Federal savings bank chartered pursuant to section 5(o) of the Home Owners' Loan Act, which becomes an insured depository institution shall be a Savings Association Insurance Fund member.

(3) *Transition provision.*

(A) *Bank insurance fund.* Any depository institution the deposits of which were insured by the [FDIC] on the day before [August 9, 1989], including—

(i) any Federal savings bank chartered pursuant to section 5(o) of the Home Owners' Loan Act; and

(ii) any cooperative bank,

shall be a Bank Insurance Fund member as of [August 9, 1989].

(B) *Savings association insurance fund.* Any savings association which is an insured depository institution by operation of section 4(a)(2) shall be a Savings Association Insurance Fund member as of [August 9, 1989].

12 U.S.C. 1817(*l*)(1)–(3).

The FDI Act does not explicitly state that a depository institution cannot be a member of both SAIF and BIF at the same time, but the FDI Act implies that this is so. By designating any newly insured depository institution that does not become a SAIF member to be a BIF member, the FDI Act indicates that membership in one fund necessarily excludes membership in the other fund. The designation of depository institutions insured prior to the enactment of FIRREA as either SAIF members or BIF members, lends further support to the view that a depository institution cannot belong to both funds at the same time. Since the SAIF and the BIF were first established by FIRREA the FDIC has treated an insured depository institution as either a SAIF member or a BIF member but not both.

2. A Bank Retains its Status as a BIF Member When it Acquires Deposits from A Savings Association Pursuant to Oakar. Nothing in 5(d)(3) of the FDI Act indicates that an institution forfeits its fund-designation by virtue of participating in an Oakar transaction. Rather, section 5(d)(3) provides that in the case of any ''acquiring, assuming, or resulting depository institution which is a Bank Insurance Fund member,'' that portion of the deposits of such member attributable to the former SAIF member ''shall be treated as'' deposits which are SAIF-insured for purposes of calculating the assessment to be paid to SAIF, and for purposes of allocating costs in the event of default.[2] The fact that section 5(d)(3) refers to the acquiring, assuming, or resulting depository institution as a BIF member, and the use of the phrase ''treated as'' SAIF deposits—as opposed to ''are'' SAIF deposits—indicates that a BIF member acquiring deposits from a SAIF member pursuant to section 5(d)(3) retains its status as a BIF member.

Since FICO's assessment authority extends only to ''a savings association which is a [SAIF] member,'' and (1) a depository institution cannot be a member of BIF and SAIF at the same time, and (2) a BIF member that acquires deposits from a SAIF member pursuant to section 5(d)(3) of the FDI Act retains its status as a BIF member, it is our opinion that SAIF assessments paid by BIF-member Oakar banks should remain in the SAIF and are not subject to draws by FICO. Moreover, neither REFCORP nor FRF are permitted to assess BIF-member Oakar banks since their assessment authority extends only to ''Savings Association Insurance Fund members.'' [3]

C. BIF-Member Oakar Banks Are Not Subject to FICO Draws

Nothing in the legislative history of section 21 of the FHLB Act indicates that Congress intended a result other than that required by the plain language of the statute. There is no specific evidence to suggest that Congress intended the phrase ''a savings association which is a [SAIF] member'', as used in that Act, to have any meaning other than the normal meaning of the words. The best, if not the only, manifestation of congressional intent in this instance is the language of the statute; we cannot base our interpretation on a supposed intent that is not spelled out in the statutory text or the legislative history.

The conclusion that an Oakar bank is not subject to FICO draws because it is neither a savings association nor a SAIF member finds ample support in the relevant statutory text. A contrary interpretation would disregard the explicit statutory language which grants assessment powers to FICO only over savings associations that are SAIF members.[4] Moreover, the conclusion that an Oakar bank is not subject to REFCORP or FRF draws because an Oakar bank is not a SAIF member finds ample support in the relevant statutory text.

It is consistent with the purposes of the legislation to retain these SAIF assessments in SAIF. Under section 5(d)(3), the SAIF, rather than the Resolution Trust Corporation (RTC), is required to bear the cost of any loss attributable to the SAIF-insured deposits held by an Oakar bank. Thus, SAIF was and is responsible for losses attributable to resolving the SAIF-insured part of BIF-member Oakar banks. In the absence of the 1992 letter, SAIF would have had no funding to cover insurance losses for which it was and is responsible by statute. The FDIC and Federal Government agencies have relied on the views expressed in the 1992 letter to allocate the cost of resolving failed institutions between the SAIF and the RTC. The FDIC has relied on the letter to allocate assessments between the SAIF and the FRF.

III. A Sasser Bank is Not a ''Savings Association'' and Thus is not Subject to FICO Draws

Likewise, it is our opinion that SAIF assessments paid by any former savings association that (i) has converted from a savings association charter to a bank charter, and (ii) remains a SAIF member pursuant to section 5(d)(2)(G) of the FDI Act, are not subject to FICO draws. As explained above with regard to Oakar banks, FICO's assessment authority extends only to savings associations which are SAIF members. Sasser institutions are not savings associations. Rather, the FDI Act expressly provides that Sasser institutions are banks. More specifically, section 3(a)(1) of the FDI Act provides:

(a) Definition of Bank and Related Terms.

(1) Bank.—The term ''bank''—

(A) means any national bank, State bank, and District bank, and any Federal branch and insured branch;

(B) includes any former savings association that—

(i) has converted from a savings association charter; and

(ii) is a Savings Association Insurance Fund member.

12 U.S.C. 1813(a)(1).

Although a Sasser bank is a SAIF member, it is classified as a ''bank'' by the FDI Act. As a result, such an institution is not subject to draws by FICO. In contrast to BIF-member Oakar banks, however, Sasser banks are

[2] The deposits that are attributable to the former SAIF member are calculated under a formula prescribed at FDI Act section 5(d)(3)(C). The dollar amount resulting from the statutorily prescribed formula is the ''adjusted attributable deposit amount'' or ''AADA''.

[3] With regard to REFCORP's assessment authority, see 12 U.S.C. 1441b(e)(7), 1441b(k)(8), 1817(*l*). With regard to FRF's assessment authority, see 12 U.S.C. 1821a(b)(4), 1817(*l*).

[4] At the urging of the Federal Housing Finance Board (the ''FHF-Board''), the Office of Thrift Supervision has decided not to require Oakar banks and ''Sasser'' banks (SAIF-member savings associations that convert to bank charters but remain SAIF members) to maintain Federal Home Loan Bank membership. 58 FR 14510, 14512 (March 18, 1993). The FHF-Board concluded that it had no authority to prohibit a savings association that converts to a commercial bank or state savings bank charter from withdrawing from membership. The FHLB Act prohibits Federal savings associations from withdrawing from Federal Home Loan Bank membership, but does not apply to institutions with other types of charters.