Statement
of
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General Counsel Federal Deposit Insurance Corporationon the "Financial Services Regulatory Relief Act of 2005" before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Financial Services U.S. House of Representatives
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Appendix

Chairman Bachus, Representative Sanders, Representative Hensarling and Members of the Subcommittee, I appreciate the opportunity to present the views of the Federal Deposit Insurance Corporation (FDIC) on H.R. 3505, proposed legislation to provide regulatory burden relief. The FDIC shares the Subcommittee's continuing commitment to eliminate unnecessary burden and to streamline and modernize laws and regulations as the financial industry evolves. This is an important endeavor and our nation's insured financial institutions are counting on us to succeed in our efforts to reduce unnecessary regulatory burden.

The Federal bank and thrift regulatory agencies have been working together over the last few years to identify regulatory requirements that are outdated, unnecessary or unduly burdensome, in accordance with the requirements of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). The agencies have identified numerous proposals to reduce regulatory burden and I am pleased to see that quite a few of them are included in H.R. 3505. We continue to work with the other agencies in an effort to achieve greater consensus and, as required by law, we will submit a final report to Congress with legislative recommendations, next year.

In my testimony today, I will identify twelve regulatory burden relief proposals that are supported by all of the Federal banking agencies. Next, I will address specific provisions in the proposed legislation that the FDIC requested to improve our performance. Finally, I will suggest additional provisions for inclusion in the proposed legislation. However, I would first like to take a moment to update the Subcommittee on recent activities by the FDIC and other Federal agencies addressing the need for regulatory flexibility in response to Hurricane Katrina.

Recent Actions by FDIC and Other Agencies in Response to Hurricane Katrina

As you know, all of the Federal banking agencies recognize the challenges faced by financial institutions in the aftermath of Hurricane Katrina. Without question, the federal banking agencies should exercise discretion and flexibility in the enforcement of regulatory requirements and execution of supervisory responsibility with regard to financial institutions and their communities and customers affected by Hurricane

Katrina. We have provided timely information regarding the availability of banking services in the three affected states and posted information for consumers and bankers in the affected states on our website – www.fdic.gov. The FDIC has asked insured financial institutions to consider all reasonable and prudent steps to meet the financial needs of their customers and communities. In cooperation with the other Federal agencies, we have also provided banks with written guidance on two pressing issues.

Check Cashing. There is no Federal banking law that prohibits banks from cashing checks of non-customers. As defined in the Customer Identification Program Rule (CIP Rule), check cashing by itself is not the opening of an account and therefore, the CIP Rule does not apply if all the customer does is cash a check, one time or many times. It is left up to individual banks to establish their own policies and procedures on check cashing services for customers and non-customers. The banking regulators have encouraged banks--in writing--to meet the financial services needs of the Hurricane victims in a number of ways including waiving ATM fees, easing restrictions on check cashing, and being reasonable in their approach to verifying the identity of displaced individuals. Examiners, like bankers, are fully aware that this is the right thing to do under the circumstances.

Opening New Accounts. If customers are opening new accounts, banks must follow Customer Identification Rule under the Bank Secrecy Act. The banking agencies, in conjunction with FinCEN, published a question-and-answer document on September 12 to clarify how banks can comply with the CIP Rule even if customers have little or no written identification. Essentially, the four pieces of information required by the CIP are: 1) name 2) date of birth 3) address [or prior or temporary address, in the case of evacuees] and 4) Tax ID number. Most people can provide these required elements on the spot. Verification can take place later, and can be done without written documents.

Potential Legislative Action

In previous natural disasters, Congress temporarily relaxed Prompt Corrective Action (PCA) requirements for affected institutions. The Depository Institutions Disaster Relief Acts of 1992, 1993, and 1997 each had a section titled, "Deposit of Insurance Proceeds." That section provided the banking agencies authority to permit an insured depository institution to subtract from the institution's total assets, in calculating compliance with the leverage limit prescribed under section 38 of the Federal Deposit Insurance Act (FDI Act), an amount not exceeding the qualifying amount attributed to flood-related insurance proceeds and government assistance, if the agency determined the institution:

- had its principal place of business within disaster area;
- derived more than 60 percent of its total deposits from persons and businesses within the disaster area:
- was adequately capitalized before the major disaster; and
- had an acceptable plan for managing the increase in its total assets and total deposits.

The authority to subtract such assets from the leverage capital ratio calculation lasted for 18 months. Due to the widespread nature and the severity of the damage, as well as the dollar volume of relief funds that will be flowing to the area, we believe many banks would avail themselves of similar relief if it were offered by Congress in response to Katrina. Such relief would be very beneficial to banks in the area.

EGRPRA Interagency Consensus Items

Through the interagency EGRPRA effort led by former FDIC Vice Chairman John Reich, now Director of the Office of Thrift Supervision, consensus among all of the Federal banking agencies was reached on twelve regulatory burden relief proposals. Five of these proposals currently are included in H.R. 3505, as well as a variation on a sixth. The FDIC joins with the other Federal banking agencies in supporting inclusion of the remaining six of the proposals in the current regulatory relief legislation. Specifically, the twelve interagency consensus proposals for regulatory burden relief are:

Interagency Provisions Included in H.R. 3505

1. Repeal Certain Reporting Requirements Relating to Insider Lending
These amendments, included as Section 403 in H.R. 3505, repeal certain reporting requirements related to insider lending imposed on banks and savings associations, their executive officers, and their principal shareholders. The reports recommended for elimination are: (1) reports by executive officers to the board of directors whenever an executive officer obtains a loan from another bank in an amount more than he or she could obtain from his or her own bank; (2) quarterly reports from banks regarding any loans the bank has made to its executive officers; and (3) annual reports from bank executive officers and principal shareholders to the bank's board of directors regarding their outstanding loans from a correspondent bank.

Federal banking agencies have found that these particular reports do not contribute significantly to the monitoring of insider lending or the prevention of insider abuse. Identifying insider lending is part of the normal examination and supervision process. The proposed amendments would not alter the restrictions on insider loans or limit the authority of the Federal banking agencies to take enforcement action against a bank or its insiders for violations of those restrictions.

2. Streamline Depository Institution Merger Application Requirements
This proposal, included as Section 610 in H.R. 3505, streamlines merger application requirements by eliminating the requirement that each Federal banking agency must request a competitive factors report from the other three Federal banking agencies, in addition to requesting a report from the Attorney General. Instead, the agency reviewing the application would be required to request a report only from the Attorney General and give notice to the FDIC as insurer.

3. Improve Information Sharing with Foreign Supervisors

This proposal, included as Section 612 in H.R. 3505, amends Section 15 of the International Banking Act of 1978 to add a provision to ensure that the Federal Reserve, OCC, FDIC, and OTS cannot be compelled to disclose information obtained from a foreign supervisor in certain circumstances. Disclosure could not be compelled if public disclosure of the information would be a violation of the applicable foreign law and the U.S. banking agency obtained the information under an information sharing arrangement or other procedure established to administer and enforce the banking laws. This amendment would reassure foreign supervisors that may otherwise be reluctant to enter into information sharing agreements with U.S. banking agencies because of concerns that those agencies could not keep the information confidential and public disclosure could subject the foreign supervisor to a violation of its home country law. It also would facilitate information sharing necessary to supervise institutions operating internationally, lessening duplicative data collection by individual national regulators. The banking agency, however, cannot use this provision as a basis to withhold information from Congress or to refuse to comply with a valid court order in an action brought by the U.S. or the agency.

4. Provide an Inflation Adjustment for the Small Depository Institution Exception under the Depository Institution Management Interlocks Act
This amendment, included as Section 404 in H.R. 3505, increases the threshold for the small depository institution exception under the Depository Institution Management Interlocks Act. Under current law, a management official generally may not serve as a management official for another nonaffiliated depository institution or depository institution holding company if their offices are located, or they have an affiliate located, in the same metropolitan statistical area (MSA). For institutions with less than $20 million in assets, this MSA restriction does not apply. The proposal would increase the MSA threshold, which dates back to 1978, to $100 million.

5. Call Report Streamlining
This proposal, included as Section 606 in H.R. 3505, requires the Federal banking agencies to review information and schedules required to be filed in Reports of Condition (Call Reports) every five years to determine if some of the required information and schedules can be eliminated. Currently, banks must report substantial amounts of financial and statistical information with its Call Report schedules that appears to many bankers to be unnecessary to assessing the financial health of the institution and determining the amount of insured deposits it holds. This amendment would require the agencies to review their real need for information routinely so as to reduce that burden.

6. Enhance Examination Flexibility
The FDI Act requires the banking agencies to conduct a full-scale, on-site examination of the insured depository institutions under their jurisdiction at least once every twelve months. The FDI Act provides an exception for small institutions—that is institutions with total assets of less than $250 million—that are well-capitalized and well-managed, and meet other criteria. Examinations of these qualifying smaller institutions are required at least once every eighteen months. The interagency proposal raises the total assets

ceiling for small institutions to qualify for an 18-month examination cycle from $250 million to $500 million, thus potentially permitting more institutions to qualify for less frequent examinations. Section 607 of H.R. 3504 raises the asset ceiling to $1 billon; the FDIC supports this higher amount. The bill would reduce regulatory burden on low-risk, smaller institutions and permit the banking agencies to focus their resources where the great majority of the industry's assets and deposits are.

Interagency Consensus Items Not Currently Included in H.R. 3505
The remaining proposals supported by all of the Federal banking agencies are not included in H.R. 3505:

7. Shorten Post-Approval Waiting Period on Bank Mergers and Acquisitions Where There Are No Adverse Effects on Competition
The proposed amendments to the Bank Holding Company Act and the FDI Act shorten the current 15-day minimum post-approval waiting period for certain bank acquisitions and mergers when the appropriate Federal banking agency and the Attorney General agree that the transaction would not have significant adverse effects on competition. Under those circumstances, the waiting period could be shortened to five days. However, these amendments would not shorten the time period for private parties to challenge the transaction under the Community Reinvestment Act.

8. Exempt Merger Transactions Between an Insured Depository Institution and One or More of its Affiliates from Competitive Factors Review and Post-Approval Waiting Periods
This proposal amends the Bank Merger Act (12 U.S.C. 1828(c)) to exempt certain merger transactions from both the competitive factors review and post-approval waiting periods. It applies only to merger transactions between an insured depository institution and one or more of its affiliates, as this type of merger is generally considered to have no affect on competition.

9. Increase Flexibility for Flood Insurance
The FDIC and the other federal bank regulators have developed amendments to the National Flood Insurance Program to improve program operations and reduce regulatory burden by revising the maximum dollar amount qualifying for the "small loan" flood insurance exception; eliminating coverage gaps when an institution must buy insurance on the borrower's behalf; and modifying the current system for assessing civil monetary penalties. We will continue to develop these proposals and seek additional ideas to improve the flood insurance program, especially in light of Gulf Coast hurricane damage.

The following three consensus proposals have been included in earlier regulatory relief and other legislation aimed at repealing the prohibition against the payment of interest on demand deposits, but are not included in this bill at this time.

10. Authorize the Federal Reserve to Pay Interest on Reserves

This amendment would give the Federal Reserve express authority to pay interest on balances that depository institutions are required to maintain at the Federal Reserve Banks. By law, depository institutions are required to hold funds against transaction accounts held by customers of those institutions. These funds must be held in cash or on reserve at Federal Reserve Banks. Over the years, institutions have tried to minimize their reserve requirements. Allowing the Federal Reserve Banks to pay interest on those reserves should put an end to economically wasteful efforts by banks to circumvent the reserve requirements. Moreover, it could be helpful in ensuring that the Federal Reserve will be able to continue to implement monetary policy with its existing procedures.

11. Increase Flexibility for the Federal Reserve Board to Establish Reserve Requirements
This proposal gives the Federal Reserve Board greater discretion in setting reserve requirements for transaction accounts below the ranges established in the Monetary Control Act of 1980. The provision would eliminate current statutory minimum reserve requirements for transaction accounts, thereby allowing the Board to set lower reserve requirements, to the extent such action is consistent with the effective implementation of monetary policy.

12. Authorize Member Bank to Use Pass-Through Reserve Accounts
This amendment allows banks that are members of the Federal Reserve System to count as reserves their deposits in affiliated or correspondent banks that are in turn "passed through" by those banks to the Federal Reserve Banks as required reserve balances. It extends to these member banks a privilege that was granted to nonmember institutions at the time of the Depository Institutions Deregulation and Monetary Control Act of 1980.

Provisions to Increase FDIC Efficiency

The FDIC has worked closely with the Subcommittee in developing several of the provisions contained in the proposed legislation that will help the FDIC become more efficient and effective in its regulation of insured institutions. The FDIC enthusiastically supports several statutory provisions of the Financial Services Regulatory Relief Act of 2005 as described below.

Judicial Review of Conservatorship and Receivership Appointments
The FDIC supports Section 402 of H.R. 3505 that specifies the time period during which the appointment, in certain circumstances, of the FDIC as conservator or receiver of a failed insured depository institution could be challenged. Moreover, this provision provides greater certainty to the receiver's activities and to those doing business with the receiver.

Currently, some provisions of Federal law specify a 30-day period for challenges after appointment of a receiver. In contrast, other provisions of the FDI Act that govern appointment of a conservator or receiver by the appropriate Federal banking agencies

for a State-chartered institution under prompt corrective action provisions and the FDIC's appointment of itself as conservator or receiver for an insured depository institution are silent on the limitations period for challenges to those appointments. At least one court has previously held that the Administrative Procedure Act applied because the National Bank Receivership Act was silent regarding the time period for challenging such an appointment. The court held that the national bank had six years from the date of appointment to challenge the action. The proposed legislation remedies the silence in the National Bank Receivership Act and in the FDI Act consistent with the parallel provisions in Section 5 of the Home Owners' Loan Act and another appointments provision of the FDI Act.

Enforcement of Agreements and Conditions
The FDIC applauds inclusion of Section 405 that enhances the safety and soundness of insured depository institutions and protects the deposit insurance funds from unnecessary losses. The proposed amendment provides that the Federal banking agencies may enforce (i) conditions imposed in writing, and (ii) written agreements in which an institution-affiliated party agreed to provide capital to the institution. The proposal similarly would clarify existing authority of the FDIC as receiver or conservator to enforce written conditions or agreements entered into between insured depository institutions and institution-affiliated parties and controlling shareholders.

In addition, the proposal eliminates the requirement that an insured depository institution be undercapitalized at the time of a transfer of assets from an affiliate or controlling shareholder to the insured institution in order to prevent a claim against a Federal banking agency for the return of assets under bankruptcy law. Under Section 18(u) of the FDI Act, protection against a claim for the return of assets would still require that, at the time of transfer, the institution must have been subject to written direction from a Federal banking agency to increase its capital and, for that portion of the transfer made by a broker, dealer, or insurance firm, the Federal banking agency must have followed applicable procedures for those functionally regulated entities.

Amendment Clarifying FDIC's Cross Guarantee Authority
The FDIC is pleased that H.R. 3505 contains a provision necessary to correct a gap in current law regarding cross guarantee liability. As part of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Congress established a system that permits the FDIC to assess liability for FDIC losses caused by the default of an insured depository institution. Cross guarantee liability, however, is currently limited to commonly controlled insured depository institutions as defined in the statute. Because the statutory definition does not include certain types of financial institutions such as credit card banks that are controlled by nonbank holding companies, liability may not attach to insured institutions that are owned by the same nonbank holding company.

Over the years, a growing number of companies have acquired, either directly or through an affiliate, one or more credit card banks, trust companies, industrial loan companies, or some combination of those types of institutions. Because these

companies do not fall within the scope of depository institution holding companies for common control purposes, in the event of default, the FDIC may not be able to assess cross guarantee liability as envisioned in the statute. Section 407 of the proposed legislation corrects language to strengthen the FDIC's efforts to protect the deposit insurance funds when it is determining whether and to what extent to exercise its discretionary authority to assess cross guarantee liability. The assessment of liability would continue to be only against the insured depository institution under common control with the defaulting institution.

Amendment Clarifying the FDIC's Golden Parachute Authority
The FDIC also supports Section 408 of H.R. 3505 that amends Section 18(k) of the FDIC Act to clarify that the FDIC could prohibit or limit a nonbank holding company's golden parachute payment or indemnification payment. In 1990, Congress added this section to the FDI Act and authorized the FDIC to prohibit or limit prepayment of salaries or any liabilities or legal expenses of an institution-affiliated party by an insured depository institution or depository institution holding company. Such payments are prohibited if they are made in contemplation of the insolvency of such institution or holding company or if they prevent the proper application of assets to creditors or create a preference for creditors of the institution. Due to the statutory definition of depository institution holding company, it is not clear that the FDIC is authorized to prohibit these types of payments made by nonbank holding companies. Some examples are companies that own only credit card banks, trust companies, or industrial loan companies.

The lack of clear authority for the FDIC to prohibit payments made by nonbank holding companies to institution-affiliated parties frustrates the purpose of the legislation by allowing nonbank holding companies to make golden parachute payments when an institution is insolvent or is in imminent danger of becoming insolvent to the detriment of the institution, the insurance funds, and the institution's creditors. The proposed amendment strengthens the FDIC's efforts to protect the insurance funds and ensure that an insured institution does not make these payments to the detriment of the institution.

Change in Bank Control Act Amendment
The FDIC supports Section 409 of the proposed legislation that amends the Change in Bank Control Act to address an issue that arises when a "stripped charter" institution is the subject of a change-in-control notice. A stripped charter is essentially a bank charter with insurance, but without any significant ongoing business operations. Such "stripped charters" can result after a purchase and assumption transaction where the assets and liabilities of an institution are transferred to an acquiring institution, but the charter remains and may have value attached to it.

The Change in Bank Control Act provides the appropriate Federal banking agency with authority to disapprove a change-in-control notice within a set period of time. The availability of stripped charters for purchase in the establishment of new banking operations is sometimes used as an alternative to de novo charter and deposit

insurance applications. Change-in-control notices are subject to strict time periods for disapproval and extensions of time beyond the 45 days for review. These time frames place significant pressures on the agencies when they are required to analyze novel or significant issues or complex or controversial business proposals. For example, issues presented by change-in-control notices proposing control by non-resident foreign nationals, or issues presented where third parties are proposed to have significant participation in the bank's operations, generally require additional scrutiny to satisfy safety and soundness concerns. The FDIC supports the provisions of H.R. 3505 that clarify the bases for which such notices may be disapproved and expand the bases for extensions of time for consideration of certain notices raising novel or significant issues. The provision is a safety and soundness measure that would greatly increase the agencies' ability to adequately consider the risks inherent in a proposed business plan and to use that information in determining whether to disapprove a notice of change-in-control.

Recordkeeping Amendment
The FDIC supports Section 604 of the bill that modifies the requirement for retention of old records of a failed insured depository institution at the time a receiver is appointed. Currently, the statute requires the FDIC to preserve all records of a failed institution for six years from the date of its appointment as receiver, regardless of the age of the records at the time of the failure. After the end of six years, the FDIC can destroy any records that it determines to be unnecessary, unless directed not to do so by a court or a government agency or prohibited by law. Consequently, the FDIC must preserve for six years very old records that have no value to the FDIC, the public interest, or to any pending litigation.

The proposed provision allows the FDIC to destroy records that are 10 or more years old at the time of its appointment as receiver that are not relevant to any pending or reasonably probable future litigation, unless directed not to do so by a court or a government agency or prohibited by law. This change benefits the FDIC and/or acquirers of failed institutions by reducing the storage costs for these outdated records.

Preservation of Records by Optical Imaging and Other Means
The FDIC supports Section 605 of H.R. 3505 to permit the FDIC to rely on records preserved electronically, such as optically imaged or computer scanned images, as well as the "preservation of records by photography" currently provided by the statute.

Under present law, the FDIC is permitted to use "permanent photographic records" in place of original records for all purposes, including introduction of documents into evidence in State and Federal court. The substance of the statute has been unchanged since 1950. Because of the advent of electronic information systems and imaging technologies that do not have any photographic basis, this amendment would significantly aid the FDIC in preservation of documents by newer methods. In addition, it can be expected that the technology in this area will continue to develop. This amendment is intended to provide the FDIC with the flexibility to rely on appropriate new technology, while retaining the requirement that our Board of Directors prescribe the

manner of the preservation of records to ensure their reliability, regardless of the technology used.

Clarification of Section 8(g) Prohibition Authority
Section 8(g) of the FDI Act provides the appropriate Federal banking agency with the authority to suspend or prohibit individuals charged with certain crimes from participation in the affairs of the depository institution with which they are affiliated. The FDIC supports Section 609 of H.R. 3505 that clarifies that the agency may suspend or prohibit those individuals from participation in the affairs of any depository institution and not solely the insured depository institution with which the institution affiliated party is or was associated. The provision will make clear that a Federal banking agency may use the Section 8(g) remedy even where the institution that the individuals were associated with ceases to exist.

The FDIC also supports a number of provisions that were requested by our fellow regulators and included in the proposal, for example, we support provisions that streamline merger application requirements and authorize additional community development activities through investments by institutions that promote the public welfare. Moreover, the bill makes a number of changes to update or conform existing statutes that we believe are quite useful.

Other Issues for Inclusion in the Bill

The FDIC respectfully recommends that the Subcommittee consider including the following additional regulatory relief items in the bill. The appendix to my testimony contains the relevant legislative language.

Authority to Enforce Conditions on the Approval of Deposit Insurance
The FDIC supports an amendment to Section 8 of the FDI Act to provide each of the other three appropriate Federal banking agencies with express statutory authority to take enforcement action against the banks they supervise based upon a violation of a condition imposed by the FDIC in writing in connection with the approval of an institution's application for deposit insurance.

The FDIC frequently imposes written conditions when approving deposit insurance to a de novo bank or thrift pursuant to Section 5 of the FDI Act (application for deposit insurance). Because of a drafting anomaly under current law, the other three appropriate Federal banking agencies cannot enforce violations of deposit insurance conditions by their supervised institutions. Currently, our only recourse—for institutions that we do not serve as primary regulator—is to commence deposit insurance termination proceedings. This provision would provide express enforcement authority for the involved institution's appropriate Federal banking agency.

Clarification of Section 8 Enforcement Authority that Change-in-Control Conditions are Enforceable

The FDIC recommends for inclusion in the proposed legislation language that clarifies the appropriate Federal banking agencies' authority to take enforcement action against the banks they supervise based on a violation of a condition imposed in writing in connection with any action by the agency on an application, notice, or other request by an insured depository institution or institution-affiliated party. The agencies frequently provide conditions on applications, notices, or other requests, and the proposed change to Section 8 of the FDI Act would expressly provide that this enforcement authority applies equally to conditions imposed in connection with notices and to applications, notices, or other requests by an institution-affiliated party.

Deposit Insurance Related to the Optional Conversion of Federal Savings Associations
Under a provision adopted in the Gramm-Leach-Bliley Act (Section 739), Section 5(i)(5) of the Home Owners' Loan Act permits Federal savings associations with branches in one or more states to undergo a conversion into one or more national or state banks. Such conversions require the approval of the OCC and/or the appropriate state authorities. However, Section 739 does not specifically mention either deposit insurance or the FDIC.

The FDIC supports an amendment to Section 739 clarifying that conversions under that section, which result in more than one bank, would continue to require deposit insurance applications from the resulting institutions, as well as review and approval by the appropriate Federal banking agency. A one-to-one conversion does not change the risk to the deposit insurance funds because it involves one institution simply changing charters. However, a "breakup conversion" presents a potential increase in risk to the insurance funds because two or more institutions are created with risk profiles that are likely to differ from the original institution.

Bank Merger Act and Bank Holding Company Act
The FDIC supports amendments to the Bank Merger Act and Bank Holding Company Act to require consideration of the potentially adverse effects on the insurance funds of any proposed bank merger transaction or holding company formation/ acquisition. As presently written, these laws do not require that any specific consideration be given to a transaction's possible impact on the deposit insurance funds. The omission is noteworthy and potentially damaging to the financial viability of the funds.

Language specifying consideration of risks to the insurance funds already exists for consideration of other transactions. For example, regarding change in control of insured banks, the FDI Act provides authority to the appropriate Federal banking agency to disapprove any proposed acquisition if the agency determines that the proposed transaction would result in an adverse effect on the Bank Insurance Fund or the Savings Association Insurance Fund.

In addition, Section 207 of FIRREA amended Section 6 of the FDI Act to include a new factor—"the risk presented by such depository institution to the Bank Insurance Fund or the Savings Association Insurance Fund"—that must be considered in granting deposit insurance. Additional parallels can also be found in Sections 24 and 28 of the FDI Act.

Given the potential insurance risks inherent in transactions involving large diversified financial services organizations, the addition of an "adverse effect on the deposit insurance funds" assessment factor as a requirement under the Bank Merger Act and Bank Holding Company Act would seem warranted. As with the other factors, each of the agencies would be required to make a separate "adverse effect on the deposit insurance funds" evaluation during its review of the proposed transaction. The intent would be to ensure that the financial integrity of the BIF and the SAIF are prime considerations in any proposed combination. As indicated, there is precedent in other bank application reviews and we believe a compelling case can be made for its inclusion in both the Bank Merger Act and the Bank Holding Company Act.

The FDIC also suggests including language that will:

1) provide for the FDIC in its role as receiver of failing institutions to gain access to individual FICO scores to improve the FDIC's ability to evaluate assets and recommend transaction structures for failing banks;
2) clarify the provision of the FDI Act relating to the resolution of deposit insurance disputes in the case of failed insured depository institutions; and
3) exclude from the Federal Advisory Committee Act advisory committees to the banking agencies.

Conclusion

Thank you for the opportunity to present the FDIC's views on these issues. The FDIC supports the Subcommittee's continued efforts to reduce unnecessary burden on insured depository institutions without compromising safety and soundness or consumer protection. We continually strive for more efficiency in the regulatory process and are pleased to work with the Subcommittee in accomplishing this goal.

Appendix Legislative Language for FDIC Recommendations

Authority to Enforce Conditions on the Approval of Deposit Insurance

Sec. ____. FEDERAL BANKING AGENCY AUTHORITY TO ENFORCE DEPOSIT INSURANCE CONDITIONS.

(a) Section 8 of the Federal Deposit Insurance Act (12 U.S.C. § 1818) is amended –
(1) in subsection (b)(1) in the first sentence, by striking "any condition imposed in writing by the agency" and inserting "any condition imposed in writing by a Federal banking agency";
(2) in subsection (e)(1)(A)(i)(III), by striking "any condition imposed in writing by the appropriate Federal banking agency" and inserting "any condition imposed in writing by a Federal banking agency"; and
(3) in subsection (i)(2)(A)(iii), by striking "any condition imposed in writing by the appropriate Federal banking agency" and inserting "any condition imposed in writing by a Federal banking agency".

Clarification of Section 8 Enforcement Authority that Change-in-Control Conditions are Enforceable

Sec.____. CLARIFICATION OF ENFORCEMENT AUTHORITY.

Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended –
(a) in subsection (b)(1), in the first sentence, by striking "the granting of any application or other request by the depository institution" and inserting "any action on any application, notice, or other request by the depository institution or institution-affiliated party,";
(b) in subsection (e)(1)(A)(i)(III), striking "the grant of any application or other request by such depository institution" and inserting "any action on any application, notice, or request by such depository institution or institution-affiliated party"; and
(c) in subsection (i)(2)(A)(iii), by striking "the grant of any application or other request by such depository institution" and inserting "any action on any application, notice, or other request by the depository institution or institution-affiliated party".

Deposit Insurance Related to the Optional Conversion of Federal Savings Associations

Sec ____. CLARIFICATION OF APPLICATION REQUIREMENTS FOR OPTIONAL CONVERSION FOR FEDERAL SAVINGS ASSOCIATIONS.

(a) Paragraph 5 of the Home Owners' Loan Act (12 U.S.C. 1464(i)(5)) is amended to read as follows --
(5) CONVERSION TO NATIONAL OR STATE BANK. –
(A) IN GENERAL. – Any Federal savings association chartered and in operation before the date of the enactment of the Gramm-Leach-Bliley Act, with branches in operation before such date of enactment in 1 or more States, may convert, at its option, with the approval of the Comptroller of the Currency for each national bank, and with the approval of the appropriate State bank supervisor and the appropriate Federal banking

agency for each State bank, into 1 or more national or State banks, each of which may encompass 1 or more of the branches of the Federal savings association in operation before such date of enactment in 1 or more States, but only if each resulting national or State bank (i) will meet all financial, management, and capital requirements applicable to the resulting national or State bank, and (ii) if more than 1 national or State bank results from a conversion under this subparagraph, has received approval from the Federal Deposit Insurance Corporation under section 5(a) of the Federal Deposit Insurance Act. No application under section 18(c) of the Federal Deposit Insurance Act shall be required for a conversion under this subparagraph.
(B) DEFINITIONS. – For purposes of this paragraph, the terms "State bank" and "State bank supervisor" have the meanings given those terms in section 3 of the Federal Deposit Insurance Act.".

(b) Section 4(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1814(c)) is amended –

(1) after "Subject to section 5(d)", by inserting "of this Act and section 5(i)(5) of the Home Owners' Loan Act"; and
(2) in paragraph (2), after "insured State" by inserting "or Federal".

Bank Merger Act and Bank Holding Company Act
Bank Merger Act Amendment

Paragraph (5) of subsection (c) of section 18 of the FDI Act (12 U.S.C. § 1828(c)(5)) is amended -
in the last sentence of paragraph (5), by inserting ", the potential risk of loss to the Bank Insurance Fund or Savings Association Insurance Fund" before ", and".

Bank Holding Company Act Amendment

Paragraph (2) of subsection (c) of section 3 of the Bank Holding Company Act (12 U.S.C. § 1842(c)(2)) is amended -
by inserting ", the potential risk of loss to the Bank Insurance Fund or Savings Association Insurance Fund" before ", and".

Acquisition of FICO Scores

Sec.____. ACQUISITION OF FICO SCORES.
Section 604(a) of the Fair Credit Reporting Act (15 U.S.C. 1681b(a)) is amended by adding a new paragraph after paragraph (5) as follows:
"(6) To the Federal Deposit Insurance Corporation as part of its preparation for its appointment or as part of its exercise of powers as conservator or receiver for an insured depository institution under the Federal Deposit Insurance Act or other applicable Federal or State law or in connection with the resolution or liquidation of a failed or failing insured depository institution .".

Resolution of Deposit Insurance Disputes

Sec.____. RESOLUTION OF DEPOSIT INSURANCE DISPUTES.

Paragraphs (3), (4), and (5) of section 11(f) of the Federal Deposit Insurance Act (12 U.S.C. § 1821(f)(3)) are amended to read as follows:
"(3) RESOLUTION OF DISPUTES. -- The Corporation's determination regarding any claim for insurance coverage shall be treated as a final determination for purposes of this section. In its discretion, the Corporation may promulgate regulations prescribing procedures for resolving any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit.
(4) REVIEW OF CORPORATION'S DETERMINATION. -- A final determination made by the Corporation shall be a final agency action reviewable in accordance with chapter 7 of title 5, United States Code, by the United States district court for the Federal judicial district where the principal place of business of the depository institution is located.
(5) STATUTE OF LIMITATIONS. – Any request for review of a final determination by the Corporation shall be filed with the appropriate United States district court not later than 60 days after such determination is issued.".

Amendment to Exclude Advisory Committees to the Banking Agencies from the Federal Advisory Committee Act

Sec.____. EXEMPTION FROM THE FEDERAL ADVISORY COMMITTEE ACT.
The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:
"Sec. _____ . ADVISORY COMMITTEES ESTABLISHED BY THE FEDERAL BANKING AGENCIES.—
(a) IN GENERAL.-- The Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision may each establish and use a committee composed of persons selected by the agency to provide advice and recommendations to the agency relating to safety and soundness, product and service developments and delivery, or consumer issues affecting the institutions supervised by such agencies, and, with respect to committees formed by the Federal Deposit Insurance Corporation, the protection, operation, and administration of the deposit insurance funds, including the resolution and liquidation of failed or failing insured depository institutions.
(b) EQUAL TREATMENT.--Notwithstanding any other law, a Federal banking agency that establishes and uses an advisory committee under subsection (a) shall be treated in the same manner as if it were the Federal Reserve System establishing and using the advisory committee.".

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