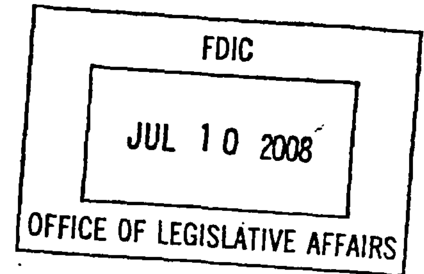
LA08-225

BARNEY FRANK, MA, CHAIRMAN

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

SPENCER BACHUS, AL, RANKING MEMBER



July 10, 2008

Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
3501 N. Fairfax Drive
Arlington, VA 22226

The House Financial Services Committee has jurisdiction over the Equal Credit Opportunity Act (ECOA) which the Federal Reserve implements through Regulation B. The Committee, therefore, closely monitors the use of Regulation B and its effectiveness as a tool to ensure compliance with fair lending laws.

The Oversight and Investigations (O&I) Subcommittee of the House Financial Services Committee has scheduled a hearing on July 17, 2008 at which a United States Government Accountability Office (GAO) Report entitled "Fair Lending: Race and Gender Data are Limited for Nonmortgage Lending" (GAO-08-898) will be officially released. An advance copy of the report is attached for your review, which I respectfully request you not to share because the report is embargoed until the day of the hearing.

In preparation for this hearing, I request that your agency provide written responses to the following questions by **July 15, 2008** in order that your responses may be made part of the hearing record:

(1) Should personal characteristic data be collected on applicants for and borrowers of nonmortgage credit?

(2) What types of nonmortgage loans should be included if personal characteristic data is collected (e.g. small business loans, automobile loans, or other categories)?

(3) Should the collection of such data be mandatory or voluntary?

(4) Should personal characteristic data be collected by the lenders and publicly reported, collected but not publicly reported, or collected but only reported to the appropriate federal banking regulator?

LA08-231

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

July 14, 2008

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

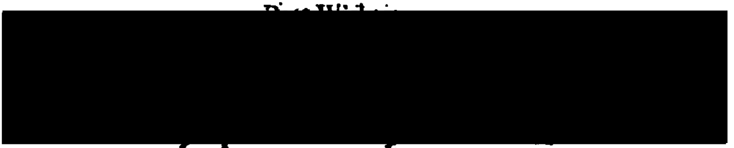
Dear Chairman Bair:

I annually invite over 100 business and community leaders from Rhode Island to Washington, DC to hear from a variety of officials and experts on the issues of the day.

I believe this year's attendees would greatly enjoy hearing from you on the many topics of concern to small business owners, Chamber of Commerce members, and others.

This year, Rhode Island Business Leaders Day will be held on Wednesday, September 17th from 10:00 a.m. to 5:30 p.m., and I would be pleased if you could find time in your schedule to participate.

Please do not hesitate to call me if you would like to discuss this invitation, or have your staff contact Rosanna Haroian of my staff at 224-4646 if you are able to attend or have further questions.



Jack Reed
United States Senator

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FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 16, 2008

Honorable Melvin L. Watt
Chairman
Subcommittee on Oversight and Investigations
Committee on Financial Services
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to respond to the questions you submitted in advance of a hearing before the Subcommittee on Oversight and Investigations on July 17, 2008.

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

Sincerely,

Sheila C. Bair

Enclosure

Response to questions from the Honorable Melvin L. Watt
by Sheila C. Bair, Chairman,
Federal Deposit Insurance Corporation

Q1. Should personal characteristic data be collected on applicants for and borrowers of nonmortgage credit?

A1. The FDIC would defer to the Federal Reserve Board regarding the collection of personal characteristic data as they have the rulemaking under the Equal Credit Opportunity Act. Deciding whether to collect personal characteristic data of nonmortgage loan applicants and borrowers presents difficult issues, as articulated in the recent report by the Government Accountability Office. On the one hand, such information could be useful for detecting lending discrimination. On the other hand, collection of the information could be costly, and highlighting an applicants race and ethnicity could have unintended or counterproductive effects. Before such collection is undertaken, these difficult issues must be thoroughly considered and addressed, for example through notice and comment rulemaking, by the Federal Reserve Board.

Q2. What types of nonmortgage loans should be included if personal characteristics data is collected (e.g. small business loans, automobile loans, or other categories)?

A2. Determining whether it is appropriate to collect personal characteristic data for particular types of loans requires determining whether the potential value of the data for detecting discrimination is outweighed by the potential harm to applicants as described in the response to Question 1.

Q3. Should the collection of such data be mandatory or voluntary?

A3. If a decision is made to collect personal characteristic data, voluntary collection is unlikely to yield meaningful information that would allow the detection or prevention of discrimination. Mandatory collection of personal characteristic data, on the other hand, is potentially costly to the lender and ultimately the borrower. Reaching a decision on this question is illustrative of the types of difficult issues that must be weighed in deciding whether to collect such information.

Q4. Should personal characteristic data be collected by the lenders and publicly reported, collected but not publicly reported, or collected but only reported to the appropriate federal banking regulator?

A4. If it is determined that collection of personal characteristic should be required, then at a minimum it should be collected and maintained by institutions for the use of relevant regulatory agencies. While public access to the data yields benefits from broad research and analysis, constraints to protect individual applicants' privacy and address institutions' competitive concerns would need to be developed and implemented.

LA08-247

DENNIS A. CARDOZA
18TH DISTRICT, CALIFORNIA

COMMITTEE ON RULES

COMMITTEE ON AGRICULTURE

CHAIRMAN, SUBCOMMITTEE ON
HORTICULTURE AND ORGANIC AGRICULTURE

SUBCOMMITTEE ON LIVESTOCK, DAIRY AND POULTRY

SUBCOMMITTEE ON
CONSERVATION, CREDIT, ENERGY AND RESEARCH

Congress of the United States
House of Representatives
Washington, DC 20515–0518

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WASHINGTON, DC 20515
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(209) 383-4455

1010 10TH STREET, SUITE 5800
MODESTO, CA 95354
(209) 527-1914

137 EAST WEBER AVENUE
STOCKTON, CA 95202
(209) 946-0361

July 17, 2008

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

Dear Chairman Bair,

I am writing to request a meeting with you or someone appropriate from your agency to discuss the state of the banking industry in California's 18th congressional district. Given the recent collapse of IndyMac and the escalating foreclosure crisis, I am concerned about the challenges facing financial institutions in California's Central Valley. I would like to discuss these issues with you or someone from your office before the financial crisis burdening my district's banks and residents worsens.

The failure of IndyMac last week demonstrated the widespread and startling vulnerability of financial institutions across the country. As the third largest bank failure in U.S. history, IndyMac's collapse also underscores how deep the housing crisis has penetrated the overall lending industry. Unfortunately my district consistently ranks among the worst hit by the housing crisis. The cities of Stockton, Modesto, and Merced, in particular, have the greatest share of homes in foreclosure in the country. It is precisely these exorbitant rates of foreclosures, combined with shaky investor confidence, that make me extremely troubled about the financial stability of California's Central Valley.

I am particularly worried about the future of the community banks in the region. These institutions play a central role in neighborhoods across the state, and their collapse would be disastrous for my constituents. That is why it is important for me to discuss with your office the overall financial risks in my district and the process followed by the FDIC in the unfortunate event any banks in the Central Valley collapse.

I look forward to your expeditious response to my meeting request. Please do not hesitate to contact me if you have any questions in this matter.

Sincerely,

Dennis Cardoza

cc: Eric Spitler, Director, Office of Legislative Affairs

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

Office of Legislative Affairs

July 21, 2008

Honorable Joe Sestak
Representative, U.S. Congress
600 North Jackson Street, Suite 203
Media, Pennsylvania 19063

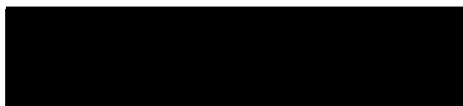
Dear Congressman Sestak:

Thank you for your letter on behalf of your constituent concerning the security measures that Wachovia Bank, National Association may have in place to protect customers' accounts.

Wachovia Bank is regulated by the Office of the Comptroller of the Currency. Consequently, we have taken the liberty of forwarding your inquiry to the OCC for consideration.

The Federal Deposit Insurance Corporation insures deposits at most of the nation's banks and savings associations and promotes the safety and soundness of these institutions by identifying, monitoring, and addressing risks to which they are exposed. The FDIC also is the primary federal regulator of state chartered banks that are not members of the Federal Reserve System.

Sincerely,



Lali Crampton
Congressional Information Specialist
Office of Legislative Affairs

cc: Congressional Liaison
Office of the Comptroller
of the Currency
250 E Street, S.W.
Washington, D.C. 20219

LA08-224

JOE SESTAK
7TH DISTRICT, PENNSYLVANIA

COMMITTEES:
ARMED SERVICES
AIR AND LAND FORCES
OVERSIGHT AND INVESTIGATIONS
SEAPOWER AND EXPEDITIONARY FORCES

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

SMALL BUSINESS
VICE CHAIRMAN
FINANCE AND TAX
CONTRACTING AND TECHNOLOGY
REGULATION, HEALTH CARE AND TRADE

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

(202) 225-2011

July 1, 2008

Ms. Alice C. Goodman
Director, Office of Legislative Affairs
Federal Deposit Insurance Corporation
550 Seventeenth Street, NW, Room 6076
Washington, DC 20429-0002

Dear Ms. Goodman,

I am writing in regards to a phone call that I recently received from one of my constituents regarding her account with Wachovia. She was curious about the security measures in place that protect her account.

I would appreciate it if you would provide me with whatever information you feel may help address my constituent's inquiry. Please address your response to my office at 600 North Jackson Street, Suite 203, Media, PA 19063.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,

Joe Sestak
Member of Congress

JS/av

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 24, 2008

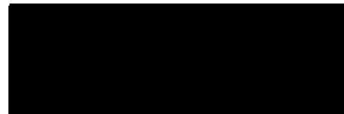
Honorable Spencer Bachus
Ranking Minority Member
Committee on Financial Services
House of Representatives
Washington, D.C. 20515

Dear Congressman Bachus:

Thank you for your letter regarding the request by the owners of GMAC Bank to waive the two-year disposition agreement related to the Bank. As noted in your letter, the request was pursuant to an agreement executed in connection with the owners' 2006 acquisition of GMAC, LLC, and the Bank. At the July FDIC Board of Directors meeting, the Board voted to address the request through the execution of an Extended Disposition Agreement that will lengthen the disposition period until November 30, 2018.

If you have questions, please contact me at (202) 898-6974 or Eric Spitler, Director, Office of Legislative Affairs at (202) 898-3837.

Sincerely,



Sheila C. Bair

LA08-240

SPENCER BACHUS
6TH DISTRICT, ALABAMA

COMMITTEE:
FINANCIAL SERVICES,
RANKING REPUBLICAN MEMBER

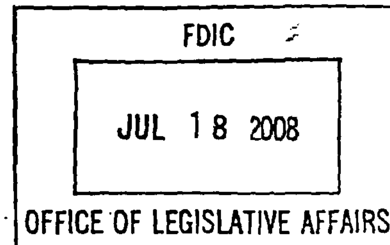
Congress of the United States
House of Representatives
Washington, DC

2246 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4921

1900 INTERNATIONAL PARK DRIVE
SUITE 107
BIRMINGHAM, AL 35243
(205) 969-2296

703 SECOND AVENUE NORTH
P.O. BOX 502
CLANTON, AL 35045
(205) 280-0704
http://www.house.gov/bachus

July 11, 2008


FDIC

JUL 18 2008

OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Sheila Bair
Chairwoman, Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429-0002

Dear Chairwoman Bair,

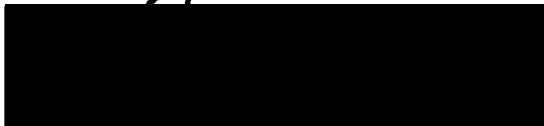
I understand the FDIC is currently reviewing the request to waive the two-year disposition agreement with respect to the GMAC Bank. As a Member of the House Financial Services Committee, I would like to clarify how pending industrial loan company (ILC) legislation would affect this transaction.

The House on May 21, 2007, overwhelmingly passed H.R. 698, which would curtail new ILC charters held by commercial firms. I was a leader in getting this legislation passed and I strongly support its limitation on new ILCs. As part of the legislative process, moreover, the House examined the circumstances of existing ILCS and specifically grandfather commercially owned ILCs such as the GMAC Bank to permit them to continue their current operations. Indeed, during the debate Chairman Frank engaged in a colloquy stating his intent to have the bill's grandfather rule override any disposition agreement.

I am aware that the pending Senate ILC bill, like the House bill, would grandfather the existing ownership of the GMAC Bank. In my judgment, if an ILC bill ultimately enacted it is very likely to grandfather institutions like GMAC Bank, and thus the FDIC need not delay consideration of the pending application while it awaits Congressional action.

Thank you for your consideration of my views, and please do not hesitate to contact me if you have any questions.

Sincerely,



Spencer Bachus
Member of Congress

cc: The Honorable John C. Dugan, Comptroller of the Currency
The Honorable John M. Reich, Director, Office of Thrift Supervision

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FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

August 15, 2008

Honorable Russell D. Feingold
United States Senator
Washington, D.C. 20510

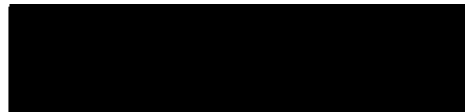
Dear Senator Feingold:

Thank you for your letter regarding the Buy American Report the Federal Deposit Insurance Corporation is required to submit in accordance with Title VIII, Subtitle C, Section 8306 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, Public Law 110-28.

The FDIC has provided the required reports to Congress and copies of these reports have been provided to your staff. As you noted in your letter, the new reporting requirement requires more specific information than in past years. After reviewing our most recent Report, the FDIC has determined that we should supplement our response to include the specific exceptions required by the statute. I am enclosing a copy of this supplemented response for your records.

If you have questions, please contact me at (202) 898-6974 or Eric Spitler, Director, Office of Legislative Affairs at (202) 898-3837.

Sincerely,



Sheila C. Bair

Enclosure

PLACE OF MANUFACTURE REPORT
Required by P.L. 110-28, Section 8306

1) Dollar value of any articles, materials or supplies purchased that were manufactured outside of the United States: $ 934,971.00.

2) There were no waivers granted with respect to such articles, materials or supplies under the Buy American Act (41 U.S.C 10a *et seq.*).

3) The articles, materials, or supplies were acquired under a contract subject to the Trade Agreements Act of 1979, as amended (TAA) – 19 USCA §2501 *et seq.*, and were therefore not subject to the Buy American Act.

4) Summary of the total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States:

   Total Procurement Funds Spend on Goods: $ 2,688,269.69.

   Dollars and Percent Spent on Goods Manufactured in the U.S.: $ 1,753,298.69. (65.2 percent)

   Dollars and Percent Spent on Goods Manufactured Outside of the U.S.: $ 934,971.00. (34.8 percent)

LA08-304

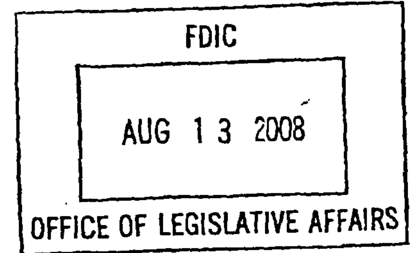
RUSSELL D. FEINGOLD
WISCONSIN

506 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5323
(202) 224-1280 (TDD)
feingold.senate.gov

COMMITTEE ON THE BUDGET
COMMITTEE ON FOREIGN RELATIONS
COMMITTEE ON THE JUDICIARY
SELECT COMMITTEE ON INTELLIGENCE
DEMOCRATIC POLICY COMMITTEE

United States Senate

WASHINGTON, DC 20510-4904



July 29, 2008

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

Dear Chairwoman Bair:

I write to inquire about the status of the Buy American Report that you were required to submit to Congress by March 31, 2008, as required by Title VIII, Subtitle C, Sec. 8306, of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (Public Law 110-28). Congress has not, as of yet, received a copy of this report. In addition, Congress has not yet received reports from the FDIC for fiscal years 2004-2007 as required, which I hope you will submit at this time.

I would appreciate it if you would forward a copy of this report to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform and to me at the earliest possible date.

In addition, I would like to remind you that the reporting requirement in Public Law 110-28 extends the Buy American reporting requirement from fiscal year 2007 through fiscal year 2011. The new language requires more specific information than in past years. I have enclosed a copy of Title VIII, Subtitle C, Sec. 8306 of Public Law 110-28 to assist you in preparing the report for the FDIC. If you have questions, please feel free to contact Amanda Beaumont in my office at (202) 224-5323.

Sincerely,

Russell D. Feingold
U.S. Senator

1600 ASPEN COMMONS
ROOM 100
MIDDLETON, WI 53562
(608) 828-1200
(608) 828-1215 (TDD)

517 EAST WISCONSIN AVENUE
ROOM 408
MILWAUKEE, WI 53202
(414) 276-7282

401 5TH STREET
ROOM 410
WAUSAU, WI 54403
(715) 848-5660

425 STATE STREET
ROOM 225
LA CROSSE, WI 54601
(608) 782-5585

1640 MAIN STREET
GREEN BAY, WI 54302
(920) 465-7508

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SEC. 8306. REPORTS ON ACQUISITIONS OF ARTICLES, MATERIALS, AND SUPPLIES MANUFACTURED OUTSIDE THE UNITED STATES.

Section 2 of the Buy American Act (41 U.S.C. 10a) is amended—

(1) by striking "Notwithstanding" and inserting the following:

"(a) IN GENERAL.—Notwithstanding"; and

(2) by adding at the end the following:

"(b) REPORTS.—

"(1) IN GENERAL.—Not later than 180 days after the end of each of fiscal years 2007 through 2011, the head of each Federal agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the amount of the acquisitions made by the agency in that fiscal year of articles, materials, or supplies purchased from entities that manufacture the articles, materials, or supplies outside of the United States.

"(2) CONTENTS OF REPORT.—The report required by paragraph (1) shall separately include, for the fiscal year covered by such report—

"(A) the dollar value of any articles, materials, or supplies that were manufactured outside the United States;

"(B) an itemized list of all waivers granted with respect to such articles, materials, or supplies under this Act, and a citation to the treaty, international agreement, or other law under which each waiver was granted;

"(C) if any articles, materials, or supplies were acquired from entities that manufacture articles, materials, or supplies outside the United States, the specific exception under this section that was used to purchase such articles, materials, or supplies; and

"(D) a summary of—

"(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

"(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

"(3) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under paragraph (1) shall make the report publicly available to the maximum extent practicable.

"(4) EXCEPTION FOR INTELLIGENCE COMMUNITY.—This subsection shall not apply to acquisitions made by an agency, or component thereof, that is an element of the intelligence community as specified in, or designated under, section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).".

TITLE IX—AGRICULTURAL ASSISTANCE

SEC. 9001. CROP DISASTER ASSISTANCE.

(a) ASSISTANCE AVAILABLE.—There are hereby appropriated to the Secretary of Agriculture such sums as are necessary, to remain available until expended, to make emergency financial assistance available to producers on a farm that incurred qualifying quantity or quality losses for the 2005, 2006, or 2007 crop, due to damaging

Federal Deposit Insurance Corporation

August 27, 2008

Honorable Ben S. Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Request for Comments on the Proposed Rule on Unfair or Deceptive Acts or Practices under Section 5(a) of the Federal Trade Commission Act (Docket No. R-1314);[1]

Request for Comment on the Proposed Amendments to the Open-End Credit Provisions of Regulation Z (Docket No. R-1286);[2] and

Request for Comment on the Proposed Amendments to the Overdraft Provisions of Regulation DD (Docket No. R-1315).[3]

Dear Chairman Bernanke:

The Federal Deposit Insurance Corporation (FDIC) is pleased to comment in support of the proposals of the Board of Governors of the Federal Reserve System (Board) to address problematic practices in consumer credit card lending and overdraft services.[4] The FDIC shares the Board's concerns (and those of the National Credit Union Administration and the Office of Thrift Supervision) because credit cards have become an important component of everyday life for consumers, and the FDIC strongly supports the goal of preventing practices that are unfair or deceptive. We appreciate the opportunity to comment in support of the proposals and to offer our suggestions for enhancements that we believe would further the Board's goals.

From both a consumer protection and credit risk supervisory perspective, the FDIC believes it is important to address unfair or deceptive credit card and overdraft practices using all available tools. Particularly egregious practices warrant enforcement actions; however, taking action on a case-by-case basis is a difficult and resource-intensive challenge, and should be supplemented by clear minimum standards for consumers and the industry. While providing disclosures to consumers is important, credit card practices and disclosures have become more and more complex. As the Board's own testing indicates, disclosures are not always enough to protect

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[1] 73 Fed. Reg. 28904 (May 19, 2008).
[2] 73 Fed. Reg. 28866 (May 19, 2008).
[3] 73 Fed. Reg. 28739 (May 19, 2008).
[4] Two of the three proposals, which would amend Regulation Z and Regulation DD, respectively, are being proposed by the Board under its exclusive rulemaking authority, while the proposed amendments to Regulation AA are being proposed by the Board, with counterpart proposals by the National Credit Union Administration and the Office of Thrift Supervision pursuant to their parallel rulemaking authority.

consumers from abusive practices that may be hard to avoid by even the most informed consumer.[5] Therefore, the FDIC believes that the most effective remedy for addressing certain unfair or deceptive credit card practices is a broader approach using regulatory standards, as the Board is proposing. The promulgation of regulations with targeted measures to restrict certain practices will help ensure that all financial institutions operate on a level playing field.

In particular, the FDIC supports the Board's efforts to set standards that allow consumers a reasonable amount of time within which to make credit card payments, as well as to prohibit the practice of setting a cut-off time earlier than 5:00 p.m. for credit card payments. The FDIC also supports permitting financial institutions to apply consumer payments to different credit card account balances, using a choice of reasonable methods in a manner that is easier for consumers to understand. The FDIC strongly supports prohibiting double-cycle billing. Moreover, we think it is appropriate to require issuers to disclose selection criteria used in firm offers of credit that advertise a range of credit limits and interest rates.

With respect to overdraft services, the FDIC supports requiring all institutions to disclose on periodic statements the aggregate dollar amounts charged for paid overdraft and returned item fees. Finally, the FDIC supports the proposal to require institutions that provide balance information through an automated system to disclose the amount of funds available for the consumer's immediate use or withdrawal without including additional funds the institution may provide to cover overdrafts.

Based on our experience, the FDIC proposes enhancements to three areas of the Board's proposal: 1) subprime credit cards; 2) application of rate increases to credit card balances; and 3) overdraft services.

Background

Credit cards and overdraft services can be useful tools for consumers when provided responsibly and used carefully. Credit cards have given consumers unprecedented access to credit, and are widely used by households across all demographic and socioeconomic groups. By recent estimates, three-fourths of American households have at least one credit card, and 46% of households carry a credit card balance.[6] Revolving consumer credit outstanding, which is comprised primarily of credit card debt, continues to grow. Revolving credit outstanding climbed to $962 billion in May 2008, a 7% increase from the previous year and a 15% increase from May 2006.[7]

Because credit cards are accessible and convenient, many consumers have substituted credit card debt for other kinds of consumer debt. However, there are concerns that American families are growing more reliant on short-term, high-interest credit card debt for financing of daily

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[5] *See* Remarks of Governor Randall S. Kroszner, Federal Reserve Bank of Cleveland Community Development Policy Summit (June 11, 2008).
[6] *See* Federal Reserve 2004 Study of Consumer Finances.
[7] *See* Federal Reserve Statistical Release G.19 Consumer Credit (July 8, 2008).

necessities. Thirty six percent of credit card users who carry balances owe more than $10,000, and 13% maintain balances of more than $25,000.[8]

Additionally, a substantial portion of the growth in credit card ownership and usage has been achieved by marketing cards to new classes of borrowers who would not have qualified for credit in the past. These include low-income borrowers, borrowers with little or no credit history, and borrowers with blemished credit histories who exhibit more than a normal risk of loss.

Debt accumulated by lower-income families, who already are facing challenges making ends meet, is of particular concern. These borrowers are most at risk of quickly becoming overextended. Nearly 30% of households in the lowest income quintile held credit card debt in 2004, up from 15% in 1989.[9] Almost one-third of households in the lowest income quintile report that they hardly ever pay their entire balance in full.[10]

Another important change affecting consumers is the growth of automated overdraft services that has turned overdraft coverage from an occasional, discretionary accommodation to a widely available, automatically provided service used in lieu of other forms of short-term credit by some bank customers.[11] Moreover, a recent GAO study found that average overdraft fees have risen to $26 per transaction.[12] Given that overdraft fees can be charged on purchases multiple times during a month under most deposit account agreements, the costs can quickly add up to a significant debt, particularly for lower income customers who tend to have smaller deposit account balances.

Increases in credit card borrowing and high overdraft service charges each can increase consumer debt burdens. Excessive consumer debt levels are a concern at any time, but are especially worrisome in the current economic environment when rising costs, housing market turmoil, job concerns and other negative economic conditions are pushing more consumers, particularly lower income consumers, to the limits of their ability to meet their obligations.

The FDIC supervises state-chartered, non-member banks, and more than 1,000 have credit card portfolios. Many also offer automated overdraft services. As a result, the FDIC has a heightened interest in ensuring the best practices for credit card transactions and overdraft services. Our comments are informed by our examination and supervisory experiences, including what we have learned through our consumer complaint process. During the past five years, our Consumer Response Center has received thousands of complaints about credit cards on a wide range of issues, including the calculation of finance charges and annual percentage rates (APR); high or inappropriate fees; failure to credit payments promptly; absent or

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[8] *See* Stephanie Jupiter, "Credit Card Debt – What Do Americans Really Owe?" CardTrack, May 31, 2007. http://www.cardtrak.com/press/2007.05.31.
[9] *Supra* note 6.
[10] *Id.*
[11] Overdraft services are offered by many banks as an alternative to traditional lines of credit or linked account arrangements, which permit transfers from savings or other accounts to cover deposit account overdrafts.
[12] *See Bank Fees: Federal Banking Regulators Could Better Insure That Consumers Have Required Disclosure Documents Before Opening Checking or Savings Accounts*, GAO Report 08-281, at 13-14 (January 2008).

inadequate disclosures; lack of advance notices for changes in terms; double-cycle billing; and universal default-triggered increases in the APR. We also have received a number of complaints regarding overdraft service charges from consumers who were unaware of how quickly these fees can add up.

Recommendations

Subprime Credit Cards

Some credit card products, particularly those marketed to subprime borrowers, require high opening and other fees but offer little to no credit. The FDIC has seen an increase in some credit card issuers marketing credit cards with a primary goal of collecting significant fees. For example, one business model for these cards has been to offer a line of credit that immediately is exhausted by a "refundable acceptance fee," along with a monthly participation fee.[13] Before the cardholder could use the card for actual purchases, he or she might owe nearly the total amount of credit offered in fees and, as a result, would be more likely to exceed his or her credit limit. The combination of these fees – initial and over limit – charged in consecutive or multiple months, particularly if late fees also are incurred, could cause a consumer to be mired in a cycle of debt with virtually no ability to keep pace with the multiple fees charged on a monthly basis.

Given the nature of these card products, the FDIC recommends several enhancements to the Board's UDAP proposal to further protect consumers and promote transparency. At the outset, issuers of high fee credit cards should be required to prominently disclose all fees up front as a total amount in any solicitation and subsequent disclosures.[14] This is an important step in highlighting the impact of the fees on the credit that at-risk consumers are seeking.

In addition, because the high fees currently charged by some issuers often are deducted from a consumer's available credit limit at the outset, it is inherently deceptive to advertise and offer a line of credit to which the consumer lacks meaningful access. Since 2004, the FDIC and the Board have encouraged institutions to accurately and completely represent the amount of "useable credit" a consumer will receive.[15] The FDIC recommends that the Board now require that the credit limit advertised and offered by an issuer be the amount available at the outset to

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[13] The refundability of such membership fees, which most cardholders cannot pay in full up front, was highly conditional under this model.

[14] We note with support that the Board already has proposed several changes to Regulation Z, which are aimed at improving the disclosures consumers receive for credit cards that impose high fees at account opening. The Board's May 2008 proposal would require creditors assessing fees at account opening that comprise 25% or more of the minimum credit limit to provide a notice of the consumer's right to reject the plan after receiving the disclosures if the cardholder has not used the account or paid the fee. Currently and under the Board's June 2007 proposal, creditors may collect or obtain a promise to pay a membership fee before required initial disclosures are provided if the consumer can reject the plan. The Board's June 2007 proposal would clarify that assessment of the membership fee is not an activity indicating acceptance of the fee. Finally, the Board is proposing an additional model disclosure form that would highlight, but would not total, fees and interest charges at account opening. 73 Fed. Reg. at 28868-28869; 28894.

[15] *See, e.g., Unfair or Deceptive Acts or Practices by State-Chartered Banks*, FDIC FIL-26-2004 (March 11, 2004).

the consumer for purchases and cash advances. Fees should not be permitted to be deducted from the credit limit.

The FDIC also is concerned that high fee credit cards often are deceptively marketed to subprime borrowers as a way to repair their credit histories by, for example, making regular timely payments and not exceeding the credit limit. There is minimal credible evidence to support this claim. As the Board notes, high fee credit cardholders often derive little effective benefit from use of the cards while incurring the substantial fees that exhaust their credit limit. In addition, the consumer's overall debt level increases. Because high fee credit cards can worsen, not improve, a consumer's credit history, the FDIC recommends that the Board restrict marketing of such credit cards as credit repair products.

The FDIC also recommends that the Board prohibit issuers from assessing multiple fees based on a single event, such as a late payment or a charge that exceeds the credit limit. The piling on or pyramiding of late fees already is prohibited for closed-end credit under Regulation AA and we believe the same protection should be afforded users of open-end credit.

An additional issue is the financing of fees on subprime credit cards. While the FDIC supports the Board's efforts in the UDAP proposal to limit the harmful impact of subprime credit card fees by restricting the financing of high initial security deposits and other fees during the first 12 months, the FDIC recommends that card issuers be prohibited from financing initial fees, security deposits and other costs that exceed 25% of the initial credit limit, rather than 50% as proposed by the Board. Significantly restricting the amount of initial fees that can be financed on the subprime credit card will force issuers of high fee credit cards to be more transparent in their pricing of credit. This change is important because some issuers of high fee credit cards often claim that significant initial fees are necessary to compensate the issuer for the borrower's higher than normal risk. Yet, rather than charging a higher and fully disclosed APR to compensate for increased risk, issuers of these cards instead impose fees that significantly exhaust the amount of useable credit and may not accurately reflect the issuer's actual costs. Because most of the targeted cardholders cannot and do not pay the initial fees in full up front, many of these fees are financed on the credit card, often without the cardholder's full understanding of the impact. Charging and financing high initial fees can be viewed as deceptive because it misleads the cardholder about both the amount of useable credit being offered and its true cost. Limiting financing of initial fees to 25% will improve transparency in the pricing of credit and better equip the consumer with the necessary information to compare the cost of high fee credit cards with any other available options.

Applying Rate Increases to Credit Card Balances

The FDIC supports the Board's proposed general rule that lenders should not be able to increase the APR on existing credit card balances, with limited exceptions. The Board's new rule will help protect consumers from unexpected increases in the cost of transactions that already have been completed.

To further protect consumers, the FDIC encourages the Board to consider extending the proposed limitations on APR increases to cover future card balances that are incurred through the expiration date of the current card issued to cardholders who are meeting their payment obligations to an issuer, and are not exceeding the credit limit. Today, credit card *agreements* often do not have expiration dates, while the credit *cards* do. Because credit card agreements are open-ended, issuers can change credit card contract terms at any time. Continued use by the cardholder typically indicates his or her acceptance of any subsequent change in terms. Thus, credit card holders do not have a clear and regularly timed opportunity to consider changes in terms, or shop around for other credit cards with lower terms. For cardholders meeting their obligations on the account, and to give both the issuer and the cardholder an opportunity to reevaluate how much the cardholder will pay for credit going forward, the FDIC recommends that the Board consider a provision that would restrict issuers from raising the APR on a cardholder in good standing for future balances through the expiration of the current credit card.[16]

Overdraft Services

The FDIC supports the Board's proposal to prohibit banks from assessing fees for overdraft services unless the deposit account customer is given notice and the opportunity to opt out. It also would prohibit using debit holds as a basis for assessing an overdraft fee. The FDIC also supports the Board's proposal amendments to Regulation DD that would require all institutions that offer overdraft services to provide additional disclosures.[17]

The FDIC recommends that the Board consider the following two additional changes, which would make transparent that overdraft services involve the extension of credit, better prevent unfair or deceptive practices, and help consumers avoid overuse of overdraft services, which may lead to a cycle of debt.

TILA Coverage: Coverage under the Truth in Lending Act (TILA) would properly define overdraft services as a form of credit with an accompanying finance charge.[18] This would trigger required initial disclosures about the cost of overdraft services, which would better enable consumers to compare these costs with the costs of competing forms of credit.

To date, the Board has declined to include as a form of credit under TILA automatic advances covering overdrafts, and has concluded that the fees associated with paying overdrafts are not a

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[16] In establishing limits on changes in credit card agreement terms, S. 3252, the *Credit Card Accountability Responsibility and Disclosure Act of 2008*, which was introduced by Sen. Christopher J. Dodd (D-CT), makes a similar distinction between the credit card and the governing agreement, and would prohibit unilateral changes in the terms of a credit card contract or agreement until the date after the current credit card expires.

[17] *Supra*, note 3.

[18] "Credit" under TILA is the "right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment." TILA section 103(e), 15 U.S.C. § 1602(e). Consumer credit is used primarily for personal, family or household purposes. TILA section 103(h), 15 U.S.C. § 1602(h). A "finance charge" is the cost of credit in dollars and includes any charge payable directly or indirectly by the consumer, and imposed directly or indirectly by the creditor, "as an incident to the extension of credit." TILA section 106(a), 15 U.S.C. § 1605(a). The APR is measured as the cost of credit expressed as a yearly rate. TILA section 107, 15 U.S.C. § 1606; 12 C.F.R. § 226.14.

finance charge under TILA in the absence of a written agreement between the borrower and the institution to pay an overdraft and impose a fee.[19] Historically, overdraft advance charges on deposit accounts could easily be distinguished from regular finance charges on credit accounts because, unlike a mutual agreement between a lender and a borrower, the bank unilaterally elected to pay the overdraft and impose a fee as an accommodation.

The overdraft landscape has significantly changed since 1969, when the Board first considered whether fees for overdrafts should be covered under TILA. Unlike occasional, discretionary overdraft accommodation in the past, today's automated overdraft programs often are marketed and function as a regularly used, short-term type of credit. While the agreement governing these services may retain the bank's discretion to pay an overdraft, overdrafts generally are paid automatically and, as a result, the programs are indistinguishable to the consumer from competing overdraft lines of credit or linked accounts, except for the cost. Chronic use of overdraft services is quite expensive and may be inappropriate for many customers who could benefit from more affordable, small-dollar credit.

Coverage under TILA is important to properly characterize these products and to inform consumers about the costs. When the Board amended Regulation DD in 2005 to provide for additional disclosures for promoted overdraft services, it stated that the "adoption of final rules under Regulation DD does not preclude a future determination that TILA disclosures would also benefit consumers. The Board expressly stated in its proposal that further consideration of the need for coverage under Regulation Z may be appropriate in the future."[20] The FDIC believes the widespread growth and use of automated overdraft services strengthens the case for the Board to bring these products within the coverage of TILA.

Consumer Consent: The FDIC recognizes, as does the Board, that some benefits may accrue to consumers when an occasional overdraft is paid. On the other hand, repeated usage of overdraft services can lead to recurring high cost fees, create significant debt problems, and cause consumers to fall into a cycle of debt.

Therefore, the FDIC recommends that banks be permitted to offer automated overdraft services to consumers on an opt-out basis up to a limited number, such as five, overdraft transactions per consumer per year. Once a consumer reaches this number of automated overdrafts in a given year, the bank should be required to inform the consumer about possibly less costly alternatives to automatic overdraft programs for which they may qualify, such as linked accounts and overdraft lines of credit. Consumers should have the opportunity at that time to affirmatively select such alternatives for which they qualify, or to choose to continue to receive automatic overdraft coverage. If a consumer does not select an overdraft service (i.e., opt-in), automatic coverage would be discontinued. Consumers are best served by understanding the costs of repetitive use of automatic overdrafts and being informed of and having the opportunity to choose alternatives to managing their personal finances.

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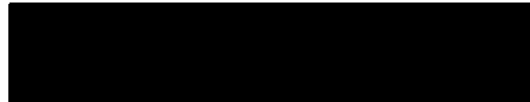
[19] UDAP Proposal, 73 Fed. Reg. at 28927; Regulation DD Proposal, 73 Fed. Reg. 28739.
[20] 70 Fed. Reg. 29582, 29585 (May 24, 2005).

Conclusion

The FDIC supports the Board's proposals under its rulemaking authority pursuant to the Federal Trade Commission Act as an important means of protecting consumers from abusive credit card and overdraft practices. The FDIC also supports the proposed amendments to Regulation Z (Truth in Lending). Each of the proposed rules will provide additional protections for consumers and offer banks better guidance on how to provide these products and services responsibly.

The FDIC appreciates the opportunity to comment on this proposed rulemaking. We commend the Board and the other agencies for your leadership in moving to protect consumers and promote the informed, prudent use of these credit products and services.

Sincerely,



Martin J. Gruenberg
Vice Chairman

cc: Jennifer J. Johnson, Secretary,
Board of Governors of the Federal Reserve System
Mary F. Rupp, Secretary, National Credit Union Administration
John E. Bowman, Chief Counsel, Office of Thrift Supervision

CHRISTOPHER J. DODD, CONNECTICUT, CHAIRMAN
[illegible committee member roster]

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

September 10, 2008

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

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, "Recent Bank Failures and the Regulators' Response." The hearing is scheduled for Thursday, September 18, at 10:00 A.M. in Room 538 of the Dirksen Senate Office Building.

The Committee requests that your testimony discuss the circumstances that led to the third quarter bank failures and your agency's role in examining and resolving these institutions, with particular emphasis on IndyMac Bank and the larger institutions among the seven that have failed since July. Additionally, the Committee would like your testimony to address the costs of these failures to the Deposit Insurance Fund and your plans to restore the fund's reserve ratio to the statutorily required 1.15%. We would also appreciate your views on the likelihood of future bank failures and the specific measures your agency is taking to address these possible failures.

For purposes of the Committee Record and printing, your written statement must be submitted in electronic form by e-mail to amy_friend@banking.senate.gov and dawn_ratliff@banking.senate.gov, or on a CDRW in WordPerfect (or other comparable program) format; 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. Your oral statement should be approximately 5 minutes in duration. Your full statement will be made part of the hearing record.

If you have any questions regarding the hearing, please contact Amy Friend at 202-224-0331.

Sincerely,

CHRISTOPHER J. DODD
Chairman

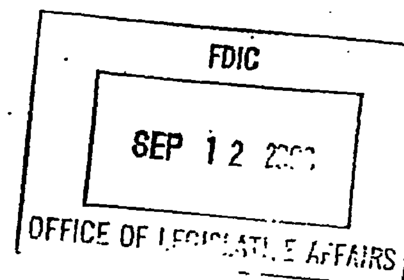
LA08-38

BARNEY FRANK, MA, CHAIRMAN

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

SPENCER BACHUS, AL, RANKING MEMBER

September 12, 2008



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

Dear Chairman Bair:

The Committee on Financial Services will hold a hearing entitled "The Implementation of the HOPE for Homeowners Program and a Review of Foreclosure Mitigation Efforts" at 10 a.m. on Wednesday, September 17, 2008, in room 2128 Rayburn House Office Building. I am writing to confirm your invitation to testify at this hearing.

This hearing will review experiences to date with foreclosure mitigation and preparations to use the HOPE Program on October 1. Your testimony should address the following specific issues or questions:

- The state of the U.S. housing market;
- Success of loan servicers at making meaningful loan modifications sufficient to avoid foreclosures;
- FDIC's experience as servicer for IndyMac's loan portfolio and your expectations for using the HOPE for Homeowners Program on October 1; and
- Any additional views you may have on HOPE for Homeowners Program.

For the second panel, we ask that the oversight board's testimony address the following specific issues or questions:

- What your company is doing to prepare for the HOPE program?
- What progress has been made?
- Do you anticipate using the program?
- Please describe with specificity what loan modifications you are doing. Are you making principal reductions? Do you anticipate making the reductions necessary for the HOPE Program?
- What, if anything, do you believe is preventing more meaningful modifications?

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

The Form of your Testimony. Under rule 3(d)(2) of the Rules of the Committee on Financial Services, each witness who is to testify before the Committee or its subcommittees must file with the Clerk of the Committee a written statement of proposed testimony of any reasonable length. Please also include with the testimony a current resume summarizing education, experience and affiliations pertinent to the subject matter of the hearing. This must be filed at least two business days before your appearance. Please note that changes to the written statement will not be permitted after the hearing begins. Failure to comply with this

requirement may result in the exclusion of your written testimony from the hearing record. Your oral testimony should not exceed five minutes and should summarize your written remarks. The Chair reserves the right to exclude from the printed hearing record any supplemental materials submitted with a written statement due to space limitations or printing expense.

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

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

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

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

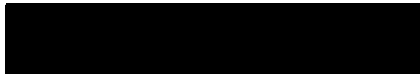
The Rules of the Committee on Financial Services, and the applicable rules of the House, are available on the Committee's website at http://financialservices.house.gov. Copies can also be sent to you upon request.

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

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

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

Sincerely,



BARNEY FRANK
Chairman

BF/rd

cc: The Honorable Spencer Bachus

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

September 24, 2008

Honorable Nancy E. Boyda
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Boyda:

Thank you for your letter and your kind words. The closing of a financial institution is unfortunate, and we regret any inconvenience or hardship that any customers have experienced as a result of the bank's failure. Enclosed are responses to the questions you posed regarding the former Columbian Bank and Trust. We appreciate the opportunity to provide some clarification regarding the bank resolution process.

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,

Sheila C. Bair

Enclosure

Response to Questions from
The Honorable Nancy E. Boyda

Q1: In every bank failure this year in which the FDIC has made a dividend payment, the initial payment has been fifty percent or more. In addition to the two cases noted above where large dividends were paid within two weeks, the FDIC paid a 59.5% dividend on the uninsured deposits of Hume Bank almost four months after the bank failed. Is the FDIC pursuing a policy of not paying dividends on uninsured deposit claims until it can pay a dividend of at least 50 percent? If so, what is the justification for not paying smaller, earlier initial dividends?

A1: The Federal Deposit Insurance Act outlines the priorities for paying claimants of the receivership of a failed insured institution. As the receiver liquidates assets in a receivership, it distributes the proceeds in the form of dividends paid to claimants in order of their priority. After first paying the secured and preferred claimants, the FDIC sets aside funds to cover the administrative expenses of running the receivership. As the insurer of deposits, the FDIC represents the largest and senior most claimant of the receivership. Uninsured depositors share pro rata with the FDIC in its claim on the receivership. The amount and timing of dividend payments depend on the speed with which the assets are liquidated.

Occasionally, the FDIC pays an immediate dividend to the uninsured depositors within a day or two of the failure, based on a number of factors that include the availability of liquid assets in the receivership, the amount of uninsured deposits, and economic conditions at the time of failure. If an immediate dividend is paid, the uninsured depositors do not get another dividend until the FDIC recoups a pro rata amount from the receivership. As an example, if the FDIC pays a 30 percent immediate dividend to uninsured depositors at the time of failure, another dividend will not be paid until the FDIC recoups its own 30 percent dividend on its claim with the receivership estate.

The initial dividend paid by the receiver may be large, as some failed banks have marketable assets that can be sold at the time of failure. Receiverships typically declare dividends when cash available for distribution exceeds the greater of $500,000 or 2 percent of proven claims.

Columbian Bank was closed quickly due to its inability to maintain sufficient liquidity necessary to operate and because of concerns about its solvency. Columbian's largest depositor was quickly withdrawing funds and the Kansas State Banking Commissioner and the FDIC were concerned that the bank would not be able to meet the ordinary withdrawals of its depositors. As a result, the bank was closed by the Commissioner and the FDIC was appointed receiver. Because of the rapidity of this closing, neither the FDIC nor prospective bidders were able to conduct due diligence on Columbian's asset portfolio. As a result, the cost of the failure and the related loss that the uninsured might bear and the amount of premium that a bidder would need to offer to cover that loss was

unknown. Therefore, the bidders did not have the opportunity to bid on a transaction for all of the institution's deposits.

As failed bank assets are sold, dividends are paid from the failed bank receivership both to the uninsured depositors and to the FDIC on a pro rata basis. It is to the FDIC's best interest that these dividends are paid quickly to uninsured depositors and the FDIC as they are used to replenish the Deposit Insurance Fund.

At First Priority Bank, located in Bradenton, Florida, enough assets were sold at closing and the amount of uninsured deposits was so small that the receiver could quickly pay a dividend. At Hume Bank, no dividend was paid at resolution, but some assets were sold to the acquiring bank and enough additional asset sales soon followed to allow the receiver to pay a dividend of over 50 percent both to the uninsured depositors four months after the bank's closure. At IndyMac Bank, F.S.B., located in Pasadena, California, the receiver paid an advance dividend due to IndyMac's size, operational issues, and the FDIC's objective to facilitate a least costly resolution through preserving the bank's franchise value in conservatorship.

Prior to the failure of the bank, Columbian Bank had arranged for surety bonds and other financial instruments to cover as much as $41 million of the uninsured deposits. This is a very unusual situation for a failing bank. It did, however, quickly get a significant amount of money back into the hands of participating uninsured depositors and fully covered the amount of uninsured funds for many Columbian depositors.

Q2: The FDIC announced on August 22 that Citizens Bank had purchased $85.5 million in assets from Columbian. This transaction liquidated over ten percent of Columbian's assets. How much of Columbian's asset base has been liquidated to date? What has the FDIC done with these funds? What portion of the assets needs to be liquidated before the FDIC anticipates paying a dividend to the uninsured depositors?

A2: The $85.5 million figure was a pre-failure estimate based on Columbian Bank's balance sheet as of June 30, 2008. The actual assets that conveyed to Citizens at closing were $56.4 million. The types of assets that conveyed were in conjunction with the transfer of insured deposits and included liquid assets such as cash (e.g. vault cash) and cash equivalents. The FDIC did not receive a distribution as part of this transaction. As mentioned in the response above, the priority of claims in a receivership requires that FDIC first pay secured collateralized claimants, and then the operational expenses of the receiver, before distributing dividends to the uninsured depositors and the FDIC on a pro rata basis.

The FDIC, as receiver, is currently valuing the remaining assets of Columbian Bank and preparing them for sale. Approximately $280 million of the bank's assets will soon be offered for sale. The receiver's objective is to market 80 percent of Columbian's assets

within 90 days of its failure. Proceeds from those sales will be available to pay dividends to uninsured depositors and to the FDIC Deposit Insurance Fund.

Q3: In its position as receiver for at least nine banks, the FDIC must have considerable knowledge of the market for distressed bank assets. What can the FDIC share about that market that would give uninsured depositors a sense of how soon and how much they might recover in dividends?

A3: The FDIC is working aggressively to market and sell the assets of Columbian Bank as soon as possible to get dividends into the hands of the uninsured depositors and replenish the Deposit Insurance Fund. Market conditions have deteriorated and the value of many types of assets is uncertain. Further, as the market downturn continues and more assets become available for sale, values decline because of uncertainty and the investor's inability to accurately value assets. Nevertheless, the FDIC operates under a statutory mandate to maximize its recoveries.

Q4: The FDIC provides an estimate of the loss to the deposit insurance fund for almost every bank failure. For failures that aren't resolved by a whole-bank acquisition, this calculation must be based upon the FDIC's estimates of what the asset portfolio can be sold for. Isn't it possible to use that same calculation to estimate the amount that can be returned to the uninsured depositors?

A4: If the FDIC does not have time to conduct due diligence on an institution's asset portfolio prior to failure, the initial loss estimate is based on an internal FDIC model that relies on historical loss rates. As more information on asset values becomes available post failure, and as the assets are marketed and sold, that figure is updated. The final loss on a receivership does not necessarily match the initial estimate, as it may take three years or more to fully liquidate a receivership and settle all of the claims, including lawsuits and claims brought against management and directors.

Q5: In the two cases this year where the FDIC paid out advance dividends of fifty percent or more within two weeks of failure (First Priority and IndyMac), the losses to the FDIC deposit insurance fund were estimated at 27.8% and 12.5 – 25% of the banks' assets respectively. In the case of Columbian, the losses were estimated at just 8.0% of the bank's assets. Does the smaller loss ratio on the assets indicate that the eventual recovery for the uninsured depositors will be more than fifty percent?

A5: The 8 percent loss estimate is derived from an FDIC model based on historical data for failed banks similar to Columbian, not from a review of Columbian's asset portfolios. The historic recovery for all recent bank failures has averaged approximately 75 percent. Some bank failures have smaller losses and others, typically those involving fraud, incur much greater loss rates. The assets of Columbian Bank are currently being valued and marketed for sale.

Q6: The FDIC is rightly pressuring banks to shore up their capital ratios, and this often means shrinking their balance sheets. Obviously, this makes it more difficult to sell the assets of a failed bank piecemeal. Yet news reports indicate that the FDIC did not solicit any bids for the purchase of Columbian in its entirety. Does the FDIC take market conditions into account when evaluating whether it is less costly to sell off the whole bank or to break off the insured deposits and conduct asset sales over the following months? Did the FDIC solicit bids for a whole-bank purchase of Columbian? Did it receive any bids? What loss to the deposit fund did the FDIC estimate for whole-bank bids?

A6: Given sufficient time, the FDIC offers a whole bank option in all resolutions. In order to offer an institution on a whole bank basis, the FDIC and potential acquiring institutions require time to conduct due diligence and value assets. As explained above, in the case of Columbian Bank, there was insufficient time for this resolution option. Even when a whole bank option is marketed, we do not always receive bids to acquire the whole bank.

Q7: After FDIC took over IndyMac, the FDIC announced a plan to renegotiate IndyMac mortgages in order to help the borrowers stay in their homes. When Columbian failed, some small businesses lost all but $100,000 of their working capital and were forced to lay off workers because the businesses were unable to make payroll. Why was the FDIC willing to take losses to help California homeowners but not to help Kansas businesses?

A7: The program announced by the FDIC to modify troubled loans at IndyMac Federal is designed to reduce the loss the FDIC would otherwise incur from the sale of loans in default. Our experience has been that turning troubled loans into performing loans enhances overall value. In recent years, we have seen troubled loan portfolios yield about 32 percent of book value compared to our sales of performing loans, which have yielded over 87 percent. Where it will improve the value of the loan, IndyMac Federal is offering loan modifications to eligible borrowers. Covering all deposits in the case of Columbian would have increased the FDIC's loss and would not have met our statutory obligation to select the least costly resolution of the failed bank.

Q8: Many small businesses have working capital of $100,000 or more. What advice does the FDIC have for small businesses trying to protect themselves from bank failures? Spreading accounts across multiple banks is very intensive. Sweep accounts take the money out of the community and away from FDIC's guarantee. In times of financial turmoil like these, is there any way for responsible, community-minded small business owners to keep their money at work in deposit accounts at local banks?

A8: Many banks offer cash management services to the commercial business customers to stay within the deposit insurance limits. These services either transfer money into the account to cover checks when presented, or they sweep out the funds that are above the deposit insurance limit. The failure of Columbian Bank was very unique in that the bank had arranged for nearly $41 million in financial instruments to help cover the uninsured deposits for many of its business customers.

Q9: The financial obligations of a business often cluster near the end of the month. In order to make payment, checking account balances may temporarily swell over $100,000. What precautions can the FDIC take to make sure that a bank failure near month's end doesn't punish prudently-run small businesses that exceed insurance limits for only a day or two?

A9: Again, many banks offer cash management services to the commercial business customers to stay within the deposit insurance limits. While the bank's primary regulator determines what day a bank will fail based on the bank's financial condition, it usually occurs on or near the end of a week so that FDIC can complete an orderly transaction or transition over the weekend – while in most cases also giving depositors access to their insured funds over the weekend or at the opening of business on the following Monday.

Q10: Does the FDIC recommend any special precautions for individuals to take during the purchase or sale of a home in order to remain protected by insurance? Does the FDIC conduct any outreach to realtors or the general public to help make these recommendations known?

A10: The FDIC has a significant outreach effort regarding FDIC deposit insurance. This year, for example, in connection with the observation of the FDIC's 75th anniversary, the FDIC conducted a major advertising campaign that has encompassed print ads about federal deposit insurance limits in national newspapers and magazines, public service announcements about FDIC deposit insurance and its limits for television, radio, and print media, a national seminar series to train bank personnel on the FDIC's insurance coverage rules, and distribution of FDIC literature and videos for bank lobbies and offices regarding how deposit insurance works. In addition, the FDIC recently upgraded its Electronic Deposit Insurance Estimator (EDIE), which allows bankers and depositors to calculate insurance coverage for groups of deposit accounts. This information is available on the FDIC's website at http://www.myfdicinsurance.gov. The FDIC also operates a toll free customer assistance line (1-877-275-3342) for anyone to call with questions about deposit insurance.

LA08-374

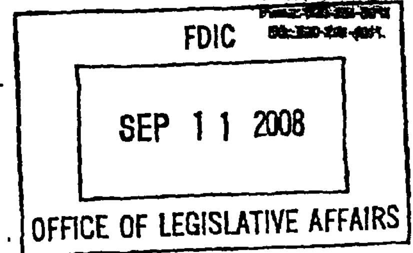
NANCY E. BOYDA
2nd District, Kansas

COMMITTEE ON AGRICULTURE

COMMITTEE ON ARMED SERVICES

Congress of the United States
House of Representatives
Washington, DC 20515-1602

September 10, 2008



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

Dear Chairman Blair,

Eighteen months ago, you were the only regulator willing to provide clear-eyed, level-headed analysis of the breakdown in the mortgage markets and the bursting of the bubble in home prices. It is nice to see that the years in Washington have not compromised your Kansas values of straight talk and common sense. Thank you for your leadership. I write today to request some more straight talk.

As you know, on August 22, 2008, the Kansas State Bank Commissioner closed Columbian Bank and Trust in Topeka, Kansas and appointed the Federal Deposit Insurance Corporation (FDIC) as receiver. According to FDIC's June 2007 market share report, Columbian had been the third-largest bank in Topeka with over ten percent of the deposits in the city.

As I'm sure you appreciate, the failing of a bank – especially one as large as Columbian – is traumatic for the community. We are fortunate that, thanks to the FDIC, a bank failure no longer means widespread panic or financial loss. The FDIC acted very efficiently in selling the insured deposits to Citizens Bank & Trust so that fully-insured depositors had uninterrupted access to their funds. I thank your team for their hard work in minimizing the disruption to these account holders.

However, for account holders with more than $100,000 in deposits, the situation is very different. Obviously, amounts over $100,000 are not entitled to any money from the insurance fund, but FDIC policy is to treat them as senior creditors of the estate of the failed bank. They share with the FDIC in the proceeds from selling off the failed banks' assets and receive dividends against their claim. They often recover most or all of their uninsured deposits.

Indeed, <u>in seven of the ten bank failures before September of this year, the FDIC took steps to ensure that account holders would continue to have access to uninsured deposits.</u> In five cases, the FDIC arranged for another bank to acquire all of the deposits of the failed bank. In two more cases, the FDIC paid advance dividends returning fifty percent or more of the uninsured deposits within two weeks of the failure.

In contrast, for Columbian depositors, the FDIC has not made any funds available beyond the insured limit and has given little information on when they can expect to receive dividends. My main purpose in writing is to gain more information on the resolution of the uninsured deposits. I hope you will be able to answer some questions that will clarify the timing and size of eventual dividend payments:

- In every bank failure this year in which the FDIC has made a dividend payment, the initial payment has been fifty percent or more. In addition to the two cases noted above where large dividends were paid within two weeks, the FDIC paid a 59.5% dividend on the uninsured deposits of Hume Bank almost four months after the bank failed. Is the FDIC pursuing a policy of not paying dividends on uninsured deposit claims until it can pay a dividend of at least fifty percent? If so, what is the justification for not paying smaller, earlier initial dividends?

- The FDIC announced on August 22 that Citizens Bank had purchased $85.5 million in assets from Columbian. This transaction liquidated over ten percent of Columbian's assets. How much of Columbian's asset base has been liquidated to date? What has the FDIC done with these funds? What portion of the assets needs to be liquidated before the FDIC anticipates paying a dividend to the uninsured depositors?

- In its position as receiver for at least nine banks, the FDIC must have considerable knowledge of the market for distressed bank assets. What can the FDIC share about that market that would give uninsured depositors a sense of how soon and how much they might recover in dividends?

- The FDIC provides an estimate of the loss to the deposit insurance fund for almost every bank failure. For failures that aren't resolved by a whole-bank acquisition, this calculation must be based upon the FDIC's estimates of what the asset portfolio can be sold for. Isn't it possible to use that same calculation to estimate the amount that can be returned to the uninsured depositors?

- In the two cases this year where the FDIC paid out advance dividends of fifty percent or more within two weeks of the failure (First Priority and IndyMac), the losses to the FDIC deposit insurance fund were estimated at [illegible]% and 12.5 – 25% of the banks' assets respectively. In the case of Columbian, the losses were estimated at just 8.0% of the bank's assets. Does the smaller loss ratio on the assets indicate that the eventual recovery for the uninsured depositors will be more than fifty percent?

Here in Kansas, much has been made of the fact that the two cases where the FDIC paid large, prompt dividends involved failed banks on the coasts (IndyMac in Pasadena, California and First Priority in Bradenton, Florida) while the three cases with no prompt dividends were Midwestern banks (Hume Bank in Hume, Missouri; ANB Financial in Bentonville, Arkansas; and Columbian in Topeka, Kansas). I understand that every bank failure is different, but I'd like you to explain how consistent policies produced such different results.

Information for the uninsured depositors and other creditors of Columbian is my highest priority, and I hope to hear from you by September 19, 2008 with more information about the claims.

against the estate. I have additional questions about FDIC policies and recommendations that are not as urgent. Please feel free to take more time, if necessary, to answer these later questions.

I understand that the FDIC has a mandate to resolve bank failures in the manner that results in the least cost to the deposit insurance fund. I have two questions regarding how the FDIC interprets that mandate:

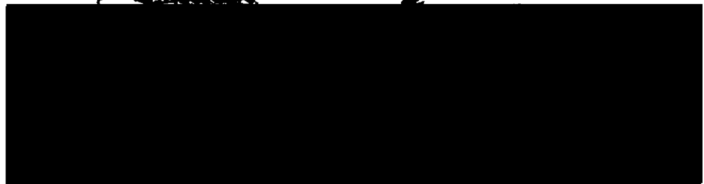
- The FDIC is rightly pressuring banks to shore up their capital ratios, and this often means shrinking their balance sheets. Obviously, this makes it more difficult to sell the assets of a failed bank piecemeal. Yet news reports indicate that the FDIC did not solicit any bids for the purchase of Columbian in its entirety. Does the FDIC take market conditions into account when evaluating whether it is less costly to sell off the whole bank or to break off the insured deposits and conduct asset sales over the following months? Did the FDIC solicit bids for a whole-bank purchase of Columbian? Did it receive any bids? What loss to the deposit fund did the FDIC estimate for the whole-bank bids?
- After FDIC took over IndyMac, the FDIC announced a plan to renegotiate IndyMac mortgages in order to help the borrowers stay in their homes. When Columbian failed, some small businesses lost all but $100,000 of their working capital and were forced to lay off workers because the businesses were unable to make payroll. Why was the FDIC willing to take losses to help California homeowners but not to help Kansas businesses?

The failure of Columbian made clear that the $100,000 insurance limit does little for short-term, high-dollar transactions. A small business that brings funds into a single account to make payroll or a family that deposits the money from the sale of their home can easily exceed the insurance limit, if only for a day or two. For that money to be lost because of a bank failure during that short period of time seems deeply unfair. I would like to learn what the FDIC is doing to avoid that result:

- Many small businesses have working capital of $100,000 or more. What advice does the FDIC have for small businesses trying to protect themselves from bank failures? Spreading accounts across multiple banks is very intensive. Sweep accounts take the money out of the community and away from FDIC's guarantee. In times of financial turmoil like these, is there any way for responsible, community-minded small business owners to keep their money at work in deposit accounts at local banks?
- The financial obligations of a business often cluster near the end of the month. In order to make payment, checking account balances may temporarily swell over $100,000. What precautions can the FDIC take to make sure that a bank failure near month's end doesn't punish prudently-run small businesses that exceed insurance limits for only a day or two?
- Does the FDIC recommend any special precautions for individuals to take during the purchase or sale of a home in order to remain protected by insurance? Does the FDIC conduct any outreach to realtors or the general public to help make these recommendations known?

Thank you again for your work in stabilizing the banking system and protecting depositors. I look forward to your answers to these questions and to the resolution of the Columbian estate.

Sincerely,



Nancy Boyda
Member of Congress
Kansas 2nd District

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

September 25, 2008

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

Dear Senator Clinton:

Thank you for copying me on your letter to Chairman Bernanke expressing your concerns about reports of members of the Armed Services being subjected to foreclosure proceedings that may be in violation of the Servicemembers Civil Relief Act (SCRA). I wanted to assure you that the Federal Deposit Insurance Corporation shares your concern for strong enforcement of the SCRA and protection of our service members.

The SCRA provides a number of protections to service members and their dependents. If service members own property purchased before they entered on active duty, mortgage lenders may not foreclose on it while a service member is on active duty, or within 90 days after military service, without court approval. As you are aware, this 90-day time period was recently extended to nine months by Title II of the Housing and Economic Recovery Act of 2008 (HERA).

In April 2007, the FDIC, along with the other federal financial institution regulatory agencies, issued the enclosed interagency statement, "Statement on Working with Mortgage Borrowers," encouraging lenders to restructure mortgage loans to assist troubled borrowers. In that statement, the agencies specifically advised lenders of the foreclosure provisions of the SCRA. Moreover, the agencies stated that "[w]hile the SCRA requirements apply only to obligations that were originated prior to the member's military service, the agencies encourage institutions to work with service members and their families who are unable to meet any of their contractual obligations."

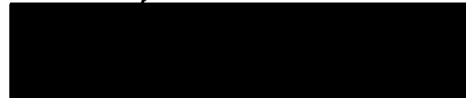
Because of the FDIC's commitment to enforcing laws that protect service members and their families, we have adopted examination procedures that specifically address the SCRA and apply to FDIC supervised financial institutions. When FDIC examiners conduct consumer compliance examinations of FDIC supervised banks, they review for compliance with requirements that institutions provide service personnel with notice about their rights. Specifically, to educate service personnel about the law, Congress included in the National Defense Authorization Act for Fiscal Year 2006 (2006 Defense Authorization) an amendment to the content of homeownership counseling notices required by the Housing and Urban Development Act. The 2006 Defense Authorization directed the Department of Housing and Urban Development (HUD) to

develop a revised notice in consultation with the Departments of Defense and Treasury advising service members of the SCRA's foreclosure protections and providing a telephone number for service members or their families to call for further assistance. The notice took effect June 5, 2006.[1]

The FDIC is committed to ensuring that the institutions we supervise comply with all consumer protection laws; service personnel and their families should not be subject to foreclosure proceedings in violation of the law. The FDIC examines for compliance with the SCRA and will take appropriate supervisory action to ensure adherence to its requirements.

Thank you for the opportunity to respond to your concerns.

Sincerely,



Sheila C. Bair

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[1] U.S. Department of Housing and Urban Development, Mortgage and Foreclosure Rights of Servicemembers under the Servicemembers Civil Relief Act (SCRA), Mortgagee Letter 2006-28 (November 20, 2006) (http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/06-28ML.doc).

Press Releases

Statement on Working with Mortgage Borrowers

The federal financial institutions regulatory agencies[1] encourage financial institutions to work constructively with residential borrowers who are financially unable to make their contractual payment obligations on their home loans. Prudent workout arrangements that are consistent with safe and sound lending practices are generally in the long-term best interest of both the financial institution and the borrower.

Many residential borrowers may face significant payment increases when their adjustable rate mortgage (ARM) loans reset in the coming months. These borrowers may not have sufficient financial capacity to service a higher debt load, especially if they were qualified based on a low introductory payment. The agencies have long encouraged borrowers who are unable to meet their contractual obligations to contact their lender or servicer to discuss possible payment alternatives at the earliest indication of such problems.

The agencies encourage financial institutions to consider prudent workout arrangements that increase the potential for financially stressed residential borrowers to keep their homes. However, there may be instances when workout arrangements are not economically feasible or appropriate.

Financial institutions should follow prudent underwriting practices in determining whether to consider a workout arrangement. Such arrangements can vary widely based on the borrower's financial capacity. For example, an institution might consider modifying loan terms, including converting loans with variable rates into fixed-rate products to provide financially stressed borrowers with predictable payment requirements.

The agencies will continue to examine and supervise financial institutions according to existing standards. The agencies will not penalize financial institutions that pursue reasonable workout arrangements with borrowers who have encountered financial problems. Further, existing supervisory guidance and applicable accounting standards do not require institutions to immediately foreclose on the collateral underlying a loan when the borrower exhibits repayment difficulties. Institutions should identify and report credit risk, maintain an adequate allowance for loan losses, and recognize credit losses in a timely manner.

Financial institutions may receive favorable Community Reinvestment Act (CRA) consideration for programs that transition low and moderate income borrowers from higher cost loans to lower cost loans, provided the loans are made in a safe and sound manner.[2] Financial institutions, working alone or in conjunction with reputable organizations such as the Center for Foreclosure Solutions sponsored by NeighborWorks, can assist borrowers in avoiding foreclosure through credit counseling.[3] Such programs also help financially stressed borrowers avoid predatory foreclosure rescue scams.

Under the Homeownership Counseling Act, financial institutions should inform certain borrowers who are delinquent on their mortgage loans (home loans secured by a single family dwelling that is the borrower's principal residence) about the availability of homeownership counseling. The Department of Housing and Urban Development (HUD) maintains a list of approved counselors.[4]

If a service member defaults on a mortgage, the Servicemembers Civil Relief Act (SCRA) prohibits the sale, foreclosure, or seizure of service member property secured by the mortgage during the period of military service, or within 90 days thereafter. Institutions are required to notify service members of their rights under the SCRA.[5] While the SCRA requirements apply only to obligations that were originated prior to the service member's military service, the agencies encourage institutions to work with service

members and their families who are unable to meet any of their contractual mortgage obligations.

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[1] The federal financial institutions regulatory agencies consist of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (collectively, the agencies).

[2] Consideration as a CRA flexible lending practice may be granted in instances where such action helps to meet the credit needs of low- and moderate-income individuals or geographies within the institution's assessment area, and is consistent with safe and sound lending practices. Also see Q&A § __.22(a)– 1 (2001 Interagency Questions and Answers Regarding Community Reinvestment). Federal credit unions are not subject to CRA requirements.

[3] Consideration as a CRA community development service may be granted in instances where such activities help to meet the credit needs of low- and moderate-income individuals or geographies within the institution's assessment area. Also see Q&A § __.12(j)– 3 (2001 Interagency Questions and Answers Regarding Community Reinvestment). Federal credit unions are not subject to CRA requirements.

[4] Information on HUD's counseling services is available at http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm or (800) 569-4287.

[5] HUD's service member notice is available at http://www.hud.gov/offices/adm/hudclips/forms/files/92070.pdf - 27k (PDF Help).

Last Updated 4/17/2007 communications@fdic.gov

LA08-329

HILLARY RODHAM CLINTON
NEW YORK
SENATOR

RUSSELL SENATE OFFICE BUILDING
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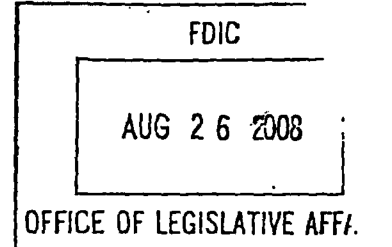
WASHINGTON, DC 20510-3204
202-224-4451

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

United States Senate

WASHINGTON, DC 20510-3204

August 20, 2008



The Honorable Ben S. Bernanke
Chairman
Federal Reserve Board
20th Street and Constitution Avenues, NW
Washington, D.C. 20551

Dear Chairman Bernanke:

I am troubled by recent reports of members of our Armed Forces subjected to foreclosure proceedings that may be in violation of the *Servicemembers Civil Relief Act* (SCRA). As you know, the SCRA provides protections for servicemembers in the event that their military service impedes their ability to meet financial obligations incurred before entry into active military service. Included in those protections are rules that prevent banks or other lenders from entering into foreclosure proceedings in certain circumstances against active duty service members.

Recent news reports indicate that some servicemembers have returned home from duty only to find a foreclosure notice waiting for them, an apparent violation of the SCRA. As a result, many are forced into costly litigation to contest the foreclosures while others are distracted from their duty while their families are left to fight with their lenders. I am particularly concerned that many lenders may not even be familiar with their obligations under the SCRA which is troubling at a time when we are in the midst of a housing crisis that has resulted in a record number of foreclosure proceedings and we have more than 200,000 servicemembers that are directly supporting our combat operations overseas. Indeed, according to one recent news report, the main trade association for banks indicated that the banks themselves "may be a little rusty and have to go back and check on the provisions". It is unconscionable that servicemen and women who have risked their lives to defend their country are returning home to foreclosure notices or costly and time consuming litigation brought by lenders who are either unaware of, or ignore the rules of the SCRA.

In light of these developments, I believe it is imperative that all of the Federal banking regulators take steps to educate and fully inform the institutions under their oversight of their obligations and the rights of servicemembers under the SCRA. To be sure, the protections under the SCRA could be strengthened such as ensuring that any member of the Armed Forces deployed to combat duty would have an ironclad protection against foreclosure regardless of when their loan was originated, and I have introduced legislation, the *Armed Forces Housing Security Act* to ensure that. Nevertheless, while Congress continues to debate these issues, it is necessary for you and the other oversight agencies to take all steps to remind and inform lenders of their obligations under the SCRA. I stand ready to work with you to ensure that this initiative

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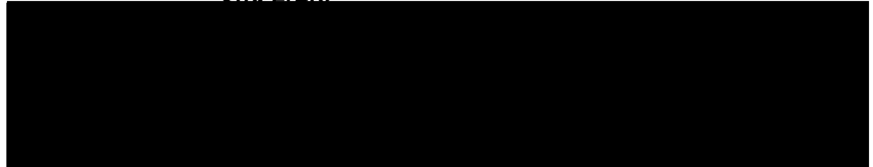
is successful in order to support the men and women in uniform who have already sacrificed so much for their Nation.

Thank you for your attention to my concerns, and I look forward to your reply.

Sincerely,



Hillary Rodham Clinton

cc: John Reich, Director of the Office of Thrift Supervision
Sheila C. Bair, Chairman of Board of Directors, Federal Deposit Insurance Corporation
The Honorable John C. Dugan, Director of the Office of the Comptroller of the Currency

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 21, 2008

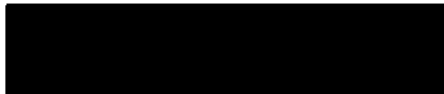
Honorable Christopher J. Dodd
Chairman
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter enclosing questions from Senator Dole and Senator Bunning subsequent to my testimony on "The State of the Banking Industry: Part II" before the Committee on June 5, 2008.

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

Sincerely,



Sheila C. Bair

Enclosure

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

There was an article in the June 4, 2008, Financial Times that said banks could be forced to bring up to 5 trillion of assets currently held off their books onto their balance sheets. This raises many questions, but I will start with three.

Q1: First, in the current markets can the banks raise the capital they need to hold against these assets?

A1: The June 4, 2008 Financial Times article addresses lingering concerns with off-balance sheet exposures. Firms have used loopholes in off-balance sheet accounting for years in order to enhance their financial statements without shedding risk. Capital and accounting rules need to reflect the economic reality of the transactions that our large financial institutions engage in on a daily basis.

Financial institutions have shown a remarkable ability to raise capital even in this stressed market, which I view as a positive reflection on the long-term prospects for the U.S. banking system. Bloomberg reports that the ten U.S. bank holding companies with the largest write-downs and credit losses since second quarter 2007 raised $114.5 billion in capital during this same time period. This amount more than offsets the $100.2 billion in write-downs and losses that these institutions reported. To shore up their capital bases, institutions have reduced and in some cases eliminated cash dividends and have raised common stock and preferred shares from a wide range of sources.

While their ability to continue to access the capital markets for funding is not assured, institutions have taken the right steps to adequately plan for their capital needs. However, several market participants have indicated that continued losses are expected as we work through the credit market turmoil, which could place additional pressure on bank capital levels.

We are continuing to evaluate the potential impact of any FASB action on off-balance sheet accounting on regulatory capital and on the securitization business in general, and will be in a better position to consider changes once the FASB proposals are issued for public comment.

Q2: Second, since you are their regulators, do you know and have you known all along what those assets are?

A2: U.S. regulators have three important tools at our disposal for identifying and evaluating the risk present in bank operations: on-site examination, off-site surveillance, and public disclosures. While these tools provide us with a significant amount of information necessary to assess the safety and soundness of our banks, the financial innovations that have transpired over the past several years have made it more difficult to fully understand the risks present in off-balance sheet structures such as securitized investment vehicles (SIVs) and collateralized debt

obligations (CDOs). These vehicles were used to transfer a wide variety of exposures to investors without a sufficient degree of transparency and disclosures. However, the opacity in these structures served to exacerbate problems since investors and, in some instances, regulators were not able to quickly identify the assets placed in these vehicles.

The work underway in the Basel Committee to improve the disclosures governing off-balance sheet vehicles should address many of these concerns. In addition, I have been a strong advocate of requiring banks that invest and manage securitization exposures to fully understand the risk characteristics present in the securitization vehicles and the underlying collateral supporting these structures before they can take any capital relief from external ratings. These are bare minimum due diligence standards that serve as the foundation of prudent investment management.

Q3: And third, why were they allowed to move trillions of dollars of what turned out to be the riskiest assets off their books to avoid capital charges?

A3: The accounting and capital rules have provided banks with the ability and incentive to remove assets from their balance sheet. I believe that the accounting standards and the capital rules need to be reassessed in order to ensure that they provide the right incentives for managing risks at our largest financial institutions. Securitization in general has provided several benefits to the financial markets—it has enhanced credit availability and has provided market participants with another asset class in which to invest. At the same time, the off-balance sheet rules were abused in some cases. I am pleased to see that the Financial Accounting Standards Board is reviewing their off-balance sheet accounting standards with an eye towards eliminating any loopholes. The Basel Committee and U.S. regulators need to consider these issues as well in conjunction with any revisions to our capital rules.

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

Q: In March, the Attorney General of New York, OFHEO, and the GSE's entered into an agreement creating new appraiser requirements that are inconsistent with existing practices. Last month, I introduced an amendment to the Federal Housing Finance Regulatory Reform Act of 2008 that would require the Director of OFHEO to issue a regulation establishing appraisal standards for mortgages purchased or guaranteed by Fannie and Freddie. It would establish a common set of appraisal standards governing mortgage lenders that are federally supervised and regulated. In your opinion, would this amendment strengthen the appraisal standards of federally regulated mortgages?

A: The New York Attorney General, Fannie Mae, Freddie Mac, and the Office of Federal Housing Enterprise Oversight (OFHEO) have proposed a Home Valuation Code of Conduct that would overlay the long-standing set of federal banking agency appraisal regulations and Uniform Standards of Professional Appraisal Practice (USPAP) guidelines. The FDIC provided a comment to OFHEO on the proposal on June 20, 2008, which is attached. Our comment letter strongly supports the concept of appraiser independence and USPAP standards, but articulates our belief that the use of in-house or affiliated appraisers may be appropriate if managed prudently.

The Dole amendment would direct OFHEO to devise appraisal rules for mortgages purchased or guaranteed by government-sponsored enterprises in a way that is consistent with appraisal regulations issued by the federal banking agencies. This would have the advantage of establishing a common set of appraisal standards for insured depository institutions and other mortgage lenders nationwide. As indicated in our comment letter, the FDIC supports an interagency rulemaking process to establish comprehensive appraisal and appraiser standards.

Attachment