Section by Section Summary of the Consensus Proposal on Deposit Insurance Reform

Section 1. **Short Title**. "The Federal Deposit Insurance Reform Act of 2003."

Section 2. **Merger of Deposit Insurance Funds**.

Currently, the FDIC separately administers the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF). Pursuant to this bill, the FDIC would merge BIF and SAIF effective on the first day of the first calendar quarter that begins 90 days after enactment and simultaneously establish a new federal deposit insurance fund. The new insurance fund formed from the merger of BIF and SAIF would be known as the Deposit Insurance Fund (DIF).

Section 3. **Assessments; Designated Reserve Ratio**.

The bill retains the current statutory authority for the FDIC to establish a risk-based assessment system and the current factors that FDIC must consider in setting assessments (operating expenses, case resolution expenses and income, the effect of assessments on institution earnings and capital, and other factors as FDIC deems appropriate).

Current law directs the FDIC to set assessments "when necessary, and only to the extent necessary" to maintain, or restore the reserve ratio to, the designated reserve ratio (DRR). In general, current law prohibits the FDIC from assessing institutions more than the amount needed to maintain the reserve ratio at the current DRR or increase it in the event it falls below the DRR. There are exceptions to this prohibition for institutions that exhibit financial, operational, or compliance weaknesses, or that are not well capitalized. The bill would eliminate these limitations and prohibitions on FDIC assessment authority, and would add a Sense of the Congress that the FDIC should assess each insured depository institution a premium for the benefits of federal deposit insurance.

Current law defines the DRR as 1.25 percent of estimated insured deposits, or such higher percentage as set by the FDIC by regulation, after notice and comment, for a particular year if the FDIC finds a "significant risk of substantial future losses to the fund." The bill would define the DRR as 1.25 percent, or as another percentage between 1.15 percent and 1.50 percent that the FDIC determines is justified after taking into account: (1) the risk of loss to the insurance fund, (2) economic conditions (with the goal of allowing the DRR to rise under more favorable economic conditions and fall under less favorable conditions), (3) the desirability of avoiding sharp swings in assessment rates, and (4) other factors that the FDIC deems appropriate. The FDIC would have to act by regulation to adjust the DRR, after providing notice and seeking public comment, and could not adjust the DRR more than once per year.

Section 4. **Raising the Reserve Ratio to the Designated Reserve Ratio**.

When the reserve ratio is less than the DRR, current law requires the FDIC to set assessments as necessary to increase the reserve ratio to the DRR within one year after such rates are set, or in accordance with a recapitalization schedule established by FDIC regulation. Under a recapitalization schedule established under current law, the FDIC would promulgate target reserve ratios at semiannual intervals and must ultimately reach the DRR no later than 15 years after the schedule is implemented. If an insurance fund's reserve ratio remains below the DRR for more than one year, or if an insurance fund has borrowings outstanding (including Treasury and Federal Financing Bank borrowings), current law requires that FDIC charge an assessment rate of at least 23 basis points.

In place of these provisions in current law, the bill would give the FDIC broad discretion to manage reserves within the range for the DRR established under Section 3. The bill would provide that if the reserve ratio is below the lower bound of the range for the DRR, the FDIC shall set assessments that are sufficient to increase the fund to the lower bound of the DRR range not later than: (1) one year after such rates are set, or (2) in accordance with a recapitalization schedule established by regulation that culminates in the fund reaching the lower bound of the DRR range within 6 years. If the FDIC has borrowings outstanding from its lines of credit with the Treasury or Federal Financing Bank, or if a recapitalization schedule is in effect, the minimum premium rate in the risk-based assessment system would have to be no less than 5 basis points, after application of any assessment credits (as provided under Section 5), for each insured depository institution.

Section 5. **Assessment Credits and Cash Rebates**.

The bill would require that FDIC establish, by regulation, criteria and procedures for awarding credits to offset an insured institution's prospective deposit insurance assessments.

The bill would authorize the FDIC to award transition assessment credits in an aggregate amount equal to 9 basis points of the combined BIF and SAIF assessment base on December 31, 2002, an amount equal to approximately $4.4 billion. Institutions eligible for these transition credits are those insured depository institutions that were in existence on December 31, 1996, and that paid a deposit insurance assessment prior to that date, as well as their successor institutions. The amount of credit to be awarded to each eligible institution would be based on the assessment base of the institution on December 31, 1996 compared to the aggregate assessment base for all such institutions on that date, and such other factors as the FDIC may determine to be appropriate.

Under the bill, the FDIC could also award additional assessment credits if the reserve ratio exceeds the greater of the DRR or 1.25 percent. In establishing the amount of additional credits for each individual institution and in the aggregate, the FDIC would have to take into account: (1) the factors for setting assessments and the DRR, (2) the ratio of each institution's (including any predecessor's) assessment base as of December 31, 1996 compared to the aggregate assessment for all such institutions on that date, (3) previous deposit insurance assessments levied with respect to the insured depository institution (including any predecessor) on or after January 1, 1997, (4) that portion of assessments levied that reflects higher levels of risk assumed by such institution, and (5) other factors as the FDIC deems appropriate.

In addition, the FDIC could, in its sole discretion, choose to provide cash rebates in lieu of all or part of any additional assessment credits that would otherwise have been provided, but only if (1) the reserve ratio exceeds the upper bound of the range for the DRR and (2) the reserve ratio would remain above the upper bound after any such cash rebate.

Although transition or additional assessment credits awarded to an eligible insured institution would remain available until exhausted, the FDIC could suspend or limit the use of such credits if the reserve ratio is below the lower bound of the range for the DRR. Furthermore, under the bill, the amount of any credit that the FDIC applied in an assessment period against the assessment on an insured depository institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not adequately capitalized, could not exceed the amount calculated by applying to that depository institution the average assessment rate on all insured depository institutions for such assessment period.

The bill requires FDIC regulations implementing assessment credits to include procedures allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of its credit or cash rebate. The FDIC's determination of the amount of any credit or cash rebate following any such challenge would be final and not subject to judicial review.

Section 6. **Regulations Required**.

Under the bill, the FDIC is required to promulgate, after notice and comment, final regulations to implement Sections 3, 4 and 5 not later than 270 days after the date of enactment. Sections 3, 4 and 5 would become effective when the final regulations are effective.

Section 7. **Assessment Base Study**.

The bill would require the FDIC to study and report to Congress on the insurance fund assessment base within one year of the date of enactment. In conducting the study, the FDIC must consult with the Treasury and Federal Reserve and take into account, among other factors, the risks posed to the deposit insurance fund by the composition of insured depository institution liabilities.

Section 8. **Assessments-Related Record Retention and Statute of Limitations**.

The bill would reduce the length of time that insured depository institutions must maintain all records that the FDIC may require for verifying the accuracy of any assessment from 5 years to 3 years, except in the case of disputed assessments when records would have to be maintained until the dispute has been resolved. Similarly, the statute of limitations on assessment disputes would be reduced from 5 years to 3 years.

Section 9. **Late Payment Fees for Failure to Pay Assessments**.

The bill would increase fees for late assessment payments from $100 per day under current law to 1 percent of the required assessment for each day that the assessment continues to be late.

Section 10. **Employee Benefit Plans**.

The bill would provide that employee benefit plan deposits always receive pass-through coverage from the FDIC. However, an insured institution could accept employee benefit plan deposits only if the institution is well capitalized, or is adequately capitalized and has received a brokered-deposit waiver from the FDIC.

Section 11. **Technical and Conforming Amendments to the Federal Deposit Insurance Act Relating to the Merger of the Deposit Insurance Funds**.

The bill would make various technical amendments to the Federal Deposit Insurance Act to ensure conformity with the provision of the bill merging BIF and SAIF.

Section 12. **Additional Technical Amendments to the Federal Deposit Insurance Act to Eliminate Requirement of Semiannual Assessments**.

The bill would make technical amendments to the Federal Deposit Insurance Act to repeal the requirement that the FDIC set premiums on a semi-annual basis.

Section 13. **Other Technical and Conforming Amendments Relating to the Merger of the Deposit Insurance Funds**.

The bill would make various technical amendments to banking laws other than the Federal Deposit Insurance Act, and to other laws, to ensure conformity with the provision of the bill merging BIF and SAIF.