

112TH CONGRESS
1ST SESSION

H. R. 2056

IN THE SENATE OF THE UNITED STATES

JULY 29, 2011

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To instruct the Inspector General of the Federal Deposit Insurance Corporation to study the impact of insured depository institution failures, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. INSPECTOR GENERAL STUDY.**

2 (a) STUDY.—The Inspector General of the Federal
3 Deposit Insurance Corporation (FDIC) shall conduct a
4 comprehensive study on the impact of the failure of in-
5 sured depository institutions.

6 (b) DEFINITIONS.—For purposes of this Act—

7 (1) the term “insured depository institution”
8 has the meaning given such term in section 3(e) of
9 the Federal Deposit Insurance Act (12 U.S.C.
10 1813(e));

11 (2) the term “private equity company” has the
12 meaning given the terms “hedge fund” and “private
13 equity fund” in section 13(h)(2) of the Bank Hold-
14 ing Company Act of 1956 (12 U.S.C. 1851(h)(2));
15 and

16 (3) the term “paper-loss” means any write
17 down on a performing asset held by an insured de-
18 pository institution that causes such institution to
19 raise more capital in order to cover the write down.

20 (c) MATTERS TO BE STUDIED.—In conducting the
21 study under this section, the Inspector General shall ad-
22 dress the following:

23 (1) LOSS-SHARING AGREEMENTS.—The effect
24 of loss-sharing agreements (LSAs), including—

25 (A) the impact of loss-sharing on the in-
26 sured depository institutions that survive and

1 the borrowers of insured depository institutions
2 that fail, including—

3 (i) the impact on the rate of loan
4 modifications and adjustments;

5 (ii) whether more types of loans (such
6 as commercial (including land development
7 and 1- to 4-family residential and commer-
8 cial construction loans), residential, or
9 small business loans) could be modified
10 with fewer LSAs, or if LSAs could be
11 phased out altogether;

12 (iii) the FDIC's policies and proce-
13 dures for monitoring LSAs, including those
14 designed to ensure institutions are not im-
15 prudently selling assets at a depressed
16 value;

17 (iv) the impact on the availability of
18 credit; and

19 (v) the impact on loans with participa-
20 tion agreements outstanding with other in-
21 sured depository institutions;

22 (B) the FDIC's policies and procedures for
23 terminating LSAs and mitigating the risk of ac-
24 quiring institutions having substantial assets

1 remaining in their portfolio when the LSAs are
2 due to expire;

3 (C) the extent to which LSAs provide in-
4 centives for loan modifications and other means
5 of increasing the probability of commercial as-
6 sets being considered “performing”;

7 (D) the nature and extent of differences
8 for modifying residential assets and working
9 out commercial real estate under LSAs; and

10 (E) methods of ensuring the orderly end of
11 expiring LSAs to prevent any adverse impact
12 on borrowing, real estate industry and the De-
13 positors Insurance Fund.

14 (2) PAPER LOSSES.—The significance of paper
15 losses, including—

16 (A) the number of insured depository insti-
17 tutions that have been placed into receivership
18 or conservatorship due to paper losses;

19 (B) the impact on paper losses of raising
20 more capital;

21 (C) the effect of changes in the application
22 of the fair value of real estate accounting rules
23 and other accounting standards;

1 (D) whether field examiners are using
2 proper appraisal procedures with respect to
3 paper losses; and

4 (E) methods of stopping the vicious down-
5 ward spiral of losses and write downs.

6 (3) APPRAISALS.—

7 (A) The number of insured depository in-
8 stitutions placed into receivership or con-
9 servatorship due to asset write-downs and the
10 policies and procedures for evaluating the ade-
11 quacy of an insured depository institution's al-
12 lowance for loan and lease losses.

13 (B) The policies and procedures examiners
14 use for evaluating the appraised values of prop-
15 erty securing real estate loans and the extent to
16 which those policies and procedures are fol-
17 lowed.

18 (C) FDIC field examiner implementation
19 of guidance issued December 2, 2010, titled
20 "Agencies Issue Final Appraisal and Evaluation
21 Guidelines".

22 (4) CAPITAL.—

23 (A) The factors that examiners use to as-
24 sess the adequacy of capital at insured deposi-
25 tory institutions, including the extent to which

1 the quality and risk profile of the insured insti-
2 tution's loan portfolio is considered in the ex-
3 aminers' assessment.

4 (B) The number of applications received by
5 the FDIC from private capital investors to ac-
6 quire insured depository institutions in receiver-
7 ship, the factors used by the FDIC in evalu-
8 ating the applications, and the number of appli-
9 cations that have been approved or not ap-
10 proved, including the reasons pertaining there-
11 to.

12 (C) The policies and procedures associated
13 with the evaluation of potential private invest-
14 ments in insured depository institutions and the
15 extent to which those policies and procedures
16 are followed.

17 (5) WORKOUTS.—The success of FDIC field ex-
18 aminers in implementing FDIC guidelines titled
19 “Policy Statement on Prudent Commercial Real Es-
20 tate Loan Workouts” (October 31, 2009) regarding
21 workouts of commercial real estate, including—

22 (A) whether field examiners are using the
23 correct appraisals; and

24 (B) whether there is any difference in im-
25 plementation between residential workouts and

1 commercial (including land development and 1-
2 to 4-family residential and commercial construc-
3 tion loans) workouts.

4 (6) ORDERS.—The application and impact of
5 consent orders and cease and desist orders, includ-
6 ing—

7 (A) whether such orders have been applied
8 uniformly and fairly across all insured depository
9 institutions;

10 (B) the reasons for failing to apply such
11 orders uniformly and fairly when such failure
12 occurs;

13 (C) the impact of such orders on the abil-
14 ity of insured depository institutions to raise
15 capital;

16 (D) the impact of such orders on the abil-
17 ity of insured depository institutions to extend
18 or modify credit to existing and new borrowers;
19 and

20 (E) whether individual insured depository
21 institutions have improved enough to have such
22 orders removed.

23 (7) FDIC POLICY.—The application and impact
24 of FDIC policies, including—

1 (A) the impact of FDIC policies on the in-
2 vestment in insured depository institutions, es-
3 pecially in States where more than 10 such in-
4 stitutions have failed since 2008;

5 (B) whether the FDIC fairly and consist-
6 ently applies capital standards when an insured
7 depository institution is successful in raising
8 private capital; and

9 (C) whether the FDIC steers potential in-
10 vestors away from insured depository institu-
11 tions that may be in danger of being placed in
12 receivership or conservatorship.

13 (8) PRIVATE EQUITY COMPANIES.—The FDIC’s
14 handling of potential investment from private equity
15 companies in insured depository institutions, includ-
16 ing—

17 (A) the number of insured depository insti-
18 tutions that have been approved to receive pri-
19 vate equity investment by the FDIC;

20 (B) the number of insured depository insti-
21 tutions that have been rejected from receiving
22 private equity investment by the FDIC; and

23 (C) the reasons for rejection of private eq-
24 uity investment when such rejection occurs.

1 (d) REPORT.—Not later than 1 year after the date
2 of the enactment of this Act, the Inspector General shall
3 submit to Congress a report—

4 (1) on the results of the study conducted pursu-
5 ant to this section; and

6 (2) any recommendations based on such study.

7 (e) COORDINATION BETWEEN FDIC IG, TREASURY
8 IG, AND FEDERAL RESERVE IG.—In carrying out this
9 section, the Inspector General of the FDIC shall consult
10 with the Inspectors General of the Treasury and of the
11 Federal Reserve System, and such Inspectors General
12 shall provide any documents or other material requested
13 by the Inspector General of the FDIC in order to carry
14 out this section.

15 **SEC. 2. FUNDING.**

16 The FDIC shall make available from the portion of
17 the FDIC budget allocated to management expenses, sums
18 allowing the FDIC Inspector General to complete this
19 study.

20 **SEC. 3. GAO STUDY.**

21 (a) STUDY.—The Comptroller General of the United
22 States shall carry out a study on the following:

23 (1) The causes of high levels of bank failures in
24 States with 10 or more failures since 2008.

1 (2) The procyclical impact of fair value ac-
2 counting standards.

3 (3) The causes and potential solutions for the
4 “vicious cycle” of loan write downs, raising capital,
5 and failures.

6 (4) An analysis of the community impact of
7 bank failures.

8 (5) The feasibility and overall impact of loss
9 share agreements.

10 (b) REPORT.—Not later than the end of the 1-year
11 period beginning on the date of the enactment of this Act,
12 the Comptroller General shall issue a report to the Con-
13 gress on the study carried out pursuant to subsection (a).

 Passed the House of Representatives July 28, 2011.

Attest:

KAREN L. HAAS,

Clerk.