SEIU®
Stronger Together

ANDREW L. STERN
International President

ANNA BURGER
International Secretary-Treasurer

MITCH ACKERMAN
Executive Vice President

MARY KAY HENRY
Executive Vice President

GERRY HUDSON
Executive Vice President

ELISEO MEDINA
Executive Vice President

BRUCE RAYNOR
Executive Vice President

DAVE REGAN
Executive Vice President

TOM WOODRUFF
Executive Vice President

SERVICE EMPLOYEES
INTERNATIONAL UNION
CTW, CLC

1800 Massachusetts Ave NW
Washington, DC 20036

202.730.7000
TDD: 202.730.7481
www.SEIU.org

9556 KP 6.16.09

August 10, 2009

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

Re: RIN#3604-AD47

Dear Chairwoman Bair:

On behalf of the two million members of the Service Employees International Union (SEIU), I write to express our support for the FDIC's proposed Statement on Policy on Qualifications for Failed Bank Acquisitions. We applaud the FDIC for putting out regulatory guidelines that provide reasonable restrictions that will ensure that investors who have operated free from regulatory oversight, such as private equity firms, run failed banks in a safe and sound manner. We also want to thank the FDIC for inviting public comment on this important matter.

SEIU has served as a voice of reason on banking and financial issues. We voiced numerous concerns at the height of the recent credit bubble about certain types of financial practices that have plunged the U.S. into the current economic crisis. Over the years we have engaged with private equity firms and financial institution lobby groups over a number of issues, including the effect that leveraged buyouts have on workers and the communities they live in. We believe that our experience in dealing with these entities gives us a unique perspective into how they operate, and for that reason, we submit these comments for your attention. We want to focus the bulk of our comments on four issues: 1) the Tier 1 Leverage Ratio, 2) the Cross-Guarantee requirements, 3) the three year holding requirement, and 4) the applicability of this policy. We would also like to provide brief comments on the specific questions posed by the FDIC for comment.

I. The Tier 1 Leverage Ratio

SEIU believes that current economic conditions coupled with the circumstances under which these failed banks are being bought, counsel that the FDIC set the Tier 1 Leverage Ratio at higher levels than it normally would. In the past, the FDIC has shown a willingness to raise the Tier 1 Leverage Ratio to higher levels when the circumstances call for such measures. For example, when the FDIC has had concerns about a

bank's prior operating history, its business plan, its management, and the character of its balance sheet, it has required that the bank maintain a higher leverage ratio. A number of private capital investors, including private equity fund leaders, have criticized the FDIC for requiring them to maintain a 15% Tier I Leverage Ratio if they choose to buy a failed bank. Some of private equity managers have suggested that the FDIC should take into account the factors outlined above, but not take into account the source of capital when determining the appropriate ratio to impose.

We could not disagree more. If the sources of capital were seeking to be nothing more than passive investors, we would not have anything to say about the matter, but the situation contemplated here is different. In this case, private equity firms and other private investors appear much more interested in running these banks, not simply acting as passive investors. Many of the firms interested in purchasing banks have shown a special appetite for risk. They have leveraged and sometimes drained the value out of their portfolio companies and left them in precarious financial situations. They have conducted dividend recapitalizations, essentially repaying themselves some or all of their equity investment while sometimes leaving their portfolio companies devoid of operating capital to pay wages to workers or conduct routine business. Given that these particular sources of capital have had checkered operating histories in running companies, have drained their companies of value, and have had trouble running banks, we would continue to urge that the FDIC maintain the 15% Tier 1 Ratio at the current proposed level. That way, these banks will have a lower likelihood of failing even if they are managed poorly. The Ratio requirement also will have the effect of controlling how much risk these firms can take.

Consideration of the other factors mentioned above also counsel in favor of higher ratios. The banks that these entities seek to purchase are banks that, by definition, have poor operating histories. The fact that ultimately these banks will be managed by boards comprised largely of investment professionals that have limited experience in the operations of a regulated institution again lead to the conclusion that the FDIC got it right the first time around when it propounded a 15% Tier I Leverage Ratio. The risks are too high here to allow for the lower ratio that some private equity investors are advocating.

II. Cross-Guarantee and Source of Strength

SEIU also supports the FDIC's decision to include cross-guarantee and source of strength requirements in the policy guidelines. From our vantage point, we believe that requiring source of strength and cross-guarantee provisions in any deal that the FDIC does with a private investor, especially those who seeks to act as a controlling influence over the bank, makes sense because it moves away from socializing risks. We have advocated, on a consistent basis, that any private capital investor share any risk in proportion to any profit they may gain from a venture. The way that the FDIC has structured these requirements in the policy guidelines gives private capital investors some "skin in the game" and may have the effect of taming a private investor's appetite for taking undue risks with FDIC-insured deposits. The cross-guarantee requirement, as

outlined in the policy, seems especially reasonable because it is in line with previous FDIC requirements. Despite some press reports that indicate that some private investors see the imposition of a cross-guarantee as the imposition of unlimited liability for their investment, we believe that requiring an investor guarantee losses only to the extent of their ownership percentage strikes the right balance on the issue of liability for underfunding. While we are generally pleased with the source of strength requirement outlined in the policy, we request that the FDIC consider enhancing the source of strength commitment by placing a statement in the policy noting that a private capital investor or beneficial fund manager also be required to make direct capital injections directly from its own funds in the case that a depository institution falters.

III. Continuity of Ownership

From a practical standpoint, SEIU believes that a three year holding period is too short a holding period, and would ask that the FDIC consider a longer period, such as four to five years, to ensure that private investors engage in practices that would encourage long-term income growth, versus short-term and potentially unsustainable gain. While we generally understand that the FDIC has usually required that owners of a *de novo* institution not sell any securities for three years, we believe a change is in order. The recent market collapse came as a result of managerial and compensation practices that focused on short-term over long-term gains. In general, private investors, especially private equity firms, have sought to unwind their holdings as quickly as stock market conditions allow, sometimes in as short a time as 18 months, but sometimes within two to three years. We believe that the horizon should be extended so that private equity funds are not focused solely on creating short-term profits at the expense of the long-term financial stability. Given that this will be the first time that many of these private equity firms will be competing in a highly regulated industry, it seems to make sense to allow them and the management they select to get their bearings first in an unfamiliar environment before simply focusing on a sale.

IV. Applicability of Policy

While generally SEIU applauds the FDIC for issuing an excellent set of guidelines for private capital investors' acquisitions of failed banks, we believe some improvements can be made to clarify to *whom* this policy applies. Currently, the policy appears to apply to any private capital investor that is directly or indirectly looking to assume deposit liabilities and assets from an insured depository in receivership and *de novo* applicants for insurance. Under this language, it appears as if a private capital investor may seek to avoid the application of these guidelines to their transaction by purchasing less than a majority stake in a deposit institution currently in receivership. Many private capital investors, including private equity firms, typically make asset purchases in "club deals", or deals structured as joint ventures with other purchasers. As the guidelines are currently structured, a number of private equity capital investors could each purchase less than a 24.9% interest in a failed bank and yet exercise joint control over its operations without being subject to these guidelines, Regulation Y, and source of

strength requirements.

We believe that this potential loophole should be closed up. We suggest that the FDIC clarify these guidelines by specifying that the policy apply to any private capital investor *or group of investors acting in concert* that will act as a controlling company or influence on the purchased institution, as defined by Regulation Y of the Bank Holding Company Act. Under this approach, the guidelines would apply to any private capital investor who, together or in concert with other private capital investors, seeks to own or control, directly or indirectly, 25% or more of the failed depository institution's outstanding voting shares.

This approach has three distinct advantages. First, this approach would ensure that the guidelines reach the greatest amount of transactions possible. Second, this approach would provide clarity regarding the applicability of this policy by referring to a well-established body of law. Third, it would accommodate the realities of how private equity deals are done and how private investment managers seek to influence board and management decisions.

Questions specifically asked by the FDIC

In the statements contained below, SEIU will briefly answer the nine questions (in italics) that the FDIC was specifically seeking comment on.

1. *The measures contained in the Proposed Policy Statement will not be applied to individuals, partnerships, limited liability companies, or responsibilities under existing law to serve as responsible custodians of the public interest that is inherent in insured depository institutions, but will be applied to (a) private capital investors in certain companies, proposing to assume deposit liabilities, or both such liabilities and assets, from a failed insured depository institution in receivership (including all entities in such an ownership chain), and to (b) applicants for insurance in the case of de novo charters issued in connection with the resolution of failed insured depository institutions (hereinafter ''Investors''). Is some other definition more appropriate?*

SEIU believes that the Proposed Policy Statement should apply to private capital investors and applicants for insurance in cases of *de novo* charters who, acting either alone or in concert, seek to act as a controlling company or influence over a failed insured depository institution in receivership as defined by the Bank Holding Company Act and Regulation Y.

2. *The Proposed Policy Statement indicates that so-called ''silo'' structures would not be considered to be eligible bidders for failed bank assets and liabilities since under these structures beneficial ownership cannot be ascertained, the responsible parties for making decisions are not clearly identified, and/or ownership and control are separated. Are there any reasons why they should be considered to be eligible bidders?*

SEIU does not think that the FDIC should consider "silo" structures to be eligible bidders for failed bank assets and liabilities precisely because ownership and control would be separated. Furthermore, the creation of "silo" structures could be used to undermine the source of strength and cross-guarantee requirements laid out in the Proposed Policy Statement because such structures are typically undercapitalized.

3. *Should there be a further requirement that if capital declines below the required capital level, the institution would be treated as "undercapitalized" for purposes of Prompt Corrective Action and the institution's regulator would have available all the measures that would be available in such a situation?*

Yes, any depository institution that falls below the required should be treated as "undercapitalized". As noted above in Section I of this comment, banks owned by private capital investors that fall below the Ratio threshold should be treated as being "undercapitalized" in order to avoid guard the DIF. Ownership by private capital investors, especially private equity firms with little experience in the banking industry, brings risks to these banks that the FDIC has not had to deal with. The failure of Washington Mutual suggests that a more aggressive set of controls may be needed to safeguard against another failure.

4. *Should the Source of Strength commitment included in the Proposed Policy Statement be retained in the final policy statement? Should the commitment be enhanced to require from the shell holding company and/or the Investors a broader obligation than only a commitment to raise additional equity or engage in capital qualifying borrowing?*

SEIU suggests that the FDIC enhance the source of strength commitment included in the Proposed Policy Statement to include not just a commitment to raise additional equity, but require additional commitments. Specifically, the FDIC should require that private capital investors, and specifically the managing entity behind a shell holding company (such as a general partner of a private equity firm), provide direct capital infusions when needed. The FDIC should further enhance the source of strength requirement by requiring that these obligations be made first against the managing entities assets, so as to better align the managing entities risk with their management of a bank.

5. *Should the Cross-Guarantee commitment included in the Proposed Policy Statement be retained in the final policy statement? Should the commitment contained in the Proposed Policy Statement be enhanced by requiring a direct obligation of the Investors?*

The Cross-Guarantee commitment included in the Proposed Policy Statement should be enhanced by requiring a direct obligation of the Investors, as noted above in SEIU's response to Question 4.

6. *The Proposed Policy Statement limits the use of entities in an ownership structure that are domiciled in bank secrecy jurisdictions unless the investors are subsidiaries of*

companies that are subject to comprehensive consolidated supervision as recognized by the Federal Reserve Board. Should entities established in bank secrecy jurisdictions be considered to be eligible bidders even without being subject to comprehensive consolidated supervision?

No, entities established in bank secrecy jurisdictions should not be considered as eligible bidders unless they are subject to comprehensive consolidated supervision. We completely agree with the approach taken by the FDIC in this regard.

7. *Under the Proposed Policy Statement, Investors would be prohibited from selling or otherwise transferring securities of the Investors' holding company or depository institution for a three year period of time following the acquisition absent the FDIC's prior approval. Is three years the correct period of time for limiting sales, or should the period be shorter or longer?*

For the reasons discussed in Section III of this letter, SEIU believes that the period should be extended to four or five years before a private capital investor may seek to transfer their ownership interests in the securities of the holding company or depository institution.

8. *The Proposed Policy Statement provides that Investors that directly or indirectly hold 10% or more of the equity of a bank or thrift in receivership would not be considered eligible to be a bidder to become an investor in the deposit liabilities, or both such liabilities and assets, of that failed depository institution. Is this exclusion from bidding eligibility appropriate on the basis of the need to assure fairness among all bidders and to avoid an incentive for the 10% or more Investor to seek to take advantage of the potential availability of loss sharing by the FDIC if the subsidiary bank or thrift enters into a receivership?*

SEIU agrees with FDIC's approach to this issue.

9. *Should the limitations in this Proposed Policy Statement be lifted after a certain number of years of successful operation of a bank or thrift holding company? If so, what would be the appropriate timeframe for lifting the conditions? What other criteria should apply? Should all or only some of the conditions be lifted?*

Consistent with our answer to Question 7, SEIU believes that a four or five year period to keep these restrictions in place would be appropriate for the transfer of securities. We also think that the same time period should apply for maintaining the Tier 1 Leverage Ratio at 15%. However, the source of strength, cross-guarantee, and bank secrecy restrictions should be held in perpetuity, as other banks are required to operate under those restrictions generally, and lifting those restrictions would give an unfair competitive advantage to banks held by private investors.

Conclusion

Thank you for the opportunity to comment on this extremely important issue. Please contact Lilah Pomerance at 202-730-7704 if you have any questions or wish to discuss this further.

Sincerely,

Anna Burger
International Secretary Treasurer