REPORT LANGUAGE TO ACCOMPANY TITLE II – COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

DEPOSIT INSURANCE REFORM

Although the deposit insurance system has functioned properly since the reforms instituted under the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) and the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), certain inadequacies were present in the system. These inadequacies include: (1) deposit insurance is provided by two insurance funds at potentially different prices; (2) deposit insurance cannot be priced effectively to reflect risk; (3) deposit insurance premiums are highest at the wrong point in the business cycle; and (4) the value of insurance coverage does not keep pace with inflation.

This proposal addresses each of these inadequacies. The legislation merges the Bank Insurance Fund and the Savings Association Insurance Fund, eliminates any disparities in bank and thrift risk-based premium assessments, and reduces the administrative burden of maintaining and operating two separate funds. It gives the Federal Deposit Insurance Corporation (FDIC) greater discretion to identify the relative risks all institutions present to the deposit insurance fund and set risk-based premiums accordingly, thereby addressing the concern that the pricing of deposit insurance does not adequately reflect risk. The legislation provides the FDIC with the ability to set the designated reserve ratio within a range of between 1.15 percent and 1.50 percent, rather than maintaining 1.25 percent at all times regardless of prevailing economic conditions. This allows the FDIC the ability to avoid sharp premium swings and smooth economic cycles rather than exacerbate them. Finally, the bill allows the FDIC to compensate for inflation by indexing the standard maximum deposit insurance amount every 5 years.

In addition to addressing the FDIC's concerns, the bill increases the coverage limit for insured retirement account deposits in order to enhance the retirement security of senior citizens and those planning for retirement.

SUBTITLE A. MERGER OF THE DEPOSIT INSURANCE FUNDS

Section-by-Section Analysis

Section 2001. Short title

Section 2001 provides the short title for Subtitle A, the "Safe and Fair Deposit Insurance Act of 2005".

Section 2002. Definitions

Section 2002 contains a set of definitions that are used throughout the Act.

1. "Administration" means the National Credit Union Administration.
2. "Board" means the Board of Directors of the Federal Deposit Insurance Corporation.

3. “Corporation” means the Federal Deposit Insurance Corporation.
4. The term “designated reserve ratio” means the reserve ratio designated by the Board under section 7(b)(3) of the Federal Deposit Insurance Act (FDIA), as amended by this Act.
5. The terms “Fund” and “Deposit Insurance Fund” mean the Deposit Insurance Fund (DIF) established under section 11(a)(4) of the FDIA, as amended by this Act.
6. The terms “depository institution” and “insured depository institution” have the same meaning as in section 3 of the FDIA.
7. The term “reserve ratio” means the ratio of the fund balance of the DIF to aggregate estimated insured deposits held in all depository institutions.

Section 2003. Merger of BIF and SAIF

Section 2003 requires the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF) to be merged into the DIF and directs all assets and liabilities of the BIF and SAIF to be transferred to the DIF.

Section 2004. Establishment of the Deposit Insurance Fund

Section 2004(a) amends the FDIA to provide for the establishment of the DIF to be administered by the FDIC. This subsection also specifies that all amounts assessed against insured depository institutions be deposited in the DIF.

Section 2004(b) amends the FDIA to permit the FDIC to make certain assessments in the amounts and at the times as the Board requires. This provision gives the FDIC greater discretion to identify the relative risks all institutions present to the deposit insurance fund and set risk-based premiums accordingly, thereby addressing the concern that the pricing of deposit insurance does not adequately reflect risk. In making assessments, section 2004(b) directs the Board to consider the estimated operating expenses of the DIF, the estimated case resolutions expenditures and income of the DIF, the projected effects of assessments on the earnings and capital of insured depository institutions, the need to maintain a risk-based assessment system, and any other factors that the Board may determine to be appropriate. Section 2004(b) also requires the FDIC to notify insured depository institutions of assessments and permits the Board to waive assessments for any assessment period in which a depository institution becomes insured.

Section 2005. Technical and conforming amendments to the Federal Deposit Insurance Act

This section makes numerous amendments to ensure the technical conformity of the Safe and Fair Deposit Insurance Act of 2005 to various provisions in the FDIA and other banking laws, to include the authority of the DIF to borrow from insured depository institutions and the Federal Home Loan Banks.

In particular, this section repeals section 5(d)(2) of the FDIA, dealing with exit fees collected from institutions leaving the SAIF. The Committee intends that those funds be returned to the DIF upon the repeal of this provision.

Section 2006. Other technical and conforming amendments

Section 2006 makes a number of technical and conforming amendments to several Acts, including the Federal Reserve Act, the Balanced Budget and Emergency Deficit Control Act of 1985, the Federal Home Loan Bank Act, the Home Owners' Loan Act, the National Housing Act, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Bank Holding Company Act of 1956, and the Gramm-Leach-Bliley Act.

Section 2007. Effective date

Unless otherwise specified by a particular section, this subtitle and amendments made thereby are effective not later than the first day of the first calendar quarter that begins more than 90 days after the date of the enactment of the Act.

Section 2007(b), however, provides for the earlier implementation of the subtitle if the FDIC makes a determination that the merger of the deposit insurance funds should occur prior to the time described in section 2007(a) and announces its determination publicly. If the FDIC makes a determination to implement ahead of time, then the subtitle and the amendments made thereby are effective on the date of the merger of the deposit insurance funds.

SUBTITLE B. DEPOSIT INSURANCE MODERNIZATION AND IMPROVEMENT

Section-by-Section Analysis

Section 2011. Short title

Section 2011 provides the short title for Subtitle B, the "Deposit Insurance Reform Act of 2005".

Section 2012. Increase in Federal insurance coverage

Section 2012(a) amends the FDIA to permit the standard maximum deposit insurance amount to be adjusted every five years for inflation, provide pass-through deposit insurance for the deposits of any employee benefit plan, and provide Federal insurance coverage for retirement accounts up to $250,000. This section also permits only the best-rated insured depository institutions to accept employee benefit plan deposits. Specifically, section 2012(a) amends the FDIA to limit the acceptance of employee benefit plan deposits to insured depository institutions that are well capitalized or adequately capitalized.

No later than April 1, 2010, and each five-year period thereafter, the Board is required to determine whether to increase the standard maximum deposit insurance. In making its determination, the Board must consider the economic conditions affecting insured depository institutions, the overall risk or risks to the DIF, a demonstrated need by depositors for the inflation adjustment increase, the ability of insured depository institutions to identity and obtain the alternative funding sources, the ability of insured depository institutions to meet the credit needs of their communities, potential problems affecting insured depository institutions generally or a specific group or type of insured depository institution, and any other factors the Board deems appropriate.

If the Board determines to increase the standard maximum deposit insurance after considering the prescribed factors, then the increase shall equal the product of $100,000 and the ratio of the value of the Personal Consumption Expenditures Chain-Type Index (as published by the Department of Commerce for December 31 of the year preceding the year in which the adjustment is calculated) to the value of such index for December 31 of the year preceding the enactment of the Act. After 2010, the inflationary increase is equal to the product of the standard maximum deposit insurance then in effect and the ratio of the value of the Personal Consumption Expenditures Chain-Type Index (as published by the Department of Commerce for December 31 of the year preceding the year in which the adjustment is calculated) to the value of such index for December 31 of 6 years prior to the year in which the adjustment is to be calculated. The subsection also provides an identical calculation for retirement accounts with the exception that the first of the five-year inflation calculations is based on $250,000 rather than $100,000.

After calculating the inflation adjustment provided above, the subsection directs the Board to round the amount to the nearest $10,000. The Board is required to publish the standard maximum deposit insurance applicable to the upcoming five-year period not later than April 1, 2010, or the first day of each five-year period thereafter as applicable.

Section 2012(a) also clarifies that the inflation adjustments do not apply to municipal deposits under Section 11(a)(2) of the FDIA.

Insured depository institutions are required to display signs relating to the insurance of the deposits of the institution pursuant to regulations to be promulgated by the FDIC governing such signs. Failure to comply with this subsection or related regulations will result in a fine of not more than $100 per day of continued violation.

Section 2012(b) amends the Federal Credit Union Act to make changes applicable to credit unions analogous to those above. These amendments include permitting the standard maximum deposit insurance amount to be adjusted every five years for inflation, providing pass-through deposit insurance for the deposits of any employee benefit plan, limiting the acceptance of employee benefit plan deposits to credit unions that are well capitalized or adequately capitalized, and providing Federal insurance coverage for retirement accounts up to $250,000. The formula for calculating inflation adjustments is the same for credit unions as for other insured depository institutions.

The effective date for the amendments made by this section corresponds to the effective date for the regulations required under section 2017(a)(2).

Section 2013. Designated reserve ratio

Section 2013(a) amends the FDIA to allow the Board to designate the designated reserve ratio on an annual basis within a range from 1.15 percent to 1.50 percent. In setting the designated reserve ratio, the Board must take into account the risk of losses to the DIF in that year and future years, take into account economic conditions generally affecting insured depository institutions, to provide for an increase in the designated reserve ratio during more favorable economic conditions and to provide for a decrease during less favorable economic conditions, regardless of the increased risks of loss that may exist during such less favorable conditions, seek to prevent sharp swings in the assessment rates for insured depository institutions, and take into account any other factors as the Board may determine to be appropriate.

This subsection becomes effective on the same date as the regulations required under section 2017(a)(1) become effective. Prior to effectiveness, the designated reserve ratio shall continue to be determined under section 7(b)(2)(A)(iv) of the FDIA, as in effect just prior to the effective date of the merger of the BIF and SAIF under this Act.

Section 2013(b) imposes limits on the Board's ability to modify certain aspects of the risk-based assessment system. Specifically, the Board may not make any change to the information collected from, or required to be maintained by, insured depository institutions solely for the purpose of assessment risk classification if the change would result in an overall greater regulatory or reporting burden. In addition, the Board must also provide notice and an opportunity to comment before any modification.

Section 2014. Assessment credits and dividends

This section provides for a one-time assessment credit and gives the FDIC the ability to make cash dividends to insured depository institutions.

Section 2014(a) amends the FDIA to allow a one-time credit to each insured depository institution that existed on December 31, 1996, and that had previously paid a deposit insurance assessment. This includes successors to insured depository institutions as well. The amount of the credit will be based on the assessment base of the institution at year-end 1996 compared to the combined aggregate assessment base of all institutions. The aggregate amount of credits may not exceed the amount that the FDIC could collect if it imposed a 9 basis point assessment on the combined assessment base of the BIF and SAIF as of year-end 2001, approximately $4 billion. Finally, this subsection allows the FDIC to apply the one-time credit, if any, against any assessment levied by the FDIC under section 7(b) of the FDIA in the future.

Section 2014(b) permits the FDIC to provide cash dividends to insured depository institutions when the reserve ratio equals or exceeds 1.40 percent but is less than 1.50 percent. The amount of the cash dividends in aggregate will be equal to 50 percent of the amount in excess of the amount required to maintain a reserve ratio of 1.40 percent. This subsection also requires the FDIC to provide cash dividends to insured depository institutions when the reserve ratio exceeds 1.50 percent. In this case, the amount of the cash dividends in the aggregate will be equal to the amount in excess of the amount required to maintain a reserve ratio of 1.50 percent.

Although the FDIC must provide a cash dividend when the reserve ratio exceeds 1.50 percent, it need not provide a cash dividend when the reserve ratio is between 1.40 percent and 1.50 percent. In this scenario, the Board may suspend or limit dividends if it makes a written determination that a significant risk of losses to the DIF exists over the next year. In making this determination, the Board must consider the national and regional conditions and their impact on insured depository institutions, the potential problems affecting insured depository institutions or a specific group or type of depository institution, the degree to which the contingent liability of the FDIC for anticipated failures of insured institutions adequately addresses concerns over funding levels in the DIF, and any other factors that the Board determines are appropriate. If it determines to limit or suspend the dividend, the Board must submit a written report to the Senate Committee on Banking, Housing, and Urban Affairs and to the House Committee on Financial Services detailing its reasons and the factors considered. A determination to limit or suspend the dividend must be reviewed annually and either renewed or removed.

If a dividend is provided, the FDIC is required to consider certain factors in allocating the dividend among insured depository institutions. The purpose of this provision is to provide further consideration of the contribution made by insured depository institutions prior to year-end 1996. These include the ratio of the assessment base of an insured depository institution (including any predecessor institution) on December 31, 1996, to the assessment base of all eligible institutions as of that date, the total amount of assessments paid on or after January 1, 1997, by an institution (including a predecessor institution), that portion of assessments paid by an institution (including a predecessor institution) that reflect higher levels of risk assumed by such institution, and other factors as the FDIC deems appropriate.

This section is effective on the same date as the regulations required to be issued under section 2017(a)(3) are effective.

Section 2015. Assessments-related records retention and statute of limitations

This section requires insured depository institutions to maintain all records which are necessary for the FDIC to verify its assessment for the later of three years from the date of each assessment or the date any dispute between the institution and the FDIC is settled.

This section also allows the FDIC to recover unpaid assessments in court and specifies an applicable statute of limitations of three years.

Section 2016. Increase in fees for later assessment payments

Section 2016 increases fees for late assessment payments to not more than 1 percent of the amount of the assessment due, provides an exception in cases where the assessment is less than $10,000, and gives the FDIC discretion to modify penalties upon a showing of good cause.

Section 2017. Regulations required

This section requires the Board to issue final regulations within 270 days of the Act's enactment. The Board's regulations should designate the reserve ratio for the DIF and implement the changes to deposit insurance coverage under section 2012. These regulations must be effective within 90 days of their publication in final form. The Board must also promulgate regulations to implement the one-time assessment credit, establish qualifications and procedures under which the FDIC may provide assessment credits, and provide for assessments under section 7 of the FDIA.

This section also provides a savings clause that clarifies that the Act does not affect the authority of the FDIC to set or collect assessments prior to the effectiveness of the regulations under this section.

Section 2018 Studies of potential changes to the Federal deposit insurance system

Section 2018(a) directs the Board of the FDIC and the National Credit Union Administration Board to conduct a study of the feasibility of increasing the limit on deposit insurance coverage for municipal deposits, the feasibility of establishing a voluntary deposit insurance system for deposits in excess of the amounts covered in the Act, and the potential benefits and drawbacks of each.

Section 2018(b) directs the FDIC to conduct a study on the feasibility of alternatives to estimated insured deposits in calculating the reserve ratio.

All of the reports required under this section are due to Congress within a year of the date of the Act's enactment.

Section 2019. Effective date

Except as otherwise noted in specific sections, the Act is effective as of its enactment.

FHA REFORM

SUBTITLE C. FHA ASSET DISPOSITION

The Federal Housing Administration (FHA) insures the mortgages of multi-family residential properties. Existing statutory provisions allow the Secretary of Housing and Urban Development (HUD) to use rehabilitation grants and to make property sales at prices below their market value for properties in mortgage default. The use of these authorities imposes costs on the FHA insurance fund. The FHA Asset Disposition Act of 2005 would make these authorities subject to prior appropriations action thus providing greater opportunity to set the level of activity and better control their use.

Section-by-Section Analysis

Section 2021. Short Title.

Section 2021 provides the short title for Subtitle C, "FHA Asset Disposition Act of 2005".

Section 2022. Definitions.

Section 2022 contains a set of definitions used in this subtitle, including "affordability requirements", "discount sale", "discount loan sale", "loan market value", "multifamily real property", "multifamily loan", and "property market value".

Section 2023. Appropriated Funds Requirement for Below Market Sales.

Section 2023 provides that the disposition of any multifamily real property or loan be subject to the availability of appropriations to the extent that the property value or loan value exceeds the sale proceeds.

Section 2024. Up-Front Grants.

Section 2024 provides that any grants made under Section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997 be available only to the extent that appropriations are made in advance for such purpose.

Section 2025. Authorization of Appropriations

Section 2025 authorizes the appropriation of $100 million in fiscal year 2006 for purposes of this subtitle.