ATTACHMENT A

LEGISLATIVE HISTORY OF SAIF FUNDING SCHEME

This legislative history reviews the primary statutes that established the funding scheme intended by Congress to resolve the thrift crisis of the 1980s and to provide capital to the Savings Association Insurance Fund (SAIF) and its predecessor, the Federal Savings and Loan Insurance Corporation (FSLIC). Although these laws cover a broad range of issues with respect to insured institutions, this review is limited to those provisions that concern the funding of the FSLIC and the SAIF.

Background

From the inception of federal deposit insurance, insured banks and thrifts were charged a flat rate for deposit insurance. That flat-rate system generated sufficient revenue to cover the costs of failures through the mid-1980s when bank and thrift failures began to escalate rapidly. In 1987, the Federal Home Loan Bank Board (FHLBB), as the agency with oversight responsibility for the FSLIC, the thrift insurance fund, announced that the FSLIC was insolvent.

Competitive Equality Banking Act of 1987

Congress passed the Competitive Equality Banking Act of 1987 (CEBA) against a backdrop of an increasing rate of thrift failures. One of the primary purposes of CEBA was to recapitalize the FSLIC through a combination of capital market borrowings and thrift industry contributions. CEBA authorized the FHLBB to charter the Financing Corporation (FICO) to issue bonds in the capital markets, the net proceeds of which were used to purchase redeemable nonvoting capital stock and nonredeemable capital certificates of the FSLIC. The FICO was authorized to sell up to $10.825 billion in 30-year bonds to the public. Of that amount, $10 billion was to be used for FSLIC operations and the remainder was to replace secondary reserve losses. The FICO issued 30-year non-callable bonds in a principal amount of approximately $8.1 billion which mature in 2017 through 2019.

The principal amount of the FICO debt was to be paid by the Federal Home Loan Banks (FHLBs). To cover interest costs, the FICO was authorized to impose on each institution insured by the FSLIC, both a regular assessment not to exceed 8.3 basis points and, if required, a supplemental assessment not to exceed 12.5 basis points. The FICO assessment was to be subtracted from the insurance premium of 8.3 basis points charged by the FSLIC. If

the full amount of the regular assessment authorized had been assessed by the FICO, no funds would have remained to replenish the FSLIC. No institution could be required to pay more than the maximum regular and supplemental assessment amounts, whether paid to the FSLIC, the FICO or a combination of both. The FICO's assessment authority does not expire until 2019, the maturity year of its last bond issuance.

A key element of the capitalization scheme was the moratorium on changing insurance funds established in CEBA. By prohibiting thrifts from leaving the FSLIC, the moratorium provided the FSLIC with a captive funding source so that the fund could be built up. In addition, it ensured that FSLIC members would bear the burden of paying interest on the bonds issued by the FICO, thereby contributing toward the payment of the fund's past losses. CEBA also provided the FICO with authority (with FHLBB approval) to levy an exit fee on insured institutions that terminated their FSLIC insurance.

Financial Institutions Reform, Recovery, and Enforcement Act

In 1989, with losses from thrift failures continuing to mount and the condition of the bank insurance fund beginning to deteriorate, Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) for the purpose of reforming, recapitalizing and consolidating the federal deposit insurance system by 1) placing the deposit insurance funds on a solid financial footing and 2) strengthening the supervisory and enforcement authority of federal bank and thrift regulators.

FIRREA restructured the deposit insurance funds by abolishing the FSLIC and establishing in its place the SAIF, which was to be managed by the FDIC. The FDIC's Permanent Insurance Fund was renamed the Bank Insurance Fund (BIF). FIRREA established a designated reserve ratio (DRR) for each fund set at 1.25 percent of estimated insured deposits and directed the FDIC to set rates and the DRR for the BIF and the SAIF independently. FIRREA also departed from the previous flat-rate assessment system by establishing a schedule of minimum annual assessment rates for both BIF and SAIF members. The FDIC was authorized to increase the minimum rates as necessary to achieve the DRR, but the rate could not exceed 32.5 basis points, nor could it be increased by more than 7.5 basis points in any one year. Until 1998, the minimum assessment schedule set for SAIF members was higher than that for BIF members, ranging from a difference of approximately 12.5 basis points at enactment to 3 basis points through 1997.

To continue to ensure a captive source of assessments to the SAIF, FIRREA extended for an additional five years the moratorium

on changing insurance funds with certain exceptions for troubled institutions and for transfers of "an insubstantial portion of total deposits," typically involving sales of branches by healthy institutions. FIRREA further established entrance and exit fees to be paid by institutions that engaged in permissible transfers between insurance funds. Any institution that transfers deposits from the SAIF to the BIF must pay an entrance fee to the BIF to prevent dilution of the BIF reserve ratio and an exit fee to the SAIF (currently 90 basis points). Exit fees received in connection with transfers from the SAIF to the BIF are held in a segregated account and may be made available to the FICO if the FDIC and the Secretary of the Treasury determine that the FICO has exhausted all other sources of funding for interest payments on its bonds.

One of the exceptions to the moratorium authorized a bank holding company that controlled a savings association to merge the savings association with a subsidiary bank. These so-called "Oakar" banks pay premiums to the SAIF on deposits attributable to the former savings association (the adjusted attributable deposit amount). The moratorium did not affect the ability of thrift institutions to convert to bank charters so long as the resulting institution remained a member of the SAIF ("Sasser" banks).

The funding framework established in FIRREA to pay for the escalating cost of thrift resolutions created three new entities, the FSLIC Resolution Fund (FRF), the Resolution Trust Corporation (RTC) and the Resolution Funding Corporation (REFCORP). The FRF was created to liquidate the assets and liabilities of the FSLIC. The FRF paid to the SAIF all amounts needed for administrative and supervisory expenses from creation of the SAIF through September 30, 1992. The FRF received funds from amounts assessed against SAIF members by the FDIC that were not required for principal payments on bonds issued by the REFCORP or interest payments on bonds issued by the FICO.

FIRREA established the RTC to manage and resolve all troubled thrift institutions previously insured by the FSLIC as well as future thrift resolutions through August 9, 1992. This date was subsequently extended to June 30, 1995. Since enactment of FIRREA, the SAIF's resolution responsibility has been limited to the SAIF-insured portion of BIF-member Oakar banks and thrifts chartered since 1989. The SAIF will assume resolution responsibility for thrifts on July 1, 1995.

Finally, pursuant to FIRREA, the REFCORP was created to provide funding for the RTC by issuing bonds. The principal of REFCORP bonds was to be paid by the FHLBs, up to a maximum annual amount of $300 million or 20 percent of net earnings per FHLB. To the extent that monies from the FHLBs were insufficient to pay the principal amount, with the approval of the Board of Directors

of the FDIC, the REFCORP was authorized to assess SAIF members. The amount of REFCORP's assessment could not exceed the amount authorized to be assessed by the FDIC, less any FICO assessment.

Under the funding scheme established in FIRREA, the FICO continued to retain first priority on SAIF assessments followed by the REFCORP and the FRF, limited by the maximum amount authorized to be assessed by the FDIC. If the FICO, REFCORP and FRF assessments exhausted the amount of the FDIC's authorized assessment, then no funds were available to deposit in the SAIF.

Congress recognized in FIRREA that the diversion of SAIF assessments to the FICO, REFCORP and FRF would necessarily delay the capitalization of the SAIF. Therefore, in addition to assessment revenue, Congress authorized the appropriation of funds to the SAIF in an aggregate amount of up to $32 billion to supplement SAIF revenue and to maintain a statutory minimum net worth. Congress authorized an annual appropriation to SAIF to supplement assessment revenue by ensuring an income stream of $2 billion (after subtracting the amounts diverted to the FICO, REFCORP and FRF) each year through 1999, not to exceed $16 billion in the aggregate, and to meet statutorily mandated minimum net worth targets through 1999, not to exceed $16 billion in the aggregate. Subsequent legislation extended the date for receipt of appropriated funds to 2000.

Federal Deposit Insurance Corporation Improvement Act of 1991

In December 1991, faced with continuing bank and thrift failures and the impending bankruptcy of the BIF, Congress passed the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). In FDICIA, Congress focused its efforts on preventive actions to protect the insurance funds by 1) requiring a variety of regulatory and supervisory measures intended to limit the risk of loss to the insurance funds and 2) restructuring the deposit insurance assessments system.

FDICIA restructured completely the basis upon which deposit insurance assessments are determined by replacing the flat-rate assessment system with a risk-related assessment system in which an institution's insurance premium is a function of the risk posed to the applicable fund by that institution. Congress intended the system to serve as an incentive to curtail activities that posed a greater risk to the funds. In addition to the implementation of a risk-related system, Congress authorized the FDIC to set assessments to maintain the reserve ratio at the DRR once that level is achieved. However, until that time, the FDIC is required to set rates not lower than the statutory minimum assessments. Currently, SAIF members are

assessed risk-related rates ranging from 23 basis points to 31 basis points, which is higher than the statutory minimum assessment of a weighted average of 18 basis points. If the SAIF is not recapitalized by January 1, 1998, or if the SAIF has outstanding Treasury borrowings on that date, the FDIC must promulgate a recapitalization schedule for the SAIF and the statutory minimum assessment will increase to a weighted average rate of 23 basis points. Finally, FDICIA reaffirmed that FICO assessments must be subtracted first from the assessments established by the FDIC for SAIF members.

In early 1992, because of the continuing weak position of the SAIF, the FDIC asked the Treasury Department and the Office of Management and Budget to request funding for the revenue and net worth supplements authorized under FIRREA. Despite these requests, no funds were ever requested or appropriated for these purposes.

Finally, to provide additional avenues for resolution of troubled institutions, Congress broadened the "Oakar" exception to the moratorium on conversions to permit acquisitions by banks not in a holding company structure and to enable SAIF-insured institutions to acquire BIF-insured institutions. The resulting SAIF-insured institution would pay assessments to the BIF for the deposits attributable to the former BIF member.

In 1992, the FDIC Legal Division determined that as a matter of law assessments paid by BIF-member Oakar banks on deposits acquired from SAIF members must remain in the SAIF and may not be allocated among the FICO, REFCORP, or FRF. The FDIC General Counsel recently reaffirmed this opinion and further stated the Legal Division's position that assessments paid by any former savings association that has converted to a bank and remains a SAIF member (Sasser banks) are not available to the FICO. (See Notice of FDIC General Counsel's Opinion No. 7, 60 FR 7055 (Feb. 6, 1995)).

Resolution Trust Corporation Completion Act

The Resolution Trust Corporation Completion Act (RTCCA) was enacted in 1993 to "provide for the remaining funds needed to assure that the United States fulfills its obligation for the protection of depositors at savings and loan institutions. . ." and to provide the final funding for the RTC. The RTCCA extended the moratorium on transfers between insurance funds to such time as the SAIF first attains the DRR and authorized the FDIC to extend any SAIF recapitalization schedule beyond the 15-year time limit specified in FDICIA to a date that will maximize the amount of semiannual assessments received by SAIF. The RTCCA also replaced the revenue and net worth supplements authorized in FIRREA with an authorization to use up to $8 billion of

appropriated funds for losses incurred by the SAIF in fiscal years 1994 through 1998. In addition, the RTCCA authorized the use by SAIF of unexpended RTC funds for losses incurred or reasonably expected to be incurred. In both cases, these funds can be received only if the FDIC certifies to Congress that 1) assessments on SAIF members cannot be increased further without causing additional losses to the Government and 2) SAIF members cannot pay higher assessments to cover losses to the SAIF without adversely affecting their ability to raise and maintain capital or to maintain the assessment base.