CONTENTS

PURPOSE AND SUMMARY

The FHA Asset Disposition Act of 2005 would make several FHA multifamily authorities subject to appropriations, including 1) discount property sales; 2) discount loan sales; and 3) up-front grant assistance. While beneficial to making a property financially and physically viable, these currently mandatory FHA spending authorities represent an open-ended liability. These authorities are costly, with few restrictions. In recognizing the importance and usefulness of these authorities along with the need for greater financial accountability, these FHA authorities would be subject to appropriations to allow for greater oversight by Congress, which will reduce costs and provide for stronger Congressional control. This legislation would be effective 2006 through 2010.

Since 1934, FHA and HUD have insured almost 33 million home mortgages and multifamily project mortgages. Within HUD, FHA provides mortgage insurance to lenders to protect against losses as a result of borrower default. Currently, FHA has the authority to sell, at below-market rates, properties taken over by the agency because of mortgage defaults. FHA also has the authority to sell discount loans. Additionally, FHA can provide up-front grants to rehabilitate dilapidated multifamily properties. Funding for the grants currently comes from the General Insurance Fund, which collects money from premiums and servicing of insured mortgages. The amount spent on the grants is left to the discretion of FHA.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on October 27, 2005, to consider the committee print entitled "Recommendations of the Committee on Financial Services for Reconciliation for FY06: FHA Asset Disposition".

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken with in conjunction with the consideration of this legislation. An amendment offered by Mr. Gutierrez, No. 1, reverting to the current status quo in fiscal year 2011, was agreed to by voice vote. A motion by Mr. Oxley to transmit the recommendations of the Committee as contained in the committee print, as amended, and all appropriate accompanying material, to the Committee on the Budget, in order to comply with the reconciliation directives contained in House Concurrent Resolution 95, was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

While recognizing the importance and usefulness of these authorities, along with the need for greater financial accountability, subjecting these FHA authorities to the appropriations process will allow for greater oversight by Congress, resulting in reduced costs and providing for stronger Congressional control.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

[Insert CBO estimate here]

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation. [If the legislation creates an advisory commission, please see Hugh for language.]

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 4101. **Short Title.** The short title of this legislation is the "FHA Asset Disposition Act of 2005"

Sec. 4102. Definitions. This section defines many key terms cited in the legislation including "affordability requirements," "discount sale," "discount loan sale," "loan market value," "multifamily real property," "multifamily loan," "property market value," and "Secretary."

Sec. 4103. Appropriated Funds Requirement for Below Market Sales. This section would shift FHA's authority to sell, at discount prices, properties and loans acquired by the agency because of borrower default from mandatory to discretionary, making funding subject to appropriations. Under this section, if a property or loan is sold for a price that is at least market value, that property will not be subject to appropriations. Transactions covered under this section that formally begin within one year before enactment are excluded from this section and can receive mandatory funding as before. This provision is effective 2006 through 2010.

Sec. 4104. Up-Front Grants. This section would make FHA's authority to provide up-front grant assistance discretionary, making funding subject to appropriations.

These grants would be limited to cases where appropriations have been made in advance. Funding for the grants would no longer be drawn from the General Insurance Fund. Transactions covered under this section that formally begin within one year before enactment are excluded from this section and can receive mandatory funding as before. This provision is effective 2006 through 2010.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

[**GPO:** insert Ramsayer text here]

MINORITY, ADDITIONAL, AND DISSENTING VIEWS

[Insert text here.]

CONTENTS

PURPOSE AND SUMMARY

The language contained in the Committee Print, now subtitle A of title IV, addressing deposit insurance reform is identical to H.R. 1185, the Federal Deposit Insurance Reform Act of 2005, which overwhelmingly passed the House on May 4, 2005. As did H.R. 1185, this proposal preserves the value of insured deposits at the nation's banks, thrifts, and credit unions; advance the national priority of enhancing retirement security for all Americans; and ensure that the value, benefit and costs of deposit insurance are allocated equitably and fairly.

The subtitle merges the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF); increases the standard maximum deposit insurance limit from $100,000 to $130,000, and indexes it every 5 years for inflation; doubles the new coverage level for certain retirement accounts; and increases the coverage amount for in-State municipal deposits. Federally chartered credit unions are provided with parity in general standard maximum deposit insurance coverage, coverage for retirement accounts and municipal deposits.

The subtitle removes legal constraints on the authority of the Federal Deposit Insurance Corporation (FDIC) to charge risk-based premium assessments, so that all insured depository institutions pay for the value and benefit of deposit insurance fairly and equitably.

The legislation authorizes the FDIC to set the ratio of reserves to estimated insured deposits within a range of 1.15 to 1.40 percent, replacing the 1.25 percent "hard target" mandated by current law.

The subtitle also returns assessments in the form of refunds, credits, and dividends to insured depository institutions. Dividends are provided to qualified insured depository institutions whenever specified reserve ratios are exceeded.

Finally, the legislation mandates studies of the FDIC's administrative and managerial processes and of alternative means for administering the deposit insurance system. These studies will ensure that the deposit insurance fund and the overall deposit insurance system are managed and operated as efficiently and as effectively as possible.

BACKGROUND AND NEED FOR LEGISLATION

Federal deposit insurance was created by Congress in 1934 and significantly modified in 1989 and 1991 in response to the savings and loan and bank crises. All banks and savings associations are required to carry Federal deposit insurance.

The National Credit Union Share Insurance Fund (NCUSIF) was created in 1970. This fund insures "share" accounts at credit unions and is administered by the National Credit Union Administration (NCUA). All Federally chartered credit unions must belong to NCUSIF; membership is optional for State-chartered credit unions.

Deposit insurance makes deposits safe by assuring depositors that up to $100,000 will be available to them to cover their deposits even if their insured depository institution fails. It protects depositors from suffering a sudden and unforeseen loss of wealth. It also protects the economy from the effects of a precipitous loss of liquidity in the financial services system.

Currently, the FDIC provides deposit insurance through two funds, the BIF and the SAIF. These funds are maintained in the U.S. Treasury and both earn interest income from investment in non-marketable Treasury securities.

The Federal deposit insurance system has served the United States economy well for over 70 years--public confidence and stability in the Nation's banking system were preserved through one of the largest banking crises since the Federally insured deposit system originated. During the crisis of the 1980's and the 1990's, the FDIC and the Resolution Trust Corporation (RTC) resolved 2,362 failures of insured depository institutions involving more than $700 billion in assets, with no bank runs, no panics, no disruptions to the financial markets, and no debilitating impact on overall economic activity.

After conducting a comprehensive study of the overall deposit insurance system, the FDIC published a report in 2001 (*Keeping the Promise: Recommendations for Deposit Insurance Reform*, April 2001), that identified four structural deficiencies that warranted legislative consideration:

(1) Deposit insurance is provided by two insurance funds at potentially different prices;

(2) Under current law, 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.

Hearings before the Subcommittee on Financial Institutions and Consumer Credit during the past several Congresses yielded a broad consensus among the Bush Administration, the Federal and State banking and thrift regulators, and industry and consumer groups that the deposit insurance system could be improved and strengthened to make it more responsive to the cyclical nature of lending and deposit taking activities and the post-Gramm-Leach-Bliley Act financial and economic environment.

Merging the BIF and the SAIF eliminates potential disparities in bank and thrift risk-based premium assessments and the administrative burden of maintaining and operating two separate funds.

Current law limits the ability of the FDIC to assess premiums on depository institutions above amounts needed to achieve and maintain the existing ratio of reserves to estimated insured deposits at 1.25 percent. Currently over 90 percent of the industry does not pay for deposit insurance, and more than 1,100 institutions that were chartered within the last 8 years have never paid any premiums. Current law also limits the FDIC's ability to charge riskier institutions, new entrants, and institutions growing at excessive rates appropriate premiums based on the risks they present to the fund. The current premium restrictions require safer institutions to subsidize riskier institutions unnecessarily, and new entrants and institutions that undergo significant growth are allowed to avoid paying premiums.

Further, the current system's “pro-cyclical” bias results in sharply higher premiums being assessed at “down” points in the economic cycle, when banks can least afford to pay them and the economy could most benefit from additional liquidity in the banking system.

These inequities are addressed in the Committee Print by giving the FDIC greater discretion to identify the relative risks all institutions present to the deposit insurance fund and set appropriate risk-based premiums. With this authority, the FDIC can better manage the insurance fund relative to industry and economic conditions.

The current deposit insurance system's emphasis on maintaining the 1.25 percent designated reserve ratio (DRR) and the requirement that a 23-basis point premium be assessed whenever the DRR drops and remains below this level for a year is pro-cyclical and creates the potential for volatile premium swings. This problem would also more than likely result in the industry paying high premiums when both banks and the economy could least afford it, and it could sustain and deepen an economic downturn.

The legislation gives the FDIC the discretion to set the DRR within a range of 1.15 to 1.40 percent, addressing the system's volatility and avoiding sharp premium swings. This flexibility gives the FDIC better tools with which to manage the deposit insurance fund during various economic environments.

Deposit insurance coverage levels were last adjusted in 1980. The value of basic insurance coverage has eroded over the last 25 years. If the base coverage level had kept pace with inflation since 1980, when levels were last adjusted, it would now be at well over $200,000; if it were adjusted from the $40,000 coverage level in effect in 1974, the level would be more than $140,000. The Committee believes that increasing the maximum standard deposit insurance amount to $130,000 is a modest step and indexing the new amount every 5 years appropriately restores and maintains the value of deposit insurance coverage.

The current deposit insurance system provides inadequate protection for in-State municipal deposits and certain retirement account deposits. The legislation doubles the coverage limit for insured retirement account deposits in order to enhance the retirement security of senior citizens and those planning for retirement. Coverage limits for in-State municipal deposits are also significantly expanded to ensure that more municipal deposits can be kept in local financial institutions and used to meet local credit needs.

In sum, this legislation will respond to these issues by:

- preserving the value of insured deposits at insured depository institutions;
- strengthening the nation's insured depository institutions, especially small banks, thrifts, and credit unions;
- ensuring that the Federal deposit insurance system does not harm the ability of insured depository institutions to meet the nation's credit needs at all stages of the economic cycle;
- ensuring that the Federal deposit insurance system remains strong and complements the Federal and State regulatory structure that helps to maintain the safety and soundness of the nation's banks, thrifts, and credit unions;
- advancing the national priority of enhancing retirement security for all Americans;
- ensuring that the value, benefit and costs of deposit insurance are allocated equitably and fairly; and
- modernizing the Federal deposit insurance system by merging the BIF with the SAIF and reinforcing the risk-based nature of the system.

HEARINGS

The Subcommittee on Financial Institutions and Consumer Credit held a legislative hearing on H.R. 1185, the Federal Deposit Insurance Reform Act of 2005, on March 17, 2005, at which the Chairman of the Federal Deposit Insurance Corporation, Donald E. Powell, testified.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on October 27, 2005, to consider a committee print entitled "Recommendations of the Committee on Financial Services for Reconciliation for FY06: Deposit Insurance Reform".

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken with in conjunction with the consideration of this legislation. No amendments were considered. A motion by Mr. Oxley to transmit the recommendations of the Committee as contained in the committee print, and all appropriate accompanying material, to the Committee on the Budget, in order to comply with the reconciliation directives contained in House Concurrent Resolution 95 was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

This will improve the deposit insurance system while keeping it well-funded, as well as reflect more accurately the risks to the fund that are imposed by institutions. As a result, the fund will be less susceptible to problems caused by changes in the economy and will better serve depository institutions and depositors.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c) (2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c) (3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

[insert CBO letter]

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b) (3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 4001. Short Title; Table of contents

This section establishes the short title, the `Federal Deposit Insurance Reform Act of 2005'.

Section 4002. Merging the BIF and SAIF

This section amends provisions of the Federal Deposit Insurance Act to merge the Bank Insurance Fund and the Savings Association Insurance Fund. The section transfers each fund's respective assets and liabilities into a newly created Deposit Insurance Fund (DIF).

The section gives the FDIC at least 90 days after the bill is enacted to complete the merger of the BIF and SAIF. The effective date of the merger would be the first day of the next calendar quarter after the grace period elapses. For example, assuming the bill is enacted on March 10 the FDIC would have until June 8 to complete the merger, and all transactions would become operationally effective as of July 1.

Section 4003. Increase in deposit insurance coverage

This section provides for a higher level of deposit insurance coverage and an inflation index for general depositors, individual retirement accounts, and municipalities. Further, it expands coverage to employee benefit plans. Credit unions are provided with complete parity in coverage with other insured depository institutions.

The section also eliminates the $100,000 deposit insurance limit on accounts at insured depository institutions and replaces it with a new standard maximum deposit insurance limit of $130,000.

The section further provides that, beginning April 1, 2007, the new standard maximum deposit insurance limit would be subject to a 5 year cost of living adjustment, calculated according to the Personal Consumption Expenditures Chain-Type Index (PCE) published by the Department of Commerce and rounded to the nearest $10,000. The FDIC and National Credit Union Administration (NCUA) Boards of Directors are required to publish the new standard maximum deposit insurance amount in the Federal Register and provide a corresponding report to Congress within 6 months of the new calculation. Also, the 5-year inflation-adjusted standard maximum amount would automatically increase unless a Congressional act provides otherwise. The new standard amount would take effect on January 1 of the year immediately succeeding the calendar year in which the new amount is calculated.

The section also requires institutions to provide pass through coverage for employee benefit plans. However, institutions that are not well-capitalized or adequately-capitalized may not accept employee benefit plan deposits.

The section also doubles the new standard maximum deposit insurance limit for certain retirement accounts to $260,000.

Finally, this section increases coverage for in-State municipal deposits to $2 million or the sum of the new standard coverage amount plus 80 percent of the amount of deposits in excess of the new standard, whichever is lower, and provides that no State may deny to insured depository institutions within its jurisdiction the authority to accept insured in-State municipal deposits, or prohibit the making of such deposits in such institutions by any in-State municipal depositor.

Section 4004. Setting assessments and repeal of special rules relating to minimum assessments and free deposit insurance

This section allows the FDIC Board to set assessments in such amounts as it may determine to be necessary or appropriate in order to maintain the reserve ratio at the designated reserve ratio. This provision also eliminates the existing restrictions on the FDIC's authority to levy assessments on any institution above amounts needed to achieve and maintain the existing DRR of 1.25 percent. In effect, the minimum statutory rate (23 basis point cliff rate) is eliminated.

This section establishes a rate of not more than 1 basis point (exclusive of any credit or dividend) for those insured depository institutions in the lowest-risk category under the FDIC's risk-based assessment system. This section also provides that no depository institution will be barred from the lowest-risk category solely because of size. The one basis point rate does not apply during any period in which the DIF's reserve ratio is less than 1.15 percent of aggregate insured deposits.

In testimony before the Subcommittee on Financial Institutions and Consumer Credit, FDIC Chairman Donald Powell stated that:

> Using the current system as a starting point, I believe that the FDIC should consider additional objective financial indicators, based upon the kinds of information that banks and thrifts already report, to distinguish and price for risk more accurately within the existing least-risk (1A) category. The sample `scorecard' included in the FDIC's April 2001 report represents the right kind of approach.

(Hearing before the Subcommittee on Financial Institutions and Consumer Credit, Viewpoints of the FDIC and Select Industry Experts on Deposit Insurance Reform, Oct. 17, 2001, Serial no. 107-47, p. 5.)

This scorecard example showed the lowest-risk category, 1A+, contained approximately 42 percent of all banks. The Committee looked to these examples, and the distribution of banks (including size, charter, and governance) within each of the 1A subcategories, as a basis for this provision. This section provides a necessary balance between the expanded authority and discretion of the FDIC to charge all institutions premiums and assuring that top-rated institutions are not excessively charged.

The Committee envisions that this rate will be the starting point or base premium for the risk-based assessment schedule to be developed by the FDIC (with higher premiums associated with higher risk categories being set relative to this base rate). Nothing in this provision precludes the FDIC from providing credits or dividends should the fund be at sufficient levels to warrant such an action.

The Committee is concerned that the FDIC's development and implementation of a new risk-based assessment system not negatively impact the cost of homeownership or community credit by charging higher premiums to prudently-managed and sufficiently-capitalized institutions simply because they fund mortgages and other types of lending through advances from Federal Home Loan Banks. The Gramm-Leach-Bliley Act took great care in trying to provide adequate funding resources for community financial institutions and insured housing lenders through expanding community institutions' access to Federal Home Loan Bank advances. The Committee expects the FDIC to take into consideration the goals of the Gramm-Leach-Bliley Act with respect to Federal Home Loan Bank advances and the objectives of this Act when developing a risk-based premium system.

The section also requires insured depository institutions to maintain all records that the FDIC may require for verifying the accuracy of any assessment for 3 years or, in the case of disputed assessments, until the dispute has been resolved, and increases the fees that the FDIC can impose for late payments of premium assessments from $100 to 1 percent of assessments per day, for institutions with assessments greater than $10,000. Institutions with assessments lower than $10,000 would face a maximum penalty of $100 for each day they were delinquent in paying their premium assessments

This section also provides for a 50 percent discount in the assessment rate for deposits attributable to "lifeline" deposit accounts and repeals section 232 of the Federal Deposit Insurance Corporation Improvement Act of 1991 that required that credits for such accounts be funded from congressional appropriations.

The legislation repeals a number of provisions requiring the FDIC to set premiums on a semi-annual basis, replacing them with a provision granting the FDIC greater flexibility in the timing of those evaluations, so long as they are done at least once in a 12-month period. In granting this flexibility, the Committee intends that the FDIC should make these changes, absent extraordinary circumstances, in a manner that provides insured depository institutions with sufficient lead time to make reasonable budget preparations.

Section 4005. Replacement of fixed designated reserve ratio with reserve range

This section eliminates the current 1.25 percent "hard target" DRR and provides the FDIC Board with the discretion to set the DRR within a range of 1.15 to 1.40 percent for any given year, using the following criteria as a basis for making these determinations:

(1) present and future risk of losses to the deposit insurance fund;

(2) economic conditions; and

(3) any other factors the Board may determine to be appropriate.

The more flexible range for setting the DRR is designed to prevent sharp swings in the assessment rates for insured depository institutions. In designating the reserve ratio, the FDIC must follow notice-and-comment rulemaking procedures, and is required to publish a thorough analysis of the data and projections on which the proposed DRR is based.

Section 4006. Requirements applicable to the risk-based assessment system

This section directs the FDIC to collect information from all appropriate sources in determining risk of losses to the DIF. This provision does not authorize the FDIC to impose additional recordkeeping requirements on insured depository institutions.

The FDIC is required to consult with the appropriate Federal banking agency in assessing the risk of loss to the DIF with respect to any insured depository institution. This risk of loss evaluation may be done on an aggregate basis for institutions that are determined to be well-capitalized and well-managed.

The FDIC is also required to provide notice and opportunity for comment prior to revising or modifying the risk-based assessment system.

Section 4007. Refunds, dividends, and credits from Deposit Insurance Fund

This section provides for refunds or credits of any assessment payment that was made by an insured depository institution in excess of the amount due the FDIC.

The section specifies two circumstances under which the FDIC is required to pay dividends to insured depository institutions: (1) whenever the reserve ratio of the DIF equals or exceeds 1.35 percent of estimated insured deposits and is less than or equal to 1.4 percent of such deposits, the FDIC is required to pay dividends equal to 50 percent of the amount in excess of what is required to maintain the reserve ratio at 1.35 percent; and (2) whenever the reserve ratio of the DIF exceeds 1.4 percent of estimated insured deposits, the FDIC is required to pay dividends in the amount of the excess of what is necessary to maintain the ratio at 1.4 percent.

The requirement that when the DIF exceeds 1.35 percent and is less than or equal to 1.4 percent, the FDIC must provide a cash dividend equal to one-half the difference between the actual fund balance and the fund balance required to maintain a reserve ratio of 1.35 percent is intended to slow the fund's growth automatically as it approaches its upper limit and return dividends to institutions that could be used for lending and to provide other financial services in their communities.

The section also provides for a transitional credit of 12 basis points of the total assessment base as of December 31, 2001 (or about $5.4 billion) to eligible insured depository institutions based on their respective share or percentage of total industry insured deposits held as of December 31, 1996. Eligible insured depository institutions had to be in existence at December 31, 1996, or be a successor to such an institution, and paid a deposit insurance assessment prior to that date.

In addition to the transitional credit, this section directs the FDIC to promulgate regulations establishing an ongoing system of credits to be applied against future premium assessments. Such credits will not be awarded, however, during any period in which (1) the reserve ratio of the DIF is less than the DRR; or (2) the reserve ratio is less than 1.25 percent of estimated insured deposits. In determining the amount of any ongoing assessment credits, the FDIC is required to consider the factors for designating the reserve ratio and setting assessments outlined elsewhere in the statute.

For purposes of allocating dividends and credits, the FDIC is required to determine each insured depository institution's relative contribution to the DIF (or any predecessor deposit insurance fund), taking into account the institution's share of the assessment base as of December 31, 1996; the total amount of deposit insurance assessments paid by the institution after December 31, 1996; that portion of assessments paid by an institution that reflects higher levels of risk assumed by the institution; and such other factors as the FDIC deems appropriate. The FDIC's calculation, declaration and payment of dividends are made subject to notice-and-comment rulemaking.

For any insured depository institution that exhibits financial, operational or compliance weaknesses ranging from moderately severe to unsatisfactory at the beginning of the assessment period, credits may not exceed the amount equal to the average assessment on all insured depository institutions.

In promulgating regulations establishing a system for dividends and credits, the FDIC is required to include provisions allowing insured depository institutions a reasonable opportunity to challenge administratively the amount of their dividends or credits.

Nothing in this section precludes the FDIC from providing credits, over and above the mandated dividend requirement, should it so choose.

The Committee intends that the FDIC, in determining the appropriate distribution of dividends or ongoing credits, weigh a number of factors in its rulemaking process. The calculation should recognize past contributions to the deposit insurance funds by incorporating the ratio determined for an institution in the calculation of the institution's one-time credit based on total assessment base at year-end 1996, as well as the actual assessments paid since that time. In establishing the dividend and credit systems, the FDIC should also take into account and make adjustments that reflect the higher risk profiles of some institutions so that they are not rewarded for riskier behavior. The FDIC is given the discretion to incorporate additional factors, through the rulemaking process, as it deems appropriate.

Initially, the Committee anticipates that the FDIC will establish a dividend account or similar mechanism for each insured depository institution. It is contemplated that when a dividend is declared, each institution would receive the same proportion of the total dividend declared as its dividend account bears to the sum of all institutions' dividend accounts for that declaration. As an example of how this might work under such a scenario, the calculation of an institution's dividend account could be based on the balance in the fund multiplied by the institution's 1996 assessment base ratio (described above). In addition, after reducing the amount of assessments paid to account for an institution's higher risk profile, and after considering other factors, the Corporation would incorporate the remainder in the calculation of the dividend account. In sum, it is the Committee's intent that the FDIC create and implement a robust system of dividends and ongoing credits based upon the various factors set forth in the bill.

Section 4008. Deposit Insurance Fund restoration plans

Whenever the reserve ratio falls or is projected to fall below the low end of the range within which the FDIC is authorized to set the DRR, the FDIC is required, within 90 days, to establish and implement a plan for restoring the DIF to that level within ten years. While such a restoration plan is in effect, the FDIC has the authority to restrict the use of assessment credits by insured depository institutions, but is required to apply to an institution's assessment an amount that is the lesser of the institution's assessment or 3 basis points of an institution's assessment base. The FDIC must publish the details of its restoration plan in the Federal Register within 30 days of its implementation.

Section 4009. Regulations required

This section provides that the FDIC has 270 days after the date of enactment to prescribe final regulations, after notice and opportunity for public comment, establishing the DRR, implementing increases in deposit insurance coverage, implementing the dividend requirement and the one-time assessment credit, and providing for premium assessments under the amended Act.

Section 4010. Studies of FDIC structure and expenses and certain activities and further possible changes to deposit insurance system

This section provides that within one year of enactment, reports must be submitted to Congress on the following issues:

(1) The efficiency and effectiveness of the administration of the prompt corrective action (PCA) program, including the degree of effectiveness of the Federal banking agencies in identifying troubled depository institutions and the degree of accuracy of the risk assessments made by the FDIC;

(2) The appropriateness of the FDIC's organizational structure for the mission of the FDIC, to take into account the current size and complexity of the business of insured depository institutions; the extent to which the organizational structure contributes to or reduces operational inefficiencies that increase operational costs; and the effectiveness of internal controls;

(3) The feasibility of establishing a voluntary deposit insurance system for deposits in excess of the maximum amount of deposit insurance for any depositor;

(4) The feasibility of privatizing all deposit insurance at insured depository institutions and insured credit unions; and,

(5) The feasibility of using actual domestic deposits rather than estimated insured deposits in calculating the DIF's reserve ratio and the DRR.

Finally, the section directs the FDIC to conduct a study of the reserve methodology and loss accounting for insured depository institutions in a troubled condition over the period January 1, 1992 through December 31, 2004, and report its findings and conclusions to Congress within 6 months of the date of enactment. The FDIC is required to obtain comments on the design of this study from the Government Accountability Office (GAO), and to provide a draft of the final report to GAO prior to its submission to Congress.

Section 4011. Bi-annual FDIC survey and report on increasing the deposit base by encouraging use of depository institutions by the unbanked

This section requires the FDIC to conduct a bi-annual survey on efforts by insured depository institutions to bring the "unbanked" into the conventional finance system, and report its findings and conclusions to the House Committee on Financial Services and the Senate Committee on Banking, Housing and Urban Affairs, together with any recommendations for legislative or administrative action.

Section 4012. Technical and Conforming Amendments to the Federal Deposit Insurance Act relating to the merger of the BIF and SAIF

This section makes numerous amendments to ensure the technical conformity of the Federal Deposit Insurance Reform Act to various provisions in the Federal Deposit Insurance Act 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 Federal Deposit Insurance Act, dealing with exit fees collected from institutions leaving the Savings Association Insurance Fund (SAIF). The Committee intends that those funds be returned to the DIF upon the repeal of this provision.

Section 4013. Other Technical and Conforming Amendments relating to the merger of the BIF and SAIF

This section ensures the technical conformity of the Federal Deposit Insurance Reform Act to various provisions in the Federal Deposit Insurance Act and other banking laws. Most notably, amendments conform the Federal Deposit Insurance Reform Act to the Balanced Budget and Emergency Control Act of 1985.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Formatted: Font: 11 pt

[**GPO:** insert Ramsayer text here]

Formatted: Font: 11 pt

Minority, Additional, and Dissenting Views

[Insert text here.]