List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 11, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–16590 Filed 7–2–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Safety Wireless Advisory Committee; Steering and Subcommittee Meetings

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the Next Meetings of the Spectrum Requirements and Interoperability Subcommittees.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the next meetings of two of the five Subcommittees of the Public Safety Wireless Advisory Committee. The NTIA and the FCC established a Public Safety Wireless Advisory Committee, Subcommittees, and Steering Committee to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. All interested parties are invited to attend and to participate in the next round of meetings of the Subcommittees.

DATES: July 18, 19 1996 (Thursday, Friday).

ADDRESSES: Federal Communications Commission, 2000 M St., NW, Rooms 110 A,B, & C (Rooms subject to change), Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: For information regarding the Subcommittees, contact: Interoperability Subcommittee: James E. Downes at 202–622–1582; Spectrum Requirements Subcommittee: Richard N. Allen at 703–630–6617.

For information regarding accommodations and transportation, contact: Deborah Behlin at 202–418–0650 (phone), 202–418–2643 (fax), or dbehlin@fcc.gov (email). You may also contact Ms. Behlin for general information concerning the Public Safety Wireless Advisory Committee. Information is also available from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov).

SUPPLEMENTARY INFORMATION: Two Subcommittees of the Public Safety Wireless Advisory Committee will hold consecutive meetings on Thursday, July 18, 1996 and Friday, July 19, 1996. The expected arrangement of the meetings, which is subject to change at the time of the meetings, is as follows:

July 18 & July 19: The Interoperability Subcommittee and then the Spectrum Requirements Subcommittee will meet consecutively starting at 8:00 a.m.

For further information contact Don Speights, NTIA, directly at 202–482–1652 or by email at wspeights@ntia.doc.gov.

The tentative agenda for each subcommittee meeting is as follows:

1. Welcoming Remarks.
2. Approval of Agenda.
3. Administrative Matters.
4. Work Program/Organization of Work.
5. Meeting Schedule.
6. Agenda for Next Meeting.
7. Other Business.
8. Closing Remarks.

The tentative schedule and general location of the next full meeting of the Public Safety Wireless Advisory Committee is: September 1996, in Washington, D.C.

The Co-Designated Federal Officials of the Public Safety Wireless Advisory Committee are William Donald Speights, NTIA, and John J. Borkowski, FCC. For public inspection, a file designated WTB–1 is maintained in the Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, Room 8010, 2025 M Street, N.W., Washington, D.C. 20554.

Federal Communications Commission

Robert H. McNamara.

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 96–17096 Filed 7–2–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy on Assistance to Operating Insured Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Policy statement; Notice of opportunity for comment.

SUMMARY: The statement of policy would revise the FDIC's Statement of Policy on Assistance to Operating Insured Depository Institutions, which was published in the Federal Register on December 18, 1992 (the 1992 Policy Statement) (see, 57 FR 60203 (December 18, 1992)). As required by section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (the RCDRIA), the FDIC is conducting a systematic review of its regulations and statements of policy to identify and revise regulations and statements of policy that might be inefficient, cause unnecessary burden, or contain outmoded, duplicative, or inconsistent provisions (see, 60 FR 62345 (December 6, 1995)). The FDIC has reviewed the 1992 Policy Statement and has concluded that it should be revised. This revised statement of policy would replace the 1992 Policy Statement.

The statement of policy would (i) reflect the statutory ''sunset'' of the Resolution Trust Corporation on December 31, 1995, by deleting references to the Resolution Trust Corporation's statutory authority; (ii) incorporate the requirements of section 11 of the Resolution Trust Corporation Completion Act, P.L. 103–204, section 11 (1993), which revised section 11(a)(4) of the Federal Deposit Insurance Act, as amended (the FDI Act), 12 U.S.C. 1821(a)(4), to prohibit, with certain exceptions, the use of funds from the Bank Insurance Fund or the Savings Association Insurance Fund to benefit shareholders of a failed or failing insured depository institution; thus, the statement of policy would impact the treatment of shareholders with regard to FDIC assistance under section 13(c) of the FDI Act to an operating insured depository institution prior to the appointment of a conservator or receiver for that institution; (iii) provide that any depository institution subsidiary of a holding company may be included when considering what entities may contribute resources in connection with a proposal for FDIC assistance; and (iv) generally streamline the retained provisions of the 1992 Policy Statement, in pertinent part by removing certain detailed discussions of section 13(k)(5) of the FDI Act and various provisions added to the FDI Act by the Federal Deposit Insurance Corporation Improvement Act of 1991.

DATES: Written comments must be received on or before August 2, 1996.

ADDRESSES: Written comments should be addressed to the Office of the Executive Secretary, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

Comments may be hand delivered to Room F–402, 1776 F Street, N.W., Washington, D.C. 20439, on business days between 8:30 a.m. and 5:00 p.m. Comments may be sent through facsimile to: (202) 898–3838 or by the Internet to: comments@fdic.gov. Comments will be available for inspection at the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, D.C. between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Gail L. Patelunas, Acting Director, Division of Resolutions, (202) 898–6779; Sean C. Forbush, Resolutions Specialist, Division of Resolutions, (202) 898–8506; Barbara I. Taft, Assistant General Counsel, Legal Division, (202) 736–0183; Michael B. Phillips, Counsel, Legal Division, (202) 736–0186, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The statement of policy does not require any collections of paperwork pursuant to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the statement of policy will not have a significant economic impact on a substantial number of small entities. In addition, the statement of policy will not impose regulatory compliance requirements on depository institutions of any size.

The text of the statement of policy follows:

FDIC Statement Of Policy on Assistance to Operating Insured Depository Institutions

I. Introduction

A. General Statutory Requirements

Section 13(c) of the Federal Deposit Insurance Act, as amended (the FDI Act), authorizes the Federal Deposit Insurance Corporation (the FDIC) to provide assistance to operating insured institutions (open assistance) (1) to prevent the ''default'' of insured institutions or to assist acquisitions of insured institutions that are ''in danger of default,'' [1] or (2) if severe financial conditions exist that threaten the stability of a significant number of insured institutions or of insured institutions possessing significant financial resources, to lessen the risk to the FDIC posed by such insured institutions under such threat of instability.

In order for the FDIC to provide assistance to an operating insured institution, the FDIC must determine that the assistance meets the least-cost test set forth in section 13(c) of the FDI Act. That section provides that the assistance (1) must be necessary to meet the obligation of the FDIC to provide insurance coverage for the insured deposits in such institution, and (2) must be the least costly to the deposit insurance fund of all possible methods for meeting that obligation.[2]

The FDIC has the authority to provide to an operating insured institution assistance that does not meet the least-cost test only if the Secretary of the Treasury (in consultation with the President and upon the written recommendations of two-thirds of the Board of Directors of the FDIC and two-thirds of the Board of Governors of the Federal Reserve System) determines that the FDIC's compliance with the least-cost test would have adverse effects on economic conditions or financial stability and the assistance to the operating insured institution would avoid or mitigate such adverse effects (the ''Systemic Risk Exception'').[3]

The FDIC may consider providing financial assistance under section 13(c) to an operating insured institution before the appointment of a conservator or receiver only if the FDIC determines that (1) grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the institution's capital levels are increased,[4] and (2) it is unlikely that the institution can meet all currently applicable capital standards without assistance.[5] In addition, before the FDIC may provide assistance to an operating insured institution, (1) the appropriate Federal banking agency [6] and the FDIC must determine that, for such period of time as the agency or the FDIC considers to be relevant, the institution's management has been competent and has complied with applicable laws, rules, and supervisory directives and orders,[7] and (2) the FDIC must determine that the institution's management did not engage in any insider dealing, speculative practice, or other abusive activity.[8] Any determination made by the FDIC to provide assistance to an operating insured institution under section 13(c) must be made in writing and published in the Federal Register.[9]

SAIF-insured institutions submitting proposals for assistance under section 13(k)(5) of the FDI Act also must meet the criteria contained in that statutory provision.[10]

B. Timing Considerations

As section 13(c)(4) of the FDI Act requires the FDIC to select the resolution alternative that involves the least cost to the relevant deposit insurance fund, any open assistance proposal must be evaluated on a competitive basis with other available resolution alternatives. Because of the cost savings inherent in FDIC-assisted transactions involving the appointment of a receiver for an institution, it may be difficult for an open assistance proposal to be more cost effective than an available closed institution resolution.[11] Therefore, an open assistance proposal, to be acceptable, generally must be submitted substantially before grounds exist for the appointment of a receiver for the institution. Moreover, because of the complexity of many transactional

[1] The terms ''default'' and ''in danger of default'' are defined in section 3(x) of the FDI Act, 12 U.S.C. 1813(x).

[2] *See* section 13(c)(4)(A)(ii) of the FDI Act, 12 U.S.C. 1823(c)(4)(A)(ii).

[3] *See* section 13(c)(4)(G) of the FDI Act, 12 U.S.C. 1823(c)(4)(G).

[4] *See* section 13(c)(8)(A)(i)(I) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(i)(I).

[5] *See* section 13(c)(8)(A)(i)(II) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(i)(II).

[6] ''Appropriate Federal banking agency'' is defined at 12 U.S.C. 1813(q), in part, to mean: (1) the Comptroller of the Currency, in the case of a national bank; (2) the Board of Governors of the Federal Reserve System, in the case of a state member insured bank; (3) the FDIC, in the case of a state nonmember insured bank; and (4) the Director of the Office of Thrift Supervision, in the case of any savings association.

[7] *See* section 13(c)(8)(A)(ii)(I) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(ii)(I).

[8] *See* section 13(c)(8)(A)(ii)(II) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(ii)(II).

[9] *See* section 13(c)(8)(B) of the FDI Act, 12 U.S.C. 1823(c)(8)(B).

[10] Assistance proposals with respect to SAIF-insured institutions under section 13(k)(5) that do not meet all nine of the criteria in that statutory provision may be submitted to the FDIC for consideration under section 13(c) of the FDI Act. Section 13(k)(5) applies only to SAIF-insured institutions located in ''economically depressed regions,'' and only if those institutions have certain types of problems pre-dating the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The nine criteria for proposals submitted under section 13(k)(5) of the FDI Act are listed in subsections (k)(5)(A)(i) (I)–(III) and (A)(ii) (I)–(VI) of section 13 of the FDI Act, 12 U.S.C. 1823(k)(5)(A)(i) (I)–(III) and (A)(ii) (I)–(VI).

[11] Among the cost advantages favoring a resolution transaction following the appointment of a receiver for an institution are the effect of the receivership on the contingent liabilities of the failed institution, the potential for uninsured depositors and other unsecured creditors to share in the loss incurred on the institution and the ability of the FDIC as receiver to repudiate burdensome contracts.

structures involving open assistance, the time required to negotiate terms acceptable to all parties and to obtain necessary regulatory and shareholder approvals, and the ''prompt corrective action'' mandates of Section 38 of the FDI Act,[12] the FDIC encourages submission of proposals for open assistance well before grounds exist for the institution's closure. In general, this timing consideration will require the board of directors of the insured institution to make the difficult business judgment that the institution is likely to fail and that the balance of their responsibilities, including those to depositors as well as shareholders, compels the board to seek FDIC assistance, and to make that judgment before it is certain that the institution will fail.

II. Treatment of Shareholders Under Section 11(a)(4) of the FDI Act

Section 11(a)(4) of the FDI Act states, in pertinent part:

Notwithstanding any provision of law other than section 13(c)(4)(G) [of the FDI Act], the Bank Insurance Fund and the Savings Association Insurance Fund shall not be used in any manner to benefit any shareholder of—

(i) Any insured depository institution for which the [FDIC] or the [RTC] has been appointed conservator or receiver, in connection with any type of resolution by the [FDIC] or the [RTC];

(ii) Any other insured depository institution in default or in danger of default, in connection with any type of resolution by the [FDIC] or the [RTC]; or

(iii) Any insured depository institution, in connection with the provision of assistance under this section or section 13 with respect to such institution, except that this clause shall not prohibit any assistance to any insured depository institution that is not in default, or that is not in danger of default, that is acquiring (as defined in section 13(f)(8)(B) [of the FDI Act]) another insured depository institution.[13]

As the scope of the language of section 11(a)(4) and related legislative history with respect to the limitation on the use of the relevant deposit insurance fund for assistance under section 13(c) of the FDI Act is not clearly delineated,[14] the FDIC will determine, on a case-by-case basis, the application of section 11(a)(4) to any proposal for assistance.

III. Criteria for the FDIC's Consideration of Proposals for Assistance to an Operating Insured Institution

A proposal for assistance to an operating insured institution will be evaluated pursuant to the following criteria:

A. Prerequisites for Open Assistance

Criterion 1. The FDIC must determine that grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the insured institution's capital levels are increased.[15]

Criterion 2. The FDIC must determine that it is unlikely that the insured institution can meet all currently applicable capital standards without assistance.[16]

B. Financial Criteria for Open Assistance

Criterion 3. The cost of the proposal for open assistance to the FDIC must be determined to be the least-costly alternative available.[17] In order to ensure that the proposal is the least costly alternative, the FDIC will, in many cases, also seek proposals for resolving the insured institution on a closed basis.

Criterion 4. The proposal must provide for sufficient tangible capitalization, including capital infusions from outside private investment sources, to meet the regulatory capital standards of the appropriate Federal banking agency.[18]

Criterion 5. The amount of the assistance and the new capital injected from outside sources must provide for a reasonable assurance of the future viability of the insured institution.[19]

Criterion 6. Applicants must establish quantitative limits on all financial items in the proposal. For example, if applicants request indemnification from the FDIC for certain contingent liabilities, the proposal must include ceilings on the FDIC's financial exposure.

C. Competition

Criterion 7. The FDIC will consider the proposal within a competitive context which provides for the solicitation by the FDIC of interest from qualified entities.[20]

D. FDIC Financial Contribution and Repayment and Repayment

Criterion 8. The FDIC will consider, on a case-by-case basis, whether the proposal shall provide the FDIC with an equity or other financial interest in the resulting institution.[21]

Criterion 9. It is preferable that the proposal for FDIC assistance provide for repayment of such assistance in whole or in part.

E. Impact on Shareholders and Creditors

Criterion 10. Unless the Systemic Risk Exception in section 13(c)(4)(G) of the FDI Act is applicable, FDIC assistance may not be used in any manner to benefit any preexisting shareholder of the insured institution, as determined by the FDIC on a case-by-case basis. In any event, any remaining ownership interest of such shareholders shall be subordinate to the FDIC's right to receive reimbursement for any

[12] *See* section 38(h)(3) of the FDI Act, 12 U.S.C. 1831o(h)(3).

[13] *See* 12 U.S.C. 1821(a)(4).

[14] *See* the Report of the House Committee on Banking, Finance and Urban Affairs, H.R. Rep. No. 103, 103d Cong., 1st Sess., Part 1, at 32 (1993) and the Conference Report accompanying the RTC Completion Act, H.R. Rep. No. 380, 103d Cong., 1st Sess. at 55 (1993).

[15] This criterion is mandatory. *See* section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A).

[16] This criterion is mandatory. *See* section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A).

[17] This criterion is mandatory unless the Secretary of the Treasury makes a systemic risk determination. *See* section 13(c)(4) (A) and (G) of the FDI Act, 12 U.S.C. 1823(c)(4) (A) and (G). Resolution alternatives must be evaluated on a present-value basis, using a realistic discount rate. *See* section 13(c)(4)(B) of the FDI Act, 12 U.S.C. 1823(c)(4)(B). This cost determination is premised on evaluating all possible resolution alternatives and must be made as of the date the FDIC determines to provide section 13(c) assistance. *See* section 13(c)(4)(C) of the FDI Act, 12 U.S.C. 1823(c)(4)(C). In calculating the cost of such assistance, the FDIC must treat any tax revenues that the U.S. Treasury would forego as a result of an assistance transaction, to the extent they are reasonably determinable, as revenues foregone by the applicable deposit insurance fund.

[18] The regulatory capital requirements of the respective Federal banking agencies are stated in: (1) For the Office of the Comptroller of the Currency, 12 CFR Part 3; (2) for the Board of Governors of the Federal Reserve System, 12 CFR Part 225; (3) for the FDIC, 12 CFR Part 325; and (4) for the Office of Thrift Supervision, 12 CFR Part 567.

[19] Viability may be demonstrated by pro forma projections based on reasonable assumptions regarding the use of the assistance, earnings, reserve levels, asset quality trends, anticipated dividends, and capital levels and needs. The viability projections will be reviewed closely by the FDIC for the reasonableness of assumptions. In addition, under normal circumstances, enough new capital should come from outside private sources to represent a vote of confidence in the viability of the assisted institution. By contrast, as an example, a *de minimus* investment which gave the investor an option on the whole institution would not represent a market validation of the assurance of viability.

[20] The FDIC has determined that under 12 U.S.C. 1823(c)(4), in order to demonstrate that the least costly resolution was selected, an assistance transaction generally cannot be the result of a single party negotiation, but rather must be the result of a competitive process.

[21] Under 12 U.S.C. 1823(c)(5), the FDIC is prohibited from purchasing the voting or common stock of an insured institution. However, this restriction does not preclude the acceptance by the FDIC of non-voting preferred stock, warrants, or other forms of equity or equity-equivalent arrangements.

assistance provided. Preexisting debtholders of the insured institution shall make substantial concessions.

F. Due Diligence

Criterion 11. Applicants must consent to unrestricted on-site due diligence reviews by the FDIC (or its agents) and FDIC-monitored, on-site due diligence reviews by all potential qualified acquirers as determined by the FDIC (after consultation with the appropriate Federal banking agency).

G. Acquisition Within a Holding Company Structure

Criterion 12. The proposal must ensure that the assistance will benefit the insured institution and the FDIC and not be diverted to other purposes. If the insured institution is a subsidiary of a holding company, the proposal should be structured so that FDIC assistance is not provided to the holding company, except where compelling reasons require it, and then only when the holding company acts as a conduit to immediately provide the entire amount of assistance to the insured institution.[22]

Criterion 13. If the insured institution is a subsidiary of a holding company, the proposal should be structured so that available resources from the holding company and its other depository institution subsidiaries and/or nondepository subsidiaries are used to make a significant contribution toward minimizing the financial exposure of the FDIC.

H. Assets

Criterion 14. The FDIC may consider, in appropriate circumstances, the acquisition of, or loss-sharing, gain-sharing and other incentive arrangements with respect to, distressed assets.

I. Supervisory Concerns With Respect to Management

Criterion 15. The appropriate Federal banking agency and the FDIC must determine that, during such period of time preceding the date of such determination as the agency or the FDIC considers to be relevant, management of the insured institution was competent and complied with applicable laws, rules, and supervisory directives and orders. In no event will such determination, for assistance transaction purposes, estop or impair the FDIC or the appropriate Federal banking agency from pursuing any enforcement, civil or criminal remedies or redress against any person.[23]

Criterion 16. The FDIC must determine that the management of the resulting institution did not engage in any insider dealing, speculative practice, or other abusive activity.[24]

Criterion 17. The proposal must provide for adequate managerial resources. Continued service of any directors or senior ranking officers who served in a policy-making role at the insured institution, as may be determined by the FDIC, will be subject to approval by the FDIC.

Criterion 18. Any renegotiation or termination of management contracts is to be completed prior to the granting of assistance. Further, the FDIC may review and object to any or all parts of any compensation arrangements (including termination clauses) covering these individuals during the period assistance is outstanding.[25] In general, the failure to terminate a particular management contract prior to the granting of assistance will not stop the FDIC or the appropriate Federal banking agency from subsequently pursuing any enforcement, civil, or criminal remedies or redress against any person by reason of such contract, unless there is a written statement explicitly waiving such rights that is signed by an authorized official of the FDIC and the appropriate Federal banking agency. Notwithstanding the foregoing, any such waiver must take into consideration the requirements of 12 CFR part 359.

J. Fee Arrangements

Criterion 19. All fee arrangements with attorneys, investment bankers, accountants, consultants, and other advisors and agents incident to an open assistance proposal must be disclosed to the FDIC and will be evaluated in determining the cost of the assistance. Excessive fees must be avoided.

IV. Other Information

Any proposal requesting assistance to prevent the closing of an insured institution should be addressed to the appropriate FDIC regional offices of the Division of Supervision and the Division of Resolutions and should provide the amount, terms, and conditions of the assistance requested, as well as the details of the financial support to be provided. This information must be presented in sufficient detail to permit the FDIC to estimate the maximum cost that will be incurred as a result of the proposal and to determine the extent to which the proposal satisfies the criteria of this policy statement.

The proposal must include, with respect to the management determinations set forth in Criteria 15, 16, 17 and 18 in Part III, information about proposed management of the insured institution or the resulting institution, as applicable. Specifically, the proposal must identify all individuals who would exercise significant influence over, or participate in, major policy-making decisions of the insured institution or the resulting institution, without regard to title, salary or compensation. This list would include, without limitation, all directors, the chief executive officer, chief managing official (in an insured state branch of a foreign bank), chief operating officer, chief financial officer, chief lending officer and chief investment officer.

Copies of the proposal also should be provided to (1) the Director of the Division of Supervision, FDIC, 550 17th Street, N.W., Washington, D.C. 20429, (2) the Director of the Division of Resolutions, FDIC, 550 17th Street, N.W., Washington, D.C. 20429, (3) the insured institution's chartering authority, and, (4) if approvals under the Bank Holding Company Act are required, the appropriate Federal Reserve Bank.

By Order of the Board of Directors. Dated at Washington, D.C., this 17th day of June, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–16904 Filed 7–2–96; 8:45 am]

BILLING CODE 6714–01–P

[22] *See* section 13(c)(3) of the FDI Act, 12 U.S.C. 1823(c)(3).

[23] This criterion is mandatory. *See* section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A). The FDIC interprets section 13(c)(8)(A)(ii) of the FDI Act that the management critrion applies to the management of the resulting institution, including any management retained from the predecessor institution, but *not* including predecessor management that is not retained. This interpretation is based on the relevant statutory provisions and their legislative history and reconciles the management criteria of section 13(c)(8)(A)(ii) with the statutory mandate of minimizing the cost of resolutions and with Congress' desire to encourage early resolutions.

[24] This criterion is mandatory. *See* section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A).

[25] In addition, under section 18(k)(1) of the FDI Act, the FDIC may ''prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.'' *See* 12 U.S.C. 1828(k)(1). The terms ''golden parachute payment'' and ''indemnification payment'' are defined in 12 U.S.C. 1828(k)(4) and (5)(A), respectively. *See also* the FDIC's regulations at 12 CFR part 359, which implement section 18(k)(1).