Generally, the Corporation's authority for formal enforcement actions emanates from Section 8 of the Federal Deposit Insurance Act. These include termination of deposit insurance, issuance of cease and desist actions (including immediate temporary actions), suspension or removal of a bank officer or director, or prohibition of participation by others in bank affairs when certain criteria can be established. The initiation of formal actions is based upon findings of practices or conditions deemed unsafe or unsound (undesirable, unacceptable and/or objectionable) and/or violations of law, regulation, condition or order.

The circumstances which lead to the taking of formal enforcement actions can include unsatisfactory management, inadequate capital, failure to recognize or charge off losses, inadequate loan valuation reserve, unsatisfactory loan administration, large volume of subquality assets, operating losses or inadequate earnings, unwarranted dividends or other insider payments, poor liquidity, lacking or insufficient corporate planning, failure to file or inaccurate reports, and/or violations of laws and regulations. Actions may require institutions to cease unsatisfactory practices, take affirmative action to correct deficiencies, and/or achieve and maintain certain acceptable levels in the future. Civil money penalties are assessed to punish the violator and to deter future violations. They may be issued for violations of several laws and are initiated if the violation is found to be willful, flagrant, or otherwise evidence bad faith on the part of the bank or individual(s), and/or if violations have not been corrected or represent repeat-type violations. [redacted]

Memorandums of understanding or FDIC Resolutions with a bank's board of directors are considered for near-problem banks and are used by the FDIC as a means of applying informal action to institutions of supervisory concern, but which have not deteriorated to the point where they warrant formal administrative action. They may also be utilized in otherwise deteriorated situations where, because of strong commitment for correction on the part of a competent board and management, more formal action is foregone. Contents of a resolution memorandum are uniquely fashioned to address the specific problems of an individual institution.

The Capital Forbearance Policy is for solvent and viable banks with concentrations in weak economic sectors that are experiencing a severe, unexpected and protracted downturn. These banks have had their capital deficiency caused by external problems in the economy that are beyond management's control. Situations are such that these banks are not able to raise additional needed capital. The FDIC is not enforcing capital standards on the banks approved into this program. These banks have provided an acceptable plan for capital restoration, have competent management, and file annual progress reports.

Each of the FDIC's Regional Offices has front-line responsibility to identify and recommend institutions or individuals for formal or informal enforcement actions (most commonly through examination or visitation reports). The senior staff meets directly with an institution's board of directors to delineate deficiencies and seek appropriate corrective measures. The Regional Office staff will monitor and follow up on compliance with provisions of formal or informal enforcement actions through reviewing progress reports required to be submitted at specified intervals by the institution and first-hand appraisals by Corporation field examiners at subsequent examinations and visitations.

ADMINISTRATIVE ACTIONS

The Board of Directors of the FDIC uses a broad array of enforcement powers, including:

<u>Section 8(a) - Termination of Insurance</u> - The most severe sanction available to the FDIC is the termination of a bank's insurance (national banks, Federal savings banks and many state banks are not permitted to operate without federal deposit insurance). Insurance termination may be used where the FDIC determines that a bank is in an unsafe or unsound condition or has violated a law or regulation. In practice, insurance termination is generally reserved for banks whose financial condition has seriously deteriorated and other efforts to obtain correction have failed.

<u>Section 8(b) - Cease and Desist Proceedings</u> - Permits the FDIC to order an insured bank and its directors, officers, employees, and agents to cease and desist from certain practices and violations and take affirmative action to correct the condition resulting therefrom.

<u>Section 8(c) - Temporary Cease and Desist Proceedings</u> - Provides that the FDIC may issue a Temporary Cease and Desist Order whenever the FDIC determines the violation or threatened violations or unsafe or unsound practices are likely to cause insolvency or substantial dissipation of assets or earnings of the bank, seriously weaken the condition of the bank, or otherwise seriously prejudice the interests of the depositors prior to the completion of action under Section 8(b).

<u>Section 8(e) - Removal Procedures</u> - Gives the FDIC the power to remove any director, officer, or other person participating in the conduct of the affairs of a bank for certain conduct evidencing personal dishonesty and posing a threat to the bank or its depositors.

<u>Section 8(g) - Suspension Procedures</u> - Permits the FDIC to suspend any director, officer, or other person participating in the conduct of the affairs of a bank if such person is indicted for a felony involving personal dishonesty or breach of trust.

Section 8(p) - Termination of Insurance - Permits the FDIC to terminate the insurance of an insured banking organization that is not engaged in the business of receiving deposits, other than trust funds.

Civil Money Penalties - Fines assessed by the FDIC on banks, bank officers, directors, and/or persons participating in the conduct of a bank's affairs because of violations of certain laws, regulations, or cease and desist orders.

Part 325 Capital Directive - Final order issued by the FDIC to a bank that fails to maintain capital at or above the minimum capital requirement as set forth by Part 325 of the FDIC Rules and Regulations.

Memorandums of Understanding and Board Resolutions - Informal agreements between the FDIC and the bank's board of directors which are used in banks of supervisory concern but which have not deteriorated to the point where formal administrative action is warranted.

Capital Forbearance - Formal agreements to give undercapitalized institutions time to recapitalize. These are supported by a written plan discussing the bank's plans for operating in a safe manner and their intentions and timetable for increasing capital.