FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 7, 2009

Honorable Barbara Lee
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Lee:

Thank you for your letter regarding the status of the Federal Deposit Insurance Corporation's initiatives related to the participation of Small, Minority, and Women-Owned businesses in procurement related to the federal government's efforts to resolve the banking crisis. We are pleased to continue the dialogue begun at the Congressional Black Caucus contracting summit in March of this year.

The FDIC's Office of Diversity and Economic Opportunity (ODEO) administers a Minority and Women Outreach Program. This Program seeks to ensure, to the maximum extent possible, the inclusion of minorities and women in all contracts entered into by the FDIC, including entities owned by minorities and women such as financial institutions, investment banking firms, underwriters, accountants, and providers of legal services.

It has been the Corporation's policy to include Minority and Women Owned Businesses (MWOB) and Small Disadvantaged Business (SDB) vendors to the maximum extent practicable in its solicitations for services. Our inclusion of MWOB and SDB enterprises has occurred in all aspects of FDIC procurement, including participation in the resolution and management of assets from failed institutions.

The FDIC has expanded outreach to MWOBs, SDBs, and Veteran and Disabled Veteran-Owned Businesses for assistance in resolving the banking crisis. We are seeing positive results from this outreach, with smaller firms exploring new subcontracting, teaming, and limited joint venture relationships. We also have seen the large prime vendors reaching out to these smaller enterprises and adding these firms to their corporate databases as sources for future contracting.

Enclosed are detailed responses to the questions raised in your letter. I also understand that FDIC staff is scheduled to brief your staff on FDIC outreach efforts and to receive any input and suggestions they may have.

Your interest in this matter is appreciated. If you have further questions, please contact me at (202) 898-6974 or Eric Spitler, Director of the Office of Legislative Affairs, at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

Enclosure

The Legal Division has been participating in Outreach activities with the Division of Administration and the Office of Diversity and Economic Opportunity at various outreach events referred to above and at recent job fairs held in Dallas, Texas, Arlington, Virginia, and Irvine, California. In the near future, the Legal Division will conduct an outreach event in New York City specifically to identify MWOLFs having experience in financial transactions, complex financial instruments, and related litigation experience. The Legal Division also is continuing outreach through attendance at various minority bar association conferences referred to above. Finally, Legal Division staff is endeavoring to increase work assignments made to MWOLFs that are on the LCA, by encouraging both direct retention on new matters and co-counseling arrangements as appropriate in particular cases.

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 7, 2009

Honorable Yvette Clarke
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Clarke:

Thank you for your letter regarding the status of the Federal Deposit Insurance Corporation's initiatives related to the participation of Small, Minority, and Women-Owned businesses in procurement related to the federal government's efforts to resolve the banking crisis. We are pleased to continue the dialogue begun at the Congressional Black Caucus contracting summit in March of this year.

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Sincerely,

[redacted]

Sheila C. Bair

Enclosure

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 7, 2009

Honorable David Scott
House of Representatives
Washington, D.C. 20515

Dear Congressman Scott:

Thank you for your letter regarding the status of the Federal Deposit Insurance Corporation's initiatives related to the participation of Small, Minority, and Women-Owned businesses in procurement related to the federal government's efforts to resolve the banking crisis. We are pleased to continue the dialogue begun at the Congressional Black Caucus contracting summit in March of this year.

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Sincerely,

[redacted]

Sheila C. Bair

Enclosure

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 7, 2009

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

Dear Congressman Green:

Thank you for your letter regarding the status of the Federal Deposit Insurance Corporation's initiatives related to the participation of Small, Minority, and Women-Owned businesses in procurement related to the federal government's efforts to resolve the banking crisis. We are pleased to continue the dialogue begun at the Congressional Black Caucus contracting summit in March of this year.

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Sincerely,

[redacted]

Sheila C. Bair

Enclosure

Response to questions regarding outreach to Small, Minority, and Women-owned Businesses

Provided by the Federal Deposit Insurance Corporation's Office of Diversity and Economic Opportunity

Q1: How will FDIC ensure Small, Minority and Women owned business access to and participation in, FDIC programs designed to assist in the economic recovery?

A1: The FDIC conducts nationwide outreach events to provide Minority and Women-Owned Businesses (MWOBs), Minority and Women Owned Law Firms (MWOLFs), as well as Small Disadvantaged Businesses (SDBs) and Veteran and Disabled Veteran Owned Business, with information on the FDIC's contracting activities. We encourage their participation as both prime and sub-contractors.

The FDIC has conducted five "Doing Business with the FDIC" seminars this year since March and expects to schedule three or four additional seminars by the end of August. The seminars already completed have drawn more than 1,400 attendees, and these businesses have been added to our MWOB, MWOLF, and contracting databases. Additionally, we continue to participate in outreach conferences with the Black Enterprise Entrepreneurs, Women in Business, LULAC, National Council of La Raza, NAACP, National Bar Association, National Urban League, Hispanic Chamber of Commerce, the Hispanic Bar Association, the Congressional Black Caucus, the Asian Pacific Bar Association, and the National Minority Supplier Development Council.

MWOBs and others also can learn about doing business with the FDIC by visiting our website: http://www.fdic.gov/buying/goods/index.html, where they will find instructions on how to provide the FDIC with information about their company, which we will enter into our Contractor Resource List. This system organizes and maintains corporate capability statements submitted by firms seeking future business with the FDIC. Our program managers and contracting officers use this system to identify sources for solicitation. The web page also contains points of contact and telephone numbers for various FDIC prime contractors. These prime contractors will provide services in support of failed financial institutions and may have subcontracting opportunities for the MWOBs.

MWOLFs can find information regarding opportunities for representing the FDIC on our website at http://www.fdic.gov/buying/legal/ocbrochure/index.html.

Q2: Please provide the number of FDIC Requests for Proposals (RFPs) which contain incentives for large firms to partner or joint venture with Small Minority and Women Owned Businesses.

A2: Where subcontracting opportunities exist, FDIC RFPs will contain language encouraging offerors to subcontract with MWOBs and SDBs. Current law prohibits the FDIC from placing incentives in RFPs for large firms that partner or joint venture with MWOBs or SDBs. However, many of our prime contractors are participating voluntarily in the *Doing Business with the FDIC* seminars providing valuable information on how to partner, joint venture, and sub-contract with them.

Q3: Please explain FDIC's weighted evaluation process and criteria to assure Small, Minority and Woman Owned Business participation in large business Proposal Responses.

A3: Evaluations of most large dollar acquisitions at the FDIC are based on a best value approach, in lieu of a price-only approach. The best value approach typically involves the assigning of points to various factors of the offeror's technical proposal, along with establishing a confidence rating based on past performance, as well as an analysis of price. The relative importance of the technical proposal's ratings to the ratings for past performance and price may vary from one RFP to another.

After the proposals of all offerors have been evaluated, the FDIC performs an analysis to determine which offeror(s) will provide the overall best value to the FDIC. Offerors who are MWOBs, or those who partner with and subcontract to MWOBs, do not receive any additional weight or incentives in the evaluation process.

Q4: Please provide the number of RFP opportunities specifically designated for Small Minority and Women Owned Business.

A4: The FDIC does not have the statutory authority to set aside acquisitions for MWOBS, MWOLFs, or SDBs. However, FDIC does have a statutory requirement to engage in outreach activities and provide opportunities to MWOBs and MWOLFs to the maximum extent practicable, and therefore, members of FDIC acquisition teams are encouraged to include MWOBs and SDBs on their solicitation lists whenever possible. Also, for acquisitions with an estimated dollar value of $100,000 or more, staff of the Office of Diversity and Economic Opportunity may recommend the addition of sources to be included on the solicitation list.

Q5: Please provide the number of contract awards to Small, Minority and Woman Owned Businesses.

A5: For 2008, 48 of 293 (16 percent) of total awards were issued to MWOBs or SDBs. Of the $651.83 million awarded in 2008 for the 293 awards, $201.72 million (31 percent) went to MWOB or SDB prime contractors and subcontractors.

For the first quarter of 2009, 61 of 194 (31 percent) of total awards were issued to MWOBs or SDBs. Of the $427.77 million awarded during the first quarter of 2009 for the 194 awards, $183.58 million (43 percent) went to MWOB or SDB prime contractors and subcontractors.

Regarding law firms having legal services agreements with the FDIC, the Corporation maintains a List of Counsel Available (LCA), which includes firms that are eligible and qualified to represent the FDIC on a variety of legal matters. As a result of efforts undertaken by the FDIC Legal Division over the past six to eight months, there has been a significant increase in the number of MWOLFs among the law firms included in the LCA, and our efforts are ongoing.

Congress of the United States
Washington, DC 20515

June 19, 2009

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

Dear Chairwoman Bair,

The Federal Deposit Insurance Corporation's (FDIC), Division of Administration and the Acquisition Services Branch have, in the past, been committed to ensuring the broad based participation of minority and women owned businesses in its procurements. We believe that participation by Small, Minority, and Women Owned business enterprises in the Public Private Investment Program (PPIP), the Troubled Asset Relief Program (TARP), the Term Asset Backed Securities Lending Facility (TALF) and other programs at the Treasury, the Federal Reserve, the Federal Deposit Insurance Corporation, and the Federal Housing Finance Agency are essential to effectively rebuilding the American economy.

It is our understanding that the FDIC is preparing to initiate a series of acquisition activities which are specific to rebuilding the economy and undergirding the most vulnerable communities touched by the economic downturn. It is imperative that minority and women owned firms participate in the FDIC's economic recovery efforts, particularly in the accounting operations, monitoring and oversight functions, as they move forward.

There is wide spread interest, on the part of these minority firms, to participate in the competitive acquisition process. Many of the qualified and successful minority and woman owned firms, that are working to economically empower America's diverse communities, inform us that they remain outside of the competitive process, for these acquisitions. They also tell us that unless the Federal agencies provide avenues for participation and encourage large financial institutions to partner or enter into joint ventures with these firms, they may continue to be excluded from making a valuable contribution and commitment to our economic recovery.

We respectfully ask that your office brief our Members regarding FDIC's plans to enhance minority and woman owned business participation in the economic recovery efforts at the FDIC. We respectfully ask that you provide the following information concerning FDIC's acquisition efforts going forward, on a monthly basis:

- *How will the FDIC ensure Small, Minority and Women owned businesses access to and participation in, FDIC programs designed to assist in the economic recovery?*

- *Please provide the number of FDIC Requests for Proposals (RFPs) which contain incentives for large firms to partner or joint venture with Small Minority and Women Owned Businesses.*

- *Please explain FDIC's weighted evaluation process and criteria to assure Small, Minority and Woman Owned Business participation in large business Proposal Responses.*

- *Please provide the number of RFP opportunities specifically designated for Small Minority and Woman Owned businesses.*

- *Please provide the number of contract awards to Small, Minority and Woman Owned Businesses.*

We hope that we can continue to work together to meet this economic crisis head on and to ensure that the recovery is shared by all Americans. We look forward to working with you on this important matter. Please contact me or my staff with any questions concerning this letter.

Sincerely,

[redacted]
Congresswoman Barbara Lee

[redacted]
Congressman Keith Ellison

[redacted]
Congressman David Scott

[redacted]
Congressman Al Green

[redacted]
Congresswoman Yvette Clarke

LA09-1002

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 7, 2009

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

Dear Congressman Kanjorski:

Thank you for expressing your concerns about the availability of credit in this challenging economic environment, and I appreciate the invitation to participate in the congressional policy dinner. Although I am unable to attend this event, I look forward to participating in your policy discussions on the future of financial services regulation.

I agree with you that credit availability is a critical component of our national economic recovery efforts. Banks play an extremely important role in providing loans to businesses and consumers on Main Street, and this, in turn, promotes economic growth and job creation across the country. Unfortunately, we also have observed that some lenders are curtailing lending in an effort to reduce credit concentrations, preserve capital, and manage an increasing volume of problem loans.

I assure you the FDIC and the other bank regulatory agencies understand the macroeconomic risks that could arise from a credit crunch. We have encouraged banks to continue making loans to creditworthy customers and work with borrowers that are having difficulty remaining current on their payments. On November 12, 2008, the banking agencies issued the *Interagency Statement on Meeting the Needs of Creditworthy Borrowers* (a copy of which is attached), which encourages financial institutions to lend prudently and responsibly to creditworthy borrowers and work with borrowers to preserve homeownership and avoid preventable foreclosures. This Statement presents the federal banking supervisors' formal position on credit availability; however, banks make their own decisions on extending or modifying credit based on internal underwriting standards, risk appetite, and financial operating position. The FDIC strongly supports banks that are prudently extending credit at this time as they are the lifeblood of credit in our economy.

If you have further questions, please feel free to contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3827.

Sincerely,

[redacted]

Sheila C. Bair

LA09-1002

PAUL E. KANJORSKI
11TH DISTRICT, PENNSYLVANIA

COMMITTEE ON
FINANCIAL SERVICES

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

COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM

WASHINGTON OFFICE:
2188 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3811
(202) 225-6511

Website: http://kanjorski.house.gov
E-mail: paul.kanjorski@mail.house.gov

Congress of the United States
Washington, DC 20515-3811

June 23, 2009

DISTRICT OFFICES:

THE STEGMAIER BUILDING
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WILKES-BARRE, PA 18702-5283
(570) 825-2200

546 SPRUCE STREET
SCRANTON, PA 18503-1808
(570) 496-1011

102 POCONO BOULEVARD
MOUNT POCONO, PA 18344-1412
(570) 895-4176

TOLL FREE HELP-LINE
(800) 222-2346

FDIC
JUN 24 2009
OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Sheila C. Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW, Room 6028
Washington, DC 20429-9990

Dear Sheila:

Thank you once again for your prompt response to the invitation to appear at our policy dinner to discuss your thoughts on the future of financial services regulation. While you could not attend this particular event, I hope that you can participate at a similar dinner with Members of Congress in the near future. With our sponsor, the Bipartisan Policy Center, Capital Markets Subcommittee Ranking Member Scott Garrett and I have hosted some very informative and thoughtful conversations with a number of highly regarded financial minds. Your voice would be a welcome complement to the views expressed by our previous speakers.

On another matter, through recent conversations with business leaders, it has come to my attention that the decisions of bankers to cut back on current credit lines or to limit new loans continue to hamper efforts to promote economic growth and create jobs. This lack of credit availability has affected particular regions of the country especially hard. For example, just the other week construction at the Fontainebleau Las Vegas resort came to a halt because its developer filed for bankruptcy after a group of lenders ended their support for the multi-billion dollar project. Without access to financing, economic development projects like this one are unfortunately getting suspended or never getting off the ground.

As you probably recall, we faced similar circumstances during the savings-and-loan crisis. At that time, federal banking regulators acted to encourage borrowing and lending to businesses as a means of spurring economic growth. For businesses to remain operational through the current economic crisis and for new projects to get underway, our banking regulators must take similar action once again to grant forbearance and promote credit availability. As a result, I urge the Federal Deposit Insurance Corporation to encourage banks to expand access to credit, in any appropriate manner, so that big and small businesses alike can weather this economic crisis and so that we can maintain and create much-needed jobs.

In closing, thank you for considering my views on these important matters. I look forward to your participation at a dinner hosted by the Bipartisan Policy Center in the near future and to learning more about what the Federal Deposit Insurance Corporation is doing to promote growth during these difficult economic times.

[redacted]

Paul E. Kanjorski
Member of Congress

LA09-1112

FDIC

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

Office of Legislative Affairs

July 15, 2009

Honorable Mary Jo Kilroy
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Kilroy:

Thank you for your comments concerning the Federal Deposit Insurance Corporation's Proposed Rule on the Transaction Account Guarantee program. I can assure you we will carefully consider your concerns and those of the other commenters.

We appreciate for your interest in this important issue. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

[redacted]

Eric J. Spitler
Director
Office of Legislative Affairs

HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

MARY JO KILROY
15TH DISTRICT, OHIO

July 8, 2009

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

Comments RIN 3064-AD37

Dear Chairwoman Bair:

I am writing to urge you to consider the impact the Federal Depository Insurance Corporation's (FDIC) forthcoming decision on the Transaction Account Guarantee (TAG) program will have on community banks and the local communities they serve.

Community banks have been particularly helped by the TAG program, which provides non-interest bearing accounts a full guarantee for deposits held at FDIC-insured depository institutions. Local businesses use non-interest bearing accounts for large payroll deposits, and during the financial crisis the TAG program provided businesses with a guarantee that their assets were safe. Since its inception, the TAG program has helped over 7,100 institutions secure over $700 billion of assets.

An abrupt halt to the program could adversely impact local economies. The TAG program has significantly helped local banks and the communities they serve secure their assets. While the financial system is better now than as in October, community banks continue to fail at an alarming rate.

Furthermore, the proposed fee increase, from 10 basis points to 25 basis points assessed against deposits insured under the program, is unnecessary and excessive and would add an additional burden on community banks struggling to provide lending to help spur their local economies.

Thank you for taking the time to hear my concerns and to consider how community banks will be impacted by your decision.

Sincerely,

[redacted]

Mary Jo Kilroy
U.S. House of Representatives
Ohio's 15th Congressional District

14. In what year, and by what means were Superior's mortgage securities moved to market through Merrill Lynch? Who were the individuals involved in those transactions at Superior and at Merrill? Were third parties or other brokerages or investment banks employed to move this paper? If so specify. By year, what volume and amount of such mortgage securities were sold to Merrill Lynch? Were Fannie Mae and Freddie Mac engaged, and how and when?

15. In 1986, Congress passed a new Tax Reform Act which created the Real Estate Mortgage Investment Conduit to facilitate collateralized mortgage obligations. Knowing everything your agency knows today about the subprime crisis, to what extent did this act contribute to the mortgage crisis America is facing today? Why?

16. During its existence, do records indicate Superior, or any of its subsidiaries, conducted any major financial transactions through or with the following firms: Wasserstein Perella, Dresdner Bank, Carlyle Group?

Thank you very much for your attention to these issues. If you should need to contact my office, please call Julia Andrews of my staff at 202-225-4146 or email her at julia.andrews@mail.house.gov.

Sincerely,

[redacted]

MARCY KAPTUR
Member of Congress

LA07-10

FDIC

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

Office of Legislative Affairs

July 17, 2009

Honorable Bill Nelson
United States Senate
Washington, DC 20515

Dear Senator Nelson:

Thank you for your letter regarding requests for federal financial assistance under the Troubled Asset Relief Program's (TARP) Capital Purchase Program (CPP) by [redacted] As you may know, the Federal Deposit Insurance Corporation is actively engaged with the U.S. Department of the Treasury (Treasury) and the other federal banking agencies in considering TARP applications filed by banking institutions. In our role as primary federal supervisor for state nonmember institutions, the FDIC makes a recommendation on each TARP application it receives to the Treasury, which ultimately determines if an institution may participate.

The FDIC received a TARP CPP application from [redacted] Florida on October 28, 2008. The institution was advised of the FDIC's recommendation to Treasury concerning the TARP CPP request on June 12, 2009. The Corporation also received a TARP Capital Assistance Program (CAP) application from the institution that was filed on May 7, 2009. The CAP application is in process of being reviewed.

The Office of Thrift Supervision (OTS) is the primary federal regulator for [redacted] Consequently, we have taken the liberty of forwarding your inquiry to the OTS for consideration.

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

Sincerely,

[redacted]

Eric J. Spitler
Director
Office of Legislative Affairs

cc: Congressional Affairs
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

LA09-1028

United States Senate

WASHINGTON, DC 20510-0905

June 26, 2009

BILL NELSON
FLORIDA

FDIC
JUL 15 2009
OFFICE OF LEGISLATIVE AFFAIRS

Mr. Eric Spitler
Director of Legislative Affairs
Federal Deposit Insurance Corporation
550 17th Street Northwest, Room 6076
Washington, District of Columbia 20429-0002

Dear Mr. Spitler:

I am referring the enclosed inquiry from my constituent regarding the TARP Capital Assistance Program application of [redacted]

My constituent would appreciate an update on the status of their application. Please respond directly to him and send a copy to me.

The Honorable Bill Nelson
United States Senate
Washington, DC 20510
Attention: Stephanie Mickle (202-224-1554)

I thank you for your attention to this matter.

Sincerely,

[redacted]

Dodd

United States Senate

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

July 17, 2009

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 "Establishing a Framework for Systemic Risk Regulation." The hearing is scheduled for Thursday, July 23, 2009 at 9:30 am in Room 538 of the Dirksen Senate Office Building.

The Banking Committee is continuing a series of hearings on the modernization of the financial regulatory framework, which must be based on lessons learned from the current financial crisis and designed to safeguard consumers and foster a robust economy.

The Committee requests that your testimony discuss the merits of the Administration's proposal for regulating systemic risk and for resolving systemically important financial companies that would:

- provide new authority to the Federal Reserve to identify, regulate and supervise all financial companies (which could include nonbanks such as securities and insurance companies) considered systemically important, while also establishing a council of financial regulators serving an advisory function; and

- create a new resolution regime to provide a framework for the orderly resolution of systemically important bank holding companies and other nonbank financial companies.

If you believe that a framework for systemic risk regulation comprised of an enhanced Federal Reserve and an advisory council is not appropriate or adequate, the Committee requests your testimony on any alternative approaches. In describing an alternative approach, you may want to consider the following:

- How should a systemic risk regulatory authority be structured? Should there be a governing board consisting of financial regulators and an independently appointed head? Should there be full-time professional staff?

- What powers would a systemic risk regulatory authority need? Should it have the power to obtain information or assistance from financial regulators? To direct financial regulators to take specific actions? To promulgate regulations to mitigate systemic risk?

In addition, the Committee asks you to discuss:

- how systemic risk should be defined and to what extent there is a need for a systemic risk regulatory authority;
- how a systemic risk regulatory authority should interact with financial regulators;
- how resolution of systemically important financial companies should be funded; and
- the need for international coordination, especially with regard to a resolution regime.

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

If you have any questions regarding this hearing, please contact Charles Yi at 202-224-1564.

Sincerely,

[redacted]

CHRISTOPHER J. DODD
Chairman

LTTO4-10 L.

FDIC

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

Office of Legislative Affairs

July 17, 2009

Honorable Allyson Y. Schwartz
Representative, U.S. Congress
7219 Frankford Avenue
Philadelphia, Pennsylvania 19135

Dear Congresswoman Schwartz:

Thank you for your most recent letter on behalf of [redacted] regarding the status of [redacted] application for deposit insurance.

As you know from our previous correspondence, the Federal Deposit Insurance Corporation met with [redacted] and other organizers. Since that meeting, we have received additional information regarding the application of [redacted] This information, along with previously submitted materials, is being reviewed and processed.

I assure you that our deposit insurance application process is thorough, carefully evaluating the seven statutory factors listed in Section 6 of the Federal Deposit Insurance Act. These factors assess the financial history and condition of the proposed depository institution and its parent organization, capital structure, proposed oversight and management, earnings prospects, activities to be conducted, convenience and needs of the community to be served, and potential risks to the Deposit Insurance Fund.

Also important to the assessment of the deposit insurance application is the complexity and unique nature of the underlying proposal and business plan, including the conditions under which the proposed institution will operate. This framework helps ensure the viability and long-term success of each applicant.

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

Sincerely,

[redacted]

Eric J. Spitler
Director
Office of Legislative Affairs

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 21, 2009

Honorable Corrine Brown
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Brown:

Thank you for your letter regarding the Federal Deposit Insurance Corporation's East Coast Temporary Satellite Office in Jacksonville, Florida. I appreciate your interest in this matter and your offer of assistance.

The lease for this office was executed on May 6, 2009. In accordance with FDIC Leasing Policy, staff ran a competitive process to select a site for the temporary office. The boundaries for the lease competition included downtown and suburban Jacksonville. FDIC staff received assistance in this process from our national broker, Grubb and Ellis. Landlords with available vacant space were issued a Request for Proposals (RFP) on March 5, 2009, which set forth detailed financial and qualitative requirements.

On March 11, 2009, proposals were submitted by four landlords, two from downtown and two from suburban Jacksonville. These proposals were evaluated against the criteria in the RFP. A detailed financial and qualitative analysis was performed on each, which resulted in the selection of the best value offer at 7777 Baymeadows Way. The best value decision considered the FDIC's mission, as well as cost and the qualitative criteria listed in the solicitation. A business case with the results of the competition was presented to the FDIC Board of Directors and approved on April 23, 2009. Plans are now underway to staff the office and occupy the space. It is urgent that this site become operational at the earliest possible date.

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

Sincerely,

[redacted]

Sheila C. Bair

LA09-1065

COMMITTEES:

TRANSPORTATION & INFRASTRUCTURE
RAILROADS, PIPELINES AND HAZARDOUS MATERIALS, CHAIRWOMAN
COAST GUARD AND MARITIME TRANSPORTATION
AVIATION
WATER RESOURCES AND ENVIRONMENT

VETERANS' AFFAIRS
HEALTH

MEMBERSHIPS:

CONGRESSIONAL BLACK CAUCUS
CONGRESSIONAL CAUCUS FOR WOMEN'S ISSUES
CONGRESSIONAL HUMAN RIGHTS CAUCUS
CONGRESSIONAL MISSING AND EXPLOITED CHILDREN'S CAUCUS
CONGRESSIONAL DIABETES CAUCUS
OLDER AMERICANS CAUCUS
PROGRESSIVE CAUCUS
THE DUMA CONGRESS STUDY GROUP

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

CORRINE BROWN
3D DISTRICT, FLORIDA

REPLY TO:

WASHINGTON OFFICE:

☐ 2336 Rayburn House Office Building
Washington, DC 20515
(202) 225-0123
Fax: (202) 225-2256

DISTRICT OFFICES:

☐ 101 East Union Street
Suite 202
Jacksonville, Florida 32202
(904) 354-1652
Fax: (904) 354-2721

☐ 219 Lime Avenue
Orlando, Florida 32802
(407) 872-0656
Fax: (407) 872-5763

Gainesville, Florida
(352) 376-6476

June 23, 2009

FDIC
JUL - 2 2009
OFFICE OF LEGISLATIVE AFFAIRS

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

Dear Chairwoman Bair,

I am excited that the FDIC is opening an office at 7777 Baymeadows Way in the Jacksonville, Florida, area. I am confident that the FDIC will do everything it can to resolve the current banking problems in the Southeastern United States.

While I am deeply appreciative of the FDIC's decision to create 500 jobs in Jacksonville, I am disappointed that a downtown office location was not selected. The leasing of space and the focusing of jobs in the downtown Jacksonville area would greatly amplify the economic benefits of the FDIC's move into the region. Furthermore, the FDIC would benefit from the world class transportation infrastructure that serves downtown Jacksonville.

I understand that Executive Orders 13006 and 12072 which recommend locating federal agencies on historic and downtown properties is not mandated for the FDIC. However, I would urge you to take into account the reasoning within these Executive Orders and reconsider the FDIC's current location. The FDIC needs to make the most economically prudent decision and I speak for Mayor John Peyton and myself when I say we will assist in any way we can.

Sincerely,

[redacted]

Corrine Brown
Member of Congress

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 21, 2009

Honorable Nydia M. Velazquez
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Velazquez:

Thank you for your letter regarding recent developments in the reform of the over-the-counter (OTC) derivatives market. I have and continue to be a strong proponent for addressing the systemic risk inherent in the OTC derivatives market, and I support reforms that would encourage the trading of derivatives on federally regulated exchanges or clearing through central counterparties (CCPs).

As compared with OTC derivatives, derivatives traded on exchanges and suitably structured CCPs will tend to be simpler and more standardized, and have both greater liquidity and greater certainty of timely payment. These attributes are beneficial to the end users of these products who have a legitimate need to hedge risks arising in the normal course of business, and to the stability of the financial system as a whole.

Needed reforms include strong capital requirements to address the higher credit and liquidity risks associated with OTC derivatives, while recognizing the risk reduction benefits of exchanges and some CCPs. Other needed reforms include enhanced market transparency, substantially improved data capture so that regulators can better identify and address risk concentrations, and strong protections against market manipulation and fraud, including specific position limits where necessary. Moreover, market participants involved in derivatives activities should not be able to avoid such requirements by their choice of regulator or other creative legal structuring of the activity.

I appreciate the efforts of the Financial Services Committee to ensure regulators have the authority to implement reform of the OTC derivatives market. If you have any questions, please do not hesitate to call me at (202) 898-6974 or Eric Spitler, Director, Office of Legislative Affairs at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 21, 2009

Honorable Patrick T. McHenry
House of Representatives
Washington, D.C. 20515

Dear Congressman McHenry:

Thank you for your letter regarding recent developments in the reform of the over-the-counter (OTC) derivatives market. I have and continue to be a strong proponent for addressing the systemic risk inherent in the OTC derivatives market, and I support reforms that would encourage the trading of derivatives on federally regulated exchanges or clearing through central counterparties (CCPs).

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 21, 2009

Honorable Gregory W. Meeks
House of Representatives
Washington, D.C. 20515

Dear Congressman Meeks:

Thank you for your letter regarding recent developments in the reform of the over-the-counter (OTC) derivatives market. I have and continue to be a strong proponent for addressing the systemic risk inherent in the OTC derivatives market, and I support reforms that would encourage the trading of derivatives on federally regulated exchanges or clearing through central counterparties (CCPs).

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 21, 2009

Honorable Leonard Lance
House of Representatives
Washington, D.C. 20515

Dear Congressman Lance:

Thank you for your letter regarding recent developments in the reform of the over-the-counter (OTC) derivatives market. I have and continue to be a strong proponent for addressing the systemic risk inherent in the OTC derivatives market, and I support reforms that would encourage the trading of derivatives on federally regulated exchanges or clearing through central counterparties (CCPs).

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 21, 2009

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

Dear Congressman Campbell:

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Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 21, 2009

Honorable Michael N. Castle
House of Representatives
Washington, D.C. 20515

Dear Congressman Castle:

Thank you for your letter regarding recent developments in the reform of the over-the-counter (OTC) derivatives market. I have and continue to be a strong proponent for addressing the systemic risk inherent in the OTC derivatives market, and I support reforms that would encourage the trading of derivatives on federally regulated exchanges or clearing through central counterparties (CCPs).

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[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 21, 2009

Honorable Paul W. Hodes
House of Representatives
Washington, D.C. 20515

Dear Congressman Hodes:

Thank you for your letter regarding recent developments in the reform of the over-the-counter (OTC) derivatives market. I have and continue to be a strong proponent for addressing the systemic risk inherent in the OTC derivatives market, and I support reforms that would encourage the trading of derivatives on federally regulated exchanges or clearing through central counterparties (CCPs).

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Sincerely,

[redacted]

Sheila C. Bair

LA09-900

Congress of the United States

Washington, DC 20515

June 2, 2009

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

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

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

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

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

The Department of Treasury recently announced Regulatory Reform to Over-The-Counter (OTC) Derivatives. To contain systemic risks, Secretary Timothy Geithner stated that standardized OTC derivatives should be cleared through regulated central counterparties (CCPs) and that regulators will need to ensure that CCPs impose "robust" margin requirements and other necessary risk controls. Additionally, he explained that regulated financial institutions should be encouraged to make greater use of regulated exchange-traded derivatives.

As you know, other regulators, including Securities and Exchange Commission Chair Mary Schapiro and Commodity Futures Trading Commission Chair-designee Gary Gensler also have advocated moving OTC derivatives to central clearing. Since the recommendations of the Secretary and other regulators have not yet been implemented, we would like to know if any barriers exist, legislative, regulatory or market-related, that have delayed the movement toward clearing OTC derivatives through an approved CCP and that encourage the use of exchange-traded instruments wherever possible.

In 1999, the President's Working Group made recommendations about the need for clearing systems for OTC derivatives. However, ten years later, as Chairman Bernanke said in a March 10, 2009 speech, the "infrastructure for managing these derivatives is still not as efficient or transparent as that for more mature instruments," despite efforts by the Federal Reserve Bank of New York since September 2005 to improve arrangements for clearing and settling credit default swaps and OTC derivatives.

In the United States, in order for a CCP to be approved it must adhere to strict standards applied by U.S. regulators regarding its operation, financial resources, requirements for participants, and other rules, including the maintenance of a guarantee fund. Regulators have acknowledged that the use of a CCP provides transparency to the market and provides better tools for regulators to monitor institutional risk.

The Federal Reserve, Securities and Exchange Commission and Commodity Futures Trading Commission have all licensed and approved clearinghouses for several OTC derivatives products within the last several months. However, simply making clearinghouses available will not bring about any real reduction of risk from derivatives. We believe that there is little dispute that the approximately $160 billion in taxpayer funds that have been paid or committed to prop up AIG could have been saved if the credit default swaps written by AIG had been subject to stringent clearinghouse rules on margin, collateral, and risk management.

As you are aware, the Financial Services Committee is preparing to develop legislation to address the shortcomings in regulatory authority that allowed the current financial crisis to take place. With this in mind, we would like your insight regarding the following questions: 1) Do you believe you have the necessary regulatory authority to ensure the clearing of standardized OTC derivatives; 2) What incentives can you offer the institutions you regulate to encourage greater use of exchange-traded instruments; and 3) Will mandating the clearing of standardized OTC derivatives have a detrimental effect on the bespoke market?

We look forward to receiving your response and working closely with you to ensure the safety and soundness of our financial system while maintaining the competitiveness of the U.S. financial markets.

Sincerely,

[redacted]
Michael N. Castle
Member of Congress

[redacted]
Gregory W. Meeks
Member of Congress

[redacted]
John Campbell
Member of Congress

[redacted]
Paul W. Hodes
Member of Congress

[redacted]
Leonard Lance
Member of Congress

[redacted]
Nydia M. Velázquez
Member of Congress

[redacted]
Patrick T. McHenry
Member of Congress

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

Office of Legislative Affairs

July 21, 2009

Honorable Henry C. "Hank" Johnson, Jr.
House of Representatives
Washington, D.C. 20515

Dear Congressman Johnson:

Thank you for your letter to Chairman Bair on behalf of the Rockdale County Tax Commissioner, Mr. Daniel Gray.

On December 5, 2008, the Georgia Department of Banking and Finance closed First Georgia Community Bank, Jackson, Georgia and named the Federal Deposit Insurance Corporation receiver. As receiver, the FDIC has a statutory responsibility to the uninsured depositors and creditors of a failed bank to minimize losses by obtaining the maximum recovery from the assets of the receivership.

The Division of Resolutions and Receiverships (DRR) contacted Mr. Gray to discuss Rockdale County's claim for unpaid taxes on the twenty-six (26) properties collateralizing certain loans issued by First Georgia Community Bank. In May 2009, after verifying that none of the homes were owner-occupied, the FDIC foreclosed on twenty-two of these properties. The FDIC recorded deeds on the foreclosed properties on June 2, 2009. The four remaining properties are owned by entities other than the receiver or the former bank. Currently, the FDIC is processing a payment for $72,766.19 to cover the property taxes owed and billed to the receiver by the Rockdale County Tax Office, and payment should be completed within the next seven business days.

In addition to base taxes, interest on the taxes will be paid provided that such payments are not exempted under our statutory guidelines, for example, if the interest is determined to be so confiscatory as to be in the nature of a penalty. The FDIC is exempted from the payment of penalties and fines associated with real property taxes.

If Mr. Gray has additional questions, he may contact Mr. Victor M. Robert of DRR's ORE and Marketing group. Mr. Robert will be pleased to assist him and can be reached at (972) 761-8322.

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

Sincerely,

[redacted]

Eric J. Spitler
Director
Office of Legislative Affairs

LA 69-962

HENRY C. "HANK" JOHNSON, JR.
4TH DISTRICT, GEORGIA

COMMITTEES:
ARMED SERVICES
JUDICIARY
SMALL BUSINESS

Congress of the United States
House of Representatives
Washington, DC 20515—1004

SUBCOMMITTEES:
AIR AND LAND FORCES
STRATEGIC FORCES

COURTS, INTERNET, AND INTELLECTUAL PROPERTY
COMMERCIAL AND ADMINISTRATIVE LAW
CRIME, TERRORISM, AND HOMELAND SECURITY

FINANCE AND TAX
RURAL AND URBAN ENTREPRENEURSHIP

June 19, 2009

FDIC
JUN 17 2009
OFFICE OF LEGISLATIVE AFFAIRS

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

Dear Chairwoman Bair:

According to a March 6th letter to the Rockdale County, Georgia Tax Commissioner, the Federal Deposit Insurance Corporation (FDIC), currently acting as the receiver of First Georgia Community Bank, stated that it cannot pay local taxes on 26 properties previously held by the bank until the properties have been sold. These properties account for over $90,000 in unpaid taxes with 41 percent of this money going to pay for county services and 58 percent going to pay for the county public school system. The Rockdale County Tax Commissioner contacted my office regarding FDIC's decision. He is asking that we research this matter.

In these difficult economic times, this decision by FDIC seems especially harsh since under the American Recovery and Reinvestment Act (ARRA), the Federal government is moving to provide significant funding to alleviate state and local budget cuts because the President and Congress understand the immediate and drastic impact of such cuts on local communities.

In his letter, the Tax Commissioner stated the county is "already suffering from state and federal funding budget cuts and unfunded mandates in addition to diminishing revenues due to the faltering economy. It would be extremely helpful if the Federal Government, …would please pay any outstanding taxes owed to our local government."

I am asking that you investigate the FDIC's decision in this matter and, if possible, provide some relief to Rockdale County. I appreciate your taking the time to address this issue and look forward to your response. With best personal regards, I remain

Very truly yours,

[redacted]

Henry C. "Hank" Johnson, Jr.
Member of Congress

WASHINGTON OFFICE
1133 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
PHONE (202) 225-1605
FAX (202) 226-0691

SOUTH DISTRICT OFFICE
5700 HILLANDALE DRIVE, SUITE 110
LITHONIA, GA 30058
PHONE (770) 987-2291
FAX (770) 987-8721

NORTH DISTRICT OFFICE
3469 LAWRENCEVILLE HIGHWAY, SUITE 205
TUCKER, GA 30084
PHONE (770) 939-2016
FAX (770) 939-3763

LA09-1119

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

OFFICE OF THE CHAIRMAN

July 22, 2009

Honorable Jim Costa
House of Representatives
Washington, D.C. 20515

Dear Congressman Costa:

Thank you for your support of the Federal Deposit Insurance Corporation's establishment of an Advisory Committee on Community Banking. I especially appreciate your referral of Dennis R. Woods, President and Chief Executive Officer of United Security Bank, Fresno, California. We believe this Advisory Committee will provide the FDIC with valuable input on the issues facing community and rural financial institutions.

Again, thank you for your interest and the referral of Mr. Woods. If you have further questions regarding the Advisory Committee on Community Banking, please feel free to contact me at (202) 898-6962.

Sincerely,

[redacted]

Paul Nash
Deputy for External Affairs

LA09-1119

JIM COSTA
20TH DISTRICT, CALIFORNIA

EMAIL: congressmanjimcosta@mail.house.gov
WEB PAGE: www.house.gov/costa

COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES
CHAIRMAN
SUBCOMMITTEE ON
WATER AND POWER

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

COMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON
CONSERVATION, CREDIT, ENERGY AND RESEARCH
SUBCOMMITTEE ON
HORTICULTURE AND ORGANIC FARMING
SUBCOMMITTEE ON
LIVESTOCK, DAIRY AND POULTRY

COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON
EUROPE
SUBCOMMITTEE ON
MIDDLE EAST AND SOUTH ASIA

FDIC
JUL 15 2009
OFFICE OF LEGISLATIVE AFFAIRS

July 9, 2009

The Honorable Sheila C. Bair
Chairman of the Board
Federal Deposit Insurance Corporation
550 17th Street, NW Room # MB-6028
Washington, D.C. 20429-0002

Dear Chairman Bair:

This letter serves to express my recommendation that Dennis R. Woods be appointed to a seat on the Advisory Committee on Community Banking which was recently approved by your Board of Directors. This recommendation is based on my longstanding professional and personal relationship with Dennis Woods and his extensive work in the community banking arena.

As president and CEO of the United Security Bank in Fresno, CA, he oversees 11 bank branches, four loan centers, and one financial services office in Fresno, Madera, Kern, and Santa Clara Counties, employing more than 150 people. In fact, under his leadership United Security Bank has consistently received the highest bank ratings for safety and soundness.

On a personal level, I have known Dennis for many years. During this time I have found him to be creative and committed. He takes an active role in the community, participating in charity endeavors and forging relationships with a broad spectrum of individuals throughout the region. His commitment to Fresno's downtown revitalization effort and urban renewal goals make him stand out among his peers. He is an active participant in the community and a true believer that banks can be more than simple financial instruments.

WASHINGTON OFFICE:
1314 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
PHONE: (202) 225-3341
FAX: (202) 225-9308

DISTRICT OFFICE:
855 M STREET, SUITE 940
FRESNO, CA 93721
PHONE: (559) 495-1620
FAX: (559) 495-1027

DISTRICT OFFICE:
2700 M STREET, SUITE 225
BAKERSFIELD, CA 93301
PHONE: (661) 869-1620
FAX: (661) 869-1027

Given the extraordinary demands that face the financial services industry, the committee must be comprised of leaders with diverse backgrounds. Dennis Woods would bring extensive knowledge, an impeccable work ethic, and a host of unique banking perspectives to the table. I appreciate your consideration of my recommendation of Dennis Woods. If you have any questions, please do not hesitate to contact me.

Sincerely,

[redacted]

JIM COSTA
Member of Congress

CC:

Mr. Paul M. Nash
Deputy Chairman for External Affairs
The Federal Deposit Insurance Commission
550 17th Street, NW Room # MB-6124
Washington, DC 20429-0002

LA09-1083

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 24, 2009

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

Dear Mr. Chairman:

Thank for your letter about reports of credit card issuers raising interest rates on credit card balances without proper justification. I share your concern about such reports given the provisions of the Credit Card Accountability Responsibility and Disclosure (Credit CARD) Act and the economic pressures that continue to mount on many financially strained consumers.

Protecting consumers is a top priority for the Federal Deposit Insurance Corporation, and we strongly support the provisions of the Credit CARD Act. The FDIC is working to help the institutions we supervise prepare to comply with this critical piece of consumer protection legislation, and we have directed our examination staff to ensure institutions comply with this law.

To ensure FDIC-supervised institutions understand their responsibilities under this law, we are distributing the interim Credit CARD regulations that the Federal Reserve issued on July 15, 2009, along with guidance highlighting the repricing provisions and other important requirements. This guidance will remind banks about the requirements relating to reviewing accounts on which the annual percentage rate has been increased since January 1, 2009, and that the FDIC will take appropriate action to address repricing or other practices by individual institutions when we determine such practices are or may be unfair or deceptive or otherwise not in compliance with laws or regulations.

The FDIC has long focused on preventing abusive credit card practices. Dedicated staff investigates all complaints received about FDIC-supervised credit card lenders, and we take strong action to remedy any violations of law or regulations. During the past several years we pursued enforcement actions resulting in major settlements against several credit card issuers for deceptive or unfair practices in violation of Section 5 of the Federal Trade Commission Act, including unfair practices involving repricing of existing balances.

I assure you the FDIC is committed to ensuring that individuals and businesses dealing with the institutions we supervise are treated fairly, and we will continue to use our legal authority to pursue any entity that engages in unfair or deceptive acts or practices.

Thank you for your leadership on this important issue. If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

LA 09-1083

United States Senate

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

WASHINGTON, DC 20510-6075

FDIC

JUL 9 2009

OFFICE OF LEGISLATIVE AFFAIRS

July 9, 2009

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

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

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

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

Michael E. Fryzel
Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

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

I am disturbed by recent reports in the press that some credit card companies are allegedly raising interest rates on their customers' existing balances without justification. As you know, the Credit Card Accountability Responsibility Disclosure (Credit CARD) Act enacted in May will protect cardholders by curbing such abusive practices. Press reports indicate, however, that some companies are raising rates now to get around these consumer protection provisions before they take effect and before regulations can be promulgated to enforce them.

I urge you to do everything in your power to protect cardholders from these abusive practices. In particular, as the Federal Reserve drafts regulations and the agencies enforce them going forward, I invite your diligent attention to Section 101(c) of the Credit CARD Act which will require credit card companies to review every six months any account where the interest rate has been raised since January 1, 2009, and reduce the rate if the review indicates that the cardholder has become less risky or the circumstances that warranted the increase are no longer present.

In addition to any future interest rate increases, all interest rate increases that have taken place this year will become subject to the mandatory 6-month review. I ask you to immediately notify all credit card companies under your respective jurisdictions that they will be held accountable for all interest rate increases during this time period and will be subject to the review requirement once it takes effect.

This January look-back was designed to address reports of credit card companies arbitrarily raising rates after the December 2008 promulgation of the UDAP regulations that would have taken effect in July 2010, and to deter companies from doing the same before the provisions of the Credit CARD Act take effect.

However, the look-back provision will serve as a deterrent only if it will be implemented and enforced effectively. I therefore expect the Federal Reserve to draft regulations that provide clear, robust requirements for the review of rate increases, and the agencies enforcing the regulations to hold the credit card companies strictly accountable for conducting thorough reviews and decreasing rates where warranted.

Congress will closely monitor both the development of the implementing regulations and their enforcement.

I understand that not all credit card companies under your respective jurisdictions have engaged in abusive practices. Nonetheless, experience has shown we must maintain vigilant watch to protect the financial interests of the American people. I hope that you will take seriously the need to protect cardholders from abuses by credit card companies, and I look forward to working with you on this important task.

Sincerely,

[redacted]

CHRISTOPHER J. DODD
Chairman

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 24, 2009

Honorable Steven C. LaTourette
Representative, U.S. Congress
1 Victoria Place, Room 320
Painesville, Ohio 44077

Dear Congressman LaTourette:

Thank you for your letter on behalf of the [redacted] regarding the Federal Deposit Insurance Corporation's Public Private Investment Fund and the related Legacy Loan Program.

Mr. James R. Wigand, Deputy Director, Division of Resolutions and Receiverships wrote directly to the company's principals, Messrs. [redacted] A copy of Mr. Wigand's letter is enclosed.

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

Sincerely,

[redacted]

Sheila C. Bair

Enclosure

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

Division of Resolutions and Receiverships

July 16, 2009

[redacted]
Principals
[redacted]
[redacted] Michigan [redacted]

Dear Messrs. [redacted]

Thank you for your letter of April 10, 2009 providing feedback on the Public-Private Investment Fund (PPIF) and the related Legacy Loan Program (LLP). The Federal Deposit Insurance Corporation (FDIC) recognizes and appreciates the integral roll the private sector plays in the valuation and disposition of real estate on a national basis. Your valued feedback has been added to the LLP public comments page on the FDIC website: http://www.fdic.gov/llp/LLPcommentsPage3.html

In a press release dated June 3, 2009, the FDIC formally announced that the development of the Legacy Loans Program would continue, but that a previously planned pilot sale of assets by open banks would be postponed. As originally contemplated, the LLP would have primarily involved the purchase and management of loans from participating institutions. Under this structure, the private sector teams would assume all aspects of management and disposition responsibility for the loans in partnership with the federal government. Since the original announcement of the PPIP program, economic conditions have improved such that many institutions have been able to raise capital, reflecting confidence in our banking system, without having to sell bad assets through the LLP. As a consequence, banks and their supervisors will take additional time to assess the magnitude and timing of troubled assets sales as part of our larger efforts to strengthen the banking sector.

The revised program announced June 3rd still contemplates a partnering arrangement, albeit using receivership assets currently under management at the FDIC. In either scenario, however, the expertise of the private sector will most certainly be employed by the asset management teams in the course of their valuation and ultimate disposition of the aforementioned assets.

The FDIC announced that it will test the funding mechanism contemplated by the LLP in a sale of receivership assets this summer.

We also note [redacted] background in commercial real estate including acquisition, investment advisory, structured capital placement/advisory and brokerage of multi-tenant residential real estate assets and, as a result, we are including the following information on purchasing FDIC assets and/or becoming a contractor.

If you are interested in purchasing FDIC assets:

- For loans or real estate more information can be found at http://www.fdic.gov/buying/index.html.
- For capital market securities and/or structured transactions, you must register as a qualified purchaser. To obtain additional information on becoming a qualified purchaser, please contact [redacted] (Franchise and Asset Marketing, Division of Resolutions and Receiverships).

If you are interested in becoming a government contractor, you may register as both as a federal government contractor and an FDIC contractor. The following are contractor registration websites:

- Central Contractor Registration (CCR): the CCR is the primary registrant database for the U.S. Federal Government. CCR collects, validates, stores and disseminates data in support of agency acquisition missions.
  http://www.ccr.gov/
- The FDIC Contractor Resource List: the FDIC maintains a Contractor Resource List of potential contractots to assist with work related to failing financial institutions and associated requirements. The FDIC will use information from the Contractor Resource List, as well as other sources, when developing solicitation lists for future contract requirements.
  http://www.fdic.gov/buying/goods/contractorresourcelist.html

We recognize the potential benefit to working in partnership with the private sector and appreciate your interest in the FDIC.

Sincerely,

[redacted]

James R. Wigand
Deputy Director
Division of Resolutions and Receiverships

LA09-1071

FDIC

JUN 30 2009

OFFICE OF LEGISLATIVE AFFAIRS

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

Dear Chairman Bair:

My constituent, [redacted] has contacted me about the Legacy Loan Programs, which is part of the FDIC's proposed Public Private Investment Program.

I have enclosed a copy of a report [redacted] has prepared for the FDIC regarding its guaranteed debt program for the Legacy Loans Programs (LLP). My constituent was hopeful in becoming a resource as Congress and the FDIC craft a guaranteed debt program for the LLP.

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

Very truly yours,

Congressman Steven LaTourette

SCL/jcy

FOIA Redaction/Fact Sheet

At this point in this document 15 page(s) have/has been withheld totally because of the following:

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

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

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

____

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COMMENTS: ______________________________

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LA09-1074

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 27, 2009

Honorable Todd Tiahrt
House of Representatives
Washington, D.C. 20515-1604

Dear Congressman Tiahrt:

Thank you for sharing your concerns about credit availability during these challenging economic times. We agree that community banks are the engine that will drive the economic recovery. It is always nice to hear from a fellow Kansan. We also acknowledge that credit availability has become somewhat constrained due to a tightening of underwriting standards. The FDIC understands the impact of these issues on borrowers and continues to encourage FDIC-supervised institutions to keep credit available on prudent terms.

As you may be aware, the FDIC provides banks with considerable flexibility in managing customer relationships and loan portfolios. We do not instruct banks to curtail prudent lending activities, restrict lines of credit to strong borrowers, or require appraisals on performing loans unless an advance of new funds is being considered. For these reasons, the FDIC joined the other federal banking agencies in issuing an interagency policy statement on November 12, 2008, *Interagency Statement on Meeting the Needs of Creditworthy Borrowers*, which encourages banks to fulfill their economic role as credit intermediaries to creditworthy businesses and consumers. The Statement encourages banks to continue making prudent loans and work with borrowers experiencing difficulties. The FDIC strongly endorses the principles of the Statement and issued a Financial Institution Letter to that effect. (Copies of these documents are enclosed.) In addition to this formal guidance to the industry and examiners, we have shared this message orally with staff on numerous occasions. We believe that through these various forms of communication we are sending a clear message that the FDIC encourages banks to make prudent loans in their local markets.

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

Sincerely,

[redacted]

Sheila C. Bair

Enclosure

FDIC

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

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

INTERAGENCY STATEMENT ON MEETING THE NEEDS OF CREDITWORTHY BORROWERS

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

Distribution:
FDIC-Supervised Institutions

Suggested Routing:
Chief Executive Officer
Senior Credit Officer

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

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

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

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

Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226.

Highlights:

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

The agencies expect all banking organizations to fulfill their fundamental role in the economy as intermediaries of credit to businesses, consumers, and other creditworthy borrowers. Lending to creditworthy borrowers provides sustainable returns for the organization and is constructive for the economy as a whole.

The agencies urge all lenders and servicers to adopt systematic, proactive, and streamlined mortgage loan modification protocols and to review troubled loans using these protocols. Lenders and servicers should first determine whether a loan modification would enhance the net present value of the loan before proceeding to foreclosure, and they should ensure that loans currently in foreclosure have been subject to such analysis.

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

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

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

Press Releases

Joint Release

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Office of Thrift Supervision

For Immediate Release November 12, 2008

Interagency Statement on Meeting the Needs of Creditworthy Borrowers

The Department of the Treasury, the Federal Deposit Insurance Corporation, and the Federal Reserve have recently put into place several programs designed to promote financial stability and to mitigate procyclical effects of the current market conditions. These programs make new capital widely available to U.S. financial institutions, broaden and increase the guarantees on bank deposit accounts and certain liabilities, and provide backup liquidity to U.S. banking organizations. These efforts are designed to strengthen the capital foundation of our financial system and improve the overall functioning of credit markets.

The ongoing financial and economic stress has highlighted the crucial role that prudent bank lending practices play in promoting the nation's economic welfare. The recent policy actions are designed to help support responsible lending activities of banking organizations, enhance their ability to fund such lending, and enable banking organizations to better meet the credit needs of households and business. At this critical time, it is imperative that all banking organizations and their regulators work together to ensure that the needs of creditworthy borrowers are met. As discussed below, to support this objective, consistent with safety and soundness principles and existing supervisory standards, each individual banking organization needs to ensure the adequacy of its capital base, engage in appropriate loss mitigation strategies and foreclosure prevention, and reassess the incentive implications of its compensation policies.

Lending to creditworthy borrowers
The agencies expect all banking organizations to fulfill their fundamental role in the economy as intermediaries of credit to businesses, consumers, and other creditworthy borrowers. Moreover, as a result of problems in financial markets, the economy will likely become increasingly reliant on banking organizations to provide credit formerly provided or facilitated by purchasers of securities. Lending to creditworthy borrowers provides sustainable returns for the lending organization and is constructive for the economy as a whole.

It is essential that banking organizations provide credit in a manner consistent with prudent lending practices and continue to ensure that they consider new lending opportunities on the basis of realistic asset valuations and a balanced assessment of borrowers' repayment capacities. However, if underwriting standards tighten excessively or banking organizations retreat from making sound credit decisions, the current market conditions may be exacerbated, leading to slower growth and potential damage to the economy as well as the long-term interests and profitability of individual banking organizations. Banking organizations should strive to maintain healthy credit relationships with businesses, consumers, and other creditworthy borrowers to enhance their own financial well-being as well as to promote a sound economy. The agencies have directed supervisory staffs to be mindful of the procyclical effects of an excessive tightening of credit availability and to encourage banking organizations to practice economically viable and appropriate lending activities.

Strengthening capital
Maintaining a strong capital position complements and facilitates a banking organization's capacity and willingness to lend and bolsters its ability to withstand uncertain market conditions. Banking organizations should focus on effective and efficient capital planning and longer-term capital maintenance. An effective capital planning process requires a banking organization to assess both the risks to which it is exposed and the risk management processes in place to manage and mitigate those risks; evaluate its capital adequacy relative to its risks; and consider the potential impact on earnings and capital from economic downturns. Further, an effective capital planning process requires a banking organization to recognize losses on bank assets and activities in a timely manner; maintain adequate loan loss provisions; and adhere to prudent dividend policies.

In particular, in setting dividend levels, a banking organization should consider its ongoing earnings capacity, the adequacy of its loan loss allowance, and the overall effect that a dividend payout would have on its cost of funding, its capital position, and, consequently, its ability to serve the expected needs of creditworthy borrowers,. Banking organizations should not maintain a level of cash dividends that is inconsistent with the organization's capital position, that could weaken the organization's overall financial health, or that could impair its ability to meet the needs of creditworthy borrowers. Supervisors will continue to review the dividend policies of individual banking organizations and will take action when dividend policies are found to be inconsistent with sound capital and lending policies.

Working with mortgage borrowers
The agencies expect banking organizations to work with existing borrowers to avoid preventable foreclosures, which can be costly to both the organizations and to the communities they serve, and to mitigate other potential mortgage-related losses. To this end, banking organizations need to ensure that their mortgage servicing operations are sufficiently funded and staffed to work with borrowers while implementing effective risk-mitigation measures.

Given escalating mortgage foreclosures, the agencies urge all lenders and servicers to adopt systematic, proactive, and streamlined mortgage loan modification protocols and to review troubled loans using these protocols. Lenders and servicers should first determine whether a loan modification would enhance the net present value of the loan before proceeding to foreclosure, and they should ensure that loans currently in foreclosure have been subject to such analysis. Such practices are not only consistent with sound risk management but are also in the long-term interests of lenders and servicers, as well as borrowers.

Systematic efforts to address delinquent mortgages should seek to achieve modifications that result in mortgages that borrowers will be able to sustain over the remaining maturity of their loan. Supervisors will fully support banking organizations as they work to implement effective and sound loan modification programs. Banking organizations that experience challenges in implementing loss mitigation efforts on their mortgage portfolios or in making new loans to borrowers should work with their primary supervisors to address specific situations.

Structuring compensation
Poorly-designed management compensation policies can create perverse incentives that can ultimately jeopardize the health of the banking organization. Management compensation policies should be aligned with the long-term prudential interests of the institution, should provide appropriate incentives for safe and sound behavior, and should structure compensation to prevent short-term payments for transactions with long-term horizons. Management compensation practices should balance the ongoing earnings capacity and financial resources of the banking organization, such as capital levels and reserves, with the need to retain and provide proper incentives for strong management. Further, it is important for banking organizations to have independent risk management and control functions.

The agencies expect banking organizations to regularly review their management compensation policies to ensure they are consistent with the longer-run objectives of the organization and sound lending and risk management practices.

The agencies will continue to take steps to promote programs that foster financial stability and mitigate procyclical effects of the current market conditions. However, regardless of their participation in particular programs, all banking organizations are expected to adhere to the principles in this statement. We will work with banking organizations to facilitate their active participation in those programs, consistent with safe and sound banking practices, and thus to support their central role in providing credit to support the health of the U. S. economy.

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Media Contacts

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Fed	Dave Skidmore	(202) 452-2955
OTS	Bill Ruberry	(202) 906-6677
OCC	Bob Garsson	(202) 874-5770

FDIC-PR-115-2008

LA09-1074

TODD TIAHRT
4TH DISTRICT, KANSAS

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEES:
LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION
RANKING MEMBER
DEFENSE

Congress of the United States
House of Representatives
Washington, DC 20515–1604

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WASHINGTON, DC 20515
(202) 225-6216 • FAX: (202) 225-3489

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WICHITA, KS 67202
(316) 262-8992 • FAX: (316) 262-5309

E-MAIL VIA WEB SITE:
WWW.TIAHRT.HOUSE.GOV

July 2, 2009

FDIC
JUL - 8 2009
OFFICE OF LEGISLATIVE AFFAIRS

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

Dear Chairwoman Bair,

As our nation continues to press forward through this economic downturn, it is essential that our nation's lenders be given the ability to work with individual borrowers in ways that will help both parties weather the storm. In the past few months, you have made comments of your willingness to work with banks across the nation to ensure their ability to lend and maintain relationships with their current customers.

The reality, however, is different. I have heard from banks all across the State of Kansas who are finding it frustratingly difficult to work with responsible borrowers because of the Federal Deposit Insurance Corporation's field supervisors onerous conditions. Bankers tell me they are fearful that commercial loans, especially commercial real estate loans, are held to such an unreasonable standard that there is no such thing as a "good" commercial loan. Loans that are performing are required to be "written off".

Traditional banks, like we have in Kansas, will be the engine that drives the recovery of our economy. But for that to happen, they must be able to make reasonable loans in their communities. We all understand that values have dropped considerably in recent months, and loan requests and decisions must reflect this new reality. However, bankers continually tell me that the language they hear from Washington, DC, from the President to the leadership of the banking regulatory agencies, does not coincide with what happens during an actual examination.

I ask that you take swift actions to ensure that FDIC's message to work with local banks isn't being hindered by your field representatives through onerous and unnecessary requirements.

Thank you for your attention to this matter.

Respectfully,

[redacted]

Todd Tiahrt

LR09-1053

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 28, 2009

Honorable Robert Menendez
United States Senate
Washington, D.C. 20510

Dear Senator Menendez:

Thank you for your letter regarding an application filed on behalf of [redacted] under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program (TLGP). [redacted] seeks to participate in the TLGP and issue up to $5 billion of guaranteed debt.

The TLGP was implemented last year during a time of unprecedented disruption in the credit markets when it was vital to preserve the nation's confidence in its financial institutions and in the economy. The preamble to the final Rule implementing the program states clearly that the primary purposes of the TLGP are to provide liquidity to the inter-bank lending market and promote stability in the unsecured funding market for banks. The TLGP was designed to enable the existing bank holding companies and certain thrift holding companies to rollover expiring unsecured debt. The decision to permit bank holding companies to participate in the TLGP was extraordinary. Accordingly, the FDIC carefully evaluates the merits of new holding company TLGP applications, and approvals have been very rare.

Although I cannot comment on specific TLGP applications, I can assure you that the FDIC considers every application in a timely and thorough manner. In appropriate cases, the application process is extended to give applicants the opportunity to supplement their application or to address issues of concern. This ensures that all applicants receive fair consideration.

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

Sincerely,

[redacted]

Sheila C. Bair

LA09-1147

ROBERT MENENDEZ
NEW JERSEY

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
BUDGET
ENERGY AND NATURAL RESOURCES
FINANCE
FOREIGN RELATIONS

United States Senate

WASHINGTON, DC 20510-3005

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(202) 224-4744

One Gateway Center
11th Floor
Newark, NJ 07102
(973) 645-3030

208 White Horse Pike
Suite 18-19
Barrington, NJ 08007
(856) 757-5353

July 21, 2009

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

Dear Chairman Bernanke:

I write to ask the Federal Reserve to grant the attached application of [redacted] to acquire [redacted], and given the circumstances surrounding this request, I urge you to expedite this review, as they need a decision before this coming Friday, July 24th.

The situation is urgent because of the deteriorating financial condition of [redacted] and as I understand it, there's a strong likelihood that the FDIC will put the bank into receivership by next Friday, July 24th unless the merger receives Federal Reserve approval by then. The application was submitted to the Federal Reserve in May.

Both of these financial institutions are minority-owned and important to New Jersey and the under-banked Hispanic community in particular. I hope that there is a way to resolve the difficult financial situation of [redacted] without having to use taxpayer money. To that end, I urge you to support the proposed acquisition of [redacted] in order to avoid an action by the FDIC. Putting [redacted] into receivership would send yet another negative message to consumers and investors and further impact our fragile economy.

Thank you for your consideration, and I look forward to your response.

[redacted]
ROBERT MENENDEZ
United States Senator

Cc:

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

LA09-1113

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

July 28, 2009

Honorable Albio Sires
House of Representatives
Washington, D.C. 20515

Dear Congressman Sires:

Thank you for your letter regarding an application filed on behalf of [redacted] under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program (TLGP). [redacted] seeks to participate in the TLGP and issue up to $5 billion of guaranteed debt.

The TLGP was implemented last year during a time of unprecedented disruption in the credit markets when it was vital to preserve the nation's confidence in its financial institutions and in the economy. The preamble to the final Rule implementing the program states clearly that the primary purposes of the TLGP are to provide liquidity to the inter-bank lending market and promote stability in the unsecured funding market for banks. The TLGP was designed to enable the existing bank holding companies and certain thrift holding companies to rollover expiring unsecured debt. The decision to permit bank holding companies to participate in the TLGP was extraordinary. Accordingly, the FDIC carefully evaluates the merits of new holding company TLGP applications, and approvals have been very rare.

Although I cannot comment on specific TLGP applications, I can assure you that the FDIC considers every application in a timely and thorough manner. In appropriate cases, the application process is extended to give applicants the opportunity to supplement their application or to address issues of concern. This ensures that all applicants receive fair consideration.

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

Sincerely,

[redacted]

Sheila C. Bair

ALBIO SIRES
13TH DISTRICT, NEW JERSEY

COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEES:
WESTERN HEMISPHERE
ASIA, THE PACIFIC, AND THE GLOBAL ENVIRONMENT
EUROPE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES:
HIGHWAYS AND TRANSIT
RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

WEBSITE: HTTP://WWW.HOUSE.GOV/SIRES

Congress of the United States
House of Representatives
Washington, DC 20515-3013

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PERTH AMBOY CITY HALL
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PERTH AMBOY, NJ 08861
(732) 442-0610

Congressman Albio Sires
New Jersey - 13

1024 Longworth HOB
Washington, D.C. 20515

Ph: 202-225-7919 *Fax: 202-226-0792*

FAX COVER SHEET

DATE: July 14, 2009 No. of pages (including cover): 3

TO: Chairman Bair Fax # 202-898-3745

FROM:

(X) Congressman Sires
( ) Judi Wolford
( ) Kate Fink
( ) Jessica Lawrence
( ) Arielle Botter
( ) Gene Martorony
( ) Devon Barnhart
( ) Hannah Brown
( ) Kaylan Koszela

Remarks:
hard copy being mailed also

*If there are problems with this transmission, please call 202-225-7919

ALBIO SIRES
13TH DISTRICT, NEW JERSEY

COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEES:
WESTERN HEMISPHERE
EUROPE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES:
HIGHWAYS AND TRANSIT
RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

WEBSITE: HTTP://WWW.HOUSE.GOV/SIRES

Congress of the United States
House of Representatives
Washington, DC 20515-3013

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(732) 442-0610

July 14, 2009

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

Dear Chairman Bair:

I am writing to inquire about the status of [redacted] January 2009 application to participate in the Temporary Liquidity Guarantee Program (TLGP). I understand that applications for TLGP by newly eligible institutions are considered on a case by case basis and according to the parameters established in the final rule released on November 26, 2008. According to that rule, you will consider "the extent of the financial activity of the bank holding company; the strength, from a ratings perspective of the issuer of the obligations that will be guaranteed; and the size and extent of the activities of the organization".

[redacted] is headquartered in [redacted] and has provided needed capital to the communications, healthcare, finance, manufacturing, retail, technology and transportation industries for nearly 100 years. [redacted] employs nearly [redacted] U.S-based employees in [redacted] With nearly $70 billion in assets, [redacted] offers a comprehensive set of financial products and services to small- and medium-sizes businesses and entrepreneurs in the "middle market". As you are likely aware, small- and medium-sized businesses account for more than $6 trillion in sales annually across the nation and employ 32 million Americans. [redacted] was the number one Small Business Administration 7(a) volume leader for nine consecutive years, and the number one Small Business Administration 7(a) volume lender to women-, veteran-, and minority-owned business for five consecutive years. [redacted] became a bank holding company in [redacted] in order to qualify for federal assistance in order to continue its lending to middle-market businesses. The Treasury Department provided $2.3 billion to [redacted] through the TARP program as a result of this change in charter.

Without access to the TLGP, [redacted] may fail, representing the largest bank collapse since regulators seized Washington Mutual in September 2008. This would have a significant impact on the economy of New Jersey, New York, Connecticut, Massachusetts, and Virginia, where they have a large presence. Failure of [redacted] would cut off capital to many important businesses across the county at a time when the economy can bear no more job losses. If allowed to fail, American taxpayers would lose the $2.3 billion given to [redacted] in the TARP program.

In short, I believe [redacted] meets the criteria for participation in TLGP. I urge you to consider [redacted] application and to notify [redacted] as quickly as possible with your decision. As you are very aware, the program is set to expire at the end of October so time is of the essence. Additionally, I would like to better understand the process and timeframe in which you consider such applications. Thank you for your consideration of my request.

Sincerely,

[redacted]

Albio Sires
Member of Congress

cc: Secretary Geithner
Rahm Emanuel

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 29, 2009

Honorable Earl Blumenauer
House of Representatives
Washington, D.C. 20515

Dear Congressman Blumenauer:

Thank you for your support of the Federal Deposit Insurance Corporation's establishment of an Advisory Committee on Community Banking. I agree that this Advisory Committee will provide the FDIC with valuable input on the issues facing community and rural financial institutions. I especially appreciate your referral of Ms. Patricia Moss of Cascade Bancorp in Oregon.

As you know, the FDIC advised interested parties in a recent Federal Register notice to submit information to the FDIC by July 3. Enclosed is a copy of the Federal Register notice. If she has not already done so, we encourage Ms. Moss to contact us at CommunityBanking@fdic.gov.

Again, thank you for your interest and the referral of Ms. Moss. If you have further questions regarding the Advisory Committee on Community Banking, please feel free to contact me at (202) 898-6974 or Paul Nash, Deputy for External Affairs, at (202) 898-6962.

Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 29, 2009

Honorable Jeff Merkley
United States Senate
Washington, D.C. 20510

Dear Senator Merkley:

Thank you for your support of the Federal Deposit Insurance Corporation's establishment of an Advisory Committee on Community Banking. I agree that this Advisory Committee will provide the FDIC with valuable input on the issues facing community and rural financial institutions. I especially appreciate your referral of Ms. Patricia Moss of Cascade Bancorp in Oregon.

As you know, the FDIC advised interested parties in a recent Federal Register notice to submit information to the FDIC by July 3. Enclosed is a copy of the Federal Register notice. If she has not already done so, we encourage Ms. Moss to contact us at CommunityBanking@fdic.gov.

Again, thank you for your interest and the referral of Ms. Moss. If you have further questions regarding the Advisory Committee on Community Banking, please feel free to contact me at (202) 898-6974 or Paul Nash, Deputy for External Affairs, at (202) 898-6962.

Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

June 29, 2009

Honorable Kurt Schrader
House of Representatives
Washington, D.C. 20515

Dear Congressman Schrader:

Thank you for your support of the Federal Deposit Insurance Corporation's establishment of an Advisory Committee on Community Banking. I agree that this Advisory Committee will provide the FDIC with valuable input on the issues facing community and rural financial institutions. I especially appreciate your referral of Ms. Patricia Moss of Cascade Bancorp in Oregon.

As you know, the FDIC advised interested parties in a recent Federal Register notice to submit information to the FDIC by July 3. Enclosed is a copy of the Federal Register notice. If she has not already done so, we encourage Ms. Moss to contact us at CommunityBanking@fdic.gov.

Again, thank you for your interest and the referral of Ms. Moss. If you have further questions regarding the Advisory Committee on Community Banking, please feel free to contact me at (202) 898-6974 or Paul Nash, Deputy for External Affairs, at (202) 898-6962.

Sincerely,

[redacted]

Sheila C. Bair

LA09-1217

BARNEY FRANK
4TH DISTRICT, MASSACHUSETTS

2252 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2104
(202) 225-5931

29 CRAFTS STREET
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NEWTON, MA 02458
(617) 332-3920

Congress of the United States
House of Representatives
Washington, DC

558 PLEASANT STREET
ROOM 309
NEW BEDFORD, MA 02740
(508) 999-6462

THE JONES BUILDING
29 BROADWAY
SUITE 310
TAUNTON, MA 02780
(508) 822-4796

July 29, 2009

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

Dear Madam Chair,

As I mentioned to you at our last hearing, when I was in Las Vegas and met with a group of bankers convened by my colleague Shelley Berkley, I heard disturbing reports that there appears to be a disconnect in some important areas between the policies you have set at the national level, with which I am in strong agreement on the whole, and the way in which they are carried out at the regional and local levels. I understand that for those who are in the examination field that this is a difficult time, and many of them have been unfairly criticized for not having been able to foresee what no one foresaw. But the consequence of all this is that I believe special efforts are needed to bring the practices of the FDIC into full compliance with the approaches you have outlined which are important both to protect safety and soundness and to help us get the economy back to a situation in which credit flows freely.

Given the depths of these issues, my strong recommendation is that you try to find time to go to Las Vegas and meet with the banking community of Nevada because I don't think this can adequately be done in any other way. I realized that there are great demands on your time and I can assure you that I have deflected many other requests that I have received to try to persuade you to appear somewhere, but this one does seem to me very important in terms of preserving the credibility of the federal regulatory structure, and of helping the economy in an area where it is very much needed. The best way to do this, if you are able to do it, would be for your office to coordinate with Congresswoman Berkley and I am sending her a copy of this letter. I'm also enclosing a copy of the letter I received from the banking community in Las Vegas, which gives an explanation of the issues that concern them.

[redacted]

BARNEY FRANK

ENCLOSURES

BF/la

July 20, 2009

The Honorable Barney Frank
2252 Rayburn House Office Building
Washington, DC 20515

The Honorable Shelley Berkley
405 Cannon House Office Building
Washington, DC 20515

Dear Congressman Frank and Congresswoman Berkley:

Thank you both for the time that you spent with us on Monday, July 6. We appreciate your interest in the issues that Nevada bankers are having with the FDIC.

At the meeting you asked for more details of the various events that we referred to. They are set out below.

October 1, 2008, meeting with FDIC concerning closure of Silver State Bank and First National Bank of Nevada. The published meeting agenda was "... to discuss the orderly disposal of the bank's assets, how to minimize the impact on other banks involved in participations and the impact on the market in general."

FDIC personnel involved:
Robert Schwarlose, Manager, Resolutions and Closings was handling First National Bank of Nevada (FNB)
Donna LaRue, Franchise and Asset Marketing Specialist was handling Silver State Bank (SSB)

At the meeting, both of the above parties committed that participation loans with local banks would be handled on a "business as usual basis" to not jeopardize other participating banks. As Jackie DeLaney of Sun West Bank explained, this was not the case. The FDIC would not make its pro-rata share of scheduled construction loan advances so that a nearly completed commercial office development, which had office buildings sold and in escrow, could be finished. By not funding the corresponding construction draws, the project was liened for non-payment and the sale/escrow could not close, causing the buyers to walk away, the collapse of the development and greater losses for all concerned. In this transaction, Sun West Bank would have been substantially paid off. Instead, Sun West Bank has a large non-performing loan and 10 months later they are no further along on a resolution of this loan with the FDIC.

This is just one example of the difficulty participating banks are facing when an institution is taken over. It is not the only example of participation loans with local banks in Nevada that have been challenged by the FDIC receivership of two banks (SSB & FNB). There are others that have had similar difficulties and treatment.

Clearly the regulations in these situations need to be looked at and better defined with a different set of rules and mandates so as not to damage other FDIC insured participating institutions. These issues may in-fact be given consideration by the FDIC going forward and we ask that our congressional leadership take a hard look at changes to prevent unnecessary harm to other banks, borrowers, participating parties, like the contractors in the above case, and the community as a whole.

CDARS treatment by examiners. In establishing a new premium assessment structure last February, the FDIC Board of Directors acknowledged that CDARS Reciprocal deposits differed from traditional brokered deposits. In effect, the FDIC exempted CDARS deposits from the adjusted brokered deposit ratio for financially healthy banks. At the time, it said it did so in part because CDARS Reciprocal deposits, "may be a more stable source of funding for healthy banks than other types of brokered deposits . . ." The agency cited more than 3,000 comment letters, most noting that CDARS reciprocal deposits were a stable source of funding because the deposits were local, not out of market. Many also noted that interest rates on CDARS CDs reflect local market rates because the rates are set by a bank, not by a third- party broker. With CDARS deposits there is no deposit broker; bankers act as their own broker. In fact, the firm that offers the CDARS service to banks has told us that 80 percent of CDARS customers are located within 25 miles of the bank with which they do business, that CDARS customers roll-over their deposits 83 percent of the time, and that the average interest rates on CDARS CDs nationally are virtually the same as interest rates on all CDs, by maturity. They are not "hot money" seeking the highest interest rates in a national market. They exhibit volatility similar to that of core deposits. Because CDARS Reciprocal may be a more stable source of funding, the FDIC in February established a separate line on the call report to break out CDARS Reciprocal deposits from traditional core deposits.

While the FDIC Board of Directors and staff at headquarters has drawn an official distinction between stable CDARS and volatile traditional brokered deposits, the distinction is often ignored in the field. For example, as Pete Atkinson of Black Mountain Community Bank told you, the examiner in his May 2009 examination classified the bank's CDARS Reciprocal as "volatile deposits." Pete supplied the EIC with a breakdown of the $26 million in CDARS deposits: 35 depositors, all Nevada residents, 34 of whom reside in the Las Vegas area. Some have been depositors since 2000, 6 have only CDARS accounts while the other 29 have other deposit accounts with the bank, some with 10 – 13 accounts with the bank, 12 have loans with the bank. Many were customers who moved money from money market accounts and CDs to CDARS to keep FDIC coverage. These are not the characteristics of traditional brokered deposits. These are established local customer relationships. Even so, the EIC concurred in the downgraded liquidity rating assigned by the examiner -- ignoring the actual circumstances. Citing excessive reliance on CDARS reciprocal deposits as a contributing factor, the EIC further downgraded the bank's liquidity rating.

Examiner attitude toward examinations. A number of bankers are recounting recent examination experiences in which the level of harshness, the non-negotiable nature of examiner decisions and even a high degree of distrust of bankers has been exhibited. The bankers hear from Washington that banks should be working with borrowers in this difficult time but examiners have no appreciation or regard for the bankers' role in the community and the importance of relations with customers. To say the banking community is receiving mixed messages is an understatement.

As we discussed when you were in Las Vegas, you can't fix these problems retroactively. However, we think that they are endemic, the field staff is deciding how things will be either disregarding directives from Washington, DC or interpreting them as they believe. For instance, Ms. Bair was quoted in the New York Times as saying that "during the golden age of banking it seems as if we all lost our compass. But we have seen the errors of our ways." Examiners take this to mean, leave no opening for criticism at a later date. At the same time, leadership is telling Congress what they think you want to hear. Without corrective action, the problems will continue.

Instead of the agency maximizing the return for investors of failed banks by taking a prudent approach to the sale of assets they will depress land and commercial real estate values further through fire sale pricing, forcing more banks to fail. It's as if they have decided that the impact on the FDIC insurance fund from the failure of community banks will not be so severe as to worry them – they will just continue to focus on the "too big to fail" banks and let the others whither on the vine. This approach is not good for the economy and Main Street America and steps need to be taken to change the course.

You suggested that you will ask Sheila Bair to visit bankers in Las Vegas early this fall to hear first hand what is going on. Nevada Bankers look forward to that opportunity.

Thank you for your time and consideration.

Sincerely,

William R. Uffelman
President & CEO
Nevada Bankers Association

LA09-1128

FDIC

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

Office of Legislative Affairs

July 30, 2009

Honorable Walt Minnick
House of Representatives
Washington, D.C. 20515

Dear Congressman Minnick:

Thank you for your letter to San Francisco Regional Director Stan Ivie concerning the recent visitation of [redacted] Idaho. The Federal Deposit Insurance Corporation understands the importance of community banks to local economies7, and we appreciate the opportunity to respond to your concerns.

As you note, the economic conditions in Idaho [redacted] trade area have deteriorated significantly. During a period of rapid deterioration, timely identification of bank problems is critical to the correction of deficiencies and, ultimately, the protection of depositors, which is the FDIC's primary mission. A proactive supervisory approach also helps ensure the long-term health of community banks that spur economic growth by continuing to make credit available in communities across the country.

Although we cannot discuss details of our supervisory communications with the Bank, I can assure you that during the visitation of [redacted] examiners considered the most recent financial information provided by the Bank. In fact, the visitation was extended to ensure additional information provided by the Bank could be reviewed and assessed, particularly with respect to the loan portfolio. We believe the results of the visitation, which have been communicated to the Bank, accurately reflect the Bank's condition.

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

Sincerely,

[redacted]

Eric J. Spitler
Director
Office of Legislative Affairs

WALT MINNICK
[illegible]

1517 [illegible]
[illegible]

MINNICK.HOUSE.GOV

Congress of the United States
House of Representatives
Washington, DC 20515–1201

HOUSE COMMITTEE ON FINANCIAL SERVICES
[illegible]

HOUSE COMMITTEE ON AGRICULTURE
[illegible]

July 13, 2009

Mr. Stan Ivie
San Francisco Regional Director
Federal Deposit Insurance Corporation
25 Jessie Street at Ecker Square
Suite 2300
San Francisco, CA 94105-2780

Dear Mr. Ivie:

I have been contacted by principals of [redacted] Idaho, to discuss various issues relating to its current status with your agency. I am concerned that regulatory actions will have a devastating impact on this community bank and the area it serves. It is my understanding that the Bank was recently the subject of an examination. During the exit review your examiners said there was a strong likelihood that the Bank's regulatory rating ("CAMELS") would be significantly downgraded.

In my meeting with Bank officials, they explained the review process which was undertaken to reach this conclusion. The Bank's officials are concerned that the examiners were unable to develop a fair and complete picture of the Bank's performance and financial status. For example, I am told the visitation team did not consider the most recent valid information when evaluating the Bank's Tier One Capital. Apparently, the examiners used interim numbers rather than the ratios at the end of the quarterly call report.

Despite the extremely difficult economic conditions in its market, I understand that the Bank's staff has worked to solve credit portfolio issues. These efforts included closely working with affected borrowers, restructuring the loans to better match the current cash flows, and performing their normal reviews of credit quality in preparation for their regulatory report requirements. According to its officials, Idaho First had originated no sub-prime mortgages or non-affordable speculative construction loans.

In the event the visitation team's recommendation of a lower rating is approved, I understand that it will have an extremely negative impact on the Bank's ability to acquire new capital this quarter. The threatened decrease in the "CAMELS" rating comes less than four months away from the Bank's full scope exam and in the middle of its capital raising efforts. It puts the Bank at high risk for failing even as its principals work to increase capital. Any official status as a problem bank may also make it difficult for the Bank to qualify for assistance under the Capital Purchase Program ("CPP"). The Bank reportedly has been in close contact with your agency and the State of Idaho Department of Finance to discuss the trends of the Bank and their plans for increasing the capital of the institution.

It is my understanding that, historically, such a rating change has not been done unless in conjunction with the full scope safety and soundness examination, which this Bank is scheduled to undergo beginning in November. Bank officials are concerned that there was insufficient time in the visitation to understand fully the credit portfolio of this Bank and that there were very limited discussions of the adversely graded credits from which an accurate determination might be made.

It is also my understanding that the Bank has applied for CPP investment last October and raised $2.3 million in private capital. The Bank plans to apply again for CPP matching funding as part of their capital plan. The Bank operates in an economically depressed area and avoided toxic loan types. Its loan portfolio is under stress not from poor lending practices, but from the general economic climate of its primary service area. The loss of this Bank, if it is allowed to occur, will be a major factor in deepening the economic decline of an important part of my Congressional District.

Finally, as Congress works with the Administration and the Federal Reserve to maintain and improve liquidity in our economy, I am concerned that regulatory actions not unnecessarily compound the situation. I am inquiring as to the need for this interim rating change regarding the Bank and to encourage your office to review carefully the Bank's ability to qualify for CPP funding.

Very Truly Yours,

[redacted]

Walt Minnick
Member of Congress

cc: Gavin M. Gee, Idaho Department of Finance

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

August 3, 2009

Honorable Carolyn B. Maloney
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Maloney:

Thank you for your interest in the Federal Deposit Insurance Corporation's Legacy Loans Program (LLP), and for sharing your suggestions and analysis promoting the inclusion of Real Estate Owned properties (REO) in the program.

Since the LLP was announced in March, we have been encouraged to see that banks have been able to raise capital without having to sell distressed assets through the LLP. As a result of this renewed investor confidence in the banking system, we have postponed the planned pilot sale of assets by open banks. However, the FDIC is continuing to work on the LLP. The first test using the LLP funding mechanism commenced last week through a sale of receivership assets. The FDIC will analyze the results of this sale to see how the LLP can best further the removal of troubled assets from bank balance sheets, and in turn spur lending to further support the credit needs of the economy.

No decisions have been made regarding specific asset classes that would be eligible for sale through the LLP by open banks. However, REO remains under consideration for inclusion as an eligible asset.

Thank you again for sharing your counsel on this issue. I look forward to continuing to work with Congress toward solving problems in the markets, to stabilize our communities and improve our economy. If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

Congress of the United States
Washington, DC 20515

July 13, 2009

FDIC
JUL 13 2009
OFFICE OF LEGISLATIVE AFFAIRS

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

Dear Chairman Bair:

As Members of the Financial Services Committee, we are writing to encourage you to include Real Estate Owned Properties (REOs) as a priority asset in the Public Private Investment Funds (PPIF) Legacy Loan Program (LLP). We believe that recognizing REO properties as an asset class will help stabilize not only bank portfolios, but also local neighborhoods facing the effects of ever increasing foreclosures. Including REO properties as an asset class will help achieve dual goals of improving the balance sheets of banks, and help establish a much-needed floor on home prices.

Though the increase in home foreclosures had been temporarily abated, it has been creeping back up recently. While improperly utilized mortgage instruments were the main driver of the first wave of increased foreclosures, we fear that in the near future, foreclosures will continue to occur because of the deep recession and high unemployment rate, which conspire to make it increasingly difficult for many homeowners to continue to meet their mortgage payments. As foreclosures increase, banks will be even harder-pressed to manage and dispose of their growing inventory of properties. To date, most banks have been unable or unwilling to sell foreclosed properties in any quantity that will meaningfully reduce their balance sheets, which leaves them with an ever-growing inventory that they must manage. Many banks are not equipped to manage and maintain these often-uninhabited homes, leaving them in a dilapidated state and causing a general blight on communities across the country.

Many companies are attempting to rehabilitate these forgotten properties and reverse the effects on these homes and stabilize these communities. These efforts will increase the overall value of other homes in these neighborhoods, and increase the safety of the community. While this issue was brought to our attention by a New York-based company, the addition of REO properties to the LLP would foster and promote a nation-wide market that would stabilize home values and rejuvenate neighborhoods. Likewise, we understand that the American Bankers Association supports inclusion of REOs in the LLP, as stated in their comments submitted to the Federal Deposit Insurance Corporation (FDIC) on April 9, 2009.

Current government efforts for addressing the increasing number of foreclosed homes, such as the Neighborhood Stabilization Program (NSP) have not shown themselves to be adequate to deal with the growing supply of REO properties, so the positive effects have not been felt as fully as they could otherwise have been with better support and funding. The amount of private investment that can come through PPIF could have a great impact on reducing the supply of REO properties, and bringing about all of these positive and stabilizing effects for

both communities and banking balance sheets. Clearly, this will help achieve the goal of the PPIF while also positively addressing some of the critical housing issues faced by local governments nation-wide.

In conclusion, in light of all of the positive effects that flow from investing in REO properties, we urge you to add REO properties as an asset class under the PPIF LLP pilot program and to support the rehabilitation of not only bank balance sheets, but also of our neighborhoods and communities.

Sincerely,

[redacted]

PETER T. KING
Member of Congress

[redacted]

GARY L. ACKERMAN
Member of Congress

[redacted]

CAROLYN B. MALONEY
Member of Congress

[redacted]

CAROLYN MCCARTHY
Member of Congress

LA09-1095

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

August 3, 2009

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

Dear Mr. Chairman:

Thank you for your recent letter concerning efforts to help people save their homes from foreclosure. As you know, the Federal Deposit Insurance Corporation has actively participated in initiatives to promote loan modifications that will provide at-risk borrowers the opportunity to keep their homes if they are willing and able to continue making their mortgage payments at a lower interest rate. For borrowers with both first and junior lien mortgages on their homes, your letter cites the unwillingness of junior lienholders to accept reasonable compensation for the extinguishment of their liens as a significant impediment to the success of the HOPE for Homeowners Program. You are concerned this unwillingness may be the result of inadequate loan loss allowances on the books of large mortgage servicers who hold junior lien mortgages as assets on their balance sheets.

The FDIC has long emphasized in policy guidance to banks and through its examination process that each institution is responsible for maintaining an allowance for loan and lease losses at a level that is appropriate and determined in accordance with generally accepted accounting principles. When estimating the appropriate level for the allowance, each institution's management is expected to consider all significant factors that affect the collectibility of the loan portfolio as of the evaluation date. These factors may vary over time and from one type of loan, such as junior lien residential mortgages, to another.

We recognize that proper financial reporting by depository institutions in their financial statements and regulatory reports is essential to sound decision-making by investors, creditors, regulators, and the public, as well as by the institutions themselves. Establishing an appropriate amount for the allowance for loan and lease losses requires significant judgment and is one of the most critical accounting estimates for an institution, particularly in the current economic environment. Accordingly, to supplement existing supervisory policies, the FDIC has issued the enclosed guidance to the institutions it supervises. The guidance reminds institutions about certain key loan loss allowance concepts and requirements. In addition, it addresses more specifically allowances for junior lien residential mortgages, including qualitative or environmental factors to be considered in determining an appropriate allowance level for such loans. We believe this guidance should reinforce our ongoing efforts to ensure institutions maintain loan loss allowances at levels that appropriately reflect the impact of relevant current trends and conditions on loan collectibility.

This guidance cautions banks that failure to timely recognize estimated credit losses could delay appropriate loss mitigation activity, such as restructuring junior lien loans to more affordable payments or reducing principal on such loans to facilitate refinancings. Please be assured that my examiners will continue to evaluate the effectiveness of an institution's loss mitigation strategies for loans as part of their assessment of the institution's overall financial condition.

Again, thank you for sharing your concerns, and I hope this information is helpful. If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

Enclosure

FDIC

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

Financial Institution Letter
FIL-43-2009
August 3, 2009

ALLOWANCE FOR LOAN AND LEASE LOSSES
Residential Mortgages Secured by Junior Liens

Summary: When estimating credit losses on each group of loans with similar risk characteristics, an institution should consider its historical loss experience on the group, adjusted for changes in trends, conditions, and other relevant factors in the current economic environment that affect repayment of the loans in the group as of the allowance evaluation date. The need to consider all significant factors that affect collectibility is especially important for loans secured by junior liens on 1-4 family residential properties (junior lien loans) in areas where there have been declines in the value of such properties. See the attached "Allowances for Loan and Lease Losses in the Current Economic Environment: Loans Secured by Junior Liens on 1-4 Family Residential Properties."

Distribution:
FDIC-Supervised Institutions

Suggested Routing:
Chief Executive Officer
Chief Financial Officer
Chief Credit Officer

Related Topics:
- Interagency Statement on the Allowance for Loan and Lease Losses
- Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions

Attachment:
Allowances for Loan and Lease Losses in the Current Economic Environment: Loans Secured by Junior Liens on 1-4 Family Residential Properties

Contact:
FDIC Regional Accountant or Robert Storch, Chief Accountant, Division of Supervision and Consumer Protection, on 202-898-8906 or rstorch@fdic.gov.

Note:
FDIC financial institution letters (FILs) may be accessed from the FDIC's Web site at www.fdic.gov/news/news/financial/2009/index.html.

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

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

Highlights:

- At least quarterly, each institution must analyze the collectibility of its loans held for investment and maintain an allowance for loan and lease losses (ALLL) at a level that is appropriate and determined in accordance with generally accepted accounting principles.
- An appropriate ALLL covers estimated credit losses on individually evaluated loans that are determined to be impaired and on groups of loans with similar risk characteristics that are collectively evaluated for impairment.
- After determining the appropriate historical loss rate for each group of junior lien loans with similar risk characteristics, management should consider those current qualitative or environmental factors that are likely to cause the estimated credit losses on these loans as of the ALLL evaluation date to differ from the group's historical loss experience.
- Failure to timely recognize estimated credit losses could delay appropriate loss mitigation activity, such as restructuring junior lien loans to more affordable payments or reducing principal on such loans to facilitate refinancings. Examiners will continue to evaluate the effectiveness of an institution's loss mitigation strategies for loans as part of their assessment of the institution's overall financial condition.

Allowances for Loan and Lease Losses in the Current Economic Environment: Loans Secured by Junior Liens on 1-4 Family Residential Properties

Allowance Concepts and Requirements

The Interagency Policy Statement on the Allowance for Loan and Lease Losses, issued by the federal financial institution regulatory agencies in December 2006,[1] states that the allowance for loan and lease losses (ALLL)

> represents one of the most significant estimates in an institution's financial statements and regulatory reports. Because of its significance, each institution has a responsibility for developing, maintaining, and documenting a comprehensive, systematic, and consistently applied process for determining the amounts of the ALLL and the provision for loan and lease losses (PLLL). To fulfill this responsibility, each institution should ensure controls are in place to consistently determine the ALLL in accordance with GAAP [i.e., generally accepted accounting principles], the institution's stated policies and procedures, management's best judgment, and relevant supervisory guidance.
>
> As of the end of each quarter, or more frequently if warranted, each institution must analyze the collectibility of its loans and leases held for investment (hereafter referred to as "loans") and maintain an ALLL at a level that is appropriate and determined in accordance with GAAP. [Footnote omitted.]

An appropriate ALLL covers estimated credit losses on:

- Loans that an institution individually evaluates and determines to be impaired under Statement of Financial Accounting Standards No. 114, *Accounting by Creditors for Impairment of a Loan*;[2] and
- Groups of loans with similar risk characteristics that the institution evaluates collectively for impairment under Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* (FAS 5).[3]

According to the Interagency Policy Statement, the term "estimated credit losses" means an estimate of the current amount of loans that it is probable the institution will be unable to collect given facts and circumstances as of the evaluation date. Estimates of credit losses should reflect consideration of all significant factors that affect the collectibility of the portfolio as of the evaluation date.[4]

The Interagency Policy Statement further notes that changes in the level of the ALLL should be directionally consistent with changes in the factors, taken as a whole, that evidence credit losses,

[1] http://www.fdic.gov/news/news/financial/2006/fil06105a.pdf.
[2] In the Financial Accounting Standards Board's Accounting Standards Codification™, see Section 310-10-35, Receivables – Overall – Subsequent Measurement.
[3] In the Accounting Standards Codification™, see Subtopic 450-20, Contingencies – Loss Contingencies.
[4] Thus, under GAAP, the purpose of the ALLL is not to absorb all of the risk in the loan portfolio, but to cover probable credit losses that have already been incurred.

keeping in mind the characteristics of an institution's loan portfolio. In this regard, if declining credit quality trends relevant to the types of loans in an institution's portfolio are evident, which is generally the case in the current economic environment, the ALLL level as a percentage of the portfolio should generally increase, barring exceptionally high charge-off activity.

In particular, institutions are reminded that, when estimating credit losses on each group of loans with similar risk characteristics under FAS 5, they should consider their historical loss experience on the group, *adjusted for changes in trends, conditions, and other relevant factors* that affect repayment of the loans in the group as of the ALLL evaluation date.

<u>Considerations Related to Loans Secured by Junior Liens on 1-4 Family Residential Properties</u>

The need to consider all significant factors that affect the collectibility of loans is especially important for loans secured by junior liens on 1-4 family residential properties, both closed-end and open-end, in areas where there have been declines in the value of such properties. Thus, consistent with the Interagency Policy Statement, after determining the appropriate historical loss rate for each group of junior lien loans with similar risk characteristics, an institution's management should consider those current qualitative or environmental factors that are likely to cause the estimated credit losses on these loans as of the ALLL evaluation date to differ from the group's historical loss experience.

As noted in the Interagency Policy Statement, these qualitative or environmental factors include, but are not limited to, changes in the volume and severity of past due loans in each group of junior lien loans and changes in economic and business conditions and other developments that affect the collectibility of the junior lien loans. Furthermore, given the unique nature of junior lien loans, other factors that an institution should take into account would include, for example:

- Changes in the repayment status of the junior lien borrowers' loans secured by first (and any other more senior) liens on the same 1-4 family residential properties, including the extent and severity of delinquencies and the volume of senior lien loan modifications that represent troubled debt restructurings, regardless of whether the junior lien loans themselves are current or past due;
- Changes in the value of the junior lien borrowers' underlying real estate collateral, including the extent to which these borrowers' more senior lien loan balances, or the combined balances of the more senior lien loans and the institution's junior lien loan, currently exceed the value of the underlying real estate; and
- The institution's policies regarding the initiation of foreclosure action on junior lien loans and the submission of bids on foreclosure sales initiated by more senior lienholders when the value of the underlying real estate collateral is insufficient to adequately protect the institution's junior lien position.

The FDIC recognizes that determining the appropriate level for the ALLL for each group of loans with similar risk characteristics under FAS 5 is inevitably imprecise and requires a high degree of management judgment. Nevertheless, delaying the recognition of estimated credit losses on junior lien loans secured by 1-4 family residential properties by failing to properly consider the current effect of more senior liens on the collectibility of an institution's existing junior lien loans is an inappropriate application of GAAP. Additional supervisory action may also be warranted based on the magnitude of the deficiencies in this aspect of the institution's ALLL process. Furthermore, the failure to timely recognize estimated credit losses could delay appropriate loss mitigation activity, such as restructuring junior lien loans to more affordable payments or reducing principal on such loans to facilitate refinancings. Examiners will continue to evaluate the effectiveness of an institution's loss mitigation strategies for loans as part of their assessment of the institution's overall financial condition.

LA09-1106

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

August 3, 2009

Honorable Peter T. King
House of Representatives
Washington, D.C. 20515

Dear Congressman King:

Thank you for your interest in the Federal Deposit Insurance Corporation's Legacy Loans Program (LLP), and for sharing your suggestions and analysis promoting the inclusion of Real Estate Owned properties (REO) in the program.

Since the LLP was announced in March, we have been encouraged to see that banks have been able to raise capital without having to sell distressed assets through the LLP. As a result of this renewed investor confidence in the banking system, we have postponed the planned pilot sale of assets by open banks. However, the FDIC is continuing to work on the LLP. The first test using the LLP funding mechanism commenced last week through a sale of receivership assets. The FDIC will analyze the results of this sale to see how the LLP can best further the removal of troubled assets from bank balance sheets, and in turn spur lending to further support the credit needs of the economy.

No decisions have been made regarding specific asset classes that would be eligible for sale through the LLP by open banks. However, REO remains under consideration for inclusion as an eligible asset.

Thank you again for sharing your counsel on this issue. I look forward to continuing to work with Congress toward solving problems in the markets, to stabilize our communities and improve our economy. If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

Congress of the United States
Washington, DC 20515

July 13, 2009

FDIC
JUL 13 2009
OFFICE OF LEGISLATIVE AFFAIRS

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

Dear Chairman Bair:

As Members of the Financial Services Committee, we are writing to encourage you to include Real Estate Owned Properties (REOs) as a priority asset in the Public Private Investment Funds (PPIF) Legacy Loan Program (LLP). We believe that recognizing REO properties as an asset class will help stabilize not only bank portfolios, but also local neighborhoods facing the effects of ever increasing foreclosures. Including REO properties as an asset class will help achieve dual goals of improving the balance sheets of banks, and help establish a much-needed floor on home prices.

Though the increase in home foreclosures had been temporarily abated, it has been creeping back up recently. While improperly utilized mortgage instruments were the main driver of the first wave of increased foreclosures, we fear that in the near future, foreclosures will continue to occur because of the deep recession and high unemployment rate, which conspire to make it increasingly difficult for many homeowners to continue to meet their mortgage payments. As foreclosures increase, banks will be even harder-pressed to manage and dispose of their growing inventory of properties. To date, most banks have been unable or unwilling to sell foreclosed properties in any quantity that will meaningfully reduce their balance sheets, which leaves them with an ever-growing inventory that they must manage. Many banks are not equipped to manage and maintain these often-uninhabited homes, leaving them in a dilapidated state and causing a general blight on communities across the country.

Many companies are attempting to rehabilitate these forgotten properties and reverse the effects on these homes and stabilize these communities. These efforts will increase the overall value of other homes in these neighborhoods, and increase the safety of the community. While this issue was brought to our attention by a New York-based company, the addition of REO properties to the LLP would foster and promote a nation-wide market that would stabilize home values and rejuvenate neighborhoods. Likewise, we understand that the American Bankers Association supports inclusion of REOs in the LLP, as stated in their comments submitted to the Federal Deposit Insurance Corporation (FDIC) on April 9, 2009.

Current government efforts for addressing the increasing number of foreclosed homes, such as the Neighborhood Stabilization Program (NSP) have not shown themselves to be adequate to deal with the growing supply of REO properties, so the positive effects have not been felt as fully as they could otherwise have been with better support and funding. The amount of private investment that can come through PPIF could have a great impact on reducing the supply of REO properties, and bringing about all of these positive and stabilizing effects for

both communities and banking balance sheets. Clearly, this will help achieve the goal of the PPIF while also positively addressing some of the critical housing issues faced by local governments nation-wide.

In conclusion, in light of all of the positive effects that flow from investing in REO properties, we urge you to add REO properties as an asset class under the PPIF LLP pilot program and to support the rehabilitation of not only bank balance sheets, but also of our neighborhoods and communities.

Sincerely,

[redacted]

PETER T. KING
Member of Congress

[redacted]

GARY L. ACKERMAN
Member of Congress

[redacted]

CAROLYN B. MALONEY
Member of Congress

[redacted]

CAROLYN MCCARTHY
Member of Congress

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

August 3, 2009

Honorable Carolyn McCarthy
House of Representatives
Washington, D.C. 20515

Dear Congresswoman McCarthy:

Thank you for your interest in the Federal Deposit Insurance Corporation's Legacy Loans Program (LLP), and for sharing your suggestions and analysis promoting the inclusion of Real Estate Owned properties (REO) in the program.

Since the LLP was announced in March, we have been encouraged to see that banks have been able to raise capital without having to sell distressed assets through the LLP. As a result of this renewed investor confidence in the banking system, we have postponed the planned pilot sale of assets by open banks. However, the FDIC is continuing to work on the LLP and will be prepared to offer it in the future, if needed, to cleanse bank balance sheets and bolster their ability to support the credit needs of the economy. Our next step is to test the funding mechanism contemplated by the LLP in a sale of receivership assets this summer.

No decisions have been made regarding specific asset classes that will be eligible for sale through the LLP. However, REO remains under consideration for inclusion as an eligible asset.

Thank you again for sharing your counsel on this issue. I look forward to continuing to work with Congress toward solving problems in the markets, to stabilize our communities and improve our economy. If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

Congress of the United States
Washington, DC 20515

July 13, 2009

FDIC

JUL 13 2009

OFFICE OF LEGISLATIVE AFFAIRS

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

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both communities and banking balance sheets. Clearly, this will help achieve the goal of the PPIF while also positively addressing some of the critical housing issues faced by local governments nation-wide.

In conclusion, in light of all of the positive effects that flow from investing in REO properties, we urge you to add REO properties as an asset class under the PPIF LLP pilot program and to support the rehabilitation of not only bank balance sheets, but also of our neighborhoods and communities.

Sincerely,

[redacted]

PETER T. KING
Member of Congress

[redacted]

GARY L. ACKERMAN
Member of Congress

[redacted]

CAROLYN B. MALONEY
Member of Congress

[redacted]

CAROLYN MCCARTHY
Member of Congress

LA09-1096

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

August 3, 2009

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

Dear Mr. Chairman:

Thank you for your recent letter concerning efforts to help people save their homes from foreclosure. As you know, the Federal Deposit Insurance Corporation has actively participated in initiatives to promote loan modifications that will provide at-risk borrowers the opportunity to keep their homes if they are willing and able to continue making their mortgage payments at a lower interest rate. For borrowers with both first and junior lien mortgages on their homes, your letter cites the unwillingness of junior lienholders to accept reasonable compensation for the extinguishment of their liens as a significant impediment to the success of the HOPE for Homeowners Program. You are concerned this unwillingness may be the result of inadequate loan loss allowances on the books of large mortgage servicers who hold junior lien mortgages as assets on their balance sheets.

The FDIC has long emphasized in policy guidance to banks and through its examination process that each institution is responsible for maintaining an allowance for loan and lease losses at a level that is appropriate and determined in accordance with generally accepted accounting principles. When estimating the appropriate level for the allowance, each institution's management is expected to consider all significant factors that affect the collectibility of the loan portfolio as of the evaluation date. These factors may vary over time and from one type of loan, such as junior lien residential mortgages, to another.

We recognize that proper financial reporting by depository institutions in their financial statements and regulatory reports is essential to sound decision-making by investors, creditors, regulators, and the public, as well as by the institutions themselves. Establishing an appropriate amount for the allowance for loan and lease losses requires significant judgment and is one of the most critical accounting estimates for an institution, particularly in the current economic environment. Accordingly, to supplement existing supervisory policies, the FDIC has issued the enclosed guidance to the institutions it supervises. The guidance reminds institutions about certain key loan loss allowance concepts and requirements. In addition, it addresses more specifically allowances for junior lien residential mortgages, including qualitative or environmental factors to be considered in determining an appropriate allowance level for such loans. We believe this guidance should reinforce our ongoing efforts to ensure institutions maintain loan loss allowances at levels that appropriately reflect the impact of relevant current trends and conditions on loan collectibility.

This guidance cautions banks that failure to timely recognize estimated credit losses could delay appropriate loss mitigation activity, such as restructuring junior lien loans to more affordable payments or reducing principal on such loans to facilitate refinancings. Please be assured that my examiners will continue to evaluate the effectiveness of an institution's loss mitigation strategies for loans as part of their assessment of the institution's overall financial condition.

Again, thank you for sharing your concerns, and I hope this information is helpful. If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

Enclosure

FDIC

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

Financial Institution Letter
FIL-43-2009
August 3, 2009

ALLOWANCE FOR LOAN AND LEASE LOSSES
Residential Mortgages Secured by Junior Liens

Summary: When estimating credit losses on each group of loans with similar risk characteristics, an institution should consider its historical loss experience on the group, adjusted for changes in trends, conditions, and other relevant factors in the current economic environment that affect repayment of the loans in the group as of the allowance evaluation date. The need to consider all significant factors that affect collectibility is especially important for loans secured by junior liens on 1-4 family residential properties (junior lien loans) in areas where there have been declines in the value of such properties. See the attached "Allowances for Loan and Lease Losses in the Current Economic Environment: Loans Secured by Junior Liens on 1-4 Family Residential Properties."

Distribution:
FDIC-Supervised Institutions

Suggested Routing:
Chief Executive Officer
Chief Financial Officer
Chief Credit Officer

Related Topics:
- Interagency Statement on the Allowance for Loan and Lease Losses
- Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions

Attachment:
Allowances for Loan and Lease Losses in the Current Economic Environment: Loans Secured by Junior Liens on 1-4 Family Residential Properties.

Contact:
FDIC Regional Accountant or Robert Storch, Chief Accountant, Division of Supervision and Consumer Protection, on 202-898-8906 or rstorch@fdic.gov.

Note:
FDIC financial institution letters (FILs) may be accessed from the FDIC's Web site at www.fdic.gov/news/news/financial/2009/index.html.

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

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

Highlights:

- At least quarterly, each institution must analyze the collectibility of its loans held for investment and maintain an allowance for loan and lease losses (ALLL) at a level that is appropriate and determined in accordance with generally accepted accounting principles.
- An appropriate ALLL covers estimated credit losses on individually evaluated loans that are determined to be impaired and on groups of loans with similar risk characteristics that are collectively evaluated for impairment.
- After determining the appropriate historical loss rate for each group of junior lien loans with similar risk characteristics, management should consider those current qualitative or environmental factors that are likely to cause the estimated credit losses on these loans as of the ALLL evaluation date to differ from the group's historical loss experience.
- Failure to timely recognize estimated credit losses could delay appropriate loss mitigation activity, such as restructuring junior lien loans to more affordable payments or reducing principal on such loans to facilitate refinancings. Examiners will continue to evaluate the effectiveness of an institution's loss mitigation strategies for loans as part of their assessment of the institution's overall financial condition.

Congress of the United States
Washington, DC 20510

FDIC

July 10, 2009

JUL 10 2009

OFFICE OF LEGISLATIVE AFFAIRS

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

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

The Honorable John Dugan
Comptroller of the Currency
Office of the Comptroller of the Currency
Administrator of National Banks
Washington, DC 20219

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

The Honorable Michael E. Fryzel
Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Dear Sirs/Madam:

One of our highest priorities as Chairmen, respectively, of the Senate Committee on Banking, Housing, and Urban Affairs and the House of Representatives Financial Services Committee has been to help people save their homes from foreclosure. To do so, we have sought to create adequate tools to address the foreclosure crisis created by the bubble in housing prices, aggressive marketing of risky mortgages, weak underwriting standards, and inadequate regulation.

A key part of this effort was the creation of the HOPE for Homeowners (H4H) program, enacted as part of the Housing and Economic Recovery Act of 2008 (*HERA*), and the improvements made to the program in the Helping Families Save Their Homes Act of 2009. The program is premised on the view, expressed by Federal Reserve Board Chairman Bernanke and others, that the creation of equity for troubled homeowners is likely to be an effective tool for helping families keep their homes and avoid foreclosure.

In recent discussions with servicers, investors in mortgage backed securities, and Administration officials, it has become clear that one of the most significant impediments to the success of H4H is the unwillingness of subordinate lien holders to extinguish their liens as required for participation in this program, even in return for offers of reasonable compensation. This is true despite the fact that these subordinate liens may have minimal economic value.

We understand that the nation's largest mortgage servicers carry on their balance sheets significant volumes of these subordinate liens in the form of closed-end second mortgages or home equity lines of credit. We are concerned that the loss allowances associated with these subordinated liens may be insufficient to realistically and accurately reflect their value, especially in light of the historically poor performance of first lien mortgages and seriously diminished values of the underlying collateral. As you know, the nation has experienced sharp declines in home prices, with further declines expected in many markets. This has resulted in as many as 20 percent of all homeowners having mortgages that exceed the value of the home. These numbers are likely to be much higher in the case of option ARMs and subprime loans.

Many subordinate liens stand behind these mortgages. Carrying these loans at potentially inflated values may contribute to resistance on the part of servicers to negotiate the disposition of these liens, and thus may stand in the way of increasing participation in the H4H program. Inadequate reserving would also overstate the capital position of these institutions at a time when an accurate picture of the capital adequacy of the banking system is crucial.

We urge you and your staff to look into this issue as expeditiously as possible to ensure that we can achieve the vital goal of the H4H to help American families build equity and keep their homes. Please be in contact with us or our staff to review your findings in this area as soon as possible.

Thank you for your prompt attention to this matter.

Sincerely,

[redacted]

CHRISTOPHER DODD
Chairman
Senate Committee on Banking, Housing and Urban Affairs

[redacted]

Chairman
House of Representatives Committee on Financial Services

Allowances for Loan and Lease Losses in the Current Economic Environment: Loans Secured by Junior Liens on 1-4 Family Residential Properties

Allowance Concepts and Requirements

The Interagency Policy Statement on the Allowance for Loan and Lease Losses, issued by the federal financial institution regulatory agencies in December 2006,[1] states that the allowance for loan and lease losses (ALLL)

> represents one of the most significant estimates in an institution's financial statements and regulatory reports. Because of its significance, each institution has a responsibility for developing, maintaining, and documenting a comprehensive, systematic, and consistently applied process for determining the amounts of the ALLL and the provision for loan and lease losses (PLLL). To fulfill this responsibility, each institution should ensure controls are in place to consistently determine the ALLL in accordance with GAAP [i.e., generally accepted accounting principles], the institution's stated policies and procedures, management's best judgment, and relevant supervisory guidance.
>
> As of the end of each quarter, or more frequently if warranted, each institution must analyze the collectibility of its loans and leases held for investment (hereafter referred to as "loans") and maintain an ALLL at a level that is appropriate and determined in accordance with GAAP. [Footnote omitted.]

An appropriate ALLL covers estimated credit losses on:

- Loans that an institution individually evaluates and determines to be impaired under Statement of Financial Accounting Standards No. 114, *Accounting by Creditors for Impairment of a Loan*;[2] and
- Groups of loans with similar risk characteristics that the institution evaluates collectively for impairment under Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* (FAS 5).[3]

According to the Interagency Policy Statement, the term "estimated credit losses" means an estimate of the current amount of loans that it is probable the institution will be unable to collect given facts and circumstances as of the evaluation date. Estimates of credit losses should reflect consideration of all significant factors that affect the collectibility of the portfolio as of the evaluation date.[4]

The Interagency Policy Statement further notes that changes in the level of the ALLL should be directionally consistent with changes in the factors, taken as a whole, that evidence credit losses,

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[2] In the Financial Accounting Standards Board's Accounting Standards Codification™, see Section 310-10-35, Receivables – Overall – Subsequent Measurement.

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[4] Thus, under GAAP, the purpose of the ALLL is not to absorb all of the risk in the loan portfolio, but to cover probable credit losses that have already been incurred.

keeping in mind the characteristics of an institution's loan portfolio. In this regard, if declining credit quality trends relevant to the types of loans in an institution's portfolio are evident, which is generally the case in the current economic environment, the ALLL level as a percentage of the portfolio should generally increase, barring exceptionally high charge-off activity.

In particular, institutions are reminded that, when estimating credit losses on each group of loans with similar risk characteristics under FAS 5, they should consider their historical loss experience on the group, *adjusted for changes in trends, conditions, and other relevant factors* that affect repayment of the loans in the group as of the ALLL evaluation date.

<u>Considerations Related to Loans Secured by Junior Liens on 1-4 Family Residential Properties</u>

The need to consider all significant factors that affect the collectibility of loans is especially important for loans secured by junior liens on 1-4 family residential properties, both closed-end and open-end, in areas where there have been declines in the value of such properties. Thus, consistent with the Interagency Policy Statement, after determining the appropriate historical loss rate for each group of junior lien loans with similar risk characteristics, an institution's management should consider those current qualitative or environmental factors that are likely to cause the estimated credit losses on these loans as of the ALLL evaluation date to differ from the group's historical loss experience.

As noted in the Interagency Policy Statement, these qualitative or environmental factors include, but are not limited to, changes in the volume and severity of past due loans in each group of junior lien loans and changes in economic and business conditions and other developments that affect the collectibility of the junior lien loans. Furthermore, given the unique nature of junior lien loans, other factors that an institution should take into account would include, for example:

- Changes in the repayment status of the junior lien borrowers' loans secured by first (and any other more senior) liens on the same 1-4 family residential properties, including the extent and severity of delinquencies and the volume of senior lien loan modifications that represent troubled debt restructurings, regardless of whether the junior lien loans themselves are current or past due;
- Changes in the value of the junior lien borrowers' underlying real estate collateral, including the extent to which these borrowers' more senior lien loan balances, or the combined balances of the more senior lien loans and the institution's junior lien loan, currently exceed the value of the underlying real estate; and
- The institution's policies regarding the initiation of foreclosure action on junior lien loans and the submission of bids on foreclosure sales initiated by more senior lienholders when the value of the underlying real estate collateral is insufficient to adequately protect the institution's junior lien position.

The FDIC recognizes that determining the appropriate level for the ALLL for each group of loans with similar risk characteristics under FAS 5 is inevitably imprecise and requires a high degree of management judgment. Nevertheless, delaying the recognition of estimated credit losses on junior lien loans secured by 1-4 family residential properties by failing to properly consider the current effect of more senior liens on the collectibility of an institution's existing junior lien loans is an inappropriate application of GAAP. Additional supervisory action may also be warranted based on the magnitude of the deficiencies in this aspect of the institution's ALLL process. Furthermore, the failure to timely recognize estimated credit losses could delay appropriate loss mitigation activity, such as restructuring junior lien loans to more affordable payments or reducing principal on such loans to facilitate refinancings. Examiners will continue to evaluate the effectiveness of an institution's loss mitigation strategies for loans as part of their assessment of the institution's overall financial condition.

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

August 3, 2009

Honorable Gary L. Ackerman
House of Representatives
Washington, D.C. 20515

Dear Congressman Ackerman:

Thank you for your interest in the Federal Deposit Insurance Corporation's Legacy Loans Program (LLP), and for sharing your suggestions and analysis promoting the inclusion of Real Estate Owned properties (REO) in the program.

Since the LLP was announced in March, we have been encouraged to see that banks have been able to raise capital without having to sell distressed assets through the LLP. As a result of this renewed investor confidence in the banking system, we have postponed the planned pilot sale of assets by open banks. However, the FDIC is continuing to work on the LLP. The first test using the LLP funding mechanism commenced last week through a sale of receivership assets. The FDIC will analyze the results of this sale to see how the LLP can best further the removal of troubled assets from bank balance sheets, and in turn spur lending to further support the credit needs of the economy.

No decisions have been made regarding specific asset classes that would be eligible for sale through the LLP by open banks. However, REO remains under consideration for inclusion as an eligible asset.

Thank you again for sharing your counsel on this issue. I look forward to continuing to work with Congress toward solving problems in the markets, to stabilize our communities and improve our economy. If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director of Legislative Affairs, at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

Congress of the United States
Washington, DC 20515

July 13, 2009

FDIC
JUL 13 2009
OFFICE OF LEGISLATIVE AFFAIRS

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

Dear Chairman Bair:

As Members of the Financial Services Committee, we are writing to encourage you to include Real Estate Owned Properties (REOs) as a priority asset in the Public Private Investment Funds (PPIF) Legacy Loan Program (LLP). We believe that recognizing REO properties as an asset class will help stabilize not only bank portfolios, but also local neighborhoods facing the effects of ever increasing foreclosures. Including REO properties as an asset class will help achieve dual goals of improving the balance sheets of banks, and help establish a much-needed floor on home prices.

Though the increase in home foreclosures had been temporarily abated, it has been creeping back up recently. While improperly utilized mortgage instruments were the main driver of the first wave of increased foreclosures, we fear that in the near future, foreclosures will continue to occur because of the deep recession and high unemployment rate, which conspire to make it increasingly difficult for many homeowners to continue to meet their mortgage payments. As foreclosures increase, banks will be even harder-pressed to manage and dispose of their growing inventory of properties. To date, most banks have been unable or unwilling to sell foreclosed properties in any quantity that will meaningfully reduce their balance sheets, which leaves them with an ever-growing inventory that they must manage. Many banks are not equipped to manage and maintain these often-uninhabited homes, leaving them in a dilapidated state and causing a general blight on communities across the country.

Many companies are attempting to rehabilitate these forgotten properties and reverse the effects on these homes and stabilize these communities. These efforts will increase the overall value of other homes in these neighborhoods, and increase the safety of the community. While this issue was brought to our attention by a New York-based company, the addition of REO properties to the LLP would foster and promote a nation-wide market that would stabilize home values and rejuvenate neighborhoods. Likewise, we understand that the American Bankers Association supports inclusion of REOs in the LLP, as stated in their comments submitted to the Federal Deposit Insurance Corporation (FDIC) on April 9, 2009.

Current government efforts for addressing the increasing number of foreclosed homes, such as the Neighborhood Stabilization Program (NSP) have not shown themselves to be adequate to deal with the growing supply of REO properties, so the positive effects have not been felt as fully as they could otherwise have been with better support and funding. The amount of private investment that can come through PPIF could have a great impact on reducing the supply of REO properties, and bringing about all of these positive and stabilizing effects for

both communities and banking balance sheets. Clearly, this will help achieve the goal of the PPIF while also positively addressing some of the critical housing issues faced by local governments nation-wide.

In conclusion, in light of all of the positive effects that flow from investing in REO properties, we urge you to add REO properties as an asset class under the PPIF LLP pilot program and to support the rehabilitation of not only bank balance sheets, but also of our neighborhoods and communities.

Sincerely,

[redacted]

PETER T. KING
Member of Congress

[redacted]

GARY L. ACKERMAN
Member of Congress

[redacted]

CAROLYN B. MALONEY
Member of Congress

[redacted]

CAROLYN MCCARTHY
Member of Congress

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Office of Thrift Supervision

August 4, 2008

Honorable Tom Feeney
House of Representatives
Washington, D.C. 20515

Dear Congressman Feeney:

Thank you for your letter concerning the effect enforcement of the USA PATRIOT Act and the Bank Secrecy Act (BSA) has had upon the banking industry. The federal banking and thrift regulatory agencies (collectively referred to as the Federal Banking Agencies) have various statutory authorities and obligations for regulation, supervision, and enforcement with respect to money laundering and terrorist financing, and we continue to work diligently to fulfill our duties within the existing framework. The Federal Banking Agencies recognize the industry's compliance efforts and remain committed to maintaining a high level of compliance while working to eliminate any unnecessary regulatory burden. We coordinate closely on these issues with other authorities as appropriate, including the Treasury Department's Financial Crimes Enforcement Network (FinCEN) and the Office of Foreign Assets Control (OFAC); state banking supervisors; federal and state regulatory agencies; and law enforcement. To that end, the Federal Banking Agencies have issued significant guidance to improve consistency and transparency in BSA supervision and enforcement.

In 2005, the Federal Banking Agencies created the Federal Financial Institutions Examination Council (FFIEC) BSA/Anti-Money Laundering (AML) Working Group, which includes FinCEN and state banking supervisor representation, to enhance coordination and consistency in BSA/AML examination and training functions. Additionally, we participate extensively in the BSA Advisory Group (BSAAG), an entity created by statute and led by FinCEN, which serves as a venue for discussion of BSA/AML issues among regulators, representatives from industries subject to the BSA, and law enforcement.

Also in 2005, the Federal Banking Agencies issued the *FFIEC BSA/AML Examination Manual (Manual)* which has been updated twice. The release of this interagency Manual marked an important step to ensure the consistent application of the BSA and its implementing regulations to all banking organizations.

Regarding your concerns relating to enforcement activity, we note that 12 U.S.C. 1818(s)(3) requires the Federal Banking Agencies to impose formal enforcement actions for BSA/AML program violations. Last year, to ensure better consistency in BSA/AML enforcement decisions, the Federal Banking Agencies released an *Interagency Statement on Enforcement of BSA/AML Requirements* (Statement). The Statement describes specific circumstances, provides examples under which the Federal Banking Agencies will issue a formal enforcement action, and offers insight into the consideration of those decisions. This Statement reinforced existing enforcement practices regarding BSA/AML compliance as determined by federal statutes and fosters interagency consistency and transparency.

Pertinent to your concerns regarding the impact of compliance upon banking operations, we regularly communicate with supervised institutions through the examination process and in other venues. This ongoing dialogue serves to promote an understanding of supervisory expectations and of current compliance practices and standards as they apply to evolving banking operations. We recognize the considerable challenges institutions have faced in recent years in their ongoing efforts to combat money laundering and terrorist financing and to ensure compliance with requirements imposed by BSA/AML statutes and regulations. We also recognize that supervised institutions have dedicated considerable resources to these compliance efforts and that many banking organizations' senior management and directorates have made BSA/AML compliance efforts a priority.

As you point out, it is necessary to have an appropriate balance between the prevention of misuse of U.S. financial institutions and the maintenance of a strong, competitive U.S. financial system. In instances where the Federal Banking Agencies play a regulatory role, we endeavor to strike such a balance, utilizing input from industry received through the administrative rulemaking process. In discharging our supervisory obligations with respect to individual institutions, we seek to tailor our examination efforts to take into account each institution's risk profile and risk management efforts.

Finally, with regard to the concerns you raise about account closures, it is not a practice for the Federal Banking Agencies to instruct institutions to deny or discontinue offering products and services to banks in foreign nations or to international customers, nor is it our aim to discourage lawful business. Decisions regarding the operations of banking organizations and the customers served, either international or domestic, remain and have always been at the discretion of bank management.

The Federal Banking Agencies take very seriously their responsibility to ensure that banking organizations are effective in their efforts against money laundering and terrorist financing, while reducing or eliminating unnecessary regulatory burden. We hope that this response addresses your concerns.

Sincerely,

[redacted]

Randall S. Kroszner, Governor
Board of Governors of the
Federal Reserve System

[redacted]

Sheila C. Bair, Chairman
Federal Deposit Insurance Corporation

[redacted]

John C. Dugan, Comptroller
Office of the Comptroller of the Currency

[redacted]

John M. Reich, Director
Office of Thrift Supervision

LA08-202

TOM FEENEY
MEMBER OF CONGRESS
24TH DISTRICT, FLORIDA

WASHINGTON OFFICE:
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Congress of the United States
House of Representatives
Washington, DC 20515

ASSISTANT WHIP

COMMITTEE ON
FINANCIAL SERVICES
CAPITAL MARKETS, INSURANCE, AND
GOVERNMENT-SPONSORED ENTERPRISES

FINANCIAL INSTITUTIONS AND
CONSUMER CREDIT

COMMITTEE ON THE JUDICIARY
COURTS, THE INTERNET AND
INTELLECTUAL PROPERTY
DEPUTY RANKING MEMBER

COMMERCIAL AND ADMINISTRATIVE LAW

COMMITTEE ON
SCIENCE AND TECHNOLOGY
SPACE AND AERONAUTICS
DEPUTY RANKING MEMBER

June 23, 2008

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

Federal Reserve Board
Chairman Ben Bernanke
Board of Governors
20th Street & Constitution Ave., NW
Washington, DC 20551

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

Office of Thrift Supervision
Director John Reich
1700 G Street, NW
Washington, DC 20552

Financial Crimes Enforcement
Network
Director James H. Freis
P.O. Box 39
Vienna, VA 22183

Ladies and Gentlemen:

This letter is to bring to your attention our concern regarding the effect that current enforcement policies of the Patriot Act and the Bank Secrecy Act are having on our financial community and our economy. We understand and appreciate your efforts to make sure those for whom you have regulatory responsibility are in compliance with the law. Striking the proper balance between national security and criminal activity on the one hand and an efficient and competitive financial system on the other is not easy but it must be done.

These are difficult times. Our country and our economy face challenges from terrorism, crime, abusive mortgage lending and international competition to name but a few. Many of these challenges have lines of intersection with our financial institutions. The traditional function of financial institutions has been to serve as the conduit for circulation of capital. They now have been given the additional role of an arm of law enforcement. Bankers are now in effect the policemen and their failure to perform that role to the satisfaction of the regulators will subject them to serious punishment.

We do not think there has been sufficient consideration of the consequences of making the financial services industry an arm of enforcement of non-financial

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(407) 208-1106
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(386) 756-9798
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400 SOUTH STREET, SUITE 4-A
TITUSVILLE, FL 32780
(321) 264-6113
FAX: (321) 264-6227

policies. While each of the mandates may make sense to those who are focused on the goal of dealing with drugs, or terrorism, we do not believe that anyone has stopped to analyze the cumulative effect of all these initiatives on the health of the nation's banking system and its ability to carry out its fundamental functions.

We know for a fact that many banks have ceased to do business with banks in foreign nations. The requirement of having to vouch for the systems of banks in other countries, and the requirement to know the political and personal background of foreign customers impose expensive burdens on banks and make them unattractive to legitimate customers. The reputational, financial and regulatory risk of being found wanting in the expectations of regulators and the cost of compliance has driven many banks out of the international markets in the United States.

We understand that there are cases where financial institutions have not lived up to their obligations to comply with the laws and regulation. These cases, however, should not lead to an environment that results in high technical compliance at the expense of achieving the original goal of these laws.

Our laws do not spell out all the detail of regulation. We rely on you to provide that and to carry it out with good judgment and common sense, no easy task.

It is clearly not the purpose of the Patriot Act or the Bank Secrecy Act to lead to the closing of the accounts of legitimate businesses, nor is it their purpose to discourage lawful business. The administration of these acts should not lead to counterproductive results such as defensive compliance. We urge you to make sure that your enforcement policies do not produce consequences never intended by these laws and which are contrary to existing policies and the public interest.

We would appreciate hearing from you what steps are being taken to address these concerns.

Sincerely,

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted]

[redacted]

Crampton, Lali

From: Parker, Lindsey [lindsey.parker@mail.house.gov]

Sent: Wednesday, July 02, 2008 9:52 AM

To: Crampton, Lali

Subject: Signature list

Lali,

Here you go!

Tom Feeney
Robert Wexler
Mario Diaz-Balart
Ileana Ros-Lehtinen
Cliff Stearns
Tim Mahoney
Allen Boyd
Ron Paul
Ginny Brown-Waite
Scott Garrett
Lincoln Diaz-Balart
Jeff Miller
Connie Mack
Adam Putnam
Ander Crenshaw
Vern Buchanan
Spencer Bachus
Randy Neugebauer

Thanks!

Lindsey A. Parker
Office of Representative Tom Feeney (FL-24)

JEB HENSARLING
TEXAS: 5TH DISTRICT

DEPUTY REPUBLICAN WHIP

COMMITTEES:
BUDGET
VICE RANKING MEMBER

FINANCIAL SERVICES
RANKING MEMBER,
SUBCOMMITTEE ON FINANCIAL
INSTITUTIONS AND CONSUMER CREDIT

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

DISTRICT OFFICES:
6510 ABRAMS ROAD
SUITE 243
DALLAS, TX 75231
(214) 349-9996

702 EAST CORSICANA STREET
ATHENS, TX 75751
(903) 675-8288

WEB OFFICE:
www.hensarling.house.gov

August 7, 2009

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

Dear Chairman Bair:

Please find enclosed a copy of a letter I sent to Treasury Secretary Timothy Geithner earlier this week for your reference. Please let me know if you have any questions.

Yours respectfully,

[redacted]

JEB HENSARLING
Member of Congress

FDIC
AUG 7 2009
OFFICE OF LEGISLATIVE AFFAIRS

Congress of the United States
Washington, DC 20515

August 4, 2009

FDIC
AUG 7 2009
OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Timothy Geithner
Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Mr. Secretary:

We were alarmed at allegations that surfaced today regarding your purported intimidation of federal financial regulators, including Federal Reserve Board Chairman Ben Bernanke, who had expressed their concerns about aspects of the President's regulatory reform proposal. In addition to Chairman Bernanke, this group of regulators reportedly also included FDIC Chairman Shelia Bair, Comptroller of the Currency John Dugan, Office of Thrift Supervision Acting Director John Bowman, SEC Chairman Mary Schapiro, CFTC Chairman Gary Gensler, and Fed Governor Daniel Tarullo.

As reported in Wall Street Journal today, and apparently confirmed by several regulators during their testimony before the Senate Banking Committee this morning, last week you summoned these independent regulators to your offices and excoriated them for having voiced their concerns over the Administration's restructuring plans. During the meeting, the Wall Street Journal reported that you "*blasted*" those present in an "*expletive-laced critique*" featuring the "*repeated use of obscenities*" and an "*aggressive posture*" designed to tell those regulators that "*enough is enough*." Such attempted suppression of the judgment of independent regulators has no place in our or any other financial system, and is directly contrary to the Administration's stated goals of increasing transparency and creating a safer, more stable economy.

If these allegations are correct, we are gravely concerned that you would attempt to abuse your position to silence the expert opinions of the very public servants who are charged with ensuring the safety and soundness of our financial system. Federal regulators at the Fed, FDIC, SEC, OCC, CFTC, and OTS are statutorily designated as independent for a specific reason – so that they can provide unbiased assessments to Members of Congress and the public regarding the health of our financial system. Any attempt to intimidate these officials from speaking their minds or to suppress their concerns on issues affecting their agencies because it does not fit into your Administration's political agenda would be a significant abrogation of the public's trust and a substantial deviation from the Administration's commitment to transparency. Thus, we request that you provide an explanation of the nature of this meeting, including what if any limits you attempted to place on these officials as well as a written explanation of Treasury's internal policies and procedures with respect to its interaction with these independent agencies.

Sincerely,

[redacted]

JEB HENSARLING
Member of Congress

[redacted]

SPENCER BACHUS
Member of Congress

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

Office of Legislative Affairs

August 11, 2009

Honorable Susan M. Collins
United States Senate
Washington, D.C. 20510

Dear Senator Collins:

Thank you for your comments concerning the Federal Deposit Insurance Corporation's Proposed Rule on Acquisition Policy. I can assure you we will carefully consider your concerns and those of the other commenters.

We appreciate for your interest in this important issue. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

[redacted]

Eric J. Spitler
Director
Office of Legislative Affairs

LA09-1247
Collins

United States Senate

WASHINGTON, D.C. 20510

August 6, 2009

Sent via email to Comments@FDIC.gov

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

RE: RIN 3064-AD47: Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions

Dear Madame Chairman:

The purpose of this letter is to offer strong support for the proposed statement of policy issued by the Federal Deposit Insurance Corporation (FDIC) clarifying the qualifications that must be met by private capital investors wishing to acquire or invest in a failed United States bank or thrift. While supportive of the provisions as currently drafted, we also recommend strengthening the proposed policy statement related to secrecy law jurisdictions.

Stable and prosperous banks are key to a thriving U.S. economy. Banks provide the credit and financing that is the lifeblood of businesses, communities, and families. They offer critical financial services, such as money transfers, checking accounts, and credit cards, that enable modern society to function. They play a lynchpin role in the housing and real estate markets. They protect savings and retirement nest eggs.

When banks collapse, they disrupt the local economy, impose economic hardships on clients, hurt surrounding communities, and impair other financial institutions and businesses. In addition, a failed bank can undermine confidence in the U.S. financial system as a whole and even precipitate more failures and economic problems.

We have witnessed many bank and thrift failures, from the $150 billion savings & loan crisis during the 1980s, to the wave of bank failures during the early 1990s, to the thrift and bank failures over the last year associated with the current financial crisis. We have seen how those failures, despite government intervention, have disrupted communities and required hundreds of billions of dollars to resolve. This recent history amply demonstrates the importance of the precautions taken by the FDIC to ensure that those wishing to purchase a failed institution understand and accept the public trust involved in owning a U.S. bank or thrift, and have the means, expertise, and commitment needed to ensure a safe and sound banking institution.

Traditionally, banks and thrifts have been owned by holding companies whose investors have included individuals, corporations, and limited liability companies. In recent years, however, additional classes of investors, such as private equity funds and hedge funds, have sought to acquire ownership interests in failed U.S. banks and thrifts. These prospective investors, referred to as "private capital investors" in the proposed guidance, have raised concerns due to perceptions that some may favor short-term investment returns over long-term commitments, and prefer secrecy to the transparency that has traditionally characterized bank ownership in the United States. To allay these concerns, provide notice of the expectations and standards related to U.S. bank ownership, and afford private capital investors the opportunity to acquire ownership interests in a failed U.S. bank or thrift on terms that protect the public, the FDIC has developed needed guidance on some of the qualifications required to become an owner of a failed U.S. insured depository institution.

The proposed guidance presents nine common-sense policies, derived from FDIC standard banking practice and experience, that must be adopted by private capital investors seeking to acquire or invest in a failed U.S. bank or thrift. All are important, but one in particular, regarding secrecy law jurisdictions, should be further strengthened.

Capital Commitment, Source of Strength, and Continuity of Ownership. First and most importantly, the proposed guidance makes it clear that those wishing to take ownership of a failed U.S. bank or thrift must stand ready to make a sustained commitment of capital over a period of years. The proposed policy statement on capital commitment makes it clear that investors must be willing to provide adequate capital at the time of acquisition to ensure an ongoing concern. The following source of strength policy statement makes it plain that, after providing an initial capital outlay, investors must be willing to raise additional capital or borrow funds if needed to ensure an institution's ongoing viability. The proposed policy on continuity of ownership would prohibit investors in a failed U.S. bank or thrift from selling their securities in the institution or its holding company for a minimum of three years, absent FDIC approval. Together, these three safeguards make it clear that acquiring a U.S. bank or thrift should not be viewed as a short-term investment opportunity to turn a quick profit, but must be treated as a long-term commitment requiring steady and significant investment over several years. Only investors willing to meet each of these commitments should be eligible to take ownership of a failed U.S. bank or thrift.

The proposed guidance requests comment on whether three years is the correct period of time to prohibit the sale of relevant securities after acquisition of a failed institution. From our perspective, three years is the minimal acceptable period and may even be too brief. Failed financial institutions typically require several years to regain their footing, and require dedicated funding and support during that period. Since it is not uncommon for private equity funds and hedge funds to make investment commitments of three to five years in other endeavors, this requirement is both reasonable and prudent. Any shorter period would invite investors with shorter time horizons, whose primary goal may be to turn a profit rather than contribute to a stable banking institution willing and able to provide the lending and financial services our communities need. A shorter time period might also encourage more rapid turnover in bank ownership, which would be an unhealthy and undesirable development.

Cross Guarantees. The proposed guidance also contains a policy statement that would require investors seeking to gain an ownership interest in more than one U.S. bank or thrift to pledge their proportionate interests in each such institution to pay for any FDIC insurance loss. This cross guarantee commitment is not only prudent, but would help ensure that private capital investors understand that it is not possible to game the system by segregating or hiding assets from the FDIC in the event of a bank or thrift failure.

Transactions with Affiliates. Next, the proposed guidance contains a policy statement making it clear that a bank or thrift owned by private capital investors may not offer any credit to those investors, their investment funds, investment companies, or affiliates. This prohibition reflects standard practice within the banking industry aimed at preventing insiders from taking advantage of the banks they own. It is a response to a sordid history of some bank insiders who have obtained large loans, failed to repay them, depleted bank capital, and contributed to a weakened bank. This prohibition on insider loans is an essential safeguard to make it clear to private capital investors that they cannot expect their ownership interest in a U.S. bank or thrift to translate into a financial institution available to provide loans to their affiliates.

Secrecy Law Jurisdictions. The next safeguard, which proposes restrictions related to secrecy law jurisdictions, is particularly significant. It is a response to the attempt of some private capital investors to use offshore structures in jurisdictions with secrecy laws to establish their ownership interests in a U.S. bank or thrift. Apparently, some private equity funds or hedge funds seeking to acquire a failed institution proposed cloaking their ownership interests behind offshore shell entities, making it difficult for the FDIC to determine the identity of the prospective owners. Some apparently even proposed setting up an offshore ownership structure with the intent, after acquisition of a failed institution, of quickly transferring or "flipping" that ownership to a new structure. Such efforts are a direct affront to U.S. traditions of transparent, stable, and prudent bank ownership.

There is simply no justification for the FDIC or any other U.S. regulator to allow a prospective owner of a U.S. bank or thrift to use an offshore ownership structure instead of an ownership structure established right here in the United States. Offshore structures, by their nature, are outside of U.S. regulatory control, invite disputes over secrecy laws and practices, and raise concerns about how to resolve conflicting laws between the United States and the offshore jurisdiction. Offshore structures also have a history of association with financial fraud, money laundering, tax evasion, and other misconduct and, due to secrecy laws, have posed obstacles to investigative efforts by U.S. law enforcement and regulators.

In one investigation conducted by the U.S. Senate Permanent Subcommittee on Investigations, several hedge funds and private equity funds established by two U.S. citizens, Sam and Charles Wyly, used offshore structures to secretly funnel millions of dollars in offshore funds into the United States. The owners of those offshore funds were hidden behind layers of offshore corporations and trusts, and were difficult to identify. Subcommittee investigations have often found that offshore structures have been used to dodge payment of U.S. taxes, including by hedge funds avoiding taxes owed on U.S. dividends and by nonprofit entities avoiding payment of unrelated business income taxes.

A policy allowing offshore owners of U.S. banks and thrifts would open the door to a wide range of transparency problems, questionable arrangements, and potential abuses, with no countervailing benefit to the United States. U.S. bank ownership has traditionally been founded on U.S. ownership structures; there is no reason to start moving U.S. bank ownership offshore and a multitude of reasons against allowing offshore arrangements that could undermine effective U.S. regulatory oversight and control of U.S. financial institutions.

The proposed policy statement, as currently worded, seeks to place a variety of conditions and restrictions on the use of offshore ownership structures, but fails to take the necessary step of simply prohibiting their use as an ownership vehicle for U.S. banks and thrifts. The statement should be strengthened to establish a clear policy against allowing offshore ownership structures for U.S. banks and thrifts. To establish this prohibition, the current policy statement could be reworded as follows: "Investors employing ownership structures utilizing entities that are domiciled in bank secrecy jurisdictions are not eligible to own a direct or indirect interest in an insured depository institution."

If the proposed policy statement does not establish a clear prohibition, it should at least be clarified. As currently drafted, the proposed provision would allow offshore ownership structures if the "Investors are subsidiaries of companies that are subject to comprehensive consolidated supervision ('CCS') as recognized by the Federal Reserve Board." It is not clear what subsidiaries would be covered by this language. Stand-alone private equity funds and hedge funds are not typically subject to comprehensive consolidated supervision, so presumably their subsidiaries would not be covered. On the other hand, the provision could perhaps be interpreted to allow offshore structures established by subsidiaries of hedge funds registered with the Securities and Exchange Commission under the Investment Advisers Act. Alternatively, the provision could be interpreted to allow only offshore structures set up by a subsidiary of a bank or broker-dealer. If that is the intent of the provision – to allow only those offshore structures owned by a subsidiary of a bank or broker-dealer already subject to U.S. regulation – that restriction needs to be spelled out. The question would remain, of course, why the guidance would allow a regulated entity to hold its ownership interest through an offshore structure rather than a structure formed right here in the United States. It should not, as urged above.

The remaining portion of the provision, as currently drafted, essentially tries to force an allowable offshore entity to keep its books and records in the United States, to accept service of process in the United States, to disclose information to U.S. regulators, to cooperate with FDIC information requests, and to consent to be bound by U.S. laws and regulations. Instead of creating this thicket of requirements to try to require an offshore entity to operate as if it were a U.S. entity, the more straightforward, sensible, and prudent approach would be to require prospective owners of U.S. banks and thrifts to use U.S. ownership structures in the first place.

Special Owner Bid Limitation. The next proposed policy statement is also important. It would make investors who directly or indirectly own 10 percent or more of a U.S. bank or thrift in receivership ineligible to seek ownership of that failed institution's liabilities or assets. This safeguard would remove any incentive for an existing bank or thrift owner to place the institution in receivership so that it could then bid on the failed institution's assets and liabilities. Since some private equity funds and hedge funds specialize in taking over failed businesses, dismantling their operations, and selling their assets and debt instruments, this precaution is necessary to inform private capital investors that such an approach is not permitted in the case of an insured depository institution.

Disclosure. The next policy statement in the proposed guidance states that private capital investors wishing to acquire or invest in a U.S. bank or thrift must be prepared to submit to the FDIC information about all entities in its ownership chain, the volume and nature of its assets, the returns earned on its investment activities, its management team, and its business model. This policy statement is essential to ensure that private capital investors understand that ownership of a U.S. bank or thrift requires them to provide full disclosure to the FDIC of their ownership, operations, profitability, and stability. Such transparency is essential to ensure effective and prudent oversight and regulation by U.S. regulators. Private equity funds and hedge funds that want to keep such information confidential from the FDIC must understand that they are ineligible to take ownership of a failed U.S. bank or thrift.

Limitations. Finally, the proposed guidance would make it plain that nothing in its policy statements would restrict or supercede any other statutory or regulatory requirement related to owning or operating a U.S. bank, including requirements related to a prospective owner's general character, fitness, expertise, and employment of competent management.

More banks and thrifts have failed in 2009 than in the prior decade, and more failures are to come. Each of these failed institutions undergoes analysis by the FDIC to determine whether it should be closed or sold. We cannot afford to have those failed financial institutions sold to new owners without the means, commitment, and expertise to operate them as going concerns. The proposed FDIC guidance will help ensure that only those private capital investors who are willing to make a sustained commitment with full transparency can acquire ownership of our banks and thrifts, and that those investors seeking to make a quick profit at the expense of our communities and our financial system are turned away.

Thank you for this opportunity to comment on the proposed rulemaking.

Sincerely,

[redacted] [redacted] [redacted]

Susan M. Collins | Carl Levin | Daniel K. Akaka

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

August 11, 2009

Honorable Jerry Costello
House of Representatives
Washington, D.C. 20515

Dear Congressman Costello:

Thank you for your letter regarding a constituent's concerns about loans to residential real estate developers and re-appraisals that resulted in a significant devaluation of the mortgaged properties.

We agree with your constituent that real estate developers are contending with extremely challenging market conditions, exacerbated by the turmoil in the capital markets. As a result, credit availability has suffered. Banks also have taken reasonable steps to re-value collateral as property values have declined during the past several years. Despite these economic changes, we can assure you that the Federal Deposit Insurance Corporation has not changed its expectations for prudent commercial real estate loan underwriting and administration or for obtaining updated appraisals on collateral. We strongly encourage banks to continue lending and to work with their financially distressed borrowers (see enclosed Statement).

Further, the FDIC provides banks with considerable flexibility in dealing with customer relationships and managing loan portfolios. We do not instruct banks to curtail prudently managed lending activities, restrict lines of credit to strong borrowers, or require appraisals on performing loans unless an advance of new funds is being contemplated. Rather, we encourage financial institutions to strive to maintain healthy credit relationships with businesses and other creditworthy borrowers to enhance their own financial well-being, as well as to promote a sound economy.

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

Sincerely,

[redacted]

Eric J. Spitler
Director
Office of Legislative Affairs

FDIC

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

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

INTERAGENCY STATEMENT ON MEETING THE NEEDS OF CREDITWORTHY BORROWERS

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

Distribution:
FDIC-Supervised Institutions

Suggested Routing:
Chief Executive Officer
Senior Credit Officer

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

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

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

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

Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226.

Highlights:

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

The agencies expect all banking organizations to fulfill their fundamental role in the economy as intermediaries of credit to businesses, consumers, and other creditworthy borrowers. Lending to creditworthy borrowers provides sustainable returns for the organization and is constructive for the economy as a whole.

The agencies urge all lenders and servicers to adopt systematic, proactive, and streamlined mortgage loan modification protocols and to review troubled loans using these protocols. Lenders and servicers should first determine whether a loan modification would enhance the net present value of the loan before proceeding to foreclosure, and they should ensure that loans currently in foreclosure have been subject to such analysis.

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

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

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

Press Releases

Joint Release

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Office of Thrift Supervision

For Immediate Release November 12, 2008

Interagency Statement on Meeting the Needs of Creditworthy Borrowers

The Department of the Treasury, the Federal Deposit Insurance Corporation, and the Federal Reserve have recently put into place several programs designed to promote financial stability and to mitigate procyclical effects of the current market conditions. These programs make new capital widely available to U.S. financial institutions, broaden and increase the guarantees on bank deposit accounts and certain liabilities, and provide backup liquidity to U.S. banking organizations. These efforts are designed to strengthen the capital foundation of our financial system and improve the overall functioning of credit markets.

The ongoing financial and economic stress has highlighted the crucial role that prudent bank lending practices play in promoting the nation's economic welfare. The recent policy actions are designed to help support responsible lending activities of banking organizations, enhance their ability to fund such lending, and enable banking organizations to better meet the credit needs of households and business. At this critical time, it is imperative that all banking organizations and their regulators work together to ensure that the needs of creditworthy borrowers are met. As discussed below, to support this objective, consistent with safety and soundness principles and existing supervisory standards, each individual banking organization needs to ensure the adequacy of its capital base, engage in appropriate loss mitigation strategies and foreclosure prevention, and reassess the incentive implications of its compensation policies.

Lending to creditworthy borrowers
The agencies expect all banking organizations to fulfill their fundamental role in the economy as intermediaries of credit to businesses, consumers, and other creditworthy borrowers. Moreover, as a result of problems in financial markets, the economy will likely become increasingly reliant on banking organizations to provide credit formerly provided or facilitated by purchasers of securities. Lending to creditworthy borrowers provides sustainable returns for the lending organization and is constructive for the economy as a whole.

It is essential that banking organizations provide credit in a manner consistent with prudent lending practices and continue to ensure that they consider new lending opportunities on the basis of realistic asset valuations and a balanced assessment of borrowers' repayment capacities. However, if underwriting standards tighten excessively or banking organizations retreat from making sound credit decisions, the current market conditions may be exacerbated, leading to slower growth and potential damage to the economy as well as the long-term interests and profitability of individual banking organizations. Banking organizations should strive to maintain healthy credit relationships with businesses, consumers, and other creditworthy borrowers to enhance their own financial well-being as well as to promote a sound economy. The agencies have directed supervisory staffs to be mindful of the procyclical effects of an excessive tightening of credit availability and to encourage banking organizations to practice economically viable and appropriate lending activities.

Strengthening capital
Maintaining a strong capital position complements and facilitates a banking organization's capacity and willingness to lend and bolsters its ability to withstand uncertain market conditions. Banking organizations should focus on effective and efficient capital planning and longer-term capital maintenance. An effective capital planning process requires a banking organization to assess both the risks to which it is exposed and the risk management processes in place to manage and mitigate those risks; evaluate its capital adequacy relative to its risks; and consider the potential impact on earnings

and capital from economic downturns. Further, an effective capital planning process requires a banking organization to recognize losses on bank assets and activities in a timely manner; maintain adequate loan loss provisions; and adhere to prudent dividend policies.

In particular, in setting dividend levels, a banking organization should consider its ongoing earnings capacity, the adequacy of its loan loss allowance, and the overall effect that a dividend payout would have on its cost of funding, its capital position, and, consequently, its ability to serve the expected needs of creditworthy borrowers,. Banking organizations should not maintain a level of cash dividends that is inconsistent with the organization's capital position, that could weaken the organization's overall financial health, or that could impair its ability to meet the needs of creditworthy borrowers. Supervisors will continue to review the dividend policies of individual banking organizations and will take action when dividend policies are found to be inconsistent with sound capital and lending policies.

Working with mortgage borrowers
The agencies expect banking organizations to work with existing borrowers to avoid preventable foreclosures, which can be costly to both the organizations and to the communities they serve, and to mitigate other potential mortgage-related losses. To this end, banking organizations need to ensure that their mortgage servicing operations are sufficiently funded and staffed to work with borrowers while implementing effective risk-mitigation measures.

Given escalating mortgage foreclosures, the agencies urge all lenders and servicers to adopt systematic, proactive, and streamlined mortgage loan modification protocols and to review troubled loans using these protocols. Lenders and servicers should first determine whether a loan modification would enhance the net present value of the loan before proceeding to foreclosure, and they should ensure that loans currently in foreclosure have been subject to such analysis. Such practices are not only consistent with sound risk management but are also in the long-term interests of lenders and servicers, as well as borrowers.

Systematic efforts to address delinquent mortgages should seek to achieve modifications that result in mortgages that borrowers will be able to sustain over the remaining maturity of their loan. Supervisors will fully support banking organizations as they work to implement effective and sound loan modification programs. Banking organizations that experience challenges in implementing loss mitigation efforts on their mortgage portfolios or in making new loans to borrowers should work with their primary supervisors to address specific situations.

Structuring compensation
Poorly-designed management compensation policies can create perverse incentives that can ultimately jeopardize the health of the banking organization. Management compensation policies should be aligned with the long-term prudential interests of the institution, should provide appropriate incentives for safe and sound behavior, and should structure compensation to prevent short-term payments for transactions with long-term horizons. Management compensation practices should balance the ongoing earnings capacity and financial resources of the banking organization, such as capital levels and reserves, with the need to retain and provide proper incentives for strong management. Further, it is important for banking organizations to have independent risk management and control functions.

The agencies expect banking organizations to regularly review their management compensation policies to ensure they are consistent with the longer-run objectives of the organization and sound lending and risk management practices.

The agencies will continue to take steps to promote programs that foster financial stability and mitigate procyclical effects of the current market conditions. However, regardless of their participation in particular programs, all banking organizations are expected to adhere to the principles in this statement. We will work with banking organizations to facilitate their active participation in those programs, consistent with safe and sound banking practices, and thus to support their central role in providing credit to support the health of the U.S. economy.

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Media Contacts

FDIC Andrew Gray (202) 898-6993

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

August 12, 2009

Honorable Robert Menendez
United States Senate
Washington, D.C. 20510

Dear Senator Menendez:

Thank you for your letter on behalf of CIT requesting an expedited review of the company's request for an exemption from the requirements of Section 23A of the Federal Reserve Act (Section 23A). I assure you the Federal Deposit Insurance Corporation shares your views about the importance of keeping credit available during these challenging economic times.

Section 23A contains restrictive provisions relating to transactions between banks and their affiliates to safeguard bank resources and limit their exposure to the affiliate's operations. As you know, CIT has requested an exemption from these restrictions to transfer certain assets to affiliate CIT Bank, Salt Lake City, Utah that exceed regulatory limits. Section 23A and Federal Reserve Board Regulation W are implemented by the Board of Governors of the Federal Reserve System (FRB). Exemptions from the requirements of Section 23 and its companion regulation can only be granted by the FRB. However, the FRB does consult with the FDIC when Section 23A exemptions are requested.

The FDIC and FRB have been in regular contact with representatives from CIT regarding the company's strategic reorganization which contained a variety of funding requests, including exemptions from the requirements of Section 23A. As part of the reorganization, in December 2008, CIT transitioned to a bank holding company regulated by the FRB under the Bank Holding Company Act of 1956. Any decision on pending requests under the FDIC's authority will be made based on statutory requirements and the overall potential risk to the Deposit Insurance Fund.

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

Sincerely,

[redacted]

Sheila C. Bair

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

August 12, 2009

Honorable Robert Menendez
United States Senate
Washington, D.C. 20510

Dear Senator Menendez:

Thank you for your letter on behalf of [redacted] requesting an expedited review of the company's request for an exemption from the requirements of Section 23A of the Federal Reserve Act (Section 23A). I assure you the Federal Deposit Insurance Corporation shares your views about the importance of keeping credit available during these challenging economic times.

Section 23A contains restrictive provisions relating to transactions between banks and their affiliates to safeguard bank resources and limit their exposure to the affiliate's operations. As you know [redacted] has requested an exemption from these restrictions to transfer certain assets to affiliate [redacted] that exceed regulatory limits. Section 23A and Federal Reserve Board Regulation W are implemented by the Board of Governors of the Federal Reserve System (FRB). Exemptions from the requirements of Section 23 and its companion regulation can only be granted by the FRB. However, the FRB does consult with the FDIC when Section 23A exemptions are requested.

The FDIC and FRB have been in regular contact with representatives from [redacted] regarding the company's strategic reorganization which contained a variety of funding requests, including exemptions from the requirements of Section 23A. As part of the reorganization, in December 2008 [redacted] transitioned to a bank holding company regulated by the FRB under the Bank Holding Company Act of 1956. Any decision on pending requests under the FDIC's authority will be made based on statutory requirements and the overall potential risk to the Deposit Insurance Fund.

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

Sincerely,

[redacted]

Sheila C. Bair

LA09-1148

ROBERT MENENDEZ
NEW JERSEY

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
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July 21, 2009

FDIC
JUL [illegible]
OFFICE OF LEGISLATIVE AFFAIRS

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

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

Dear Chairman Bernanke and Chairman Bair:

I write to urge the federal government, particularly the Federal Reserve and the FDIC, to craft a well-thought-out response to the problems at [redacted]

As you are aware, [redacted] is a large lender to small and medium-sized businesses across the nation. Its failure would pose risks to the economy and would greatly hurt thousands of businesses, especially in the retail sector. In the current economic environment, further failures of businesses would not serve the nation's best interests.

[redacted] just obtained private bridge financing and long ago applied for a 23(a) exemption from the federal government to transfer unencumbered assets to [redacted] Bank. I have been told that this was part of the original plan for capitalizing the bank that was approved last December. Given the significance and timeliness of this matter, I urge you to expedite your review of [redacted] request.

Thank you for your consideration.

Sincerely,

[redacted]

ROBERT MENENDEZ
United States Senator

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

August 12, 2009

Honorable Diane E. Watson
Chairman
Subcommittee on Government Management, Organization, and Procurement
Committee on Oversight and Government Reform
House of Representatives
Washington, D.C. 20515

Dear Madam Chairman:

Thank you for your letter regarding the Federal Deposit Insurance Corporation procurement for owned real estate (ORE) management, marketing, and disposition services under Request for Proposal (RFP) RRV-000186. The FDIC shares your interest in a transparent, fair, and competitive procurement process. Although the selection of contractors is made by FDIC professional staff, the Board of Directors oversees policies and procedures applicable to these decisions.

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

In November 2008, the FDIC competitively awarded contracts to two firms, C.B. Richard Ellis and Prescient, Incorporated, to manage and market owned real estate assets. These offerors submitted proposals that were determined by FDIC staff to be the "best value" for the FDIC considering their price, technical capabilities, and other qualitative factors listed in the RFP. I am enclosing responses prepared by the staff of the FDIC Division of Administration to your specific questions regarding FDIC contracting policies.

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

Sincerely,

[redacted]

Sheila C. Bair

Enclosure

Response to Questions
Provided by the Federal Deposit Insurance Corporation's
Division of Administration

Q1. The current value of owned real estate held by FDIC banks requiring disposition services:

A1. Owned real estate (ORE) in FDIC receiverships currently has an appraised value of $1.3 billion.

Q2. The methods used by FDIC in developing requirements for the procurement:

A2. The requirements were developed by experienced FDIC staff who have successfully managed and sold similar ORE portfolios in the past.

Q3. The FDIC's rationale for non-competitive procedures in its solicitation process to procure the required services:

A3. The FDIC did not use non-competitive procedures for this procurement. The requirement was competitively solicited after extensive market research to develop the source list. The FDIC publicly sought sources that had interest in competing through advertisements in the *Wall Street Journal, New York Times* and *Fedbizops.gov*. Our Office of Diversity and Economic Opportunity provided minority and women-owned business sources. The solicitation was issued to 37 firms. Proposals were received from 18 firms. The proposals were evaluated against technical criteria in the solicitation. Eight firms that scored the highest were required to make oral presentations further describing their capabilities. These eight firms submitted best and final offers that were evaluated to determine the final selections. Award was made to the two firms that offered the best value to FDIC, considering both technical qualifications and pricing.

Q4. The rationale for including firms that are not licensed to acquire, manage or sell real estate for the solicitation:

A4. The solicitation required a range of asset management services, including: assisting at bank closings when a failed financial institution's ORE portfolio must be compiled and analyzed; performing property management; resolving litigation; managing participation relationships; and the marketing/disposing of assets. Simply possessing a license to sell real estate does not indicate an ability to satisfy the full range of services needed by the FDIC. In order to meet the contract requirements, offerors were allowed to augment their core capabilities by forming teaming arrangements, creating joint ventures, or subcontracting. This approach maximizes competition and encourages the use of multiple firms to satisfy the requirements under contract.

Q5. The rational for combining distinct and differentiated services into a single contract, rather than procuring these services through more narrowly focused separate contracts:

A5. Management and disposition of property is a complex process, particularly when the real estate market and overall economy are unsettled. Oversight efficiency and effectiveness can be better achieved if one firm has responsibility and accountability for the entire process. Through teaming arrangements, joint ventures, or subcontracts, all contract requirements can be effectively addressed. Our prime contractors subcontract much of the required work, including brokerage and property management services, to local vendors.

Also, procuring the full range of services needed under one master contract requires fewer FDIC personnel to monitor the contract. Contracting separately for management and disposition services with multiple firms for the same asset makes it difficult to determine responsibility when problems arise. Using prime contractors to provide all management and disposition services proved to be highly successful for the Resolution Trust Corporation when it disposed of ORE during the savings and loan crisis in the early 1990s. The FDIC adopted this methodology as a proven best practice.

Q6. The FDIC's rationale for offering a compensation scale that may exceed industry standards or common market rates:

A6. This was a competitive solicitation. The offerors competitively provided the rates included in the awarded contract. The FDIC established a categorically structured price schedule in the solicitation. It was the responsibility of the competing firms to complete the schedule and propose prices. The prices offered were market rates.

Q7. The FDIC's plans and time table for issuing additional requests for proposals involving the disposition of owned real estate:

A7. The FDIC posted a new request for proposals, open to all interested parties, on *FedBizOps.gov* in May 2009. Proposals were received June 17, 2009, and are currently being evaluated. The award of additional contracts is expected by the end of September 2009.

Q8. The FDIC's plans for ensuring that the best-qualified contractors or subcontractors from the commercial real estate sector are able to participate in future procurements:

A8. The solicitation released in May 2009 was posted on *FedBizOps.gov* to ensure the procurement was open to all firms interested in bidding on the contract. The solicitation contained both technical and price evaluation factors. The evaluation will focus on the prime contractor's entire team, including their proposed subcontractors. The FDIC will select the contractor(s) that offer the best value based on our assessment of the proposal responses to all criteria contained in the solicitation.

The FDIC also has held seminars around the country to inform potential vendors about our requirements and contracting process. These seminars have been particularly targeted to minority and women-owned businesses. Contractors register their capabilities with the FDIC and are informed about potential contracting and teaming opportunities. Over 1,500 contractors have attended six seminars so far this year. Two more seminars are planned for August.

Q9. The process, criteria, and time table the FDIC will use to select additional vendors for the disposition of owned real estate:

A9. As mentioned previously, a competition is now underway for additional contractors to provide ORE management and marketing services. The due date for proposals was June 17, 2009. An in-house Technical Evaluation Panel is currently evaluating proposals. We anticipate making multiple awards in September 2009 to those firms that offer the best value for the FDIC. In addition to price, the technical criteria used for evaluation include: the contractor's understanding of the requirement; management approach; experience of key personnel; acceptable automated systems to support inventory management/ reporting; and past experience providing similar services.

Solicitations for additional services will depend on how many banks fail in the future and the amount of assets from failed institutions retained for disposition by the FDIC.

LA 09-1082

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
FACSIMILE (202) 225-4784
MINORITY (202) 225-5074

www.oversight.house.gov

July 8, 2009

FDIC

JUL 9 2009

OFFICE OF LEGISLATIVE AFFAIRS

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

Dear Chairman Bair:

I write to make you aware of concerns that recently have been raised regarding the Federal Deposit Insurance Corporation's (FDIC) recent procurement, Request for Proposal Number RRV-0000186, for owned real estate management, marketing and disposition services. Following your agency's recent selection process, a number of concerns regarding the lack of transparency and competition in the procurement process have been raised, with specific concerns raised about the following issues: the *de facto* sole-source nature of the contracts; the extensive scope of the contracts; and the legal qualifications of firms who are unlicensed or unqualified to provide, marketing, disposition, and management services procured through the contract in multiple states or jurisdictions.

As you are aware, the effectiveness of this program is vital to limiting the financial exposure of both the FDIC and taxpayers during this challenging economic period. While I therefore applaud and endorse your goals of accurately valuing and timely disposing of owned real estate assets at the highest possible rate of return, I am concerned that the manner in which the Agency's procurement was developed and conducted does not serve – and indeed may undermine – this critically important public objective.

In addition to these concerns, recent media reports about procurement have raised questions about the terms of compensation in the Agency's contracts. According to an April 21, 2009 article in the *Washington Times*, the two contractors selected by the Agency will receive commissions ranging from eight percent of the sales price to 30 percent on properties worth less than $25,000, which is considered excessive according to industry standards and market rates.

Lastly, I understand that questions have arisen over whether Prescient, Inc. is a licensed real estate broker. If it is not, this raises the most serious concerns about both the process used by the FDIC to identify the most qualified contractors to carry out this important task, and the legal capacity and institutional ability of Prescient, Inc. to perform this work on behalf of the FDIC and, ultimately, the American taxpayer.

In order to further understand both the procurement selection process and the agency's plans for satisfying its obligations to efficiently dispose of owned real estate going forward, I ask that you provide my office with the following information:

- The current value of owned real estate held by FDIC banks requiring disposition services;
- The methods used by FDIC in developing requirements for the procurement;
- The FDIC's rationale for noncompetitive procedures in its solicitation process to procure the required services;
- The rational for including firms that are not licensed to acquire, manage, or sell real estate in the solicitation;
- The rational for combining distinct and differentiated services into a single contract, rather than procuring these services through more narrowly focused separate contracts;
- The FDIC's rationale for offering a compensation scale that may exceed industry standards or common market rates;
- The FDIC's plans and time table for issuing additional requests for proposals involving the disposition of owned real estate;
- The FDIC's plans for ensuring that the best-qualified contractors or subcontractors from the commercial real estate sector are able to participate in future procurements; and
- The process, criteria, and time table the FDIC will use to select additional vendors for the disposition of owned real estate.

In the interim, I would welcome the chance to discuss with you these aforementioned issues in order to develop a better understanding of your long-term management challenges and strategic objectives for the disposing of owned real estate. I look forward to your response at your earliest opportunity. Please feel free to contact Adam C. Bordes of my staff at (202) 225-3741 if you have any questions.

Sincerely,

[redacted]

Diane E. Watson
Chairwoman
Subcommittee on Government Management,
Organization, and Procurement

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

August 12, 2009

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

Dear Congressman Bachus:

Thank you for soliciting the Federal Deposit Insurance Corporation's input on the proposed Consumer Financial Protection Agency (CFPA). Enclosed are responses to the questions you posed.

We appreciate the opportunity to comment. If we can provide further information, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director, Office of Legislative Affairs at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

Enclosure

Response to Questions from
The Honorable Spencer Bachus

Q1. What problem would be addressed by the creation of a CFPA that is not or cannot be addressed by the current system of financial institution and product regulation?

A1. The proposal addresses one of the principal limitations of the current regulatory system. It would eliminate the remaining regulatory gaps between insured depository institutions and *non-bank* providers of financial products and services by establishing strong, consistent consumer protection standards. It also would address another gap by giving the CFPA authority to examine non-bank financial service providers that are not currently examined by a federal, or in many cases, state agency. In addition, the Administration's proposal would eliminate the potential for regulatory arbitrage that exists because of federal preemption of certain state laws.

Q2. How would the new consumer protection standards established in H.R. 3126 impact the availability of credit for consumers? Would any particular category of consumers be affected more than others?

A2. Properly defined standards should not impede the availability of credit to any category of consumers. H.R. 3126 does not prohibit the offering of consumer financial products and services. Rather, it seeks to protect consumers against abusive products and practices that strip individual and family wealth. The standards could lower risks to consumers of such financial products by enhancing transparency of terms and features, and facilitating comparison of alternative products or services. The standards also could bring greater protection to consumers of non-bank financial products and services, which are not subject to the examination and supervision for consumer protection and safety and soundness compliance that currently benefits insured institution customers.

Q3. One of the directives given to the proposed agency is to coordinate with a variety of other agencies, both state and federal, to "promote consistent regulatory treatment of consumer and investment products." However, the legislation would permit individual states to pass laws that will differ from federal law. What would be the impact on consumers and the institutions you regulate if individual states can impose additional and different standards?

A3. To a great extent, the current patchwork regulatory situation is the result of a lack of coordination of national consumer protection laws and regulations. Creating a federal floor for consumer protection will provide standardization for institution and product regulation. While the proposal allows states to apply more protective state consumer laws, a strong federal floor should make additional state standards unnecessary. It should be noted that state-chartered banks operating in multiple jurisdictions currently comply with those jurisdiction's consumer laws with no problems.

Q4. The legislation envisions the separation of safety and soundness regulation from consumer protection regulation. How would this separation impact the safety and soundness of banking institutions? Would it enhance or undermine safety and soundness, in your view?

A4. Separating the examination and supervision of insured depository institution consumer protection compliance from that of safety and soundness could undermine the effectiveness of both. As the banking regulators' experience during the past few years has shown, consumer protection issues and the safety and soundness of insured depository institutions go hand-in-hand. Examination and supervision for safety and soundness and consumer protection must be closely coordinated and reflect a comprehensive understanding of an institution's management, operations, policies, and practices. Consumer protection and risk supervision benefit from the synergies created by this holistic approach and by ready and timely access to expertise and critical information. Separating consumer protection examination and supervision from other supervisory efforts could weaken both and result in weakened financial institutions.

By contrast, if the CFPA has sole rule-writing authority over consumer financial products and services, this will ensure appropriate focus on protecting consumers and a level playing field between insured depository institutions and other types of entities that offer similar financial products. In addition, the FDIC would support providing the CFPA with back up enforcement and examination authority to ensure that the federal regulators are providing effective supervision of these standards. Freeing the CFPA from direct supervision and enforcement of depository institutions would allow this entity to focus its examination and enforcement resources on the non-bank entities that provide financial products and services that have not previously been subject to federal examination or enforcement.

Q5. Does your agency have a separate consumer protection compliance examination force? If not, how could the consumer compliance examination function be transferred to a new agency and what would be the impact of the transfer on your safety and soundness supervision?

A5. The FDIC has a dedicated force of consumer protection compliance examiners. As discussed above, consumer protection and risk supervision benefit from the synergies created by ready and timely access to expertise and critical information in both areas. For example, violations of consumer regulations by an institution frequently signal management problems related to safety and soundness issues as well. Preserving the current regulatory framework, and the ability of the examiners to work together to evaluate institutions, will ensure that financial institutions will be continue to be viewed holistically.

Q6. H.R. 3126 requires coordination and consultation between the CFPA and the Federal banking agencies. However, it does not offer a framework or mechanism in the event that there is not a consensus. Please comment on any practical or legal problems or challenges that would be presented by this proposal.

A6. In our answer to Question 7, we describe the many ways that consumer protection compliance and safety and soundness examination and supervision are intertwined. Separating the functions into two agencies inevitably would create issues. For example, it would constrain the ability of examination staff to develop a comprehensive view of the institutions they supervise. It also would be more difficult to easily coordinate, share information, and bring joint actions on consumer protection and safety and soundness issues. In addition, the flow of information would slow, thus reducing opportunities to quickly identify and resolve problems.

As indicated above, one way to address this issue would be for the banking agencies to retain the authority to examine and supervise insured institutions for consumer protection compliance and safety and soundness. The CFPA should be given the authority to examine and supervise *non-bank* consumer product and service providers and back-up enforcement authority over insured depository institutions. Giving the CFPA authority to write rules for all consumer product and service providers would ensure strong and uniform consumer protection standards for all consumer product and service providers.

Another means of ensuring coordination and consultation would be to have federal financial institution regulators represented on the CFPA Board, which could be the final arbiter of any problems that could not be resolved at the staff level. We believe it is particularly important that the FDIC be represented. As ultimate insurer of over $6 trillion in deposits, the FDIC has both the responsibility and vital need to ensure that consumer compliance and safety and soundness are appropriately integrated. The FDIC also is the primary federal supervisor for the largest number of banks (including many larger ones) and maintains an active examination staff on-site in the largest major banks as back-up supervisor. The FDIC's direct supervision of the majority of the nation's community banks provides it with a unique "Main Street" perspective that enabled it to be an early proponent of affordable and sustainable mortgage loan modifications, improved economic inclusion, and the prevention of abusive lending practices. Moreover, the FDIC's deposit insurance function involves a significant consumer protection role with regard to consumer deposits that affects all institutions, but is unique to the FDIC.

Q7. H.R. 3126 provides for each of the Federal banking agencies to transfer consumer financial protection functions to the new agency. Such functions are defined to mean "research, rulemaking, issuance of orders or guidance, supervision, examination, and enforcement activities, powers, and duties relating to the provision of consumer financial products or services." Please identify all of the functions within your agency that would be transferred under this new provision? Does it affect underwriting standards for mortgage loans? Insider lending rules? Lending limits? Anti-money laundering compliance? If so, what would be the impact of the transfer on safety and soundness?

A7. Staff in three different FDIC Divisions likely would have to be transferred if the new agency is created as proposed: the Division of Supervision and Consumer Protection (DSC), the Legal Division, and the Division of Insurance and Research (DIR). In particular:

1) DSC: Generally speaking, staff in this Division performs research, rulemaking, guidance, supervision, examination and enforcement functions, and coordinates extensively with the Legal Division and DIR in connection with all of these functions.

- *Examinations:* Consumer protection compliance examiners and examination management and staff in FDIC field offices, regions, and at headquarters in Washington, D.C. examine banks for compliance with consumer protection and CRA regulations and coordinate with legal staff to bring informal and formal enforcement actions when banks fail to comply with laws or regulations. Consumer protection staff also coordinates with DSC's risk management/safety and soundness function on applications and other regulatory requests from institutions that have less than satisfactory consumer compliance or CRA programs.
- *Policy:* Consumer protection compliance policy analysts conduct outreach to industry and consumer groups, monitor legislative and regulatory developments, develop policy and guidance for examiners and institutions, participate in interagency working groups to issue regulations and examination procedures, and develop and provide training for consumer protection compliance examiners.
- *Consumer Protection Outreach:* Consumer affairs staff receives, investigates, and responds to consumer complaints and inquiries involving FDIC-supervised institutions, along with other data requests concerning consumer protection laws and banking practices. In addition to assisting individual consumers, the consumer complaint resolution function provides information used in individual bank compliance examinations and to detect emerging consumer protection issues. As part of its deposit insurance function, FDIC consumer affairs staff provides consumer education and assistance with regard to deposit insurance coverage matters. This function would necessarily remain with the FDIC.
- *Community Affairs:* DSC also has a Community Affairs program that provides technical support to financial institutions to help them identify and respond to the credit and banking needs of the communities they serve. Program staff conducts the FDIC's financial education and consumer protection outreach, except for deposit insurance. Community affairs staff facilitates the Alliance for Economic Inclusion -- the FDIC's national initiative to establish broad-based coalitions of financial institutions, community-based organizations, and other partners to bring unbanked and underserved populations into the financial mainstream. The FDIC developed and distributes the award-winning *Money Smart* financial education program, which is available in several formats and languages. In addition, the Small Dollar Loan pilot project is reviewing affordable and responsible small-dollar loan programs in financial institutions to identify effective and replicable business practices that banks can incorporate into their mainstream services. Community Affairs staff also leads the FDIC's ongoing outreach efforts to mitigate foreclosures and help consumers avoid scam artists.

2) Legal Division: Legal Division attorneys from headquarters and regional offices support the research, supervision, examination, legislative, rulemaking, policymaking and

enforcement functions. Enforcement attorneys work closely with examination staff in bringing formal and informal enforcement actions against institutions.

3) DIR: Economists and statisticians support the consumer protection compliance examination and policy programs and Legal Division staff by conducting research and analyzing quantitative and qualitative data. Staff pursues original research exploring consumer financial products, behaviors, and trends.

On balance, transferring consumer protection compliance examination and enforcement to the new consumer protection agency would cause disruption to agency operations during a critical time, complicating safety and soundness functions and enforcement efforts. A number of mission-critical regulatory functions exist in which consumer protection and safety and soundness issues are intertwined. Consumer protection weaknesses may affect the safety and soundness of an institution, or they may reflect an overall weakness, particularly of management. Unsafe or unsound practices, or the resulting financial weakness of an institution, can impact a bank's customers, the community, and even the financial markets.

Significant expertise, lines of communication, and cooperative efforts among safety and soundness and consumer protection compliance staff would be hampered by moving these functions to the new consumer protection agency. Particular areas of supervision, examination, and enforcement that would be impacted include:

- Non-Traditional Mortgage Lending
- Subprime Lending
- Payday Lending
- Credit Card Lending
- Predatory Lending
- Loan Modifications
- Flood Insurance
- Third-Party Risk
- Retail Securities and Insurance Sales and Referrals, under the Gramm-Leach-Bliley Act of 1999 (GLBA) and Regulation R
- New Bank Application Investigations and Community Reinvestment Act (CRA) Analysis
- Bank Branch and Merger Applications, which require consideration of compliance ratings, fair lending and CRA ratings
- Privacy (GLBA)
- Identity Theft Red Flags and the Fair and Accurate Credit Transactions Act of 2003 (FACT Act)
- The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act)

Because the FDIC and other regulators must continue to consider consumer protection issues in evaluating banks – even if a new agency is established – separating these functions will necessarily create a duplication of effort.

The new agency also would impose incremental burden on financial institutions as they would be examined and evaluated by another federal agency. Separating the compliance examination function from the safety and soundness program also will delay action on applications or other requests requiring federal approval.

Q8. Does the proposed CFPA get at the heart of what caused the mortgage crisis?

A8. If a CFPA-type agency had been in place, it could have taken the long view of both the banking sector and the non-bank financial sector. A strong focus on consumer protection could have called into question the underlying rationale for many of the more abusive mortgage products. Further, rules and guidelines could have been developed that would have slowed or halted the worst practices.

However, the CFPA, as currently proposed, does not get at one of the fundamental causes of the mortgage crisis: the lack of effective supervision and enforcement of non-bank entities that offer mortgages and other financial products. While these entities are subject to many of the same laws and regulations as federally supervised banks and thrifts, they are not subject to the same regular examinations or supervision, or the resulting potential for enforcement actions if they break the law. State and federal enforcement agencies (state consumer protection agencies and the Federal Trade Commission for civil matters, state Attorneys General and the Department of Justice for criminal) have limited resources and must make constant choices about whether situations are egregious enough to warrant bringing an action to stop a particular practice.

To the extent possible, legislation should specifically define the components of an effective enforcement and examination regime focused on non-banks. For example, rather than diluting resources by aiming them at all financial products and entities, the CFPA's primary supervisory resources should be targeted on non-bank entities. The federal bank and thrift supervisors should continue to have examination and enforcement authority over banks; however, they would enforce the consumer protection standards set by the CFPA. Under such a regime, overall consumer protection would be greatly strengthened because the CFPA would have back up authority to enforce all consumer protection laws regarding banks, and there would be several supervisory entities, including the CFPA and the bank regulators, targeting their resources on enforcing consumer protection laws across the country.

Q9. H.R. 3126 provides for the agency to approve "standard" financial products and services. What would be the impact of this proposal on product innovation, especially when you consider the risks, expenses, and compliance requirements (e.g., disclosure and opt-out requirements) associated with the creation or sale of other than standard products?

A9. At this time, it is difficult to determine the impact on product innovation. However, it has become clear from the current economic crisis that when innovative products are not well understood by investors and consumers, product innovation does not always benefit consumers, the economy, or society as a whole. Inappropriate promotion of interest-only and other non-traditional mortgage products contributed to the current economic crisis. Therefore, it could be argued that non-standard products should receive stronger attention from regulators to ensure they are being used appropriately.

Q10. What will be the impact on consumers if banking and some insurance products are subject to regulation by the new agency, but economically similar investment products are subject to a different form of regulation by the SEC?

A10. In creating the CFPA, Congress should provide a clear and effective mechanism for ensuring comparable consumer protections regardless of the entity from which a consumer purchases economically or functionally equivalent products. The CFPA should have the authority to set comparable standards for comparable products and to ensure that there is no loophole in consumer protection for products that are economically similar. Prudential supervisors would enforce the standards established by the CFPA for products and institutions under their jurisdiction. The ability to establish comparable protections will strengthen coordination and cooperation among the banking agencies, the new consumer agency, and federal and state securities and insurance regulators, and should prevent practical and operational gaps in regulations and supervision.

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

Office of Legislative Affairs

August 13, 2009

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

Dear Senator Reed:

Thank you for your comments concerning the Federal Deposit Insurance Corporation's Proposed Rule on Acquisition Policy. I can assure you we will carefully consider your concerns and those of the other commenters.

We appreciate for your interest in this important issue. If you have further questions, the Office of Legislative Affairs can be reached at (202) 898-7055.

Sincerely,

[redacted]

Eric J. Spitler
Director
Office of Legislative Affairs

LA09-1265

JACK REED
RHODE ISLAND

COMMITTEES:

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

United States Senate

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Rhode Island:

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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

August 13, 2009

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Mr. Feldman:

I am writing to commend the Federal Deposit Insurance Corporation for proposing a clear policy on the acquisitions of failed banks by private equity firms and other investors. In a letter date May 22, 2009, I urged you and other regulators to take necessary steps in this area. Your recent "Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions" is an important effort to ensure that failed bank acquisitions are conducted in a way that protects taxpayers.

As financial institutions seek new capital to help regain their strength, private equity and other firms offer a potentially valuable source of funding that would also take the pressure off of taxpayers. But such acquisitions only protect taxpayers if they have appropriate and tailored safeguards to minimize the risks to the safety and soundness of the institutions and the deposit insurance fund. Before letting these firms invest in banks, they must first demonstrate that they have adequate capital and that they represent a source of financial and managerial strength for the depository institution.

I support your efforts to implement strong capital, source of strength, and other requirements. I also commend you for considering comments from all interested parties on whether your proposal strikes the right balance of creating effective standards while also facilitating investments in failed banks and thrifts. I look forward to continuing to work with you to address this issue.

Sincerely,

[redacted]

Jack Reed
United States Senator

Cc: Sheila C. Bair, Chairman

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

August 14, 2009

Honorable Robert F. Bennett
United States Senate
Washington, D.C. 20510

Dear Senator Bennett:

Thank you for your letter expressing your concerns regarding facilitating private investment in banks and thrifts. The Federal Deposit Insurance Corporation is aware of the need for additional capital in the banking system and the contribution that private equity capital could make to meeting this need, provided this contribution is consistent with protection of the Deposit Insurance Fund and the safety and soundness of insured institutions.

In 2009, the FDIC has completed three resolution transactions involving new private capital investors. In March 2009, the FDIC completed the sale of IndyMac Federal Bank, FSB, Pasadena, California, to One West Bank, FSB, a newly formed federal savings bank controlled by IMB Management Holding LP, which was funded by a consortium of private equity investors that invested over $1 billion in the capital of the new thrift. In May 2009, the FDIC as receiver for BankUnited, FSB, Coral Gables, Florida, sold its banking operations to a newly chartered federal savings bank owned by a group of private equity investors that invested $900 million in this thrift. In July 2009, the FDIC entered into an agreement with State Bank and Trust Company, Pinehurst, Georgia, to assume all of the deposits and purchase assets from the FDIC as receiver of the six bank subsidiaries of Security Bank Corporation, Macon, Georgia after State Bank and Trust Company received a $300 million capital infusion from a group of 26 investors, led by Georgia banker Joseph Evans, who will own about 1 percent of the equity of the bank and be responsible for its management. As required by law, the winning bids by these investors were the least costly to the Deposit Insurance Fund (DIF) of all competing bids.

As is the case of all investors approved by the FDIC for investment in insured depository institutions, these bidders are vetted for reputation and integrity among other considerations. In light of the increased number of bank and thrift failures and the consequent increase in interest by potential private capital investors, the FDIC published for comment on July 9, 2009, a Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions (Proposed Policy Statement) to provide guidance to private capital investors interested in acquiring the deposit liabilities, or the liabilities and assets, of failed insured depository institutions.

The Proposed Policy Statement provides the terms and conditions for such investments or acquisitions and is aimed at establishing the proper balance in a number of important areas of keen interest to investors. These areas include the level of capital required for these de novo banks and whether these owners can be a source of strength to the banks in which they have invested. Thus, we are especially interested in public comments on the issues. We currently are reviewing public comments and will carefully consider your views as we work to finalize our policies. As I indicated when we proposed this statement for comment, I remain open-minded on each of its elements.

If you have further questions, please contact me at 202-898-6974 or Paul Nash, Deputy for External Affairs, at 202-898-6962.

Sincerely,

[redacted]

Sheila C. Bair

LA09-1176

ROBERT F. BENNETT
UTAH

COMMITTEES:
APPROPRIATIONS
BANKING, HOUSING, AND URBAN AFFAIRS
ENERGY AND NATURAL RESOURCES
RULES AND ADMINISTRATION
JOINT ECONOMIC

United States Senate

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SALT LAKE CITY, UT 84138-1188
(801) 524-5933
- JAMES V. HANSEN FEDERAL BUILDING
324 25TH STREET, SUITE 1410
OGDEN, UT 84401-2310
(801) 625-5676
- OLD COURT HOUSE BUILDING
51 SOUTH UNIVERSITY AVENUE, SUITE 310
PROVO, UT 84601-4424
(801) 851-2525
- FEDERAL BUILDING
196 EAST TABERNACLE, SUITE 21
ST. GEORGE, UT 84770-3474
(435) 628-5514
- 77 NORTH MAIN, SUITE 113
P.O. BOX 1326
CEDAR CITY, UT 84721
(435) 865-1335

July 23, 2009

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

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

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

Mr. John E. Bowman
Acting Director
Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552

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

Federal actions over the past several months have helped to stabilize the financial markets and to inject liquidity into the system. Although recent government interventions have been critical, I believe that our markets will not fully recover until private capital returns. Putting aside the regulatory restructuring debate in Congress, I believe that the federal banking regulators should use their existing authority and act now to encourage new sources of private capital such as private equity to enter the banking system. This would reduce the need for additional TARP dollars and further stabilize the financial system. This increased stabilization in the system brought by willing private capital would also increase the likelihood that the taxpayer will see a return on their current commitments under TARP. We must look seriously at the significant obstacles that exist in current regulatory interpretations that deter additional sources of private capital from fully participating in the recapitalization of the banking system.

As each of you has previously noted, it is clear that the banking system requires significant amounts of new capital to offset current and future losses. According to the results of the Supervisory Capital Assessment Program, losses at the largest 19 firms during 2009 and 2010 could total $600 billion under the adverse scenario. The International Monetary Fund recently estimated that the global financial sector can expect to realize an additional $2 trillion in losses. It would appear that few banks are currently in a position to sustain these losses and at the same time remain well capitalized. While close to 60 insured depository institutions have already failed in 2009, this number is expected to grow significantly throughout the next 18-24 months.

It is my understanding that private investors are prepared to invest in banks, restoring lending and recapitalizing the banking system. Each dollar of private investment reduces the potential exposure of the U.S. taxpayer to future losses in the banking sector. Each of your agencies should act quickly to remove the regulatory obstacles to private capital. I would ask each of you to send me a letter detailing the recent actions you have taken to encourage private capital.

Sincerely,

[redacted]

Robert F. Bennett
United States Senator

RFB: ncb

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

Office of Legislative Affairs

August 18, 2009

Honorable Jesse L. Jackson, Jr.
House of Representatives
Washington, D.C. 20515

Dear Congressman Jackson:

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

As a matter of policy, the Federal Deposit Insurance Corporation does not comment on the supervision of operating insured depository institutions and, therefore, we cannot discuss the facts presented in your letter. The FDIC is in contact with Bank management and is continuing to assess the circumstances relating to the Bank's current situation.

The FDIC believes community banks play a key role in providing critical banking products and services in local communities across the country. We will implement a supervisory strategy that is consistent with this belief and supports our mission to maintain stability and public confidence in the nation's financial system.

We encourage the Bank's Board of Directors to contact FDIC Chicago Regional Director M. Anthony Lowe at (312) 382-3837 to discuss their capital raising efforts and other outstanding issues.

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

Sincerely,

[redacted]

Eric J. Spitler
Director
Office of Legislative Affairs

LA09-1243

JESSE L. JACKSON, JR.
2ND DISTRICT, ILLINOIS

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

LABOR-HEALTH AND HUMAN SERVICES-EDUCATION

FOREIGN OPERATIONS, EXPORT FINANCING AND RELATED PROGRAMS

Congress of the United States
House of Representatives
Washington, DC 20515—1302

August 3, 2009

The Honorable Philip F. Mangano
RTC / FDIC
550 17th Street NW
Washington, DC 20429-9990

Dear Mr. Mangano:

I write to support [redacted] request for an additional sixty days, after August 21st, to secure additional capital to avoid receivership by the FDIC.

[redacted] a privately held community bank located in [redacted] Illinois, serves over 4,500 loan and deposit customers. Founded in [redacted] has worked to provide individualized and customized service to the residents and small businesses of [redacted] and south suburbs. Employing sixty five local staff [redacted] has been one of the most profitable financial institutions in Illinois for the past fifteen years.

However, in 2007 [redacted] experienced stress with troubled loans, specifically in their construction loan portfolio. As their borrowers in commercial real estate and the industrial loan sectors struggled to repay their loans and began to default [redacted] was forced to restructure and classify these loans as non-performing.

After the FDIC and State regulatory exam in April [redacted] was advised by regulators, that it needed to increase its capital by August 21, 2009 or face receivership by the FDIC. The Bank immediately initiated steps to resolve the problems identified by the examination and found a potential investor, the [redacted] I have been told by [redacted] that an additional sixty days is needed to secure the appropriate capital and to resolve outstanding issues.

Again, I respectfully request that the FDIC extend this deadline to October 21, 2009, in order for [redacted] to avoid receivership and to preserve jobs and banking services in [redacted] and the south suburbs. Thank you in advance for your consideration of this request and I look forward to hearing from you on this matter.

Sincerely,

[redacted]

Jesse L. Jackson, Jr.
Member of Congress

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LA09-1303

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6632 GERMANTOWN AVENUE
PHILADELPHIA, PA 19119
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Congress of the United States
House of Representatives

COMMITTEES:
COMMITTEE ON APPROPRIATIONS
COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES SUBCOMMITTEE
ENERGY AND WATER DEVELOPMENT SUBCOMMITTEE
HOMELAND SECURITY SUBCOMMITTEE

August 19, 2009

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

Dear Chairman Bair,

I would like to personally invite you or a representative from your organization to participate in *"Tapping into the Stimulus,"* an opportunity for individuals and small businesses seeking to access stimulus and other government funding. The event, which will be held during the Congressional Black Caucus Annual Legislative Weekend, will be an integral part of the weekend's activities, and your participation as a key procurement professional is vital.

"Tapping into the Stimulus" takes place at the Washington Convention Center, Room (207B) on Thursday, September 25th from 2 p.m. to 5:00 p.m. We are expecting 200 to 300 attendees. Below please find specific instructions for participating agencies.

Arrival:
Each presenter should be accompanied by an assistant. Presenters and assistants should arrive by 1pm for set up. Presenters should bring materials for 200 to 300 attendees.

Set Up/Break Down:
You will be provided with a six foot skirted table and two chairs. You are not responsible for setting up or removing the table cloth, skirt, or chairs. You will have one hour to set up your signage and/or printed materials beginning at 1pm, and one hour to break down, beginning at 5:00.

Event Day:
Doors will open at 2 p.m. CBC staff will man the registration tables, located in the front of the room. You will be asked to staff your table, answer questions, and provide printed materials to attendees. You will not be asked to do a separate presentation.

Thank you for considering this invitation to participate in *"Tapping into the Stimulus."* Please email your response to (Brenden.chainey@mail.house.gov or Solomon.Jones@mail.house.gov). If you have any questions, please call Brenden Chainey at 202.225.4001 or Solomon Jones at 215.266.0548.

Very truly yours,

[redacted]

Chaka Fattah
Member of Congress

DeLoose, Michael

From: Chainey, Brenden [Brenden.Chainey@mail.house.gov]
Sent: Thursday, August 20, 2009 11:37 AM
To: DeLoose, Michael
Attachments: FDIC.pdf

Hello,

Congressman Fattah is organizing an event during the Congressional Black Caucus Annual Legislative Weekend called "Tapping into the Stimulus". The event is designed to enable individuals and small businesses to come and speak with a representative from your organization about the range of programs that you offer (grants, loans, contracting opportunities, etc). I have attached a copy of the formal invitation to this email. Please email your response to (Brenden.chainey@mail.house.gov or Solomon.Jones@mail.house.gov). If you have any questions, please call Brenden Chainey at 202.225.4001 or Solomon Jones at 215.266.0548.

Thanks

Brenden Chainey
Legislative Counsel
U.S. House of Representatives
Congressman Chaka Fattah (PA-02)
202-225-4001 (p)
202-225-5392 (f)
Brenden.chainey@mail.house.gov

LA09-1325

JACK REED
RHODE ISLAND
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APPROPRIATIONS
ARMED SERVICES
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS

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TDD Relay Rhode Island
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http://reed.senate.gov

FDIC
AUG 26
OFFICE OF THE CHAIRMAN

August 19, 2009

The Honorable Shelia Bair
Federal Deposit Insurance Corporation
550 17th St., NW,
Washington, DC 20429

Dear Chairwoman Bair:

I write to invite you to speak at the 2009 Rhode Island Business Leaders Day which will be held on Wednesday, September 16, 2009.

Each year, I invite more than 100 business and community leaders from Rhode Island to participate in a one day issues conference held on Capitol Hill. Attendees have an opportunity to discuss matters of critical importance with elected officials, Administration representatives, and industry experts on a variety of domestic and foreign policy issues.

Rhode Island has been hit especially hard in the current economic downturn, with an unemployment rate that is among the highest in the country. Like many states, Rhode Island families are coping with stagnant wages and a decline in housing values, all the while energy, health care, and education costs continue to soar. As a result of this economic uncertainty, I anticipate this year's event will be especially valuable to Rhode Island's business and community leaders who choose to attend.

I hope you are able to participate, and I look forward to discussing this invitation with you. Please do not hesitate to call me, or have your staff contact Neil Campbell regarding this invitation.

Warm regards.

Sincerely,

[redacted]

Jack Reed
United States Senator

LA09-1331

~~Banking and~~ ~~Financial Services~~ Committee

Judiciary Committee

August 26, 2009

Chairman Sheila Bair
Office of the Chairman
Federal Deposit Insurance Corporation
550 Seventeenth Street, NW
Washington, DC 20429

Dear Chairman Bair,

Each year the Congressional Black Caucus Foundation produces its Annual Legislative Conference, a four-day event held in September at the Walter E. Washington Convention Center in Washington, D.C. During this event, thousands of elected officials, business and industry leaders, celebrities, media and everyday Americans come together to discuss issues affecting the African-American community.

Members of the Congressional Black Caucus assist with this exchange of ideas by chairing policy forums and general sessions. It is my hope that you, along with Treasury Secretary Geithner and Federal Reserve Board Chairman Bernanke, will join me in a public discussion of how the Administration's regulatory reform proposals will impact the African-American community.

This forum is scheduled for Friday, September 25, 2009 and will take place between 9:00 a.m. and 11:50 a.m. The session will focus on the roles that minority partners have played in federal financial recovery programs such as the Term Asset-Backed Securities Loan Facility and the Public-Private Investment Program. We will also spend some time publicly discussing how each agency or regulator involves minority-owned firms in its day-to-day financial operations, such as the FDIC's use of outside contractors in its' bank resolution efforts.

I will arrange a phone call to personally discuss the forum and thank you in advance for your attendance. In the meantime, please do not hesitate to contact Mikael Moore at (202) 225-8246 or Matthew Janiga at (202) 226-3503 with any questions.

Sincerely,

[redacted]

Maxine Waters
Chairwoman
Financial Services Committee
Subcommittee on Housing and Community Opportunity

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

August 31, 2009

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

Dear Senator Reid:

Thank you for your letter concerning Federal Deposit Insurance Corporation travel policies.

I understand your concern regarding recent press coverage of government agencies prohibiting staff from attending conferences in Las Vegas and Reno, Nevada. The FDIC does not have any travel or conference policy that discriminates against specific U.S. cities. In conducting our own internal conferences, we are fortunate to have a large FDIC conference facility in Arlington, Virginia, where most of our FDIC conferences are held. We also require that conference planners take into consideration other factors including the adequacy of rooms and facilities, security and safety, and public perception. If conference planners proposed going to Las Vegas for a conference, the over-riding factor in the decision-making process would be cost, not location.

If you have further questions or comments, please contact me at 202-898-6974 or Paul Nash, Deputy for External Affairs, at 202-898-6962.

Sincerely,

[redacted]

Sheila C. Bair

L409-1204

HARRY REID
NEVADA

MAJORITY LEADER

United States Senate
WASHINGTON, DC 20510-7012

July 28, 2009

FDIC

JUL 31 2009

OFFICE OF LEGISLATIVE AFFAIRS

The Honorable Sheila C. Bair
Chairwoman
Federal Deposit Insurance Corporation
1700 G. Street, NW
Washington, D.C. 20552

Dear Madam Chairwoman:

I am writing to request that you reject or reverse any agency policy regarding official travel for your employees that discriminates against specific U.S. cities, particularly Las Vegas and Reno. It has come to my attention that some agencies have adopted guidelines that identify cities also known as resort or vacation destinations as inappropriate venues for official agency travel and meetings. I was glad to learn recently that the White House shares my strong view that decisions concerning government travel, or where to locate official meetings, should be determined by a cost-benefit analysis as opposed to perceptions about a particular location. A letter explaining White House policy is included with this correspondence.

While I am proud of the allure Las Vegas and Reno possess for vacationers, organizations of all sizes and purposes have chosen our state as a destination for their official meetings because it offers them value and convenience. It's therefore no surprise that over the last two decades Nevada has become a world-class destination for business conventions. Room rates are relatively low (hovering around $90 per room on average in Las Vegas), convention and meeting space is plentiful, travel in and out of Nevada is convenient, and amenities are unmatched by any other location in the U.S.

These are the factors that should drive decisions on travel by the federal government; if taken into proper account, I am confident they would bring official government meetings to Nevada. Now more than ever, taxpayer dollars need to be spent wisely and should maximize benefit to the government. By following these principles – and ignoring ill-conceived biases or perceptions about resort destinations – our government decision makers will serve the interests of all taxpayers, and Nevada will receive its deserved share of meeting-and-convention business from federal agencies.

I respectfully request that you respond to this letter and confirm that your agency has adopted a travel policy consistent with the one articulated by the President's chief of staff in the attached letter.

My best wishes to you.

Sincerely,

[redacted]

HARRY REID
United States Senator
Nevada

Encl

THE WHITE HOUSE

WASHINGTON

July 14, 2009

The Honorable Harry Reid
Majority Leader
United States Senate
Washington. DC 20510

Dear Mr. Leader:

Thank you for conveying your concern about any suggestion that federal policy, explicitly or implicitly, prohibit government meetings and conferences in prominent American cities such as Las Vegas or other communities known for attracting vacationers. I agree that federal policy should not dictate the location where such government events are held.

You are as aware as anyone of the toll that the current economic downturn is having on working families and communities nationwide. Your leadership in passing the Economic Recovery Act earlier this year speaks to your commitment to, and effectiveness in, helping communities like Las Vegas and industries like tourism rebound.

Our view on the issue of government travel is not focused on specific destinations, but rather on the justification for and the cost/benefit ratio of the individual exercise. There is no doubt in my mind that the Federal government should lead by example in tightening its belt and justifying its expenditures as we meet the priority challenge of reducing the national deficit and the debt. For me, the test of government travel is what will be accomplished by that travel and whether the cost to the government is reasonable as opposed to other options.

Again, thank you for raising this important issue. I hope this letter helps clarify our view of it.

Sincerely,

[redacted]

Rahm Emanuel

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

August 31, 2009

Honorable Paul W. Hodes
House of Representatives
Washington, D.C. 20515

Dear Congressman Hodes:

Thank you for your letter regarding your constituents' concerns about bank lending to small businesses in New Hampshire.

We agree with your constituents that small businesses are contending with very challenging economic conditions and a contraction in credit availability. I assure you the Federal Deposit Insurance Corporation has not changed its expectations for bank lending or prudent loan underwriting. The FDIC provides banks with considerable flexibility in dealing with customer relationships and managing loan portfolios. We do not instruct banks to curtail prudently managed lending activities, restrict lines of credit to strong borrowers, or require appraisals on performing loans unless an advance of new funds is being contemplated.

Further, the FDIC believes the banking industry is in a position to provide critical banking services and the credit needed to help small businesses prosper in New Hampshire and across the country. Therefore, we strongly encourage banks to continue lending and to work with financially distressed borrowers, and we joined with the other federal banking agencies in issuing the enclosed *Interagency Statement on Meeting the Needs of Creditworthy Borrowers*.

We appreciate the opportunity to address your concerns on this important issue. If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Paul Nash, Deputy for External Affairs, at (202) 898-6962.

Sincerely,

[redacted]

Sheila C. Bair

Enclosures

FDIC

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

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

INTERAGENCY STATEMENT ON MEETING THE NEEDS OF CREDITWORTHY BORROWERS

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

Distribution:
FDIC-Supervised Institutions

Suggested Routing:
Chief Executive Officer
Senior Credit Officer

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

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

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

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

Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226.

Highlights:

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

The agencies expect all banking organizations to fulfill their fundamental role in the economy as intermediaries of credit to businesses, consumers, and other creditworthy borrowers. Lending to creditworthy borrowers provides sustainable returns for the organization and is constructive for the economy as a whole.

The agencies urge all lenders and servicers to adopt systematic, proactive, and streamlined mortgage loan modification protocols and to review troubled loans using these protocols. Lenders and servicers should first determine whether a loan modification would enhance the net present value of the loan before proceeding to foreclosure, and they should ensure that loans currently in foreclosure have been subject to such analysis.

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

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

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

Board of Governors of the Federal Reserve System

Joint Press Release

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Office of Thrift Supervision

For release at 10:00 a.m. EST **November 12, 2008**

Interagency Statement on Meeting the Needs of Creditworthy Borrowers

The Department of the Treasury, the Federal Deposit Insurance Corporation, and the Federal Reserve have recently put into place several programs designed to promote financial stability and to mitigate procyclical effects of the current market conditions. These programs make new capital widely available to U.S. financial institutions, broaden and increase the guarantees on bank deposit accounts and certain liabilities, and provide backup liquidity to U.S. banking organizations. These efforts are designed to strengthen the capital foundation of our financial system and improve the overall functioning of credit markets.

The ongoing financial and economic stress has highlighted the crucial role that prudent bank lending practices play in promoting the nation's economic welfare. The recent policy actions are designed to help support responsible lending activities of banking organizations, enhance their ability to fund such lending, and enable banking organizations to better meet the credit needs of households and business. At this critical time, it is imperative that all banking organizations and their regulators work together to ensure that the needs of creditworthy borrowers are met. As discussed below, to support this objective, consistent with safety and soundness principles and existing supervisory standards, each individual banking organization needs to ensure the adequacy of its capital base, engage in appropriate loss mitigation strategies and foreclosure prevention, and reassess the incentive implications of its compensation policies.

Lending to creditworthy borrowers

The agencies expect all banking organizations to fulfill their fundamental role in the economy as intermediaries of credit to businesses, consumers, and other creditworthy borrowers. Moreover, as a result of problems in financial markets, the economy will likely become increasingly reliant on banking organizations to provide credit formerly provided or facilitated by purchasers of securities. Lending to creditworthy borrowers provides sustainable returns for the lending organization and is constructive for the economy as a whole.

It is essential that banking organizations provide credit in a manner consistent with prudent lending practices and continue to ensure that they consider new lending opportunities on the basis of realistic asset valuations and a balanced assessment of borrowers' repayment capacities. However, if underwriting standards tighten excessively or banking organizations retreat from making sound credit decisions, the current market conditions may be exacerbated, leading to slower growth and potential damage to the economy as well as the long-term interests and profitability of individual banking organizations. Banking organizations should strive to maintain healthy credit relationships with businesses, consumers, and other creditworthy borrowers to enhance their own financial well-being as well as to promote a sound economy. The agencies have directed supervisory staffs to be mindful of the procyclical effects of an excessive tightening of credit availability and to encourage banking organizations to practice economically viable and appropriate lending activities.

Strengthening capital

Maintaining a strong capital position complements and facilitates a banking organization's capacity and willingness to lend and bolsters its ability to withstand uncertain market conditions. Banking organizations should focus on effective and efficient capital planning and longer-term capital maintenance. An effective capital planning process requires a banking organization to assess both the risks to which it is exposed and the risk management processes in place to manage and mitigate those risks; evaluate its capital adequacy relative to its risks; and consider the potential impact on earnings and capital from economic downturns. Further, an effective capital planning process requires a banking organization to recognize losses on bank assets and activities in a timely manner; maintain adequate loan loss provisions; and adhere to prudent dividend policies.

In particular, in setting dividend levels, a banking organization should consider its ongoing earnings capacity, the adequacy of its loan loss allowance, and the overall effect that a dividend payout would have on its cost of funding, its capital position, and, consequently, its ability to serve the expected needs of creditworthy borrowers. Banking organizations should not maintain a level of cash dividends that is inconsistent with the organization's capital position, that could weaken the organization's overall financial health, or that could impair its ability to meet the needs of creditworthy borrowers. Supervisors will continue to review the dividend policies of individual banking organizations and will take action when dividend policies are found to be inconsistent with sound capital and lending policies.

Working with mortgage borrowers
The agencies expect banking organizations to work with existing borrowers to avoid preventable foreclosures, which can be costly to both the organizations and to the communities they serve, and to mitigate other potential mortgage-related losses. To this end, banking organizations need to ensure that their mortgage servicing operations are sufficiently funded and staffed to work with borrowers while implementing effective risk-mitigation measures.

Given escalating mortgage foreclosures, the agencies urge all lenders and servicers to adopt systematic, proactive, and streamlined mortgage loan modification protocols and to review troubled loans using these protocols. Lenders and servicers should first determine whether a loan modification would enhance the net present value of the loan before proceeding to foreclosure, and they should ensure that loans currently in foreclosure have been subject to such analysis. Such practices are not only consistent with sound risk management but are also in the long-term interests of lenders and servicers, as well as borrowers.

Systematic efforts to address delinquent mortgages should seek to achieve modifications that result in mortgages that borrowers will be able to sustain over the remaining maturity of their loan. Supervisors will fully support banking organizations as they work to implement effective and sound loan modification programs. Banking organizations that experience challenges in implementing loss mitigation efforts on their mortgage portfolios or in making new loans to borrowers should work with their primary supervisors to address specific situations.

Structuring compensation
Poorly-designed management compensation policies can create perverse incentives that can ultimately jeopardize the health of the banking organization. Management compensation policies should be aligned with the long-term prudential interests of the institution, should provide appropriate incentives for safe and sound behavior, and should structure compensation to prevent short-term payments for transactions with long-term horizons. Management compensation practices should balance the ongoing earnings capacity and financial resources of the banking organization, such as capital levels and reserves, with the need to retain and provide proper incentives for strong management. Further, it is important for banking organizations to have independent risk management and control functions.

The agencies expect banking organizations to regularly review their management compensation policies to ensure they are consistent with the longer-run objectives of the organization and sound lending and risk management practices.

The agencies will continue to take steps to promote programs that foster financial stability and mitigate procyclical effects of the current market conditions. However, regardless of their participation in particular programs, all banking organizations are expected to adhere to the principles in this statement. We will work with banking organizations to facilitate their active participation in those programs, consistent with safe and sound banking practices, and thus to support their central role in providing credit to support the health of the U.S. economy.

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LA09-1252

PAUL W. HODES
2ND DISTRICT, NEW HAMPSHIRE

COMMITTEES:
FINANCIAL SERVICES

OVERSIGHT AND
GOVERNMENT REFORM

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-2902

August 4, 2009

Timothy Geithner
Secretary
U.S. Department of Treasury
1500 Pennsylvania Ave, N.W.
Washington, D.C. 20220

Ben Bernanke
Chairman
Federal Reserve
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

John Dugan
Comptroller of the Currency
Administrator of National Banks
Washington, DC 20219

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

Dear Secretary Geithner, Chairman Bernanke, Comptroller Dugan, and Chairman Bair,

I am writing today to urge your agencies to take more action in helping small businesses get the loans they need during these difficult economic times. In my home state of New Hampshire, small business is big business. There are about 142,400 small businesses in New Hampshire, and over 85,000 Granite Staters are self-employed.

Many financial institutions have come before the Financial Services Committee and claimed that their lending rates have increased to individuals and small businesses. My constituents and small businesses owners have repeatedly told me otherwise for months now.

Additionally, nearly 4 in 10 small-business owners polled said they are not able to get the financing they need to run their businesses in a July 22, 2009 National Small Business Association report. Bank of America, a recipient of billions of taxpayer dollars from TARP, has cut small business loans by 89.7 percent made through the Small Business Administration (SBA) 7(a) program in the past calendar year, according to a Service Employees International Union (SEIU) report.

It is critical that your agencies encourage small business lending because families and communities rely on these small businesses. Small businesses must get the loans they need.

It is unacceptable that these struggling small businesses cannot get the help they need from the federal government. SBA's lending initiatives are most needed during economic downturns, when private capital markets fail to provide small businesses the financing options they need. The SBA's capital access program has not performed this vital function during the current economic crisis.

According to an article in *The Washington Post*, "Breaking SBA Lending Logjam", the Obama Administration is deciding whether to increase the amount businesses can borrow from the SBA, with the possibility of using TARP funds. I encourage this use of the TARP funds to help with small business loans.

The Obama Administration has stated that it is important that small businesses can continue to thrive. Small businesses are not getting the loans to keep their doors open. I urge your agencies to take action to help our small businesses.

Sincerely,

[redacted]

Paul W. Hodes
Member of Congress

cc: Karen Mills
Administrator
US Small Business Administration
409 3rd Street, SW
Washington, DC 20416

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

September 9, 2009

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

Dear Mr. Chairman:

Thank you for sharing a copy of your letter to the Treasury Secretary concerning a proposal by Congressman Jim Costa to use funds from Troubled Asset Relief Program (TARP) redemptions to augment capital at smaller institutions. The Federal Deposit Insurance Corporation agrees with Congressman Costa that TARP funds could be redistributed to strengthen community banks.

As you may be aware, community banks continue to perceive the TARP program as a financial stability initiative targeted for large institutions. All qualifying domestically owned banks among the 25 largest institutions have received TARP subscriptions, while a comparative handful of smaller institutions have participated. Only 667 institutions of the 7,257 holding companies and small independent banks in the United States have received TARP subscriptions. Approximately 90 percent of U.S. banking institutions did not participate in the TARP program, and only 8 percent of institutions with risk-weighted assets less than $5 billion participated.

We have heard a variety of other concerns voiced about the program, such as the high cost of TARP capital for Subchapter S corporations, the tier 1 capital ineligibility of TARP subscription for mutual institutions, the high closing costs on TARP subscriptions for smaller institutions, and the opacity of the approval process. We believe a more streamlined approval process predicated on the primary federal regulator's extensive knowledge of the applicant and a more consistent cost structure would substantially improve community banks' perception of this program.

The FDIC agrees with Congressman Costa's proposal to stabilize certain community banks by redistributing TARP funds. These funds could help to fuel an economic recovery by taking advantage of several key opportunities:

- bolstering the capital of existing banking institutions that acquire troubled banks and thrifts,

- providing additional capital for minority-owned and -operated institutions to assist their community lending efforts, and

- supporting the capital needs of institutions with favorable lending records that operate in underserved rural or urban markets.

Again, we believe TARP program enhancements should be focused on community banks and more specifically on those institutions with assets less than $5 billion. Enhancements should include more attractive pricing and terms. For institutions with assets less than $100 million, consideration also should be given to reducing or eliminating the cost of closing on TARP subscriptions.

The FDIC has a number of eligible bidders for failing institutions that could be strengthened by an infusion of TARP capital to provide a cushion for losses arising from the failed bank acquisition and intermediate new loans. At this critical juncture in the banking crisis, we believe banks and their communities would greatly benefit from the reinvestment of TARP funds in markets affected by bank closings as well as traditionally underserved communities. The community institutions described above can positively influence our country's financial stability and economic recovery and are especially deserving of access to the TARP Program.

If the program is enhanced as Congressman Costa proposes, a more robust outreach effort must be undertaken with community banks and their trade organizations to overcome existing skepticism. The FDIC would welcome the opportunity to assist Treasury with such outreach efforts if the program is enhanced for community institutions.

Thank you again for allowing the FDIC to provide input on this matter. If you have further questions, please contact me at 202-898-6974 or Paul Nash, Deputy for External Affairs, at 202-898-6962.

Sincerely,

[redacted]

Sheila C. Bair

cc: Honorable Jim Costa

LA09-1220

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July 29, 2009

The Honorable Timothy Geithner
Department of the Treasury
1500 Pennsylvania Avenue
Washington, D.C. 20004

Dear Mr. Secretary,

I'm enclosing a copy of a very thoughtful letter I received from one of my colleagues who is very much engaged in trying to help us get back to full economic strength in an area of the country which very much needs it. As you know, I have myself been in favor of taking advantage of some of the TARP repayments to deal with the problems that led us to pass the TARP in the first place. I am very impressed with the thought behind Congressman Costa's idea and I send it to you in the hope that you and others in the administration will study it and be willing to work with us in implementing it. It does not seem to me to require a legislative action, but if you thought it did, I would try to provide it. But if it is something you can do on your own, I strongly recommend it.

I am sending a copy of this correspondence, both my letter to you and Congressman Costa's letter to me, to Chairwoman Bair of the FDIC as well.

[redacted]

BARNEY FRANK

ENCLOSURE

BF/la

JIM COSTA
20TH DISTRICT, CALIFORNIA

EMAIL: congressmanjimcosta@mail.house.gov
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COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES
CHAIRMAN
SUBCOMMITTEE ON
WATER AND POWER

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

COMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON
CONSERVATION, CREDIT, ENERGY AND RESEARCH
SUBCOMMITTEE ON
HORTICULTURE AND ORGANIC FARMING
SUBCOMMITTEE ON
LIVESTOCK, DAIRY AND POULTRY

COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON
EUROPE
SUBCOMMITTEE ON
MIDDLE EAST AND SOUTH ASIA

July 27th, 2009

Chairman Barney Frank
House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Frank:

As you know, earlier this month the Treasury announced that $70 Billion in funds issued through the Capitol Purchase Program under TARP were returned by many of the larger banking institutions. This letter serves to urge you to investigate the possibility of reinvesting a portion of the returned TARP funds in order to assist our community banks and provide for an expeditious exit of our nationwide financial crisis.

When the FDIC takes over a failed bank, like it did with County Bank of Merced earlier this year, it usually settles on a 20% success rate and then turns these losses over to all surviving banks in the form of new fees. Instead, perhaps the regulators should put these failing banks with well managed banks that admittedly have their share of troubled loans and invest some capital into the acquiring bank so that they can effect the 80+ % success versus the current 20% success. We now have funds left in the TARP program that weren't used to buy toxic assets nor to recapitalize community banks that could be used for this purpose. Perhaps the repayments of TARP money could be used to put two struggling banks together with a little capital which could make one very strong bank.

Reinforcing lending at the local level is something that will help the small businesses throughout the country, including those in the housing sector, and stop this recession from dragging on year after year. The answer to the current fiscal crisis is creating jobs and that means lending to small businesses and builders which is the domain of the all too often ignored community banks.

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The recent hearing your committee held on reinvesting TARP earnings, discussing HR 3068, the TARP for Main Street Act of 2009 was certainly worthwhile. However, I urge you to broaden your consideration of the reinvestment of these TARP earnings, and include Community Banks as part of the proposed solutions. Chairman, I realize that you face an entire host of pressing concerns in the financial services arena; however, I appreciate your consideration of this request and look forward to hearing from you on this issue.

Sincerely,

[redacted]

JIM COSTA
Member of Congress

cc:

The Honorable Timothy Geithner, Secretary of the Treasury

The Honorable Sheila Bair, Chairwoman, Federal Deposit Insurance Corporation

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

September 9, 2009

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

Dear Congressman Bachus:

Thank you for the opportunity to respond to the questions you submitted subsequent to my testimony at the hearing on "Regulatory Perspectives on the Obama Administration's Financial Regulatory Reform Proposals-Part II," before the House Financial Services Committee on July 24, 2009.

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

Sincerely,

[redacted]

Sheila C. Bair

Enclosure

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

UDAP Questions

Q1. Under the Federal Trade Commission Act, only the Board of Governors of the Federal Reserve System (Fed) has the authority to issue rules or regulations defining what acts or practices are unfair or deceptive with respect to all banks, including those for which the FDIC or the OCC is the primary federal regulator. Neither the FDIC nor the OCC has authority to adopt such rules or regulations for the banks they regulate. The Fed, FDIC and OCC, however, have taken the position that the FDIC and the OCC may define what acts or practices they think are unfair or deceptive on a case-by-case basis in the context of administrative enforcement proceedings, and the FDIC has done just that, as reflected in a series of Consent Cease and Desist Orders recently issued by the FDIC including those regarding Advanta Bank Corporation; American Express Centurion Bank of Salt Lake City, Utah; and the CompuCredit-related cease and desist orders against Columbus Bank and Trust, Columbus, Georgia, First Bank of Delaware, Wilmington, Delaware, and First Bank & Trust, Brookings, South Dakota.

Q1a. The FTC Act explicitly confers upon the Federal Reserve Board, the Federal Home Loan Bank Board, and the National Credit Union Administration Board the authority to "define with specificity" unfair and deceptive acts and practices. While the FTC Act grants enforcement authority to the FDIC and OCC, the Act does not explicitly grant the FDIC and OCC the authority to define unfair or deceptive acts and practices. In other words, under the express language of the FTC Act, the FDIC and the OCC do not have the statutory authority to decide for the banks they regulate that a particular act or practice is unsafe or unsound, either by adopting a regulation or on a case-by-case basis in enforcement proceedings.

Q1a(i). Have the FDIC and the OCC each analyzed this legal issue and prepared written legal opinions which conclude that they each do have the authority to define unfair or deceptive acts or practices on a case by case basis?

A1a(i): The FDIC General Counsel has not issued a formal legal opinion, but the FDIC has issued two Financial Institution Letters (FILs) addressing this issue, "Guidance on Unfair or Deceptive Acts," FIL-57-2002 (May 30, 2002), and "Unfair or Deceptive Acts or Practices by State-Chartered Banks," FIL-26-2004 (March 11, 2004). Copies of the two FILS are attached.

The FTC Act contains a broad prohibition on the use of unfair or deceptive acts or practices that does not depend on specific regulations. The FTC Act also grants authority to the FTC and to certain financial regulators including the Fed (for banks), the Office of Thrift Supervision (for thrifts), and the National Credit Union Administration (for credit unions) to issue regulations with respect to specific practices. Insured financial institutions must comply with both the general prohibition on the use of unfair or deceptive practices and any regulations issued by the appropriate financial regulator. If an insured financial institution violates the FTC Act or an implementing regulation, the banking agencies can pursue corrective actions including enforcement actions such as cease and desist orders and the imposition of civil money penalties under Section 8 of the Federal Deposit Insurance Act (FDI Act). For example, in the Compucredit cases listed above, the FDIC brought actions against the three banks, and the FDIC and FTC brought parallel actions against Compucredit.

Q1a(ii). Have these opinions been reviewed and approved by the General Counsel of each agency?

A1a(ii). The FDIC General Counsel reviewed the issue and approved the two FILS before their issuance.

Q1a(iii). Has the Fed General Counsel's office reviewed these opinions or performed its own analysis and prepared its own written opinion?

A1a(iii). While the FDIC is not aware of a formal written opinion by the Fed's General Counsel addressing the FDIC and the OCC's authority to cite banks for violations of Section 5 and take appropriate enforcement action, the Fed has publicly stated this position. Then Chairman Greenspan in his May 30, 2002 letter to Honorable John J. LaFalce, Ranking Member, Committee on Financial Services, noted that "the banking agencies also may take formal enforcement actions under the FDI Act to prevent unfair or deceptive practices that violate the FTC Act." Further, the Fed and the FDIC jointly issued FIL-26-2004, "Unfair or Deceptive Acts or Practices by State-Chartered Banks," which explicitly stated the authority to take enforcement actions under Section 8 of the FDI Act against banks that commit unfair or deceptive trade practices, as provided in Section 5. The Fed, along with the OTS and the NCUA, recently reaffirmed the authority to enforce Section 5 on a case-by-case basis in the Preamble to the January 29, 2009, Amendments to Regulation AA, 74 FR 5498.

Q1a(iv). Have any of the opinions that may have been prepared by the FDIC, OCC, and/or the Fed regarding this issue been reviewed by any independent third party, such as the relevant Inspectors General or the Justice Department?

A1a(iv). We are not aware that either FIL has been reviewed by the FDIC Inspector General or the Justice Department. In Roberts v. Fleet Bank (R.I.), 342 F. 3d 260, 269-70 (3rd Cir. 2003), the Court of Appeals recognized that the OCC has the authority under Section 8 to address proscribed conduct under Section 5.

Qb. What, if any procedures have been established to assure that the Fed, OCC, and the FDIC are all in agreement as to what acts or practices are unfair or deceptive?

Ab: When the FDIC first considered whether it would be appropriate to enforce the FTC Act's Section 5 prohibition against unfair and deceptive acts and practices on a case-by-case basis, it consulted with the Fed. The two agencies determined that such enforcement would be appropriate under Section 8 of the FDI Act. As a means to ensure consistency, they also agreed to follow the standards developed by the FTC and tested through the courts. In FIL 26-2004, the FDIC and the Fed jointly explained that they would follow those standards, which were described in the FIL, and that they would "also consider factually similar cases brought by the FTC and other agencies to ensure that these standards are applied consistently."

The FDIC subjects all potential UDAP cases to a thorough internal review, by both examination and legal staff at multiple levels, which considers the unique facts and circumstances of that case. Each case is considered individually, because a change in a single fact can make the difference between finding a UDAP violation or not.

The FDIC staff regularly consults with FTC staff to obtain informal views in particular situations. The FDIC and Fed staffs are in regular contact through mechanisms such as the FFIEC Consumer Compliance Task Force and other less formal means of communication. A Consumer Compliance Task Force working group has been drafting UDAP examination procedures, for example.

Qb(i). How do the regulators ensure that the OCC and/or the FDIC do not adopt a UDAP rule in a case through their respective adjudicatory processes that has not been, or is not, also adopted by the other banking agencies? Do you see a problem with the possibility of inconsistent rulings or positions between or among the federal banking agencies regarding what acts or practices are unfair or deceptive?

Ab(i). When the FDIC brings an enforcement action against a bank for unfair or deceptive practices on a case-by case basis, the agency has not promulgated a UDAP rule under the FTC Act. As the agencies follow the standards established by the FTC and consult with that agency, we do not believe the agencies will enforce Section 5 in an inconsistent manner. In addition, final decisions by the FDIC in enforcement cases are subject to review by United States Courts of Appeal.

Qb(ii). Are you aware of any inconsistent positions that exist as of today, i.e. situations where the FDIC or OCC or Fed has determined in the context of an administrative enforcement proceeding that a particular act or practice is unfair or deceptive, while one or both of the other agencies have not and do not regard the conduct at issue as a violation of the FTC Act? How would you find out if that was the case?

Ab(ii): We are unaware of any inconsistent positions taken by the agencies in administrative enforcement proceedings addressing unfair or deceptive acts or practices. Further before the FDIC brings a significant formal enforcement action against an institution in a UDAP matter, such as to impose a cease and desist order, restitution order, or a civil money penalty, in most instances the action is approved by the FDIC Case Review Committee, which includes OCC and OTS representatives as voting members. Agency staff routinely discusses matters such as these at Consumer Compliance Task Force meetings.

Questions on FAS 166 and FAS 167

Q1. What will be the impact of this "consolidation" on bond investors who are critical to the extension of credit and the future of our securitized credit markets?

A1. The securitization market involves the complex interaction of originators, borrowers, servicers, and investors. While securitization has helped to extend credit and increase funding of housing and other important markets, the recent crisis has exposed some deficiencies that are in the process of being addressed. The impact of the Financial Accounting Standards Board's (FASB) new accounting standards that will require the consolidation of certain off-balance sheet structures along with other recent reform efforts, such as the requirement for securitizers to retain a percentage of the credit risk on any asset that is transferred through a securitization, is difficult to predict. The various initiatives change the incentives, risks, and rewards for the various securitization market participants in different ways that make it difficult to predict the overall market impact.

The FDIC along with the other banking agencies has just issued a Notice of Proposed Rulemaking (NPR) related to the FASB's adoption of FAS 166 and FAS 167. The NPR seeks to better align regulatory capital requirements with the actual risks of certain exposures and seeks comment and supporting data on the impact of the accounting changes on securitization activity, lending, and financial markets generally. It also seeks comment and supporting data on the features and characteristics of transactions that, although consolidated under the new accounting standards, might merit an alternative capital treatment, as well as on the potential impact of the new accounting standards on lending, provisioning, and other activities.

Q2(a) Does the FDIC consult with the other federal banking agencies in an effort to achieve uniformity with respect to the factors that will be evaluated and the standards that will be applied in arriving at such individual capital requirements for institutions?

A2(a): The federal banking agencies work together to achieve uniformity in the development, interpretation, and implementation of the risk-based capital requirements. An interagency capital policy group from the supervision and legal divisions of the respective agencies meets regularly to discuss and reach consensus on capital policy issues involving new interpretations of the agencies capital rules. We note, for example, that the FDIC and the other federal banking agencies have just developed a uniform joint NPR for a regulatory capital rule to address FAS 166 and FAS 167.

Q2(b): Should the federal banking agencies apply the same criteria to determine the capital ratios for a regulated institution?

A2(b): Insured depository institutions are subject to regulatory capital standards that are, with rare and very minor exceptions, identical across the federal banking agencies. Supervisors generally expect banks to hold capital in excess of regulatory minimums commensurate with their risk profiles. It is appropriate for the agencies to look to a common set of factors in determining capital adequacy, including the individual risk profile of the institution, the level and severity of adversely classified assets, and the institution's interest rate risk.

Q2(c): Is there consistency between and among the federal banking agencies regarding the criteria they use to determine whether to establish individual capital requirements?

A2(c): As provided in the response to question 2(b) above, the agencies generally evaluate a common set of factors in determining whether, and to what extent, an institution should be required to hold capital in excess of the regulatory minimums. However, this determination is dictated largely by the circumstances of the individual institution and supervisory judgment by the respective agencies, including under the specific delegations of authority under the capital rules involving the appropriate classification of capital instruments and the proper risk-weighting of assets under the risk-based capital rules.

Q2(d): Does your agency use an economic model to determine the capital ratios a given institution should maintain in light of its particular risk profile in order to be considered adequately capitalized or well-capitalized?

- **ii. If you do use a model, whose model is it?**
    1. **Was it constructed by your agency alone?**
    2. **Did you discuss it with the other banking agencies, or consult with them regarding what, if any, models they use for such purposes?**
    3. **To the extent you know what differences there are between any model that your agency uses and any model used by any other banking agency, how do you go about resolving hose differences, if at all?**

4. **Do you have a set of standards you use in evaluating capital adequacy models that are employed by the institutions you regulate and, if so, what are they and were they developed in consultation with any other agencies?**

A2(d): No, the FDIC does not use an economic model in determining the capital ratios an institution should maintain. In December 2007, the banking agencies promulgated a regulation mandating the use of certain "advanced approaches" from Basel II to calculate regulatory capital for large, complex banks. These approaches draw heavily from banks' own internal risk models. No U.S. bank is currently calculating its capital requirements under these approaches.

The agencies expect the internal capital adequacy assessment of any institution to go beyond the assumptions underlying the minimum risk-based capital requirements. Although the assessment process may vary on an institution-by-institution basis, banks may use economic capital measures for certain elements of risk management, such as limit setting or for evaluating performance and aggregate capital needs. However, notwithstanding the particular metrics or analytical paradigm used for any given process, the fundamental objectives of the internal assessment must remain the same: to identify and measure material risks; set and assess internal capital adequacy objectives that relate directly to risk; and ensure the integrity of internal capital adequacy assessments. The interagency guidance document discusses the agencies' expectations with respect to each of these objectives, with a specific emphasis on the various risk types that should be identified and measured as part of the internal capital adequacy assessment process (i.e., credit, market, operational, interest rate, and liquidity risk).

Financial Institution Letters

GUIDANCE ON UNFAIR OR DECEPTIVE ACTS OR PRACTICES

FIL-57-2002
May 30, 2002

TO: CHIEF EXECUTIVE OFFICER

SUBJECT: *Unfair or Deceptive Acts or Practices: Applicability of the Federal Trade Commission Act*

The Federal Trade Commission Act (FTC Act) declares that unfair or deceptive trade practices are illegal. **See** 15 USC § 45(a) (FTC Act Section 5). This letter confirms that the Federal Deposit Insurance Corporation (FDIC) intends to cite state nonmember banks and their institution-affiliated parties for violations of FTC Act Section 5 and will take appropriate action pursuant to its authority under Section 8 of the Federal Deposit Insurance Act (FDI Act) when unfair or deceptive trade practices are discovered. FDIC enforcement action against entities other than banks will be coordinated with the Federal Trade Commission, which also has authority to take action against nonbank parties that engage in unfair or deceptive trade practices.

In order to determine whether a practice is "unfair," the FDIC will consider whether the practice "causes or is likely to cause substantial injury to consumers which is not reasonably avoided by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." 15 U.S.C. § 45(n). By adhering to this tenet, the FDIC will take action to address conduct that falls well below the high standards of business practice expected of most banks and the parties affiliated with them.

In addition, to correct deceptive trade practices, the FDIC will take action against representations, omissions, or practices that are likely to mislead consumers acting reasonably under the circumstances, and are likely to cause such consumers harm. The FDIC will focus on material misrepresentations, i.e., those that affect choices made by consumers because such misrepresentations are most likely to cause consumers financial harm.

The FDIC recognizes that the institutions that it supervises generally adhere to high standards of conduct. The agency, therefore, anticipates that it will not be required to take action to correct unfair or deceptive practices on a frequent basis. However, to avoid misunderstanding about the applicability of the FTC Act, this letter is intended to clarify that the FTC Act's prohibition against unfair and deceptive trade practices does apply to your institution, and to its subsidiaries and third-party contractors.

While the Federal Trade Commission has adopted policy statements on unfairness (FTC Policy Statement on Unfairness, December 17, 1980) and deception (FTC Policy Statement on Deception, October 14, 1983), most unfair and deceptive trade practices have been defined in fact-specific, case-by-case adjudications. The FDIC anticipates that additional guidance will be provided in similar fashion going forward.

Please contact Division of Compliance and Consumer Affairs (DCA) staff in your regional office for more information. To obtain Federal Trade Commission business guidance on unfair and deceptive practices and other topics, please link to: www.ftc.gov/ftc/business.htm. For assistance from the DCA Washington Office, please call April Breslaw, Senior Policy Analyst, at (202) 942-3061, Louise Kotoshirodo Kramer, Policy Analyst, at (202) 942-3599, or David LaFleur, Policy Analyst, at (202) 942-3466.

Michael J. Zamorski
Director

Distribution: FDIC-Supervised Banks (Commercial and Savings)

NOTE: Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center, 801 17th Street, NW, Room 100, Washington, DC 20434 (800-276-6003 or (703) 562-2200).

Last Updated 05/30/2002 communications@fdic.gov

Financial Institution Letters

Unfair or Deceptive Acts or Practices by State-Chartered Banks

FIL-26-2004
March 11, 2004

TO: CHIEF EXECUTIVE OFFICER (also of interest to Compliance Officer)

SUBJECT: Unfair or Deceptive Acts or Practices Under Section 5 of the Federal Trade Commission Act

Summary: *The FDIC and the Board of Governors of the Federal Reserve System are issuing guidance to state-chartered banks to outline the standards that the agencies will consider when applying the prohibitions against unfair or deceptive acts or practices found in section 5 of the Federal Trade Commission Act. The guidance also provides information about managing risks relating to unfair or deceptive acts or practices, including best practices.*

The Federal Deposit Insurance Corporation (FDIC) and the Board of Governors of the Federal Reserve System are jointly issuing the attached guidance to state-chartered banks regarding unfair or deceptive acts or practices prohibited by section 5 of the Federal Trade Commission (FTC) Act.

In FIL-57-2002, issued May 30, 2002, the FDIC informed state nonmember banks that these prohibitions apply to their activities, and that the FDIC would issue guidance about how institutions could avoid engaging in practices that might be viewed as unfair or deceptive. In its corresponding release, the Federal Reserve Board indicated that it would work with the FDIC to prepare additional guidance for state member banks on this subject. The attached guidance fulfills these commitments.

Specifically, the guidance explains:

- the standards used to assess whether an act or practice is unfair or deceptive;
- the interplay between the FTC Act and other consumer protection statutes; and
- guidelines for managing risks related to unfair and deceptive practices.

Although most insured banks adhere to high levels of professional conduct, managers of all banks must remain vigilant against possible unfair or deceptive acts or practices to protect consumers and to minimize their own risk.

For more information about the guidance, please contact April P. Breslaw, Section Chief (202- 898-6609); Deirdre Foley, Senior Policy Analyst (202-898-6612); or Mira N. Marshall, Senior Policy Analyst (202-898-3912), in the Division of Supervision and Consumer Protection.

For your reference, FDIC Financial Institution Letters (FILs) may be accessed from the FDIC's Web site at www.fdic.gov/news/news/financial/2004/index.html.

Michael J. Zamorski
Director
Division of Supervision and Consumer Protection

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Attachment: Unfair or Deceptive Acts or Practices by State-Chartered Banks March 11, 2004

Distribution: FDIC-Supervised Banks (Commercial and Savings)

NOTE: Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center , 801 17 th Street, NW , Room 100, Washington , DC 20434 (1-877-275-3342 or (703) 562-2200).

Last Updated 3/11/2004 communications@fdic.gov

Financial Institution Letters

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation

Unfair or Deceptive Acts or Practices by State-Chartered Banks
March 11, 2004

Purpose

The Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation (the "Board" and the "FDIC," or collectively, the "Agencies") are issuing this statement to outline the standards that will be considered by the Agencies as they carry out their responsibility to enforce the prohibitions against unfair or deceptive trade practices found in section 5 of the Federal Trade Commission Act ("FTC Act") as they apply to acts and practices of state-chartered banks. The Agencies will apply these standards when weighing the need to take supervisory and enforcement actions and when seeking to ensure that unfair or deceptive practices do not recur.

This statement also contains a section on managing risks relating to unfair or deceptive acts or practices, which includes best practices as well as general guidance on measures that state-chartered banks can take to avoid engaging in such acts or practices.

Although the majority of insured banks adhere to a high level of professional conduct, banks must remain vigilant against possible unfair or deceptive acts or practices both to protect consumers and to minimize their own risks.

Coordination of Enforcement Efforts

Section 5(a) of the FTC Act prohibits "unfair or deceptive acts or practices in or affecting commerce," and applies to all persons engaged in commerce, including banks. The Agencies each have affirmed their authority under section 8 of the Federal Deposit Insurance Act to take appropriate action when unfair or deceptive acts or practices are discovered.

A number of agencies have authority to combat unfair or deceptive acts or practices. For example, the FTC has broad authority to enforce the requirements of section 5 of the FTC Act against many non-bank entities. In addition, state authorities have primary responsibility for enforcing state statutes against unfair or deceptive acts or practices. The Agencies intend to work with these other regulators as appropriate in investigating and responding to allegations of unfair or deceptive acts or practices that involve state banks and other entities supervised by the Agencies.

Standards for Determining What Is Unfair or Deceptive

The FTC Act prohibits unfair or deceptive acts or practices. Congress drafted this provision broadly in order to provide sufficient flexibility in the law to address changes in the market and unfair or deceptive practices that may emerge.

An act or practice may be found to be unfair where it "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." A representation, omission, or practice is deceptive if it is likely to mislead a consumer acting reasonably under the circumstances and is likely to affect a consumer's conduct or decision regarding a product or service.

The standards for unfairness and deception are independent of each other. While a specific act or practice may be both unfair and deceptive, an act or practice is prohibited by the FTC Act if it is either unfair or deceptive. Whether an act or practice is unfair or deceptive will in each instance depend upon a careful analysis of the facts and circumstances. In analyzing a particular act or practice, the Agencies will be guided by the body of law and official interpretations for defining unfair or deceptive acts or practices developed by the courts and the FTC. The Agencies will also consider factually similar cases brought by the FTC and other agencies to ensure that these standards are applied consistently.

Unfair Acts or Practices

Assessing whether an act or practice is unfair

An act or practice is unfair where it (1) causes or is likely to cause substantial injury to consumers, (2) cannot be reasonably avoided by consumers, and (3) is not outweighed by countervailing benefits to consumers or to competition. Public policy may also be considered in the analysis of whether a particular act or practice is unfair. Each of these elements is discussed further below.

- The act or practice must cause or be likely to cause substantial injury to consumers.

To be unfair, an act or practice must cause or be likely to cause substantial injury to consumers. Substantial injury usually involves monetary harm. An act or practice that causes a small amount of harm to a large number of people may be deemed to cause substantial injury. An injury may be substantial if it raises a significant risk of concrete harm. Trivial or merely speculative harms are typically insufficient for a finding of substantial injury. Emotional impact and other more subjective types of harm will not ordinarily make a practice unfair.

- Consumers must not reasonably be able to avoid the injury.

A practice is not considered unfair if consumers may reasonably avoid injury. Consumers cannot reasonably avoid injury from an act or practice if it interferes with their ability to effectively make decisions. Withholding material price information until after the consumer has committed to purchase the product or service would be an example of preventing a consumer from making an informed decision. A practice may also be unfair where consumers are subject to undue influence or are coerced into purchasing unwanted products or services.

The Agencies will not second-guess the wisdom of particular consumer decisions. Instead, the Agencies will consider whether a bank's behavior unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decision-making.

- The injury must not be outweighed by countervailing benefits to consumers or to competition.

To be unfair, the act or practice must be injurious in its net effects —that is, the injury must not be outweighed by any offsetting consumer or competitive benefits that are also produced by the act or practice. Offsetting benefits may include lower prices or a wider availability of products and services.

Costs that would be incurred for remedies or measures to prevent the injury are also taken into account in determining whether an act or practice is unfair. These costs may include the costs to the bank in taking preventive measures and the costs to society as a whole of any increased burden and similar matters.

- Public policy may be considered.

Public policy, as established by statute, regulation, or judicial decisions may be considered with all other evidence in determining whether an act or practice is unfair. For example, the fact that a particular lending practice violates a state law or a banking regulation may be considered as evidence in determining whether the act or practice is unfair. Conversely, the fact that a particular practice is affirmatively allowed by statute may be considered as evidence that the practice is not unfair. Public policy considerations by themselves, however, will not serve as the primary basis for determining that an act or practice is unfair.

Deceptive Acts and Practices

Assessing whether an act or practice is deceptive

A three-part test is used to determine whether a representation, omission, or practice is "deceptive." First, the representation, omission, or practice must mislead or be likely to mislead the consumer. Second, the consumer's interpretation of the representation, omission, or practice must be reasonable under the circumstances. Lastly, the misleading representation, omission, or practice must be material. Each of these elements is discussed below in greater detail.

- There must be a representation, omission, or practice that misleads or is likely to mislead the consumer.

An act or practice may be found to be deceptive if there is a representation, omission, or practice that misleads or is likely to mislead the consumer. Deception is not limited to situations in which a consumer has already been misled. Instead, an act or practice may be found to be deceptive if it is likely to mislead consumers. A representation may be in the form of express or implied claims or promises and may be written or oral. Omission of information may be deceptive if disclosure of the omitted information is necessary to prevent a consumer from being misled.

In determining whether an individual statement, representation, or omission is misleading, the statement, representation, or omission will not be evaluated in isolation. The Agencies will evaluate it in the context of the entire advertisement, transaction, or course of dealing to determine whether it constitutes deception. Acts or practices that have the potential to be deceptive include: making misleading cost or price claims; using bait-and-switch techniques; offering to provide a product or service that is not in fact available; omitting material limitations or conditions from an offer; selling a product unfit for the purposes for which it is sold; and failing to provide promised services.

- The act or practice must be considered from the perspective of the reasonable consumer.

In determining whether an act or practice is misleading, the consumer's interpretation of or reaction to the representation, omission, or practice must be reasonable under the circumstances. The test is whether the consumer's expectations or interpretation are reasonable in light of the claims made. When representations or marketing practices are targeted to a specific audience, such as the elderly or the financially unsophisticated, the standard is based upon the effects of the act or practice on a reasonable member of that group.

If a representation conveys two or more meanings to reasonable consumers and one meaning is misleading, the representation may be deceptive. Moreover, a consumer's interpretation or reaction may indicate that an act or practice is deceptive under the circumstances, even if the consumer's interpretation is not shared by a majority of the consumers in the relevant class, so long as a significant minority of such consumers is misled.

In evaluating whether a representation, omission or practice is deceptive, the Agencies will look at the entire advertisement, transaction, or course of dealing to determine how a reasonable consumer would respond. Written disclosures may be insufficient to correct a misleading statement or representation, particularly where the consumer is directed away from qualifying limitations in the text or is counseled that reading the disclosures is unnecessary. Likewise, oral disclosures or fine print may be insufficient to cure a misleading headline or prominent written representation.

- The representation, omission, or practice must be material.

A representation, omission, or practice is material if it is likely to affect a consumer's decision regarding a product or service. In general, information about costs, benefits, or restrictions on the use or availability of a product or service is material. When express claims are made with respect to a financial product or service, the claims will be presumed to be material. Similarly, the materiality of an implied claim will be presumed when it is demonstrated that the institution intended that the consumer draw certain conclusions based upon the claim.

Claims made with the knowledge that they are false will also be presumed to be material. Omissions will be presumed to be material when the financial institution knew or should have known that the consumer needed the omitted information to evaluate the product or service.

Relationship to Other Laws

Acts or practices that are unfair or deceptive within the meaning of section 5 of the FTC Act may also violate other federal or state statutes. On the other hand, there may be circumstances in which an act or practice violates section 5 of the FTC Act even though the institution is in technical compliance with other applicable laws, such as consumer protection and fair lending laws. Banks should be mindful of both possibilities. The following laws warrant particular attention in this regard:

Truth in Lending and Truth in Savings Acts

Pursuant to the Truth in Lending Act (TILA), creditors must "clearly and conspicuously" disclose the costs and terms of credit. The Truth in Savings Act (TISA) requires depository institutions to provide interest and fee disclosures for deposit accounts so that consumers may compare deposit products. TISA also provides that advertisements shall not be misleading or inaccurate, and cannot misrepresent an institution's deposit contract. An act or practice that does not comply with these provisions of TILA or TISA may also violate the FTC Act. On the other hand, a transaction that is in technical compliance with TILA or TISA may nevertheless violate the FTC Act. For example, consumers could be misled by advertisements of "guaranteed" or "lifetime" interest rates when the creditor or depository institution intends to change the rates, whether or not the disclosures satisfy the technical requirements of TILA or TISA.

Equal Credit Opportunity and Fair Housing Acts

The Equal Credit Opportunity Act (ECOA) prohibits discrimination in any aspect of a credit transaction against persons on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), the fact that an applicant's income derives from any public assistance program, and the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. Similarly, the Fair Housing Act (FHA) prohibits creditors involved in residential real estate transactions from discriminating against any person on the basis of race, color, religion, sex, handicap, familial status, or national origin. Unfair or deceptive practices that target or have a disparate impact on consumers who are members of these protected classes may violate the ECOA or the FHA, as well as the FTC Act.

Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act prohibits unfair, deceptive, and abusive practices related to the collection of consumer debts. Although this statute does not by its terms apply to banks that collect their own debts, failure to adhere to the standards set by this Act may support a claim of unfair or deceptive practices in violation of the FTC Act. Moreover, banks that either affirmatively or through lack of oversight, permit a third-party debt collector acting on their behalf to engage in deception, harassment, or threats in the collection of monies due may be exposed to liability for approving or assisting in an unfair or deceptive act or practice.

Managing Risks Related to Unfair or Deceptive Acts or Practices

Since the release of the FDIC's statement and the Board's letter on unfair and deceptive practices in May 2002, bankers have asked for guidance on strategies for managing risk in this area. This section outlines guidance on best practices to address some areas with the greatest potential for unfair or deceptive acts and practices, including: advertising and solicitation; servicing and collections; and the management and monitoring of employees and third-party service providers. Banks also should monitor compliance with their own policies in these areas, and should have procedures for receiving and addressing consumer complaints and monitoring activities performed by third parties on behalf of the bank.

To avoid engaging in unfair or deceptive activity, the Agencies encourage use of the following practices, which have already been adopted by many institutions:

Review all promotional materials, marketing scripts, and customer agreements and disclosures to ensure that they fairly and adequately describe the terms, benefits, and material limitations of the product or service being offered, including any related or optional products or services, and that they do not misrepresent such terms either affirmatively or by omission. Ensure that these materials do not use fine print, separate statements or inconspicuous disclosures to correct potentially misleading headlines, and ensure that there is a reasonable factual basis for all representations made.

Draw the attention of customers to key terms, including limitations and conditions, that are important in enabling the customer to make an informed decision regarding whether the product or service meets the customer's needs.

Clearly disclose all material limitations or conditions on the terms or availability of products or services, such as a limitation that applies a special interest rate only to balance transfers; the expiration date for terms that apply only during an introductory period; material prerequisites for obtaining particular products, services or terms (e.g., minimum transaction amounts, introductory or other fees, or other qualifications); or conditions for canceling a service without charge when the service is offered on a free trial basis.

Inform consumers in a clear and timely manner about any fees, penalties, or other charges (including charges for any force-placed products) that have been imposed, and the reasons for their imposition.

Clearly inform customers of contract provisions that permit a change in the terms and conditions of an agreement.

When using terms such as "pre-approved" or "guaranteed," clearly disclose any limitations, conditions, or restrictions on the offer.

Clearly inform consumers when the account terms approved by the bank for the consumer are less favorable than the advertised terms or terms previously disclosed.

Tailor advertisements, promotional materials, disclosures and scripts to take account of the sophistication and experience of the target audience. Do not make claims, representations or statements that mislead members of the target audience about the cost, value, availability, cost savings, benefits, or terms of the product or service.

Avoid advertising that a particular service will be provided in connection with an account if the bank does not intend or is not able to provide the service to accountholders. Clearly disclose when optional products and services — such as insurance, travel services, credit protection, and consumer report update services that are offered simultaneously with credit — are not required to obtain credit or considered in decisions to grant credit.

Ensure that costs and benefits of optional or related products and services are not misrepresented or presented in an incomplete manner.

When making claims about amounts of credit available to consumers, accurately and completely represent the amount of potential, approved, or useable credit that the consumer will receive.

Avoid advertising terms that are not available to most customers and using unrepresentative examples in advertising, marketing, and promotional materials.

Avoid making representations to consumers that they may pay less than the minimum amount due required by the account terms without adequately disclosing any late fees, overlimit fees, or other account fees that will result from the consumer paying such reduced amount.

Clearly disclose a telephone number or mailing address (and, as an addition, an email or website address if available) that consumers may use to contact the bank or its third-party servicers regarding any complaints they may have, and maintain appropriate procedures for resolving complaints. Consumer complaints should also be reviewed by banks to identify practices that have the potential to be misleading to customers.

Implement and maintain effective risk and supervisory controls to select and manage third-party servicers.

Ensure that employees and third parties who market or promote bank products, or service loans, are adequately trained to avoid making statements or taking actions that might be unfair or deceptive.

Review compensation arrangements for bank employees as well as third-party vendors and servicers to ensure that they do not create unintended incentives to engage in unfair or deceptive practices.

Ensure that the institution and its third party servicers have and follow procedures to credit consumer payments in a timely manner. Consumers should be clearly told when and if monthly payments are applied to fees, penalties, or other charges before being applied to regular principal and interest.

The need for clear and accurate disclosures that are sensitive to the sophistication of the target audience is heightened for products and services that have been associated with abusive practices. Accordingly, banks should take particular care in marketing credit and other products and services to the elderly, the financially vulnerable, and customers who are not financially sophisticated. In addition, creditors should pay particular attention to ensure that disclosures are clear and accurate with respect to: the points and other charges that will be financed as part of home-secured loans; the terms and conditions related to insurance offered in connection with loans; loans covered by the Home Ownership and Equity Protection Act; reverse mortgages; credit cards designed to rehabilitate the credit position of the cardholder; and loans with pre-payment penalties, temporary introductory terms, or terms that are not available as advertised to all consumers.

Conclusion

The development and implementation of policies and procedures in these areas and the other steps outlined above will help banks assure that products and services are provided in a manner that is fair, allows informed customer choice, and is consistent with the FTC Act.

Last Updated 3/11/2004 communications@fdic.gov

LA09-1279

FDIC

AUG 17 2009

OFFICE OF LEGISLATIVE AFFAIRS

ADDITIONAL QUESTIONS FOR CHAIRWOMAN BAIR FROM JULY 24, 2009 HEARING:
"REGULATORY PERSPECTIVES ON THE OBAMA ADMINISTRATION'S FINANCIAL REGULATORY REFORM PROPOSALS – PART II"
Representative Spencer Bachus
Response Requested by September 7, 2009

<u>UDAP Questions</u>

1. Under the Federal Trade Commission Act, only the Board of Governors of the Federal Reserve System ("Fed") has the authority to issue rules or regulations defining what acts or practices are unfair or deceptive with respect to all banks, including those for which the FDIC or the OCC is the primary federal regulator. Neither the FDIC nor the OCC has the authority to adopt such rules or regulations for the banks they regulate. The Fed, FDIC and OCC, however, have taken the position that the FDIC and the OCC may define what acts or practices they think are unfair or deceptive on a case-by-case basis in the context of administrative enforcement proceedings, and the FDIC has done just that, as reflected in a series of Consent Cease and Desist Orders recently issued by the FDIC, including those regarding Advanta Bank Corporation; American Express Centurion Bank of Salt Lake City, Utah; and the CompuCredit-related cease and desist orders against Columbus Bank and Trust, Columbus, Georgia, First Bank of Delaware, Wilmington, Delaware, and First Bank & Trust, Brookings, South Dakota.

    a. The FTC Act explicitly confers upon the Federal Reserve Board, the Federal Home Loan Bank Board, and the National Credit Union Administration Board the authority to "define with specificity" unfair and deceptive acts and practices. While the FTC Act grants enforcement authority to the FDIC and OCC, the Act does not explicitly grant the FDIC and OCC the authority to define unfair or deceptive acts and practices. In other words, under the express language of the FTC Act, the FDIC and the OCC do not have the statutory authority to decide for the banks they regulate that a particular act or practice is unsafe or unsound, either by adopting a regulation or on a case-by-case basis in enforcement proceedings.

        i. Have the FDIC and the OCC each analyzed this legal issue and prepared written legal opinions which conclude that they each do have the authority to define unfair or deceptive acts or practices on a case-by-case basis?

        ii. Have these opinions been reviewed and approved by the General Counsel of each agency?

        iii. Has the Fed General Counsel's office reviewed these opinions or performed its own analysis and prepared its own written opinion?

        iv. Have any of the opinions that may have been prepared by the FDIC, OCC and/or the Fed regarding this issue been reviewed by any independent third party, such as the relevant Inspectors General or the Justice Department?

b. What, if any, procedures have been established to assure that the Fed, OCC and the FDIC are all in agreement as to what acts or practices are unfair or deceptive?

   i. How do the regulators ensure that the OCC and/or the FDIC do not adopt a UDAP rule in a case through their respective adjudicatory processes that has not been, or is not, also adopted by the other banking agencies? Do you see a problem with the possibility of inconsistent rulings or positions between or among the federal banking agencies regarding what acts or practices are unfair or deceptive?

   ii. Are you aware of any inconsistent positions that exist as of today, i.e., situations where the FDIC or OCC or Fed has determined in the context of an administrative enforcement proceeding that a particular act or practice is unfair or deceptive, while one or both of the other agencies have not and do not regard the conduct at issue as a violation of the FTC Act? How would you find out if that were the case?

QUESTIONS ON FAS 166 AND 167

1. Treasury Secretary Geithner has warned that "no financial recovery plan will be successful unless it helps restart securitization markets. . . ." At the same time, the Financial Accounting Standards Board (FASB) has recently finalized significant and retroactive changes to securitization accounting that will have a tremendous impact on existing assets and future lending. These changes – which become effective January 1 2010 – could seriously complicate efforts to repair financial markets.

   The Administration has made the securitized credit markets the centerpiece of the Financial Stability Plan (through TALF, PPIP, etc). However, in promulgating FAS 166 and 167, FASB has sought to retroactively eliminate the securitization accounting vehicle known as the "Qualified Special Purpose Entity," which will require some bond investors to "consolidate" an entire pool of loans on their balance sheet, despite only owning 2-3% of the transaction. What will be the impact of this "consolidation" on bond investors who are critical to the extension of credit and the future of our securitized credit markets?

2. The same statutory capital ratios apply to every federally insured depository institution for purposes of determining what their level of capital adequacy is, e.g., well capitalized, adequately capitalized, undercapitalized, etc. However, each of the federal banking agencies also has the authority to require a given institution it regulates to achieve and maintain capital ratios (e.g., for total risk-based capital, core capital, etc.) at specific levels set by the agency, which may be even higher than

the statutory ratios used to define a "well-capitalized" institution. In connection with these individual capital requirements:

a. Does your agency consult with the other federal banking agencies in an effort to achieve uniformity with respect to the factors that will be evaluated and the standards that will be applied in arriving at such individual capital requirements for institutions?

b. Should the federal banking agencies apply the same criteria to determine the capital ratios for a regulated institution?

c. Is there consistency between and among the federal banking agencies regarding the criteria they use to determine whether to establish individual capital requirements?

d. Does your agency use an economic model to determine the capital ratios a given institution should maintain in light of its particular risk profile in order to be considered adequately capitalized or well-capitalized?

    i. If you don't use a model, how do you make that determination?

    ii. If you do use a model, whose model is it?

        1. Was it constructed by your agency alone?

        2. Did you discuss it with the other banking agencies, or consult with them regarding what, if any, models they use for such purposes?

        3. To the extent you know what differences there are between any model that your agency uses and any model used by any other banking agency, how do you go about resolving those differences, if at all?

        4. Do you have a set of standards you use in evaluating capital adequacy models that are employed by the institutions you regulate and, if so, what are they and were they developed in consultation with any other agencies?

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

September 15, 2009

Honorable Jean Schmidt
Representative, U.S. Congress
8044 Montgomery Road, Suite 170
Cincinnati, Ohio 45236

Dear Congresswoman Schmidt:

Thank you for your letter on behalf of a constituent concerned with the interest rate paid on his certificate of deposit purchased from People's Community Bank of West Chester, Ohio.

On July 31, 2009, the Office of Thrift Supervision closed the Peoples Community Bank, West Chester, Ohio, and appointed the Federal Deposit Insurance Corporation receiver. To protect the depositors, the FDIC entered into a purchase and assumption agreement with First Financial Bank, National Association, Hamilton, Ohio, to assume all of the deposits of Peoples Community Bank. All insured depositors and customers automatically became customers of First Financial Bank and depositors continued to have access to their funds.

When a bank fails and the FDIC transfers the insured deposits to another financial institution, the assuming institution is not legally bound by the same terms agreed to by the failed institution and may choose to pay a different interest rate. The assuming institution is required to notify the accountholders of the new rate and terms immediately after the transfer of deposits. Depositors are not required to maintain their deposit accounts at the new institution and have the right to withdraw their deposits, without penalty, after being advised of the new interest rate and terms.

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

Sincerely,

[redacted]

Paul Nash
Deputy to the Chairman for External Affairs

LA09-1284

Jean Schmidt
2nd District of Ohio

418 Cannon House Office Building
Washington, DC 20515
(202) 225-3164

Congress of the United States
House of Representatives

Committee on Agriculture
Subcommittees
Ranking Member, Horticulture and Organic Agriculture
Department Operations, Oversight, Nutrition, and Forestry
Conservation, Credit, Energy, and Research

Committee on Transportation and Infrastructure
Subcommittees
Aviation
Highways and Transit
Railroads, Pipelines and Hazardous Materials

FAX COVER SHEET

District Office
8044 Montgomery Road, Suite 170
Cincinnati, OH 45236

Phone: 513.791.0381

Fax: 513.791.1696

linda.long@mail.house.gov

DATE: August 17, 2009

TO: FDIC ATTN: Mr. Michael DeLoose

FROM: Linda Long for Congresswoman Jean Schmidt 202.898.3745

RE: People's Community Bank Ohio

Number of Pages: 2

Michael, thank you for your call this morning.

Jean Schmidt
2nd District of Ohio

118 Cannon House Office Building
Washington, DC 20515
(202) 225-3164

Congress of the United States
House of Representatives

Committee on Agriculture
Subcommittees
Ranking Member, Horticulture and Organic Agriculture
Department Operations, Oversight, Nutrition, and Forestry
Conservation, Credit, Energy, and Research
Committee on Transportation and Infrastructure
Subcommittees
Aviation
Highways and Transit
Railroads, Pipelines and Hazardous Materials

August 17, 2009

Mr. Eric Spitler
Director, Office of Legislative Affairs
550 Seventeenth Street, NW, Room 6076
Washington, DC 20429-0001

Dear Eric:

I received a telephone call from a constituent who expressed concern about his Certificates of Deposit that had been opened at the People's Community Bank of West Chester, Ohio.

I will not use his name, since I do not have his signature on a privacy release form. He indicated that he has received a letter from First Financial Bank saying that he must withdraw his funds by November 1st. He is concerned that he will not find another savings institution that provides the higher interest rate he was supposed to have earned on the CDs at Peoples. The constituent asked if he had a "contract" for a certain interest rate when he opened the CDs with Peoples.

My caseworker, Linda Long, spoke with Michael DeLoose this morning; and he suggested that your office would be able to send a written response that would shed some light on the situation for the constituent. Your assistance in responding to the constituent's concerns, in accordance with all applicable laws and regulations, is greatly appreciated.

Please direct your response and any questions to my caseworker, Linda Long, at my district office: 8044 Montgomery Road, Suite 170, Cincinnati, OH 45236, or via e-mail at linda.long@mail.house.gov or via telephone at 513.791.0381. Thank you.

Sincerely,

[redacted]

Jean Schmidt
MEMBER OF CONGRESS

JS/ll

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

September 21, 2009

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

Dear Congressman Wilson:

Thank you for your letter expressing concern about the availability of bank lending to the home building industry. This sector is critical to an economic recovery, and we appreciate the opportunity to respond.

We agree with your constituents that home builders are contending with extremely challenging market conditions, which have been exacerbated by turmoil in the credit markets. As a result, credit availability has suffered. Banks also have taken reasonable steps to re-value collateral as property values have declined during the past several years. I assure you the FDIC has not changed its expectations for prudent commercial real estate loan underwriting and administration or for obtaining updated appraisals on collateral. We strongly encourage banks to continue lending and work with their financially distressed borrowers as evidenced by the enclosed Interagency Statement on Meeting the Needs of Creditworthy Borrowers. Moreover, for institutions that received capital subscriptions as part of the Troubled Asset Relief Program's Capital Purchase Program, the FDIC expects these institutions to use those funds to enhance the availability of prudently underwritten loans.

The FDIC provides banks with considerable flexibility in dealing with customer relationships and managing loan portfolios. I assure you we do not instruct banks to curtail prudently managed lending activities, restrict lines of credit to strong borrowers, or require appraisals on performing loans unless an advance of new funds is being contemplated. Home builders and other small businesses are an important component of our economy, and we share your concern for making credit available to these enterprises in South Carolina and across the nation.

If you have further questions or comments, please contact me at 202-898-6974 or Paul Nash, Deputy for External Affairs, at 202-898-6962.

Sincerely,

[redacted]

Sheila C. Bair

Enclosure

FDIC

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

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

INTERAGENCY STATEMENT ON MEETING THE NEEDS OF CREDITWORTHY BORROWERS

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

Distribution:
FDIC-Supervised Institutions

Suggested Routing:
Chief Executive Officer
Senior Credit Officer

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

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

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

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

Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226.

Highlights:

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

The agencies expect all banking organizations to fulfill their fundamental role in the economy as intermediaries of credit to businesses, consumers, and other creditworthy borrowers. Lending to creditworthy borrowers provides sustainable returns for the organization and is constructive for the economy as a whole.

The agencies urge all lenders and servicers to adopt systematic, proactive, and streamlined mortgage loan modification protocols and to review troubled loans using these protocols. Lenders and servicers should first determine whether a loan modification would enhance the net present value of the loan before proceeding to foreclosure, and they should ensure that loans currently in foreclosure have been subject to such analysis.

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

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

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

Joint Release

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Office of Thrift Supervision

EMBARGOED for release at 10 a.m. EST November 12, 2008

Interagency Statement on Meeting the Needs of Creditworthy Borrowers

The Department of the Treasury, the Federal Deposit Insurance Corporation, and the Federal Reserve have recently put into place several programs designed to promote financial stability and to mitigate procyclical effects of the current market conditions. These programs make new capital widely available to U.S. financial institutions, broaden and increase the guarantees on bank deposit accounts and certain liabilities, and provide backup liquidity to U.S. banking organizations. These efforts are designed to strengthen the capital foundation of our financial system and improve the overall functioning of credit markets.

The ongoing financial and economic stress has highlighted the crucial role that prudent bank lending practices play in promoting the nation's economic welfare. The recent policy actions are designed to help support responsible lending activities of banking organizations, enhance their ability to fund such lending, and enable banking organizations to better meet the credit needs of households and business. At this critical time, it is imperative that all banking organizations and their regulators work together to ensure that the needs of creditworthy borrowers are met. As discussed below, to support this objective, consistent with safety and soundness principles and existing supervisory standards, each individual banking organization needs to ensure the adequacy of its capital base, engage in appropriate loss mitigation strategies and foreclosure prevention, and reassess the incentive implications of its compensation policies.

Lending to creditworthy borrowers

The agencies expect all banking organizations to fulfill their fundamental role in the economy as intermediaries of credit to businesses, consumers, and other creditworthy borrowers. Moreover, as a result of problems in financial markets, the economy will likely become increasingly reliant on banking organizations to provide credit formerly provided or facilitated by purchasers of securities. Lending to creditworthy borrowers provides sustainable returns for the lending organization and is constructive for the economy as a whole.

It is essential that banking organizations provide credit in a manner consistent with prudent lending practices and continue to ensure that they consider new lending opportunities on the basis of realistic asset

(more)

valuations and a balanced assessment of borrowers' repayment capacities. However, if underwriting standards tighten excessively or banking organizations retreat from making sound credit decisions, the current market conditions may be exacerbated, leading to slower growth and potential damage to the economy as well as the long-term interests and profitability of individual banking organizations. Banking organizations should strive to maintain healthy credit relationships with businesses, consumers, and other creditworthy borrowers to enhance their own financial well-being as well as to promote a sound economy. The agencies have directed supervisory staffs to be mindful of the procyclical effects of an excessive tightening of credit availability and to encourage banking organizations to practice economically viable and appropriate lending activities.

Strengthening capital

Maintaining a strong capital position complements and facilitates a banking organization's capacity and willingness to lend and bolsters its ability to withstand uncertain market conditions. Banking organizations should focus on effective and efficient capital planning and longer-term capital maintenance. An effective capital planning process requires a banking organization to assess both the risks to which it is exposed and the risk management processes in place to manage and mitigate those risks; evaluate its capital adequacy relative to its risks; and consider the potential impact on earnings and capital from economic downturns. Further, an effective capital planning process requires a banking organization to recognize losses on bank assets and activities in a timely manner; maintain adequate loan loss provisions; and adhere to prudent dividend policies.

In particular, in setting dividend levels, a banking organization should consider its ongoing earnings capacity, the adequacy of its loan loss allowance, and the overall effect that a dividend payout would have on its cost of funding, its capital position, and, consequently, its ability to serve the expected needs of creditworthy borrowers,. Banking organizations should not maintain a level of cash dividends that is inconsistent with the organization's capital position, that could weaken the organization's overall financial health, or that could impair its ability to meet the needs of creditworthy borrowers. Supervisors will continue to review the dividend policies of individual banking organizations and will take action when dividend policies are found to be inconsistent with sound capital and lending policies.

Working with mortgage borrowers

The agencies expect banking organizations to work with existing borrowers to avoid preventable foreclosures, which can be costly to both the organizations and to the communities they serve, and to mitigate other potential mortgage-related losses. To this end, banking organizations need to ensure that their mortgage servicing operations are sufficiently funded and staffed to work with borrowers while implementing effective risk-mitigation measures.

(more)

Given escalating mortgage foreclosures, the agencies urge all lenders and servicers to adopt systematic, proactive, and streamlined mortgage loan modification protocols and to review troubled loans using these protocols. Lenders and servicers should first determine whether a loan modification would enhance the net present value of the loan before proceeding to foreclosure, and they should ensure that loans currently in foreclosure have been subject to such analysis. Such practices are not only consistent with sound risk management but are also in the long-term interests of lenders and servicers, as well as borrowers.

Systematic efforts to address delinquent mortgages should seek to achieve modifications that result in mortgages that borrowers will be able to sustain over the remaining maturity of their loan. Supervisors will fully support banking organizations as they work to implement effective and sound loan modification programs. Banking organizations that experience challenges in implementing loss mitigation efforts on their mortgage portfolios or in making new loans to borrowers should work with their primary supervisors to address specific situations.

Structuring compensation

Poorly-designed management compensation policies can create perverse incentives that can ultimately jeopardize the health of the banking organization. Management compensation policies should be aligned with the long-term prudential interests of the institution, should provide appropriate incentives for safe and sound behavior, and should structure compensation to prevent short-term payments for transactions with long-term horizons. Management compensation practices should balance the ongoing earnings capacity and financial resources of the banking organization, such as capital levels and reserves, with the need to retain and provide proper incentives for strong management. Further, it is important for banking organizations to have independent risk management and control functions.

The agencies expect banking organizations to regularly review their management compensation policies to ensure they are consistent with the longer-run objectives of the organization and sound lending and risk management practices.

The agencies will continue to take steps to promote programs that foster financial stability and mitigate procyclical effects of the current market conditions. However, regardless of their participation in particular programs, all banking organizations are expected to adhere to the principles in this statement. We will work with banking organizations to facilitate their active participation in those programs, consistent with safe and sound banking practices, and thus to support their central role in providing credit to support the health of the U.S. economy. **FDIC-115-2007**

Media Contacts:

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Fed Dave Skidmore (202) 452-2955
OTS Bill Ruberry (202) 906-6677
OCC Bob Garsson (202) 874-5770

LA09-1323

JOE WILSON
2ND DISTRICT, SOUTH CAROLINA

ASSISTANT REPUBLICAN WHIP

COMMITTEES:
ARMED SERVICES
RANKING, PERSONNEL SUBCOMMITTEE
FOREIGN AFFAIRS
EDUCATION AND LABOR
HOUSE POLICY

Congress of the United States
House of Representatives

COUNTIES:
AIKEN*
ALLENDALE
BARNWELL
BEAUFORT
CALHOUN*
HAMPTON
JASPER
LEXINGTON
ORANGEBURG*
RICHLAND*
(*PARTS OF)

W. ERIC DELL
CHIEF OF STAFF
AND COUNSEL

August 20, 2009

FDIC
AUG 25 2009
OFFICE OF LEGISLATIVE AFFAIRS

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

Dear Chairman Bair,

Turmoil in the housing credit and broader financial markets has spilled over into financing for housing production. Home builders are experiencing a significant adverse shift in terms and availability on land acquisition, land development and home construction (AD&C) loans, and builders with outstanding loans are facing mounting challenges. This rapidly spreading freeze in home building credit is causing severe harm to the small businesses that comprise the majority of the home building industry, and to a growing number of local economies already suffering job and revenue loss.

Portfolio lenders – commercial banks and thrifts – remain the predominant source of residential AD&C financing, accounting for over 90 percent of originations. There are no alternative sources of housing production credit for most firms in the home building industry. Thus, smaller builders have borne the brunt of the credit retraction.

I am hearing from my constituents in the home building industry that banks and thrifts are increasingly refusing to extend new AD&C credit or to modify outstanding AD&C loans in order to provide builders more time to complete their projects and pay off these loans. Lenders often cite regulatory requirements or examiner pressure that banks shrink their AD&C loan portfolios as the reasons for their actions. On outstanding loans, examiners are requiring banks to obtain new appraisals on properties for fully performing loans, which can result in the banks having to downgrade those loans, turning them into troubled "non-performing performing loans."

As a result, an increasing number of builders are being required to put up additional equity or collateral due to reappraisal of collateral or revaluation of their loan. Since most home building companies are small businesses and do not have the capacity to meet significant equity calls, the results are often foreclosure on a loan that had been performing and, in some cases, forcing builders into insolvency.

In many instances, banks that have received TARP funds are letting projects fail rather than pursuing workouts with the original developer and builders. This questionable action, which imposes serious hardship on home builders, often putting them out of business, should not be condoned or subsidized by the federal government.

As the nation's chief federal financial institution regulators, you are charged with ensuring sound lending practices are followed by regulated financial institutions. While I support prudent financial regulatory oversight, it seems that lenders are making demands on existing loans that are unrelated to sensible regulatory requirements. It is not in anyone's interest – not lenders, not builders, not the economy as a whole – to force sound and viable borrowers into insolvency.

Generally, a lender would be better off working with the borrower to extend the loan, rather than shutting off credit. Rather than calling loans, banks would be acting in their own self interest by extending loans for borrowers who are not in default or who have projects that are worthy of completion. This would allow borrowers to adjust their finances or to find other funding sources until they are able to complete and sell their homes.

As the home building industry is a major contributor to the economic vibrancy of the nation and its communities, I urge you to put a halt to these shortsighted practices that are adversely affecting the financial condition of the banking industry, as well as having devastating impacts on home building companies. Financial institutions should be encouraged to fund viable new projects and to take steps to avoid foreclosure on AD&C loans by accommodating loan modifications and workouts.

Further, banks that have received TARP funds should be required to account for how these funds are being used in lending on new AD&C projects. These banks must demonstrate how the institution is working out the restructuring of existing loans and providing more flexible terms to facilitate continued funding and eventual repayment of performing AD&C loans.

These actions would provide relief for a major sector of the economy that has suffered because of the inability of banks to provide the necessary funding and flexibility that would otherwise keep loans performing as scheduled. While it is not clear if lender demands are the result of regulatory excess, I hope that you, the nation's top federal financial institution regulators, recognize the effect that overly conservative lending standards have on credit availability. Americans benefit from a strong and fair financial regulatory system that balances prudent lending standards with the need for credit availability. I thank you in advance for your consideration of this matter.

It is an honor to represent the people of the Second Congressional District of South Carolina, and I value your input.

If I may be of further assistance to you, please do not hesitate to contact me.

Very truly yours,

[redacted]

JOE WILSON
Member of Congress

JW:jb

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

September 21, 2009

Honorable Gregory W. Meeks
House of Representatives
Washington, D.C. 20515

Dear Congressman Meeks:

Thank you for your letter of August 26, 2009, in which you express concern that the Federal Deposit Insurance Corporation not unduly discourage private investment in depository institutions nor take any actions that may discourage minority-owned or minority-run investment funds. As you may be aware, the FDIC Board of Directors approved the final *Statement of Policy on the Acquisition of Failed Insured Depository Institutions* (Statement of Policy) on August 26, 2009.

The FDIC received 61 comment letters on its proposed Statement of Policy. After careful consideration of those comments, the FDIC has incorporated a number of significant changes such as the following: refining the description of the types of investors covered, modifying the capital standard to what we believe is a better measure of capital available to absorb losses, and clarifying the circumstances in which the cross-support obligation would apply.

As you describe in your letter, the FDIC Board's goal was to "ensure [the] proper capitalization of depository institutions and the need to ensure that responsible management be encouraged at financial institutions across the country." With this intent in mind, the FDIC Board approved a 10 percent tier 1 common equity ratio that a bank must maintain for three years. We believe this capital level will provide a sufficient buffer against losses. The need to balance the potential for fewer qualifying bidders for a troubled bank with the desire to ensure the long-term viability of the acquiring bank was weighed carefully, and we believe the 10 percent common equity ratio will accomplish this objective. The FDIC Board will revisit this issue in six months to determine if any adjustments to the ratio are needed.

Please be assured that the FDIC recognizes the importance of minority depository institutions (MDIs) to the nation's economy, particularly in areas underserved by traditional banking services. We recently completed our fourth annual MDI National Conference in Chicago, with almost 200 bankers in attendance. The FDIC devotes considerable resources to support MDIs, sustaining a robust outreach program that provides valuable technical assistance.

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

Sincerely,

[redacted]

Sheila C. Bair

PLEASE RESPOND TO:

WASHINGTON OFFICE:
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FAX: (718) 725-9868

1931 MOTT AVENUE, ROOM 305
FAR ROCKAWAY, NY 11691
(718) 327-9791
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Congress of the United States
House of Representatives

GREGORY W. MEEKS
6TH DISTRICT, NEW YORK

COMMITTEES:
FINANCIAL SERVICES

SUBCOMMITTEES:
CAPITAL MARKETS, INSURANCE, AND GOVERNMENT SPONSORED ENTERPRISES

DOMESTIC AND INTERNATIONAL MONETARY POLICY, TRADE AND TECHNOLOGY

FOREIGN AFFAIRS

SUBCOMMITTEES:
WESTERN HEMISPHERE

INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS, AND OVERSIGHT

ASIA, THE PACIFIC, AND THE GLOBAL ENVIRONMENT

August 26, 2009

FDIC
AUG 26 2009
OFFICE OF LEGISLATIVE AFFAIRS

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

Dear Chairman Bair:

I am writing you to follow-up on the status of the FDIC's Statement of Policy on Qualifications for Failed Bank Acquisitions, and to express some concern that this policy be drafted carefully so as to strike an appropriate balance to encourage responsible investing in the financial sector without being overly burdensome or onerous, and take into account previous discussions on ensuring increased participation of minority-owned and minority-run investment funds.

Press reports indicate that the FDIC is going to issue final guidelines this week. One area of key concern is the FDIC's position on Tier 1 Leverage Ratio requirements, with press reports suggesting it will be fixed at 10%. The concern is that a fixed number of that magnitude could hamper the ongoing recovery of our financial institutions and communities, particularly minority depository institutions (MDIs), the communities those MDIs serve, and the private investors who invest in MDIs.

I understand the need to ensure proper capitalization of depository institutions, and the need to ensure that responsible management be encouraged at financial institutions across the country. Yet in doing so, we also want to ensure that we do not discourage minority participation in the economic recovery, particularly in predominantly minority areas which have often been hardest hit by the economic crisis, and that the requirements we set do not slow a possible recovery by slowing the pace of new investments or unduly limiting participation.

I very much appreciate any feedback that you can provide on these issues, and look forward to continuing to work with you in the future.

With best regards, I am

Sincerely,

[redacted]

GREGORY W. MEEKS
Member of Congress

GWM/sl

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

September 29, 2009

Honorable John J. Duncan Jr.
House of Representatives
Washington, D.C. 20515

Dear Congressman Duncan:

Thank you for your letter expressing your constituents' concerns about banks' reluctance to lend because of unreasonable examiner demands. I appreciate the opportunity to respond.

The Federal Deposit Insurance Corporation recognizes that many small businesses, especially in the real estate sector, are contending with extremely difficult market conditions which are further exacerbated by a contraction in credit availability. I assure you the FDIC has not changed its expectations for prudent real estate loan underwriting and administration. We strongly encourage banks to continue lending and to work closely with their financially distressed borrowers, and we joined with the other federal banking agencies in issuing the *Interagency Statement on Meeting the Needs of Creditworthy Borrowers* (copy enclosed).

Further, the FDIC provides banks with considerable flexibility in dealing with customer relationships and managing loan portfolios. We do not instruct banks to curtail prudently managed lending activities, restrict lines of credit to creditworthy borrowers, or require appraisals on performing loans unless an advance of new funds is expected.

We appreciate the opportunity to address your concerns on this important issue. If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Paul Nash, Deputy for External Affairs, at (202) 898-6962.

Sincerely,

[redacted]

Sheila C. Bair

Enclosure

FDIC

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

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

INTERAGENCY STATEMENT ON MEETING THE NEEDS OF CREDITWORTHY BORROWERS

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

Distribution:
FDIC-Supervised Institutions

Suggested Routing:
Chief Executive Officer
Senior Credit Officer

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

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

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Highlights:

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

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

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

Press Releases

Joint Release

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Office of Thrift Supervision

For Immediate Release November 12, 2008

Interagency Statement on Meeting the Needs of Creditworthy Borrowers

The Department of the Treasury, the Federal Deposit Insurance Corporation, and the Federal Reserve have recently put into place several programs designed to promote financial stability and to mitigate procyclical effects of the current market conditions. These programs make new capital widely available to U.S. financial institutions, broaden and increase the guarantees on bank deposit accounts and certain liabilities, and provide backup liquidity to U.S. banking organizations. These efforts are designed to strengthen the capital foundation of our financial system and improve the overall functioning of credit markets.

The ongoing financial and economic stress has highlighted the crucial role that prudent bank lending practices play in promoting the nation's economic welfare. The recent policy actions are designed to help support responsible lending activities of banking organizations, enhance their ability to fund such lending, and enable banking organizations to better meet the credit needs of households and business. At this critical time, it is imperative that all banking organizations and their regulators work together to ensure that the needs of creditworthy borrowers are met. As discussed below, to support this objective, consistent with safety and soundness principles and existing supervisory standards, each individual banking organization needs to ensure the adequacy of its capital base, engage in appropriate loss mitigation strategies and foreclosure prevention, and reassess the incentive implications of its compensation policies.

Lending to creditworthy borrowers
The agencies expect all banking organizations to fulfill their fundamental role in the economy as intermediaries of credit to businesses, consumers, and other creditworthy borrowers. Moreover, as a result of problems in financial markets, the economy will likely become increasingly reliant on banking organizations to provide credit formerly provided or facilitated by purchasers of securities. Lending to creditworthy borrowers provides sustainable returns for the lending organization and is constructive for the economy as a whole.

It is essential that banking organizations provide credit in a manner consistent with prudent lending practices and continue to ensure that they consider new lending opportunities on the basis of realistic asset valuations and a balanced assessment of borrowers' repayment capacities. However, if underwriting standards tighten excessively or banking organizations retreat from making sound credit decisions, the current market conditions may be exacerbated, leading to slower growth and potential damage to the economy as well as the long-term interests and profitability of individual banking organizations. Banking organizations should strive to maintain healthy credit relationships with businesses, consumers, and other creditworthy borrowers to enhance their own financial well-being as well as to promote a sound economy. The agencies have directed supervisory staffs to be mindful of the procyclical effects of an excessive tightening of credit availability and to encourage banking organizations to practice economically viable and appropriate lending activities.

Strengthening capital
Maintaining a strong capital position complements and facilitates a banking organization's capacity and willingness to lend and bolsters its ability to withstand uncertain market conditions. Banking organizations should focus on effective and efficient capital planning and longer-term capital maintenance. An effective capital planning process requires a banking organization to assess both the risks to which it is exposed and the risk management processes in place to manage and mitigate those risks; evaluate its capital adequacy relative to its risks; and consider the potential impact on earnings

and capital from economic downturns. Further, an effective capital planning process requires a banking organization to recognize losses on bank assets and activities in a timely manner; maintain adequate loan loss provisions; and adhere to prudent dividend policies.

In particular, in setting dividend levels, a banking organization should consider its ongoing earnings capacity, the adequacy of its loan loss allowance, and the overall effect that a dividend payout would have on its cost of funding, its capital position, and, consequently, its ability to serve the expected needs of creditworthy borrowers,. Banking organizations should not maintain a level of cash dividends that is inconsistent with the organization's capital position, that could weaken the organization's overall financial health, or that could impair its ability to meet the needs of creditworthy borrowers. Supervisors will continue to review the dividend policies of individual banking organizations and will take action when dividend policies are found to be inconsistent with sound capital and lending policies.

Working with mortgage borrowers
The agencies expect banking organizations to work with existing borrowers to avoid preventable foreclosures, which can be costly to both the organizations and to the communities they serve, and to mitigate other potential mortgage-related losses. To this end, banking organizations need to ensure that their mortgage servicing operations are sufficiently funded and staffed to work with borrowers while implementing effective risk-mitigation measures.

Given escalating mortgage foreclosures, the agencies urge all lenders and servicers to adopt systematic, proactive, and streamlined mortgage loan modification protocols and to review troubled loans using these protocols. Lenders and servicers should first determine whether a loan modification would enhance the net present value of the loan before proceeding to foreclosure, and they should ensure that loans currently in foreclosure have been subject to such analysis. Such practices are not only consistent with sound risk management but are also in the long-term interests of lenders and servicers, as well as borrowers.

Systematic efforts to address delinquent mortgages should seek to achieve modifications that result in mortgages that borrowers will be able to sustain over the remaining maturity of their loan. Supervisors will fully support banking organizations as they work to implement effective and sound loan modification programs. Banking organizations that experience challenges in implementing loss mitigation efforts on their mortgage portfolios or in making new loans to borrowers should work with their primary supervisors to address specific situations.

Structuring compensation
Poorly-designed management compensation policies can create perverse incentives that can ultimately jeopardize the health of the banking organization. Management compensation policies should be aligned with the long-term prudential interests of the institution, should provide appropriate incentives for safe and sound behavior, and should structure compensation to prevent short-term payments for transactions with long-term horizons. Management compensation practices should balance the ongoing earnings capacity and financial resources of the banking organization, such as capital levels and reserves, with the need to retain and provide proper incentives for strong management. Further, it is important for banking organizations to have independent risk management and control functions.

The agencies expect banking organizations to regularly review their management compensation policies to ensure they are consistent with the longer-run objectives of the organization and sound lending and risk management practices.

The agencies will continue to take steps to promote programs that foster financial stability and mitigate procyclical effects of the current market conditions. However, regardless of their participation in particular programs, all banking organizations are expected to adhere to the principles in this statement. We will work with banking organizations to facilitate their active participation in those programs, consistent with safe and sound banking practices, and thus to support their central role in providing credit to support the health of the U.S. economy.

###

Media Contacts

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LA09-1350

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Congress of the United States
House of Representatives
Washington, DC 20515-4202

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OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEES:
NATIONAL SECURITY AND FOREIGN AFFAIRS
GOVERNMENT MANAGEMENT, ORGANIZATION, AND PROCUREMENT

August 24, 2009

Ms. Shelia Blair
Chairman
FDIC
3501 Fairfax Dr.
Arlington, Virginia 22226

Dear Ms. Blair:

I have been contacted by two of my constituents [redacted] who had a real estate business in [redacted] Tennessee that was worth at least three and a half million two and a half years ago. Now they tell me that they are going to have to file bankruptcy. They say that banks in this area are not lending because examiners are making totally unreasonable demands on the banks while those at the top, as the President and Secretary of the Treasury, are telling banks to make loans and examiners are saying no,no,no.

It is not just these constituents that met with me on August 10, 2009, but everybody in East Tennessee are telling me the same thing. Will you give us some help?

With kindest regards, I am

Yours truly,

[redacted]

JOHN J. DUNCAN, JR.
Member of Congress

JJD:vf

b6

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

September 30, 2009

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

Dear Congressman Sestak:

Thank you for contacting me about the availability of business credit and the bank examination process. I share your concern about the need to reinvigorate business activity and stimulate the economy. As you point out, banks play a critical role in extending credit to commercial enterprises and can help businesses fuel growth.

I agree with you that large and small businesses are contending with extremely challenging market conditions that have been exacerbated by turmoil in the credit markets. As a result, credit availability has suffered. We strongly encourage banks to continue lending and working with their financially distressed borrowers through mutually advantageous loan modifications or other cooperative arrangements. Moreover, for institutions that received capital subscriptions as part of the Troubled Asset Relief Program's Capital Purchase Program, the Federal Deposit Insurance Corporation expects these institutions to use those funds to enhance the availability of prudently underwritten loans.

Further, the FDIC provides banks with considerable flexibility in dealing with customer relationships and managing loan portfolios. I assure you we do not instruct banks to curtail prudently managed lending activities, restrict lines of credit to strong borrowers, or require appraisals on performing loans unless an advance of new funds is being contemplated. Commercial loans are the lifeblood of our economy, and we share your concern for making credit available to these enterprises in Pennsylvania and across the nation.

If you have further questions or comments, please contact me at 202-898-6974 or Paul Nash, Deputy for External Affairs, at 202-898-6962.

Sincerely,

[redacted]

Sheila C. Bair

LA 09-1422

JOE SESTAK
7TH DISTRICT, PENNSYLVANIA

COMMITTEES:
ARMED SERVICES
AIR AND LAND FORCES
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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

FDIC
SEP 18 2009
OFFICE OF LEGISLATIVE AFFAIRS

September 17, 2009

The Honorable Timothy F. Geithner
Secretary of the Treasury
United States Department of the Treasury
Room 330
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Benjamin S. Bernanke
Chairman of the Federal Reserve
Board of Governors
Twentieth St. and Constitution Ave.
Washington, D.C. 20551

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

Dear Chairman Bernanke, Secretary Geithner and Chairman Blair,

Because of the continuing challenges in the commercial real estate market, I am writing to urge the Federal Reserve, United States Treasury, and Federal Deposit Insurance Corporation to give all possible consideration to actions -- including the responsible use of remaining TARP funds -- to restore appropriate sound business activity in new commercial loan origination. It is clear that this market, which accounts for more than $6 trillion, has not fully benefitted from earlier actions.

I was in favor of the previous actions taken by the Federal Reserve and Treasury Department to try to head off the overall economic crisis, as well as the impending crisis in commercial real estate. I applauded the Federal Reserve's decision to make "high quality" Commercial-Mortgage Backed Securities eligible as collateral under the Term-Asset Backed Securities Loan Facility. Clearly, however, more needs to be done to ensure that there are funds for high-quality commercial loans to be continued -- so necessary if the economic momentum which is just starting is not to be shut down and a second wave of bank crisis is to be averted.

I was encouraged by the Internal Revenue Service's announcement that it would reconsider the provision in the Internal Revenue Code which prohibits modification of loans within Real Estate Mortgage Investment Conduits (REMICs). I also urge policy makers to consider changes to our current system, such as not reclassifying modified loans if they have been performing well. Allowing borrowers and lenders to renegotiate terms has proven extremely useful in mitigating the worst of the housing crisis. Similar allowances could lessen the blow of the impending crisis with commercial real estate. Performing loans should not be reclassified and higher loan reserves required solely because of lower property valuations. Failure to act on these measures could deepen our current credit crisis and cause significant delay in overall economic recovery.

In recent years, we have seen the dangers of lenders being extended too far into questionable investments with poor cash flow prospects and too much leverage. The same bad practices that led to the housing crisis also wreaked havoc on commercial real estate. The market had swung too far in the direction of reckless lending, and I commend the Federal Reserve, Treasury, and FDIC for its action to reign in such practices. Now, I implore you to take action to ensure that the pendulum does not swing too far in the opposite direction. I urge you to take all necessary steps to ensure that good commercial loans are able to be made. Failure to act could stall the critical economic momentum we have built through recent actions, such as TARP and the Economic Stimulus Bill.

Thank you for your consideration and your service in these difficult times. I look forward to hearing from you on this matter.

Warmly,

[redacted]

Joe Sestak
Member of Congress

LA09-1422

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FDIC
SEP 18 2009
OFFICE OF LEGISLATIVE AFFAIRS

Office of

Joe Sestak

Member of Congress • 7th Congressional District, Pennsylvania

FAX

DATE: 9/18/09	Pages: 2 + CVR
To: FDIC Leg. Affairs	
Fax: 202-898-3745	
From: Rep. Joe Sestak	: DC : PA

To: Hon. Sheila Blair

From Rep. Joe Sestak

Please confirm receipt of materials w/ Kate Ryan
202-225-2011

Thank you!

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

September 30, 2009

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

Dear Mr. Chairman:

Thank you for the opportunity to testify before the Committee at the August 4 hearing "Strengthening and Streamlining Prudential Bank Supervision."

Enclosed are my responses to the follow up questions you provided from Senator Bunning. If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Paul Nash, Deputy for External Affairs, at (202) 898-6962.

Sincerely,

[redacted]

Sheila C. Bair

Enclosure

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

Q1. What is the best way to decrease concentration in the banking industry? Is it size limitations, rolling back state pre-emption, higher capital requirements, or something else?

A1. We must find ways to impose greater market discipline on systemically important institutions. We believe there are several ways to decrease concentration levels in the banking industry without the federal government setting size limits on banks. For example, certain requirements, such as higher capital and liquidity levels, could be established to mirror the heightened risk they pose to the financial system. Assessments also could be used as incentives to contain growth and complexity, as well as to limit concentrations of risk and risk taking.

However, one of the lessons of the past few years is that regulation alone is not enough to control imprudent risk-taking within our dynamic and complex financial system. You need robust and credible mechanisms to ensure that market players will actively monitor and keep a handle on risk-taking. In short, we need to enforce market discipline for systemically important institutions. To end too big to fail, we need an orderly and highly credible mechanism that is similar to the process we use to resolve FDIC-insured banks. In such a process, losses would be borne by the stockholders and bondholders of a holding company, and senior managers would be replaced. There would be an orderly resolution of the institution, but no bail-out. Open bank assistance should not be used to prop up any individual firm.

Q2. Treasury has proposed making the new banking regulator a bureau of the Treasury Department. Putting aside whether we should merge the current regulators, does placing the new regulator in Treasury rather than as a separate agency provide enough independence from political influence?

A2. We believe independence is an essential element of a sound supervisory program. Supervisors must have the authority and resources to gather and evaluate sufficient information to make sound supervisory decisions without undue pressures from outside influences. The FDIC and state banking supervisors, who often provide a different and unique perspective on the operations of community banks, have worked cooperatively to make sound supervisory decisions without compromising their independence.

As currently structured, two of the federal banking agencies, the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) are bureaus within the U.S. Department of the Treasury. Although subject to general Treasury oversight, the OCC and OTS have a considerable amount of autonomy within the Treasury with regard to examination and enforcement matters. Unlike Treasury, the

OCC and OTS are funded by examination and other fees assessed on regulated entities, and they have independent litigating authority. The other three federal banking agencies–the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve, and the National Credit Union Association are fully independent agencies, self-funded though assessments or other fees, and have independent litigating authority. To the extent the OTS and OCC would be merged into a single regulator under Treasury, continued independence could be maintained through non-appropriated funding sources, independent litigating authority, and independent decision making authority, such as currently afforded to the OCC and OTS.

Q3. Given the damage caused by widespread use of subprime and non-traditional mortgages–particularly low documentation mortgages–it seems that products that are harmful to the consumer are also harmful to the banks that sell them. If bank regulators do their job and stop banks from selling products that are dangerous to the banks themselves, other than to set standards for currently unregulated firms, why do we need a separate consumer protection agency?

A3. As currently proposed, the new Consumer Financial Protection Agency (CFPA) would be given sole rulemaking authority for consumer financial protection statutes over all providers of consumer credit, including those outside the banking industry. The CFPA would set a floor on consumer regulation and guarantee the states' ability to adopt and enforce stricter (more protective) laws for institutions of all types, regardless of charter. It also is proposed that the CFPA would have consumer protection examination and enforcement authority over all providers of consumer credit and other consumer products and services–banks and nonbanks.

Giving the CFPA the regulatory and supervisory authority over nonbanks would fill in the existing regulatory and supervisory gaps between nonbanks and insured depository institutions and is key to addressing most of the abusive lending practices that occurred during the current crisis. In addition, the provision to give the CFPA sole rule-writing authority over consumer financial products and services would establish strong, consistent consumer protection standards among <u>all</u> providers of financial products and services and eliminate potential regulatory arbitrage that exists because of federal preemption of certain state laws.

However, the Treasury proposal could be made even more effective with a few targeted changes. As recent experience has shown, consumer protection issues and the safety and soundness of insured institutions go hand-in-hand and require a comprehensive, coordinated approach for effective examination and supervision. Separating federal banking agency examination and supervision (including enforcement) from consumer protection examination and supervision could undermine the effectiveness of each with the unintended consequence of weakening bank oversight.

As a federal banking supervisor and the ultimate insurer of $6 trillion in deposits, the FDIC has the responsibility and the need to ensure consumer protection and safety and soundness are properly integrated. The FDIC and other federal banking agencies should retain their authority to examine and supervise insured depository institutions for consumer protection standards established by the CFPA. The CFPA should focus its examination and enforcement resources on nonbank providers of products and services that have not been previously subject to federal examinations and standards. The CFPA also should have back-up examination and enforcement authority to address situations where it determines the federal banking agency supervision is deficient.

Q4. Since the two most recent banking meltdowns were caused by mortgage lending, do you think it is wise to have a charter focused on mortgage lending? In other words, why should we have a thrift charter?

A4. Over several decades financial institutions with thrift charters have provided financing for home loans for many Americans. In recent years, federal and state banking charters have expanded into more diversified, full service banking operations that include commercial and residential mortgage lending. However, it is understandable that the lack of diversification and exposure to the housing market could raise concerns about the thrift charter. Market forces have reduced the demand for thrift charters. Given the dwindling size of the federal thrift industry, it makes sense to consider merging the federal thrift charter into a single federal depository institution charter.

Q5. Should banking regulators continue to be funded by fees on the regulated firms, or is there a better way?

A5. We believe the banking industry should pay for its supervision, but the federal bank supervision funding process should not disadvantage state-chartered depository institutions and the dual banking system. State-chartered banks pay examination fees to state banking agencies. The federal banking agencies are self-funded through assessments, exam fees, and other sources. This arrangement helps them remain independent of the political process and separates them from the federal budget appropriations.

Q6. Why should we have a different regulator for holding companies than for the banks themselves?

A6. We do not believe it is always necessary to have a different regulator for the holding company and the bank. Numerous one bank holding companies exist where the bank is essentially the only asset owned by the holding company. In these cases, there is no reason why bank regulators could not also serve as holding company regulators as it is generally more efficient and prudent for one regulator to evaluate both entities.

In the case of more complex multi-bank holding companies, one can argue it is more effective for the primary federal regulators to examine the insured depository institutions while the Federal Reserve evaluates the parent (as a source of strength) and the financial condition of the non-bank subsidiaries. Yet even for a separate holding company regulator, the prudential standards it applies should be at least as strong as the standards applied to insured banks.

Q7. Assuming we keep thrifts and thrift holding companies, should thrift holding companies be regulated by the same regulator as bank holding companies?

A7. Similar to the answer to Question 6, it may not be necessary for small thrifts that are owned by what are essentially shell holding companies to have a separate holding company regulator. While one can argue that more complex organizations merit a separate holding company regulator, even in this structure we believe prudential standards applied to a holding company should be at least as strong as those applied to an insured entity.

Q8. The proposed risk council is separate from the normal safety and soundness regulator of banks and other firms. The idea is that the council will set rules that the other regulators will enforce. That sounds a lot like the current system we have today, where different regulators read and enforce the same rules different ways. Under such a council, how would you make sure the rules were being enforced the same across the board?

A8. The proposed risk council would oversee systemic risk issues, develop needed prudential policies, and mitigate developing systemic risks. A primary responsibility of the council should be to harmonize prudential regulatory standards for financial institutions, products, and practices to assure market participants cannot arbitrage regulatory standards in ways that pose systemic risk. The council should evaluate different capital standards that apply to commercial banks, investment banks, investment funds, and others to determine the extent to which these standards circumvent regulatory efforts to contain excess leverage in the system. The council should ensure that prompt corrective action and capital standards are harmonized across firms. For example, large financial holding companies should be subject to tougher prompt corrective action standards under U.S. law and be subject to holding company capital requirements that are no less stringent than those for insured banks. The council also should undertake the harmonization of capital and margin requirements applicable to all OTC derivatives activities and facilitate interagency efforts to encourage greater standardization and transparency of derivatives activities and the migration of these activities onto exchanges or central counterparties. To be successful, the council must have sufficient authority to require some uniformity and standardization in those areas where appropriate.

LA09-1342

United States Senate

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

WASHINGTON, DC 20510-6075

August 28, 2009

FDIC
SEP - 1 2009
OFFICE OF LEGISLATIVE AFFAIRS

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

Dear Chairman Bair:

Thank you for testifying before the Committee on Banking, Housing, and Urban Affairs on August 4, 2009. In order to complete the hearing record, we would appreciate your answers to the enclosed questions as soon as possible.

Please repeat the question, then your answer, single spacing both question and answer. Please do not use all capitals.

Send your reply to Ms. Dawn L. Ratliff, the Committee's Chief Clerk. She will transmit copies to the appropriate offices, including the committee's publications office. Due to current procedures regarding Senate mail, it is recommended that you send replies via e-mail in a MS Word, WordPerfect or .pdf attachment to Dawn_Ratliff@banking.senate.gov.

If you have any questions about this letter, please contact Ms. Ratliff at (202)224-3043.

Sincerely,

[redacted]

CHRISTOPHER J. DODD
Chairman

CJD/dr

Questions for the Hearing on "Strengthening and Streamlining Prudential Bank Supervision"
August 4, 2009

<u>Questions for The Honorable Sheila Bair, Chairman, Federal Deposit Insurance Corporation, from Senator Bunning:</u>

1. What is the best way to decrease concentration in the banking industry? Is it size limitations, rolling back state pre-emption, higher capital requirements, or something else?

2. Treasury has proposed making the new banking regulator a bureau of the Treasury Department. Putting aside whether we should merge the current regulators, does placing the new regulator in Treasury rather than as a separate agency provide enough independence from political influence?

3. Given the damage caused by widespread use of subprime and non-traditional mortgages – particularly low documentation mortgages – it seems that products that are harmful to the consumer are also harmful to the banks that sell them. If bank regulators do their job and stop banks from selling products that are dangerous to the banks themselves, other than to set standards for currently unregulated firms, why do we need a separate consumer protection agency?

4. Since the two most recent banking meltdowns were caused by mortgage lending, do you think it is wise to have a charter focused on mortgage lending? In other words, why should we have a thrift charter?

5. Should banking regulators continue to be funded by fees on the regulated firms, or is there a better way?

6. Why should we have a different regulator for holding companies than for the banks themselves?

7. Assuming we keep thrifts and thrift holding companies, should thrift holding companies be regulated by the same regulator as bank holding companies?

8. The proposed risk council is separate from the normal safety and soundness regulator of banks and other firms. The idea is that the council will set rules that the other regulators will enforce. That sounds a lot like the current system we have today, where different regulators read and enforce the same rules different ways. Under such a council, how would you make sure the rules were being enforced the same across the board?

LA09-1109

BARNEY FRANK, MA, CHAIRMAN

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

SPENCER BACHUS, AL, RANKING MEMBER

July 13, 2009

VIA FACSIMILE

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

Dear Chairman Bair:

As you are aware, the Financial Services Committee is poised to consider legislation (H.R. 3126) that establishes an independent Consumer Financial Protection Agency (CFPA). Because the creation of a CFPA would fundamentally change financial institution and product regulation, it is a proposal our Committee must fully understand. Some weeks ago, I asked Chairman Frank to hold a hearing on the proposed Consumer Financial Products Agency exclusively devoted to the views of the prudential regulators. However, because such a hearing may not occur in time for the Committee to thoroughly consider your perspectives before legislating, I respectfully request that you respond to the following questions by Monday, July 20, 2009.

1. What problem would be addressed by the creation of a CFPA that is not or cannot be addressed by the current system of financial institution and product regulation?

2. How would the new consumer protection standards established in H.R. 3126 impact the availability of credit for consumers? Would any particular category of consumers be affected more than others?

3. One of the directives given to the proposed agency is to coordinate with a variety of other agencies, both state and federal, to "promote consistent regulatory treatment of consumer and investment products." However, the legislation would permit individual states to pass laws that will differ from federal law. What would be the impact on consumers and the institutions you regulate if individual states can impose additional and different standards?

4. The legislation envisions the separation of safety and soundness regulation from consumer protection regulation. How would this separation impact the safety and soundness of banking institutions? Would it enhance or undermine safety and soundness, in your view?

5. Does your agency have a separate consumer protection compliance examination force? If not, how could the consumer compliance examination function be

transferred to a new agency and what would be the impact of the transfer on your safety and soundness supervision?

6. H.R. 3126 requires coordination and consultation between the CFPA and the Federal banking agencies. However, it does not offer a framework or mechanism in the event that there is not a consensus. Please comment on any practical or legal problems or challenges that would be presented by this proposal.

7. H.R. 3126 provides for each of the Federal banking agencies to transfer consumer financial protection functions to the new agency. Such functions are defined to mean "research, rulemaking, issuance of orders or guidance, supervision, examination, and enforcement activities, powers, and duties relating to the provision of consumer financial products or services". Please identify all of the functions within your agency that would be transferred under this provision? Does it affect underwriting standards for mortgage loans? Insider lending rules? Lending limits? Anti-money laundering compliance? If so, what would be the impact of the transfer on safety and soundness?

8. Does the proposed CFPA get at the heart of what caused the mortgage crisis?

9. H.R. 3126 provides for the agency to approve "standard" financial products and services. What would be the impact of this proposal on product innovation, especially when you consider the risks, expenses, and compliance requirements (e.g., disclosure and opt-out requirements) associated with the creation or sale of other than standard products?

10. What will be the impact on consumers if banking and some insurance products are subject to regulation by the new agency, but economically similar investment products are subject to a different form of regulation by the SEC?

Thank you for your attention to this important matter.

Sincerely,

[redacted]

SPENCER BACHUS
Ranking Member

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

August 12, 2009

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

Dear Congressman Bachus:

Thank you for soliciting the Federal Deposit Insurance Corporation's input on the proposed Consumer Financial Protection Agency (CFPA). Enclosed are responses to the questions you posed.

We appreciate the opportunity to comment. If we can provide further information, please do not hesitate to contact me at (202) 898-6974 or Eric Spitler, Director, Office of Legislative Affairs at (202) 898-3837.

Sincerely,

[redacted]

Sheila C. Bair

Enclosure

Response to Questions from
The Honorable Spencer Bachus

Q1. What problem would be addressed by the creation of a CFPA that is not or cannot be addressed by the current system of financial institution and product regulation?

A1. The proposal addresses one of the principal limitations of the current regulatory system. It would eliminate the remaining regulatory gaps between insured depository institutions and *non-bank* providers of financial products and services by establishing strong, consistent consumer protection standards. It also would address another gap by giving the CFPA authority to examine non-bank financial service providers that are not currently examined by a federal, or in many cases, state agency. In addition, the Administration's proposal would eliminate the potential for regulatory arbitrage that exists because of federal preemption of certain state laws.

Q2. How would the new consumer protection standards established in H.R. 3126 impact the availability of credit for consumers? Would any particular category of consumers be affected more than others?

A2. Properly defined standards should not impede the availability of credit to any category of consumers. H.R. 3126 does not prohibit the offering of consumer financial products and services. Rather, it seeks to protect consumers against abusive products and practices that strip individual and family wealth. The standards could lower risks to consumers of such financial products by enhancing transparency of terms and features, and facilitating comparison of alternative products or services. The standards also could bring greater protection to consumers of non-bank financial products and services, which are not subject to the examination and supervision for consumer protection and safety and soundness compliance that currently benefits insured institution customers.

Q3. One of the directives given to the proposed agency is to coordinate with a variety of other agencies, both state and federal, to "promote consistent regulatory treatment of consumer and investment products." However, the legislation would permit individual states to pass laws that will differ from federal law. What would be the impact on consumers and the institutions you regulate if individual states can impose additional and different standards?

A3. To a great extent, the current patchwork regulatory situation is the result of a lack of coordination of national consumer protection laws and regulations. Creating a federal floor for consumer protection will provide standardization for institution and product regulation. While the proposal allows states to apply more protective state consumer laws, a strong federal floor should make additional state standards unnecessary. It should be noted that state-chartered banks operating in multiple jurisdictions currently comply with those jurisdiction's consumer laws with no problems.

Q4. The legislation envisions the separation of safety and soundness regulation from consumer protection regulation. How would this separation impact the safety and soundness of banking institutions? Would it enhance or undermine safety and soundness, in your view?

A4. Separating the examination and supervision of insured depository institution consumer protection compliance from that of safety and soundness could undermine the effectiveness of both. As the banking regulators' experience during the past few years has shown, consumer protection issues and the safety and soundness of insured depository institutions go hand-in-hand. Examination and supervision for safety and soundness and consumer protection must be closely coordinated and reflect a comprehensive understanding of an institution's management, operations, policies, and practices. Consumer protection and risk supervision benefit from the synergies created by this holistic approach and by ready and timely access to expertise and critical information. Separating consumer protection examination and supervision from other supervisory efforts could weaken both and result in weakened financial institutions.

By contrast, if the CFPA has sole rule-writing authority over consumer financial products and services, this will ensure appropriate focus on protecting consumers and a level playing field between insured depository institutions and other types of entities that offer similar financial products. In addition, the FDIC would support providing the CFPA with back up enforcement and examination authority to ensure that the federal regulators are providing effective supervision of these standards. Freeing the CFPA from direct supervision and enforcement of depository institutions would allow this entity to focus its examination and enforcement resources on the non-bank entities that provide financial products and services that have not previously been subject to federal examination or enforcement.

Q5. Does your agency have a separate consumer protection compliance examination force? If not, how could the consumer compliance examination function be transferred to a new agency and what would be the impact of the transfer on your safety and soundness supervision?

A5. The FDIC has a dedicated force of consumer protection compliance examiners. As discussed above, consumer protection and risk supervision benefit from the synergies created by ready and timely access to expertise and critical information in both areas. For example, violations of consumer regulations by an institution frequently signal management problems related to safety and soundness issues as well. Preserving the current regulatory framework, and the ability of the examiners to work together to evaluate institutions, will ensure that financial institutions will be continue to be viewed holistically.

Q6. H.R. 3126 requires coordination and consultation between the CFPA and the Federal banking agencies. However, it does not offer a framework or mechanism in the event that there is not a consensus. Please comment on any practical or legal problems or challenges that would be presented by this proposal.

A6. In our answer to Question 7, we describe the many ways that consumer protection compliance and safety and soundness examination and supervision are intertwined. Separating the functions into two agencies inevitably would create issues. For example, it would constrain the ability of examination staff to develop a comprehensive view of the institutions they supervise. It also would be more difficult to easily coordinate, share information, and bring joint actions on consumer protection and safety and soundness issues. In addition, the flow of information would slow, thus reducing opportunities to quickly identify and resolve problems.

As indicated above, one way to address this issue would be for the banking agencies to retain the authority to examine and supervise insured institutions for consumer protection compliance and safety and soundness. The CFPA should be given the authority to examine and supervise *non-bank* consumer product and service providers and back-up enforcement authority over insured depository institutions. Giving the CFPA authority to write rules for all consumer product and service providers would ensure strong and uniform consumer protection standards for all consumer product and service providers.

Another means of ensuring coordination and consultation would be to have federal financial institution regulators represented on the CFPA Board, which could be the final arbiter of any problems that could not be resolved at the staff level. We believe it is particularly important that the FDIC be represented. As ultimate insurer of over $6 trillion in deposits, the FDIC has both the responsibility and vital need to ensure that consumer compliance and safety and soundness are appropriately integrated. The FDIC also is the primary federal supervisor for the largest number of banks (including many larger ones) and maintains an active examination staff on-site in the largest major banks as back-up supervisor. The FDIC's direct supervision of the majority of the nation's community banks provides it with a unique "Main Street" perspective that enabled it to be an early proponent of affordable and sustainable mortgage loan modifications, improved economic inclusion, and the prevention of abusive lending practices. Moreover, the FDIC's deposit insurance function involves a significant consumer protection role with regard to consumer deposits that affects all institutions, but is unique to the FDIC.

Q7. H.R. 3126 provides for each of the Federal banking agencies to transfer consumer financial protection functions to the new agency. Such functions are defined to mean "research, rulemaking, issuance of orders or guidance, supervision, examination, and enforcement activities, powers, and duties relating to the provision of consumer financial products or services." Please identify all of the functions within your agency that would be transferred under this new provision? Does it affect underwriting standards for mortgage loans? Insider lending rules? Lending limits? Anti-money laundering compliance? If so, what would be the impact of the transfer on safety and soundness?

A7. Staff in three different FDIC Divisions likely would have to be transferred if the new agency is created as proposed: the Division of Supervision and Consumer Protection (DSC), the Legal Division, and the Division of Insurance and Research (DIR). In particular:

1) DSC: Generally speaking, staff in this Division performs research, rulemaking, guidance, supervision, examination and enforcement functions, and coordinates extensively with the Legal Division and DIR in connection with all of these functions.

- *Examinations:* Consumer protection compliance examiners and examination management and staff in FDIC field offices, regions, and at headquarters in Washington, D.C. examine banks for compliance with consumer protection and CRA regulations and coordinate with legal staff to bring informal and formal enforcement actions when banks fail to comply with laws or regulations. Consumer protection staff also coordinates with DSC's risk management/safety and soundness function on applications and other regulatory requests from institutions that have less than satisfactory consumer compliance or CRA programs.
- *Policy:* Consumer protection compliance policy analysts conduct outreach to industry and consumer groups, monitor legislative and regulatory developments, develop policy and guidance for examiners and institutions, participate in interagency working groups to issue regulations and examination procedures, and develop and provide training for consumer protection compliance examiners.
- *Consumer Protection Outreach:* Consumer affairs staff receives, investigates, and responds to consumer complaints and inquiries involving FDIC-supervised institutions, along with other data requests concerning consumer protection laws and banking practices. In addition to assisting individual consumers, the consumer complaint resolution function provides information used in individual bank compliance examinations and to detect emerging consumer protection issues. As part of its deposit insurance function, FDIC consumer affairs staff provides consumer education and assistance with regard to deposit insurance coverage matters. This function would necessarily remain with the FDIC.
- *Community Affairs:* DSC also has a Community Affairs program that provides technical support to financial institutions to help them identify and respond to the credit and banking needs of the communities they serve. Program staff conducts the FDIC's financial education and consumer protection outreach, except for deposit insurance. Community affairs staff facilitates the Alliance for Economic Inclusion -- the FDIC's national initiative to establish broad-based coalitions of financial institutions, community-based organizations, and other partners to bring unbanked and underserved populations into the financial mainstream. The FDIC developed and distributes the award-winning *Money Smart* financial education program, which is available in several formats and languages. In addition, the Small Dollar Loan pilot project is reviewing affordable and responsible small-dollar loan programs in financial institutions to identify effective and replicable business practices that banks can incorporate into their mainstream services. Community Affairs staff also leads the FDIC's ongoing outreach efforts to mitigate foreclosures and help consumers avoid scam artists.

2) Legal Division: Legal Division attorneys from headquarters and regional offices support the research, supervision, examination, legislative, rulemaking, policymaking and

enforcement functions. Enforcement attorneys work closely with examination staff in bringing formal and informal enforcement actions against institutions.

3) DIR: Economists and statisticians support the consumer protection compliance examination and policy programs and Legal Division staff by conducting research and analyzing quantitative and qualitative data. Staff pursues original research exploring consumer financial products, behaviors, and trends.

On balance, transferring consumer protection compliance examination and enforcement to the new consumer protection agency would cause disruption to agency operations during a critical time, complicating safety and soundness functions and enforcement efforts. A number of mission-critical regulatory functions exist in which consumer protection and safety and soundness issues are intertwined. Consumer protection weaknesses may affect the safety and soundness of an institution, or they may reflect an overall weakness, particularly of management. Unsafe or unsound practices, or the resulting financial weakness of an institution, can impact a bank's customers, the community, and even the financial markets.

Significant expertise, lines of communication, and cooperative efforts among safety and soundness and consumer protection compliance staff would be hampered by moving these functions to the new consumer protection agency. Particular areas of supervision, examination, and enforcement that would be impacted include:

- Non-Traditional Mortgage Lending
- Subprime Lending
- Payday Lending
- Credit Card Lending
- Predatory Lending
- Loan Modifications
- Flood Insurance
- Third-Party Risk
- Retail Securities and Insurance Sales and Referrals, under the Gramm-Leach-Bliley Act of 1999 (GLBA) and Regulation R
- New Bank Application Investigations and Community Reinvestment Act (CRA) Analysis
- Bank Branch and Merger Applications, which require consideration of compliance ratings, fair lending and CRA ratings
- Privacy (GLBA)
- Identity Theft Red Flags and the Fair and Accurate Credit Transactions Act of 2003 (FACT Act)
- The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act)

Because the FDIC and other regulators must continue to consider consumer protection issues in evaluating banks – even if a new agency is established – separating these functions will necessarily create a duplication of effort.

The new agency also would impose incremental burden on financial institutions as they would be examined and evaluated by another federal agency. Separating the compliance examination function from the safety and soundness program also will delay action on applications or other requests requiring federal approval.

Q8. Does the proposed CFPA get at the heart of what caused the mortgage crisis?

A8. If a CFPA-type agency had been in place, it could have taken the long view of both the banking sector and the non-bank financial sector. A strong focus on consumer protection could have called into question the underlying rationale for many of the more abusive mortgage products. Further, rules and guidelines could have been developed that would have slowed or halted the worst practices.

However, the CFPA, as currently proposed, does not get at one of the fundamental causes of the mortgage crisis: the lack of effective supervision and enforcement of non-bank entities that offer mortgages and other financial products. While these entities are subject to many of the same laws and regulations as federally supervised banks and thrifts, they are not subject to the same regular examinations or supervision, or the resulting potential for enforcement actions if they break the law. State and federal enforcement agencies (state consumer protection agencies and the Federal Trade Commission for civil matters, state Attorneys General and the Department of Justice for criminal) have limited resources and must make constant choices about whether situations are egregious enough to warrant bringing an action to stop a particular practice.

To the extent possible, legislation should specifically define the components of an effective enforcement and examination regime focused on non-banks. For example, rather than diluting resources by aiming them at all financial products and entities, the CFPA's primary supervisory resources should be targeted on non-bank entities. The federal bank and thrift supervisors should continue to have examination and enforcement authority over banks; however, they would enforce the consumer protection standards set by the CFPA. Under such a regime, overall consumer protection would be greatly strengthened because the CFPA would have back up authority to enforce all consumer protection laws regarding banks, and there would be several supervisory entities, including the CFPA and the bank regulators, targeting their resources on enforcing consumer protection laws across the country.

Q9. H.R. 3126 provides for the agency to approve "standard" financial products and services. What would be the impact of this proposal on product innovation, especially when you consider the risks, expenses, and compliance requirements (e.g., disclosure and opt-out requirements) associated with the creation or sale of other than standard products?

A9. At this time, it is difficult to determine the impact on product innovation. However, it has become clear from the current economic crisis that when innovative products are not well understood by investors and consumers, product innovation does not always benefit consumers, the economy, or society as a whole. Inappropriate promotion of interest-only and other non-traditional mortgage products contributed to the current economic crisis. Therefore, it could be argued that non-standard products should receive stronger attention from regulators to ensure they are being used appropriately.

Q10. What will be the impact on consumers if banking and some insurance products are subject to regulation by the new agency, but economically similar investment products are subject to a different form of regulation by the SEC?

A10. In creating the CFPA, Congress should provide a clear and effective mechanism for ensuring comparable consumer protections regardless of the entity from which a consumer purchases economically or functionally equivalent products. The CFPA should have the authority to set comparable standards for comparable products and to ensure that there is no loophole in consumer protection for products that are economically similar. Prudential supervisors would enforce the standards established by the CFPA for products and institutions under their jurisdiction. The ability to establish comparable protections will strengthen coordination and cooperation among the banking agencies, the new consumer agency, and federal and state securities and insurance regulators, and should prevent practical and operational gaps in regulations and supervision.

LA09-1342

United States Senate

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

WASHINGTON, DC 20510-6075

August 28, 2009

FDIC

SEP - 1 2009

OFFICE OF LEGISLATIVE AFFAIRS

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

Dear Chairman Bair:

Thank you for testifying before the Committee on Banking, Housing, and Urban Affairs on August 4, 2009. In order to complete the hearing record, we would appreciate your answers to the enclosed questions as soon as possible.

Please repeat the question, then your answer, single spacing both question and answer. Please do not use all capitals.

Send your reply to Ms. Dawn L. Ratliff, the Committee's Chief Clerk. She will transmit copies to the appropriate offices, including the committee's publications office. Due to current procedures regarding Senate mail, it is recommended that you send replies via e-mail in a MS Word, WordPerfect or .pdf attachment to Dawn_Ratliff@banking.senate.gov.

If you have any questions about this letter, please contact Ms. Ratliff at (202)224-3043.

Sincerely,

[redacted]

CHRISTOPHER J. DODD
Chairman

CJD/dr

Questions for the Hearing on "Strengthening and Streamlining Prudential Bank Supervision"
August 4, 2009

Questions for The Honorable Sheila Bair, Chairman, Federal Deposit Insurance Corporation, from Senator Bunning:

1. What is the best way to decrease concentration in the banking industry? Is it size limitations, rolling back state pre-emption, higher capital requirements, or something else?

2. Treasury has proposed making the new banking regulator a bureau of the Treasury Department. Putting aside whether we should merge the current regulators, does placing the new regulator in Treasury rather than as a separate agency provide enough independence from political influence?

3. Given the damage caused by widespread use of subprime and non-traditional mortgages – particularly low documentation mortgages – it seems that products that are harmful to the consumer are also harmful to the banks that sell them. If bank regulators do their job and stop banks from selling products that are dangerous to the banks themselves, other than to set standards for currently unregulated firms, why do we need a separate consumer protection agency?

4. Since the two most recent banking meltdowns were caused by mortgage lending, do you think it is wise to have a charter focused on mortgage lending? In other words, why should we have a thrift charter?

5. Should banking regulators continue to be funded by fees on the regulated firms, or is there a better way?

6. Why should we have a different regulator for holding companies than for the banks themselves?

7. Assuming we keep thrifts and thrift holding companies, should thrift holding companies be regulated by the same regulator as bank holding companies?

8. The proposed risk council is separate from the normal safety and soundness regulator of banks and other firms. The idea is that the council will set rules that the other regulators will enforce. That sounds a lot like the current system we have today, where different regulators read and enforce the same rules different ways. Under such a council, how would you make sure the rules were being enforced the same across the board?

LH09-1464

MICHAEL N. CASTLE
DELAWARE, AT-LARGE

COMMITTEES:
FINANCIAL SERVICES
EDUCATION AND LABOR
RANKING MEMBER:
SUBCOMMITTEE ON EARLY CHILDHOOD, ELEMENTARY, AND SECONDARY EDUCATION

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www.castle.house.gov/

September 25, 2009

The Honorable Shiela C. Bair
Chairman
Federal Deposit Insurance Commission
550 17th St., NW
Washington, DC 20429

Dear Chairman Bair:

Attached, please find a section from the proposed Consumer Financial Protection Agency Act of 2009 entitled "Preservation of State Law." Recently, concerns have been raised that this particular section would have a negative impact on banks and the credit card industry. I would appreciate your comments on this section as soon as possible.

Sincerely,

[redacted]

Michael N. Castle
Member of Congress

MNC:CC

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SEP 25 2009
OFFICE OF LEGISLATIVE AFFAIRS

tion to the Agency, as required by this title, an enumerated consumer law, or pursuant to the authorities transferred by subtitles F and H, or any regulation prescribed or order issued by the Director this title or pursuant to any such authority; or

(3) to knowingly or recklessly provide substantial assistance to another person in violation of the provisions of section 131, or any regulation prescribed or order issued under such section, and any such person shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

SEC. 139. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle D—Preservation of State Law

SEC. 141. RELATION TO STATE LAW.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—This title shall not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title from complying with, the laws, regulations, orders, or interpretations, in effect in any State, except to the extent that such statute, regulation,

order, or interpretation is inconsistent with the provisions of this title and then only to the extent of the inconsistency.

(2) GREATER PROTECTION UNDER STATE LAW.—For the purposes of this subsection, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title if the protection such statute, regulation, order, or interpretation affords consumers is greater than the protection provided under this title. A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title may be made by the Agency on its own motion or in response to a nonfrivolous petition initiated by any interested person.

(b) RELATION TO OTHER PROVISIONS OF ENUMERATED CONSUMER LAWS THAT RELATE TO STATE LAW.—No provision of this title, except as provided in section 175, shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law.

SEC. 142. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—Any State attorney general may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States or State court having jurisdiction of the defendant, to secure monetary or equitable relief for violation of any provisions of this title or regulations issued thereunder.

(2) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(b) CONSULTATION REQUIRED.—

(1) NOTICE.—

(A) IN GENERAL.—Before initiating any action in a court or other administrative or regulatory proceeding against any covered person to enforce any provision of this title, including any regulation prescribed by the Director under this title, a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Agency, or the Agency's designee.

(B) EMERGENCY ACTION.—If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the Agency immediately upon instituting the action or proceeding.

(C) CONTENTS OF NOTICE.—The notification required under this section shall, at a minimum, describe—

(i) the identity of the parties;

(ii) the alleged facts underlying the proceeding; and

(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Director or Agency or another Federal agency.

(2) AGENCY RESPONSE.—In any action described in paragraph (1), the Agency may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and

(ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment to the same extent as any other party in the proceeding may.

(c) REGULATIONS.—The Director shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to further coordinate actions with the State attorneys general and other regulators.

(d) PRESERVATION OF STATE CLAIMS.—Nothing in this section shall be construed as limiting the authority of a State attorney general or State regulator to bring an action or other regulatory proceeding arising solely under the law of that State.

SEC. 143. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

"SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

"(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) NATIONAL BANK.—The term 'national bank' includes—

"(A) any bank organized under the laws of the United States;

"(B) any affiliate of a national bank;

"(C) any subsidiary of a national bank; and

"(D) any Federal branch established in accordance with the International Banking Act of 1978.

"(2) OTHER DEFINITIONS.—The terms 'affiliate', 'subsidiary', 'includes', and 'including' have the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(3) STATE CONSUMER LAW.—The term 'State consumer law' means any law of a State that—

"(A) accords rights to or protects the rights of its citizens in financial transactions concerning negotiation, sales, solicitation, disclosure, terms and conditions, advice, and remedies; or

"(B) prevents counterparties, successors, and assigns of financial contracts from engaging in unfair or deceptive acts and practices.

"(b) STATE CONSUMER LAWS OF GENERAL APPLICATION.—Notwithstanding any other provision of Federal law and except as provided in subsection (d), any consumer protection provision in State consumer laws of general application, including any law relating to unfair or deceptive acts or practices, any consumer fraud law and repossession, foreclosure, and collection law, shall apply to any national bank.

"(c) STATE BANKING LAWS ENACTED PURSUANT TO FEDERAL LAW.—Notwithstanding any other provision of Federal law and except as provided in subsection (d), any State consumer law that—

"(1) is applicable to State banks; and

"(2) was enacted pursuant to or in accordance with, and is not inconsistent with, an Act of Congress, including the Gramm-Leach-Bliley Act, the Consumer Credit Protection Act, and the Real Estate Settlement Procedures Act, that explicitly or by implication, permits States to exceed or supplement the requirements of any comparable Federal law,

shall apply to any national bank.

"(d) EXCEPTIONS.—

"(1) IN GENERAL.—Subsections (b) and (c) shall not apply with respect to any State consumer law if—

"(A) the State consumer law discriminates against national banks; or

"(B) the State consumer law is inconsistent with provisions of Federal law other than this title, but only to the extent of the inconsistency (as determined in accordance with the provision of the other Federal law).

"(2) RULE FOR DETERMINING INCONSISTENCY.—For purposes of paragraph (1)(B), a State consumer law is not inconsistent with Federal law if the protection the State consumer law affords consumers is greater than the protection provided under Federal law as determined by the Director.

"(e) NO NEGATIVE IMPLICATIONS FOR APPLICABILITY OF OTHER STATE LAWS.—No provision of this section shall be construed as altering or affecting the applicability, to national banks, of any State law which is not described in this section.

"(f) EFFECT OF TRANSFER OF TRANSACTION.—State consumer law applicable to a transaction at the inception of the transaction may not be preempted under Federal law solely because a national bank subsequently acquires the asset or instrument that is the subject of the transaction.

"(g) DENIAL OF PREEMPTION NOT A DEPRIVATION OF A CIVIL RIGHT.—The preemption of any provision of the law of any State with respect to any national bank shall not be treated as a right, privilege, or immunity for purposes of section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983).".

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

"5136C. State law preemption standards for national banks and subsidiaries clarified.".

SEC. 144. VISITORIAL STANDARDS.

Section 5136C of the Revised Statutes of the United States (as added by section 143) is amended by adding at the end the following new subsections:

"(h) VISITORIAL POWERS.—

"(1) RULE OF CONSTRUCTION.—No provision of this title which relates to visitorial powers or otherwise limits or restricts the supervisory, examination, or regulatory authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction—

"(A) to require a national bank to produce records relative to the investigation of violations of State consumer law, or Federal consumer laws;

"(B) to enforce any applicable Federal or State law, as authorized by such law; or

"(C) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a national bank, as authorized by such law, or to seek relief and recover damages for such residents from any violation of any such law by any national bank.

"(2) CONSULTATION.—The attorney general (or other chief law enforcement officer) of any State shall consult with the head of the agency responsible for chartering and regulating national banks before acting under paragraph (1).

"(i) ENFORCEMENT ACTIONS.—The ability of the head of the agency responsible for chartering and regulating national banks to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act shall not be construed as precluding private parties from enforcing rights granted under Federal or State law in the courts.".

SEC. 145. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States is amended by inserting after subsection (i) (as added by section 144) the following new subsection:

"(j) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

"(1) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(A) DEPOSITORY INSTITUTION, SUBSIDIARY, AFFILIATE.—The terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

"(B) NONDEPOSITORY INSTITUTION.—The term 'nondepository institution' means any entity that is not a depository institution.

"(2) IN GENERAL.—No provision of this title shall be construed as annulling, altering, or affecting the applicability of State law to any nondepository institution, subsidiary, other affiliate, or agent of a national bank.".

SEC. 146. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

"SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

"(a) DEFINITION.—For purposes of this section—

"(1) the terms 'includes' and 'including' have the same meaning as in section 3(t) of the Federal Deposit Insurance Act.

"(2) the term 'State consumer law' means any law of a State that:

"(A) accords rights to or protects the rights of its citizens in financial transactions concerning negotiation, sales, solicitation, disclosure, terms and conditions, advice, and remedies; or

"(B) prevents counterparties, successors, and assigns of financial contracts from engaging in unfair or deceptive acts and practices.

"(b) STATE CONSUMER LAWS OF GENERAL APPLICATION.—Notwithstanding any other provision of Federal law and except as provided in subsection (c), any consumer protection provision in State consumer laws of general application, including any law relating to unfair or deceptive acts or practices, any consumer fraud law and repossession, foreclosure, and collection law, shall apply to any Federal savings association.

"(c) EXCEPTIONS.—

"(1) IN GENERAL.—Subsection (b) shall not apply with respect to any State law if—

"(A) the State law discriminates against Federal savings associations; or

"(B) the State consumer law is inconsistent with provisions of Federal law other than this Act, but only to the extent of the inconsistency (as determined in accordance with the provision of the other Federal law).

"(2) RULE FOR DETERMINING INCONSISTENCY.—For purposes of paragraph (1)(B), a State consumer law is not inconsistent with Federal law if the protection the State consumer law affords consumers is greater than the protection provided under Federal law, as determined by the Director.

"(d) STATE BANKING OR THRIFT LAWS ENACTED PURSUANT TO FEDERAL LAW.—

"(1) IN GENERAL.—Notwithstanding any other provision of Federal law and except as provided in paragraph (2), any State law that—

"(A) is applicable to State savings associations (as defined in section 3 of the Federal Deposit Insurance Act); and

"(B) was enacted pursuant to or in accordance with, and is not inconsistent with, an Act of Congress, including the Gramm-Leach-Bliley Act, the Consumer Credit Protection Act, and the Real Estate Settlement Procedures Act, that explicitly or by implication, permits States to exceed or supplement the requirements of any comparable Federal law,

shall apply to any Federal savings association.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to any State law if—

"(A) the State law discriminates against Federal savings associations; or

"(B) the State consumer law is inconsistent with provisions of Federal law other than this Act, but only to the extent of the inconsistency (as determined in accordance with the provision of the other Federal law). For this purpose, a State consumer law is not inconsistent with Federal law if the protection the State consumer law affords consumers is greater than the protection provided under Federal law, as determined by the Director.

"(e) NO NEGATIVE IMPLICATIONS FOR APPLICABILITY OF OTHER STATE LAWS.—No provision of this section shall be construed as altering or affecting the applicability, to Federal savings associations, of any State law which is not described in this section.

"(f) EFFECT OF TRANSFER OF TRANSACTION.—State consumer law applicable to a transaction at the inception of the transaction may not be preempted under Federal law solely because a Federal savings association subsequently acquires the asset or instrument that is the subject of the transaction.

"(g) DENIAL OF PREEMPTION NOT A DEPRIVATION OF A CIVIL RIGHT.—The preemption of any provision of the law of any State with respect to any Federal savings association shall not be treated as a right, privilege, or immunity for purposes of section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983).".

(b) CLERICAL AMENDMENT.—The table of sections for the Home Owners' Loan Act (12 U.S.C. 1461 et seq.)

is amended by striking the item relating to section 6 and inserting the following new item:

"6. State law preemption standards for Federal savings associations and subsidiaries clarified.".

SEC. 147. VISITORIAL STANDARDS.

Section 6 of the Home Owners' Loan Act (as added by section 146 of this title) is amended by adding at the end the following new subsections:

"(h) VISITORIAL POWERS.—

"(1) IN GENERAL.—No provision of this Act shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction—

"(A) to require a Federal savings association to produce records relative to the investigation of violations of State consumer law, or Federal consumer laws;

"(B) to enforce any applicable Federal or State law, as authorized by such law; or

"(C) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a Federal savings association, as authorized by such law, or to seek relief and recover damages for such residents from any violation of any such law by any Federal savings association.

"(2) CONSULTATION.—The attorney general (or other chief law enforcement officer) of any State shall consult with the Director or any successor agency before acting under paragraph (1).

"(i) ENFORCEMENT ACTIONS.—The ability of the Director or any successor officer or agency to bring an enforcement action under this Act or section 5 of the Federal Trade Commission Act shall not be construed as precluding private parties from enforcing rights granted under Federal or State law in the courts.".

SEC. 148. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 6 of the Home Owners' Loan Act is amended by adding after subsection (i) (as added by section 147) the following new subsection:

"(j) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF FEDERAL SAVINGS ASSOCIATIONS.—

"(1) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(A) DEPOSITORY INSTITUTION, SUBSIDIARY, AFFILIATE.—The terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

"(B) NONDEPOSITORY INSTITUTION.—The term 'nondepository institution' means any entity that is not a depository institution.

"(2) IN GENERAL.—No provision of this title shall be construed as preempting the applicability of State law to any nondepository institution, subsidiary, other affiliate, or agent of a Federal savings association.".

SEC. 149. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle E—Enforcement Powers

SEC. 151. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) CIVIL INVESTIGATIVE DEMAND AND DEMAND.—The terms "civil investigative demand" and "demand" mean any demand issued by the Agency.

(2) AGENCY INVESTIGATION.—The term "Agency investigation" means any inquiry conducted by an Agency investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that violates this title, any

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

SHEILA C. BAIR
CHAIRMAN

September 30, 2009

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

Dear Mr. Chairman:

Thank you for the opportunity to testify before the Committee at the August 4 hearing "Strengthening and Streamlining Prudential Bank Supervision."

Enclosed are my responses to the follow up questions you provided from Senator Bunning. If you have further questions or comments, please do not hesitate to contact me at (202) 898-6974 or Paul Nash, Deputy for External Affairs, at (202) 898-6962.

Sincerely,

[redacted]

Sheila C. Bair

Enclosure

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

Q1. What is the best way to decrease concentration in the banking industry? Is it size limitations, rolling back state pre-emption, higher capital requirements, or something else?

A1. We must find ways to impose greater market discipline on systemically important institutions. We believe there are several ways to decrease concentration levels in the banking industry without the federal government setting size limits on banks. For example, certain requirements, such as higher capital and liquidity levels, could be established to mirror the heightened risk they pose to the financial system. Assessments also could be used as incentives to contain growth and complexity, as well as to limit concentrations of risk and risk taking.

However, one of the lessons of the past few years is that regulation alone is not enough to control imprudent risk-taking within our dynamic and complex financial system. You need robust and credible mechanisms to ensure that market players will actively monitor and keep a handle on risk-taking. In short, we need to enforce market discipline for systemically important institutions. To end too big to fail, we need an orderly and highly credible mechanism that is similar to the process we use to resolve FDIC-insured banks. In such a process, losses would be borne by the stockholders and bondholders of a holding company, and senior managers would be replaced. There would be an orderly resolution of the institution, but no bail-out. Open bank assistance should not be used to prop up any individual firm.

Q2. Treasury has proposed making the new banking regulator a bureau of the Treasury Department. Putting aside whether we should merge the current regulators, does placing the new regulator in Treasury rather than as a separate agency provide enough independence from political influence?

A2. We believe independence is an essential element of a sound supervisory program. Supervisors must have the authority and resources to gather and evaluate sufficient information to make sound supervisory decisions without undue pressures from outside influences. The FDIC and state banking supervisors, who often provide a different and unique perspective on the operations of community banks, have worked cooperatively to make sound supervisory decisions without compromising their independence.

As currently structured, two of the federal banking agencies, the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) are bureaus within the U.S. Department of the Treasury. Although subject to general Treasury oversight, the OCC and OTS have a considerable amount of autonomy within the Treasury with regard to examination and enforcement matters. Unlike Treasury, the

OCC and OTS are funded by examination and other fees assessed on regulated entities, and they have independent litigating authority. The other three federal banking agencies–the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve, and the National Credit Union Association are fully independent agencies, self-funded though assessments or other fees, and have independent litigating authority. To the extent the OTS and OCC would be merged into a single regulator under Treasury, continued independence could be maintained through non-appropriated funding sources, independent litigating authority, and independent decision making authority, such as currently afforded to the OCC and OTS.

Q3. Given the damage caused by widespread use of subprime and non-traditional mortgages–particularly low documentation mortgages–it seems that products that are harmful to the consumer are also harmful to the banks that sell them. If bank regulators do their job and stop banks from selling products that are dangerous to the banks themselves, other than to set standards for currently unregulated firms, why do we need a separate consumer protection agency?

A3. As currently proposed, the new Consumer Financial Protection Agency (CFPA) would be given sole rulemaking authority for consumer financial protection statutes over all providers of consumer credit, including those outside the banking industry. The CFPA would set a floor on consumer regulation and guarantee the states' ability to adopt and enforce stricter (more protective) laws for institutions of all types, regardless of charter. It also is proposed that the CFPA would have consumer protection examination and enforcement authority over all providers of consumer credit and other consumer products and services–banks and nonbanks.

Giving the CFPA the regulatory and supervisory authority over nonbanks would fill in the existing regulatory and supervisory gaps between nonbanks and insured depository institutions and is key to addressing most of the abusive lending practices that occurred during the current crisis. In addition, the provision to give the CFPA sole rule-writing authority over consumer financial products and services would establish strong, consistent consumer protection standards among <u>all</u> providers of financial products and services and eliminate potential regulatory arbitrage that exists because of federal preemption of certain state laws.

However, the Treasury proposal could be made even more effective with a few targeted changes. As recent experience has shown, consumer protection issues and the safety and soundness of insured institutions go hand-in-hand and require a comprehensive, coordinated approach for effective examination and supervision. Separating federal banking agency examination and supervision (including enforcement) from consumer protection examination and supervision could undermine the effectiveness of each with the unintended consequence of weakening bank oversight.

As a federal banking supervisor and the ultimate insurer of $6 trillion in deposits, the FDIC has the responsibility and the need to ensure consumer protection and safety and soundness are properly integrated. The FDIC and other federal banking agencies should retain their authority to examine and supervise insured depository institutions for consumer protection standards established by the CFPA. The CFPA should focus its examination and enforcement resources on nonbank providers of products and services that have not been previously subject to federal examinations and standards. The CFPA also should have back-up examination and enforcement authority to address situations where it determines the federal banking agency supervision is deficient.

Q4. Since the two most recent banking meltdowns were caused by mortgage lending, do you think it is wise to have a charter focused on mortgage lending? In other words, why should we have a thrift charter?

A4. Over several decades financial institutions with thrift charters have provided financing for home loans for many Americans. In recent years, federal and state banking charters have expanded into more diversified, full service banking operations that include commercial and residential mortgage lending. However, it is understandable that the lack of diversification and exposure to the housing market could raise concerns about the thrift charter. Market forces have reduced the demand for thrift charters. Given the dwindling size of the federal thrift industry, it makes sense to consider merging the federal thrift charter into a single federal depository institution charter.

Q5. Should banking regulators continue to be funded by fees on the regulated firms, or is there a better way?

A5. We believe the banking industry should pay for its supervision, but the federal bank supervision funding process should not disadvantage state-chartered depository institutions and the dual banking system. State-chartered banks pay examination fees to state banking agencies. The federal banking agencies are self-funded through assessments, exam fees, and other sources. This arrangement helps them remain independent of the political process and separates them from the federal budget appropriations.

Q6. Why should we have a different regulator for holding companies than for the banks themselves?

A6. We do not believe it is always necessary to have a different regulator for the holding company and the bank. Numerous one bank holding companies exist where the bank is essentially the only asset owned by the holding company. In these cases, there is no reason why bank regulators could not also serve as holding company regulators as it is generally more efficient and prudent for one regulator to evaluate both entities.

In the case of more complex multi-bank holding companies, one can argue it is more effective for the primary federal regulators to examine the insured depository institutions while the Federal Reserve evaluates the parent (as a source of strength) and the financial condition of the non-bank subsidiaries. Yet even for a separate holding company regulator, the prudential standards it applies should be at least as strong as the standards applied to insured banks.

Q7. Assuming we keep thrifts and thrift holding companies, should thrift holding companies be regulated by the same regulator as bank holding companies?

A7. Similar to the answer to Question 6, it may not be necessary for small thrifts that are owned by what are essentially shell holding companies to have a separate holding company regulator. While one can argue that more complex organizations merit a separate holding company regulator, even in this structure we believe prudential standards applied to a holding company should be at least as strong as those applied to an insured entity.

Q8. The proposed risk council is separate from the normal safety and soundness regulator of banks and other firms. The idea is that the council will set rules that the other regulators will enforce. That sounds a lot like the current system we have today, where different regulators read and enforce the same rules different ways. Under such a council, how would you make sure the rules were being enforced the same across the board?

A8. The proposed risk council would oversee systemic risk issues, develop needed prudential policies, and mitigate developing systemic risks. A primary responsibility of the council should be to harmonize prudential regulatory standards for financial institutions, products, and practices to assure market participants cannot arbitrage regulatory standards in ways that pose systemic risk. The council should evaluate different capital standards that apply to commercial banks, investment banks, investment funds, and others to determine the extent to which these standards circumvent regulatory efforts to contain excess leverage in the system. The council should ensure that prompt corrective action and capital standards are harmonized across firms. For example, large financial holding companies should be subject to tougher prompt corrective action standards under U.S. law and be subject to holding company capital requirements that are no less stringent than those for insured banks. The council also should undertake the harmonization of capital and margin requirements applicable to all OTC derivatives activities and facilitate interagency efforts to encourage greater standardization and transparency of derivatives activities and the migration of these activities onto exchanges or central counterparties. To be successful, the council must have sufficient authority to require some uniformity and standardization in those areas where appropriate.