APPENDIX B

ADDITIONAL REGULATORY RELIEF MEASURES

The FDIC also believes the following additional statutory changes would help significantly to reduce regulatory burden. We recommend their inclusion in the bill.

- **Repeal section 39 of the FDI Act.** Section 39 requires the Federal banking agencies to prescribe standards, by regulation or guideline, for all insured depository institutions relating to asset quality, earnings, stock valuation, various operational and managerial matters, and compensation. The standards required to be prescribed by the agencies represent an extraordinary foray into the micromanagement of a depository institution and are unnecessary to ensure safety and soundness. Not only are the standards difficult and burdensome for the agencies to establish, but the agencies already have sufficient authority to deal with abuses and unsafe or unsound practices on a case-by-case basis under section 8 of the FDI Act and other provisions of law and regulation. The guidelines which the agencies may issue in satisfaction of this statute are likely to be more confusing than helpful.

- **Repeal section 37(a)(3)(D) of the FDI Act.** Section 37(a)(3)(D) requires the Federal banking agencies to develop jointly a method for insured depository institutions to provide supplemental disclosure of the estimated fair values of their assets and liabilities, to the extent feasible and practicable, in any balance sheet, financial statement, report of condition, or other report of any insured depository institution required to be filed with a Federal banking agency.

  Section 37(a)(3)(D) has not only been difficult and burdensome for the agencies to implement but also places additional regulatory burden on insured depository institutions by requiring them to disclose a variety of information, much of which the agencies already are able to obtain. For example, financial statements that are filed annually with the agencies by institutions subject to the audit and reporting requirements of section 36 of the FDI Act (i.e., institutions with $500 million or more in assets) and any other institution with financial statements prepared in accordance with Generally Accepted Accounting Principles

already include information on the fair value of their financial instruments. While not all of an institution's assets and liabilities are financial instruments, the vast majority are. Other real estate (which is one of the more significant assets that is not a financial instrument) is carried on an institution's balance sheet at an amount that does not exceed fair value less estimated selling costs. Also, certain securities are carried at fair value on the balance sheet and, for those securities that are not carried at fair value on the balance sheet, supplemental disclosure of their fair value is provided.

In addition, institutions with assets in excess of $100 million will be required to disclose the fair value of their off-balance sheet derivatives beginning March 31, 1995. For institutions subject to section 36 of the FDI Act (i.e., institutions that pose the largest risk to the insurance funds), the fair value disclosures required by section 37(a)(3)(D) essentially duplicate much of the information that they already disclose. For the few assets and liabilities for which fair value is not currently disclosed, it may not be feasible or practicable to determine fair value. Moreover, the agencies have the authority under section 36 of the FDI Act to require fair value disclosure as they determine to be necessary.

- **Amend section 11(a)(1)(D) of the FDI Act**. Section 11(a) of the FDI Act prohibits the FDIC from providing pro rata or "pass-through" deposit insurance coverage to employee benefit plan deposits that are accepted by an insured depository institution at a time when the institution may not accept brokered deposits under section 29 of the FDI Act. Consequently, if an institution accepts employee benefit plan deposits at a time when it is unable to accept brokered deposits (i.e., when it is undercapitalized), such deposits would only be insured up to $100,000 per plan (as opposed to $100,000 per participant or beneficiary). Under existing law, the depositor, rather than the institution, would be penalized for the institution's behavior.

By limiting "pass-through" coverage on employee benefit plan deposits, the burden is placed on plan administrators every time a deposit is made to inquire as to an institution's capital category and ability to accept brokered deposits before placing plan deposits with the institution, even though many plan administrators may not be aware of such restrictions. Even if they are aware of such restrictions, plan administrators must inquire each time as to the institution's continuing ability to provide "pass-through" coverage. Not only are the "pass-through" restrictions burdensome and unfair to plan administrators and participants, but they also are burdensome to the

institution by subjecting it to frequent requests for information concerning its ability to offer "pass-through" insurance to employee benefit plan deposits.

We suggest amending section 11(a)(1)(D) of the FDI Act to prohibit undercapitalized institutions from accepting employee benefit plan deposits. The effect of the suggested amendment would be to provide "pass-through" deposit insurance coverage to employee benefit plan deposits that are accepted by an institution that violates the law and accepts such deposits at a time when it is undercapitalized. Under the amendment, the institution, rather than the depositor would be penalized, which is consistent with the way brokered deposits are treated under the law.

- **Repeal section 29A of the FDI Act**. Section 29A requires deposit brokers to file notices with the FDIC and imposes certain recordkeeping and reporting requirements on deposit brokers. The FDIC believes that the requirements of section 29A serve no useful supervisory purpose and that the receipt and use of brokered deposits can be monitored through call reports and the examination process. The effect of repeal would be to reduce the burden on deposit brokers who have no reason to know what their clients are doing with the brokered funds, and on any institutions that may be acting as deposit brokers, as well as on the FDIC in receiving and maintaining reports filed by deposit brokers. Repeal would in no way change the existing restrictions on depository institutions accepting brokered deposits. The amendment would also eliminate what appears to be an incipient problem whereby individuals or entities file the notice with the FDIC that they are acting as deposit brokers and claim or misrepresent themselves to potential customers as "registered," "licensed," or "approved" by the FDIC.

- **Conform the interest-rate limitations contained in section 29 of the FDI Act**. As currently drafted, section 29 contains three separate and dissimilar provisions that limit the rate of interest payable by insured institutions that are not well-capitalized.

  The first of these provisions is section 29(e) which prohibits an adequately capitalized institution that has received a waiver to accept brokered deposits or an institution for which the FDIC has been appointed conservator from paying interest on brokered deposits that significantly exceeds the rate paid on deposits of similar maturity in the institution's normal market area or the national rate paid on deposits of comparable maturity, for deposits accepted outside the institution's normal market area.

The second provision limiting interest rates is section 29(g)(3). This section provides that any insured depository institution (other than a well-capitalized institution) that solicits deposits by offering significantly higher rates of interest than the prevailing rates in the institution's normal market area is deemed to be a "deposit broker." This provision essentially limits the rate that institutions that are not well-capitalized may pay on deposits obtained without the intermediation of a third-party broker.

The third provision limiting interest rates is section 29(h). This section prohibits an undercapitalized institution from soliciting deposits by offering rates of interest that are significantly higher than the prevailing rates of interest in the institution's normal market areas or in the market area in which such deposits would otherwise be accepted.

Computing effective yields in an institution's normal market area or in any particular area is conceptually difficult. There is a need to simplify and harmonize these provisions by eliminating the references to "normal market area" and "market area in which such deposits would otherwise be accepted" and replacing these "point-of-origin" or "geographically-determined" interest rate restrictions with a single interest-rate restriction that is independent of the geographic origin of the deposit.

- **Repeal section 30 of the FDI Act**. Section 30 prohibits an insured depository institution from entering into a written or oral contract with any person to provide goods, products, or services to or for the benefit of the institution if the performance of such contract would adversely affect its safety or soundness.

  Since enactment of section 30, there has been a significant decrease in the types of activity that the statute was intended to eliminate (i.e., abuses involving contracts made by or on behalf of an insured depository institution that seriously jeopardize or misrepresent its safety or soundness). This decrease is due in part to increased awareness of the potential for contracts to be structured in a manner that is adverse to an institution's safety or soundness and the use of alternative supervisory actions by the agencies to address such abuses if they arise. Not only has section 30 been difficult and burdensome to implement, but the agencies already possess adequate supervisory authority under section 8 of the FDI Act and other provisions of law and regulation to address adverse contracts.

- **Amend section 22(g) of the Federal Reserve Act**. Section 22(g) of the Federal Reserve Act prohibits a member bank from extending credit to its executive officers except in the amounts, and for the purposes, and upon the conditions specified therein. Section 18(j)(2) of the FDI Act and section 11(b) of the Home Owners' Loan Act make such restrictions applicable to nonmember banks and savings associations, respectively. Among the exceptions to the prohibition on loans to executive officers specified in section 22(g) are loans secured by a first lien on a dwelling of an executive officer which is expected to be owned by the executive officer and loans to finance the education of the children of an executive officer. We suggest expanding the statutory exceptions to the restrictions on loans to executive officers to include home equity lines of credit up to $100,000 and loans secured by readily marketable assets up to 50 percent of fair value. The effect of such amendments would be to provide additional flexibility in lending to executive officers without compromising safety and soundness standards.