



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

**S. 1405, THE FINANCIAL REGULATORY RELIEF AND
ECONOMIC EFFICIENCY ACT OF 1997**
As introduced¹

SUMMARY AND COMMENTS
of the
OFFICE OF THE COMPTROLLER OF THE CURRENCY

**TITLE I--IMPROVING MONETARY POLICY AND FINANCIAL INSTITUTION
MANAGEMENT PRACTICES**

Sec. 101. Payment of Interest on Reserves at Federal Reserve Banks

Summary: In general, section 19(b) of the Federal Reserve Act (FRA) requires depository institutions to maintain reserves against their transaction accounts and nonpersonal time deposits (“sterile reserves”). This section amends section 19(b) to permit the Federal Reserve Board (Fed) to pay interest on sterile reserves on at least a quarterly basis at a rate not to exceed the general level of short term interest rates. The Fed would have authority to issue regulations regarding the payment, distribution, and crediting of interest pursuant to this section. In addition, this section permits depository institutions to place their reserves in either Federal Reserve Banks or banks that maintain reserves in a Federal Reserve Bank.

OCC Comments: The OCC defers to Treasury on this provision.

**Sec. 102. Amendments Relating to Savings and Demand Deposit Accounts at
Depository Institutions**

Summary: Section 1832 of Title 12 prohibits depository institutions from offering interest-bearing NOW accounts to businesses. Section 19(i) of the FRA (12 U.S.C. § 371a), section 5(b)(1)(B) of the Home Owners’ Loan Act (HOLA) (12 U.S.C. § 1464(b)(1)(B)) and section

¹An asterisk indicates that a non-substantive technical problem exists with the amendment as drafted. (We would be happy to supply technical corrections to Congressional staff.)

18 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. § 1828) prohibit member banks, thrifts, and nonmember banks, respectively, from paying interest on demand deposits. Section 102 of this legislation removes these prohibitions.

OCC Comments: In a joint report submitted to the Congress in September, 1996, OCC, along with the other Federal banking agencies, recommended removal of the prohibition against paying interest on demand deposits. See Joint Report: Streamlining of Regulatory Requirements (September 23, 1996). At that time, the OCC and the other agencies said that the prohibition “no longer serves a public purpose.” The OCC continues to believe that the prohibition on paying interest on business checking accounts is outdated. In addition, we do not believe that the repeal of this prohibition would result in any supervisory concerns. However, we recommend linking removal of the prohibition to an appropriate transition period to allow financial institutions to make necessary changes in their funding sources and pricing.

Sec. 103 Repeal of Liquidity Provision

Summary: This section repeals section 6 of the HOLA (12 U.S.C. § 1465) and makes “conforming” changes to other provisions of HOLA. Section 6 requires savings associations to maintain between 4 and 10% of their deposits in certain liquid assets in accordance with Office of Thrift Supervision (OTS) regulations. The Director of OTS is authorized to levy deficiency assessments for failure to satisfy the liquidity requirements and, under certain conditions, to reduce or temporarily suspend the requirements.

OCC Comments: The OCC takes no position on the repeal of section 6 of HOLA.*

Sec. 104. Repeal of Dividend Notice Requirement

Summary: Under current law, different statutory requirements on dividends apply to savings associations and national banks. Section 10(f) of HOLA (12 U.S.C. § 1467a(f)) requires savings association subsidiaries of savings and loan holding companies to give 30 days advance notice to the OTS before declaring any dividends. Under section 5199(b) of the Revised Statutes (12 U.S.C. § 60(b)), national banks must obtain prior OCC approval if the dividends declared exceed a certain amount based on net income.

Section 104 of this legislation repeals the notice requirement in section 10(f) of HOLA, but leaves in place the dividend approval requirement for national banks.

OCC Comments: The OCC would support modification of the dividend requirements that apply to savings associations and to national banks so that both are subject to comparable standards. As drafted, the amendment deals only with savings association dividend approval requirements. The different treatment of thrifts and national banks is unwarranted since both

are subject to the same system of prompt corrective action based on capital levels under section 38 of the FDI Act.*

Sec. 105. Thrift Service Companies

Summary: Subsection (a) of this section amends section 5(c)(4)(B) of HOLA (12 U.S.C. § 1464(c)(4)(B)) concerning the activities of service corporations of Federal savings associations. Under current law, a Federal savings association may invest in the stock of any corporation organized under the laws of the State in which the association has its home office if the stock of the corporation is owned only by savings associations chartered by that State and Federal savings associations having their home office in that State. The amendment repeals the geographic and ownership limitations but requires that the corporation must be engaged in activities “reasonably related” to the activities of financial institutions as approved by the Director of OTS. This activity-based restriction mirrors current OTS regulations providing that Federal savings associations may apply to engage in activities through a service corporation, other than those that are preapproved, that are “reasonably related” to the activities of financial institutions subject to the geographic and ownership limitations in current law. 12 C.F.R. § 559.3(e)(2). This subsection also applies section 5(c)(4)(B) requirements to both corporations and limited liability companies.

Subsection (b) of this section amends section 5(d) of HOLA (12 U.S.C. §1464(d)) to provide the OTS with examination and regulatory authority over service providers performing services under contract for savings associations, their subsidiaries and their affiliates. The other Federal banking agencies have the same authority under the Bank Service Company Act (BSCA) (12 U.S.C. § 1861 et. seq.) over service providers that provide services under contract to insured banks, as well as authority over service companies in which an insured bank may invest. This provision seems intended to provide the OTS with statutory parity with respect to service providers only.

In addition, a confusing amendment in subsection (c) may be interpreted to limit the OTS’s new authority to savings and loan holding companies and any subsidiaries thereof, except a bank or a subsidiary of a bank. Recently, the House Banking Committee ordered reported H.R. 3116, the Examination Parity and Year 2000 Readiness for Financial Institutions Act, that would amend HOLA to give the OTS statutory parity over thrift service providers and service corporations to that provided to the other Federal banking agencies under the BSCA.

OCC Comments: The OCC takes no position on this amendment. We note that other legislation proposed by the OTS and the National Credit Union Administration (NCUA) would provide express enforcement authority over service corporations and other service providers, comparable to that possessed by the Federal banking agencies.*

Sec. 106 Elimination of Thrift Multistate Multiple Holding Company Restrictions

Summary: This section amends section 10(e) of HOLA to delete the prohibition on a savings and loan holding company controlling savings associations in more than one State unless permitted under one of three exceptions. As a result, the Director of OTS could approve interstate acquisitions of savings associations in the same manner as intrastate acquisitions.

OCC Comments: The effect of the proposed amendment would be to allow thrift holding companies broader flexibility for interstate acquisitions of thrifts, with fewer regulatory standards, then apply to bank holding company interstate acquisitions of banks under the Riegle-Neal Interstate Banking and Branching Act of 1994. Under the amendment that is made by this section, out-of-State savings and loan holding companies could acquire savings associations in a host State and maintain their separate charters without complying with the same requirements that apply to bank holding companies. The OCC recommends that the acquisition of banks and savings associations by out-of-State holding companies be treated consistently. For example, under the Riegle-Neal Act, out-of-State bank holding companies acquiring banks in a host State must comply with State age and consumer protection laws. See 12 U.S.C. § 1842(d).

The OCC also suggests including a provision that grandfathers those savings and loan holding companies that have contractual rights to acquire savings associations in a host State as negotiated under prior supervisory transactions.

Sec. 107 Noncontrolling Investments by Savings and Loan Holding Companies

Summary: This section amends section 10(e)(1)(A)(iii) of HOLA (12 U.S.C. § 1467a(e)(1)(A)(iii)) to give the Director of OTS the discretion to permit a savings and loan holding company to acquire or retain more than 5% of the voting shares of a savings association or another savings and loan holding company that is not a subsidiary. Current law prohibits the acquisition unless the transaction is subject to an exception, e.g., the shares are acquired in a fiduciary capacity or acquired pursuant to a debt previously contracted. While the Director has the discretion to permit a savings and loan holding company to acquire “control” of a savings association or another savings and loan holding company (control is generally triggered if 25% of the voting stock is acquired), the Director does not have the discretion under current law to permit noncontrolling ownership of stock of over 5%.

OCC Comments: The OCC takes no position on this provision.

Sec. 108 Repeal of Deposit Broker Notification and Recordkeeping Requirement

Summary: This section repeals section 29A of the FDI Act (12 U.S.C. § 1831f-1), which requires a deposit broker to file a written notice with the Federal Deposit Insurance Corporation (FDIC) before soliciting or placing any deposit with an insured depository institution. The FDIC has no enforcement power over deposit brokers, who are part of a generally unregulated industry.

OCC Comments: The OCC takes no position on this provision.

Sec. 109 Uniform Regulation of Extensions of Credit to Executive Officers

Summary: Section 22(g)(4) of the FRA Act (12 U.S.C. § 375a(4)) provides that the appropriate Federal banking agency prescribe regulations governing the amount of a loan that an insured depository institution may make to its executive officers if the loan is not specifically authorized by statute. This section provides that the Fed, rather than the appropriate Federal banking agency, promulgate these regulations. (The Fed has the authority under current law to promulgate regulations with respect to other provisions in § 375a.) The OCC recently amended its insider lending regulations to require national banks and their insiders to comply with the Fed's regulations. See 12 C.F.R. Part 31. The FDIC has similar regulations to the Fed's, and the OTS already follows the Fed's regulations.

OCC Comments: We request that this provision be amended so that the appropriate Federal banking agencies maintain the authority to impose limits that are more stringent than Fed rules when warranted, but not more liberal. This would permit all of the agencies to address situations in this limited area that may warrant stricter scrutiny for safety and soundness reasons, but would not permit us to loosen the Fed's rules.

Sec. 110 Expedited Procedures for Certain Reorganizations

Summary: This section amends the National Bank Consolidation and Merger Act (12 U.S.C. § 215 et seq.) to expedite the procedure by which a national bank reorganizes to become a subsidiary of a holding company. Pursuant to regulations issued by the OCC, national banks would be permitted, with the approval of two-thirds of the shareholders of the bank and the approval of the OCC, to reorganize into a subsidiary of a bank holding company directly. Under this section, the shareholder approval requirements and dissenters' rights that apply under current law to these transaction would not change, and the requirements of the BHCA would still apply.

OCC Comments: The OCC supports this provision. Under current law, a national bank that wishes to reorganize into a subsidiary of a bank holding company must go through a

cumbersome multi-step process because there are no provisions in current law that permit a national bank reorganization as a subsidiary of a bank holding company in one direct transaction. Under current law, the bank first forms a “phantom bank” that is owned by a bank holding company. The bank then merges into this phantom bank to become the subsidiary of the bank holding company. Upon the consummation of this transaction, shares of the existing bank are converted into shares of the holding company or other compensation is provided to the shareholders, and the holding company owns all of the shares of the resulting bank. The resulting bank typically is indistinguishable in name, location, and balance sheet from the preexisting bank, with the only difference being the ownership of its stock. However, because the “phantom bank” must be chartered as any other bank with its attendant procedures and costs, this procedure can be expensive and time-consuming, and imposes needless burdens.

We also note that this amendment does not affect the application of the Community Reinvestment Act (CRA), nor that of the Bank Holding Company Act (BHC Act), to these transactions.

Sec. 111 National Bank Directors

Summary: This section makes two changes to national banking law concerning national bank directors. First, this section permits national banks to elect their directors for terms of up to three years in length, and permits these directors to be elected on a staggered basis in accordance with regulations prescribed by the OCC, *e.g.*, so that only one third of the board of directors is elected each year. Currently, section 5145 of the Revised Statutes (12 U.S.C. § 71) provides that directors of a national bank may hold office for only one year and must be elected on an annual basis.

Second, the section amends section 31 of the Banking Act of 1933 (12 U.S.C. § 71a), which requires the board of directors of every national bank and State member bank to consist of at least 5 and no more than 25 members, to permit the OCC, by order or regulation, to allow a national bank to have more than 25 directors.

OCC Comments: The OCC supports both of these changes. The first amendment would provide national banks with flexibility in their corporate election process, and would ensure that the board of directors of banks that choose a staggered election process will at all times include experienced members, enhancing the bank’s safety and soundness. This change is consistent with § 8.06 of the Model Business Corporation Act (1984, as amended in 1994) and with many State corporate codes, including Delaware’s General Corporation Law, Del. Code Ann. Tit. 8, § 141 (1991, as amended in 1994). The second amendment would give the OCC the discretion to waive the 25-director maximum limitation for certain national banks if appropriate to accommodate special circumstances, such as certain mergers or consolidations or to permit greater geographic representation on the board of directors of interstate banks.

Sec. 112 Amendment to Bank Consolidation and Merger Act

Summary: This section adds a new section to the National Bank Consolidation and Merger Act (12 U.S.C. § 215 *et seq.*) to permit a national bank to merge with subsidiaries or other nonbank affiliates upon the approval of the OCC and pursuant to regulations issued by the OCC. The section specifies that it does not in any manner increase the powers of a national bank nor affect the applicability of section 18(c)(1) of the FDI Act (the Bank Merger Act), which requires the approval of the FDIC for the merger, consolidation, or assumption of liabilities of noninsured banks or savings institutions.

OCC Comments: The OCC supports this provision. The National Bank Consolidation and Merger Act authorizes and establishes the procedures for the merger or consolidation of national banks with other national banks or with State banks. However, there is no express authority under Federal law for national banks to merge with nonbank affiliates. As a result, in order to accomplish a corporate reorganization involving a combination of an uninsured subsidiary or affiliate with the bank, the bank must use a more burdensome form of corporate transaction -- a purchase of assets and assumption of liabilities of the subsidiary or affiliate. While the substance of the transaction is the same as a merger, the purchase and assumption transaction can require extensive documentation of transfers of individual assets and can entail issues of corporate succession that do not arise in a merger. This amendment enhances the ability of banks to organize activities and assets within their banking organizations in the way that makes the best business sense and does not impose unnecessary burdens. The OCC also does not object to providing Federal thrifts with authority similar to that provided to national banks by this amendment.*

Sec. 113. Loans On Or Purchases by Bank of Its Own Stock; Affiliations

Summary: Section 5201 of the Revised Statutes (12 U.S.C. § 83) prohibits a national bank from making any loan or discount on, or owning or holding, its own stock unless the stock is acquired to prevent loss on a debt previously contracted (DPC) and sold or disposed of within six months. This section replaces § 5201 with a provision that prohibits a national bank from making any loan or discount on the security of the shares of its own capital stock if it acquires the stock DPC “before the date of the loan or discount transaction.” This section also adds this prohibition to section 18 of the FDI Act so that it applies to all insured depository institutions, i.e. insured banks and savings associations.

Finally, subsection (c) of this section amends section 18(s)(1) of the FDI Act (12 U.S.C. § 1828(s)(1)), as added by the Economic Growth and Regulatory Paperwork Reduction Act of 1996, P.L. 104-208, which prohibits a bank or savings association from being an affiliate of, being sponsored by, or accepting financial support, directly or indirectly, from any Government-sponsored enterprise (GSE), except for routine business financings. For purposes

of this prohibition, a GSE includes Fannie Mae, Freddie Mac, Farmer Mac, Sallie Mae, the Federal Home Loan Bank System, the Farm Credit Banks, the Banks for Cooperatives, the College Construction Loan Insurance Association, and any of their affiliated or member institutions. Subsection (c) removes the prohibition on affiliations.

OCC Comments: The OCC recommends simply deleting the prohibition in § 83 on a national bank owning or holding its own stock without the addition of the new language “before the date of the loan or discount transaction.” This new language is confusing and its meaning is unclear. While the OCC has interpreted § 83 in light of other provisions in national banking law and has concluded that a national bank may acquire its own stock for certain legitimate corporate purposes but not for speculation (12 C.F.R. 7.2020), deleting the prohibition in § 83 will eliminate any confusion about the authority of a national bank to purchase its own shares for legitimate corporate purposes, e.g., to reduce its capital when market conditions or internal operations indicate that doing so is in the best interest of the bank and is consistent with safety and soundness. Other examples of legitimate corporate purposes for which a bank may wish to acquire or hold its own stock include offering stock in connection with an officer or employee stock option or bonus plan, selling stock to a potential director in circumstances where a director is required to own qualifying shares, or reorganizing as a Subchapter S corporation, which may involve decreasing the number of shareholders of the bank.

In addition, to be consistent with the OCC’s interpretations of § 83 and for safety and soundness reasons, we suggest that the legislative history accompanying this provision make clear that a bank’s acquisition of its own stock may not be for speculative purposes.

The OCC would support a technical correction to P.L. 104-208 that would allow depository institutions to affiliate with depository institution members of GSEs. As currently drafted, subsection (c) of this provision, which removes the prohibition against depository institution affiliations with GSEs, is broader than necessary to accomplish this technical change.*

Sec. 114. **Depository Institution Management Interlocks**

Summary: Section 205(8) of the Depository Institution Management Interlocks Act of 1978 (DIMIA) (12 U.S.C. § 3204(8)) permits a diversified savings and loan holding company to have director interlocks with a non-affiliated depository institution or holding company, if the OTS and other Federal banking agency are notified 60 days before the dual service is to begin, and neither regulator disapproves this dual service within this time period. Section 114 amends this section so that this exception applies not only to directors, but to the dual service of “management officials” (defined, in general, as an employee or officer with management functions, a trustee, or a director).

OCC Comments: The OCC takes no position on this provision.*

Sec. 115 Purchased Mortgage Servicing Rights

Summary: This section amends section 475(a) of the FDI Act (12 U.S.C. § 1828 note), which provides that purchased mortgage servicing rights (PMSR) may be included in calculating risk-based capital if, among other things, the servicing rights are valued at not more than 90 percent of their fair market value (10 percent haircut). Specifically, this section: (1) repeals the 10 percent haircut in current law and provide that PMSRs may be valued at 100 percent of their fair market value, (2) allows originated mortgage servicing rights (OMSR), as well as PMSRs, to be included in this calculation, and (3) makes a technical change in the law to conform with GAAP by replacing references to “mortgage servicing rights” with “mortgage servicing assets.”

OCC Comments: We would support the Federal banking agencies having the authority to modify by regulation the current 10% haircut, provided the agencies make a determination that such modification will not have an adverse effect on the deposit insurance funds and the safety or soundness of the depository institutions involved.

Sec. 116 Cross-Marketing Restriction; Limited Purpose Bank Relief

Summary: This section amends section 4(f) of the BHC Act (12 U.S.C. § 1843(f)). Section 4(f) of the BHC Act grandfathers companies that control so-called nonbank banks (i.e., banks that were not defined as banks under the BHC Act until that definition was amended by the Competitive Equality Banking Act of 1987 (CEBA)). Under section 4(f)(3), certain restrictions are imposed on grandfathered nonbank banks’ activities. Crossmarketing of products or services that a bank holding company could not provide under section 4(c)(8) of the BHC Act is prohibited. Overdrafts (including intra day overdrafts) on behalf of an affiliate are also prohibited except for those that are defined as “permissible overdrafts.” Violations of the restrictions may result in mandated divestiture. CEBA also permitted bank holding companies to retain ownership of nonbank banks provided that the nonbank bank did not engage in any activity that would have caused the institution to be a bank before the enactment of CEBA or increase the number of locations from which the institution transacts business. (The 7% asset growth restriction was repealed by the Economic Growth and Regulatory Paperwork Reduction Act of 1996.)

This section eliminates the crossmarketing restrictions and expands “permissible overdraft” to allow overdrafts incurred by an affiliate engaged in activities that are incidental to banking and that do not violate section 23A or 23B of the FRA.

OCC Comments: The OCC takes no position on this provision.

Sec. 117 Divestiture Requirement

Summary: This section amends section 4(f)(4) of the BHC Act (12 U.S.C. § 1843(f)(4)) requiring companies controlling a grandfathered non-bank bank to divest the nonbank bank if the company: (i) acquires control of an additional bank or an insured institution, (ii) acquires more than 5% of the shares of an additional bank or a savings association, or (iii) fails to comply with the restrictions contained in paragraph (3) of section 4(f). (See section 116, above, which amends section 4(f).) Under current law, it must divest control of the nonbank bank within 180 days or conform to the limitations in the BHC Act within that period. Section 117 provides that the company does not have to divest the nonbank bank if it corrects the condition or ceases the activity that violated the exemptions or submits a plan to the Fed to correct the condition or cease the activity within 1 year, and the company implements procedures that are reasonably adapted to avoid the reoccurrence of the offending condition or activity.

OCC Comments: The OCC takes no position on this provision.*

Sec. 118 Daylight Overdrafts Incurred by Federal Home Loan Banks

Summary: Federal Home Loan Banks utilize the Fed's payment system in providing banking and correspondent services to their member institutions. In a May 9, 1994 interpretation of its Payment System Risk Policy, the Fed imposed fees, and raised the possibility of imposing penalties, on daylight overdrafts incurred by Federal Home Loan Banks and other government sponsored enterprises in the normal course of their daily business. The Fed has explained that the extension of intraday credit to organizations not subject to deposit reserves, such as Federal Home Loan Banks, is not allowable under the FRA and the Monetary Control Act.

This section adds a new section to the FRA to require the Fed's payment system risk or intraday credit regulations to either exempt Federal Home Loan Banks or include net debit caps appropriate to the credit quality of each Federal Home Loan Bank and impose daylight overdraft fees calculated in the same manner as fees for other users.

OCC Comments: The OCC takes no position on this proposal, and defers to the Treasury Department, which in the past has proposed comprehensive legislation relating to the Federal Home Loan Bank System.

Sec. 119 Federal Home Loan Bank Governance Amendments

Summary: This section makes a number of amendments to the Federal Home Loan Bank Act (FHLB Act) relating to the governance of Federal Home Loan Banks. Specifically, this section removes the requirement that a Federal Home Loan Bank obtain approval from the

Federal Housing Finance Board when: (1) setting director compensation; (2) buying, building, or leasing for more than 10 years a building to house the Bank; (3) prescribing, repealing or amending rules and regulations relating to the administration of bank affairs; (4) establishing budget or business plans; (5) prescribing applications for, authorizing, or setting conditions for Federal Home Loan Bank advances; (6) selling Federal Home Loan Bank advances to other Federal Home Loan Banks; and (7) paying dividends.

OCC Comments: The OCC takes no position on this proposal, and defers to the Treasury Department, which has proposed comprehensive legislation relating to the Federal Home Loan Bank System.

Sec. 120 Collateralization of advances to members

Summary: This section amends section 10(a)(1) of the FHLB Act (12 U.S.C. § 1430(a)(1)) to expand the categories of acceptable collateral upon which a Federal Home Loan Bank can make advances. The expanded categories include second mortgages on improved residential property insured or guaranteed by the U.S. government or any agency thereof. [NOTE: This section also amends paragraph (4) of 10(a). However, it appears that this is a drafting error and that paragraph (5) instead should be amended. If this technical correction is made, this section would repeal the provision that permits a Federal Home Loan Bank and the Federal Housing Finance Board to approve the renewal of advances existing on August 9, 1989 without fully secured collateral.)

OCC Comments: The OCC takes no position on this proposal, and defers to the Treasury Department, which in the past has proposed comprehensive legislation relating to the Federal Home Loan Bank System.*

TITLE II--STREAMLINING ACTIVITIES OF INSTITUTIONS

Sec. 201 Updating the Authority for Thrift Community Development Investments

Summary: This section replaces outdated language in section 5(c)(3)(A) of HOLA (12 U.S.C. § 1464(c)(3)(A)) that authorizes a Federal savings association to invest in real estate (or loans secured by real estate) located in areas receiving "concentrated development assistance" under the Community Development Block Grant program, with the language that parallels the language that currently authorizes community development investments by national banks and State member banks. See 12 U.S.C. §§ 24(Eleventh) and 338a.

OCC Comments: The OCC takes no position on this provision. This authority would parallel the community investment authority of national banks pursuant to paragraph (11) of section 24, United States Code.

Sec. 202 Acceptance of Brokered Deposits and Deposit Solicitations

Summary: This section amends section 29 of the FDI Act (12 U.S.C. § 1831f) to extend the prohibition on soliciting deposits by offering significantly higher than normal rates of interest on insured deposits -- a prohibition currently applicable only to undercapitalized institutions -- to (1) insured depository institutions that are adequately capitalized (but not well capitalized), and (2) insured depository institutions for which the FDIC has been appointed conservator. This section also eliminates a provision that prohibits those same institutions from paying a higher than normal rate of interest on funds received from a deposit broker (to the extent that the FDIC allows them to accept brokered deposits). In addition, this section replaces the three different standards that define higher than normal interest rates -- all of which are based, to some extent, on an institution's "normal market area" -- with a single standard based on the "national rate of interest," as established by the FDIC.

OCC Comments: This section as drafted is unclear, but appears to restrict additional institutions from advertising high interest rates, while allowing all institutions to pay high interest rates to deposit brokers. The OCC understands that this provision is currently under review in light of its ambiguity.

Sec. 203 Repeal of Federal Reserve Act Lending Limit

Summary: This section repeals section 11(m) of the FRA (12 U.S.C. § 248(m)), which prohibits a member bank from making loans secured by stocks or bonds to one borrower in excess of 15% of the bank's unimpaired capital and surplus.

OCC Comments: The OCC supports this provision. Section 11(m), as enacted, set a limit of 10% (raised to 15% in 1994), which once corresponded to the 10% lending limit applicable to national banks under 12 U.S.C. § 84. In 1982, Congress raised the lending limit in section 84 to 25% of unimpaired capital and surplus (not more than 15% of which may correspond to loans not fully secured), but did not raise the corresponding limit in section 11(m). This produces anomalous results. For example, if a bank has loaned to one borrower an amount equal to 15% of its unimpaired capital and surplus, and those loans are secured by stocks or bonds, section 84 allows that bank to lend an additional 10% of its unimpaired capital and surplus to that borrower (secured or unsecured), but section 11(m) prohibits that bank from securing that loan with stocks or bonds, even though they may be the only or best collateral available. Section 11(m) thus hinders a bank's ability to collateralize its loans to the maximum extent possible and, thus, is inconsistent with safety and soundness.

Sec. 204 Eliminate Unnecessary Restrictions on Product Marketing (Anti-Tying)

Summary: This section repeals section 106(b)(1) of the Bank Holding Company Amendments of 1970 (12 U.S.C. § 1972(1)), which prohibits a bank from engaging in certain tying arrangements. Currently, section 106(b)(1) prohibits a bank from conditioning (or varying the conditions of) an extension of credit, a lease or sale of property, or a service, or varying the conditions thereof, on the customer obtaining or providing additional credit, property, or service from or to the bank or any of its affiliates. The Fed also is authorized to grant exceptions to section 106(b)(1) by regulation or order.

OCC Comments: The OCC has strong concerns about the repeal of section 106(b)(1). Section 106(b)(1) provides important consumer protections with respect to sales of non-deposit products by banks and their subsidiaries. Moreover, because the Fed has exemptive authority, there is no need to repeal this section.

Sec. 205 Business Purpose Credit Extensions (Business Credit Cards)

Summary: This section adds a provision to section 4 of the BHC Act (12 U.S.C. § 1843) authorizing CEBA credit card banks and non-bank banks to provide credit card accounts for business purposes.

OCC Comments: The OCC takes no position on this amendment.

Sec. 206 Affinity Groups

Summary: This section permits a payment to an “affinity group” for a written or oral endorsement of a settlement service provider in an advertisement or mailing, provided that payment is clearly disclosed in the first written communication with the consumer. This section defines “affinity group” as a person (other than an individual) that is established for common objectives or purposes and is not established by a settlement service provider for the principal purpose of endorsing a settlement service provider or the conduct of settlement services, and does not consist of member organizations whose principal business is providing settlement services.

OCC Comments: The OCC has some concerns with this amendment. Under current law, affinity groups may enter into arrangements with settlement service providers to provide discounts on services directly to consumers. However, this amendment would permit referral fees to be paid directly to affinity groups. This could increase the cost of home ownership for consumers without ensuring any corresponding benefit to consumers, such as a lower interest rate, from the lender.

We also note that previous versions of this amendment were drafted as amendments to RESPA. If section 206 moves forward, we strongly recommend that this section continue to be an amendment to RESPA because of its direct relationship to settlement service providers, and in order to provide Federal agency (HUD) implementation and oversight.

Sec. 207 Fair Debt Collection Practices

Summary: Section 207 makes several amendments to sections 803 and 809 of the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. § 1692a and 1692g). The FDCPA generally prohibits a “debt collector” from using unfair practices, false or misleading representations, or harassment to collect a debt and, among other things, from communicating with a consumer concerning collection of a debt if the “communication” is at an unusual time or place. In addition, under certain circumstances, the debt collector is prohibited from communicating with the consumer at the consumer’s place of employment. Under the FDCPA, there are two provisions that permit the consumer to terminate or suspend communications or collection efforts by debt collectors. First, if a consumer requests that the debt collector cease communications, all communications are required to cease except certain specific notices, e.g., a notice of specific remedies being invoked. Second, under the FDCPA, a consumer has 30 days in which to dispute a debt and, if disputed during that period, the debt collector must cease all collection efforts until verification information is provided to the consumer.

This section amends the definition of “communication” to exclude (1) any communication made pursuant to Federal or State rules of civil procedure or a nonjudicial foreclosure proceeding; and (2) any communication made or action taken to collect on loans made, insured, or guaranteed under the Higher Education Act of 1965. (The sponsors note that this latter change in the definition is needed so that a debt collector can adhere to regulations issued pursuant to the Higher Education Act of 1965 without violating the FDCPA, as these two laws have conflicting debt collection provisions.) This section also amends the definition of “debt” to exclude a draft drawn on a bank for a sum certain, payable on demand and signed by the maker. Finally, subsection (b) of this section adds a provision allowing a debt collector to continue debt collection activities and communications during the 30-day period after providing the written notification required in 12 U.S.C. § 1692g, unless the consumer requests the cessation of such activities.

OCC Comments: The OCC has serious concerns regarding the scope of the exclusion of Federal or State civil rules of procedure from the definition of “communication” and the potential for abuse if the amendment as drafted is enacted. Under current law, the term “debt collector” does not include a person serving legal process in connection with the judicial enforcement of any debt. Therefore, service of process made in accordance with Federal or State rules of civil procedure already is exempt from the restrictions in the FDCPA. The amendment would expand the exemption by amending the definition of “communication” to allow a debt collector to initiate any communication with the consumer at any time or place if

the communication is made pursuant to a nonjudicial foreclosure proceeding, as well as communications made pursuant to Federal or State rules of civil procedure. This exemption could be construed broadly to permit, for example, a debt collector to call a consumer in the middle of the night about foreclosing on a debt in a nonjudicial proceeding. Therefore, we recommend that this provision be redrafted to limit the exception to apply only to the transmittal of pleadings, legal documents, or other notices in connection with a court action or a nonjudicial foreclosure proceeding.

The OCC also has concerns with this section's the change to the definition of "debt." Consumers who have written checks that are returned for insufficient funds should be covered by the protections of the FDCPA. Recently, a number of Federal appeals courts have ruled that the FDCPA covers checks written for consumer purposes. See, e.g. Bath v. Stolper, 111 F.3d 1322 (7th Cir.1997), Duffy v. Landberg, 1998 US App Lexis 724 (8th Cir. 1998), and Charles v. Check Rite Ltd., Inc., 119 F.3d 739 (9th Cir. 1997). This amendment is a legislative reversal of these decisions, and would constitute a rollback of consumer protections in this area.

The OCC notes that, as currently drafted, subsection (b) has two alternative interpretations. First, this amendment could be read to defeat the purpose of the FDCPA's written notice requirement. That requirement provides the consumer with 30 days to dispute the validity of the debt (in which case the debt collector must verify the debt) or to request the identity of the original creditor. Under the FDCPA, a debt collector must suspend debt collection activities until after the debt collector mails verification of the debt if the debt is disputed by the consumer or the identity of the original creditor if requested by the consumer. The amendment made by subsection (b) could be broadly interpreted to mean that, in addition to requesting verification of the debt as provided under current law, a consumer must also specifically request that all debt collection efforts cease until verification is provided before a debt collector is required to suspend collection efforts. In the alternative, the amendment made by subsection (b) also could be construed to be a new basis under which a consumer could request a debt collector to cease communications, as well as all other debt collection activities during the 30-day dispute period. The amendment provides that a debt collector may continue debt collection activities or communications during the 30-day dispute period "unless the consumer requests the cessation of such activities." There is no requirement in the amendment that the request to cease debt collection or communications must be linked to the consumer's right to dispute the debt. Therefore, the amendment could be construed to be an independent basis under which a consumer could request cessation of all debt collection activities and communications for the 30 day period notwithstanding that the consumer does not dispute the validity of the debt. The OCC recommends that this provision be clarified to achieve the second interpretation.

Sec. 208 Restrictions on Acquisitions of Other Insured Depository Institutions

Summary: This section amends section 4(f)(12) of the BHC Act (12 U.S.C. § 1843(f)(12)) to allow a company controlling a grandfathered nonbank bank to purchase an undercapitalized insured institution without losing its exemption from treatment as a bank holding company. Under current law, a company controlling a grandfathered bank can purchase insured institutions from the RTC, FDIC, or OTS, and insured institutions found to be in danger of default, without losing its exemption.

OCC Comments: The OCC takes no position on this provision.

Sec. 209. Mutual Holding Companies

Summary: This section amends section 10(o) of HOLA, which provides for the formation and regulation of mutual holding companies. Under current law, a mutual savings association may reorganize into stock form by first forming an interim savings associations. This section would allow mutual savings associations to reorganize into stock form without first forming this “phantom bank.”

OCC Comments: The OCC takes no position on this section.

Sec. 210. Call Report Simplification

Summary. This section requires the Federal banking agencies to jointly develop a system under which insured depository institutions and their affiliates may file call reports, savings association financial reports and bank holding company consolidated and parent-only financial statements electronically, and make these reports and statements available to the public electronically. The agencies must report to Congress one year after enactment with legislative recommendations that would enhance efficiency for filers and users of these call reports and statements. In addition, the Federal banking agencies would be required to jointly adopt a single form for the filing of core information that is required to be submitted to all Federal banking agencies in these reports and statements, and to simplify, and establish an index for, instructions for these reports and statements. Finally, each Federal banking agency would be required to review the information required by schedules supplementing this core information and eliminate requirements that are not necessary for safety and soundness or other public purposes.

OCC Comments: This section has already been enacted in full by Congress. See section 307 of P.L. 103-325, the Riegle Community Development and Regulatory Improvement Act of 1994.

TITLE III--STREAMLINING AGENCY ACTIONS

Sec. 301 Scheduled Meetings of Affordable Housing Advisory Board

Summary: This section amends section 14(b)(6)(A) of the Resolution Trust Corporation Completion Act (12 U.S.C. § 1831q note) to reduce the number of times that the Affordable Housing Advisory Board must meet each year from four times per year to twice a year. This section also repeals the requirement that the Advisory Board must meet in various regional locations each year.

OCC Comments: The OCC takes no position on this provision.

Sec. 302 Elimination of Duplicative Disclosure of Fair Market Value of Assets and Liabilities

Summary: This section repeals section 37(a)(3)(D) of FDI Act (12 U.S.C. § 1831n(a)(3)(D)), a provision added by FDICIA, which requires the Federal banking agencies, by December 19, 1992, to develop jointly a method for insured depository institutions to provide supplemental disclosure of the estimated fair market value of assets and liabilities in any financial report, "to the extent feasible and practicable."

OCC Comments: The OCC takes no position on this provision.

Sec. 303 Payment of Interest to Creditors in Receiverships with Surplus Funds

Summary: This section amends section 11(d)(10) of FDI Act (12 U.S.C. § 1821(d)(10)) to provide the FDIC with express rulemaking authority, with respect to receivership estates of insured depository institutions, to pay post-insolvency interest to creditors and to establish an interest rate on those payments following satisfaction of the principal amount of all creditor claims.

OCC Comments: The OCC takes no position on this provision.

Sec. 304 Repeal of Reporting Requirement On Differences in Accounting Standards

Summary: This section repeals section 37(c) of the FDI Act (12 U.S.C. § 1831n(c)), a requirement added by FDICIA, that each Federal banking agency submit annually a report to the House and Senate Banking Committees explaining any differences among the Federal banking agencies capital or accounting standards.

OCC Comments: The Federal banking agencies have essentially accomplished the objectives of this section and have adopted uniform standards with respect to capital and accounting issues. The agencies are working jointly to eliminate the remaining differences, most of which are technical or interpretive in nature. Thus, the reporting requirement has served a valuable purpose of alerting or educating the agencies to substantive differences in their standards in this area, but it may no longer be necessary.

Sec. 305 Agency Review of Competitive Factors in Bank Merger Act Filings

Summary: Subsections (a) and (b) of this section eliminate the requirement in section 18(c)(4) of the FDI Act (12 U.S.C. § 1828(c)(4)) that the responsible agency with respect to a Bank Merger Act transaction must request competitive factors reports from all other Federal banking agencies. The requirement that the responsible agency and the Attorney General consider the competitive factors remains. Subsection (c) amends Section 3(c) of the BHC Act (12 U.S.C. § 1842(c)) and section 18(c)(5) of FDI Act (12 U.S.C. § 1828(c)(5)) to prohibit the responsible agency from disapproving a merger transaction unless it takes into account the following factors: (1) competition from non-depository institutions that provide financial services; (2) efficiencies and cost savings that the transaction may create; (3) deposits of the participants that are not derived from the relevant market; (4) the capacity of savings associations to make small business loans; (5) lending by institutions other than depository institutions to small businesses; and (6) such other factors as the Board deems relevant.

OCC Comments: The OCC supports this provision.

Sec. 306 Termination of the Thrift Depositor Protection Oversight Board (Oversight Board)

Summary: The Oversight Board was charged by Congress with the primary function of overseeing and monitoring Resolution Trust Corporation (RTC) operations. However, the RTC's operations terminated as of December 31, 1995, leaving the Oversight Board with only two remaining functions - oversight of the Resolution Funding Corporation (REFCorp) and, through FY 98, non-voting membership on the Affordable Housing Advisory Board.

Section 306 eliminates the Oversight Board three months after the enactment of this legislation, transferring its REFCorp responsibilities to the Secretary of the Treasury and restructuring the Affordable Housing Advisory Board to eliminate the non-voting seat held by the Oversight Board.

OCC Comments: The OCC takes no position on this provision. (This provision is similar to H.R. 2343, passed by the House on September 23, 1997 and section 13 of S. 318, the Homeowners' Protection Act of 1997, as passed by the Senate on November 9, 1997.)

TITLE IV--DISCLOSURE SIMPLIFICATION

Sec. 401 Alternative Compliance Method for APR Disclosure

Summary: This section amends section 127A(a)(2) of the Truth in Lending Act (TILA) (15 U.S.C. § 1637(a)(2)) to allow a creditor to provide a statement that “periodic payment may increase or decrease substantially” in lieu of the 15-year historical table currently required for a variable-rate, open-end, consumer credit plan secured by the consumer’s principal dwelling. Section 127A(a)(2) continues to require a creditor to provide the maximum APR and the associated minimum payment. (Section 2105 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 amended TILA to provide a similar change for closed-end, variable-rate loans.)

OCC Comments: The OCC takes no position on this provision.

Sec. 402 Alternative Compliance Methods for Credit Terms

Summary: Subsection (a) of this section amends section 144(d) of TILA (15 U.S.C. § 1664(d)) to eliminate (1) the number of installments, and (2) the period of repayment, as terms that trigger the disclosure of the down payment, terms of repayment, and APR in closed-end credit advertisements.

Subsection (b) adds a new section 148 to TILA (15 U.S.C. § 1661 *et seq.*) to provide an alternate disclosure method for radio and television advertisements. The disclosures that currently apply to radio and television advertisements under TILA are found in sections 143, 144(d), and 147(a) and (e) (15 U.S.C. §§ 1663, 1664, and 1665b, respectively). Section 143, which applies to open-end plans, requires disclosure of any minimum or fixed amount, the periodic rates expressed as an APR (if periodic rates may be applied), and any other term required by the Fed’s regulations (currently, 12 C.F.R. 226.16(b)(3) requires disclosure of any membership or participation fee). As indicated above, section 144(d), which applies to closed-end plans, requires disclosure of the down payment, the terms of repayment, and the finance charge expressed as an APR if certain triggering terms are used in the advertisement. Section 147(a), which applies to open-end, home-secured plans, requires disclosure of loan fees and opening cost estimates, the periodic rates expressed as an APR (if periodic rates may be applied), the highest annual percentage, and any other information required by the Fed’s regulations (currently none) if the advertisement states specific terms of the plan. Section 147(e) requires the disclosure of any required balloon payments in the case of open-end, home-secured loans if the advertisement mentions a minimum monthly payment.

Section 402 of this legislation provides that a radio or television advertisement meets the disclosure requirements of sections 143, 144(d) and 147(a) and (e) if it clearly and conspicuously discloses: (1) the APR of any finance charge (and, with respect to an open-end

plan, the simple interest rate or the periodic rate); (2) whether the interest rate may vary; (3) if the advertisement states an introductory rate, the period during which any introductory rate is in effect and the APR that will be in effect after any introductory period, with equal prominence; (4) the annual fee, with respect to an open-end plan; (5) a toll-free telephone number from which a consumer may obtain additional information; and (6) a statement that the consumer may use the telephone number to obtain further details about the terms and cost of the credit. The telephone number must be available beginning not later than the date of first broadcast and ending no earlier than 10 days after the final broadcast, and the creditor must provide all information otherwise required by TILA orally by telephone or, if requested, in writing.

OCC Comments: The OCC is concerned that these changes to TILA may deprive consumers of material terms (such as the amount of any down payment, repayment terms, highest possible APR and balloon payment requirements) that are key to making informed credit decisions, particularly in the case of home equity loans.

TITLE V - MISCELLANEOUS

Sec. 501. Positions of Board of Governors of the Federal Reserve System on the Executive Schedule

Summary: This section raises the pay of the Chairman of the Fed from Level II (\$133,600) of the Executive schedule to Level I (\$148,400) (an increase of approximately \$14,800), and Fed board members from Level III (\$123,100) to Level II (an increase of approximately \$10,500.)

OCC Comments: The OCC takes no position on this provision.

Sec. 502. Coverage of Employee Health Plans at Federal Banking Agencies

Summary: Under current law, Federal employees are required to be enrolled in the Federal Employees Health Benefits Program (FEHBP) for at least five years immediately prior to retirement in order to continue FEHBP coverage in retirement. At the end of 1997, the FDIC and the Fed will terminate their own health benefit plans which are separate from the FEHBP. This section permits FDIC and Fed retired employees, or employees within five years of retirement, who currently are enrolled in these FDIC or Fed plans to enroll in another Federal health benefit plan. Without this provision, the FDIC and Fed would need to continue the operation of their non-FEHBP in order to provide insurance coverage for these employees.

OCC Comments: The OCC notes that Congress adopted legislation in 1994 that provided OCC and OTS employees with similar rights (P.L. 103-409).

Sec. 503. Federal Housing Finance Board Positions

Summary: Section 2A of the FHLB Act (12 U.S.C. § 1422a) establishes the Federal Housing Finance Board as the Federal supervisor of Federal Home Loan Banks. The Board of Directors of the Finance Board consists of five members, one of which is the Secretary of HUD, with the four remaining members being persons with extensive experience or training in housing finance. In addition, at least one of these four directors must be chosen from an organization, which is at least two years old, that represents consumers or community interests on banking services, credit needs, housing, or financial consumer protection. Section 503 eliminates the requirement that one member of the board be a consumer representative.

OCC Comments: The OCC takes no position on this proposal, and defers to the Treasury Department, which in the past has proposed comprehensive legislation relating to the Federal Home Loan Bank System.

TITLE VI--TECHNICAL CORRECTIONS

Sec. 601 Technical Correction Relating to Deposit Insurance Funds

Summary: This section amends an incorrect citation in section 2707 of the Deposit Insurance Funds Act of 1996 (P.L. 104-208, 110 Stat. 3009).

OCC Comments: The OCC supports this technical correction. However, in order to fully correct the citation, this section should also strike from section 2707 the following: “, as redesignated by section 2704(d)(6) of this subtitle”.*

Sec. 602 Rules for Continuation of Deposit Insurance for Member Banks Converting Charters (Technical Error in Section 8(o) of FDI Act)

Summary: This section amends an incorrect citation in section 8(o) of FDI Act (12 U.S.C. § 1818(o)).

OCC Comments: The OCC supports this technical correction.

Sec. 603 Amendments to the Revised Statutes

Summary: Subsection (a) of this section amends section 5146 of the Revised Statutes (12 U.S.C. § 72) to provide the OCC with authority to waive the U.S. citizenship requirement for any national bank director for a minority of the total number of directors serving on the board. Subsection (b) amends section 329 of the Revised Statutes (12 U.S.C. § 11) to update

an obsolete reference to “any association issuing national currency under the laws of the United States” with “any national bank.” Finally, subsection (c) repeals section 5138 of the Revised Statutes (12 U.S.C. § 51), which imposes minimum capital requirements for national banks ranging from \$50,000 to \$200,000, depending on where the bank is located.

OCC Comments: The OCC supports all three changes to be made by this section. Section 2241 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (P.L. 104-208) gave the OCC the authority to waive the requirement in 12 U.S.C. § 72 that national bank directors must reside within the State in which the national bank is located or within 100 miles of the bank’s location. As drafted, however, section 2241 inadvertently deleted the long-standing authority of the OCC to waive the citizenship requirement for not more than a minority of directors of national banks that are subsidiaries or affiliates of foreign banks. In a colloquy on the Senate floor at the time P.L. 104-208 was being considered for final passage, Senators Mack, D’Amato, and Graham stated that deleting the citizenship waiver authority was a technical drafting error and directed the OCC to treat the authority as unchanged until Congress could correct the error. This amendment corrects that technical error and, in addition, gives the OCC the authority to waive the citizenship requirement for up to a minority of directors for any national bank, whether or not affiliated with a foreign bank, in the same manner that the OCC may now waive the residency requirement for any national bank.

Subsection (b) of this section also would be a beneficial change. Section 329 currently prohibits the Comptroller and Deputy Comptroller from having an interest in any association issuing national currency. This amendment updates section 329 to reflect that national banks no longer issue national currency. The amendment, however, maintains the purpose of the original provision by prohibiting the Comptroller and Deputy Comptroller from owning interests in the national banks they regulate.

Finally, subsection (c) also provides a necessary update of Federal banking law. Section 5138 was first enacted in 1864 and last amended in 1935 and does not reflect current minimum capital ratio requirements that have been adopted pursuant to the authority in section 38 of FDI Act (12 U.S.C. § 1831o) and section 908 of the International Lending Supervision Act (ILSA) (12 U.S.C. § 3907). Section 908 of ILSA was enacted by Congress in 1983 and expressly requires the Federal banking agencies to establish adequate minimum capital requirements for banking institutions. Section 38 of FDI Act was enacted in 1991 and establishes a system of prompt corrective action based on capital levels. Section 5138 is outdated and unnecessary in light of current law and should be repealed to avoid any confusion.

Sec. 604 Conforming Change to the International Banking Act.

Summary: This section amends section 4(b) of the International Banking Act of 1978 (12 U.S.C. § 3102(b)) to eliminate obsolete language stating that the requirements of 12 U.S.C. § 481 are satisfied if the Federal branch or agency is examined once in each calendar year.

OCC Comments: The OCC supports this provision. Section 2214 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 replaced the annual requirement for an on-site examination of a branch or agency of a foreign bank with a requirement that these branches and agencies be examined as frequently as would a comparable national or State bank. As a result, branches or agencies that satisfy the asset test imposed on domestic banks may be examined on an 18-month cycle rather than a 12-month cycle. However, that legislation did not make a conforming change to 12 U.S.C. § 3102(b). This provision makes that conforming change.