STATEMENT OF

WILLIAM F. KROENER, III
GENERAL COUNSEL
FEDERAL DEPOSIT INSURANCE CORPORATION

on the

"Financial Services Regulatory Relief Act of 2003"

before the

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT

of the

COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

March 27, 2003
Room 2128, Rayburn House Office Building

Mr. Chairman, Representative Sanders, Representative Capito and Members of the Subcommittee, I appreciate the opportunity to present the views of the Federal Deposit Insurance Corporation (FDIC) on H.R. 1375, 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.

In my testimony today, I will first highlight the FDIC's efforts to reduce regulatory burden in areas where statutory change may not be necessary. 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.

FDIC EFFORTS TO RELIEVE REGULATORY BURDEN

The FDIC continues to place considerable emphasis on achieving ways of reducing regulatory burden without compromising safety and soundness and consumer protection. In 2002, Chairman Powell charged a task force within the FDIC to study ways to reduce the regulatory burden that may result from the agency's activities. The task force solicited suggestions on reducing burden from FDIC staff and the public.

Based on our analysis of more than 400 comments received, the FDIC has targeted several initiatives for implementation:

1) providing for electronic filings of branch applications and exploring alternatives for further streamlining the application process for deposit insurance in connection with new charters and mergers;
2) providing more user-friendly delivery of important information to banks by consolidating outstanding directives and providing a web-based search function for Financial Institution Letters;
3) simplifying deposit insurance rules -- especially for living trust accounts; and
4) developing a system for routine sharing of information on overall and regional-specific examination trends and findings with local institutions.

In addition, FDIC Vice Chairman John Reich is leading a Federal Financial Institutions Examination Council (FFIEC) effort to conduct a thorough review of all regulations to identify outdated or otherwise unnecessary regulations. This interagency project includes both an internal review of regulations unique to the FDIC and a joint review of interagency regulations. While this review is mandated by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), it is not due until 2006. By advancing it as we have, the FDIC regards the review as an opportunity to emphasize our ongoing efforts to lessen regulatory burden and identify other areas of regulatory overlap and inefficiency.

The FDIC also is leading interagency efforts to implement an improved program for collecting, managing and distributing Call Report information. The Call Report data will be managed in a secure central facility and will allow faster and consistent exchanges of critical financial data. This program will use Extensible Business Reporting Language (XBRL), a data standard for transporting and displaying financial reporting information using the Internet. Data accuracy and timeliness will be enhanced by providing banks, regulators and others with precise definitions, instructions and validation criteria in XBRL format. The FDIC is working with other regulators, accounting firms, software companies and financial services providers around the world to promote transparency, processing efficiency and improved risk management techniques using new data standards.

The FDIC is extensively engaged in efforts to provide regulatory relief for the industry through streamlining the examination processes and procedures with an eye toward better allocating FDIC resources to areas that could pose greater risk to the insurance funds -- such as problem banks, large financial institutions, technology, high risk lending, internal controls and fraud. Highlights of these and other FDIC efforts to reduce burden include:

1) revision of the report of examination to make it more straightforward and consolidation of several schedules to reduce redundancies and highlight significant findings;
2) designation of subject matter experts who specialize on applications to promote greater consistency and more timely processing of applications;

3) establishment of several corporate governance initiatives to assist bankers and bank directors including:

    - enhancement of an existing director involvement program where directors will be invited to participate in regularly scheduled meetings between FDIC examiners and bank officials;
    - establishment on the FDIC website of a "Director's Corner" as a one-stop site for directors looking for useful and practical information to assist in fulfilling their responsibilities; and
    - expansion of the FDIC's Directors' College program, particularly for newer directors;

4) enhancement of outreach and examination communication through a new automated post-examination survey where bankers can provide their candid and confidential thoughts on the examination process and request Washington office contact;

5) expanded and targeted outreach programs for areas of high interest or rapid changes, such as information technology, real estate lending, consumer compliance, and agricultural lending;

6) establishment of a dedicated cadre of specialized and expert Information Technology (IT) examiners who focus on complex organizations with a greater exposure to technology risk; improved efficiencies of the IT examination procedures; and, streamlining of IT examinations for institutions that pose the least technology risk;

7) targeted and more efficiently focused examinations of trust activities according to institutions' risk profiles;

8) streamlined and customized requests for information from institutions prior to examinations;

9) adoption of the Maximum Efficiency Risk-Focused Institution Targeted (MERIT) Guidelines. This program has improved effectiveness by maximizing the use of risk-focused examination procedures in well-managed banks in sound financial condition, and has reduced the average time spent conducting risk management examinations by well over its original 20 percent target in qualifying institutions. This has allowed us to focus more resources on problem institutions and other high-risk areas;

10) implementation of a new interagency agreement that addresses information sharing among financial institution regulatory agencies, FDIC participation in examinations of financial institutions that present heightened risk to the insurance funds, and FDIC involvement in the supervision of certain large banks -- including establishment of the FDIC's dedicated examiner program for the eight largest insured institutions;

11) revision of the compliance examination to place greater emphasis on an institution's administration of its compliance responsibilities versus transaction testing, and empowerment of examiners to offer suggestions about how to rectify weaknesses that may be found;

12) implementation of an interagency charter and federal deposit insurance application that eliminates duplicative information requests by consolidating into

one uniform document the different reporting requirements of the three regulatory agencies (FDIC, OCC, and OTS);

13) realignment of FDIC regional office and field territory responsibilities to give greater authority and responsibility to front-line employees. This realignment will increase our responsiveness to the industry and capitalize on the knowledge of field staff to better analyze the risks of institutions in their localized areas;

14) provision to bankers of a customized version of the FDIC Electronic Deposit Insurance Estimator (EDIE), a CD-ROM and downloadable version of the web-based EDIE that allows bankers easier access to information to help them determine a customer's insured funds.

In addition to the initiatives outlined above, the FDIC continues to provide timely information on major issues to the industry and general public through its ***For Your Information*** reports. Recent reports featured the new Basel Capital Accord, payday lending, real estate markets, and syndicated credit risks. While the FDIC continues to provide in-depth information on regional and national economic and banking trends through its ***FDIC Outlook***, it recently launched a new internet publication - ***FDIC State Profiles*** - that provides analysis of state economic and banking trends and aggregate information on institutions in all 50 states, Puerto Rico and the U.S. Virgin Islands.

Chairman Powell remains keenly interested in exploring all kinds of measures to eliminate inefficiencies and costs in the supervisory and regulatory systems. For example, he raised fundamental questions about the efficacy of the current regulatory structure and the confusion of competing jurisdictions, overlapping responsibilities, and cumbersome procedures. Earlier this month the FDIC hosted a symposium on the future of the structure of financial regulation as part of a continuing initiative to examine vital policy questions.

THE FINANCIAL SERVICES REGULATORY RELIEF ACT OF 2003

The FDIC commends the Subcommittee for holding this hearing and Representative Capito for introducing legislative changes to lessen the regulatory compliance burden on insured depository institutions and improve their productivity. The FDIC's staff has worked closely with the Subcommittee in developing several of the provisions contained in the proposed legislation, including some that also will help the FDIC become more efficient and effective in its regulation of insured institutions. The FDIC enthusiastically supports several statutory provisions of the legislation as described below.

Clarification of Section 8(g) Prohibition Authority

Section 8(g) of the Federal Deposit Insurance Act (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 606 of H.R. 1375 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 ceases to exist.

Judicial Review of Conservatorship and Receivership Appointments

The FDIC supports Section 402 of H.R. 1375 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 those doing business with the receiver.

Currently, some provisions of Federal law specify a 30-day period for challenges after appointment. 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 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.

<u>Change in Bank Control Act Amendment</u>

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 a 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. 1375 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 amendment 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. 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 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, unless directed not to do so by a court or a government agency or prohibited by law. This change benefits the FDIC 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. 1375 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" as the statute currently provides.

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.

Parity in Standards for Institution-Affiliated Parties

The FDIC supports Section 614 of the proposed legislation that would make it easier for regulators to take enforcement actions under section 8 of the FDI Act against independent contractors, such as outside accountants, attorneys, and appraisers, who breach their fiduciary duty, engage in unsafe and unsound practices, or participate in violations of laws, regulations, cease and desist orders, or conditions in connection with applications or written agreements between depository institutions and banking agencies. In recent years, banking regulators have seen an increase in audit and internal control deficiencies at many insured depository institutions. Some of the deficiencies have caused significant operating losses and led to failures. Accountants who serve as independent contractors play a key role in providing for accurate books and records and in attesting to the adequacy of an institution's internal controls.

At present, independent contractors are treated more leniently under the enforcement provisions of the FDI Act than are directors, officers, employees, controlling stockholders, consultants, and joint venture partners who participate in the affairs of an insured depository institution. In order for the FDIC to take an enforcement action against an independent contractor as an institution-affiliated party the FDIC is required to prove that the contractor "knowingly or recklessly" participated in violations of law or regulation, breaches of fiduciary duty, or unsafe or unsound practices – and that those acts caused, or would likely cause more than a minimal financial loss to the insured depository institution or have a significant adverse effect on it. These requirements do not apply to other parties associated with insured institutions. The current standard is so high that it has made it extremely difficult to take enforcement actions against independent contractors such as accountants. The amendment holds such contractors to a standard closer to the standard for other institution-affiliated parties and provides added incentives for contractors to act responsibly. In addition, it strengthens the ability of the agencies to take enforcement actions against the contractors for fiduciary breaches or unsafe practices.

Amendment Clarifying FDIC's Cross Guarantee Authority

The FDIC is pleased that H.R. 1375 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. 1375 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.

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.

Enforcement Against Misrepresentation Regarding FDIC Deposit Insurance Coverage

The FDIC notes that H.R. 1375 includes a provision in Section 615 that provides the FDIC with enforcement authority to impose civil money penalties for misuse of the FDIC's name or logo, or for any misrepresentation that a deposit is insured by the FDIC. Section 615 of the bill was included at the suggestion of the FDIC's Office of the Inspector General. In particular, this proposal is aimed at persons who prey on depositors, especially elderly or unsophisticated depositors. Unfortunately, as currently drafted, Section 615 does not provide the FDIC a workable method of enforcement. The FDIC staff will be working closely with the Subcommittee's staff to present an amendment that will accomplish the goal of effective enforcement against misrepresentations of deposit insurance or any guarantee of deposits by the FDIC.

The FDIC 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 that permit bank examiners to receive credit from any insured depository institution as long as the credit is issued under the same terms and conditions as credit generally offered to the public. 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 recommends that the Subcommittee include 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 Actions 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 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 the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (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.

Automatic Stay

The FDIC recommends inclusion in the bill of an amendment to Section 11 of the FDI Act to allow a conservator and a receiver a brief "breathing period" of 45 days or 90 days, respectively, during which contract terminations, legal action, or other action affecting the assets and liabilities of a bank in conservatorship or receivership would be barred. This amendment is patterned after the Bankruptcy Code automatic stay, and supplements the bar on termination of contracts due to the appointment of a conservator or receiver in the FDI Act. Currently a conservator or receiver has the power to seek a stay of legal actions following appointment of a receiver which must be granted by any court with jurisdiction of such action or proceeding. The proposed amendment would make such a stay more broadly applicable.

The FDIC also suggests including language that will:

1) provide for the expansion of the scope of the National Flood Insurance Act to apply to mortgage companies that are subsidiaries of financial services holding companies;

2) provide for more discretion on the part of the Federal entity responsible for lending regulation to impose civil money penalties in findings of patterns or practices of violations of flood insurance requirements;

3) 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;

4) clarify the provision of the FDI Act relating to the resolution of deposit insurance disputes in the case of failed insured depository institutions; and

5) 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 Actions 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".

<u>Deposit Insurance Related to the Optional Conversion of Federal Savings Associations</u>

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".

Automatic Stay

Sec.____.AUTOMATIC STAY.

Section 11(d)(12) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(12)) is amended to read as follows –

"(12) Automatic Stay. –

(A) In general. – Except as provided by paragraph (B), the appointment of a conservator or receiver for an insured depository institution operates as a stay applicable to all entities, of –

(i) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the conservator or receiver that was or could have been commenced before the appointment of the conservator or receiver;

(ii) the enforcement against the conservator or receiver or against property of the conservatorship or receivership estate, of a judgment obtained before the appointment of the conservator or receiver;

(iii) any act to obtain possession of property of the conservatorship or receivership estate or to exercise control over property of the conservatorship or receivership estate;

(iv) any act to create, perfect, or enforce any lien against property of the conservatorship or receivership estate;

(v) any act to create, perfect, or enforce against any property of the conservatorship or receivership estate any lien to the extent that such lien secures a claim that arose before the appointment of the conservator or receiver;

(vi) any act to collect, assess, or recover a claim against the conservator or receiver that arose before the appointment of the conservator or receiver.

(B) Exception. – The appointment of a conservator or receiver for an insured depository institution does not operate as a stay as to the rights of parties to certain qualified financial contracts pursuant to subsection (e)(8).

(C) Duration of Stay. – The stay shall be for a period not to exceed –

(i) 45 days, in the case of any conservator; and

(ii) 90 days, in the case of any receiver.".

<u>National Flood Insurance Act and National Flood Disaster Protection Act Amendments</u>

Sec. ___. AMENDMENTS TO THE NATIONAL FLOOD INSURANCE ACT OF 1968 AND THE FLOOD DISASTER PROTECTION ACT OF 1973.

(a) Section 1370(a) of the National Flood Insurance Act of 1968 (42 U.S.C. § 4121(a) is amended --

(1) by inserting in paragraph (9) "(in the case of a mortgage company that is a subsidiary of a financial holding company, the entity primarily responsible for supervision would be the Federal Trade Commission)" after "the supervision of the institution"; and

(2) by inserting in paragraph (13) "mortgage company that is a subsidiary of a financial holding company as defined by section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1841(p))," between "production credit association," and "or".

(b) Section 3(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4003(a)) is amended --

(1) by inserting in paragraph (5) "(in the case of a mortgage company that is a subsidiary of a financial holding company, the entity primarily responsible for supervision would be the Federal Trade Commission)" after "the supervision of the institution"; and

(2) by inserting in paragraph (10) "mortgage company that is a subsidiary of a financial holding company as defined by section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1841(p))," between "production credit association," and "or".

(c) Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4012a) is amended --

(1) by striking subsection (f);

(2) by redesignating subsections (g) and (h) as (f) and (g) respectively;

(3) by striking the current language of redesignated paragraph (f) and inserting the following:

"(f) Administrative enforcement.-

(1) Compliance with the requirements imposed under this chapter shall be enforced under

(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C.§ 1818), in the case of –

(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act (12 U.S.C. § 601 et seq., 611 et seq.), by the Board of Governors of the Federal Reserve System; and

(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(B) section 8 of the Federal Deposit Insurance Act (12 U.S.C. § 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(C) the Federal Credit Union Act (12 U.S.C. § 1751 et seq.), by the National Credit Union Administration Board with respect to any Federal credit union;

(D) the Farm Credit Act of 1971 (12 U.S.C. § 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association;

(E) the Federal Trade Commission Act (15 U.S.C. § 41 et seq.) by the Federal Trade Commission with respect to any mortgage company that is a subsidiary of a financial holding company; and

(F) the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. § 4501 et seq.) by the Office of Federal Housing Enterprise Oversight with respect to any enterprise as that term is defined by 12 U.S.C. § 4502(6).

> (2) For the purpose of the exercise by any agency referred to in paragraph (1) of this subsection of its powers under any Act referred to in that paragraph, a violation of any requirement imposed under this chapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1) of this subsection, each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on it by law."

(4) by amending redesignated paragraph (g) so that it is titled, "Other actions to remedy noncompliance"; and

(5) by amending redesignated paragraph (g)(2)(A) by striking "engaged in a pattern and practice of noncompliance in violation of" and inserting "failed to comply with".

<u>Acquisition of FICO Scores</u>

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 .".

<u>Resolution of Deposit Insurance Disputes</u>

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.".