ratio does not dip below zero, the FDIC needs to collect a special assessment. However, the increase in the FDIC's authority to borrow from the Department of the Treasury, which was included by Congress as part of the Helping Families Save Their Homes Act of 2009, gave the FDIC a sufficient cushion against unforeseen bank failures to allow it to reduce the size of the special assessment.

On May 22, the FDIC Board of Directors approved a final rule that significantly reduced the original proposed special assessment. The final rule establishes a special assessment of five basis points on each FDIC-insured depository institution's assets, minus its Tier 1 capital, as of June 30, 2009. The special assessment will be assessed against assets minus Tier 1 capital rather than domestic deposits. In addition, the assessment will be capped at 10 basis points of an institution's domestic deposits so that no institution would pay an amount higher than they would have paid under the interim rule. This hybrid approach -- using assets minus Tier 1 capital as the assessment base but with a cap based on domestic deposits -- will shift the allocation of the special assessment somewhat toward banks that rely more on non-deposit funding, which large banks tend to do. We believe this approach is equitable and provides the appropriate balance of competing interests in terms of fairness to all insured institutions.

With the implementation of the revised special assessment, the FDIC projects that the DIF will remain low but positive through 2009 and then begin to rise in 2010. However, given the inherent uncertainty in these projections and the importance of maintaining a positive fund balance and reserve ratio, it is probable that an additional special assessment will be necessary in the fourth quarter. At the same time, the FDIC has instructed its examiners that they should not downgrade an institution's supervisory ratings because of the effect of the special assessment.

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 09-978

United States Senate

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

April 20, 2009

Ms. Alice C. Goodman
Director, Office of Legislative Affairs
Federal Deposit Insurance Corporation
550 17th Street, N.W., Room 6076
Washington, D.C. 20429

Dear Ms. Goodman:

Please see the enclosed correspondence.

I would appreciate your looking into this matter, and providing me with comments that may serve as the basis for my reply to my correspondents.

With kind regards, I am

[redacted]

Robert C. Byrd

RCB:sp
Enclosures

MVB

MVB BANK, INC.

Banking Done Right!

MARION

301 Virginia Avenue • Fairmont, WV 26554
2500 Fairmont Avenue • White Hall WV 26554

March 11, 2009

The Honorable Senator Robert C. Byrd
United States Senate
Hart Building, Room 311
2nd and C Streets, NE
Washington, DC 20510

Dear Senator Byrd,

Attached, is a copy of my letter to FDIC Chair, Sheila Bair, regarding the special assessment on all banks to enhance the balance in the FDIC Insurance Fund. My letter speaks to the issue of penalizing the community banks that did not cause the mortgage problem at the same level as those large institutions who acted in an irresponsible manner and are responsible for the mortgage problem.

There are two additional items that I believe have been root problems to our economic meltdown. The first is the short selling of a stock. This permits the selling of a stock that a person or organization does not own in anticipation of the stock sold falling lower in value. I believe this concept is wrong. The short seller has no economic interest in the stock being sold other than speculating that the stock will decline further and can be purchased at a lower price thus covering their short. If short selling was not possible, much of the market decline would not have happened. There are those who will vehemently disagree with me, claiming such is a valid investment strategy. I respectfully disagree.

In the economic package passed in October, 2008, Congress asked the Securities & Exchange Commission to investigate the impact of "Mark to Market" accounting has had in our economic meltdown. This request asked the rule maker to evaluate their rules. The result of their investigation was no surprise. It was that "Mark to Market" has had little impact on the problem. In my opinion, this is absurd. For a detailed reason why and a perfect example, please contact the Federal Home Loan Bank of Pittsburgh CEO, John R. Price. His issue is just one example of the fallacy of "Mark to Market".

I would be happy to discuss any of these issues at your convenience. The "Big Guys" have been in charge and driving economic policy for too long. We are all paying for the errors of their ways.

Sincerely,

[redacted]

James R. Martin
Vice-Chairman

Fairmont Phones: 304-363-4800; 1-888-689-1877 • Fax 304-366-8600 ▪ White Hall Phone: 304-366-8400 • Fax 304-366-9492

Hancock County
Savings Bank, FSB

March 9, 2009

Senator Robert C. Byrd
311 Hart Senate Office Building
Washington, DC 20510-1702

Dear Senator Byrd:

Below you will find a copy of my comments that I sent to the FDIC in regard to their plans to institute a "one-time" Special Assessment on banks to recapitalize the FDIC Insurance Fund.

> To comments@fdic.gov
> Assessments-Interim Rule-RIN 3064-AD35
> I am writing to comment on the "one-time" Special Assessment of 20 basis points as proposed by the FDIC. One of my concerns is that this is an across the board assessment, without consideration of risk or effect. The fact that this is in addition to the considerable increase in the regular quarterly assessment is another reason for expressing my serious reservations as to this method of recapitalization of the insurance fund.
>
> It is disconcerting to us that we have to be part of the solution to a problem in which we did not participate. Like many West Virginia banks, we have been a conservative lender. Hancock County Savings Bank is a mutual savings bank that has served its communities since 1899. We have always maintained strong underwriting guidelines, are mainly a 1-4 family mortgage lender, and have never sold a loan on the secondary market. This has always been our business model, and we plan to continue doing business in this manner.
>
> We rely primarily on our depositors to fund our lending activities. Therefore, we are acutely aware of how important a strong FDIC insurance fund is to our success. Paying our share to keep this fund strong is a responsibility we take seriously. Our regular assessment for 2009 has increased by approximately six (6) times what we paid in 2008. The 20 basis point Special Assessment will be on top of that huge increase.
>
> Our bank is in a strong capital position because we have been able to maintain consistent income year after year. While we plan to continue our consistent earnings, the increases you have proposed will make our budgeting process much more difficult.
>
> I urge you to consider a number of the alternative plans being discussed with you by many in the banking industry. Our bank wants a strong insurance fund, and will do our part to contribute to that end. However, please consider the alternatives to a significant decrease to the bottom lines of the strong banks.

I am writing to urge you to support the new legislation that Sen. Dodd is proposing to increase the FDIC's borrowing authority from thirty billion dollars to one hundred billion dollars. This will allow the FDIC to lower the special assessment from the 20 basis points to 10 basis points.

Thank you for your consideration of my comments and I urge you to work with leaders of the banking industry to develop a safer and sounder solution.

Sincerely,

[redacted]

Harry A. Comm, President/CEO

351 Carolina Avenue, Chester West Virginia 26034 304/387-1620 Fax: 304/387-1643
375 Three Springs Drive, Weirton West Virginia 26062 304/723-4140 Fax: 304/723-4142
1200 Ridge Avenue, New Cumberland, West Virginia 26047 304/564-3368 Fax: 304/564-3370
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J. SCOTT THARP
KAREN M. YOKUM
JARROD G. DEVAULT
JAMES A. LIOTTA (1946-2005)

TELEPHONE (304) 363-1123
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E-MAIL ADDRESS:
TLJY@access.mountain.net

March 11, 2009

The Honorable Robert C. Byrd
311 Hart Senate Office Building
Washington, DC 20515

FAX: (202) 228-0002

Re: RIN 3064-AD35
74 FR 9338; FDIC Interim Rule on
Special Assessment

Dear Senator Byrd:

The FDIC has proposed a "one-time" Special Assessment of 20 basis points, or 20 cents for every $100 of insured deposits. According to the Interim Rule, this is an across the board assessment, without consideration of risk or effect.

While our institution understands the need for a strong, viable and ongoing Insurance Fund, this method of securing that fund seems precarious at best and disastrous at worst. We understand the urgency of the situation, but our industry can bear no additional policy mistakes at this time.

The 20bp Special Assessment will be due right after a 12-45bp regular quarterly assessment. Even the healthiest community banks can expect their 2009 FDIC assessment to be approximately 20% of budgeted 2009 profits. This would substantially diminish our ability to cope with other economic emergencies.

Healthy, well managed banks understand that they are the backbone and the strength of the financial services industry, but a decision such as this one strikes at the very core of that strength. The FDIC has suggested that putting a risk factor into this Special Assessment rate would cause troubled banks to fail. That may be true, but imposing this Special Assessment without a risk factor could be much worse - it could cause strong banks to weaken significantly, which in turn would jeopardize the entire industry and everyone relying on it.

In addition to the immediate impact that such an assessment would have on the strength of the industry and the individual community banks, it will also drain available liquidity from the community banks, leaving us without the available funds for loans that we are being urged to make and which are necessary to economic recovery. The special assessment will also translate into higher banking fees and lower interest rates on deposits. It may also necessitate a moratorium or significant reduction in dividends, which penalizes the shareholder who has invested in well managed banks and discourages further investment of needed capital.

Our bank is a strong bank. West Virginia banks are strong banks. We have a long and impressive history of doing the business of banking in a responsible and conservative way. There are many other states and communities across the country just like us. How many times can the strong, well managed institutions be called upon before the entire system collapses?

We encourage the FDIC to work with the industry leaders, legislators, regulatory bodied and others to develop another way to restore the Insurance Fund. There are so many possibilities - none of which are perfect - but all of which are better than destroying the healthy banking system in West Virginia. Those options could include borrowing at the Treasury, using TARP funds or issuing bonds. In addition, since a special assessment of this nature would have a more significant impact on smaller banks, it would appear more appropriate to assess based on a risk based system.

There is a way to protect the industry and those who relied on it by placing their deposits in an FDIC insured institution. We have to find that way in a thoughtful, well reasoned manner - with the participation of the industry as well as the regulators.

The FDIC has extended the recovery period from 5 to 7 years because of "extraordinary" circumstances. Of course, we agree and appreciate that, but these circumstances are more than extraordinary and they demand a solution that is more than extraordinary.

Thank you for your consideration and we urge you to work with the leaders of our industry to develop a solution geared towards safety and soundness as you reconsider the results of an increased FDIC assessment.

Very truly yours,

[redacted]

Karen M. Yokum
Director, First Exchange Bank
Mannington, WV 26582

KMY:dz

MCNBBANKS DAVE

March 5, 2009

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

Dear Mr. Feldman:

The FDIC has proposed a "one-time" Special Assessment of 20 basis points, or 20 cents on every $100 of every insured institutions assessment base. According to the Interim Rule, this is an across the board assessment, without consideration of risk or effect.

While our institution understands the need for a strong, viable and ongoing Insurance Fund, this method of securing that fund seems precarious at best and disastrous at worst. We understand the urgency of the situation, but our industry can bear no additional policy mistakes at this time.

The 20bp Special Assessment will be due right after a 12-45bp regular quarterly assessment. Even the healthiest community banks can expect, under that scenario, to pay out 20% or more of the expected profits for 2009, leaving the bank with little ability to cope with other economic emergencies.

Healthy, well managed banks understand that they are the backbone and the strength of the financial services industry, but a decision such as this one strikes at the very core of that strength. The FDIC has suggested that putting a risk factor into this Special Assessment rate would cause troubled banks to fail. That may be true, but imposing this Special Assessment without a risk factor could result in much worse—it could cause strong banks to weaken significantly, which in turn would jeopardize the entire industry and everyone relying on it.

In addition to the immediate impact that such an assessment would have on the strength of the industry and the individual community banks, it will also drain available liquidity from the community banks, leaving us without the available funds for loans that we are being urged to make and which are necessary to economic recovery. In addition, it will require community banks to reduce staff, leaving valuable employees without a job during these difficult times, causing a further strain on the economy. It will also necessitate a moratorium or significant reduction in dividends, which penalizes the shareholder who has invested in well managed banks and discourages others from investing in a time when we are trying to rebuild the participation through investment of equity in sound institutions.

Our bank is a strong bank. West Virginia banks are strong banks. We have a long and impressive history of doing the business of banking in a responsible and conservative way. There are many other states and communities across the country just like us. How many times can the strong, well managed institution be looked to for shoring up those that were not responsible, before the entire system collapses?

We implore the FDIC to work with the industry leaders, legislators, other regulatory bodies and others to develop another way to restore the Insurance Fund. There are so many possibilities—none of which are perfect—but all of which are better than destroying the healthy banking system in West Virginia. Those options could include borrowing against the Treasury, using TARP funds or issuing bonds. In addition, because such a high percentage would have a significantly more disastrous impact on smaller banks, it would make more sense to have a risk system based upon the total deposits.

75 Wyoming Street Post Office Box 549 Welch, West Virginia 24801
Phone: 304-436-4112 Fax: 304-436-3228

There is a way to protect the industry and those who relied on it by placing their deposits in an FDIC insured institution. We have to find that way in a thoughtful, well reasoned manner—with the participation of the industry as well as the regulators.

The FDIC has extended the recovery period from 5 to 7 years because of "extraordinary" circumstances. Of course, we agree and appreciate that, but these circumstances are more that extraordinary and they demand a solution that is more than extraordinary.

Thank you for your consideration of these comments and, again, I urge you to work with leaders of the industry to develop a safer and sounder solution.

Sincerely

[redacted] [redacted]

Hiram C. Lewis, Jr.
Chairman of the Board

Lee M. Ellis
President and Chief Executive Officer

MCNB Bank & Trust Co

Cc: Senator Roberts C. Byrd
Senator John D. Rockefeller
Congressman Nick Joe Rahall
Federal Reserve Board

Marc Dave

Senator Robert C. Byrd
311 Hart Senate Office Building
Washington, DC 20510-1702

Re: RIN 3064-AD35
74 FR9938
FDIC Interim Rule
Special Assessment

Dear Senator Byrd:

After serving on the Board of Directors of a small community bank for over 25 years, I now find that the FDIC wants to impose a "one time" Special Assessment of 20 cents on every $100. Our bank understands that we are in crisis, but it seems very unfair that small, strong, well-managed banks should be penalized for the faulty judgements and performances of large banks who are looking for a bailout.

Our bank is strong, as are other West Virginia banks and community banks across the country. How many times can small banking institutions, such as ours, be looked to for shoring up those that did not act responsibly, before the system collapses?

We are asking the FDIC to consider other ways to restore the Insurance Fund. Why not use TARP funds or issue bonds?

Please hear our plea to work with leaders of the industry to develop a safe and sound solution. *We implore the FDIC to seek alternative ways to fund the shortfall rather than putting the burden on banks that were not part of the problem.*

Thank you for your time and consideration of my comments and concerns.

Sincerely,

[redacted]

J. Philip Kesecker

Bank of MOUNT HOPE

204 Pinewood Drive
Beckley, WV 25801
304-252-2265

Send all correspondence To:
P.O. Box 751
602 Main Street
Mount Hope, WV 25880
304-877-5551
www.mthopebank.com

835 E. Main Street
Oak Hill, WV 25901
304-469-8046

March 12, 2009

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

RE: FDIC Special Assessment - Insurance Funding

Dear Mr. Feldman:

It was somewhat comforting to hear that the FDIC is recommending a 10 basis point assessment rather that the previous 20 basis point assessment, providing that Congress clears legislation expanding the FDIC's line of credit with the Treasury to $100 billion. While this is certainly welcome news, I am extremely concerned that Congress along with the FDIC can find alternative ways to fund those shortfalls rather than putting this burden on our banks that worked to run their banks in a very efficient manner and were not in any way a part of these problems.

Even the healthiest community banks can expect to pay out 10% or more of the expected profits for 2009, leaving the bank with a reduced ability to cope with other economic emergencies.

While our institution understands the need for a strong, viable and ongoing Insurance Fund, this method of securing that fund seems precarious at best and disastrous at worst. We understand the urgency of the situation but our industry can bear no additional policy mistakes at this time.

Healthy, well managed banks understand that they are the backbone and the strength of the financial services industry, but a decision such as this one strikes the very core of that strength. The FDIC has suggested that putting a risk factor into this Special Assessment rate would cause troubled banks to fail. That may be true, but imposing this Special assessment without a risk factor could result in much worse--it could cause strong banks to weaken significantly, which in turn would jeopardize the entire industry and everyone relying on it.

In addition to the immediate impact that such an assessment would have on the strength of the industry and the individual community banks, it will also drain available liquidity from the community banks, leaving us without the available funds for loans that we are being urged to make and which are necessary to economic recovery. In addition, it will require community banks to reduce staff, leaving valuable employees without a job during these difficult times, causing a further strain on the economy. It will also necessitate a moratorium or significant reduction in dividends, which penalizes the shareholder who has invested in well managed banks and discourages others from investing in a time when we are trying to rebuild the participation through investment of equity in sound institutions.

Our bank is a strong bank. West Virginia banks are strong banks. We have a long and impressive history of doing the business of banking in a responsible and conservative way. There are many other states and communities across the country just like us. How many times can the strong, well managed institution be looked to for shoring up those that were not responsible, before the entire system collapses?

We implore the FDIC to work with the industry leaders, legislators, other regulatory bodies and others to develop another way to restore the Insurance Fund. There are so many possibilities–none of which are perfect–but all of which are better than destroying the healthy banking system in West Virginia. Those options could include borrowing against the Treasury, using TARP funds or issuing bonds. In addition, because such a high percentage would have a significantly more disastrous impact on smaller banks, it would make more sense to have a risk system based upon the total deposits.

There is a way to protect the industry and those who relied on it by placing their deposits in an FDIC insured institution. We have to find that way in a thoughtful, well reasoned manner–with the participation of the industry as well as the regulators.

The FDIC has extended the recovery period from 5 to 7 years because of "extraordinary" circumstances. Of course, we agree and appreciate that, but these circumstances are more that extraordinary and they demand a solution that is more than extraordinary.

Thank you for your consideration of these comments and, again I urge you to work with leaders of the industry to develop a safer and sounder solution.

Cordially yours,

[redacted]

Ronald E. Clay
President

cc: Senator Robert C. Byrd
Senator John D. Rockfeller, IV
Congressman Alan B. Mollohan
Congresswoman Shelly Moore Capito
Congressman Nick Joe Rahall
Federal Reserve Board

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

June 19, 2009

Honorable Wally Herger
House of Representatives
Washington, D.C. 20515

Dear Congressman Herger:

Thank you for your letter on behalf of several of your constituents regarding the proposed special assessment to the Deposit Insurance Fund (DIF). Chairman Sheila Bair has asked me to respond on her behalf.

As you noted, the original proposal was to charge a special assessment of 20 basis points on an institution's second quarter assessment base. The FDIC recognizes that assessments are a significant expense, particularly during a financial crisis and recession when bank earnings are under pressure. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy. On the other hand, deposit insurance provides a benefit for which banks have always paid. Backed by deposit insurance, deposit funding costs have fallen significantly, approaching historic lows. Indeed, the unique ability of banks to access low-cost, government-backed deposits has contributed to the recent increased profitability of many banks. For these reasons, the FDIC has tried to strike the right balance between keeping the assessment low enough so that it does not unduly burden lending capacity with our longstanding commitment to cover all projected costs through industry assessments, not taxpayer borrowing.

The FDIC currently projects approximately $70 billion in losses as a result of insured depository institution failures over the next five years -- the great majority of which are expected to occur in 2009 and 2010. In order to ensure that the DIF ratio does not dip below zero, the FDIC needs to collect a special assessment. However, the increase in the FDIC's authority to borrow from the Department of the Treasury, which was included by Congress as part of the Helping Families Save Their Homes Act of 2009, gave the FDIC a sufficient cushion against unforeseen bank failures to allow it to reduce the size of the special assessment.

On May 22, the FDIC Board of Directors approved a final rule that significantly reduced the original proposed special assessment. The final rule establishes a special assessment of five basis points on each FDIC-insured depository institution's assets, minus its Tier 1 capital, as of June 30, 2009. The special assessment will be assessed against assets minus Tier 1 capital rather than domestic deposits. In addition, the assessment will be capped at 10 basis points of an institution's domestic deposits so that no institution would pay an amount higher than they would have paid under the interim rule. This hybrid approach -- using assets minus Tier 1 capital as the assessment base but with a cap based on domestic deposits -- will shift the allocation of the special assessment somewhat toward banks that rely more on non-deposit funding, which large banks tend to do. We believe this approach is equitable and provides the appropriate balance of competing interests in terms of fairness to all insured institutions.

With the implementation of the revised special assessment, the FDIC projects that the DIF will remain low but positive through 2009 and then begin to rise in 2010. However, given the inherent uncertainty in these projections and the importance of maintaining a positive fund balance and reserve ratio, it is probable that an additional special assessment will be necessary in the fourth quarter. At the same time, the FDIC has instructed its examiners that they should not downgrade an institution's supervisory ratings because of the effect of the special assessment.

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

Sincerely,

Mark Francis
(530) 894-1000
President & CEO
Golden Valley Bank

This message has been verified by CapwizXC as authentic and sent by this individual. Authentication ID: [p1962ABB]

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FDIC – 20 basis point rule

RIVER VALLEY
COMMUNITY BANK

March 6, 2009

MAR 20 2009

The Honorable Wally Herger
United States House of Representatives
242 Cannon House Building
Washington, DC 20515-0502

Dear Congressman Herger:

This letter is to offer my comments on the FDIC's interim rule that would impose a special assessment of 20 basis points in the second quarter.

Although I fully support the view of the FDIC that we need a strong, financially secure fund in order to maintain the confidence of depositors, I have serious concerns about this proposal. However, how this is done is very important to my bank and my community.

Our Bank is less than three years old and still in our infancy. We are a traditional community bank that supports local business, the community and its residents with traditional banking services. We have not participated in sub prime lending, have funded all loans by local deposits, have no brokered CDs, and have been well embraced by our community. Last year we increased the amount of loans in the community by 72% and are on the verge of recouping all expenses used in opening the bank – while running a profitable Bank.

The special assessment is a significant and unexpected cost to my bank that will devastate earnings and reduce our capital significantly.

We are already dealing with a deepening recession, accounting rules that overstate economic losses and unfairly reduce capital; regulatory pressure to classify assets that continue to perform, and a significant increase in regular quarterly FDIC premiums

Each of these is a big challenge on its own but collectively, they are a nightmare Banks like mine that never made a subprime loan and have served our communities in a responsible way are being unfairly penalized. The special assessment is completely at odds with my bank's efforts to help my community rebuild from this economic downturn. The reduction in earnings will make it harder to build capital when it is needed the most.

We will also be forced to look at ways to lower the cost of other expenses, including the reduction of interest paid on deposits, and may limit our ability to sponsor community activities or make charitable donations.

The implications for this significant FDIC charge will impact every corner of my community. It is patently unfair and harmful to burden a young, healthy, start-up community bank like mine that is best positioned to help the economy recover.

Given the impact that the proposed assessment will have on my bank and community, I strongly urge you to consider alternatives that would reduce our burden and provide the FDIC the funding it needs in the short term. I urge you to consider more reasonable funding options, such as:

- Use a convertible debt option, whereby the FDIC could convert debt borrowed from the banking industry into capital to offset losses if it needs the funds. This would allow me to write off the expense only when the funds are actually needed.
- Increase the FDIC's borrowing authority with Treasury to use if the fund needs resources in the short-run. This is the purpose of this fund and it remains an obligation of the banking industry. Moreover, it allows any cost to be spread over a long period of time; and
- Use the revenue that the FDIC is collecting from the Temporary Liquidity Guarantee Program. There is considerable revenue from those banks that are issuing guaranteed debt to help support the FDIC at this critical time.

Making these modifications will ensure that the fund remains secure and will allow my bank to continue to lend in our community. I urge you to take these suggestions into consideration when the Board meets in April to finalize the special assessment rule.

Sincerely,

[redacted]

John Jelavich
President
Chief Executive Officer

My best personal regards, Wally!

J

E-Mail Viewer

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HTML

From: "ricksmith@tcbk.com" <ricksmith@tcbk.com>
Date: 3/11/2009 10:45:29 PM
To: "ca02ima@mail.house.gov" <ca02ima@mail.house.gov>
Cc:
Subject: Contact form Yes-response

<APP>CUSTOM
<PREFIX>Mr.</PREFIX>
<FIRST>Richard</FIRST>
<LAST>Smith</LAST>
<ADDR1>63 Constitution Dr</ADDR1>
<CITY>Chico</CITY>
<STATE>CA</STATE>
<ZIP>95973</ZIP>
<PHONE>530 898-0300</PHONE>
<EMAIL>ricksmith@tcbk.com</EMAIL>
<ISSUE>Financial Services</ISSUE>
<MSG>Richard Smith
President/Chief Executive Officer
Tri Counties Bank
63 Constitution Drive
Chico, CA 95973-4937

March 5, 2009

The Honorable Wally Herger
House of Representatives
242 Cannon House Office Building
Washington, DC 20515-0502

Dear Representative Herger:

Thank you in advance for taking the time to hear this comment on the FDIC's interim rule that would impose a special assessment of 20 basis points in the second quarter. I have grave concerns about this proposal at this point in the worst financial market since the Great Depression, but first wanted to emphasize that I fully support the view of the FDIC that we need a strong, financial secure fund in order to maintain the confidence depositors have in the system. However, how this is done could cripple my bank, my community and our ability to help our economy improve over time.

We are already dealing with a deepening recession, accounting rules that overstate economic losses and unfairly reduce capital, regulatory pressure to classify assets that continue to perform, and a significant increase in regular quarterly FDIC premiums. Each of these is a big challenge on its own - but collectively, they are a nightmare. Our bank never made a subprime loan and we have served our communities in a responsible way for years and years, and we are now being placed into financial jeopady as a result of bad decisions by others. Solving for the gap in FDIC insurance funds on an immediate basis makes no sense and harms the banks you should care most about. We are being severely penalized by facts on the ground that we did not create. We need to strenghten the fund but it is a bad decision to do this through a large one time assessment.

The special assessment is completely at odds with my bank's efforts to help my community rebuild from this economic downturn. The reduction in earnings will make it harder to build capital when it is needed the most. We will also be forced to look at ways to lower the cost of other expenses, which may limit our ability to sponsor community activities or make charitable donations - something that we have done year after year.

I urge you to consider more reasonable funding options, such as; Reducing the special assessment and spreading the cost of it over a long period of time. The FDIC should spread out the recapitalization of the fund over a longer timeframe as well.

Please understand that banks on Main Street cannot take any more pain. Our future is in your hands.

Sincerely,

Richard P. Smith
530 898-0300
President/Chief Executive Officer
Tri Counties Bank

This message has been verified by CapwizXC as authentic and sent by this individual. Authentication ID: [BSK70Nc3]

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Close

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

Office of Legislative Affairs

June 19, 2009

Honorable Charles A. Gonzalez
House of Representatives
Washington, D.C. 20515

Dear Congressman Gonzalez:

Thank you for your letter regarding the proposed special assessment to the Deposit Insurance Fund (DIF). Chairman Sheila Bair has asked me to respond on her behalf.

As you may be aware, the original proposal was to charge a special assessment of 20 basis points on an institution's second quarter assessment base. The FDIC recognizes that assessments are a significant expense, particularly during a financial crisis and recession when bank earnings are under pressure. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy. On the other hand, deposit insurance provides a benefit for which banks have always paid. Backed by deposit insurance, deposit funding costs have fallen significantly, approaching historic lows. Indeed, the unique ability of banks to access low-cost, government-backed deposits has contributed to the recent increased profitability of many banks. For these reasons, the FDIC has tried to strike the right balance between keeping the assessment low enough so that it does not unduly burden lending capacity with our longstanding commitment to cover all projected costs through industry assessments, not taxpayer borrowing.

The FDIC currently projects approximately $70 billion in losses as a result of insured depository institution failures over the next five years -- the great majority of which are expected to occur in 2009 and 2010. In order to ensure that the DIF ratio does not dip below zero, the FDIC needs to collect a special assessment. However, the increase in the FDIC's authority to borrow from the Department of the Treasury, which was included by Congress as part of the Helping Families Save Their Homes Act of 2009, gave the FDIC a sufficient cushion against unforeseen bank failures to allow it to reduce the size of the special assessment.

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With the implementation of the revised special assessment, the FDIC projects that the DIF will remain low but positive through 2009 and then begin to rise in 2010. However, given the inherent uncertainty in these projections and the importance of maintaining a positive fund balance and reserve ratio, it is probable that an additional special assessment will be necessary in the fourth quarter. At the same time, the FDIC has instructed its examiners that they should not downgrade an institution's supervisory ratings because of the effect of the special assessment.

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

LA09-692

CHARLES A. GONZALEZ
MEMBER OF CONGRESS
20TH DISTRICT, TEXAS

303 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4320
(202) 225-3236 PHONE
(202) 225-1915 FAX

B-124 FEDERAL BUILDING
727 EAST DURANGO
SAN ANTONIO, TEXAS 78206-1286
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(210) 472-4009 FAX

Congress of the United States
House of Representatives
Washington, DC 20515-4320

COMMITTEE ON
ENERGY AND COMMERCE

SUBCOMMITTEE ON COMMERCE, TRADE, AND
CONSUMER PROTECTION

SUBCOMMITTEE ON
ENERGY AND ENVIRONMENT

SUBCOMMITTEE ON HEALTH

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COMPETITION POLICY

SUBCOMMITTEE ON IMMIGRATION,
CITIZENSHIP, REFUGEES, BORDER
SECURITY, AND INTERNATIONAL LAW

COMMITTEE ON
HOUSE ADMINISTRATION

VICE CHAIR
SUBCOMMITTEE ON ELECTIONS

CHAIR OF THE CONGRESSIONAL HISPANIC
CAUCUS CIVIL RIGHTS TASK FORCE

1ST VICE CHAIR
CONGRESSIONAL HISPANIC CAUCUS

SENIOR WHIP

April 3, 2009

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 Seventeenth St, NW
Room 6028
Washington, D.C. 20429

Dear Chairman Bair:

In recent months, the Federal Deposit Insurance Corporation has borne a great share of the burden of our economic difficulties, including the increase of the insurance limit to $250,000. In light of those facts, I can understand your interest in supplementing FDIC's resolution powers. I am concerned, however, at the prospect of the traditional banks in Texas's 20th District facing a 20-basis-point assessment to provide that supplement.

I have had extensive conversations with the community bankers in my district. They are in a stronger position now than some other banks precisely because they did not engage in the risky or reckless lending practices that have so added to your workload. It is not fair that these conscientious bankers should have to pay for the failings of their less assiduous peers, but that is not the foundation of my concern. The community bankers and I understand that we must all share some of the burden. But at a time when we are working so hard to get banks lending again, this assessment would significantly curtail the ability of these community banks to make new loans, pulling millions of dollars out of the economy of South Texas alone. That would clearly be counterproductive and I hope that you will consider that collateral damage this large assessment might cause.

In light of FDIC's need for greater resolution powers, I understand a request for an increase in FDIC's borrowing authority is an alternative means of fortifying your ability to deal with the institutions that now require FDIC to rescue them and to continue to provide the reassurance on which consumers have depended since FDIC's founding.

I thank you for considering these points and for your steadfast service to our country. We have been fortunate to have your leadership at FDIC during these turbulent times.

Sincerely,

[redacted]

Charles A. Gonzalez
Member of Congress

CAG: cr

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

June 19, 2009

Honorable Lynn Jenkins
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Jenkins:

Thank you for your letter regarding the proposed special assessment to the Deposit Insurance Fund (DIF). Chairman Sheila Bair has asked me to respond on her behalf.

As you may be aware, the original proposal was to charge a special assessment of 20 basis points on an institution's second quarter assessment base. The FDIC recognizes that assessments are a significant expense, particularly during a financial crisis and recession when bank earnings are under pressure. We also recognize that assessments reduce the funds that banks can lend in their communities to help revitalize the economy. On the other hand, deposit insurance provides a benefit for which banks have always paid. Backed by deposit insurance, deposit funding costs have fallen significantly, approaching historic lows. Indeed, the unique ability of banks to access low-cost, government-backed deposits has contributed to the recent increased profitability of many banks. For these reasons, the FDIC has tried to strike the right balance between keeping the assessment low enough so that it does not unduly burden lending capacity with our longstanding commitment to cover all projected costs through industry assessments, not taxpayer borrowing.

The FDIC currently projects approximately $70 billion in losses as a result of insured depository institution failures over the next five years -- the great majority of which are expected to occur in 2009 and 2010. In order to ensure that the DIF ratio does not dip below zero, the FDIC needs to collect a special assessment. However, the increase in the FDIC's authority to borrow from the Department of the Treasury, which was included by Congress as part of the Helping Families Save Their Homes Act of 2009, gave the FDIC a sufficient cushion against unforeseen bank failures to allow it to reduce the size of the special assessment.

On May 22, the FDIC Board of Directors approved a final rule that significantly reduced the original proposed special assessment. The final rule establishes a special assessment of five basis points on each FDIC-insured depository institution's assets, minus its Tier 1 capital, as of June 30, 2009. The special assessment will be assessed against assets minus Tier 1 capital rather than domestic deposits. In addition, the assessment will be capped at 10 basis points of an institution's domestic deposits so that no institution would pay an amount higher than they would have paid under the interim rule. This hybrid approach -- using assets minus Tier 1 capital as the assessment base but with a cap based on domestic deposits -- will shift the allocation of the special assessment somewhat toward banks that rely more on non-deposit funding, which large banks tend to do. We believe this approach is equitable and provides the appropriate balance of competing interests in terms of fairness to all insured institutions.

With the implementation of the revised special assessment, the FDIC projects that the DIF will remain low but positive through 2009 and then begin to rise in 2010. However, given the inherent uncertainty in these projections and the importance of maintaining a positive fund balance and reserve ratio, it is probable that an additional special assessment will be necessary in the fourth quarter. At the same time, the FDIC has instructed its examiners that they should not downgrade an institution's supervisory ratings because of the effect of the special assessment.

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 09-977

LYNN JENKINS, CPA
2ND DISTRICT, KANSAS

ASSISTANT WHIP

COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND GOVERNMENT SPONSORED ENTERPRISES
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY

Congress of the United States
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Washington, DC 20515-1602

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HTTP://LYNNJENKINS.HOUSE.GOV

May 20, 2009

The Honorable Sheila Bair
Federal Deposit Insurance Corporation
550 17th St., NW Room 6028
Washington, DC 20429

Dear Chairwoman Bair:

On behalf of the many banks in Eastern Kansas, which I represent and which are struggling to meet regulatory capital requirements and loan demands in this ailing economy, I write today to encourage your consideration of a reduction to the Depository Insurance Fund (DIF) special assessment.

I understand and respect the responsibility that the Federal Deposit Insurance Corporation (FDIC) has to protect financial solvency of the DIF. It is my understanding that in statements you and others made, increased borrowing authority from the Treasury Department would allow the FDIC flexibility to consider reducing the special assessment that will be levied on banks. Now that President Obama has signed into law legislation that will increase FDIC's borrowing authority for the first time in almost 20 years, I urge you to re-examine the special assessment rate and contemplate an appropriate reduction.

Thank you for your consideration of this request that could have a significant impact on the many community banks across my district and our nation.

Sincerely,

[redacted]

Lynn Jenkins, CPA
Member of Congress

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 29, 2009

Honorable Peter DeFazio
House of Representatives
Washington, D.C. 20515

Dear Congressman DeFazio:

Thank you for your support of the Federal Deposit Insurance Corporation's establishment of an Advisory Committee on Community Banking. I agree that this Advisory Committee will provide the FDIC with valuable input on the issues facing community and rural financial institutions. I especially appreciate your referral of Ms. Patricia Moss of Cascade Bancorp in Oregon.

As you know, the FDIC advised interested parties in a recent Federal Register notice to submit information to the FDIC by July 3. Enclosed is a copy of the Federal Register notice. If she has not already done so, we encourage Ms. Moss to contact us at CommunityBanking@fdic.gov.

Again, thank you for your interest and the referral of Ms. Moss. If you have further questions regarding the Advisory Committee on Community Banking, please feel free to contact me at (202) 898-6974 or Paul Nash, Deputy for External Affairs, at (202) 898-6962.

Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 29, 2009

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

Dear Senator Wyden:

Thank you for your support of the Federal Deposit Insurance Corporation's establishment of an Advisory Committee on Community Banking. I agree that this Advisory Committee will provide the FDIC with valuable input on the issues facing community and rural financial institutions. I especially appreciate your referral of Ms. Patricia Moss of Cascade Bancorp in Oregon.

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Sincerely,

[redacted]

Sheila C. Bair

(0 Attachments)
File Name:

June 29, 2009

Honorable David Wu
House of Representatives
Washington, D.C. 20515

Dear Congressman Wu:

Thank you for your support of the Federal Deposit Insurance Corporation's establishment of an Advisory Committee on Community Banking. I agree that this Advisory Committee will provide the FDIC with valuable input on the issues facing community and rural financial institutions. I especially appreciate your referral of Ms. Patricia Moss of Cascade Bancorp in Oregon.

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Again, thank you for your interest and the referral of Ms. Moss. If you have further questions regarding the Advisory Committee on Community Banking, please feel free to contact me at (202) 898-6974 or Paul Nash, Deputy for External Affairs, at (202) 898-6962.

Sincerely,

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 29, 2009

Honorable Greg Walden
House of Representatives
Washington, D.C. 20515

Dear Congressman Walden:

Thank you for your support of the Federal Deposit Insurance Corporation's establishment of an Advisory Committee on Community Banking. I agree that this Advisory Committee will provide the FDIC with valuable input on the issues facing community and rural financial institutions. I especially appreciate your referral of Ms. Patricia Moss of Cascade Bancorp in Oregon.

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Again, thank you for your interest and the referral of Ms. Moss. If you have further questions regarding the Advisory Committee on Community Banking, please feel free to contact me at (202) 898-6974 or Paul Nash, Deputy for External Affairs, at (202) 898-6962.

Sincerely,

[redacted]

Sheila C. Bair

United States Senate

WASHINGTON, DC 20510

June 18, 2009

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

Dear Chairman Bair:

We write to express our enthusiastic endorsement of the decision of the FDIC Board of Directors to establish an Advisory Committee on Community Banking and to offer a bipartisan recommendation of an outstanding individual for selection to that committee.

The Advisory Committee on Community Banking is especially important to us, as Oregon has been hard hit by the current economic downturn and the economic survival of many businesses and individuals in our state depends upon the service, advice, and credit provided by our community banks.

We endorse the appointment of Patricia Moss, President and CEO of Cascade Bancorp and CEO of Bank of the Cascades, to the Advisory Committee. There is no doubt that Ms. Moss is one of the most effective and respected advocates for the financial health of community banks in our state. Headquartered in Bend, Oregon, Bank of the Cascades has received repeated national recognition as a top performing institution. Ms. Moss has also been often named as one of the top banking CEO's in the nation, and honored for five consecutive years as one of the "Most Powerful Women in Banking" by US Banker Magazine. Befitting the leader of a community bank, Ms. Moss is also a true community leader and serves on numerous non-profit and corporate boards.

In short, Patricia Moss is precisely the type of individual who would ensure that the Advisory Committee fulfills its mission of providing advice and guidance on a broad range of important policy issues impacting community banks throughout the country. We are proud to urge her appointment to the Advisory Committee.

Thank you for your time and consideration of this important issue.

Sincerely,

[redacted]

Jeff Merkley
Senator

[redacted]

Ron Wyden
Senator

[redacted]

David Wu
Member of Congress

[redacted]

Greg Walden
Member of Congress

[redacted]

Earl Blumenauer
Member of Congress

[redacted]

Peter DeFazio
Member of Congress

[redacted]

Kurt Schrader
Member of Congress

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 29, 2009

Honorable Bob Filner
House of Representatives
Washington, D.C. 20515

Dear Congressman Filner:

Thank you for forwarding a proposal for funding counseling services to borrowers who are at risk of losing their homes. According to this proposal, fees for such counseling services would be paid from proceeds the lenders or servicers receive for modifying the loans. The Federal Deposit Insurance Corporation shares your belief that housing counselors perform a valuable service in helping borrowers avoid foreclosure.

Currently, the U.S. Treasury Department's Making Home Affordable Program (Program) offers the type of incentive payments for loan modifications referenced in your letter. In addition to the incentive payments, the Program also encourages borrowers to seek the advice of HUD-approved housing counselors and, in the case of those borrowers with debt loads above a certain threshold, the Program requires the borrower to certify he or she will participate in counseling as a condition of a modification. As is the case with the proposal described in your letter, the Program provides for counseling agencies to receive compensation if certain requirements are met. Information about the Program's counseling service requirements and compensation is available at http://www.financialstability.gov/docs/counselor_qa.pdf.

The federal bank regulatory agencies encourage all federally regulated financial institutions that service or hold residential mortgage loans to participate in the Program. Going forward, the Treasury Department requires institutions receiving financial assistance under the Financial Stability Plan to implement loan modification programs in accordance with Treasury Department guidelines. The FDIC believes the incentives contained in the Program, including the counseling service requirements, will promote sustainable alternatives to foreclosures on owner-occupied residential properties.

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

Sincerely,

[redacted]

Sheila C. Bair

LA09-842

BOB FILNER
51st District, California

Veterans' Affairs Committee
Chairman

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

Congress of the United States
House of Representatives

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FDIC
MAY 27 2009
OFFICE OF LEGISLATIVE AFFAIRS

May 4, 2009

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

Dear Chairwoman Bair:

I have been meeting with a number of San Diego local home counselor non-profits to discuss how we could bring relief to San Diego. As you are aware, 30 percent of mortgages in California are underwater and an even higher percentage in many areas of San Diego, particularly in low-income areas. And as you are aware, California has the fourth highest unemployment rate in the nation.

The non-profits have proposed the following as a pilot program in San Diego and the other hard hit areas of California.

Please inform all major financial institutions, particularly those that have been a recipient of TARP funds, that you urge them to work closely with local counselors who the people have confidence in. To do so, they should mirror what the FDIC did at IndyMac, that is all contacts secured by the home counselor result in a $150 fee to the non-profit and if the modification is successful, an additional $350. This could be easily covered by financial institutions since $1,000 and up to $2,000 for each modification is compensated by the government.

Is this a proposal that makes sense?

I greatly appreciate your efforts to overcome the foreclosure crisis that has overwhelmed our nation.

Sincerely,

[redacted]

BOB FILNER
Member of Congress

BF/ek
2511591

LA09-1032

ROBERT MENENDEZ
NEW JERSEY

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
BUDGET
ENERGY AND NATURAL RESOURCES
FINANCE
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United States Senate

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(856) 757-5353

June 29, 2009

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

Dear Chairman Bair:

Thank you for your response dated April 20, 2009 to my inquiry regarding access to the Temporary Liquidity Guarantee Program ("TLGP") for bank holding companies that achieved that status after October 13, 2008. Given your response that such bank holding companies will be considered for TLGP on a case by case basis, I want to bring to your attention the TLGP application from [redacted], an important lender in [redacted] that received TARP funds.

[redacted] employs nearly [redacted] U.S.-based employees in [redacted]. Now in its 100th year, [redacted] has approximately [redacted] in assets. [redacted] offers a comprehensive set of financial products and services to small- and medium-sized businesses and entrepreneurs in the "middle market" (companies with $25 million to $1 billion in revenues), which accounts for more than $6 trillion in sales annually and the employment of 32 million Americans. For example, [redacted] is the No. 1 Small Business Administration 7(a) volume lender for nine consecutive years, and the No. 1 SBA 7(a) volume lender to women-, veteran-, and minority-owned businesses for five consecutive years. In addition, [redacted] is recognized as the leading lender to the retail industry, providing liquidity to main street businesses and entrepreneurs that might otherwise fail without access to liquidity. Because of [redacted] importance to the retail trade and small business lending, this is an important issue for the economic recovery.

[redacted] submitted its application for TLGP in January, but has not yet received a response. If TLGP access is denied, I am concerned that it would put at risk the [redacted] TARP investment as well, which I would like to see returned to the American taxpayers. While [redacted] was originally eligible to receive as much as $10 billion under the TLGP formula, the amount they are seeking has been voluntarily reduced to $5 billion. [redacted] has also offered concessions that other TLGP users have not generally been required to provide, such as raising new capital as a condition on receiving TLGP.

I understand – and expect – that the FDIC will make independent judgments regarding [redacted] and whether it merits TLGP approval. I respectfully request your thoughtful consideration and a timely reponse to their application. Thank you for your review of this matter.

[redacted]

Robert Menendez
United States Senator

cc: The Honorable Timothy F. Geithner
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Mr. Herbert Allison
Assistant Treasury Secretary for Financial Stability
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Mr. Lee Sachs,
Counsel
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington DC 20429

OFFICE OF THE VICE CHAIRMAN

June 2, 2009

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

Dear Mr. Chairman:

Thank you for the opportunity to testify before the Committee at the March 20 hearing "Federal and State Enforcement of Consumer and Investor Protection Laws."

Enclosed is my response to questions posed at the hearing by Congressman Posey, Congressman Gohmert, and Congressman Foster.

If you have further questions or comments, please do not hesitate to contact me at (202) 898-3888 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

[redacted]

Martin J. Gruenberg
Vice Chairman

Enclosure

Response to questions from the Honorable Bill Foster
by Martin J. Gruenberg, Vice Chairman,
Federal Deposit Insurance Corporation

Q1. What is your budget associated with enforcement?

A1. Closed Bank: The FDIC's Legal Division has budgeted $3.568 million for expenses of the Professional Liability and Financial Crimes Unit staff for 2009, and also has spent approximately $1.1 million on outside counsel to support enforcement efforts during the first three months of 2009. Our Division of Resolutions and Receiverships Investigations Unit has a budget for 2009 of $6.7 million for in-house investigations staff and an additional $16.5 million for assistance from outside contractors, for a total budget of $23.2 million.

Open Bank: The budget for our headquarters Legal Division enforcement section for open banks is $4.474 million. Employees of the legal departments of our six regional offices and two area offices also conduct investigations and pursue enforcement actions, and the overall budget for those employees is $17.952 million. In addition, the Division of Supervision and Consumer Protection (DSC) has approximately 1,730 examiners who regularly review the activities of insured depository institutions to ensure safe and sound operations and compliance with state and federal laws and regulations. Examination findings are the most common source of enforcement actions involving open institutions. The entire DSC budget is $503.5 million, of which $442.9 million represents regional and field operations, where all examinations and most enforcement actions are handled, and $5.4 million is the budget for the two groups in Washington that handle enforcement actions. It is not possible to separate the specific cost of handling enforcement actions from other supervisory activities as the same staff are involved in both.

Q2. What is your best estimate of losses under your purview?

A2. Our current best estimate of total losses from all civil residential mortgage fraud claims currently in investigation from the 25 institution failures in 2008 and 29 institution failures in 2009 to date is $1 billion. These losses are associated with over 4000 mortgage malpractice and mortgage fraud claims in investigation by the FDIC as Receiver. Most of these losses have arisen out of the failures of Washington Mutual Bank and IndyMac Bank, FSB, the two largest financial institutions to fail in 2008. Losses to the Deposit Insurance Fund (DIF) from the 25 banks and thrifts that failed and were placed in receivership during 2008 total $17.87 billion. Losses to the DIF from the 29 banks and thrifts that failed and were placed in receivership during 2009 to date (through March 20) total $3.8 billion.

Q3. What would be the effect of adding 10 percent to your budget for enforcement?

A3. Closed Bank: The FDIC has substantially increased its budget for the Legal Division's closed bank functions, specifically including the Professional Liability and Financial Crimes Unit. In 2008 and the first quarter of 2009, the Unit's staff has doubled, and we have plans to increase staff further during the remainder of 2009. We also have substantially increased the Division of Receiverships and Resolutions' budget and staff dedicated to closed bank matters, as noted previously.

Open Bank: The FDIC has been increasing the budget for the Legal Division's Enforcement Section in Washington and in the Regional Offices over the last two years. In 2008, the Enforcement Section added four new attorneys. Under the 2009 budget, the FDIC made provisions to further increase this staff by two additional term appointment attorneys.

In 2008, the FDIC added seven attorneys to the Regional Offices to assist in the increasing workload, including an increase in enforcement actions. The 2009 budget provides for an additional two attorneys hired in 2009, plus five more positions to be filled in the Regional Offices.

Finally, the Division of Supervision and Consumer Protection increased its budget and workforce in preparation for the additional work load. The budget increase of $86.8 million covers the hiring of 552 full-time equivalents.

Response to questions from the Honorable Bill Posey
by Martin J. Gruenberg, Vice Chairman,
Federal Deposit Insurance Corporation

Q1(a). Provide a one page summary – not a book – but a one page summary describing what you think was the root cause of the crisis.

A1(a). The financial crisis was caused by a number of factors, but five key developments appear central. The first development was a dramatic shift in the U.S. mortgage market away from the traditional 30 year fixed rate mortgage toward subprime, Alt-A, and nontraditional mortgages, which include interest only and payment option adjustable rate mortgages. Prior to this decade, the 30 year fixed rate mortgage had dominated the U.S. mortgage market for years, but by 2006 its share had slipped to less than half of mortgage originations. Subprime mortgages, which accounted for less than 5 percent of mortgage originations in 2001, grew to account for over 20 percent in 2006. The rapid growth of these risky mortgages set the stage for the coming crisis.

The second development was the widespread deterioration of underwriting standards for mortgages that facilitated the rapid growth of subprime, Alt-A, and nontraditional mortgages. Lax underwriting standards were most apparent in subprime mortgages, where the most elementary notion of prudent lending – underwriting based on the borrower's ability to pay – was ignored. Most of the subprime mortgages originated during these years were 2/28 or 3/27 hybrid adjustable rate mortgages, characterized by a low fixed initial interest rate for 24 or 36 months followed by a significant increase in the monthly payment. Many of these loans were underwritten to the introductory rate, with prepayment penalties and no escrow for taxes and insurance. A significant share of subprime mortgages was also granted on a stated income basis, requiring no verification or documentation of ability to pay the loan.

The third development was the growth of mortgage-backed securities (MBS), particularly for the highly risky subprime, Alt-A, and nontraditional mortgages. Securitization of these mortgages largely took place in the private label MBS market which existed outside of the government sponsored enterprise securitization system. The private label MBS market led to new origination and funding channels that fell outside direct federal supervision and facilitated the expansion of risky lending. Securitization facilitated the poor underwriting since many institutions that underwrote the loans did not hold the loans. It further transmitted the poor underwriting of these mortgages to investors worldwide, many of whom, it is now clear, were unaware of the risk and failed to perform appropriate due diligence.

The fourth development was the growth of complex derivative instruments such as collateralized debt obligations (CDOs), through which subprime and nontraditional mortgages were bundled into senior and subordinate mortgage-backed securities, and credit default swaps (CDS) which were utilized by many investors to hedge the risk of these securities. The outstanding value of credit default swaps grew from less than $900 billion in 2001 to over $45 trillion in 2007. The complexity and lack of transparency of these structured finance vehicles, coupled with AAA quality ratings by credit rating agencies, created a false sense of comfort among a wide range of sophisticated global investors and led to enormous counterparty risks.

The fifth development was the collapse of home prices in 2007. Much of the mortgage lending of recent years was based on the assumption that home prices would grow indefinitely. When home prices collapsed, the underlying mortgages became unsustainable. Borrowers with little to no equity in their homes became trapped in unaffordable mortgages and delinquency, default, and foreclosures began to rise substantially. This caused the secondary market for subprime mortgage backed securities to break down in 2007 and ultimately the collapse of the entire private label MBS market. When the impact of declining home prices and the spreading crisis began to affect the performance of CDS and highly leveraged financial institutions, it escalated and adopted truly global proportions.

Q1(b). To what extent is Congress to blame? If your life depended on solving this puzzle, how would you do it, and what do all the indicators point to?

A1(b). A number of measures will be required to address this crisis and prevent similar crises from occurring in the future. First is the need to restore proper underwriting to the mortgage market, particularly subprime mortgage lending. The federal banking agencies have taken a number of actions to address this issue, including the issuance in 2007 of a final *Statement on Subprime Mortgage Lending* that identifies prudent safety and soundness and consumer protection standards that institutions should follow to ensure borrowers obtain loans they can afford to pay. These standards include qualifying borrowers on a fully indexed, fully amortizing repayment basis.

In addition, in 2008, the Board of Governors of the Federal Reserve System approved a final rule for home mortgage loans under the Home Ownership and Equity Protection Act (HOEPA) that applies to all lenders, not just federally supervised institutions. The rule is designed to protect consumers from unfair or deceptive acts and practices in mortgage lending. It also establishes advertising standards and greater mortgage disclosure requirements. With regard to subprime mortgages, the rule prohibits lenders from making loans without regard to borrowers' ability to repay the loan, requires verification of income and assets relied upon to determine repayment ability, restricts the use of prepayment penalties, and requires creditors to establish escrow accounts for property taxes and homeowner's insurance for all first-lien mortgage loans.

Second, a review of securitization markets should be conducted to ensure that appropriate incentives exist for lenders to properly underwrite securitized loans and that securitizers of mortgages and other assets conduct adequate due diligence on the underlying risks of the securities. The review of securitization markets should include examination of credit rating agencies, the role they played in the crisis, and the extent to which banks relied on credit rating agencies to assess the risks associated with securitized mortgages.

Third, statutory change is needed to address gaps in supervisory oversight for Over-The-Counter (OTC) derivatives and credit default swaps. The proposed framework put forward by the Administration calls for requiring clearing of all standardized OTC derivatives through regulated central counterparties, subjecting OTC derivatives dealers and other significant involved firms to a robust regime of prudential supervision and regulation; imposing recordkeeping and reporting requirements on all OTC trades; improving enforcement authorities for OTC market manipulation, fraud, and other market abuses; and providing greater protections for unsophisticated investors.

Finally, Congress and the Administration appropriately are undertaking a comprehensive review of the financial regulatory structure. Part of that effort will be focused on the need for a special resolution regime outside the bankruptcy process for large non-bank financial firms that pose a systemic risk, such as the regime that exists for insured commercial banks and thrifts. Unlike the special statutory powers that the FDIC has for resolving insured depository institutions, the current bankruptcy framework wasn't designed to protect the stability of the financial system. It will be important to create such a regime to avoid additional instability in times of economic crisis.

Q2. How many employees does the FDIC have–employees working on closed bank fraud, and employees working on open bank fraud?

A2. Closed Bank: In total, the FDIC has approximately 113 employees, as well as outside contractors, working on closed bank fraud. By mid-2009, the FDIC Legal Division will have increased staff in its professional liability and financial crimes unit from 21 in mid-2008 to 46. This includes 24 employees devoted to professional liability civil claims work arising out of recently-failed institutions (such as mortgage malpractice and fraud claims); 12 devoted to financial crimes work to support the United States Department of Justice in its prosecutions of criminal mortgage fraud claims; and ten employees having dual responsibilities in both these areas. We also have retained 17 outside law firms to date to assist with performing professional liability investigations and litigation as well as firms to handle residential mortgage fraud cases specifically. We anticipate retaining additional firms for both of these purposes during 2009. Our Division of Resolutions and Receiverships increased its civil and criminal investigations staff, bringing its total in-house investigations staff to 67, and also added contractors to support its investigations function.

Open Bank: In total, the FDIC has approximately 2,010 employees working on open bank fraud as part of their examination and enforcement responsibilities. In Washington, we have 22 employees in the Legal Division's open bank enforcement section. In addition, our regional legal offices have 58 attorneys and 32 other regional staff that assist with open bank enforcement and other open bank concerns. Our Division of Supervision and Consumer Protection includes both examination staff—responsible for identifying and investigating potential fraud—and supervisory staff who work with the Legal Division on enforcement actions. We have approximately 1,730 examiners who regularly review the activities of insured depository institutions to ensure compliance with state and federal laws and regulations, including all consumer protection laws and the safe and sound operation of FDIC-supervised institutions. Examiners are trained to identify situations in institutions where the risk of fraud is heightened and additional review procedures may be needed. Approximately 160 FDIC employees are designated Bank Secrecy Act/Anti-Money Laundering/Fraud Subject Matter Experts, and these individuals each spend a portion of their time reviewing primarily insider fraud incidents.

Q3. How many successful convictions?

A3. The FDIC does not have authority to prosecute criminal cases directly. This authority resides with the U.S. Department of Justice. The FDIC actively supports the Justice Department in its criminal prosecutions of defendants who have committed bank fraud, but the FDIC does not maintain data on numbers of convictions separately from the data maintained by the Justice Department.

Q4. You state that you have had 4,375 mortgage fraud claims filed, and they are expected to result in 900 additional civil mortgage fraud lawsuits over the next three years. What do you think the success rate will be? What justice will come to the American people? What amount of money do you think we will be able to recover from the people involved?

A4. To clarify, the 4,375 mortgage fraud matters referenced at the March 20 hearing are investigations, and are not yet filed claims. The likelihood of success on the merits of these claims is very high since they are fraud claims. These have a high likelihood of success because fraud, by its nature, consists of dishonest acts that are not difficult to prove. For example, liability is rarely in question in the typical mortgage fraud case once the fraudulent scheme that makes up the case is uncovered, such as in mortgage transactions involving falsified loan documents and/or the theft of loan proceeds.

However, based on experience, we expect to find in many of the claims that there is not a viable recovery source to make the claim cost-effective, and thus we will not pursue those claims. Many others will be settled before the need to file suit. Our best estimate is there will be 900 remaining claims on which we will file suit. We anticipate that the estimated 900 mortgage fraud lawsuits over the next several years will result in more than $150 million in monetary recoveries.

In terms of justice for the American people, we would suggest that it is through these cases that mortgage fraud is addressed, perpetrators forced to make reparations, and future fraud deterred.

Response to questions from the Honorable Louie Gohmert
by Martin J. Gruenberg, Vice Chairman,
Federal Deposit Insurance Corporation

Q. What do you personally recommend that Congress do legislatively to keep some of the financial risk with those who put people in mortgages and those who packaged and sold them as securities?

A. The FDIC is working with the other federal banking agencies and Congress to develop potential financial and regulatory reforms to address the financial crisis. One of the most important factors driving this financial crisis has been the decline in value, liquidity, and underlying collateral performance of asset-backed securities (ABS)—including mortgage-backed securities—that were initially highly rated.

One of the key changes we are discussing is the idea of "skin in the game." If originators and securitizers of mortgages, for example, were required to retain "skin-in-the-game" by holding some form of explicit exposure to the assets they originate and sell, the likely result would be more careful underwriting and better monitoring of the performance of mortgage-backed securities. Some have noted the implementation challenges inherent in this idea, such as whether we can or should prevent issuers from hedging their exposure to their retained interests. We need to evaluate these issues but correcting the problems in the "originate-to-distribute model" is very important.

In addition to "skin in the game," we also are looking at the role of disclosure. Many previously highly-rated ABS were never traded in secondary markets and were subject to little or no public disclosure regarding the characteristics and ongoing performance of underlying collateral. Additional disclosure might include, for example, rated securitization tranches, in a readily accessible format on the ratings agency websites. This could include detailed loan-level characteristics and regular performance reports. Over the long term, liquidity and confidence also might be improved if secondary market prices and volumes of asset-backed securities were reported on some type of system similar to the way that such data is currently captured on corporate bonds.

Finally, financial incentives for short-term revenue recognition appear to have driven the creation of large volumes of highly-rated securitization products. There was insufficient attention to due diligence, and insufficient recognition of the risks being transferred to investors. Moreover, some aspects of our regulatory framework may have encouraged banks and other institutional investors in the belief that a highly-rated security is, *per se*, of minimal risk.

We look forward to working with Congress to craft a comprehensive package of regulatory reforms that will address the short-comings of the regulatory framework for the "originate-to-distribute model" as well as the regulatory gaps in the overall financial regulatory system.