109TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 109–356
1st Session } { Part 1

FINANCIAL SERVICES REGULATORY RELIEF ACT OF 2005

DECEMBER 17, 2005.—Ordered to be printed

Mr. OXLEY, from the Committee on Financial Services, submitted the following

R E P O R T

[To accompany H.R. 3505]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3505) to provide regulatory relief and improve productivity for insured depository institutions, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Financial Services Regulatory Relief Act of 2005".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—NATIONAL BANK PROVISIONS

SEC. 101. NATIONAL BANK DIRECTORS.

(a) IN GENERAL.—Section 5146 of the Revised Statutes of the United States (12 U.S.C. 72) is amended—

(1) by striking "SEC. 5146. Every director must during" and inserting the following:

"SEC. 5146. REQUIREMENTS FOR BANK DIRECTORS.

"(a) RESIDENCY REQUIREMENTS.—Every director of a national bank shall, during";

(2) by striking "total number of directors. Every director must own in his or her own right" and inserting "total number of directors.

"(b) INVESTMENT REQUIREMENT.—

"(1) IN GENERAL.—Every director of a national bank shall own, in his or her own right,"; and

(3) by adding at the end the following new paragraph:

"(2) EXCEPTION FOR SUBORDINATED DEBT IN CERTAIN CASES.—In lieu of the requirements of paragraph (1) relating to the ownership of capital stock in the national bank, the Comptroller of the Currency may, by regulation or order, permit an individual to serve as a director of a national bank that has elected, or notifies the Comptroller of the bank's intention to elect, to operate as a S corporation pursuant to section 1362(a) of the Internal Revenue Code of 1986, if that individual holds debt of at least $1,000 issued by the national bank that is subordinated to the interests of depositors and other general creditors of the national bank.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by striking the item relating to section 5146 and inserting the following new item:

"5146. Requirements for bank directors.".

SEC. 102. VOTING IN SHAREHOLDER ELECTIONS.

Section 5144 of the Revised Statutes of the United States (12 U.S.C. 61) is amended—

(1) by striking "or to cumulate" and inserting "or, if so provided by the articles of association of the national bank, to cumulate";

(2) by striking the comma after "his shares shall equal"; and

(3) by adding at the end the following new sentence: "The Comptroller of the Currency may prescribe such regulations to carry out the purposes of this section as the Comptroller determines to be appropriate.".

SEC. 103. SIMPLIFYING DIVIDEND CALCULATIONS FOR NATIONAL BANKS.

(a) IN GENERAL.—Section 5199 of the Revised Statutes of the United States (12 U.S.C. 60) is amended to read as follows:

"SEC. 5199. NATIONAL BANK DIVIDENDS.

"(a) IN GENERAL.—Subject to subsection (b), the directors of any national bank may declare a dividend of so much of the undivided profits of the bank as the directors judge to be expedient.

"(b) APPROVAL REQUIRED UNDER CERTAIN CIRCUMSTANCES.—A national bank may not declare and pay dividends in any year in excess of an amount equal to the sum of the total of the net income of the bank for that year and the retained net income of the bank in the preceding two years, minus any transfers required by the Comptroller of the Currency (including any transfers required to be made to a fund for the retirement of any preferred stock), unless the Comptroller of the Currency approves the declaration and payment of dividends in excess of such amount.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter three of title LXII of the Revised Statutes of the United States is amended by striking the item relating to section 5199 and inserting the following new item:

"5199.National bank dividends.".

SEC. 104. REPEAL OF OBSOLETE LIMITATION ON REMOVAL AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.

Section 8(e)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(4)) is amended by striking the 5th sentence.

SEC. 105. REPEAL OF INTRASTATE BRANCH CAPITAL REQUIREMENTS.

Section 5155(c) of the Revised Statutes of the United States (12 U.S.C. 36(c)) is amended—

(1) in the 2nd sentence, by striking ", without regard to the capital requirements of this section,"; and

(2) by striking the last sentence.

SEC. 106. CLARIFICATION OF WAIVER OF PUBLICATION REQUIREMENTS FOR BANK MERGER NOTICES.

The last sentence of sections 2(a) and 3(a)(2) of the National Bank Consolidation and Merger Act (12 U.S.C. 215(a) and 215a(a)(2), respectively) are each amended by striking "Publication of notice may be waived, in cases where the Comptroller determines that an emergency exists justifying such waiver, by unanimous action of the shareholders of the association or State bank" and inserting "Publication of notice may be waived if the Comptroller determines that an emergency exists justifying such waiver or if the shareholders of the association or State bank agree by unanimous action to waive the publication requirement for their respective institutions".

SEC. 107. EQUAL TREATMENT FOR FEDERAL AGENCIES OF FOREIGN BANKS.

The 1st sentence of section 4(d) of the International Banking Act of 1978 (12 U.S.C. 3102(d)) is amended by inserting "from citizens or residents of the United States" after "deposits".

SEC. 108. MAINTENANCE OF A FEDERAL BRANCH AND A FEDERAL AGENCY IN THE SAME STATE.

Section 4(e) of the International Banking Act of 1978 (12 U.S.C. 3102(e)) is amended by inserting "if the maintenance of both an agency and a branch in the State is prohibited under the law of such State" before the period at the end.

SEC. 109. BUSINESS ORGANIZATION FLEXIBILITY FOR NATIONAL BANKS.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

"SEC. 5136C. ALTERNATIVE BUSINESS ORGANIZATION.

"(a) IN GENERAL.—The Comptroller of the Currency may prescribe regulations—

"(1) to permit a national bank to be organized other than as a body corporate; and

"(2) to provide requirements for the organizational characteristics of a national bank organized and operating other than as a body corporate, consistent with the safety and soundness of the national bank.

"(b) EQUAL TREATMENT.—Except as provided in regulations prescribed under subsection (a), a national bank that is operating other than as a body corporate shall have the same rights and privileges and shall be subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations as a national bank that is organized as a body corporate.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended, in the matter preceding the paragraph designated as the "First", by inserting "or other form of business organization provided under regulations prescribed by the Comptroller of the Currency under section 5136C" after "a body corporate".

(c) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after the item relating to section 5136B the following new item:

"5136C. Alternative business organization.".

SEC. 110. CLARIFICATION OF THE MAIN PLACE OF BUSINESS OF A NATIONAL BANK.

Title LXII of the Revised Statutes of the United States is amended—

(1) in the paragraph designated the "Second" of section 5134 (12 U.S.C. 22), by striking "The place where its operations of discount and deposit are to be carried on" and inserting "The place where the main office of the national bank is, or is to be, located"; and

(2) in section 5190 (12 U.S.C. 81), by striking "the place specified in its organization certificate" and inserting "the main office of the national bank".

SEC. 111. CAPITAL EQUIVALENCY DEPOSITS FOR FEDERAL BRANCHES AND AGENCIES OF FOREIGN BANKS.

Section 4(g) of the International Banking Act of 1978 (12 U.S.C. 3102(g)) is amended to read as follows:

"(g) CAPITAL EQUIVALENCY DEPOSIT.—

"(1) IN GENERAL.—Upon the opening of a Federal branch or agency of a foreign bank in any State and thereafter, the foreign bank, in addition to any deposit requirements imposed under section 6, shall keep on deposit, in accordance with such regulations as the Comptroller of the Currency may prescribe in accordance with paragraph (2), dollar deposits, investment securities, or other assets in such amounts as the Comptroller of the Currency determines to be necessary for the protection of depositors and other investors and to be consistent with the principles of safety and soundness.

"(2) LIMITATION.—Notwithstanding paragraph (1), regulations prescribed under such paragraph shall not permit a foreign bank to keep assets on deposit in an amount that is less than the amount required for a State licensed branch or agency of a foreign bank under the laws and regulations of the State in which the Federal agency or branch is located.".

SEC. 112. ENHANCING THE AUTHORITY FOR NATIONAL BANKS TO MAKE COMMUNITY DEVELOPMENT INVESTMENTS.

The last sentence in the paragraph designated as the "Eleventh." of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended by striking "10 percent" each place such term appears and inserting "15 percent".

TITLE II—SAVINGS ASSOCIATION PROVISIONS

SEC. 201. PARITY FOR SAVINGS ASSOCIATIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934 AND THE INVESTMENT ADVISERS ACT OF 1940.

(a) SECURITIES EXCHANGE ACT OF 1934.—

(1) DEFINITION OF BANK.—Section 3(a)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6)) is amended—

(A) in subparagraph (A), by inserting "or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act" after "a banking institution organized under the laws of the United States"; and

(B) in subparagraph (C)—

(i) by inserting "or savings association as defined in section 2(4) of the Home Owners' Loan Act," after "banking institution,"; and

(ii) by inserting "or savings associations" after "having supervision over banks".

(2) INCLUDE OTS UNDER THE DEFINITION OF APPROPRIATE REGULATORY AGENCY FOR CERTAIN PURPOSES.—Section 3(a)(34) of such Act (15 U.S.C. 78c(a)(34)) is amended—

(A) in subparagraph (A)—

(i) in clause (ii), by striking "(i) or (iii)" and inserting "(i), (iii), or (iv)";

(ii) by striking "and" at the end of clause (iii);

(iii) by redesignating clause (iv) as clause (v); and

(iv) by inserting the following new clause after clause (iii):

"(iv) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding company; and";

(B) in subparagraph (B)—

(i) in clause (ii), by striking "(i) or (iii)" and inserting "(i), (iii), or (iv)";

(ii) by striking "and" at the end of clause (iii);

(iii) by redesignating clause (iv) as clause (v); and

(iv) by inserting the following new clause after clause (iii):

"(iv) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such savings association, or a savings and loan holding company; and";

(C) in subparagraph (C)—

(i) in clause (ii), by striking "(i) or (iii)" and inserting "(i), (iii), or (iv)";

(ii) by striking "and" at the end of clause (iii);

(iii) by redesignating clause (iv) as clause (v); and

(iv) by inserting the following new clause after clause (iii):

"(iv) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation, a savings and loan holding company, or a subsidiary of a savings and loan holding company when the appropriate regulatory agency for such clearing agency is not the Commission; and";

(D) in subparagraph (D)—

(i) by striking "and" at the end of clause (ii);

(ii) by redesignating clause (iii) as clause (iv); and

(iii) by inserting the following new clause after clause (ii):

"(iii) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation; and";

(E) in subparagraph (F)—

(i) by redesignating clauses (ii), (iii), and (iv) as clauses (iii), (iv), and (v), respectively; and

(ii) by inserting the following new clause after clause (i):

"(ii) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation; and";

(F) by moving subparagraph (H) and inserting such subparagraph after subparagraph (G); and

(G) by adding at the end the following new sentence: "As used in this paragraph, the term 'savings and loan holding company' has the meaning given it in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).".

(b) INVESTMENT ADVISERS ACT OF 1940.—

(1) DEFINITION OF BANK.—Section 202(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(2)) is amended—

(A) in subparagraph (A) by inserting "or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act" after "a banking institution organized under the laws of the United States"; and

(B) in subparagraph (C)—

(i) by inserting ", savings association as defined in section 2(4) of the Home Owners' Loan Act," after "banking institution"; and

(ii) by inserting "or savings associations" after "having supervision over banks".

(2) CONFORMING AMENDMENTS.—Subsections (a)(1)(A)(i), (a)(1)(B), (a)(2), and (b) of section 210A of such Act (15 U.S.C. 80b–10a), as added by section 220 of the Gramm-Leach-Bliley Act, are each amended by striking "bank holding company" each place it occurs and inserting "bank holding company or savings and loan holding company".

(c) CONFORMING AMENDMENT TO THE INVESTMENT COMPANY ACT OF 1940.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)), as amended by section 213(c) of the Gramm-Leach-Bliley Act, is amended by inserting after "1956)" the following: "or any one savings and loan holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 10 of the Home Owners' Loan Act)".

SEC. 202. INVESTMENTS BY FEDERAL SAVINGS ASSOCIATIONS AUTHORIZED TO PROMOTE THE PUBLIC WELFARE.

(a) IN GENERAL.—Section 5(c)(3) of the Home Owners' Loan Act (12 U.S.C. 1464(c)) is amended by adding at the end the following new subparagraph:

"(D) DIRECT INVESTMENTS TO PROMOTE THE PUBLIC WELFARE.—

"(i) IN GENERAL.—A Federal savings association may make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families through the provision of housing, services, and jobs.

"(ii) DIRECT INVESTMENTS OR ACQUISITION OF INTEREST IN OTHER COMPANIES.—Investments under clause (i) may be made directly or by purchasing interests in an entity primarily engaged in making such investments.

"(iii) PROHIBITION ON UNLIMITED LIABILITY.—No investment may be made under this subparagraph which would subject a Federal savings association to unlimited liability to any person.

"(iv) SINGLE INVESTMENT LIMITATION TO BE ESTABLISHED BY DIRECTOR.—Subject to clauses (v) and (vi), the Director shall establish, by order or regulation, limits on—

"(I) the amount any savings association may invest in any 1 project; and

"(II) the aggregate amount of investment of any savings association under this subparagraph.

"(v) FLEXIBLE AGGREGATE INVESTMENT LIMITATION.—The aggregate amount of investments of any savings association under this subparagraph may not exceed an amount equal to the sum of 5 percent of the savings association's capital stock actually paid in and unimpaired and 5 percent of the savings association's unimpaired surplus, unless—

"(I) the Director determines that the savings association is adequately capitalized; and

"(II) the Director determines, by order, that the aggregate amount of investments in a higher amount than the limit under this clause will pose no significant risk to the affected deposit insurance fund.

"(vi) MAXIMUM AGGREGATE INVESTMENT LIMITATION.—Notwithstanding clause (v), the aggregate amount of investments of any savings association under this subparagraph may not exceed an amount equal to the sum of 15 percent of the savings association's capital stock actually paid in and unimpaired and 15 percent of the savings association's unimpaired surplus.

"(vii) INVESTMENTS NOT SUBJECT TO OTHER LIMITATION ON QUALITY OF INVESTMENTS.—No obligation a Federal savings association acquires or retains under this subparagraph shall be taken into account for purposes of the limitation contained in section 28(d) of the Federal Deposit Insurance Act on the acquisition and retention of any corporate debt security not of investment grade.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 5(c)(3)(A) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(3)(A)) is amended to read as follows:

"(A) [Repealed].".

SEC. 203. MERGERS AND CONSOLIDATIONS OF FEDERAL SAVINGS ASSOCIATIONS WITH NONDEPOSITORY INSTITUTION AFFILIATES.

Section 5(d)(3) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(3)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by inserting after subparagraph (A) the following new subparagraph:

"(B) MERGERS AND CONSOLIDATIONS WITH NONDEPOSITORY INSTITUTION AFFILIATES.—

"(i) IN GENERAL.—Upon the approval of the Director, a Federal savings association may merge with any nondepository institution affiliate of the savings association.

"(ii) RULE OF CONSTRUCTION.—No provision of clause (i) shall be construed as—

"(I) affecting the applicability of section 18(c) of the Federal Deposit Insurance Act; or

"(II) granting a Federal savings association any power or any authority to engage in any activity that is not authorized for a Federal savings association under any other provision of this Act or any other provision of law.".

SEC. 204. REPEAL OF STATUTORY DIVIDEND NOTICE REQUIREMENT FOR SAVINGS ASSOCIATION SUBSIDIARIES OF SAVINGS AND LOAN HOLDING COMPANIES.

Section 10(f) of the Home Owners' Loan Act (12 U.S.C. 1467a(f)) is amended to read as follows:

"(f) DECLARATION OF DIVIDEND.—The Director may—

"(1) require a savings association that is a subsidiary of a savings and loan holding company to give prior notice to the Director of the intent of the savings association to pay a dividend on its guaranty, permanent, or other nonwithdrawable stock; and

"(2) establish conditions on the payment of dividends by such a savings association.".

SEC. 205. MODERNIZING STATUTORY AUTHORITY FOR TRUST OWNERSHIP OF SAVINGS ASSOCIATIONS.

(a) IN GENERAL.—Section 10(a)(1)(C) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(C)) is amended—

(1) by striking "trust," and inserting "business trust,"; and

(2) by inserting "or any other trust unless by its terms it must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust," after "or similar organization,".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 10(a)(3) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(3)) is amended—

(1) by striking "does not include—" and all that follows through "any company by virtue" where such term appears in subparagraph (A) and inserting "does not include any company by virtue";

(2) by striking "; and" at the end of subparagraph (A) and inserting a period; and

(3) by striking subparagraph (B).

SEC. 206. REPEAL OF OVERLAPPING RULES GOVERNING PURCHASED MORTGAGE SERVICING RIGHTS.

Section 5(t) of the Home Owners' Loan Act (12 U.S.C. 1464(t)) is amended—

(1) by striking paragraph (4) and inserting the following new paragraph:

"(4) [Repealed].''; and

(2) in paragraph (9)(A), by striking "intangible assets, plus" and all that follows through the period at the end and inserting "intangible assets.".

SEC. 207. RESTATEMENT OF AUTHORITY FOR FEDERAL SAVINGS ASSOCIATIONS TO INVEST IN SMALL BUSINESS INVESTMENT COMPANIES.

Subparagraph (D) of section 5(c)(4) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(4)) is amended to read as follows:

"(D) SMALL BUSINESS INVESTMENT COMPANIES.—Any Federal savings association may invest in 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies formed under the Small Business Investment Act of 1958, except that the total amount of investments under this subparagraph may not at any time exceed the amount equal to 5 percent of capital and surplus of the savings association.".

SEC. 208. REMOVAL OF LIMITATION ON INVESTMENTS IN AUTO LOANS.

(a) IN GENERAL.—Section 5(c)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(1)) is amended by adding at the end the following new subparagraph:

"(V) AUTO LOANS.—Loans and leases for motor vehicles acquired for personal, family, or household purposes.".

(b) TECHNICAL AND CONFORMING AMENDMENT RELATING TO QUALIFIED THRIFT INVESTMENTS.—Section 10(m)(4)(C)(ii) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)(C)(ii)) is amended by adding at the end the following new subclause:

"(VIII) Loans and leases for motor vehicles acquired for personal, family, or household purposes.".

SEC. 209. SELLING AND OFFERING OF DEPOSIT PRODUCTS.

Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) is amended by adding at the end the following new paragraph:

"(4) SELLING AND OFFERING OF DEPOSIT PRODUCTS.—No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall directly or indirectly require any individual who is an agent of 1 Federal savings association (as such term is defined in section 2(5) of the Home Owners' Loan Act (12 U.S.C. 1462(5)) in selling or offering deposit (as such term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)) products issued by such association to qualify or register as a broker, dealer, associated person of a broker, or associated person of a dealer, or to qualify or register in any other similar status or capacity, if the individual does not—

"(A) accept deposits or make withdrawals on behalf of any customer of the association;

"(B) offer or sell a deposit product as an agent for another entity that is not subject to supervision and examination by a Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act (12 U.S.C. 1813(z)), the National Credit Union Administration, or any officer, agency, or other entity of any State which has primary regulatory authority over State banks, State savings associations, or State credit unions;

"(C) offer or sell a deposit product that is not an insured deposit (as defined in section 3(m) of the Federal Deposit Insurance Act (12 U.S.C. 1813(m)));

"(D) offer or sell a deposit product which contains a feature that makes it callable at the option of such Federal savings association; or

"(E) create a secondary market with respect to a deposit product or otherwise add enhancements or features to such product independent of those offered by the association.".

SEC. 210. FUNERAL- AND CEMETERY-RELATED FIDUCIARY SERVICES.

Section 5(n) of the Home Owners' Loan Act (12 U.S.C. 1464(n)) is amended by adding at the end the following new paragraph:

"(11) FUNERAL- AND CEMETERY-RELATED FIDUCIARY SERVICES.—

"(A) IN GENERAL.—A funeral director or cemetery operator, when acting in such capacity, (or any other person in connection with a contract or other agreement with a funeral director or cemetery operator) may engage any Federal savings association, regardless of where the association is located, to act in any fiduciary capacity in which the savings association has the right to act in accordance with this section, including holding funds deposited in trust or escrow by the funeral director or cemetery operator (or by such other party), and the savings association may act in such fiduciary capacity on behalf of the funeral director or cemetery operator (or such other person).

"(B) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

"(i) CEMETERY.—The term 'cemetery' means any land or structure used, or intended to be used, for the interment of human remains in any form.

"(ii) CEMETERY OPERATOR.—The term 'cemetery operator' means any person who contracts or accepts payment for merchandise, endowment, or perpetual care services in connection with a cemetery.

"(iii) FUNERAL DIRECTOR.—The term 'funeral director' means any person who contracts or accepts payment to provide or arrange—

"(I) services for the final disposition of human remains; or

"(II) funeral services, property, or merchandise (including cemetery services, property, or merchandise).".

SEC. 211. REPEAL OF QUALIFIED THRIFT LENDER REQUIREMENT WITH RESPECT TO OUT-OF-STATE BRANCHES.

Section 5(r)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(r)(1)) is amended by striking the last sentence.

SEC. 212. SMALL BUSINESS AND OTHER COMMERCIAL LOANS.

(a) ELIMINATION OF LENDING LIMIT ON SMALL BUSINESS LOANS.—Section 5(c)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(1)) is amended by inserting after subparagraph (V) (as added by section 208 of this title) the following new subparagraph:

"(W) SMALL BUSINESS LOANS.—Small business loans, as defined in regulations which the Director shall prescribe.".

(b) INCREASE IN LENDING LIMIT ON OTHER BUSINESS LOANS.—Section 5(c)(2)(A) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(2)(A)) is amended by striking ", and amounts in excess of 10 percent" and all that follows through "by the Director".

SEC. 213. CLARIFYING CITIZENSHIP OF FEDERAL SAVINGS ASSOCIATIONS FOR FEDERAL COURT JURISDICTION.

Section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) is amended by adding at the end the following new subsection:

"(x) HOME STATE CITIZENSHIP.—In determining whether a Federal court has diversity jurisdiction over a case in which a Federal savings association is a party, the Federal savings association shall be considered to be a citizen only of the States in which such savings association has its home office and its principal place of business (if the principal place of business is in a different State than the home office).".

SEC. 214. INCREASE IN LIMITS ON COMMERCIAL REAL ESTATE LOANS.

Section 5(c)(2)(B)(i) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(2)(B)(i)) is amended by striking "400 percent" and inserting "500 percent".

SEC. 215. REPEAL OF ONE LIMIT ON LOANS TO ONE BORROWER.

Subparagraph (A) of section 5(u)(2) of the Home Owners' Loan Act (12 U.S.C. 1464(u)(2)(A)) is amended—

(1) by striking subclause (I) of clause (ii);

(2) by redesignating subclauses (II), (III), (IV), and (V) of clause (ii) as subclauses (I), (II), (III), and (IV), respectively;

(3) in clause (i)—

(A) by striking "for any" and inserting "For any"; and

(B) by striking "; or" and inserting a period; and

(4) in clause (ii), by striking "to develop domestic" and inserting "To develop domestic".

SEC. 216. SAVINGS ASSOCIATION CREDIT CARD BANKS.

Section 10(a)(1)(A) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(A)) is amended by inserting "and such term does not include an institution described in section 2(c)(2)(F) of the Bank Holding Company Act of 1956 for purposes of subsections (a)(1)(E), (c)(3)(B)(i), (c)(9)(C)(i), and (e)(3)" before the period at the end.

SEC. 217. INTERSTATE ACQUISITIONS BY S&L HOLDING COMPANIES.

Section 10(e)(3) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)(3)) is amended—

(1) by redesignating subparagraphs (A), (B), and (C) as subparagraphs (B), (C), and (D), respectively; and

(2) by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) such acquisition would be permissible under section 3(d) of the Bank Holding Company Act of 1956 if the savings and loan holding company were a bank holding company and any savings association to be acquired were a bank;".

SEC. 218. BUSINESS ORGANIZATION FLEXIBILITY FOR FEDERAL SAVINGS ASSOCIATIONS.

(a) IN GENERAL.—Section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) is amended by inserting after subsection (x) (as added by section 213) following new subsection:

"(y) ALTERNATIVE BUSINESS ORGANIZATION.—

"(1) IN GENERAL.—The Director may prescribe regulations that—

"(A) permit a Federal savings association to be organized other than as a corporation; and

"(B) provide requirements for the organizational characteristics of a Federal savings association organized and operating other than as a corporation, consistent with the safety and soundness of the Federal savings association.

"(2) EQUAL TREATMENT.—Except as otherwise provided in regulations prescribed under subsection (1), a Federal savings association that is operating other than as a corporation shall have the same rights and privileges and shall be subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations as a Federal savings association that is organized as a corporation.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 5(a)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(a)(1)) is amended by striking "organization, incorporation," and inserting "organization

(as a corporation or other form of business organization provided under regulations prescribed by the Director under subsection (x)),".

(2) The last sentence of section 5(i)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(i)(1)) is amended by striking "incorporated" and inserting "organized".

(3) Section 5(o)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(a)(1)) is amended by striking "organization, incorporation," and inserting "organization (as a corporation or other form of business organization provided under regulations prescribed by the Director under subsection (x)),".

TITLE III—CREDIT UNION PROVISIONS

SEC. 301. PRIVATELY INSURED CREDIT UNIONS AUTHORIZED TO BECOME MEMBERS OF A FEDERAL HOME LOAN BANK.

(a) IN GENERAL.—Section 4(a) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)) is amended by adding at the end the following new paragraph:

"(5) CERTAIN PRIVATELY INSURED CREDIT UNIONS.—

"(A) IN GENERAL.—A credit union which has been determined, in accordance with section 43(e)(1) of the Federal Deposit Insurance Act and subject to the requirements of subparagraph (B), to meet all eligibility requirements for Federal deposit insurance shall be treated as an insured depository institution for purposes of determining the eligibility of such credit union for membership in a Federal home loan bank under paragraphs (1), (2), and (3).

"(B) CERTIFICATION BY APPROPRIATE SUPERVISOR.—

"(i) IN GENERAL.—For purposes of this paragraph and subject to clause (ii), a credit union which lacks Federal deposit insurance and which has applied for membership in a Federal home loan bank may be treated as meeting all the eligibility requirements for Federal deposit insurance only if the appropriate supervisor of the State in which the credit union is chartered has determined that the credit union meets all the eligibility requirements for Federal deposit insurance as of the date of the application for membership.

"(ii) CERTIFICATION DEEMED VALID.—If, in the case of any credit union to which clause (i) applies, the appropriate supervisor of the State in which such credit union is chartered fails to make a determination pursuant to such clause by the end of the 6-month period beginning on the date of the application, the credit union shall be deemed to have met the requirements of clause (i).

"(C) SECURITY INTERESTS OF FEDERAL HOME LOAN BANK NOT AVOIDABLE.—Notwithstanding any provision of State law authorizing a conservator or liquidating agent of a credit union to repudiate contracts, no such provision shall apply with respect to—

"(i) any extension of credit from any Federal home loan bank to any credit union which is a member of any such bank pursuant to this paragraph; or

"(ii) any security interest in the assets of such credit union securing any such extension of credit.".

(b) COPIES OF AUDITS OF PRIVATE INSURERS OF CERTAIN DEPOSITORY INSTITUTIONS REQUIRED TO BE PROVIDED TO SUPERVISORY AGENCIES.—Section 43(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (A)(i);

(2) by striking the period at the end of clause (ii) of subparagraph (A) and inserting a semicolon;

(3) by inserting the following new clauses at the end of subparagraph (A):

"(iii) in the case of depository institutions described in subsection (f)(2)(A) the deposits of which are insured by the private insurer, the National Credit Union Administration, not later than 7 days after that audit is completed; and

"(iv) in the case of depository institutions described in subsection (f)(2)(A) the deposits of which are insured by the private insurer which are members of a Federal home loan bank, the Federal Housing Finance Board, not later than 7 days after that audit is completed."; and

(4) by adding at the end the following new subparagraph:

"(C) CONSULTATION.—The appropriate supervisory agency of each State in which a private deposit insurer insures deposits in an institution described in subsection (f)(2)(A) which—

"(i) lacks Federal deposit insurance; and

"(ii) has become a member of a Federal home loan bank,

shall provide the National Credit Union Administration, upon request, with the results of any examination and reports related thereto concerning the private deposit insurer to which such agency may have in its possession.".

SEC. 302. LEASES OF LAND ON FEDERAL FACILITIES FOR CREDIT UNIONS.

(a) IN GENERAL.—Section 124 of the Federal Credit Union Act (12 U.S.C. 1770) is amended—

(1) by striking "Upon application by any credit union" and inserting "Notwithstanding any other provision of law, upon application by any credit union";

(2) by inserting "on lands reserved for the use of, and under the exclusive or concurrent jurisdiction of, the United States or" after "officer or agency of the United States charged with the allotment of space";

(3) by inserting "lease land or" after "such officer or agency may in his or its discretion"; and

(4) by inserting "or the facility built on the lease land" after "credit union to be served by the allotment of space".

(b) CLERICAL AMENDMENT.—The heading for section 124 is amended by inserting "OR FEDERAL LAND" after "BUILDINGS".

SEC. 303. INVESTMENTS IN SECURITIES BY FEDERAL CREDIT UNIONS.

Section 107 of the Federal Credit Union Act (12 U.S.C. 1757) is amended—

(1) in the matter preceding paragraph (1) by striking "A Federal credit union" and inserting "(a) IN GENERAL.—Any Federal credit union"; and

(2) by adding at the end the following new subsection:

"(b) ADDITIONAL INVESTMENT AUTHORITY.—

"(1) IN GENERAL.—In addition to any investments otherwise authorized, a Federal credit union may purchase and hold for its own account such investment securities of investment grade as the Board may authorize by regulation, subject to such limitations and restrictions as the Board may prescribe in the regulations.

"(2) PERCENTAGE LIMITATIONS.—

"(A) SINGLE OBLIGOR.—In no event may the total amount of investment securities of any single obligor or maker held by a Federal credit union for the credit union's own account exceed at any time an amount equal to 10 percent of the net worth of the credit union.

"(B) AGGREGATE INVESTMENTS.—In no event may the aggregate amount of investment securities held by a Federal credit union for the credit union's own account exceed at any time an amount equal to 10 percent of the assets of the credit union.

"(3) INVESTMENT SECURITY DEFINED.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'investment security' means marketable obligations evidencing the indebtedness of any person in the form of bonds, notes, or debentures and other instruments commonly referred to as investment securities.

"(B) FURTHER DEFINITION BY BOARD.—The Board may further define the term 'investment security'.

"(4) INVESTMENT GRADE DEFINED.—The term 'investment grade' means with respect to an investment security purchased by a credit union for its own account, an investment security that at the time of such purchase is rated in one of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization.

"(5) CLARIFICATION OF PROHIBITION ON STOCK OWNERSHIP.—No provision of this subsection shall be construed as authorizing a Federal credit union to purchase shares of stock of any corporation for the credit union's own account, except as otherwise permitted by law.".

SEC. 304. INCREASE IN GENERAL 12-YEAR LIMITATION OF TERM OF FEDERAL CREDIT UNION LOANS TO 15 YEARS.

Section 107(a)(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) (as so designated by section 303 of this title) is amended—

(1) in the matter preceding subparagraph (A), by striking "to make loans, the maturities of which shall not exceed twelve years except as otherwise provided herein" and inserting "to make loans, the maturities of which shall not exceed 15 years or any longer maturity as the Board may allow, in regulations, except as otherwise provided in this Act";

(2) in subparagraph (A)—

(A) by striking clause (ii);

(B) by redesignating clauses (iii) through (x) as clauses (ii) through (ix), respectively; and

(C) by inserting "and" after the semicolon at the end of clause (viii) (as so redesignated).

SEC. 305. INCREASE IN 1 PERCENT INVESTMENT LIMIT IN CREDIT UNION SERVICE ORGANIZATIONS.

Section 107(a)(7)(I) of the Federal Credit Union Act (12 U.S.C. 1757(7)(I)) (as so designated by section 303 of this title) is amended by striking "up to 1 per centum of the total paid" and inserting "up to 3 percent of the total paid".

SEC. 306. MEMBER BUSINESS LOAN EXCLUSION FOR LOANS TO NONPROFIT RELIGIOUS ORGANIZATIONS.

Section 107A(a) of the Federal Credit Union Act (12 U.S.C. 1757a(a)) is amended by inserting ", excluding loans made to nonprofit religious organizations," after "total amount of such loans".

SEC. 307. CHECK CASHING AND MONEY TRANSFER SERVICES OFFERED WITHIN THE FIELD OF MEMBERSHIP.

Paragraph (12) of section 107(a) of the Federal Credit Union Act (12 U.S.C. 1757(12)) (as so designated by section 303 of this title) is amended to read as follows:

"(12) in accordance with regulations prescribed by the Board—

"(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers); and

"(B) to cash checks and money orders and receive international and domestic electronic fund transfers for persons in the field of membership for a fee;".

SEC. 308. VOLUNTARY MERGERS INVOLVING MULTIPLE COMMON-BOND CREDIT UNIONS.

Section 109(d)(2) of the Federal Credit Union Act (12 U.S.C. 1759(d)(2)) is amended—

(1) by striking "or" at the end of clause (ii) of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; or"; and

(3) by adding at the end the following new subparagraph:

"(D) a merger involving any such Federal credit union approved by the Board on or after August 7, 1998.".

SEC. 309. CONVERSIONS INVOLVING COMMON-BOND CREDIT UNIONS.

Section 109(g) of the Federal Credit Union Act (12 U.S.C. 1759(g)) is amended by inserting after paragraph (2) the following new paragraph:

"(3) CRITERIA FOR CONTINUED MEMBERSHIP OF CERTAIN MEMBER GROUPS IN COMMUNITY CHARTER CONVERSIONS.—In the case of a voluntary conversion of a common-bond credit union described in paragraph (1) or (2) of subsection (b) into a community credit union described in subsection (b)(3), the Board shall prescribe, by regulation, the criteria under which the Board may determine that a member group or other portion of a credit union's existing membership, that is located outside the well-defined local community, neighborhood, or rural district that shall constitute the community charter, can be satisfactorily served by the credit union and remain within the community credit union's field of membership.".

SEC. 310. CREDIT UNION GOVERNANCE.

(a) EXPULSION OF MEMBERS FOR JUST CAUSE.—Subsection (b) of section 118 of the Federal Credit Union Act (12 U.S.C. 1764(b)) is amended to read as follows:

"(b) POLICY AND ACTIONS OF BOARDS OF DIRECTORS OF FEDERAL CREDIT UNIONS.—

"(1) EXPULSION OF MEMBERS FOR NONPARTICIPATION OR FOR JUST CAUSE.—The board of directors of a Federal credit union may, by majority vote of a quorum of directors, adopt and enforce a policy with respect to expulsion from membership, by a majority vote of such board of directors, based on just cause, including disruption of credit union operations, or on nonparticipation by a member in the affairs of the credit union.

"(2) WRITTEN NOTICE OF POLICY TO MEMBERS.—If a policy described in paragraph (1) is adopted, written notice of the policy as adopted and the effective date of such policy shall be provided to—

"(A) each existing member of the credit union not less than 30 days prior to the effective date of such policy; and

"(B) each new member prior to or upon applying for membership.".

(b) TERM LIMITS AUTHORIZED FOR BOARD MEMBERS OF FEDERAL CREDIT UNIONS.—Section 111(a) of the Federal Credit Union Act (12 U.S.C. 1761(a)) is

amended by adding at the end the following new sentence: "The bylaws of a Federal credit union may limit the number of consecutive terms any person may serve on the board of directors of such credit union.".

(c) REIMBURSEMENT FOR LOST WAGES DUE TO SERVICE ON CREDIT UNION BOARD NOT TREATED AS COMPENSATION.—Section 111(c) of the Federal Credit Union Act (12 U.S.C. 1761(c)) is amended by inserting ", including lost wages," after "the reimbursement of reasonable expenses".

SEC. 311. PROVIDING THE NATIONAL CREDIT UNION ADMINISTRATION WITH GREATER FLEXIBILITY IN RESPONDING TO MARKET CONDITIONS.

Section 107(a)(5)(A)(v)(I) of the Federal Credit Union Act (12 U.S.C. 1757(5)(A)(vi)(I)) (as so designated by section 303 and redesignated by section 304(2)(B) of this title) is amended by striking "six-month period and that prevailing interest rate levels" and inserting "6-month period or that prevailing interest rate levels".

SEC. 312. EXEMPTION FROM PRE-MERGER NOTIFICATION REQUIREMENT OF THE CLAYTON ACT.

Section 7A(c)(7) of the Clayton Act (15 U.S.C. 18a(c)(7)) is amended by inserting "section 205(b)(3) of the Federal Credit Union Act (12 U.S.C. 1785(b)(3)),' before "or section 3".

SEC. 313. TREATMENT OF CREDIT UNIONS AS DEPOSITORY INSTITUTIONS UNDER SECURITIES LAWS.

(a) DEFINITION OF BANK UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6)) (as amended by section 201(a)(1) of this Act) is amended—

(1) by striking "this title, and (D) a receiver" and inserting "this title, (D) an insured credit union (as defined in section 101(7) of the Federal Credit Union Act) but only for purposes of paragraphs (4) and (5) of this subsection and only for activities otherwise authorized by applicable laws to which such credit unions are subject, and (E) a receiver"; and

(2) in subparagraph (E) (as so redesignated by paragraph (1) of this subsection) by striking "(A), (B), or (C)" and inserting "(A), (B), (C), or (D)".

(b) DEFINITION OF BANK UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 202(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(2)) (as amended by section 201(b)(1) of this Act) is amended—

(1) by striking "this title, and (D) a receiver" and inserting "this title, (D) an insured credit union (as defined in section 101(7) of the Federal Credit Union Act) but only for activities otherwise authorized by applicable laws to which such credit unions are subject, and (E) a receiver"; and

(2) in subparagraph (E) (as so redesignated by paragraph (1) of this subsection) by striking "(A), (B), or (C)" and inserting "(A), (B), (C), or (D)".

(c) DEFINITION OF APPROPRIATE FEDERAL BANKING AGENCY.—Section 210A(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–10a(c)) is amended by inserting "and includes the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act)" before the period at the end.

SEC. 314. CLARIFICATION OF DEFINITION OF NET WORTH UNDER CERTAIN CIRCUMSTANCES FOR PURPOSES OF PROMPT CORRECTIVE ACTION.

Subparagraph (A) of section 216(o)(2) of the Federal Credit Union Act (12 U.S.C. 1790d(o)(2)(A)) is amended—

(1) by inserting "the" before "retained earnings balance"; and

(2) by inserting ", together with any amounts that were previously retained earnings of any other credit union with which the credit union has combined" before the semicolon at the end.

SEC. 315. AMENDMENTS RELATING TO NONFEDERALLY INSURED CREDIT UNIONS.

(a) IN GENERAL.—Subsection (a) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(a)) is amended by adding at the end the following new paragraph:

"(3) ENFORCEMENT BY APPROPRIATE STATE SUPERVISOR.—Any appropriate State supervisor of a private deposit insurer, and any appropriate State supervisor of a depository institution which receives deposits that are insured by a private deposit insurer, may examine and enforce compliance with this subsection under the applicable regulatory authority of such supervisor.".

(b) AMENDMENT RELATING TO DISCLOSURES REQUIRED, PERIODIC STATEMENTS AND ACCOUNT RECORDS.—Section 43(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(b)(1)) is amended by striking "or similar instrument evidencing a deposit" and inserting "or share certificate".

(c) AMENDMENTS RELATING TO DISCLOSURES REQUIRED, ADVERTISING, PREMISES.—Section 43(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(b)(2)) is amended to read as follows:

"(2) ADVERTISING; PREMISES.—

"(A) IN GENERAL.—Include clearly and conspicuously in all advertising, except as provided in subparagraph (B); and at each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page, a notice that the institution is not federally insured.

"(B) EXCEPTIONS.—The following need not include a notice that the institution is not federally insured:

"(i) Statements or reports of financial condition of the depository institution that are required to be published or posted by State or Federal law or regulation.

"(ii) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution.

"(iii) Small utilitarian items that do not mention deposit products or insurance if inclusion of the notice would be impractical.".

(d) AMENDMENTS RELATING TO ACKNOWLEDGMENT OF DISCLOSURE.—Section 43(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(b)(3)) is amended to read as follows:

"(3) ACKNOWLEDGMENT OF DISCLOSURE.—

"(A) NEW DEPOSITORS OBTAINED OTHER THAN THROUGH A CONVERSION OR MERGER.—With respect to any depositor who was not a depositor at the depository institution before the effective date of the Financial Services Relief Act of 2005, and who is not a depositor as described in subparagraph (B), receive any deposit for the account of such depositor only if the depositor has signed a written acknowledgement that—

"(i) the institution is not federally insured; and

"(ii) if the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

"(B) NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking federal insurance after the effective date of the Financial Services Regulatory Relief Act of 2005, receive any deposit for the account of such depositor only if—

"(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

"(ii) the institution makes an attempt, as described in subparagraph (D) and sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment.

"(C) CURRENT DEPOSITORS.—Receive any deposit after the effective date of the Financial Services Regulatory Relief Act of 2005 for the account of any depositor who was a depositor on that date only if—

"(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

"(ii) the institution makes an attempt, as described in subparagraph (D) and sent by mail no later than 45 days after the effective date of the Financial Services Regulatory Relief Act of 2005, to obtain the acknowledgment.

"(D) ALTERNATIVE PROVISION OF NOTICE TO CURRENT DEPOSITORS AND NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—

"(i) IN GENERAL.—Transmit to each depositor who has not signed a written acknowledgement described in subparagraph (A)—

"(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

"(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.".

(e) REPEAL OF PROVISION PROHIBITING NONDEPOSITORY INSTITUTIONS FROM ACCEPTING DEPOSITS.—Section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended—

(1) by striking subsection (e); and

(2) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(f) REPEAL OF PROVISION CONCERNING NONDEPOSITORY INSTITUTIONS MASQUERADING AS DEPOSITORY INSTITUTIONS AND CLARIFICATION OF DEPOSITORY INSTITUTIONS COVERED BY THE STATUTE.—Subsection (e)(2) (as so redesignated by subsection (e) of this section) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended to read as follows:

"(2) DEPOSITORY INSTITUTION.—The term 'depository institution'—

"(A) includes any entity described in section 19(b)(1)(A)(iv) of the Federal Reserve Act; and

"(B) does not include any national bank, State member bank, or Federal branch.".

(g) REPEAL OF FTC AUTHORITY TO ENFORCE INDEPENDENT AUDIT REQUIREMENT; CONCURRENT STATE ENFORCEMENT.—Subsection (f) (as so redesignated by subsection (e) of this section) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended to read as follows:

"(f) ENFORCEMENT.—

"(1) LIMITED FTC ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b) and (c), and any regulation prescribed or order issued under any such subsection, shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission.

"(2) BROAD STATE ENFORCEMENT AUTHORITY.—

"(A) IN GENERAL.—Subject to subparagraph (C), an appropriate State supervisor of a depository institution lacking Federal deposit insurance may examine and enforce compliance with the requirements of this section, and any regulation prescribed under this section.

"(B) STATE POWERS.—For purposes of bringing any action to enforce compliance with this section, no provision of this section shall be construed as preventing an appropriate State supervisor of a depository institution lacking Federal deposit insurance from exercising any powers conferred on such official by the laws of such State.

"(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisor may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of this section that is alleged in that complaint.".

TITLE IV—DEPOSITORY INSTITUTION PROVISIONS

SEC. 401. EASING RESTRICTIONS ON INTERSTATE BRANCHING AND MERGERS.

(a) DE NOVO INTERSTATE BRANCHES OF NATIONAL BANKS.—

(1) IN GENERAL.—Section 5155(g)(1) of the Revised Statutes of the United States (12 U.S.C. 36(g)(1)) is amended by striking "maintain a branch if—" and all that follows through the end of subparagraph (B) and inserting "maintain a branch.".

(2) CLERICAL AMENDMENT.—The heading for subsection (g) of section 5155 of the Revised Statutes of the United States is amended by striking "STATE 'OPT-IN' ELECTION TO PERMIT".

(b) DE NOVO INTERSTATE BRANCHES OF STATE NONMEMBER BANKS.—

(1) IN GENERAL.—Section 18(d)(4)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(4)(A)) is amended by striking "maintain a branch if—" and all that follows through the end of clause (ii) and inserting "maintain a branch.".

(2) INTERSTATE BRANCHING BY SUBSIDIARIES OF COMMERCIAL FIRMS PROHIBITED.—Section 18(d)(3)) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(3)) is amended by adding at the end the following new subparagraph:

"(C) INTERSTATE BRANCHING BY SUBSIDIARIES OF COMMERCIAL FIRMS PROHIBITED.—

"(i) IN GENERAL.—If the appropriate State bank supervisor of the home State of any industrial loan company, industrial bank, or other institution described in section 2(c)(2)(H) of the Bank Holding Company Act of 1956, or the appropriate State bank supervisor of any host State with respect to such company, bank, or institution, determines that such company, bank, or institution is controlled, directly or indirectly, by a commercial firm, such company, bank, or institution may not acquire, establish, or operate a branch in such host State.

"(ii) COMMERCIAL FIRM DEFINED.—For purposes of this subsection, the term 'commercial firm' means any entity at least 15 percent of the an-

nual gross revenues of which on a consolidated basis, including all affiliates of the entity, were derived from engaging, on an on-going basis, in activities that are not financial in nature or incidental to a financial activity during at least 3 of the prior 4 calendar quarters.

"(iii) GRANDFATHERED INSTITUTIONS.—Clause (i) shall not apply with respect to any industrial loan company, industrial bank, or other institution described in section 2(c)(2)(H) of the Bank Holding Company Act of 1956—

"(I) which became an insured depository institution before October 1, 2003 or pursuant to an application for deposit insurance which was approved by the Corporation before such date; and

"(II) with respect to which there is no change in control, directly or indirectly, of the company, bank, or institution after September 30, 2003, that requires an application under subsection (c), section 7(j), section 3 of the Bank Holding Company Act of 1956, or section 10 of the Home Owners' Loan Act.

"(iv) TRANSITION PROVISION.—Any divestiture required under this subparagraph of a branch in a host State shall be completed as quickly as is reasonably possible.

"(v) CORPORATE REORGANIZATIONS PERMITTED.—The acquisition of direct or indirect control of the company, bank, or institution referred to in clause (iii)(II) shall not be treated as a 'change in control' for purposes of such clause if the company acquiring control is itself directly or indirectly controlled by a company that was an affiliate of such company, bank, or institution on the date referred to in clause (iii)(II), and remained an affiliate at all times after such date.".

(3) TECHNICAL AND CONFORMING AMENDMENTS.—Section 18(d)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(4)) is amended—

(A) in subparagraph (A) by striking "Subject to subparagraph (B)" and inserting "Subject to subparagraph (B) and paragraph (3)(C)"; and

(B) in subparagraphs (D) and (E), by striking "The term" and inserting "For purposes of this subsection, the term".

(4) CLERICAL AMENDMENT.—The heading for paragraph (4) of section 18(d) of the Federal Deposit Insurance Act is amended by striking "STATE 'OPT-IN' ELECTION TO PERMIT INTERSTATE" and inserting "INTERSTATE".

(c) DE NOVO INTERSTATE BRANCHES OF STATE MEMBER BANKS.—The 3rd undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 321) is amended by adding at the end the following new sentences: "A State member bank may establish and operate a de novo branch in a host State (as such terms are defined in section 18(d) of the Federal Deposit Insurance Act) on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of a de novo branch of a national bank in a host State under section 5155(g) of the Revised Statutes of the United States or are applicable to an insured State nonmember bank under section 18(d)(3) of the Federal Deposit Insurance Act". Such section 5155(g) shall be applied for purposes of the preceding sentence by substituting 'Board of Governors of the Federal Reserve System' for 'Comptroller of the Currency' and 'State member bank' for 'national bank'.".

(d) INTERSTATE MERGER OF BANKS.—

(1) MERGER OF INSURED BANK WITH ANOTHER DEPOSITORY INSTITUTION OR TRUST COMPANY.—Section 44(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(a)(1)) is amended—

(A) by striking "Beginning on June 1, 1997, the" and inserting "The"; and

(B) by striking "insured banks with different home States" and inserting "an insured bank and another insured depository institution or trust company with a different home State than the resulting insured bank".

(2) NATIONAL BANK TRUST COMPANY MERGER WITH OTHER TRUST COMPANY.—Subsection (b) of section 4 of the National Bank Consolidation and Merger Act (12 U.S.C. 215a–1(b)) is amended to read as follows:

"(b) MERGER OF NATIONAL BANK TRUST COMPANY WITH ANOTHER TRUST COMPANY.—A national bank that is a trust company may engage in a consolidation or merger under this Act with any trust company with a different home State, under the same terms and conditions that would apply if the trust companies were located within the same State.".

(e) INTERSTATE FIDUCIARY ACTIVITY.—Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by adding at the end the following new paragraph:

"(5) INTERSTATE FIDUCIARY ACTIVITY.—

"(A) AUTHORITY OF STATE BANK SUPERVISOR.—The State bank supervisor of a State bank may approve an application by the State bank, when not

in contravention of home State or host State law, to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in a host State in which State banks or other corporations which come into competition with national banks are permitted to act under the laws of such host State.

"(B) NONCONTRAVENTION OF HOST STATE LAW.—Whenever the laws of a host State authorize or permit the exercise of any or all of the foregoing powers by State banks or other corporations which compete with national banks, the granting to and the exercise of such powers by a State bank as provided in this paragraph shall not be deemed to be in contravention of host State law within the meaning of this paragraph.

"(C) STATE BANK INCLUDES TRUST COMPANIES.—For purposes of this paragraph, the term 'State bank' includes any State-chartered trust company (as defined in section 44(g)).

"(D) OTHER DEFINITIONS.—For purposes of this paragraph, the term 'home State' and 'host State' have the meanings given such terms in section 44.".

(f) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 44 of the Federal Deposit Insurance Act (12 U.S.C. 1831u) is amended—

(A) in subsection (a)—

(i) by striking paragraph (4) and inserting the following new paragraph:

"(4) TREATMENT OF BRANCHES IN CONNECTION WITH CERTAIN INTERSTATE MERGER TRANSACTIONS.—In the case of an interstate merger transaction which involves the acquisition of a branch of an insured depository institution or trust company without the acquisition of the insured depository institution or trust company, the branch shall be treated, for purposes of this section, as an insured depository institution or trust company the home State of which is the State in which the branch is located."; and

(ii) by striking paragraphs (5) and (6) and inserting the following new paragraph:

"(5) APPLICABILITY TO INDUSTRIAL LOAN COMPANIES.—No provision of this section shall be construed as authorizing the approval of any transaction involving a industrial loan company, industrial bank, or other institution described in section 2(c)(2)(H) of the Bank Holding Company Act of 1956, or the acquisition, establishment, or operation of a branch by any such company, bank, or institution, that is not allowed under section 18(d)(3).".

(B) in subsection (b)—

(i) by striking "bank" each place such term appears in paragraph (2)(B)(i) and inserting "insured depository institution";

(ii) by striking "banks" where such term appears in paragraph (2)(E) and inserting "insured depository institutions or trust companies";

(iii) by striking "bank affiliate" each place such term appears in that portion of paragraph (3) that precedes subparagraph (A) and inserting "insured depository institution affiliate";

(iv) by striking "any bank" where such term appears in paragraph (3)(B) and inserting "any insured depository institution";

(v) by striking "bank" where such term appears in paragraph (4)(A) and inserting "insured depository institution and trust company"; and

(vi) by striking "all banks" where such term appears in paragraph (5) and inserting "all insured depository institutions and trust companies";

(C) in subsection (d)(1), by striking "any bank" and inserting "any insured depository institution or trust company";

(D) in subsection (e)—

(i) by striking "1 or more banks" and inserting "1 or more insured depository institutions"; and

(ii) by striking "paragraph (2), (4), or (5)" and inserting "paragraph (2)";

(E) by striking clauses (i) and (ii) of subsection (g)(4)(A) and inserting the following new clauses:

"(i) with respect to a national bank or Federal savings association, the State in which the main office of the bank or savings association is located; and

"(ii) with respect to a State bank, State savings association, or State-chartered trust company, the State by which the bank, savings association, or trust company is chartered; and";

(F) by striking paragraph (5) of subsection (g) and inserting the following new paragraph:

"(5) HOST STATE.—The term 'host State' means—

"(A) with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch; and

"(B) with respect to a trust company and solely for purposes of section 18(d)(5), a State, other than the home State of the trust company, in which the trust company acts, or seeks to act, in 1 or more fiduciary capacities.";

(G) in subsection (g)(10), by striking "section 18(c)(2)" and inserting "paragraph (1) or (2) of section 18(c), as appropriate,"; and

(H) in subsection (g), by adding at the end the following new paragraph:

"(12) TRUST COMPANY.—The term 'trust company' means—

"(A) any national bank;

"(B) any savings association; and

"(C) any bank, banking association, trust company, savings bank, or other banking institution which is incorporated under the laws of any State,

that is authorized to act in 1 or more fiduciary capacities but is not engaged in the business of receiving deposits other than trust funds (as defined in section 3(p)).".

(2) Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)) is amended—

(A) in paragraph (1)—

(i) by striking subparagraphs (B) and (C); and

(ii) by redesignating subparagraph (D) as subparagraph (B); and

(B) in paragraph (5), by striking "subparagraph (B) or (D)" and inserting "subparagraph (B)".

(3) Subsection (c) of section 4 of the National Bank Consolidation and Merger Act (12 U.S.C. 215a–1(c)) is amended to read as follows:

"(c) DEFINITIONS.—For purposes of this section, the terms 'home State', 'out-of-State bank', and 'trust company' each have the same meaning as in section 44(g) of the Federal Deposit Insurance Act.".

(g) CLERICAL AMENDMENTS.—

(1) The heading for section 44(b)(2)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(2)(E)) is amended by striking "BANKS" and inserting "INSURED DEPOSITORY INSTITUTIONS AND TRUST COMPANIES".

(2) The heading for section 44(e) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(e)) is amended by striking "BANKS" and inserting "INSURED DEPOSITORY INSTITUTIONS".

SEC. 402. STATUTE OF LIMITATIONS FOR JUDICIAL REVIEW OF APPOINTMENT OF A RECEIVER FOR DEPOSITORY INSTITUTIONS.

(a) NATIONAL BANKS.—Section 2 of the National Bank Receivership Act (12 U.S.C. 191) is amended—

(1) by striking "SECTION 2. The Comptroller of the Currency" and inserting the following:

"SEC. 2. APPOINTMENT OF RECEIVER FOR A NATIONAL BANK.

"(a) IN GENERAL.—The Comptroller of the Currency"; and

(2) by adding at the end the following new subsection:

"(b) JUDICIAL REVIEW.—If the Comptroller of the Currency appoints a receiver under subsection (a), the national bank may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such bank is located, or in the United States District Court for the District of Columbia, for an order requiring the Comptroller of the Currency to remove the receiver, and the court shall, upon the merits, dismiss such action or direct the Comptroller of the Currency to remove the receiver.".

(b) INSURED DEPOSITORY INSTITUTIONS.—Section 11(c)(7) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(7)) is amended to read as follows:

"(7) JUDICIAL REVIEW.—If the Corporation is appointed (including the appointment of the Corporation as receiver by the Board of Directors) as conservator or receiver of a depository institution under paragraph (4), (9), or (10), the depository institution may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such depository institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to be removed as the conservator or receiver (regardless of how such appointment was made), and the court shall, upon the merits, dismiss such action or direct the Corporation to be removed as the conservator or receiver.".

(c) EXPANSION OF PERIOD FOR CHALLENGING THE APPOINTMENT OF A LIQUIDATING AGENT.—Subparagraph (B) of section 207(a)(1) of the Federal Credit Union Act (12 U.S.C. 1787(a)(1)) is amended by striking "10 days" and inserting "30 days".

(d) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall apply with respect to conservators, receivers, or liquidating agents appointed on or after the date of the enactment of this Act.

SEC. 403. REPORTING REQUIREMENTS RELATING TO INSIDER LENDING.

(a) REPORTING REQUIREMENTS REGARDING LOANS TO EXECUTIVE OFFICERS OF MEMBER BANKS.—Section 22(g) of the Federal Reserve Act (12 U.S.C. 375a) is amended—

(1) by striking paragraphs (6) and (9); and

(2) by redesignating paragraphs (7), (8), and (10) as paragraphs (6), (7), and (8), respectively.

(b) REPORTING REQUIREMENTS REGARDING LOANS FROM CORRESPONDENT BANKS TO EXECUTIVE OFFICERS AND SHAREHOLDERS OF INSURED BANKS.—Section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(2)) is amended—

(1) by striking subparagraph (G); and

(2) by redesignating subparagraphs (H) and (I) as subparagraphs (G) and (H), respectively.

SEC. 404. AMENDMENT TO PROVIDE AN INFLATION ADJUSTMENT FOR THE SMALL DEPOSITORY INSTITUTION EXCEPTION UNDER THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.

Section 203(1) of the Depository Institution Management Interlocks Act (12 U.S.C. 3202(1)) is amended by striking "$20,000,000" and inserting "$100,000,000".

SEC. 405. ENHANCING THE SAFETY AND SOUNDNESS OF INSURED DEPOSITORY INSTITUTIONS.

(a) CLARIFICATION RELATING TO THE ENFORCEABILITY OF AGREEMENTS AND CONDITIONS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 49. ENFORCEMENT OF AGREEMENTS.

"(a) IN GENERAL.—Notwithstanding clause (i) or (ii) of section 8(b)(6)(A) or section 38(e)(2)(E)(i), an appropriate Federal banking agency may enforce, under section 8, the terms of—

"(1) any condition imposed in writing by the agency on a depository institution or an institution-affiliated party (including a bank holding company) in connection with any action on any application, notice, or other request concerning a depository institution; or

"(2) any written agreement entered into between the agency and an institution-affiliated party (including a bank holding company).

"(b) RECEIVERSHIPS AND CONSERVATORSHIPS.—After the appointment of the Corporation as the receiver or conservator for any insured depository institution, the Corporation may enforce any condition or agreement described in paragraph (1) or (2) of subsection (a) involving such institution or any institution-affiliated party (including a bank holding company), through an action brought in an appropriate United States district court.".

(b) PROTECTION OF CAPITAL OF INSURED DEPOSITORY INSTITUTIONS.—Paragraph (1) of section 18(u) of the Federal Deposit Insurance Act (12 U.S.C. 1828(u)) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

SEC. 406. INVESTMENTS BY INSURED SAVINGS ASSOCIATIONS IN BANK SERVICE COMPANIES AUTHORIZED.

(a) IN GENERAL.—Sections 2 and 3 of the Bank Service Company Act (12 U.S.C. 1862, 1863) are each amended by striking "insured bank" each place such term appears and inserting "insured depository institution".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 1(b)(4) of the Bank Service Company Act (12 U.S.C. 1861(b)(4)) is amended—

(A) by inserting ", except when such term appears in connection with the term 'insured depository institution'," after "means"; and

(B) by striking "Federal Home Loan Bank Board" and inserting "Director of the Office of Thrift Supervision".

(2) Section 1(b) of the Bank Service Company Act (12 U.S.C. 1861(b)) is amended—

(A) by striking paragraph (5) and inserting the following new paragraph:

"(5) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act;";

(B) by striking "and" at the end of paragraph (7);

(C) by striking the period at the end of paragraph (8) and inserting "; and"; and

(D) by adding at the end the following new paragraph:

"(9) the terms 'State depository institution', 'Federal depository institution', 'State savings association' and 'Federal savings association' have the meanings given the terms in section 3 of the Federal Deposit Insurance Act.".

(3) The 1st sentence of section 5(c)(4)(B) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(4)(B)) is amended by striking "by savings associations of such State and by Federal associations" and inserting "by State and Federal depository institutions".

(4) Subparagraph (A)(ii) and subparagraph (B)(ii) of section 1(b)(2) of the Bank Service Company Act (12 U.S.C. 1861(b)(2)) are each amended by striking "insured banks" and inserting "insured depository institutions".

(5) Section 1(b)(8) of the Bank Service Company Act (12 U.S.C. 1861(b)(8)) is further amended—

(A) by striking "insured bank" and inserting "insured depository institution";

(B) by striking "insured banks" each place such term appears and inserting "insured depository institutions"; and

(C) by striking "the bank's" and inserting "the depository institution's".

(6) Section 2 of the Bank Service Company Act (12 U.S.C. 1862) is amended by inserting "or savings associations, other than the limitation on the amount of investment by a Federal savings association contained in section 5(c)(4)(B) of the Home Owners' Loan Act" after "relating to banks".

(7) Section 4(b) of the Bank Service Company Act (12 U.S.C. 1864(b)) is amended by inserting "as permissible under subsection (c), (d), or (e) or" after "Except".

(8) Section 4(c) of the Bank Service Company Act (12 U.S.C. 1864(c)) is amended by inserting "or State savings association" after "State bank" each place such term appears.

(9) Section 4(d) of the Bank Service Company Act (12 U.S.C. 1864(d)) is amended by inserting "or Federal savings association" after "national bank" each place such term appears.

(10) Section 4(e) of the Bank Service Company Act (12 U.S.C. 1864(e)) is amended to read as follows:

"(e) A bank service company may perform—

"(1) only those services that each depository institution shareholder or member is otherwise authorized to perform under any applicable Federal or State law; and

"(2) such services only at locations in a State in which each such shareholder or member is authorized to perform such services.".

(11) Section 4(f) of the Bank Service Company Act (12 U.S.C. 1864(f)) is amended by inserting "or savings associations" after "location of banks".

(12) Section 5 of the Bank Service Company Act (12 U.S.C. 1865) is amended—

(A) in subsection (a)—

(i) by striking "insured bank" and inserting "insured depository institution"; and

(ii) by striking "bank's" and inserting "institution's";

(B) in subsection (b)—

(i) by striking "insured bank" and inserting "insured depository institution";

(ii) by inserting "authorized only" after "performs any service"; and

(iii) by inserting "authorized only" after "perform any activity"; and

(C) in subsection (c)—

(i) by striking "the bank or banks" and inserting "any depository institution"; and

(ii) by striking "capability of the bank" and inserting "capability of the depository institution".

(13) Section 7 of the Bank Service Company Act (12 U.S.C. 1867) is amended—

(A) in subsection (b), by striking "insured bank" and inserting "insured depository institution"; and

(B) in subsection (c)—

(i) by striking "a bank" each place such term appears and inserting "a depository institution"; and

(ii) by striking "the bank" each place such term appears and inserting "the depository institution".

SEC. 407. CROSS GUARANTEE AUTHORITY.

Subparagraph (A) of section 5(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1815(e)(9)(A)) is amended to read as follows:

"(A) such institutions are controlled by the same company; or".

SEC. 408. GOLDEN PARACHUTE AUTHORITY AND NONBANK HOLDING COMPANIES.

Subsection (k) of section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828(k)) is amended—

(1) in paragraph (2)(A), by striking "or depository institution holding company" and inserting "or covered company";

(2) by striking subparagraph (B) of paragraph (2) and inserting the following new subparagraph:

"(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for—

"(i) the insolvency of the depository institution or covered company;

"(ii) the appointment of a conservator or receiver for the depository institution; or

"(iii) the depository institution's troubled condition (as defined in the regulations prescribed pursuant to section 32(f)).";

(3) in paragraph (2)(F), by striking "depository institution holding company" and inserting "covered company,";

(4) in paragraph (3) in the matter preceding subparagraph (A), by striking "depository institution holding company" and inserting "covered company";

(5) in paragraph (3)(A), by striking "holding company" and inserting "covered company";

(6) in paragraph (4)(A)—

(A) by striking "depository institution holding company" each place such term appears and inserting "covered company"; and

(B) by striking "holding company" each place such term appears (other than in connection with the term referred to in subparagraph (A)) and inserting "covered company";

(7) in paragraph (5)(A), by striking "depository institution holding company" and inserting "covered company";

(8) in paragraph (5), by adding at the end the following new subparagraph:

"(D) COVERED COMPANY.—The term 'covered company' means any depository institution holding company (including any company required to file a report under section 4(f)(6) of the Bank Holding Company Act of 1956), or any other company that controls an insured depository institution."; and

(9) in paragraph (6)—

(A) by striking "depository institution holding company" and inserting "covered company,"; and

(B) by striking "or holding company" and inserting "or covered company".

SEC. 409. AMENDMENTS RELATING TO CHANGE IN BANK CONTROL.

Section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) is amended—

(1) in paragraph (1)(D)—

(A) by striking "is needed to investigate" and inserting "is needed—

"(i) to investigate";

(B) by striking "United States Code." and inserting "United States Code; or"; and

(C) by adding at the end the following new clause:

"(ii) to analyze the safety and soundness of any plans or proposals described in paragraph (6)(E) or the future prospects of the institution."; and

(2) in paragraph (7)(C), by striking "the financial condition of any acquiring person" and inserting "either the financial condition of any acquiring person or the future prospects of the institution".

SEC. 410. COMMUNITY REINVESTMENT CREDIT FOR ESOPS AND EWOCS.

Section 804 of the Community Reinvestment Act of 1977 (12 U.S.C. 2903) is amended by adding at the end the following new subsection—

"(d) ESTABLISHMENT OF ESOPS AND EWOCS.—

"(1) IN GENERAL.—In assessing and taking into account, under subsection (a), the record of a financial institution, the appropriate Federal financial supervisory agency shall consider as a factor activities that support or enable the establishment of employee stock ownership plans or eligible worker-owned co-

operatives, so long as the employer sponsoring the plan or cooperative is at least 51 percent owned by employees, including low to moderate income employees.

"(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' has the same meaning as in section 4975(e)(7) of the Internal Revenue Code of 1986.

"(B) ELIGIBLE WORKER-OWNED COOPERATIVE.—The term 'eligible worker-owned cooperative' has the same meaning as in section 1042(c)(2) of the Internal Revenue Code of 1986.".

SEC. 411. MINORITY FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—The Federal Deposit Insurance Corporation and the Office of Thrift Supervision shall provide such technical assistance to minority financial institutions affected by Hurricane Katrina, Hurricane Rita, and Hurricane Wilma as may be appropriate to preserve the present number of minority depository institutions and preserve the minority character in cases involving mergers or acquisitions of a minority depository institution consistent with section 308(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(b) MINORITY FINANCIAL INSTITUTION DEFINED.—For purposes of this subsection, the term "minority financial institution" has the same meaning as in section 308(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

TITLE V—DEPOSITORY INSTITUTION AFFILIATES PROVISIONS

SEC. 501. CLARIFICATION OF CROSS MARKETING PROVISION.

Section 4(n)(5) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(n)(5)) is amended—

(1) in subparagraph (B), by striking "subsection (k)(4)(I)" and inserting "subparagraph (H) or (I) of subsection (k)(4)"; and

(2) by adding at the end the following new subparagraph:

"(C) THRESHOLD OF CONTROL.—Subparagraph (A) shall not apply with respect to a company described or referred to in clause (i) or (ii) of such subparagraph if the financial holding company does not own or control 25 percent or more of the total equity or any class of voting securities of such company.".

SEC. 502. AMENDMENT TO PROVIDE THE FEDERAL RESERVE BOARD WITH DISCRETION CONCERNING THE IMPUTATION OF CONTROL OF SHARES OF A COMPANY BY TRUSTEES.

Section 2(g)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(g)(2)) is amended by inserting ", unless the Board determines that such treatment is not appropriate in light of the facts and circumstances of the case and the purposes of this Act" before the period at the end.

SEC. 503. ELIMINATING GEOGRAPHIC LIMITS ON THRIFT SERVICE COMPANIES.

(a) IN GENERAL.—The 1st sentence of section 5(c)(4)(B) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(4)(B)) (as amended by section 406(b)(3) of this Act) is amended—

(1) by striking "corporation organized" and all that follows through "is available for purchase" and inserting "company, if the entire capital of the company is available for purchase"; and

(2) by striking "having their home offices in such State".

(b) TECHNICAL CORRECTIONS.—

(1) The heading for subparagraph (B) of section 5(c)(4) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(4)(B)) is amended by striking "CORPORATIONS" and inserting "COMPANIES".

(2) The 2nd sentence of section 5(n)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(n)(1)) is amended by striking "service corporations" and inserting "service companies".

(3) Section 5(q)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(q)(1)) is amended by striking "service corporation" each place such term appears in subparagraphs (A), (B), and (C) and inserting "service company".

(4) Section 10(m)(4)(C)(iii)(II) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)(C)(iii)(II)) is amended by striking "service corporation" each place such term appears and inserting "service company".

SEC. 504. CLARIFICATION OF SCOPE OF APPLICABLE RATE PROVISION.

Section 44(f) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(f)) is amended by adding at the end the following new paragraphs:

"(3) OTHER LENDERS.—In the case of any other lender doing business in the State described in paragraph (1), the maximum interest rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved from time to time in any loan, discount, or credit sale made, or upon any note, bill of exchange, financing transaction, or other evidence of debt issued to or acquired by any other lender shall be equal to not more than the greater of the rates described in subparagraph (A) or (B) of paragraph (1).

"(4) OTHER LENDER DEFINED.—For purposes of paragraph (3), the term 'other lender' means any person engaged in the business of selling or financing the sale of personal property (and any services incidental to the sale of personal property) in such State, except that, with regard to any person or entity described in such paragraph, such term does not include—

"(A) an insured depository institution; or

"(B) any person or entity engaged in the business of providing a short-term cash advance to any consumer in exchange for—

"(i) a consumer's personal check or share draft, in the amount of the advance plus a fee, where presentment or negotiation of such check or share draft is deferred by agreement of the parties until a designated future date; or

"(ii) a consumer authorization to debit the consumer's transaction account, in the amount of the advance plus a fee, where such account will be debited on or after a designated future date.".

SEC. 505. SAVINGS ASSOCIATIONS ACTING AS AGENTS FOR AFFILIATED DEPOSITORY INSTITUTIONS.

(a) IN GENERAL.—Section 18(r) of the Federal Deposit Insurance Act (12 U.S.C. 1828(r)) is amended—

(1) in paragraph (1)—

(A) by striking "bank subsidiary" and inserting "depository institution subsidiary"; and

(B) by striking "bank holding company" and inserting "depository institution holding company";

(2) in paragraph (2), by striking "a bank acting" and inserting "a depository institution acting";

(3) in paragraphs (3) and (5), by striking "or (6)" each place such term appears in each such paragraph; and

(4) by striking paragraph (6).

(b) CLERICAL AMENDMENT.—The heading for section 18(r)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1828(r)) is amended by striking "BANK" and inserting "DEPOSITORY INSTITUTION".

SEC. 506. CREDIT CARD BANK INVESTMENTS FOR THE PUBLIC WELFARE.

Section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F)) is amended—

(1) in clause (i), by striking "engages only in credit card operations;" and inserting "engages only in—

"(I) credit card operations; and

"(II) making investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs), in the manner and to the extent permitted for national banks under the paragraph designated the 'Eleventh' of section 5136 of the Revised Statutes of the United States and regulations prescribed under such paragraph, except that the last sentence of such paragraph shall be applied for purposes of this subclause by substituting '5 percent' for '15 percent' each place such term appears; "; and

(2) in clause (v), by inserting ", other than making or purchasing loans for the purposes described in and to the extent permitted in clause (i)(II))" before the period at the end.

TITLE VI—BANKING AGENCY PROVISIONS

SEC. 601. WAIVER OF EXAMINATION SCHEDULE IN ORDER TO ALLOCATE EXAMINER RESOURCES.

Section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)) is amended—

(1) by redesignating paragraphs (5), (6), (7), (8), (9), and (10) as paragraphs (6), (7), (8), (9), (10), and (11), respectively;

(2) by inserting after paragraph (4), the following new paragraph:

"(5) WAIVER OF SCHEDULE WHEN NECESSARY TO ACHIEVE SAFE AND SOUND ALLOCATION OF EXAMINER RESOURCES.—Notwithstanding paragraphs (1), (2), (3), and (4), an appropriate Federal banking agency may make adjustments in the examination cycle for an insured depository institution if necessary to allocate available resources of examiners in a manner that provides for the safety and soundness of, and the effective examination and supervision of, insured depository institutions."; and

(3) in paragraphs (8) and (9), as so redesignated, by striking "paragraph (6)" and inserting "paragraph (7)".

SEC. 602. INTERAGENCY DATA SHARING.

(a) FEDERAL BANKING AGENCIES.—Section 7(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(2)) is amended by adding at the end the following new subparagraph:

"(C) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Corporation (with respect to all insured depository institutions, including a depository institution for which the Corporation has been appointed conservator or receiver) or an appropriate State bank supervisor (with respect to a State depository institution) under subparagraph (A) or (B), a Federal banking agency may, in the agency's discretion, furnish any report of examination or other confidential supervisory information concerning any depository institution or other entity examined by such agency under authority of any Federal law, to—

"(i) any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity;

"(ii) any officer, director, or receiver of such depository institution or entity; and

"(iii) any other person the Federal banking agency determines to be appropriate.".

(b) NATIONAL CREDIT UNION ADMINISTRATION.—Section 202(a) of the Federal Credit Union Act (12 U.S.C. 1782(a)) is amended by adding at the end the following new paragraph:

"(8) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Board (with respect to all insured credit unions, including a credit union for which the Corporation has been appointed conservator or liquidating agent) or an appropriate State commission, board, or authority having supervision of a State-chartered credit union, the Board may, in the Board's discretion, furnish any report of examination or other confidential supervisory information concerning any credit union or other entity examined by the Board under authority of any Federal law, to—

"(A) any other Federal or State agency or authority with supervisory or regulatory authority over the credit union or other entity;

"(B) any officer, director, or receiver of such credit union or entity; and

"(C) any other institution-affiliated party of such credit union or entity the Board determines to be appropriate.".

SEC. 603. PENALTY FOR UNAUTHORIZED PARTICIPATION BY CONVICTED INDIVIDUAL.

Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) is amended by adding at the end the following new subsection:

"(c) NONINSURED BANKS.—Subsections (a) and (b) shall apply to a noninsured national bank and a noninsured State member bank, and any agency or noninsured branch (as such terms are defined in section 1(b) of the International Banking Act of 1978) of a foreign bank as if such bank, branch, or agency were an insured depository institution, except such subsections shall be applied for purposes of this subsection by substituting the agency determined under the following paragraphs for 'Corporation' each place such term appears in such subsections:

"(1) The Comptroller of the Currency, in the case of a noninsured national bank or any Federal agency or noninsured Federal branch of a foreign bank.

"(2) The Board of Governors of the Federal Reserve System, in the case of a noninsured State member bank or any State agency or noninsured State branch of a foreign bank.".

SEC. 604. AMENDMENT PERMITTING THE DESTRUCTION OF OLD RECORDS OF A DEPOSITORY INSTITUTION BY THE FDIC AFTER THE APPOINTMENT OF THE FDIC AS RECEIVER.

Section 11(d)(15)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(15)(D)) is amended—

(1) by striking "RECORDKEEPING REQUIREMENT.—After the end of the 6-year period" and inserting "RECORDKEEPING REQUIREMENT.—

"(i) IN GENERAL.—Except as provided in clause (ii), after the end of the 6-year period";

(2) by striking "to be unnecessary" and inserting "are unnecessary and not relevant to any pending or reasonably probable future litigation"; and

(3) by adding at the end the following new clause:

"(ii) OLD RECORDS.—In the case of records of an insured depository institution which—

"(I) are at least 10 years old, as of the date the Corporation is appointed as the receiver of such depository institution; and

"(II) are unnecessary and not relevant to any pending or reasonably probable future litigation, as provided in clause (i),

the Corporation may destroy such records in accordance with clause (i) any time after such appointment is final without regard to the 6-year period of limitation contained in such clause.".

SEC. 605. MODERNIZATION OF RECORDKEEPING REQUIREMENT.

Subsection (f) of section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820(f)) is amended to read as follows:

"(f) PRESERVATION OF AGENCY RECORDS.—

"(1) IN GENERAL.—A Federal banking agency may cause any and all records, papers, or documents kept by the agency or in the possession or custody of the agency to be—

"(A) photographed or microphotographed or otherwise reproduced upon film; or

"(B) preserved in any electronic medium or format which is capable of—

"(i) being read or scanned by computer; and

"(ii) being reproduced from such electronic medium or format by printing or any other form of reproduction of electronically stored data.

"(2) TREATMENT AS ORIGINAL RECORDS.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

"(3) AUTHORITY OF THE FEDERAL BANKING AGENCIES.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be preserved in such manner as the Federal banking agency shall prescribe and the original records, papers, or documents may be destroyed or otherwise disposed of as the Federal banking agency may direct.".

SEC. 606. STREAMLINING REPORTS OF CONDITION.

Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) is amended by adding the following new paragraph:

"(11) STREAMLINING REPORTS OF CONDITION.—

"(A) REVIEW OF INFORMATION AND SCHEDULES.—Before the end of the 1-year period beginning on the date of the enactment of the Financial Services Regulatory Relief Act of 2005 and before the end of each 5-year period thereafter, each Federal banking agency shall, in consultation with the other relevant Federal banking agencies, review the information and schedules that are required to be filed by an insured depository institution in a report of condition required under paragraph (3).

"(B) REDUCTION OR ELIMINATION OF INFORMATION FOUND TO BE UNNECESSARY.—After completing the review required by subparagraph (A), a Federal banking agency, in consultation with the other relevant Federal banking agencies, shall reduce or eliminate any requirement to file information or schedules under paragraph (3) (other than information or schedules that are otherwise required by law) if the agency determines that the continued collection of such information or schedules is no longer necessary or appropriate.".

SEC. 607. EXPANSION OF ELIGIBILITY FOR 18-MONTH EXAMINATION SCHEDULE FOR COMMUNITY BANKS.

Paragraph (4)(A) of section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)) is amended by striking "$250,000,000" and inserting "$1,000,000,000".

SEC. 608. SHORT FORM REPORTS OF CONDITION FOR CERTAIN COMMUNITY BANKS.

(a) IN GENERAL.—Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) is amended by inserting after paragraph (11) (as added by section 606 of this title) the following new paragraph:

"(12) SHORT FORM REPORTS OF CONDITION FOR COMMUNITY BANKS.—

"(A) IN GENERAL.—With respect to reports of condition required under paragraph (3) for each calendar quarter, an insured depository institution described in subparagraphs (A), (B), (C), and (D) of section 10(d)(4) may submit a short form of any such report of condition in 2 nonsequential quarters of any calendar year.

"(B) SHORT FORM DEFINED.—The term 'short form', when used in connection with any report of condition required under paragraph (3), means a report of condition in a format established by the appropriate Federal banking agency, after notice and opportunity for comment, that—

"(i) is significantly and materially less burdensome for the insured depository institution to prepare than the format of the report of condition required under paragraph (3); and

"(ii) provides sufficient material information for the appropriate Federal banking agency to assure the maintenance of the safe and sound condition of the depository institution and safe and sound practices.".

(b) REGULATIONS.—Any regulation required to carry out the amendment made by subsection (a) shall be published in final form before the end of the 6-month period beginning on the date of the enactment of this Act.

SEC. 609. CLARIFICATION OF EXTENT OF SUSPENSION, REMOVAL, AND PROHIBITION AUTHORITY OF FEDERAL BANKING AGENCIES IN CASES OF CERTAIN CRIMES BY INSTITUTION-AFFILIATED PARTIES.

(a) INSURED DEPOSITORY INSTITUTIONS.—

(1) IN GENERAL.—Section 8(g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)(1)) is amended—

(A) in subparagraph (A)—

(i) by striking "is charged in any information, indictment, or complaint, with the commission of or participation in" and inserting "is the subject of any information, indictment, or complaint, involving the commission of or participation in";

(ii) by striking "may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution," and insert "posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)),"; and

(iii) by striking "affairs of the depository institution" and inserting "affairs of any depository institution";

(B) in subparagraph (B)(i), by striking "the depository institution" and inserting "any depository institution that the subject of the notice is affiliated with at the time the notice is issued";

(C) in subparagraph (C)(i)—

(i) by striking "may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution," and insert "posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, and relevant depository institution (as defined in subparagraph (E)),"; and

(ii) by striking "affairs of the depository institution" and inserting "affairs of any depository institution";

(D) in subparagraph (C)(ii), by striking "affairs of the depository institution" and inserting "affairs of any depository institution";

(E) in subparagraph (D)(i), by striking "the depository institution" and inserting "any depository institution that the subject of the order is affiliated with at the time the order is issued"; and

(F) by adding at the end the following new subparagraph:

"(E) RELEVANT DEPOSITORY INSTITUTION.—For purposes of this subsection, the term 'relevant depository institution' means any depository institution of which the party is or was an institution-affiliated party at the time—

"(i) the information, indictment or complaint described in subparagraph (A) was issued; or

"(ii) the notice is issued under subparagraph (A) or the order is issued under subparagraph (C)(i).".

(2) CLERICAL AMENDMENT.—The heading for section 8(g) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)) is amended to read as follows:

"(g) SUSPENSION, REMOVAL, AND PROHIBITION FROM PARTICIPATION ORDERS IN THE CASE OF CERTAIN CRIMINAL OFFENSES.—".

(b) INSURED CREDIT UNIONS.—

(1) IN GENERAL.—Section 206(i)(1) of the Federal Credit Union Act (12 U.S.C. 1786(i)(1)) is amended—

(A) in subparagraph (A), by striking "the credit union" each place such term appears and inserting "any credit union";

(B) in subparagraph (B)(i), by inserting "of which the subject of the order is, or most recently was, an institution-affiliated party" before the period at the end;

(C) in subparagraph (C)—

(i) by striking "the credit union" each place such term appears and inserting "any credit union"; and

(ii) by striking "the credit union's" and inserting "any credit union's";

(D) in subparagraph (D)(i), by striking "upon such credit union" and inserting "upon the credit union of which the subject of the order is, or most recently was, an institution-affiliated party"; and

(E) by adding at the end the following new subparagraph:

"(E) CONTINUATION OF AUTHORITY.—The Board may issue an order under this paragraph with respect to an individual who is an institution-affiliated party at a credit union at the time of an offense described in subparagraph (A) without regard to—

"(i) whether such individual is an institution-affiliated party at any credit union at the time the order is considered or issued by the Board; or

"(ii) whether the credit union at which the individual was an institution-affiliated party at the time of the offense remains in existence at the time the order is considered or issued by the Board.".

(2) CLERICAL AMENDMENT.—Section 206(i) of the Federal Credit Union Act (12 U.S.C. 1786(i)) is amended by striking "(i)" at the beginning and inserting the following new subsection heading:

"(i) SUSPENSION, REMOVAL, AND PROHIBITION FROM PARTICIPATION ORDERS IN THE CASE OF CERTAIN CRIMINAL OFFENSES.—".

SEC. 610. STREAMLINING DEPOSITORY INSTITUTION MERGER APPLICATION REQUIREMENTS.

(a) IN GENERAL.—Paragraph (4) of section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended to read as follows:

"(4) REPORTS ON COMPETITIVE FACTORS.—

"(A) REQUEST FOR REPORT.—In the interests of uniform standards and subject to subparagraph (B), the responsible agency shall, before acting on any application for approval of a merger transaction—

"(i) request a report on the competitive factors involved from the Attorney General; and

"(ii) provide a copy of the request to the Corporation (when the Corporation is not the responsible agency).

"(B) CONCURRENT CONSIDERATION.—The responsible agency shall not be required to make a request under subparagraph (A) before acting on an application for approval of a merger transaction if—

"(i) the agency finds that it must act immediately in order to prevent the probable failure of a depository institution involved in the transaction; or

"(ii) the transaction consists of a merger between an insured depository institution and 1 or more affiliates of the depository institution.

"(C) FURNISHING OF REPORT.—The report requested under subparagraph (A) shall be furnished by the Attorney General to the responsible agency—

"(i) not more than 30 calendar days after the date on which the Attorney General received the request; or

"(ii) not more than 10 calendar days after such date, if the requesting agency advises the Attorney General that an emergency exists requiring expeditious action.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 18(c)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(6)) is amended—

(1) in the second sentence by striking "banks or savings associations involved" and inserting the following: "insured depository institutions involved, or if the proposed merger transaction is solely between an insured depository institution and 1 or more of affiliates of the depository institution," and

(2) by striking the penultimate sentence and inserting the following: "If the agency has advised the Attorney General under paragraph (4)(C)(ii) of the existence of an emergency requiring expeditious action and has requested a report on the competitive factors within 10 days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency.".

SEC. 611. INCLUSION OF DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION IN LIST OF BANKING AGENCIES REGARDING INSURANCE CUSTOMER PROTECTION REGULATIONS.

Section 47(g)(2)(B)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1831x(g)(2)(B)(i)) is amended by inserting "the Director of the Office of Thrift Supervision," after "Comptroller of the Currency,".

SEC. 612. PROTECTION OF CONFIDENTIAL INFORMATION RECEIVED BY FEDERAL BANKING REGULATORS FROM FOREIGN BANKING SUPERVISORS.

Section 15 of the International Banking Act of 1978 (12 U.S.C. 3109) is amended by adding at the end the following new subsection:

"(c) CONFIDENTIAL INFORMATION RECEIVED FROM FOREIGN SUPERVISORS.—

"(1) IN GENERAL.—Except as provided in paragraph (3), a Federal banking agency shall not be compelled to disclose information received from a foreign regulatory or supervisory authority if—

"(A) the Federal banking agency determines that the foreign regulatory or supervisory authority has, in good faith, determined and represented to such Federal banking agency that public disclosure of the information would violate the laws applicable to that foreign regulatory or supervisory authority; and

"(B) the relevant Federal banking agency obtained such information pursuant to—

"(i) such procedures as the Federal banking agency may establish for use in connection with the administration and enforcement of Federal banking laws; or

"(ii) a memorandum of understanding or other similar arrangement between the Federal banking agency and the foreign regulatory or supervisory authority.

"(2) TREATMENT UNDER TITLE 5, UNITED STATES CODE.—For purposes of section 552 of title 5, United States Code, this subsection shall be treated as a statute described in subsection (b)(3)(B) of such section.

"(3) SAVINGS PROVISION.—No provision of this section shall be construed as—

"(A) authorizing any Federal banking agency to withhold any information from any duly authorized committee of the House of Representatives or the Senate; or

"(B) preventing any Federal banking agency from complying with an order of a court of the United States in an action commenced by the United States or such agency.

"(4) FEDERAL BANKING AGENCY DEFINED.—For purposes of this subsection, the term 'Federal banking agency' means the Board, the Comptroller, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision.".

SEC. 613. PROHIBITION ON PARTICIPATION BY CONVICTED INDIVIDUAL.

(a) EXTENSION OF AUTOMATIC PROHIBITION.—Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) is amended by inserting after subsection (c) (as added by section 603 of this title) the following new subsections:

"(d) BANK HOLDING COMPANIES.—Subsections (a) and (b) shall apply to any company (other than a foreign bank) that is a bank holding company and any organization organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act as if such bank holding company or organization were an insured depository institution, except such subsections shall be applied for purposes of this subsection by substituting 'Board of Governors of the Federal Reserve System' for 'Corporation' each place such term appears in such subsections.

"(e) SAVINGS AND LOAN HOLDING COMPANIES.—Subsections (a) and (b) shall apply to any savings and loan holding company and any subsidiary (other than a savings association) of a savings and loan holding company as if such savings and loan holding company or subsidiary were an insured depository institution, except such subsections shall be applied for purposes of this subsection by substituting 'Director of

the Office of Thrift Supervision' for 'Corporation' each place such term appears in such subsections.".

(b) ENHANCED DISCRETION TO REMOVE CONVICTED INDIVIDUALS.—Section 8(e)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(2)(A)) is amended—

(1) by striking "or" at the end of clause (ii);

(2) by striking the comma at the end of clause (iii) and inserting "; or"; and

(3) by adding at the end the following new clause:

"(iv) an institution-affiliated party of a subsidiary (other than a bank) of a bank holding company has been convicted of any criminal offense involving dishonesty or a breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense,".

SEC. 614. CLARIFICATION THAT NOTICE AFTER SEPARATION FROM SERVICE MAY BE MADE BY AN ORDER.

(a) IN GENERAL.—Section 8(i)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(3)) is amended by inserting "or order" after "notice" each place such term appears.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The heading for section 8(i)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(3)) is amended by inserting "OR ORDER" after "NOTICE".

SEC. 615. ENFORCEMENT AGAINST MISREPRESENTATIONS REGARDING FDIC DEPOSIT INSURANCE COVERAGE.

(a) IN GENERAL.—Section 18(a) of the Federal Deposit Insurance Act (12 U.S.C. 1828(a)) is amended by adding at the end the following new paragraph:

"(4) FALSE ADVERTISING, MISUSE OF FDIC NAMES, AND MISREPRESENTATION TO INDICATE INSURED STATUS.—

"(A) PROHIBITION ON FALSE ADVERTISING AND MISUSE OF FDIC NAMES.—No person may—

"(i) use the terms 'Federal Deposit', 'Federal Deposit Insurance', 'Federal Deposit Insurance Corporation', any combination of such terms, or the abbreviation 'FDIC' as part of the business name or firm name of any person, including any corporation, partnership, business trust, association, or other business entity; or

"(ii) use such terms or any other sign or symbol as part of an advertisement, solicitation, or other document,

to represent, suggest or imply that any deposit liability, obligation, certificate or share is insured or guaranteed by the Federal Deposit Insurance Corporation, if such deposit liability, obligation, certificate, or share is not insured or guaranteed by the Corporation.

"(B) PROHIBITION ON MISREPRESENTATIONS OF INSURED STATUS.—No person may knowingly misrepresent—

"(i) that any deposit liability, obligation, certificate, or share is federally insured, if such deposit liability, obligation, certificate, or share is not insured by the Corporation; or

"(ii) the extent to which or the manner in which any deposit liability, obligation, certificate, or share is insured by the Federal Deposit Insurance Corporation, if such deposit liability, obligation, certificate, or share is not insured by the Corporation to the extent or in the manner represented.

"(C) AUTHORITY OF FDIC.—The Corporation shall have—

"(i) jurisdiction over any person that violates this paragraph, or aids or abets the violation of this paragraph; and

"(ii) for purposes of enforcing the requirements of this paragraph with regard to any person—

"(I) the authority of the Corporation under section 10(c) to conduct investigations; and

"(II) the enforcement authority of the Corporation under subsections (b), (c), (d) and (i) of section 8,

as if such person were a state nonmember insured bank.

"(D) OTHER ACTIONS PRESERVED.—No provision of this paragraph shall be construed as barring any action otherwise available, under the laws of the United States or any State, to any Federal or State law enforcement agency or individual.".

(b) ENFORCEMENT ORDERS.—Section 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818(c)) is amended by adding at the end the following new paragraph:

"(4) FALSE ADVERTISING OR MISUSE OF NAMES TO INDICATE INSURED STATUS.—

"(A) TEMPORARY ORDER.—

"(i) IN GENERAL.—If a notice of charges served under subsection (b)(1) of this section specifies on the basis of particular facts that any person is engaged in conduct described in section 18(a)(4), the Corporation may issue a temporary order requiring—

"(I) the immediate cessation of any activity or practice described, which gave rise to the notice of charges; and

"(II) affirmative action to prevent any further, or to remedy any existing, violation.

"(ii) EFFECT OF ORDER.—Any temporary order issued under this subparagraph shall take effect upon service.

"(B) EFFECTIVE PERIOD OF TEMPORARY ORDER.—A temporary order issued under subparagraph (A) shall remain effective and enforceable, pending the completion of an administrative proceeding pursuant to subsection (b)(1) in connection with the notice of charges—

"(i) until such time as the Corporation shall dismiss the charges specified in such notice; or

"(ii) if a cease-and-desist order is issued against such person, until the effective date of such order.

"(C) CIVIL MONEY PENALTIES.—Violations of section 18(a)(4) shall be subject to civil money penalties as set forth in subsection (i) in an amount not to exceed $1,000,000 for each day during which the violation occurs or continues.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 18(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1828(a)) is amended—

(A) in the 1st sentence by striking "of this subsection" and inserting "of paragraphs (1) and (2)";

(B) by striking the 2nd sentence; and

(C) in the 3rd sentence, by striking "of this subsection" and inserting "of paragraphs (1) and (2)".

(2) The heading for subsection (a) of section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828(a)) is amended by striking "INSURANCE LOGO.—" and inserting "REPRESENTATIONS OF DEPOSIT INSURANCE.—".

SEC. 616. CHANGES REQUIRED TO SMALL BANK HOLDING COMPANY POLICY STATEMENT ON ASSESSMENT OF FINANCIAL AND MANAGERIAL FACTORS.

(a) SMALL BANK HOLDING COMPANY POLICY STATEMENT ON ASSESSMENT OF FINANCIAL AND MANAGERIAL FACTORS.—

(1) IN GENERAL.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall publish in the Federal Register proposed revisions to the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors (12 C.F.R. part 225—appendix C) that provide that the policy shall apply to a bank holding company which has pro forma consolidated assets of less than $1,000,000,000 and that—

(A) is not engaged in any nonbanking activities involving significant leverage; and

(B) does not have a significant amount of outstanding debt that is held by the general public.

(2) ADJUSTMENT OF AMOUNT.—The Board of Governors of the Federal Reserve System shall annually adjust the dollar amount referred to in paragraph (1) in the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors by an amount equal to the percentage increase, for the most recent year, in total assets held by all insured depository institutions, as determined by the Board.

(b) INCREASE IN DEBT-TO-EQUITY RATIO OF SMALL BANK HOLDING COMPANY.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall publish in the Federal Register proposed revisions to the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors (12 C.F.R. part 225—appendix C) such that the debt-to-equity ratio allowable for a small bank holding company in order to remain eligible to pay a corporate dividend and to remain eligible for expedited processing procedures under Regulation Y of the Board of Governors of the Federal Reserve System would increase from 1:1 to 3:1.

SEC. 617. EXCEPTION TO ANNUAL PRIVACY NOTICE REQUIREMENT UNDER THE GRAMM-LEACH-BLILEY ACT.

Section 503 of the Gramm-Leach-Bliley Act (15 U.S.C. 6803) is amended by adding the following new subsections:

"(c) EXCEPTION TO ANNUAL NOTICE REQUIREMENT.—A financial institution that—

"(1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 502 or regulations prescribed under section 504(b);

"(2) does not share information with affiliates under section 603(d)(2)(A) of the Fair Credit Reporting Act; and

"(3) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this subsection,

shall not be required to provide an annual disclosure under this subsection until such time as the financial institution fails to comply with any criteria described in paragraph (1), (2), or (3).

"(d) EXCEPTION TO NOTICE REQUIREMENT.—A financial institution shall not be required to provide any disclosure under this section if—

"(1) the financial institution is licensed by a State and is subject to existing regulation of consumer confidentiality that prohibits disclosure of nonpublic personal information without knowing and expressed consent of the consumer in the form of laws, rules, or regulation of professional conduct or ethics promulgated either by the court of highest appellate authority or by the principal legislative body or regulatory agency or body of any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands; or

"(2) the financial institution is licensed by a State and becomes subject to future regulation of consumer confidentiality that prohibits disclosure of nonpublic personal information without knowing and expressed consent of the consumer in the form of laws, rules, or regulation of professional conduct or ethics promulgated either by the court of highest appellate authority or by the principal legislative body or regulatory agency or body of any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.".

SEC. 618. BIENNIAL REPORTS ON THE STATUS OF AGENCY EMPLOYMENT OF MINORITIES AND WOMEN.

(a) IN GENERAL.—Before December 31, 2005, and the end of each 2-year period beginning after such date, each Federal banking agency shall submit a report to the Congress on the status of the employment by the agency of minority individuals and women.

(b) FACTORS TO BE INCLUDED.—The report shall include a detailed assessment of each of the following:

(1) The extent of hiring of minority individuals and women by the agency as of the time the report is prepared.

(2) The successes achieved and challenges faced by the agency in operating minority and women outreach programs.

(3) Challenges the agency may face in finding qualified minority individual and women applicants.

(4) Such other information, findings, and conclusions, and recommendations for legislative or agency action, as the agency may determine to be appropriate to include in the report.

(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) FEDERAL BANKING AGENCY.—The term "Federal banking agency"—

(A) has the same meaning as in section 3(z) of the Federal Deposit Insurance Act; and

(B) includes the National Credit Union Administration.

(2) MINORITY.—The term "minority" has the same meaning as in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

SEC. 619. COORDINATION OF STATE EXAMINATION AUTHORITY.

Section 10(h) of the Federal Deposit Insurance Act (12 U.S.C. 1820(h)) is amended to read as follows:

"(h) COORDINATION OF EXAMINATION AUTHORITY.—

"(1) STATE BANK SUPERVISORS OF HOME AND HOST STATES.—

"(A) HOME STATE OF BANK.—The appropriate State bank supervisor of the home State of an insured State bank has authority to examine and supervise the bank.

"(B) HOST STATE BRANCHES.—The State bank supervisor of the home State of an insured State bank and any State bank supervisor of an appro-

priate host State shall exercise their respective authority to supervise and examine the branches of the bank in a host State in accordance with the terms of any applicable cooperative agreement between the home State bank supervisor and the State bank supervisor of the relevant host State.

"(C) SUPERVISORY FEES.—Except as expressly provided in a cooperative agreement between the State bank supervisors of the home State and any host State of an insured State bank, only the State bank supervisor of the home State of an insured State bank may levy or charge State supervisory fees on the bank.

"(2) HOST STATE EXAMINATION.—

"(A) IN GENERAL.—With respect to a branch operated in a host State by an out-of-State insured State bank that resulted from an interstate merger transaction approved under section 44 or that was established in such State pursuant to section 5155(g) of the Revised Statutes, the third undesignated paragraph of section 9 of the Federal Reserve Act or section 18(d)(4) of this Act, the appropriate State bank supervisor of such host State may—

"(i) with written notice to the State bank supervisor of the bank's home State and subject to the terms of any applicable cooperative agreement with the State bank supervisor of such home State, examine such branch for the purpose of determining compliance with host State laws that are applicable pursuant to section 24(j) of this Act, including those that govern community reinvestment, fair lending, and consumer protection; and

"(ii) if expressly permitted under and subject to the terms of a cooperative agreement with the State bank supervisor of the bank's home State or if such out-of-State insured State bank has been determined to be in a troubled condition by either the State bank supervisor of the bank's home State or the bank's appropriate Federal banking agency, participate in the examination of the bank by the State bank supervisor of the bank's home State to ascertain that the activities of the branch in such host State are not conducted in an unsafe or unsound manner.

"(B) NOTICE OF DETERMINATION.—

"(i) IN GENERAL.—The State bank supervisor of the home State of an insured State bank should notify the State bank supervisor of each host State of the bank if there has been a final determination that the bank is in a troubled condition.

"(ii) TIMING OF NOTICE.—The State bank supervisor of the home State of an insured State bank should provide notice under clause (i) as soon as reasonably possible but in all cases within 15 business days after the State bank supervisor has made such final determination or has received written notification of such final determination.

"(3) HOST STATE ENFORCEMENT.—If the State bank supervisor of a host State determines that a branch of an out-of-State State insured State bank is violating any law of the host State that is applicable to such branch pursuant to section 24(j) of this Act, including a law that governs community reinvestment, fair lending, or consumer protection, the State bank supervisor of the host State or, to the extent authorized by the law of the host State, a host State law enforcement officer may, with written notice to the State bank supervisor of the bank's home State and subject to the terms of any applicable cooperative agreement with the State bank supervisor of the bank's home State, undertake such enforcement actions and proceedings as would be permitted under the law of the host State as if the branch were a bank chartered by that host State.

"(4) COOPERATIVE AGREEMENT.—

"(A) IN GENERAL.—The State bank supervisors from 2 or more States may enter into cooperative agreements to facilitate State regulatory supervision of State banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations. For purposes of this subsection (h), the term 'cooperative agreement' means a written agreement that is signed by the home State bank supervisor and host State bank supervisor to facilitate State regulatory supervision of State banks and includes nationwide or multi-state cooperative agreements and cooperative agreements solely between the home State and host State.

"(B) RULE OF CONSTRUCTION.—Except for State bank supervisors, no provision of this subsection relating to such cooperative agreements shall be construed as limiting in any way the authority of home and host State law enforcement officers, regulatory supervisors, or other officials that have not signed such cooperative agreements to enforce host State laws that are ap-

plicable to a branch of an out-of-State insured State bank located in the host State pursuant to section 24(j) of this Act.

"(5) FEDERAL REGULATORY AUTHORITY.—No provision of this subsection shall be construed as limiting in any way the authority of any Federal banking agency.

"(6) STATE TAXATION AUTHORITY NOT AFFECTED.—No provision of this subsection (h) shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any bank, bank holding company, or foreign bank, to the extent such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

"(7) DEFINITIONS.—For purpose of this section, the following definition shall apply:

"(A) HOST STATE, HOME STATE, OUT-OF-STATE BANK.—The terms 'host State', 'home State', and 'out-of-State bank' have the same meanings as in section 44(g).

"(B) STATE SUPERVISORY FEES.—The term 'State supervisory fees' means assessments, examination fees, branch fees, license fees, and all other fees that are levied or charged by a State bank supervisor directly upon an insured State bank or upon branches of an insured State bank.

"(C) TROUBLED CONDITION.—Solely for purposes of subparagraph (2)(B) of this subsection (h), an insured State bank has been determined to be in 'troubled condition' if the bank—

"(i) has a composite rating, as determined in its most recent report of examination, of 4 or 5 under the Uniform Financial Institutions Ratings System (UFIRS); or

"(ii) is subject to a proceeding initiated by the Corporation for termination or suspension of deposit insurance; or

"(iii) is subject to a proceeding initiated by the State bank supervisor of the bank's home State to vacate, revoke, or terminate the charter of the bank, or to liquidate the bank, or to appoint a receiver for the bank.

"(D) FINAL DETERMINATION.—For the purposes of paragraph (2)(B), the term 'final determination' means the transmittal of a report of examination to the bank or transmittal of official notice of proceedings to the bank.".

SEC. 620. NONWAIVER OF PRIVILEGES.

(a) INSURED DEPOSITORY INSTITUTIONS.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(x) PRIVILEGES NOT AFFECTED BY DISCLOSURE TO BANKING AGENCY OR SUPERVISOR.—

"(1) IN GENERAL.—The submission by any person of any information to any Federal banking agency, State bank supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such agency, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such agency, supervisor, or authority.

"(2) RULE OF CONSTRUCTION.—No provision of paragraph (1) may be construed as implying or establishing that—

"(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

"(B) any person would waive any privilege applicable to any information by submitting the information to any Federal banking agency, State bank supervisor, or foreign banking authority, but for this subsection.".

(b) INSURED CREDIT UNIONS.—Section 205 of the Federal Credit Union Act (12 U.S.C.1785) is amended by adding at the end the following new subsection:

"(j) PRIVILEGES NOT AFFECTED BY DISCLOSURE TO BANKING AGENCY OR SUPERVISOR.—

"(1) IN GENERAL.—The submission by any person of any information to the Administration, any State credit union supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such Board, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such Board, supervisor, or authority.

"(2) RULE OF CONSTRUCTION.—No provision of paragraph (1) may be construed as implying or establishing that—

"(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

"(B) any person would waive any privilege applicable to any information by submitting the information to the Administration, any State credit union supervisor, or foreign banking authority, but for this subsection.".

SEC. 621. RIGHT TO FINANCIAL PRIVACY ACT OF 1978 AMENDMENT.

Paragraph (1) of section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) is amended by inserting "(including any lender who advances funds on pledges of personal property)" after "consumer finance institution".

SEC. 622. DEPUTY DIRECTOR; SUCCESSION AUTHORITY FOR DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.

(a) ESTABLISHMENT OF POSITION OF DEPUTY DIRECTOR.—Section 3(c)(5) of the Home Owners' Loan Act (12 U.S.C. 1462a(c)(5)) is amended to read as follows:

"(5) DEPUTY DIRECTOR.—

"(A) IN GENERAL.—The Secretary of the Treasury shall appoint a Deputy Director and may appoint up to 3 additional Deputy Directors.

"(B) FIRST DEPUTY DIRECTOR.—If the Secretary of the Treasury appoints more than 1 Deputy Director of the Office, the Secretary shall designate one such appointee as the First Deputy Director.

"(C) DUTIES.—Each Deputy Director appointed under this paragraph shall take an oath of office and perform such duties as the Director shall direct.

"(D) COMPENSATION AND BENEFITS.—The Director shall fix the compensation and benefits for each Deputy Director in accordance with this Act.".

(b) SERVICE OF DEPUTY DIRECTOR AS ACTING DIRECTOR.—Section 3(c)(3) of the Home Owners' Loan Act (12 U.S.C. 1462a(c)(3)) is amended—

(1) by striking "VACANCY.—A vacancy in the position of Director" and inserting "VACANCY.—

"(A) IN GENERAL.—A vacancy in the position of Director"; and

(2) by adding at the end the following new subparagraphs:

"(B) ACTING DIRECTOR.—

"(i) IN GENERAL.—In the event of a vacancy in the position of Director or during the absence or disability of the Director, the Deputy Director shall serve as Acting Director.

"(ii) SUCCESSION IN CASE OF 2 OR MORE DEPUTY DIRECTORS.—If there are 2 or more Deputy Directors serving at the time a vacancy in the position of Director occurs or the absence or disability of the Director commences, the First Deputy Director shall serve as Acting Director under clause (i) followed by such other Deputy Directors under any order of succession the Director may establish.

"(iii) AUTHORITY OF ACTING DIRECTOR.—Any Deputy Director, while serving as Acting Director under this subparagraph, shall be vested with all authority, duties, and privileges of the Director under this Act and any other provision of Federal law.".

SEC. 623. LIMITATION ON SCOPE OF NEW AGENCY GUIDELINES.

(a) IN GENERAL.—The provisions of the multi-agency guidance Numbered 2003–1 issued by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision that relate to minimum credit card payments and negative amortization—

(1) shall only apply to new credit card accounts established by a creditor for a consumer after the date of the enactment of this Act under an open end consumer credit plan; and

(2) shall not apply to any outstanding balance on any credit card account under an open end consumer credit plan as of such date of enactment.

(b) DEFINITIONS.—For purposes of this section, the terms "credit", "credit card", "creditor", "consumer" and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act.

(c) SUNSET PROVISION.—This section shall not apply after the end of the 3-year period beginning on the date of the enactment of this Act.

TITLE VII—"BSA" COMPLIANCE BURDEN REDUCTION

SEC. 701. EXCEPTION FROM CURRENCY TRANSACTION REPORTS FOR SEASONED CUSTOMERS.

(a) FINDINGS.—The Congress finds as follows:

(1) The completion of and filing of currency transaction reports under section 5313 of title 31, United States Code, poses a compliance burden on the financial industry.

(2) Due to the nature of the transactions or the persons and entities conducting such transactions, certain such reports as currently filed do not appear to be relevant to the detection, deterrence, or investigation of financial crimes, including money laundering and the financing of terrorism.

(3) However, the data contained in such reports can provide valuable context for the analysis of other data derived pursuant to subchapter II of chapter 53 of title 31, United States Code, as well as investigative data, which provides invaluable and indispensable information supporting efforts to combat money laundering and other financial crimes.

(4) An exemption from the reporting requirements for certain currency transactions that are of little or no value to ongoing efforts of law enforcement agencies, financial regulatory agencies, and the financial services industry to investigate, detect, or deter financial crimes would serve to balance the burden placed on members of the financial services industry with the compelling need to produce and provide meaningful information to policy-makers, financial regulators, law enforcement, and intelligence agencies.

(5) The Secretary of the Treasury has by regulation, and in accordance with section 5313 of title 31, United States Code, implemented a process by which institutions may seek exemptions from filing certain currency transaction reports based on appropriate circumstances; however, the existing exemption process has not adequately balanced the burden on the financial industry with the Government's need for data to support its efforts in combating financial crime.

(6) The act of providing notice to the Secretary of the Treasury of designations of exemption provides meaningful information to law enforcement officials on exempt customers and enables law enforcement to obtain account information through appropriate legal process; the act of providing notice of designations of exemption complements other sections of title 31, United States Code, whereby law enforcement can locate financial institutions with relevant records relating to a person of investigative interest, such as information requests made pursuant to regulations implementing section 314(a) of the USA PATRIOT Act of 2001.

(7) A designation of exemption has no effect on requirements for depository institutions to apply the full range of anti-money laundering controls as set forth in subchapter II of chapter 53 of title 31, United States Code, including the requirement to apply the customer identification program pursuant to Section 5326 of subchapter II of chapter 53 of title 31, United States Code, and the requirement to identify, monitor, and, if appropriate, report suspicious activity in accordance with section 5318(g) of title 31, United States Code.

(8) The Federal banking agencies and the Financial Crimes Enforcement Network have recently provided guidance through the Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering Examination Manual on applying appropriate levels of due diligence and identifying suspicious activity by the types of cash-intensive businesses that generally will be subject to exemption.

(b) SEASONED CUSTOMER EXEMPTION.—

(1) IN GENERAL.—Section 5313(e) of title 31, United States Code, is amended to read as follows:

"(e) QUALIFIED CUSTOMER EXEMPTION.—

"(1) IN GENERAL.—The Secretary of the Treasury shall prescribe regulations within 270 days of the enactment of the Financial Services Regulatory Relief Act of 2005 that exempt any depository institution from filing a report pursuant to this section in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes) with a qualified customer of the depository institution.

"(2) QUALIFIED CUSTOMER DEFINED.—For purposes of this section, the term 'qualified customer', with respect to a depository institution, has such meaning

as the Secretary of the Treasury shall prescribe, which shall include any person that—

"(A) is incorporated or organized under the laws of the United States or any State, including a sole proprietorship, or is registered as and eligible to do business within the United States or a State;

"(B) has maintained a deposit account with the depository institution for at least 12 months; and

"(C) has engaged, using such account, in multiple currency transactions that are subject to the reporting requirements of subsection (a).

"(3) REGULATIONS.—

"(A) IN GENERAL.—The Secretary of the Treasury shall prescribe regulations requiring a depository institution to file a 1-time notice of designation of exemption for each qualified customer of the depository institution.

"(B) FORM AND CONTENT OF EXEMPTION NOTICE.—The Secretary shall by regulation prescribe the form, manner, content, and timing of the qualified customer exemption notice; such notice shall include information sufficient to identify the qualified customer and its accounts.

"(C) AUTHORITY OF SECRETARY.—

"(i) IN GENERAL.—The Secretary may suspend, reject or revoke any qualified customer exemption notice, in accordance with criteria prescribed by the Secretary by regulation.

"(ii) CONDITIONS.—The Secretary may establish conditions, in accordance with criteria prescribed by regulation, under which exempt qualified customers of an insured depository institution that is merged with or acquired by another insured depository institution will continue to be treated as designated exempt qualified customers of the surviving or acquiring institution.".

(c) 3-YEAR REVIEW AND REPORT.—Before the end of the 3-year period beginning on the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Attorney General, the Secretary of the Department of Homeland Security, the Federal banking agencies, the banking industry, and such other persons as the Secretary deems appropriate, shall evaluate the operations and effect of this provision and make recommendations to Congress as to any legislative action with respect to this provision as the Secretary may determine to be appropriate.

SEC. 702. REDUCTION IN INCONSISTENCIES IN MONETARY TRANSACTION RECORDKEEPING AND REPORTING ENFORCEMENT AND EXAMINATION REQUIREMENTS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that inconsistencies and redundancies among regulations implementing monetary transaction recordkeeping and reporting enforcement programs under section 8 of the Federal Deposit Insurance Act, section 206(q) of the Federal Credit Union Act, and chapter II of chapter 53 of title 31, United States Code by the Secretary of the Treasury and the Federal banking agencies—

(1) increase the difficulty depository institutions have in complying with congressional intent in creating such enforcement programs,

(2) reduce the transparency and clarity of the regulatory regime;

(3) increase the potential for conflict among the various regulations in the future; and

(4) contribute to the perception that various agencies involved in the enforcement of the monetary transaction recordkeeping and reporting requirements apply such requirements inconsistently.

(b) AGENCY COORDINATION OF MONETARY TRANSACTION RECORDKEEPING AND REPORTING REQUIREMENTS.—

(1) ENFORCEMENT PROGRAMS.—

(A) FEDERAL DEPOSIT INSURANCE ACT.—Section 8(s) of the Federal Deposit Insurance Act (12 U.S.C. 1818(s)) is amended by adding at the end the following new paragraph:

"(4) COORDINATION ON UNIFORM REQUIREMENTS.—In prescribing regulations under paragraph (1), the Federal banking agencies, acting through the Financial Institutions Examination Council, shall—

"(A) consult with each other, the National Credit Union Administration Board, and the Secretary of the Treasury; and

"(B) take such action as may be necessary to ensure that the requirements for procedures established pursuant to such regulations, and the examination standards for reviewing such procedures, are congruent and reasonably uniform (taking into account differences in the form and function of the institutions subject to such requirements).".

(B) FEDERAL CREDIT UNION ACT.—Section 206(q) of the Federal Credit Union Act (12 U.S.C. 1786(q)) is amended by adding at the end the following new paragraph:

"(4) COORDINATION ON UNIFORM REQUIREMENTS.—In prescribing regulations under paragraph (1), the Board, acting through the Financial Institutions Examination Council, shall—

"(A) consult with the Federal banking agencies and the Secretary of the Treasury; and

"(B) take such action as may be necessary to ensure that the requirements for procedures established pursuant to such regulations, and the examination standards for reviewing such procedures, are congruent and reasonably uniform (taking into account differences in the form and function of the institutions subject to such requirements).".

(2) EXAMINATION STANDARDS AND DISPUTES.—Section 1006 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3305) is amended by adding at the end the following new subsection:

"(h) MONETARY TRANSACTION RECORDKEEPING AND REPORTING REQUIREMENTS.—The Council and the Secretary of the Treasury shall jointly establish—

"(1) uniform standards and principles applicable to the examination of financial institutions to ensure compliance with the requirements of subchapter II of chapter 53, United States Code, sections 8(s) and 21 of the Federal Deposit Insurance Act, and section 206(q) of the Federal Credit Union Act; and

"(2) a clear policy statement on appropriate processes for resolving examiner-institution disagreements concerning the application of subchapter II of chapter 53, United States Code, sections 8(s) and 21 of the Federal Deposit Insurance Act, and section 206(q) of the Federal Credit Union Act to financial institutions.".

(3) EFFECTIVE DATE.—The Federal banking agencies, the National Credit Union Administration Board, the Financial Institutions Examination Council, and the Secretary of the Treasury shall commence the discussions and consultations required under the amendments made by this subsection as soon as practicable after the date of the enactment of this Act.

(c) REVIEW OF AND REPORT ON ADDITIONAL REGULATORY OR LEGISLATIVE CHANGES.—

(1) REVIEW REQUIRED.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall conduct a review of the potential inconsistencies in, or redundancies among, the regulations pertaining to the application of the requirements of subchapter II of chapter 53, United States Code, sections 8(s) and 21 of the Federal Deposit Insurance Act, and section 206(q) of the Federal Credit Union Act to financial institutions.

(2) REPORT TO CONGRESS AND THE FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.—Upon completion of the review under paragraph (1), the Secretary of the Treasury shall promptly submit a report on the findings and conclusions of the Secretary with respect to the review to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, together with such recommendations for legislative and administrative actions as the Secretary may determine to be appropriate, and shall transmit a copy of such report to the members of the Financial Institutions Examination Council.

(d) REFORM OF APPLICATION OF MONETARY TRANSACTION RECORDKEEPING AND REPORTING REQUIREMENTS TO FINANCIAL INSTITUTIONS.—Before the end of the 9-month period beginning on the date of the submission of the report to Congress under subsection (c)(2), the Secretary of the Treasury shall prescribe regulations implementing appropriate changes to regulations within the jurisdiction of the Secretary to remedy redundancies or inconsistencies identified in the review by, and included in the recommendations of, the Secretary under subsection (c).

SEC. 703. ADDITIONAL REFORMS RELATING TO MONETARY TRANSACTION AND RECORDKEEPING REQUIREMENTS APPLICABLE TO FINANCIAL INSTITUTIONS.

(a) NOTIFICATION OF OFFICERS AND DIRECTORS OF FINANCIAL INSTITUTIONS.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall—

(1) review any regulation, guideline, or guidance of the Secretary, any Federal banking agency, or the National Credit Union Administration Board that serves as the basis for any requirement to provide notice to any officer or director of a depository institution of any suspicious activity report submitted by the depository institution to the Secretary and any such agency or Board;

(2) modify or eliminate any such requirement of the Secretary that the Secretary determines is not necessary to achieve the purposes of section 5318(g) of title 31, United States Code; and

(3) make a recommendation to any Federal banking agency or the National Credit Union Administration Board to modify or eliminate any such require-

ment of such agency or Board that the Secretary determines is not necessary to achieve the purposes of section 5318(g) of title 31, United States Code.

(b) ELIMINATION OF UNNECESSARY VERIFICATION REQUIREMENTS APPLICABLE TO THE PURCHASE OF FINANCIAL INSTRUMENTS.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall—

(1) review all verification of customer identity requirements as they relate to the purchases of monetary instruments by customers of depository institutions, including the regulations codified in section 103.29(a)(ii) of title 31, Code of Federal Regulations; and

(2) modify or eliminate any customer identity requirement related to the purchases of monetary instruments by customers of depository institutions codified in section 103.29(a)(ii) of title 31, Code of Federal Regulations, that the Secretary determines is unnecessary.

(c) ELIMINATION OF RECURRING FILINGS OF SUSPICIOUS ACTIVITY REPORTS ON A SINGLE TRANSACTION.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury, as appropriate, shall prescribe regulations, or issue other forms of guidance, that eliminate the need for depository institutions to file recurring suspicious activity reports on the same transaction unless there has been a subsequent change in any pattern of activity involving any person who was connected with the transaction.

(d) ELECTRONIC ACKNOWLEDGEMENT OF CERTAIN ELECTRONIC FILINGS.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Director of the Financial Crimes Enforcement Network shall put into effect a system for promptly furnishing an electronic acknowledgement of receipt to any institution that files a form with FinCEN under subchapter II of chapter 53 of title 31, United States Code, through the Network's electronic filing system.

SEC. 704. STUDY BY COMPTROLLER GENERAL.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study on methods and practices which would—

(1) reduce the overall number of currency transaction reports filed with the Secretary of the Treasury under section 5313(a) of title 31, United States Code, while ensuring that the needs of the Secretary, the Financial Crimes Enforcement Network, law enforcement agencies, and financial institution regulatory agencies continue to be met;

(2) improve financial institution utilization of the current exemption provisions; and

(3) mitigate the difficulties in the current implementation of such exemption provisions that limit the utility of the exemption process for financial institutions.

(b) REPORT.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the findings and conclusions of the Comptroller General with respect to the study conducted under subsection (a) and such recommendations for legislative and administrative action as the Comptroller General may determine to be appropriate.

SEC. 705. FEASIBILITY STUDY REQUIRED.

(a) IN GENERAL.—For the purpose of simplifying, and increasing compliance with, the various recordkeeping and reporting requirements under subchapter II of chapter 53 of title 31, United States Code, chapter 2 of title I of Public Law 91—508, and section 21 of the Federal Deposit Insurance Act, and regulations prescribed under such provisions of law, the Secretary of the Treasury (hereafter in this section referred to as the "Secretary") shall conduct a study on the feasibility of developing and implementing interfaces and templates for use in electronic communications between financial institutions (as defined in section 5312 of title 31, United States Code) and the Secretary, the Financial Crimes Enforcement Network, and other Federal financial institution regulatory agencies.

(b) FACTORS TO BE CONSIDERED.—In conducting the study required under subsection (a), the Secretary shall take into account—

(1) any procedures required to be maintained by financial institutions under regulations prescribed pursuant to section 5318(a)(2) of title 31 of the United States Code and the manner in which the use of interfaces and templates which might be developed could lessen the burden of complying with such procedures; and

(2) any exemptions prescribed by the Secretary under paragraph (5) or (6) of such section 5318(a) and the manner in which interfaces and templates which

might be developed could be programmed to reflect any such exemption for a financial institution, transaction, or class of transactions.

(c) PROTOTYPE AND REPORT REQUIRED.—

(1) IN GENERAL.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Secretary shall submit a report to the Congress containing a detailed description of the findings and conclusions of the Secretary in connection with the study required under subsection (a), together with such recommendations for legislative or administrative action as the Secretary may determine to be appropriate.

(2) PROTOTYPE.—Any recommendation on the feasibility of developing and implementing interfaces and templates for use in electronic communications shall be accompanied by prototypes of such interfaces and templates that demonstrate such feasibility.

(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) INTERFACE.—The term "interface" means the point and method of interaction between any 2 or more electronic data storage and communication systems that permits and facilitates active electronic communication between or among the systems, including any procedures, codes, and protocols that enable the systems to interact.

(2) TEMPLATE.—The term "template" means a preestablished layout model using word processing or other authoring software that ensures that data entered into it will adhere to a consistent format and content scheme when used by all parties engaged in electronic communications among each other.

SEC. 706. ANNUAL REPORT BY SECRETARY OF THE TREASURY.

(a) FINDINGS.—The Congress finds as follows:

(1) Financial institutions have too little information about money laundering and terrorist financing compliance in other markets.

(2) The current Financial Action Task Force designation system does not adequately represent the progress countries are making in combatting money laundering.

(3) Lack of information about the compliance of countries with anti-money laundering standards exposes United States financial markets to excessive risk.

(4) Failure to designate countries that fail to make progress in combatting terrorist financing and money laundering eliminates incentives for internal reform.

(5) The Secretary of the Treasury has an affirmative duty to provide to financial institutions and examiners the best possible information on compliance with anti-money laundering and terrorist financing initiatives in other markets.

(b) REPORT.—Not later than March 1 of each year, the Secretary of the Treasury shall submit to the Congress a report that identifies the applicable standards of each country against money laundering and states whether that country is a country of primary money laundering concern under section 5318A of title 31, United States Code. The report shall include—

(1) information on the effectiveness of each country in meeting its standards against money laundering;

(2) a determination of whether that the efforts of that country to combat money laundering and terrorist financing are adequate, improving, or inadequate; and

(3) the efforts made by the Secretary to provide to the government of each such country of concern technical assistance to cease the activities that were the basis for the determination that the country was of primary money laundering concern.

(c) DISSEMINATION OF INFORMATION IN REPORT.—The Secretary of the Treasury shall make available to the Federal Financial Institutions Examination Council for incorporation into the examination process, in consultation with Federal banking agencies, and to financial institutions the information contained in the report submitted under subsection (a). Such information shall be made available to financial institutions without cost.

(d) DEFINITION.—For purposes of this section, the term "financial institution" has the meaning given that term in section 5312(a)(2) of title 31, United States Code.

SEC. 707. PRESERVATION OF MONEY SERVICES BUSINESSES.

(a) FINDINGS.—The Congress finds as follows:

(1) Title III of the USA PATRIOT ACT provided United States law enforcement agencies with new tools to combat terrorist financing and money laundering.

(2) The Financial Crimes Enforcement Network in the Department of the Treasury (hereafter in this section referred to as "FinCEN") has defined money

services businesses to include the following 5 distinct types of financial services providers as well as the United States Postal Service:

(A) Currency dealers or exchanges.

(B) Check cashing services.

(C) Issuers of travelers' checks, money orders, or stored value cards.

(D) Sellers or redeemers of travelers' checks, money orders, or stored value cards.

(E) Money transmitters.

(3) Money services businesses have had more difficulty in obtaining and maintaining banking services since the passage of the USA PATRIOT ACT.

(4) On March 30, 2005, FinCEN and the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) issued a joint statement recognizing the importance of ensuring that money services businesses that comply with the law have reasonable access to banking services.

(5) On April 26, 2005, FinCEN offered guidance to money service businesses on obtaining and maintaining banking services by identifying and explaining to money services businesses the types of information and documentation they are expected to have, and to provide to, depository institutions when conducting banking business.

(6) At the same time, FinCEN and the Federal banking agencies have issued joint guidance to depository institutions to—

(A) clarify the requirements of subchapter II of chapter 53 of title 31, United States Code, and related provisions of law; and

(B) set forth the minimum steps that depository institutions should take when providing banking services to money services businesses.

(7) It is in the interest of the United States and its allies in the wars against terrorism and drugs to make certain that the international transfer of funds is done in a rules-based, formal, and transparent manner and that individuals are not forced into utilizing informal underground methods due to a lack of services.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that depository institutions and money services businesses should follow the guidance offered by FinCEN for the purpose of giving money services businesses full access to banking services and ensuring that money services businesses remain in the mainstream financial system and can be full players in providing important financial services to their customers and be fully cooperative in the fight against terrorist financing and money laundering.

TITLE VIII—CLERICAL AND TECHNICAL AMENDMENTS

SEC. 801. CLERICAL AMENDMENTS TO THE HOME OWNERS' LOAN ACT.

(a) AMENDMENT TO TABLE OF CONTENTS.—The table of contents in section 1 of the Home Owners' Loan Act (12 U.S.C. 1461) is amended by striking the items relating to sections 5 and 6 and inserting the following new items:

"Sec. 5. Savings associations.
"Sec. 6. [Repealed.].".

(b) CLERICAL AMENDMENTS TO HEADINGS.—

(1) The heading for section 4(a) of the Home Owners' Loan Act (12 U.S.C. 1463(a)) is amended by striking "(a) FEDERAL SAVINGS ASSOCIATIONS.—" and inserting "(a) GENERAL RESPONSIBILITIES OF THE DIRECTOR.—".

(2) The section heading for section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) is amended to read as follows:

"SEC. 5. SAVINGS ASSOCIATIONS.".

SEC. 802. TECHNICAL CORRECTIONS TO THE FEDERAL CREDIT UNION ACT.

The Federal Credit Union Act (12 U.S.C. 1751 et seq.) is amended as follows:

(1) In section 101(3), strike "and" after the semicolon.

(2) In section 101(5), strike the terms "account account" and "account accounts" each place any such term appears and insert "account".

(3) In section 107(a)(5)(E) (as so designated by section 303 of this Act), strike the period at the end and insert a semicolon.

(4) In paragraphs (6) and (7) of section 107(a) (as so designated by section 303 of this Act), strike the period at the end and insert a semicolon.

(5) In section 107(a)(7)(D) (as so designated by section 303 of this Act), strike "the Federal Savings and Loan Insurance Corporation or".

(6) In section 107(a)(7)(E) (as so designated by section 303 of this Act), strike "the Federal Home Loan Bank Board," and insert "the Federal Housing Finance Board,".

(7) In section 107(a)(9) (as so designated by section 303 of this Act), strike "subchapter III" and insert "title III".

(8) In section 107(a)(13) (as so designated by section 303 of this Act), strike the "and" after the semicolon at the end.

(9) In section 109(c)(2)(A)(i), strike "(12 U.S.C. 4703(16))".

(10) In section 120(h), strike "the Act approved July 30, 1947 (6 U.S.C., secs. 6–13)," and insert "chapter 93 of title 31, United States Code,".

(11) In section 201(b)(5), strike "section 116 of".

(12) In section 202(h)(3), strike "section 207(c)(1)" and insert "section 207(k)(1)".

(13) In section 204(b), strike "such others powers" and insert "such other powers".

(14) In section 206(e)(3)(D), strike "and" after the semicolon at the end.

(15) In section 206(f)(1), strike "subsection (e)(3)(B)" and insert "subsection (e)(3)".

(16) In section 206(g)(7)(D), strike "and subsection (1)".

(17) In section 206(t)(2)(B), insert "regulations" after "as defined in".

(18) In section 206(t)(2)(C), strike "material affect" and insert "material effect".

(19) In section 206(t)(4)(A)(ii)(II), strike "or" after the semicolon at the end.

(20) In section 206A(a)(2)(A), strike "regulator agency" and insert "regulatory agency".

(21) In section 207(c)(5)(B)(i)(I), insert "and" after the semicolon at the end.

(22) In the heading for subparagraph (A) of section 207(d)(3), strike "TO" and insert "WITH".

(23) In section 207(f)(3)(A), strike "category or claimants" and insert "category of claimants".

(24) In section 209(a)(8), strike the period at the end and insert a semicolon.

(25) In section 216(n), insert "any action" before "that is required".

(26) In section 304(b)(3), strike "the affairs or such credit union" and insert "the affairs of such credit union".

(27) In section 310, strike "section 102(e)" and insert "section 102(d)".

SEC. 803. OTHER TECHNICAL CORRECTIONS.

(a) Section 1306 of title 18, United States Code, is amended by striking "5136A" and inserting "5136B".

(b) Section 5239 of the Revised Statutes of the United States (12 U.S.C. 93) is amended by redesignating the second of the 2 subsections designated as subsection (d) (as added by section 331(b)(3) of the Riegle Community Development and Regulatory Improvement Act of 1994) as subsection (e).

SEC. 804. REPEAL OF OBSOLETE PROVISIONS OF THE BANK HOLDING COMPANY ACT OF 1956.

(a) IN GENERAL.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended—

(1) in subsection (c)(2), by striking subparagraphs (I) and (J); and

(2) by striking subsection (m) and inserting the following new subsection:

"(m) [Repealed]".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Paragraphs (1) and (2) of section 4(h) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(h)) are each amended by striking "(G), (H), (I), or (J) of section 2(c)(2)" and inserting "(G), or (H) of section 2(c)(2)".

TITLE IX—FAIR DEBT COLLECTION PRACTICES ACT AMENDMENTS

SEC. 901. EXCEPTION FOR CERTAIN BAD CHECK ENFORCEMENT PROGRAMS.

(a) IN GENERAL.—The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

(1) by redesignating section 818 as section 819; and

(2) by inserting after section 817 the following new section:

"§ 818. Exception for certain bad check enforcement programs operated by private entities

"(a) IN GENERAL.—If—

"(1) a State or district attorney establishes, within the jurisdiction of such State or district attorney and with respect to alleged bad check violations that do not involve a check described in subsection (c), a pretrial diversion program for alleged bad check offenders who agree to participate voluntarily in such program to avoid criminal prosecution and are not described in subsection (b);

"(2) a private entity, that is subject to an administrative support services contract with a State or district attorney and operates under the direction, supervision and control of such State or district attorney, operates the pretrial diversion program described in paragraph (1); and

"(3) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in paragraph (2)—

"(A) complies with the penal laws of the State;

"(B) conforms with the terms of the contract and directives of the State or district attorney;

"(C) does not exercise independent prosecutorial discretion;

"(D) contacts any alleged offender referred to in paragraph (1) for purposes of participating in a program referred to in such paragraph only—

"(i) as a result of any determination by the State or district attorney that sufficient evidence of a bad check violation under State law exists and that contact with the alleged offender for purposes of participation in the program is appropriate; or

"(ii) as otherwise permitted in response to evidence of a bad check;

"(E) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that—

"(i) the alleged offender may dispute the validity of any alleged bad check violation through a procedure established and supervised by the State or district attorney, together with an explanation of how such a dispute may be initiated; and

"(ii) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft, or other fraud that is not the result of the alleged offender's conduct, the alleged offender may file a crime report with the appropriate law enforcement agency and have further contacts or restitution efforts suspended until the question of the theft or forgery of the check, identity theft, or other fraud has been resolved, together with clear instructions on how to file such crime report; and

"(F) charges only fees in connection with services under the contract that—

"(i) have been authorized by the contract with the State or district attorney; and

"(ii) conform with the schedule of reasonable charges for such services which shall be established by the National District Attorney's Association, after consultation with the Commission and representatives of interested business and consumer organizations,

the private entity shall be treated as an officer of the State and excluded from the definition of debt collector, pursuant to the exception provided in section 803(6)(C), with respect to the entity's operation of the program described in paragraph (1) under the contract described in paragraph (2).

"(b) CERTAIN OFFENDERS EXCLUDED.—An alleged bad check offender is described in this subsection if a private entity described in subsection (a)(2) can determine from available records that such offender—

"(1) was convicted of a bad check offense in the 3 years prior to issuing the bad check under consideration; or

"(2) participated in a pretrial diversion program in the 18 months prior to issuing the bad check under consideration.

"(c) CERTAIN CHECKS EXCLUDED.—A check is described in this subsection if the check involves, or is subsequently found to involve—

"(1) a postdated check presented in connection with a payday loan, or other similar transaction, where the holder of the check knew that the issuer had insufficient funds at the time the check was made, drawn or delivered;

"(2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;

"(3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn or delivered;

"(4) a check for partial payment of a debt where the holder had previously accepted partial payment for such debt;

"(5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn or delivered; or

"(6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn or delivered.

"(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) STATE OR DISTRICT ATTORNEY.—The term 'State or district attorney' means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1, United States Code), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth's attorneys, solicitors, county attorneys, and state's attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.

"(2) CHECK.—The term 'check' has the same meaning as in section 3(6) of the Check Clearing for the 21st Century Act.

"(3) BAD CHECK.—The term 'bad check' means any check that—

"(A) the issuer knew, or should have known, would not be paid upon presentment because the issuer—

"(i) had no account with the drawee financial institution at the time the check was made, drawn, or delivered;

"(ii) had closed the account upon with the check was made or drawn prior to the time the check was made, drawn, or delivered; or

"(iii) used a false or altered check, or false or altered check account number; or

"(B) was refused payment by the financial institution or other drawee for lack of sufficient funds and the issuer failed to pay the full amount of the check, together with reasonable costs as permitted by State law—

"(i) after receiving written notice from the holder of the check that payment was refused by the drawee financial institution to the extent that the timing and mode of delivery of such written notice is in compliance with the applicable State law for determining criminal liability for bad check offenses; or

"(ii) in a case in which there are no applicable State law requirements as described in clause (i), within 30 days of receiving written notice, mailed to the issuer by certified mail to the address printed on the check, or given at the time the check was made, drawn or delivered or, otherwise, at the address where the alleged offender resides or is found, from the holder of the check that payment of 1 or more checks was refused by the drawee financial institution.".

(b) CLERICAL AMENDMENT.—The table of sections for the Fair Debt Collection Practices Act is amended—

(1) by redesignating the item relating to section 818 as section 819; and

(2) by inserting after the item relating to section 817 the following new item:

"818. Exception for certain bad check enforcement programs operated by private entities.".

SEC. 902. OTHER AMENDMENTS.

(a) LEGAL PLEADINGS.—Section 809 of the Fair Debt Collection Practices Act (15 U.S.C. 1692g) is amended by adding at the end the following new subsection:

"(d) LEGAL PLEADINGS.—A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).".

(b) NOTICE PROVISIONS.—Section 809 of the Fair Debt Collection Practices Act (15 U.S.C. 1692g) is amended by adding after subsection (d) (as added by subsection (a) of this section) the following new subsection:

"(e) NOTICE PROVISIONS.—The sending or delivery of any form or notice which does not request the payment of a debt and is expressly required by any other Federal or State law or regulation, including the Internal Revenue Code of 1986, title V of Gramm-Leach-Bliley Act, and any data security breach notice and privacy law shall not be treated as a communication in connection with debt collection. ".

(c) ESTABLISHMENT OF RIGHT TO COLLECT WITHIN THE FIRST 30 DAYS.—Section 809(b) of the Fair Debt Collection Practices Act (15 U.S.C. 1692g(b)) is amended by striking "If the consumer" and inserting "Collection activities and communications may continue during any 30-day period referred to in subsection (a). However, if the consumer".

PURPOSE AND SUMMARY

H.R. 3505, the "Financial Services Regulatory Relief Act of 2005," is intended to alter or eliminate statutory banking provisions in order to lessen the growing regulatory burden on insured depository institutions, as well as make needed technical corrections to current law. H.R. 3505 contains a broad range of constructive provisions that, taken as a whole, will allow banks, thrifts, and credit unions to devote more resources to the business of providing financial services and less to compliance with outdated and unneeded regulations. While effective regulation of the financial services industry is central to the preservation of public trust, this legislation will benefit consumers and the economy by lowering costs and improving productivity.

BACKGROUND AND NEED FOR LEGISLATION

In 2001, Chairman Oxley requested that Federal and State financial regulators, along with financial industry groups, recommend legislative items that would provide regulatory relief for insured depository institutions. The purpose was to lessen the regulatory burden, so banks, thrifts, and credit unions could better serve their customers and communities. Subsequently, it was also intended to be a counterbalance to the significant compliance responsibilities placed on depository institutions by the USA PATRIOT Act as well as other government efforts to counter terrorist financing.

In 2004, John M. Reich, at the time Vice Chairman of the Federal Deposit Insurance Corporation (FDIC) and head of an interagency task force on reducing regulatory burden, stated that while "there are no definitive studies of the total cost of regulation, . . . a survey of the evidence by a Federal Reserve Board economist in 1998 found that total regulatory costs account for 12 to 13 percent of banks' noninterest expense, or about $36 billion in 2003." Reich also noted that in the 15 years since the enactment of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), the Federal banking and thrift regulatory agencies had promulgated a total of 801 final rules, often requiring "computers to be reprogrammed, staff retrained, manuals updated and new forms produced."

While regulatory burden affects all of the financial services industry, it falls particularly hard on smaller institutions. In a notice published in the Federal Register, the Federal banking agencies acknowledged both the disproportionate regulatory burden faced by small institutions in relation to their larger counterparts, and the limitations of a "one-size-fits-all" approach that subjects small institutions to the same regulatory requirements in every instance that are imposed upon much larger institutions:

> When a new regulation is created or an old regulation is changed, small institutions must devote a large percentage of their staffs' time to review the regulation to determine if and how it will affect them. Compliance with a regulation also can take large amounts of time that cannot be devoted to serving customers or business planning. In a large institution, ensuring regulatory compliance can take many more hours; however, those hours make up a much

> smaller percentage of the institution's resources. In situations where a regulation is aimed at an activity engaged in primarily by large institutions, the compliance burden on small institutions can outweigh its benefit.[1]

The Committee ultimately approved a comprehensive regulatory relief bill (H.R. 1375) that passed the House during the 108th Congress by a vote of 392–25; however, the Senate took no action in that Congress.

On July 28, 2005, Mr. Hensarling and Mr. Moore introduced H.R. 3505, a bill which includes virtually all of H.R. 1375, plus over 20 new provisions and a new title addressing Bank Secrecy Act issues. Previously, other Members introduced legislation to give regulatory relief to specific sectors of the financial services industry. On May 3, 2005, Mr. Ryun introduced H.R. 2061, the "Community Banks Serving Their Communities First Act," containing regulatory and tax relief proposals targeted at small community banks. On May 12, 2005, Mr. Royce and Mr. Kanjorski introduced H.R. 2317, the "Credit Union Regulatory Improvements Act" (CURIA), which would modify credit union capital requirements and make other changes to credit union powers, governance, and regulatory oversight.

For banks, H.R. 3505 includes these provisions: (1) removes the prohibition on national and state banks from expanding across state lines by opening branches; (2) allows the use of subordinated debt instruments to meet eligibility requirements for national banks to benefit from Subchapter S tax treatment; (3) eliminates unnecessary and costly reporting requirements on banks regarding lending to bank officials; (4) changes the exemption from the prohibition on management interlocks for banks in metropolitan statistical areas from $20 million in assets to $100 million; and (5) streamlines bank merger application regulatory requirements.

For savings associations, the bill includes these provisions: (1) removes lending limits on small business and auto loans and increases the limit on other business loans; (2) gives parity with banks with respect to broker-dealer and investment adviser SEC registration requirements; (3) allows federal thrifts to merge with one or more of their non-thrift subsidiaries or affiliates, the same as national banks; (4) increases the aggregate limit on commercial real estate loans by federal thrifts from 400 to 500 percent of capital; and (5) gives thrifts the same authority as national banks to make investments primarily designed to promote community development.

For credit unions, the bill includes these provisions: (1) expands the investment authority of federal credit unions; (2) increases the general limit on the term of federal credit union loans from 12 to 15 years; (3) increases the limit on investment by federal credit unions in credit union service organizations from 1 to 3 percent of capital and surplus; (4) permits privately insured credit unions to be eligible to join a Federal Home Loan Bank; and (5) eases restrictions on voluntary mergers between healthy credit unions.

For federal financial regulatory agencies, the bill includes these provisions: (1) provides agencies the discretion to adjust the examination cycle for insured depository institutions to use agency re-

[1] 68 Fed. Reg. 35589, 35591 (June 16, 2003).

sources in the most efficient manner; (2) increases from $250 million to $1 billion the asset size of well-capitalized, well-managed banks eligible for an 18-month exam schedule and allows banks with less than $1 billion in assets to file short-form call reports; (3) authorizes the agencies to share confidential supervisory information concerning an examined institution; (4) modernizes agency recordkeeping requirements to allow use of optically imaged or computer scanned images; and (5) clarifies that agencies may suspend or prohibit institution-affiliated parties charged with certain crimes from participation in the affairs of any depository institution and not only the institution with which the individual is or was associated.

In addition, H.R. 3505 addresses financial institutions' concerns that some of the work they are being asked to do in the fight against financial crimes—money laundering and the financing of terror—is unnecessary and in some cases duplicative. Title VII seeks to make a number of changes, some statutory and others directing swift regulatory changes, to balance law enforcement's needs with the industry's very real concerns about excessive burdens.

A major focus is reducing the number of "currency transaction reports" (CTRs) that institutions must file on transactions involving more than $10,000 in cash. While a process currently exists under which institutions may be exempted from filing CTRs on legitimate business with large cash-based operations—a Wal-Mart or a Target store, for example—the process by which an exemption is granted is considered by many to be difficult to use and requires annual renewals of the exemption. Section 701 of the bill directs a swift rewrite of the regulations governing the exemptions to make them easier to navigate so that institutions may be freed from filing unnecessary CTRs on "seasoned customers," and directs the Secretary to prescribe regulations under which the filing institution may retain the exemption if the institution is acquired or merged. The statutory annual renewal requirement is eliminated.

The bill contains provisions to ease or eliminate inconsistent or duplicative requirements to file Suspicious Activity Reports (SARs), which complement Section 705 that directs the Secretary to devise computer-based methods of filing required reports electronically; particularly in the case of CTRs, virtually all of the hands-on filing burden of these non-subjective reports could be eliminated when Treasury's Financial Crimes Enforcement Network (FinCEN) adopts such measures.

Title VII also eliminates inconsistencies in the supervision of institutions' compliance with filing CTRs and SARs; directs the Government Accountability Office to undertake a further study of ways to reduce the burden of filing CTRs; directs the Treasury Secretary to file annual reports with Congress detailing the anti-money laundering efforts of each country, specifying those that are of primary money-laundering concern and detailing those technical efforts that Treasury has taken to help countries leave the list of primary money-laundering concerns; and expresses the sense of Congress that financial institutions and money-service businesses (MSBs) should follow guidance issued Spring, 2005, by FinCEN and the Federal banking agencies aimed at keeping MSBs within the mainstream of the financial-services industry.

HEARINGS

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on H.R. 3505 on September 22, 2005. The following witnesses testified: Mr. William J. Fox, Director, Financial Crimes Enforcement Network; the Honorable Mark W. Olson, Governor, Board of Governors of the Federal Reserve System; Ms. Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency; Mr. William F. Kroener III, General Counsel, Federal Deposit Insurance Corporation; Mr. John E. Bowman, Chief Counsel, Office of Thrift Supervision; Mr. Robert M. Fenner, General Counsel, National Credit Union Administration; Mr. Randall S. James, Commissioner, Texas Department of Banking, on behalf of Conference of State Bank Supervisors; and Mr. George Latham, Deputy Commissioner, Credit Unions, Bureau of Financial Institutions, Virginia State Corporation Commission, on behalf of National Association of State Credit Union Supervisors.

The Subcommittee on Financial Institutions and Consumer Credit held another hearing on H.R. 3505 on October 18, 2005. The following witnesses testified: Mr. Bradley W. Beal, President and Chief Executive Officer, Nevada Federal Credit Union, representing National Association of Federal Credit Unions; Mr. Bradley E. Rock, Chairman, President, and Chief Executive Officer, Bank of Smithtown, New York, representing American Bankers Association; Ms. Norma Alexander Hart, President, National Bankers Association; Mr. Phillip R. Buell, President and Chief Executive Officer, Superior Federal Credit Union, Lima, Ohio, representing Credit Union National Association; and Mr. David Hayes, Chairman, Independent Community Bankers of America.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 16, 2005, and ordered H.R. 3505, the Financial Services Regulatory Relief Act of 2005, favorably reported to the House as amended by a record vote of 67 yeas and 0 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto taken with in conjunction with the consideration of this legislation. A motion by Mr. Oxley to report the bill, as amended, to the House with a favorable recommendation was agreed to by a record vote of 67 yeas and 0 nays (Record vote No. FC–9). The names of Members voting for and against follow:

Record Vote No. FC–9

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Oxley	X			Mr. Frank (MA)	X		
Mr. Leach	X			Mr. Kanjorski	X		
Mr. Baker	X			Mr. Waters	X		
Ms. Pryce (OH)	X			Mr. Sanders [1]	X		
Mr. Bachus	X			Mrs. Maloney	X		
Mr. Castle	X			Mr. Gutierrez	X		

Record Vote No. FC–9—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. King (NY)	X			Mr. Velázquez	X		
Mr. Royce	X			Mr. Watt	X		
Mr. Lucas	X			Mr. Ackerman	X		
Mr. Ney	X			Ms. Hooley	X		
Mrs. Kelly	X			Ms. Carson	X		
Mr. Paul	X			Mr. Sherman	X		
Mr. Gillmor	X			Mr. Meeks (NY)	X		
Mr. Ryun (KS)	X			Ms. Lee	X		
Mr. LaTourette	X			Mr. Moore (KS)	X		
Mr. Manzullo	X			Mr. Capuano	X		
Mr. Jones (NC)	X			Mr. Ford	X		
Mrs. Biggert	X			Mr. Hinojosa	X		
Mr. Shays	X			Mr. Crowley	X		
Mr. Fossella	X			Mr. Clay	X		
Mr. Gary G. Miller (CA)	X			Mr. Israel	X		
Mr. Tiberi	X			Mrs. McCarthy	X		
Mr. Kennedy (MN)	X			Mr. Baca	X		
Mr. Feeney	X			Mr. Matheson	X		
Mr. Hensarling	X			Mr. Lynch	X		
Mr. Garrett (NJ)	X			Mr. Miller (NC)	X		
Ms. Brown-Waite (FL)	X			Mr. Scott (GA)	X		
Mr. Barrett (SC)	X			Mr. Davis (AL)	X		
Ms. Harris	X			Mr. Al Green (TX)	X		
Mr. Renzi	X			Mr. Cleaver	X		
Mr. Gerlach	X			Ms. Bean	X		
Mr. Pearce				Ms. Wasserman Schultz	X		
Mr. Neugebauer	X			Ms. Moore (WI)	X		
Mr. Price (GA)	X						
Mr. Fitzpatrick (PA)	X						
Mr. Davis (KY)	X						
Mr. McHenry	X						

[1] Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

The Committee also considered the following amendments:

An amendment by Mr. Oxley, No. 1, making technical and substantive changes, was AGREED TO by a voice vote.

An amendment by Mr. Leach, No. 2, dealing with industrial loan corporations, was WITHDRAWN.

An amendment by Mr. Renzi, No. 3, providing exception from currency transaction reports for seasoned customers, was AGREED TO by a voice vote.

An amendment by Mr. Kanjorski, No. 4, striking Section 301 which would authorize privately insured credit unions to become members of a Federal home loan bank, was AGREED TO by a voice vote, and then reconsidered by voice vote and was NOT AGREED TO by a voice vote.

An amendment by Mr. Meeks of New York, No. 5, dealing with minority financial institutions, was AGREED TO by a voice vote.

An amendment by Mrs. Kelly, No. 6, requiring an annual report by the Secretary of the Treasury, was AGREED TO by a voice vote.

An amendment by Mr. Sanders, No. 7, limiting the scope of new agency guidelines, was AGREED TO by a voice vote.

An amendment by Mr. Meeks of New York, No. 8, regarding the preservation of money services businesses, was AGREED TO by a voice vote.

An amendment by Mr. Kennedy of Minnesota, No. 9, requiring exceptions to notice requirements of financial institutions, was AGREED TO by a voice vote.

An amendment by Mr. Price of Georgia, No. 10, dealing with credit monitoring services not treated as credit repair, was WITHDRAWN.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

This legislation makes important changes to banking statutes to significantly reduce the burden of outdated and unnecessary laws and regulations on banks, savings associations, and credit unions. The appropriate banking regulatory agencies will streamline regulatory compliance for insured depository institutions in order to improve the efficiency and productivity of those institutions in providing financial services to consumers.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 8, 2005.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3505, the Financial Services Regulatory Relief Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathleen Gramp (for federal costs), Pam Greene (for revenues), Sarah Puro (for the state and local impact), and Judith Ruud (for the private-sector impact).

Sincerely,

DONALD B. MARRON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 3505—Financial Services Regulatory Relief Act of 2005

Summary: H.R. 3505 would affect the operations of financial institutions and the agencies that regulate them. Some provisions would address specific sectors: national banks could more easily operate as S corporations or adopt other alternative organizational structures; thrift institutions would be given some of the same investment, lending, and ownership options available to banks; credit unions would have new options for investments, lending, mergers, and leasing federal property; and certain privately insured credit unions could become members of the Federal Home Loan Bank system. The bill would provide the Federal Deposit Insurance Corporation (FDIC) with new enforcement authorities and modify regulatory procedures governing certain types of transactions. It also would give financial regulatory agencies more flexibility in sharing data, retaining records, and scheduling examinations. Finally, the bill would direct the Secretary of the Treasury to develop various reports, regulations, and programs related to currency transactions.

CBO estimates that enacting this bill would reduce federal revenues by $42 million over the next five years and by a total of $120 million over the 2006–2015 period. In addition, we estimate that direct spending would increase by $2 million over the next five years and by a total of $7 million over the 2006–2015 period. Provisions affecting programs funded by annual appropriations would cost another $4 million, CBO estimates, assuming appropriation of the necessary amounts.

H.R. 3505 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost of complying with the requirements would be small and would not exceed the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation).

H.R. 3505 contains several private-sector mandates as defined in UMRA. Those mandates would affect some depository institutions controlled by commercial firms, certain depository institutions and institution-affiliated parties, nondepository institutions that control depository institutions, uninsured banks, bank holding companies and their subsidiaries, and savings and loan association holding companies and their subsidiaries. At the same time, the bill would relax some restrictions on the operations of certain financial institutions. CBO estimates that the aggregate direct costs of complying with the private-sector mandates in the bill would not exceed the annual threshold established by UMRA ($123 million in 2005, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3505 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN REVENUES										
Estimated Revenues: [1]										
S Corporation Status	−3	−6	−9	−10	−12	−10	−11	−12	−14	−15
Business Organization Flexibility	*	*	*	−1	−1	−2	−2	−3	−4	−5
Total	−3	−6	−9	−11	−13	−12	−13	−15	−18	−20
CHANGES IN DIRECT SPENDING										
Estimated Budget Authority	*	*	*	1	1	1	1	1	1	1
Estimated Outlays	*	*	*	1	1	1	1	1	1	1
CHANGES IN SUBJECT TO APPROPRIATION										
Estimated Authorization Level	4	0	0	0	0	0	0	0	0	0
Estimated Outlays	*	4	0	0	0	0	0	0	0	0

[1] Negative revenues indicate a reduction in revenue collections.
Note.—*= Revenue loss or spending cost of less than $500,000.

Basis of estimate: Most of the budgetary impacts of this legislation would result from three provisions: section 101, which would make it easier for national banks to convert to S corporation status or alternative organization forms; and section 302, which would allow certain federal credit unions to lease federal land at no charge; and title VII, which would direct the Secretary of the Treasury to complete various studies, programs, and regulatory proceedings. For this estimate, CBO assumes that H.R. 3505 will be enacted near the start of calendar year 2006.

HR. 3505 also would affect the workload at agencies that regulate financial institutions. We estimate that the net change in agency spending would not be significant. Based on information from each of the agencies, CBO estimates that the change in administrative expenses—both costs and potential savings—would average less than $500,000 a year over the next several years. Expenditures of the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), and the FDIC are classified as direct spending and would be covered by fees or insurance premiums paid by the institutions they regulate. Any change in spending by the Federal Reserve would affect net revenues, while adjustments in the budgets of the Department of the Treasury, Securities and Exchange Commission (SEC), and Federal Trade Commission (FTC) would be subject to appropriation.

Revenues

CBO estimates that enacting H.R. 3505 would reduce federal tax revenues collected from national and state-chartered banks and would have an insignificant effect on civil and criminal penalties collected for violations of the bill's provisions.

S Corporation Status. Under this bill, some national banks would find it easier to convert from C corporation status to S corporation status. Section 101 would allow directors of national banks to be issued subordinated debt to satisfy the requirement that directors of a bank own qualifying shares in the bank. This provision would effectively reduce the number of shareholders of a bank by removing directors from shareholder status, making it easier for banks to comply with the 100-shareholder limit that defines eligibility for subchapter-S election.

Income earned by banks taxed as C corporations is subject to the corporate income tax, and post-tax income distributed to shareholders is taxed again at individual income-tax rates. Income earned by banks operating as S corporations is taxed only at the personal income-tax rates of the banks' shareholders and is not subject to the corporate income tax. The average effective tax rate on S-corporation income is lower than the average effective tax rate on C-corporation income. CBO estimates that enacting this provision would reduce revenues by a total of $40 million over the next five years and by $102 million over the 2006–2015 period.

Based on information from the Federal Reserve Board, the OCC, and private trade associations, CBO expects that most of the banks that would be affected are small, although banks and bank holding companies with assets over $500 million would also be affected. In addition, states are likely to amend the rules for state-chartered banks to match those for national banks. CBO expects that most conversions to subchapter-S status would occur between 2006 and 2008 and that national banks would convert earlier than state-chartered banks.

Business Organization Flexibility. Under section 109 of this bill, the Comptroller of the Currency could allow national banks to organize in noncorporate form, for example as Limited Liability Corporations (LLCs) as defined by state law. LLCs generally choose to be taxed as partnerships. Only a few states currently allow banks to organize as LLCs, however, and the IRS currently taxes state-chartered bank-LLCs as C corporations. LLCs provide more organizational flexibility than S corporations while retaining the corporate characteristic of limited liability.

Income earned by banks taxed as C corporations is subject to the corporate income tax, and post-tax income distributed to shareholders is taxed again at individual income tax rates.

Income earned by partnerships—like that earned by S corporations—is taxed only at the personal income-tax rates of the partners and is not subject to the corporate income tax. The average effective tax rate on partnerships is lower than the average effective tax rate on C-corporation income but is similar to the average effective tax rate on S-corporation Income.

Based on information from the OCC, the FDIC, and private trade associations, CBO views that it is quite possible that the OCC would alter its regulations to allow national banks to organize in noncorporate form. CBO expects that, over the next decade, most states that do not currently allow banks to organize as LLCs will begin allowing them to do so out of competitiveness concerns. CBO also expects that the IRS is likely to reconsider allowing pass-through tax treatment to banks organized as LLCs and may allow such tax treatment at some point in the next decade. CBO believes that banks forming as LLCs would most likely be newly chartered institutions. Over the next decade, only a very limited number of banks would convert from C corporation or S corporation status to LLCs taxed as partnerships.

CBO estimates that enacting this provision would reduce revenues by a total of $2 million over the next five years and by $18 million over the 2006–2015 period.

Civil and Criminal Penalties. H.R. 3505 would make all depository institutions—not just insured institutions—subject to certain

civil and criminal fines for violating rules regarding breach of trust, dishonesty, and certain other crimes. It also would authorize the FDIC to take enforcement action or impose civil penalties of up to $1 million a day on any individual, corporation, or other entity that falsely implies that deposits or other funds are insured by the agency. Based on information from the FDIC, CBO expects that enforcement actions would likely deter most individuals or institutions from violating rules regarding breach of trust, dishonesty, or certain other crimes. As a result, we estimate that any additional penalty collections under those provisions would not be significant.

Direct spending

CBO estimates that enacting H.R. 3505 would increase direct spending by a total of about $7 million over the 2006–2015 period by reducing offsetting receipts collected from credit unions that lease federal facilities. Enacting the bill also could affect the cost of deposit insurance, but CBO has no basis for estimating the amount of any change.

Credit Union Leases. Section 302 would allow federal agencies to lease land to federal credit unions without charge under certain conditions. Under existing law, agencies may allocate space in federal buildings without charge if at least 95 percent of the credit union's members are or were federal employees. Some credit unions, primarily those serving military bases, have leased federal land to build a facility. Prior to 1991, leases awarded by the Department of Defense (DoD) were free of charge and for terms of up to 25 years; a statutory change enacted that year limited the term of such leases to five years and required the lessee to pay a fair market value for the property. According to DoD, about 35 credit unions have leased land since 1991 and are paying a total of about $525,000 a year to lease federal property. Those proceeds are recorded as offsetting receipts, and any spending of those payments is subject to appropriation.

CBO expects that enacting this provision would result in a loss of offsetting receipts from all credit union leases. Those lessees currently paying a fee would stop making those payments after they renew their current leases, all of which should expire within the next five years. In addition, credit unions that have long-term, no-cost leases would be able to renew them without becoming subject to the fees they otherwise would pay under current law. CBO estimates that enacting this provision would cost a total of about $2 million over the next five years and an average of about $700,000 annually after 2010.

Deposit Insurance. Several provisions in the bill could affect the cost of federal deposit insurance. For example, the bill would streamline the approval process for mergers, branching, and affiliations, which could give eligible institutions the opportunity to diversify and compete more effectively with other financial businesses. In some cases, such efficiencies could reduce the risk of insolvency. It is also possible, however, that some of the new lending and investment options could increase the risk of losses to the deposit insurance funds.

CBO has no clear basis for predicting the direction or the amount of any change in spending for insurance that could result from the new investment, lending, and operational arrangements authorized

by this bill. The net budgetary impact of such changes would be negligible over time, however, because any increase or decrease in costs would be offset by adjustments in the insurance premiums paid by banks, thrifts, or credit unions.

Spending subject to appropriation

H.R. 3505 also would affect spending for activities funded by annual appropriations. CBO estimates implementing those provisions would cost about $4 million over the 2006–2010 period, assuming appropriation of the necessary amounts.

Title VII would direct the Secretary of the Treasury to develop and implement various measures related to the reporting of currency transactions. Based on information from the Treasury, CBO estimates that it would cost about $4 million to complete the regulations, reports, and programs required by the bill, assuming appropriation of the necessary amounts.

In addition, section 201 provides thrift institutions with exemptions from broker-dealer and investment-advisor registration requirements similar to those accorded banks. Section 313 provides similar exemptions for federally insured credit unions. Based on information from the SEC, CBO estimates that the budgetary effects of those exemptions would not be significant.

Finally, section 312 would exempt federally insured credit unions from filing certain acquisition or merger notices with the FTC. Under current law, the FTC charges filing fees ranging from $45,000 to $280,000, depending on the value of the transaction. The collection of such fees is contingent on appropriation action. Based on information from the FTC, CBO estimates that this exemption would have no significant effect on the amounts collected from such fees.

Estimated impact on State, local, and tribal governments: H.R. 3505 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act because it would preempt certain state laws and place new requirements on certain state agencies that regulate financial institutions. CBO estimates that the cost of complying with the requirements would be small and would not exceed the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation).

Provisions in section 209 would preempt certain state securities laws by prohibiting states from requiring agents who represent a federal savings association to register as brokers or dealers if they sell deposit products (CDs) issued by the savings association. Such a preemption would impose costs (in the form of lost revenues) on those states that currently require such registration. Based on information from representatives of the securities industry and securities regulators, CBO estimates that losses to states as a result of this prohibition would total less than $1 million a year.

Other provisions of the bill would place requirements on state regulators of credit unions to review documents related to federal deposit insurance and to provide certain information to the NCUA. Also, section 401 would extend certain preemptions of state laws related to mergers between insured depository institutions chartered in different states and preempt state laws that regulate certain fiduciary activities performed by insured banks and other depository institutions. Section 619 provides that only certain bank

supervisors may impose supervisory fees on the bank. Based on information from industry authorities and state entities, CBO estimates that these provisions would impose minimal costs, if any, on state, local, and tribal governments.

Estimated impact on the private sector: H.R. 3505 contains several private-sector mandates as defined by UMRA. At the same time, the bill would relax some restrictions on the operations of certain financial institutions. CBO estimates that the aggregate direct costs of mandates in the bill would not exceed the annual threshold established in UMRA ($123 million in 2005, adjusted annually for inflation).

Mandates in the bill include a prohibition of interstate branching by certain depository institutions controlled by commercial firms, an expansion of the authority of federal banking agencies over insured depository institutions and institution-affiliated parties with respect to safety and soundness enforcement, and restrictions on participation in the affairs of financial institutions of people convicted of certain crimes or the subject of certain criminal proceedings.

Prohibition of interstate branching by subsidiaries commercial firms

The bill would prohibit interstate branching by industrial loan companies or industrial banks or certain other depository institutions that are controlled by firms that derive 15 percent or more of their revenues from nonfinancial activities. The prohibition would not apply to such institutions that became insured depository institutions before October 1, 2003.

This mandate only applies to a handful of institutions, none of which currently operates any branches. While the mandate does take away their option to open branches in other states, according to government and industry sources, the affected institutions had no immediate plans to use the option to branch. Consequently, CBO estimates that there would be little or no direct cost to comply with this mandate.

Enhanced safety and soundness enforcement

The bill would expand some of the authorities of federal banking agencies with respect to troubled or failing institutions, and institution-affiliated parties. Based on information from the FDIC, the cost to the private sector of these expanded authorities would be small.

The Gramm-Leach-Bliley Act allowed new forms of affiliations among depositories and other financial services firms. Consequently, insured depository institutions may now be controlled by a company other than a depository institution holding company (DIHC). The bill would amend current law to give the FDIC certain authorities concerning troubled or failing depository institutions held by those new forms of holding companies.

Cross-Guarantee Authority. Under current law, if the FDIC suffers a loss from liquidating or selling a failed depository institution, the FDIC has the authority to obtain reimbursement from any insured depository institution within the same DIHC. Section 407 would expand the scope of the FDIC's reimbursement power to in-

clude all insured depository institutions controlled by the same company, not just those controlled by the same DIHC.

The cost of this mandate would depend, among other things, on the probability of failure of the additional institutions subject to this authority and the probability that the FDIC would incur a loss as a result of those failures. The new authority would apply only to a handful of depository institutions. Based on information from the FDIC, CBO estimates that the cost of this mandate would not be substantial.

Golden Parachute Authority and Nonbank Holding Companies. Section 408 would allow the FDIC to prohibit or limit any company that controls an insured depository from making "golden parachute" payments or indemnification payments to institution-affiliated parties of troubled or failing insured depositories. (Institution-affiliated parties include directors, officers, employees, and controlling shareholders. Institution-affiliated parties also include independent contractors such as accountants or lawyers who participate in violations of the law or undertake unsound business practices that may cause a financial loss to, or adverse effect on, the insured depository institution.)

Based on information from the FDIC, CBO expects that only a few institutions would be covered by the new authority. In the event that the FDIC exercises this authority, CBO expects that the cost to institutions of withholding such payments would be administrative in nature and minimal, if any.

Restrictions on convicted individuals

Current law prohibits a person convicted of a crime involving dishonesty, a breach of trust, or money laundering from participating in the affairs of an insured depository institution without FDIC approval. The bill would extend that prohibition so that uninsured banks, bank holding companies and their subsidiaries, and savings and loan holding companies and their subsidiaries could not allow such persons to participate in their affairs without the prior written consent of their designated federal banking regulator.

Assuming that those institutions already screen potential directors, officers, and employees for criminal offenses, the incremental cost of complying with this mandate would be small.

Estimate prepared by: Federal Spending: Kathleen Gramp. Federal Revenues: Pam Greene. Impact on State, Local and Tribal Governments: Sarah Puro. Impact on the Private Sector: Judith Ruud.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis; G. Thomas Woodward, Assistant Director for Tax Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of contents

This section establishes the short title of the bill, the "Financial Services Regulatory Relief Act of 2005," and provides a table of contents.

Title I—National Bank Provisions

Section 101. National bank directors

Currently, all directors of a national bank must own shares of the bank having an aggregate par value of at least $1,000, or an equivalent interest in the bank holding company that controls the bank. This requirement creates difficulties for some national banks that operate or wish to operate in subchapter S form. It effectively requires that all directors be shareholders, thus making it difficult or impossible for a bank to comply with the 75-shareholder limit that defines eligibility for the benefit of subchapter S tax treatment, which avoids double tax on the bank's earnings. This section permits the Office of the Comptroller of the Currency (OCC) to allow the use of a debt instrument that is subordinated to all other liabilities of the bank to satisfy the qualifying shares requirement by directors of banks operating in subchapter S status. Such a subordinated debt instrument would be closely equivalent to an equity capital interest, since the directors could only be repaid if all other claims of depositors and nondeposit creditors of the bank (including the FDIC) were first paid in full, and would therefore ensure that directors retain their personal stake in the financial soundness of the bank.

Section 102. Voting in shareholder elections

Current law imposes mandatory cumulative voting requirements on all national banks. This section permits a national bank to provide in its articles of association which method of electing its directors best suits its business goals and needs. A national bank would choose whether to allow cumulative voting.

Section 103. Simplifying dividend calculations for national banks

This section provides more flexibility than current law to a national bank to pay dividends as deemed appropriate by its board

of directors. The current requirement that OCC's approval is necessary if the dividend exceeds a certain amount is retained.

Section 104. Repeal of obsolete limitation on removal authority of the Comptroller of the Currency

Under current law all of the federal banking agencies, except for the OCC, may remove a person who engages in certain improper conduct from the banking business. The determination of whether to remove an individual from a national bank is made by the Federal Reserve Board. This section would give OCC the same removal authority as the other banking agencies.

Section 105. Repeal of intrastate branch capital requirements

Currently, a national bank, in order to establish an intrastate branch in a state, must meet the capital requirements imposed by the state on state banks seeking to establish intrastate branches. This section eliminates this requirement. Branching restrictions are already imposed under other provisions of law to limit the operations of a bank if it is in troubled condition.

Section 106. Clarification of waiver of publication requirements for bank merger notices

This section clarifies that the requirement to publish a notice for shareholders that applies in the case of a consolidation or merger of a national bank with another bank located within the same state may be waived by OCC in emergency situations or by unanimous vote of the shareholders.

Section 107. Equal treatment for Federal agencies of foreign banks

This section provides that federal agencies of foreign banks have the same right as state agencies of foreign banks to receive limited foreign source uninsured deposits (deposits that are not from U.S. citizens or residents).

Section 108. Maintenance of a Federal branch and a Federal agency in the same State

Current law prohibits a foreign bank from operating both a federal branch and a federal agency in the same state. This section permits a foreign bank to maintain both a branch and an agency in those states that do not prohibit a foreign bank from maintaining both.

Section 109. Business organization flexibility for national banks

This section allows banks to choose among different forms of business organizations, as permitted by the Comptroller of the Currency. For example, if the Comptroller should permit a national bank to organize as a limited liability company (LLC), the bank may be able to take advantage of the pass-through tax treatment for LLCs under certain tax laws and eliminate double taxation, under which the same earnings are taxed both at the corporate level as income and at the shareholder level as dividends. The LLC structure may be particularly attractive for community banks and could provide a more flexible structure than a Subchapter S corporation.

Section 110. Clarification of the main place of business of a national bank

This section clarifies where a national bank's principal place of business is located for corporate status purposes.

Section 111. Capital Equivalency deposits for Federal branches and agencies of foreign banks

Under current law, Federal branches and agencies of foreign banks are required to hold capital equivalency deposits (CEDs) in Federal Reserve member banks, equal to at least 5 percent of the liabilities of the branch or agency. State branches and agencies are subject to similar asset pledge requirements, but State banking commissioners often have flexibility to adjust the requirement to take into account the circumstances of the institution involved. This section would give the Comptroller of the Currency similar discretion to adjust the amount of the CED; however, OCC may not permit a foreign bank to keep assets on deposit in an amount that is less than the amount required for a State branch or agency of a foreign bank under the laws and regulations of the State in which the Federal branch or agency is located.

Section 112. Enhancing the authority for national banks to make community development investments

Under current law, national banks are authorized to make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families, either directly or by purchasing interests in an entity primarily engaged in such investments. Aggregate investments are limited to 5 percent of a national bank's unimpaired capital and surplus, unless the Comptroller of the Currency determines that a higher amount will pose no significant risk to the deposit insurance fund and the bank is adequately capitalized. However, in no case may OCC permit a bank's aggregate investments to exceed 10 percent of unimpaired capital and surplus. This section increases the maximum limit from 10 to 15 percent.

Title II—Savings Association Provisions

Section 201. Parity for savings associations under the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940

This section exempts Federal savings associations from the investment adviser and broker-dealer registration requirements to the same extent that banks are exempt under the Investment Advisers Act of 1940 and the Securities and Exchange Act of 1934.

Section 202. Investments by Federal savings associations authorized to promote the public welfare

This section amends the Home Owners' Loan Act (HOLA) to give federal thrift institutions the same authority national banks and state member banks have to make investments primarily designed to promote the public welfare, directly or indirectly by investing in an entity primarily engaged in making public welfare investments. The provision establishes an aggregate limit on investments of 5 percent of a thrift's capital and surplus, unless the Office of Thrift Supervision determines the thrift is adequately capitalized and

that a higher amount poses no significant risk to the deposit insurance fund. In no case may the aggregate investments by a thrift exceed 15 percent of its capital and surplus, consistent with Section 112. Thrifts may use this new community development investment authority without regard to the prohibition against acquiring or retaining corporate debt that is not of investment grade; no similar limit applies to banks.

Section 203. Mergers and consolidations of Federal savings associations with non-depository institution affiliates

This section gives federal thrift institutions the authority to merge with one or more of their non-thrift affiliates, equivalent to recently-enacted authority for national banks. Thrifts would continue to have the authority to merge with other depository institutions, but could not merge with other kinds of entities.

Section 204. Repeal of statutory dividend notice requirement for savings association subsidiaries of savings and loan holding companies

This section eliminates the requirement that any thrift institution owned by a savings and loan holding company must notify OTS 30 days before paying a dividend. Instead, OTS would have the discretion to require prior notice and could establish reasonable conditions on the payment of dividends.

Section 205. Modernizing statutory authority for trust ownership of savings associations

This section conforms the treatment of trusts that own thrift institutions to the treatment of trusts that own banks.

Section 206. Repeal of overlapping rules governing purchased mortgage servicing rights

This section repeals the overlapping, obsolete requirements governing purchased mortgage servicing rights (PMSRs) in the Home Owners' Loan Act. Section 475 of the Federal Deposit Insurance Corporation Improvement Act of 1991 will continue to govern the valuation of PMSRs for savings associations and other depository institutions. Section 475 already permits overriding the valuation limit, and repealing this provision will simply eliminate potential confusion without sacrificing safety and soundness objectives.

Section 207. Restatement of authority for Federal savings associations to invest in small business investment companies

This section restates recently-enacted statutory authority for federal savings associations to invest in small business investment companies (SBICs) and entities established to invest solely in SBICs. Savings associations are subject to an aggregate 5 percent of capital limit on such investments.

Section 208. Removal of limitation on investments in auto loans

Federal savings associations are currently limited in making automobile loans to 35 percent of total assets. This asset limitation is removed by this section.

Section 209. Selling and offering of deposit products

This section exempts insurance agents, who represent a Federal savings association in selling FDIC-insured certificate of deposit (CD) products, from registering as securities law agents under state law. Safeguards are provided, so that agents may not accept deposits or make withdrawals for any customer of the savings association, may not sell CDs for any entity that is not subject to federal or state regulation or sell CDs that are not federally insured, and may not create a secondary market in CDs or otherwise add features to CDs independent of the savings association.

Section 210. Funeral- and cemetery-related fiduciary services

This section authorizes a funeral director or cemetery operator to engage a Federal savings association to act in any fiduciary capacity, including holding funds deposited in trust or escrow by the funeral director or cemetery operator.

Section 211. Repeal of qualified thrift lender requirement with respect to out-of-state branches

Under current law, Federal savings associations must meet the qualified thrift lender (QTL) test both as an entity operating regionally or nationally and in each state where there are branches. This section eliminates the requirement to meet the QTL test on a state-by-state basis, only requiring savings associations to meet the test on the basis of entire multi-state operations.

Section 212. Small business and other commercial loans

For Federal savings associations, this section eliminates the lending limit on small business loans and increases the lending limit on other business loans from 10 to 20 percent of assets.

Section 213. Clarifying citizenship of Federal savings associations for Federal court jurisdiction

This section treats Federal savings associations for purposes of Federal court diversity jurisdiction as being a citizen of two states: the state in which the thrift has its home office and the state in which it has its principal place of business.

Section 214. Increase in limits on commercial real estate loans

This section increases the aggregate limit on commercial real estate loans by Federal savings associations from 400 to 500 percent of the thrift's capital.

Section 215. Repeal of one limit on loans to one borrower

Under their current loans-to-one-borrower authority, savings associations may lend the lesser of $30 million or 30 percent of unimpaired capital and surplus for residential development. This section eliminates a provision that imposes a $500,000 per-unit cap on the purchase price of residential units financed under this authority.

Section 216. Savings association credit card banks

Under current law, a savings and loan holding company cannot own a credit card savings association and still be exempt from the activity restrictions imposed on companies that control multiple

thrifts. However, a savings and loan holding company could charter a credit card institution as a national or state bank and still be exempt from the activity restrictions imposed on multiple savings and loan holding companies. This section amends the Home Owner's Loan Act to permit a savings and loan holding company to charter a credit card savings association and still maintain its exempt status. It also clarifies that a savings association credit card bank continues to be subject to the Qualified Thrift Lender (QTL) test under HOLA.

Section 217. Interstate acquisitions by S&L holding companies

This section amends the Home Owner's Loan Act to permit a multiple savings association to acquire associations in other states under the same rules that apply to bank holding companies under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.

Section 218. Business organization flexibility for federal savings associations

Section 109 allows national banks to choose among different forms of business organizations, as permitted by the Comptroller of the Currency. Such organizations include a limited liability company, whereby the institution may be able to take advantage of the pass-through tax treatment for LLCs under certain tax laws and eliminate double taxation. This section provides federal thrift institutions the same business organization flexibility.

Title III—Credit Union Provisions

Section 301. Privately insured credit unions authorized to become members of a Federal Home Loan Bank

This section permits privately insured credit unions to apply to become members of a Federal Home Loan Bank. Currently, only federally insured credit unions may become members. The state regulator of a privately insured credit union applying for Federal Home Loan Bank membership would have to certify that the credit union meets the eligibility requirements for federal deposit insurance before it would qualify for membership in the Federal Home Loan Bank system. The section clarifies that the Federal Home Loan Bank System's superlien—which gives the System priority in the event that one of its borrowers becomes insolvent—remains in effect notwithstanding any conflicting state law. The section requires that the statutorily mandated annual audit of any entity that provides private deposit insurance to credit unions must be submitted to the Federal Housing Finance Board and the National Credit Union Administration (NCUA).

Section 302. Leases of land on Federal facilities for credit unions

This section gives military and civilian authorities responsible for buildings erected on federal property the discretion to extend to credit unions that finance the construction of credit union facilities on federal land real estate leases at minimal charge.

Section 303. Investments in securities by Federal credit unions

The Federal Credit Union Act currently limits the investment authority of federal credit unions to loans, government securities, deposits in other financial institutions, and certain other limited investments. This section provides additional investment authority to purchase for the credit union's own account certain investment securities of investment grade. The total amount of the investment securities of any one obligor or maker could not exceed 10 percent of the credit union's net worth.

Section 304. Increase in general 12-year limitation of term of Federal credit union loans to 15 years

Currently, federal credit unions are authorized to make loans to members, to other credit unions, and to credit union service organizations. The Federal Credit Union Act imposes various restrictions on these authorities, including a 12-year maturity limit that is subject to limited exceptions. This section would amend the Federal Credit Union Act to allow loan maturities up to 15 years, or longer terms as permitted by the National Credit Union Administration Board.

Section 305. Increase in 1 percent investment limit in credit union service organizations

The Federal Credit Union Act authorizes federal credit unions to invest in organizations providing services to credit unions and credit union members. An individual federal credit union, however, may invest in aggregate no more than one percent of its shares and undivided earnings in these organizations, commonly known as credit union service organizations or CUSOs. This section raises the limit to three percent.

Section 306. Member business loan exclusion for loans to non-profit religious organizations

This section excludes loans or loan participations by federal credit unions to non-profit religious organizations from the member business loan limit contained in the Federal Credit Union Act.

Section 307. Check cashing and money transfer services offered within the field of membership

This section amends the Federal Credit Union Act to allow Federal credit unions to sell negotiable checks, money orders, and other similar transfer instruments, including international and domestic electronic fund transfers, to anyone eligible for membership, regardless of their membership status. Under current law, a credit union is only authorized to provide such services to those who are already members.

Section 308. Voluntary mergers involving multiple common-bond credit unions

In voluntary mergers of multiple bond credit unions, NCUA has determined that it must consider not transferring employee groups over 3,000 from the merging credit union and requiring such groups to spin off and form separate credit unions. This section provides that this numerical limitation does not apply in voluntary mergers.

Section 309. Conversions involving common-bond credit unions

This section requires that when a single or multiple common bond credit union voluntarily merges with or converts to a community credit union, NCUA must establish the criteria whereby it may determine that a member group or other portion of a credit union's existing membership, located outside the community, can be satisfactorily served and remain within the credit union's field of membership.

Section 310. Credit union governance

This section gives federal credit union boards of directors flexibility to expel a member who is disruptive to the operations of the credit union, including harassing personnel and creating safety concerns, without the need for a two-thirds vote of the membership present at a special meeting as required by current law. Federal credit unions are authorized to limit the length of service of their boards of directors to ensure broader representation from the membership. Finally, this section allows federal credit unions to reimburse board of director volunteers for wages they would otherwise forfeit by participating in credit union affairs.

Section 311. Providing the National Credit Union Administration with greater flexibility in responding to market conditions

Under this section, in determining whether to lift the usury ceiling for federal credit unions, NCUA will consider rising interest rates or whether prevailing interest rate levels threaten the safety and soundness of individual credit unions.

Section 312. Exemption from pre-merger notification requirement of the Clayton Act

This section gives federally insured credit unions the same exemption as banks and thrift institutions from pre-merger notification requirements and fees imposed by federal antitrust law.

Section 313. Treatment of credit unions as depository institutions under securities laws

This section gives federally insured credit unions exemptions, similar to those provided banks, from the broker-dealer and investment adviser registration requirements of the Securities and Exchange Act of 1934 and the Investment Advisers Act of 1940.

Section 314. Clarification of definition of net worth under certain circumstances for purposes of prompt corrective action

This section amends the Federal Credit Union Act's prompt corrective action requirements by redefining a credit union's net worth as the retained earnings balance of the credit union (as determined under generally accepted accounting principles, as under current law), together with any amounts that were previously retained earnings of any other credit union with which the credit union has merged.

Section 315. Amendments relating to nonfederally insured credit unions

This section amends Section 43 of the Federal Deposit Insurance Act (FDIA), which contains mandatory disclosures and other re-

quirements for depository institutions lacking federal deposit insurance (primarily state-chartered credit unions). The amendments update the section's disclosure provisions, repeal certain provisions as inappropriate and unnecessary, ensure that state supervisors of the institutions and private insurers can enforce the section, and ensure effective Federal Trade Commission (FTC) enforcement.

Section 43 of the FDIA was added in 1991 by the Federal Deposit Insurance Corporation Improvement Act (FDICIA). It was further refined in 1994 to allow alternative notifications to customers via the mail. From 1993 to 2003, federal appropriations acts barred the FTC from expending funds to enforce this section. In FY 2004, the spending restriction was lifted, allowing the FTC to enforce this provision of law.

Subsection (a) allows state supervisors of private insurers, and appropriate state supervisors of depository institutions that receive privately insured deposits in their states, to examine and enforce compliance with Section 43's requirements for private insurer audits.

Subsection (b) strikes the term "or similar instrument evidencing a deposit" and inserts "or share certificate," clarifying that disclosures are not required on deposit slips.

Subsection (c) makes minor exemptions to the requirement that "all advertising" must conspicuously display that the institution is not federally insured. Such exemptions include (i) statements or reports of financial condition required by state or federal regulation, (ii) signs, documents or logos that do not include any information about the institution's products or services, and (iii) small utilitarian items that do not mention deposit products or insurance if inclusion of the notice would be impractical.

Subsection (d) updates the time frame and improves the disclosure requirements for depositors at privately insured institutions. First, the subsection requires that that new depositors, obtained other than through a conversion or merger, must sign an acknowledgement card that the institution is not federally insured, and that if the institution fails, the federal government does not guarantee that the depositor will get back the depositor's money. Second, the subsection requires this acknowledgement for new depositors obtained through a conversion or merger. Those depositors must sign the acknowledgement or receive a letter within 45 days of the conversion seeking to obtain the acknowledgement. NCUA regulations governing the conversion and merger process provide for extensive disclosure to depositors before the conversion or merger. Finally, customers who are currently in a privately insured institution must receive a new mailing seeking an acknowledgement card.

Subsection (e) repeals the provision prohibiting non-federally insured depository institutions other than banks from using instruments of interstate commerce (such as mail, telephone, or the Internet) to accept deposits unless the institution meets all requirements for federal deposit insurance. Enforcement of this provision could effectively require many privately insured credit unions to cease operations, causing disruption and depositor losses, regardless of whether the credit union's state regulator deems it financially sound.

Subsection (f) repeals the provision allowing the FTC to identify entities that are not depository institutions but could reasonably be mistaken for depository institutions, thereby subjecting those entities to the requirements of Section 43. Any such entities are already likely either to be subject to another regulatory scheme, such as federal securities law, or to be engaging in significant deception subject to enforcement under other laws. In either case, Section 43's regulatory approach is unnecessary and may create conflicts. This subsection excludes uninsured national banks and state member banks from the scope of its coverage.

Subsection (g) limits FTC enforcement to the disclosure requirements of Section 43 (which are particularly within its purview), and expressly authorizes examination and enforcement of Section 43 by the appropriate state supervisor of an institution's chartering state. In particular, state supervisors may be able readily to incorporate examinations for compliance into their regular examinations, thus providing efficient oversight of the requirements.

Title IV—Depository Institution Provisions

Section 401. Easing restrictions on interstate branching and mergers

This section removes the prohibition in current law on national and state banks expanding through de novo interstate branching.

Currently, banks may expand in this fashion only if a state's law expressly permits interstate branching. This section clarifies that a state member bank may establish a de novo interstate branch under the same terms and conditions applicable to national banks. The authority for a state to prohibit an out-of-state bank or bank holding company from acquiring, through merger or acquisition, an in-state bank that has not existed for at least five years is eliminated. Insured banks are authorized to acquire by merger or consolidation another insured depository institution (including a savings association) or an uninsured trust company that has a different home state than the acquiring insured bank. Industrial loan companies (ILCs) controlled by firms that derive 15 percent or more of their consolidated revenues from non-financial activities would not be permitted to engage in interstate branching, unless the ILC became an insured depository institution prior to October 1, 2003.

This section permits a state bank supervisor to authorize state trust companies it supervises to act in a fiduciary capacity on an interstate basis either with or without interstate offices. Such activities must not be in contravention of state law, but will not be deemed to contravene state law to the extent that a host state grants to its trust institutions the fiduciary powers sought to be exercised on an interstate basis. This authority parallels existing authority of national banks and national trust companies under the National Bank Act.

Section 402. Statute of limitations for judicial review of appointment of a receiver for depository institutions

This section provides greater consistency in federal law governing how much time an insured depository institution has to challenge the appointment of a receiver.

Section 403. Reporting requirements relating to insider lending

This section eliminates certain reporting requirements currently imposed on banks and their executive officers and principal shareholders related to lending by banks to insiders. This would not alter restrictions on the ability of banks to make insider loans or limit the ability of federal banking agencies to take enforcement action against a bank or its insiders for violation of lending limits.

Section 404. Amendment to provide an inflation adjustment for the small depository institution exception under the Depository Institution Management Interlocks Act

The Depository Institutions Management Interlocks Act prohibits depository organizations from having interlocking management officials, if the depositories are located or have an affiliate located in the same metropolitan statistical area, primary metropolitan statistical area, or consolidated metropolitan statistical area. This statutory prohibition does not apply to depository organizations that have less than $20 million in assets. This section increases the exemption limit to $100 million in assets.

Section 405. Enhancing the safety and soundness of insured depository institutions

This section provides that the federal banking agencies may enforce conditions imposed in writing and written agreements in which an institution-affiliated party or controlling shareholder agrees to provide capital to the depository institution. Transfers to depository institutions to bolster their capital will not be reversed if the institution-affiliated party or controlling shareholder later becomes bankrupt. This section also clarifies existing FDIC authority as receiver or conservator to enforce written conditions or agreements. The agreements referenced in this section are not contracts and will not be enforced as such.

Section 406. Investments by insured savings associations in bank service companies authorized

Bank service companies allow one or more banks to establish a subsidiary or participate in a joint venture with other banks to provide banking or related services. Activities are limited to services for depository institutions, such as check sorting/posting and bookkeeping. This section permits thrifts to invest in a bank service company on the same basis as banks, but otherwise preserves current structure, terms, limits, and conditions. It permits banks to invest in thrift service companies as well.

This section clarifies that an investor in a bank service company must seek Federal Reserve approval to engage in an activity that could be authorized only under the Bank Service Company Act's Section 4(f)—that is, activities on the Fed's Section 4(c)(8) list that are beyond what the depository institution can do under its charter. All activities otherwise permissible for an investor in a bank service company are subject to the jurisdiction of the institution's appropriate federal bank regulator, according to the terms of the Bank Service Company Act or other applicable federal laws.

Section 407. Cross guarantee authority

This section clarifies the scope of cross guarantee liability to include all insured depository institutions commonly controlled by the same company. The assessment of liability by the FDIC would continue to be only against the insured depository institution commonly controlled with the defaulting institution.

Section 408. Golden parachute authority and nonbank holding companies

This section clarifies that the FDIC could prohibit or limit a nonbank holding company's golden parachute payment or indemnification payment to institution-affiliated parties.

Section 409. Amendments relating to change in bank control

The Change in Bank Control Act authorizes federal banking agencies to disapprove a change-in-control notice within a set period of time. Change-in-control notices are subject to strict time periods for disapproval and extensions of time beyond 45 days are available only in limited circumstances. This section allows federal banking agencies to extend the time for review of the notice to consider business plan information, which is already collected, and to use that information in determining whether to disapprove the notice.

Section 410. Community reinvestment credit for ESOPS and EWOCS

This section amends the Community Reinvestment Act of 1977 to permit the appropriate Federal financial supervisory agency to consider activities that support or enable the establishment of employee stock ownership plans or eligible worker-owned cooperatives for Community Reinvestment Act credit.

Section 411. Minority financial institutions

This section requires the Federal Deposit Insurance Corporation and the Office of Thrift Supervision to provide technical assistance to minority financial institutions affected by Hurricanes Katrina, Rita, and Wilma, as appropriate to preserve the present number of minority depository institutions and preserve the minority character in mergers or acquisitions of a minority depository institution, consistent with Section 308(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Title V—Depository Institution Affiliates Provisions

Section 501. Clarification of cross marketing provision

The cross marketing provisions of the Gramm-Leach-Bliley Act were enacted to provide a safeguard against the mixing of banking and commerce. Cross marketing could lead to the integration of a portfolio company into a bank's operations, making the portfolio company a de facto division of a bank. If, however, the portfolio company was not under the control of the financial holding company, it could not function as a division of a subsidiary bank. This section provides that the cross marketing prohibition would only apply to entities controlled by a financial holding company. "Control" for this purpose would be determined pursuant to the defini-

tional provisions of Section 2 of the Bank Holding Company Act. Cross-marketing arrangements between depository institutions and non-financial companies would be authorized when the shares of those companies are owned or controlled by a securities firm or its affiliate.

Section 502. Amendment to provide the Federal Reserve Board with discretion concerning the imputation of control of shares of a company by trustees

Currently, any shares held by a trust for the benefit of a bank holding company, or its shareholders, members, or employees are deemed to be controlled by the company. This is intended to prevent a bank holding company from evading restrictions on the acquisition of shares of banks and nonbanking companies by having such shares acquired by a trust controlled by the company, either directly or through its management, shareholders, or employees. This section allows the Federal Reserve Board to waive this so-called attribution rule in circumstances where the Board determines such action is appropriate.

Section 503. Eliminating geographic limits on thrift service companies

This section permits federal thrift institutions to invest in service companies without regard to geographic restrictions.

Section 504. Clarification of scope of applicable rate provision

Currently, an insured depository institution chartered with a home office in a state that has a constitutional usury ceiling may charge an interest rate on loans equal to the rate charged by national banks or federal savings associations located in the state. This section permits finance companies located in these states to charge the same rates as national and state banks.

Section 505. Savings associations acting as agents for affiliated depository institutions

This section amends the Federal Deposit Insurance Act to give Federal savings associations the same authority as banks to act as agents for their affiliated depository institutions.

Section 506. Credit card bank investments for the public welfare

This section permits credit card banks to make an investment if the investment primarily benefits low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment, or if the investment would receive consideration as a "qualified investment" subject to appropriate regulation. Such investments would have to be consistent with the safe and sound operations of an institution and cannot exceed 5% of an institution's capital and surplus.

Title VI—Banking Agency Provisions

Section 601. Waiver of examination schedule in order to allocate examiner resources

This section permits the appropriate federal banking agencies to adjust the examination cycle of insured depository institutions to

ensure that examiner resources are allocated in a manner that provides for the safety and soundness of insured depository institutions. This section permits the agencies, when necessary for safety and soundness purposes, to adjust their mandatory examination schedules to use their resources in the most efficient manner.

Section 602. Interagency data sharing

The Gramm-Leach-Bliley Act gave the Federal Reserve Board authority to provide confidential supervisory information concerning an examined entity to another supervisory authority, an officer, director, or receiver of the examined entity, or any other person determined by the supervisory agency to be appropriate. This section gives the same authority to all federal banking agencies.

Section 603. Penalty for unauthorized participation by convicted individual

A person convicted of a crime involving dishonesty or a breach of trust may not participate in the affairs of an insured depository institution without FDIC approval. Certain special purpose banks and foreign banking institutions operate without insured status (e.g., trust banks and foreign branches). This section extends the prohibition to include uninsured national and state member banks and uninsured offices of foreign banks.

Section 604. Amendment permitting the destruction of old records of a depository institution by the FDIC after the appointment of the FDIC as receiver

This section modifies the requirement for retention of old records of a failed insured depository institution when a receiver is appointed. The FDIC is authorized to destroy records that are more than ten years old at the time of its appointment as receiver, so long as the records are unnecessary and not relevant to any pending or reasonably probable future litigation, and unless directed not to do so by a court or a government agency or prohibited by law.

Section 605. Modernization of recordkeeping requirement

This section allows federal banking agencies to rely upon records preserved electronically, such as optically imaged or computer scanned images. Currently, agencies are permitted to use photographic records in place of original records for all purposes, including introduction into evidence in courts. This section gives agencies the flexibility to rely on appropriate new technology, while maintaining the requirement that agencies prescribe the manner of the preservation of records, to ensure their reliability, regardless of the technology used.

Section 606. Streamlining reports of condition

This section directs the federal banking agencies, within one year of date of enactment and every five years thereafter, to review the information and schedules that depository institutions are required to file in Reports of Condition (call reports) and reduce or eliminate any requirement where the agencies determine that the collection of such information is no longer necessary or appropriate.

Section 607. Expansion of eligibility for 18–month examination schedule for community banks

This section amends the Federal Deposit Insurance Act to increase from $250 million to $1 billion the asset size of well-capitalized, well-managed institutions eligible for the extended 18–month examination schedule.

Section 608. Short form reports of condition for certain community banks

This section authorizes well-capitalized, well-managed insured depository institutions with less than $1 billion in assets to file "short form" call reports in any two non-sequential quarters of a calendar year. The federal banking agencies are directed to develop a short form report of condition that is significantly and materially less burdensome for insured depository institutions to prepare than the long form call report, while also providing sufficient material information for the agencies to assure the continued safety and soundness of institutions.

Section 609. Clarification of extent of suspension, removal, and prohibition authority of Federal banking agencies in cases of certain crimes by institution-affiliated parties

This section clarifies that the appropriate federal banking agency may suspend or prohibit individuals who are the subject of criminal proceedings from participation in the affairs of any depository institution and not only the insured depository with which the institution affiliated party is or was associated. The agency may also use the prohibition authority even when the institution with which the individuals were associated ceases to exist.

Section 610. Streamlining depository institution merger application requirements

This section streamlines merger application requirements by eliminating the requirement that each federal banking agency must request a competitive factors report from the other three federal banking agencies as well as from the Attorney General. The amendment decreases the number to two, with the Attorney General continuing to be required to consider the competitive factors involved in each merger transaction and the FDIC, as insurer, receiving notice even where it is not the appropriate banking agency for the particular merger. Federal banking agencies are not required to request a competitive factors report if they find that they must act on a merger application immediately to prevent the probable failure of a depository institution involved in the transaction, or the transaction consists of a merger between an insured depository institution and one or more of its affiliates.

Section 611. Inclusion of Director of the Office of Thrift Supervision in list of banking agencies regarding insurance customer protection regulations

The four federal banking agencies are required by current law to publish insurance customer protection regulations. OTS has the same responsibilities in this connection as FDIC, OCC, and the Federal Reserve Board, with one exception, i.e., current law provides for preemption of state law in certain circumstances, if the

banking agencies, except for OTS, jointly determine the federal protections are greater than comparable state protections. This section adds OTS to the list of banking agencies responsible for making the preemption determination.

Section 612. Protection of confidential information received by Federal banking regulators from foreign banking supervisors

This section is intended to facilitate the sharing of information by ensuring that federal banking agencies may hold confidential any nonpublic supervisory information obtained from a foreign regulatory authority. This would not affect the ability of Congress or a defendant in an action instituted by a banking agency to obtain such information.

Section 613. Prohibition on the participation by convicted individual

This section would prohibit a person convicted of a criminal offense involving dishonesty, a breach of trust, or money laundering from participating in the affairs of a bank holding company or an Edge or Agreement Corporation, without the consent of the Federal Reserve Board, and from participating in the affairs of a savings and loan holding company or any of its nonthrift subsidiaries, without the consent of the Office of Thrift Supervision. Foreign banks and nonbank subsidiaries of a bank holding company are excluded.

Section 614. Clarification that notice after separation from service may be made by an order

The Federal Deposit Insurance Act ensures that federal banking agencies may take enforcement action against a person for conduct that occurred during his or her affiliation with a banking organization, even if the person resigns. Because such enforcement actions may take the form of both notices and orders, this section clarifies that those protections apply regardless of how the enforcement action is styled.

Section 615. Enforcement against misrepresentations regarding FDIC deposit insurance coverage

This section authorizes the FDIC to take enforcement actions and impose civil monetary penalties of up to $1 million per day on any individual, corporation, or other entity for misrepresentation of FDIC insurance coverage.

Section 616. Changes required to small bank holding company policy statement assessment of financial and managerial factors

This section directs the Federal Reserve Board to publish proposed revisions to the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors that provide that: (1) the policy shall apply to a bank holding company with pro forma consolidated assets of less than $1 billion that meets specified criteria; and (2) the debt-to-equity ratio allowable for a small bank holding company to remain eligible to pay a corporate dividend and for expedited processing procedures under the Board's regulation Y would increase from 1:1 to 3:1.

Section 617. Exception to annual privacy notice requirement under the Gramm-Leach-Bliley Act

This section amends title V of the Gramm-Leach-Bliley Act to exempt financial institutions from providing the annual privacy notice required by that title if the institution discloses nonpublic personal information to third parties only in accordance with the exceptions specified in Gramm-Leach-Bliley, does not share certain consumer report information with affiliates under the Fair Credit Reporting Act, and has not changed its policies and practices with regard to disclosing nonpublic personal information since sending its last privacy notice to consumers. It further exempts professionals currently categorized by the Federal Reserve Board as financial institutions, such as certified public accountants, if they are subject to state laws that prohibit them from disclosing nonpublic information.

Section 618. Biennial reports on the status of agency employment of minorities and women

Before December 31, 2005 and the end of each two-year period thereafter, each of the federal banking agencies will submit a report to Congress on the status of the employment by the agency of minority individuals and women.

Section 619. Coordination of State examination authority

This section is intended to improve coordination of supervision of multi-state state-chartered banks, by clarifying how state-chartered institutions with branches in more than one state are examined. While giving primacy of supervision to the chartering or home state, this section requires the home state bank supervisor to abide by any written cooperative agreement relating to coordination of exams and joint participation in exams, with the host state supervisor where an out-of-state branch is located. Unless otherwise permitted by a cooperative agreement, only the home state supervisor may charge state supervisory fees on the bank. If a branch in a host state resulted from certain interstate merger transactions, the host state supervisor may, with written notice to the home state supervisor, examine the branch for compliance with host state consumer protection laws. If permitted by a cooperative agreement or if the out-of-state bank is in a troubled condition, the host state supervisor may participate in the examination of the bank by the home state supervisor to ascertain that branch activities are not conducted in an unsafe or unsound manner. If the host state supervisor determines that a branch is violating host state consumer protection laws, the supervisor may, with written notice to the home state supervisor, undertake enforcement actions. This section does not limit in any way the authority of federal banking regulators and does not affect state taxation authority.

Section 620. Non-waiver of privileges

This section provides that when a depository institution submits information to a Federal, State, or foreign regulator as part of the supervisory or regulatory process, the institution does not waive any privilege it may claim with respect to that information as to any person or entity other than the regulator to which the information was disclosed.

Section 621. Right to Financial Privacy Act of 1978 amendment

This section amends the Right to Financial Privacy Act to include in the definition of a "financial institution" for purposes of that Act "any lender who advances funds on pledges of personal property."

Section 622. Succession authority for Director of the Office of Thrift Supervision

During a vacancy, Office of Thrift Supervision succession currently occurs through the process of the Vacancies Act, which limits the time period an acting director may serve. OTS is the only federal financial regulator that could be exposed to a vacancy problem. This section is based on long-standing authority for the Office of the Comptroller of the Currency and gives a designated deputy director authority to perform the functions of the director during a planned or sudden vacancy in the office of the director.

Section 623. Limitation on scope of new agency guidelines

This section requires that regulatory guidance, issued by the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, and Office of Thrift Supervision, related to minimum credit card payments and negative amortization only applies to new credit card accounts, not to existing balances, based on the date of enactment and to sunset in three years.

Title VII—"BSA" Compliance Burden Reduction

Section 701. Exception from currency transaction reports for seasoned customers

This section states a series of congressional findings recognizing that while currency transaction reports (CTRs) filed by financial institutions provide law enforcement with useful analytical and investigative data regarding money laundering and other financial crimes, filing them imposes a compliance burden on those same institutions. The findings also recognize that the current system for exempting financial institutions from filing CTRs on transactions that have minimal value to law enforcement "has not adequately balanced the burden on the financial industry with the government's need for data to support its efforts in combating financial crime."

The section strikes the current statutory requirement that financial institutions renew existing CTR exemptions for "qualified business customers" on an annual basis, and instead directs the Treasury Secretary to prescribe, within nine months, regulations that allow the exemption of an institution from the filing of CTRs on transactions with "qualified customers" of the institution. Such customers are defined as those that are incorporated under Federal or State law or registered to do business within the U.S., have maintained an account at the institution for at least a year and have engaged, through that account, in "multiple" currency transactions that are subject to CTR reporting requirements. Regulations are to be promulgated that ensure the application for the exemption contains adequate identifying information and clear conditions under which the exemption could be rejected or revoked by the Secretary. Further, the regulations are to allow for the continuation of an ex-

isting filing exemption in the case of a merger or acquisition of the institution that has received the filing exemption.

Finally, within three years the Secretary, in consultation with the Attorney General, the Secretary of Homeland Security, the Federal banking agencies, the banking industry and such others as the Secretary chooses, is directed to study the operation and effects of this section and report the findings of this review to Congress along with any recommendations for further legislative action.

Section 702. Reduction in inconsistencies in monetary transaction recordkeeping and reporting and examination requirements

This section expresses the sense of Congress that inconsistencies in record-keeping and reporting requirements for monetary transactions reduce the usefulness of the reports and contribute to the impression that there are inconsistencies in the federal banking agencies' supervision of compliance with the requirements. Additionally, the section requires the federal banking agencies, through the Federal Financial Institutions Examination Council (FFIEC), to ensure that BSA examination procedures are "congruent and reasonably uniform" across agencies. The Treasury is directed to review within six months and promptly report to Congress and the FFIEC any legislative or administrative recommendations to accomplish these goals, and promulgate within nine months of the report any appropriate regulatory changes within its jurisdiction.

Section 703. Additional reforms relating to monetary transactions and recordkeeping

This section requires the Secretary of the Treasury to review and make any appropriate modification to regulations requiring the notification of financial institution directors and officers of the filing of each Bank Security Act filing; review the current requirement to verify and record the identity of the purchaser of monetary instruments over $3,000 in value and make appropriate changes to reduce redundancy with other customer-verification regulations; issue appropriate guidance or a regulation eliminating the need to file multiple Suspicious Activity Reports (SARs) on the same transaction "unless there has been a subsequent change in any pattern of activity involving any person who was connected with the transaction;" and requires the Financial Crimes Enforcement Network (FinCEN) to create a system providing electronic acknowledgement of receipt of a SAR.

Section 704. Study by Comptroller General

This section requires the Government Accountability Office to study and report to Congress on ways to reduce the number of currency transaction reports filed with Treasury; improve financial institution use of the current CTR exemptions; and reduce the difficulties financial institutions have in taking advantage of the exemptions.

Section 705. Feasibility study required

This section requires the Secretary of the Treasury to conduct a study on the feasibility of developing and implementing improvements to the electronic filing of required anti-money laundering forms, to lessen the burdens of complying with recordkeeping and

reporting requirements, and requires the Secretary to produce prototypes of any software or other computer interface that would assist in that effort.

Section 706. Annual report by Secretary of the Treasury

This section requires the Treasury Secretary to report to Congress annually, by March 1, on the anti-money laundering standards of each country, stating whether or not each country is a primary money laundering concern, as per Section 5318A of Title 31, United States Code. The report is to include information on the effectiveness of each country's anti-money laundering efforts in meeting its standards; a determination of whether such efforts are or are not adequate, or if they are improving; and an indication of any efforts made by the Secretary to provide technical assistance to the government of each country of concern. The report is to be made available to Federal banking regulators, for incorporation into examinations, and to financial institutions at no cost.

Section 707. Preservation of money services businesses

This section expresses the sense of Congress that depository institutions and money-service businesses (MSBs) should follow guidance issued in the spring of 2005 by FinCEN and the Federal banking regulators that was intended to help keep MSBs in the mainstream of the financial-services sector.

Title VIII—Clerical and Technical Amendments

Section 801. Clerical amendments to the Home Owners' Loan Act

This section corrects the table of contents for HOLA. The Financial Regulatory Relief and Economic Efficiency Act of 2000 repealed section 6 of HOLA but did not conform the table of contents. The section also corrects the captions for sections 4(a) and 5 of HOLA, to eliminate confusion over the scope of the sections.

Section 802. Technical corrections to the Federal Credit Union Act

This section makes technical, clean-up amendments to the Federal Credit Union Act.

Section 803. Other technical corrections

This section makes technical corrections to Title 18, United States Code.

Section 804. Repeal of obsolete provisions of the Bank Holding Company Act of 1956

This section eliminates certain outdated provisions of the Bank Holding Company Act that no longer have any effect.

Title IX—Fair Debt Collection Practices Act Amendments

Section 901. Exception for certain bad check enforcement programs

This section extends the current Fair Debt Collection Practices Act exemption for debt collection activities by state and local agencies to private entities that operate bad check pre-trial diversion programs on behalf of, and under the supervision of, state and local district attorneys, for the purpose of saving law enforcement re-

sources and providing offenders with an alternative to criminal prosecution. Eligible pre-trial diversion programs would be limited in terms of the types of bad check violations that can be included in the programs, and must conform with other requirements in the amendment relating to allowable fees, consumer notice, and providing appropriate procedures to dispute alleged bad check offenses.

Section 902. Other amendments

This section specifies that a communication, in the form of a formal pleading in a civil action, shall not be treated as an initial communication for purposes of informing a consumer of their right to dispute and obtain validation of an alleged debt, as required by the Fair Debt Collection Practices Act, and that the sending or delivery of any form or notice which does not request the payment of a debt, and is expressly required by any other federal or state law or regulation, shall not be treated as a communication in connection with debt collection, and codifies the Federal Trade Commission's formal advisory opinion regarding the proper interpretation of the FDCPA, by clarifying that collection activities and communications by a debt collector may continue during the 30-day notice period, unless the consumer notifies the debt collector that the debt is in dispute.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE LXII OF THE REVISED STATUTES OF THE UNITED STATES

NATIONAL BANKS.

CHAPTER ONE.

ORGANIZATION AND POWERS.

Sec.
5133. Formation of national banking associations.

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[5146. Requisite qualifications of directors.]
5146. Requirements for Bank Directors.

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5136C. Alternative business organization.

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SEC. 5134. The persons uniting to form such an association shall, under their hands, make an organization certificate, which shall specifically state:

First. * * *

Second. [The place where its operations of discount and deposit are to be carried on] *The place where the main office of the na-*

tional bank is, or is to be, located, designating the State, Territory, or district, and the particular county and city, town, or village.

* * * * * * *

SEC. 5136. Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate *or other form of business organization provided under regulations prescribed by the Comptroller of the Currency under section 5136C*, and as such, and in the name designated in the organization certificate, it shall have power—

First. * * *

* * * * * * *

Eleventh. To make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs). A national banking association may make such investments directly or by purchasing interests in an entity primarily engaged in making such investments. An association shall not make any such investment if the investment would expose the association to unlimited liability. The Comptroller of the Currency shall limit an association's investments in any 1 project and an association's aggregate investments under this paragraph. An association's aggregate investments under this paragraph shall not exceed an amount equal to the sum of 5 percent of the association's capital stock actually paid in and unimpaired and 5 percent of the association's unimpaired surplus fund, unless the Comptroller determines by order that the higher amount will pose no significant risk to the affected deposit insurance fund, and the association is adequately capitalized. In no case shall an association's aggregate investments under this paragraph exceed an amount equal to the sum of **[**10 percent**]** *15 percent* of the association's capital stock actually paid in and unimpaired and **[**10 percent**]** *15 percent* of the association's unimpaired surplus fund.

* * * * * * *

SEC. 5136C. ALTERNATIVE BUSINESS ORGANIZATION.

(a) IN GENERAL.—The Comptroller of the Currency may prescribe regulations—

(1) to permit a national bank to be organized other than as a body corporate; and

(2) to provide requirements for the organizational characteristics of a national bank organized and operating other than as a body corporate, consistent with the safety and soundness of the national bank.

(b) EQUAL TREATMENT.—Except as provided in regulations prescribed under subsection (a), a national bank that is operating other than as a body corporate shall have the same rights and privileges and shall be subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations as a national bank that is organized as a body corporate.

* * * * * * *

SEC. 5144. In all elections of directors, each shareholder shall have the right to vote the number of shares owned by him for as

many persons as there are directors to be elected, [or to cumulate] *or, if so provided by the articles of association of the national bank, to cumulate* such shares and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal[,] or to distribute them on the same principle among as many candidates as he shall think fit; and in deciding all other questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him; except that (1) this shall not be construed as limiting the voting rights of holders of preferred stock under the terms and provisions of articles of association, or amendments thereto, adopted pursuant to the provisions of section 302(a) of the Emergency Banking and Bank Conservation Act, approved March 9, 1933, as amended; (2) in the election of directors, shares of its own stock held by a national bank as sole trustee, whether registered in its own name as such trustee or in the name of its nominee, shall not be voted by the registered owner unless under the terms of the trust the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and unless such donor or beneficiary actually directs how such shares shall be voted; and (3) shares of its own stock held by a national bank and one or more persons as trustees may be voted by such other person or persons, as trustees, in the same manner as if he or they were the sole trustee. Shareholders may vote by proxies duly authorized in writing; but no officer, clerk, teller, or bookkeeper of such bank shall act as proxy; and no shareholder whose liability is past due and unpaid shall be allowed to vote. Whenever shares of stock cannot be voted by reason of being held by the bank as sole trustee such shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite percentage of shares. *The Comptroller of the Currency may prescribe such regulations to carry out the purposes of this section as the Comptroller determines to be appropriate.*

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[SEC. 5146. Every director must during]

SEC. 5146. REQUIREMENTS FOR BANK DIRECTORS.

(a) RESIDENCY REQUIREMENTS.—Every director of a national bank shall, during his whole term of service, be a citizen of the United States, and at least a majority of the directors must have resided in the State, Territory, or District in which the association is located, or within one hundred miles of the location of the office of the association, for at least one year immediately preceding their election, and must be residents of such State or within a one-hundred-mile territory of the location of the association during their continuance in office, except that the Comptroller may, in the discretion of the Comptroller, waive the requirement of residency, and waive the requirement of citizenship in the case of not more than a minority of the [total number of directors. Every director must own in his or her own right] *total number of directors.*

(b) INVESTMENT REQUIREMENT.—

(1) IN GENERAL.—Every director of a national bank shall own, in his or her own right, either shares of the capital stock of the association of which he or she is a director the aggregate par value of which is not less than $1,000, or an equivalent in-

terest, as determined by the Comptroller of the Currency, in any company which has control over such association within the meaning of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). If the capital of the bank does not exceed $25,000, every director must own in his or her own right either shares of such capital stock the aggregate par value of which is not less than $500, or an equivalent interest, as determined by the Comptroller of the Currency, in any company which has control over such association within the meaning of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). Any director who ceases to be the owner of the required number of shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place.

(2) EXCEPTION FOR SUBORDINATED DEBT IN CERTAIN CASES.—In lieu of the requirements of paragraph (1) relating to the ownership of capital stock in the national bank, the Comptroller of the Currency may, by regulation or order, permit an individual to serve as a director of a national bank that has elected, or notifies the Comptroller of the bank's intention to elect, to operate as a S corporation pursuant to section 1362(a) of the Internal Revenue Code of 1986, if that individual holds debt of at least $1,000 issued by the national bank that is subordinated to the interests of depositors and other general creditors of the national bank.

* * * * * * *

SEC. 5155. The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

(a) * * *

* * * * * * *

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish and operate**[**, without regard to the capital requirements of this section,**]** a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: *Provided,* That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. **[**Except as provided in the imme-

diately preceding sentence, no such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock.**]**

* * * * * * *

(g) **[**STATE "OPT-IN" ELECTION TO PERMIT**]** INTERSTATE BRANCHING THROUGH DE NOVO BRANCHES.—

(1) IN GENERAL.—Subject to paragraph (2), the Comptroller of the Currency may approve an application by a national bank to establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not **[**maintain a branch if—

[(A) there is in effect in the host State a law that—

[(i) applies equally to all banks; and

[(ii) expressly permits all out-of-State banks to establish de novo branches in such State; and

[(B) the conditions established in, or made applicable to this paragraph by, paragraph (2) are met.**]** *maintain a branch.*

* * * * * * *

CHAPTER THREE.

REGULATION OF THE BANKING BUSINESS.

Sec.
5190. Place of business of banking associations.

* * * * * * *

[5199. Dividends.**]**
5199. National bank dividends.

* * * * * * *

SEC. 5190. The general business of each national banking association shall be transacted in **[**the place specified in its organization certificate**]** *the main office of the national bank* and in the branch or branches, if any, established or maintained by it in accordance with the provisions of section 5155 of the Revised Statutes, as amended by this Act.

* * * * * * *

[SEC. 5199. (a) The directors of any national banking association may, quarterly, semiannually or annually, declare a dividend of so much of the undivided profits of the association, subject to the limitations in subsection (b), as they shall judge expedient, except that until the surplus fund of such association shall equal its common capital, no dividends shall be declared unless there has been carried to the surplus fund not less than one-tenth part of the association's net income of the preceding half year in the case of quarterly or semiannual dividends, or not less than one-tenth part of its net income of the preceding two consecutive half-year periods in the case of annual dividends: *Provided,* That for the purposes of this

section, any amounts paid into a fund for the retirement of any preferred stock of any such association out of its net income for such period or periods shall be deemed to be additions to its surplus fund if, upon the retirement of such preferred stock, the amounts so paid into such retirement fund may then properly be carried to surplus. In any such case the association shall be obligated to transfer to surplus the amounts so paid into such retirement fund on account of the preferred stock as such stock is retired.

[(b) The approval of the Comptroller of the Currency shall be required if the total of all dividends declared by such association in any calendar year shall exceed the total of its net income of that year combined with its retained net income of the preceding two years, less any required transfers to surplus or a fund for the retirement of any preferred stock.]

SEC. 5199. NATIONAL BANK DIVIDENDS.

(a) IN GENERAL.—Subject to subsection (b), the directors of any national bank may declare a dividend of so much of the undivided profits of the bank as the directors judge to be expedient.

(b) APPROVAL REQUIRED UNDER CERTAIN CIRCUMSTANCES.—A national bank may not declare and pay dividends in any year in excess of an amount equal to the sum of the total of the net income of the bank for that year and the retained net income of the bank in the preceding two years, minus any transfers required by the Comptroller of the Currency (including any transfers required to be made to a fund for the retirement of any preferred stock), unless the Comptroller of the Currency approves the declaration and payment of dividends in excess of such amount.

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CHAPTER FOUR.

DISSOLUTION AND RECEIVERSHIP.

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SEC. 5239. (a) * * *

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[(d)] *(e)* AUTHORITY.—The Comptroller of the Currency may act in the Comptroller's own name and through the Comptroller's own attorneys in enforcing any provision of this title, regulations thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Comptroller of the Currency is a party.

* * * * * * *

FEDERAL DEPOSIT INSURANCE ACT

* * * * * * *

SEC. 5. DEPOSIT INSURANCE.

(a) * * *

* * * * * * *

(e) LIABILITY OF COMMONLY CONTROLLED DEPOSITORY INSTITUTIONS.—

(1) * * *

* * * * * * *

(9) COMMONLY CONTROLLED DEFINED.—For purposes of this subsection, depository institutions are commonly controlled if—

[(A) such institutions are controlled by the same depository institution holding company (including any company required to file reports pursuant to section 4(f)(6) of the Bank Holding Company Act of 1956); or]

(A) such institutions are controlled by the same company; or

* * * * * * *

SEC. 7. (a)(1) * * *
(2)(A) * * *

* * * * * * *

(C) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Corporation (with respect to all insured depository institutions, including a depository institution for which the Corporation has been appointed conservator or receiver) or an appropriate State bank supervisor (with respect to a State depository institution) under subparagraph (A) or (B), a Federal banking agency may, in the agency's discretion, furnish any report of examination or other confidential supervisory information concerning any depository institution or other entity examined by such agency under authority of any Federal law, to—

(i) any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity;

(ii) any officer, director, or receiver of such depository institution or entity; and

(iii) any other person the Federal banking agency determines to be appropriate.

* * * * * * *

(11) STREAMLINING REPORTS OF CONDITION.—

(A) REVIEW OF INFORMATION AND SCHEDULES.—Before the end of the 1-year period beginning on the date of the enactment of the Financial Services Regulatory Relief Act of 2005 and before the end of each 5-year period thereafter, each Federal banking agency shall, in consultation with the other relevant Federal banking agencies, review the information and schedules that are required to be filed by an insured depository institution in a report of condition required under paragraph (3).

(B) REDUCTION OR ELIMINATION OF INFORMATION FOUND TO BE UNNECESSARY.—After completing the review required by subparagraph (A), a Federal banking agency, in consultation with the other relevant Federal banking agencies, shall reduce or eliminate any requirement to file information or schedules under paragraph (3) (other than information or schedules that are otherwise required by law) if the agency determines that the continued collection of such in-

formation or schedules is no longer necessary or appropriate.

(12) SHORT FORM REPORTS OF CONDITION FOR COMMUNITY BANKS.—

(A) IN GENERAL.—With respect to reports of condition required under paragraph (3) for each calendar quarter, an insured depository institution described in subparagraphs (A), (B), (C), and (D) of section 10(d)(4) may submit a short form of any such report of condition in 2 nonsequential quarters of any calendar year.

(B) SHORT FORM DEFINED.—The term "short form", when used in connection with any report of condition required under paragraph (3), means a report of condition in a format established by the appropriate Federal banking agency, after notice and opportunity for comment, that—

(i) is significantly and materially less burdensome for the insured depository institution to prepare than the format of the report of condition required under paragraph (3); and

(ii) provides sufficient material information for the appropriate Federal banking agency to assure the maintenance of the safe and sound condition of the depository institution and safe and sound practices.

* * * * * * *

(j)(1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured depository institution through a purchase, assignment, transfer, pledge, or other disposition of voting stock of such insured depository institution unless the appropriate Federal banking agency has been given sixty days' prior written notice of such proposed acquisition and within that time period the agency has not issued a notice disapproving the proposed acquisition or, in the discretion of the agency, extending for an additional 30 days the period during which such a disapproval may issue.The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

(A) * * *

* * * * * * *

(D) the agency determines that additional time [is needed to investigate] *is needed—*

(i) to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, [United States Code.] *United States Code; or*

(ii) to analyze the safety and soundness of any plans or proposals described in paragraph (6)(E) or the future prospects of the institution.

* * * * * * *

(7) The appropriate Federal banking agency may disapprove any proposed acquisition if—

(A) * * *

* * * * * * *

(C) [the financial condition of any acquiring person] *either the financial condition of any acquiring person or the future prospects of the institution* is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

* * * * * * *

SEC. 8. (a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(4) FALSE ADVERTISING OR MISUSE OF NAMES TO INDICATE INSURED STATUS.—

(A) TEMPORARY ORDER.—

(i) IN GENERAL.—If a notice of charges served under subsection (b)(1) of this section specifies on the basis of particular facts that any person is engaged in conduct described in section 18(a)(4), the Corporation may issue a temporary order requiring—

(I) the immediate cessation of any activity or practice described, which gave rise to the notice of charges; and

(II) affirmative action to prevent any further, or to remedy any existing, violation.

(ii) EFFECT OF ORDER.—Any temporary order issued under this subparagraph shall take effect upon service.

(B) EFFECTIVE PERIOD OF TEMPORARY ORDER.—A temporary order issued under subparagraph (A) shall remain effective and enforceable, pending the completion of an administrative proceeding pursuant to subsection (b)(1) in connection with the notice of charges—

(i) until such time as the Corporation shall dismiss the charges specified in such notice; or

(ii) if a cease-and-desist order is issued against such person, until the effective date of such order.

(C) CIVIL MONEY PENALTIES.—Violations of section 18(a)(4) shall be subject to civil money penalties as set forth in subsection (i) in an amount not to exceed $1,000,000 for each day during which the violation occurs or continues.

* * * * * * *

(e) REMOVAL AND PROHIBITION AUTHORITY.—

(1) * * *

(2) SPECIFIC VIOLATIONS.—

(A) IN GENERAL.—Whenever the appropriate Federal banking agency determines that—

(i) * * *

(ii) an officer or director of an insured depository institution has knowledge that an institution-affiliated party of the insured depository institution has violated any such provision or any provision of law referred to in subsection (g)(1)(A)(ii); [or]

(iii) an officer or director of an insured depository institution has committed any violation of the Depository Institution Management Interlocks Act[,]*; or*

(iv) an institution-affiliated party of a subsidiary (other than a bank) of a bank holding company has been convicted of any criminal offense involving dishonesty or a breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense,

* * * * * * *

(4) A notice of intention to remove an institution-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of an insured depository institution, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the agency at the request of (A) such party, and for good cause shown, or (B) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the agency shall find that any of the grounds specified in such notice have been established, the agency may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the depository institution, as it may deem appropriate. In any action brought under this section by the Comptroller of the Currency in respect to any such party with respect to a national banking association or a District depository institution, the findings and conclusions of the Administrative Law Judge shall be certified to the Board of Governors of the Federal Reserve System for the determination of whether any order shall issue. **[**Any such order shall become effective at the expiration of thirty days after service upon such depository institution and such party (except in the case of an order issued upon consent, which shall become effective at the time specified therein).**]** Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

* * * * * * *

[(g)**]**

(g) SUSPENSION, REMOVAL, AND PROHIBITION FROM PARTICIPATION ORDERS IN THE CASE OF CERTAIN CRIMINAL OFFENSES.—

(1) SUSPENSION OR PROHIBITION.—

(A) IN GENERAL.—Whenever any institution-affiliated party **[**is charged in any information, indictment, or complaint, with the commission of or participation in**]** *is the subject of any information, indictment, or complaint, involving the commission of or participation in—*

(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or

(ii) a criminal violation of section 1956, 1957, or 1960 of title 18, United States Code, or section 5322 or 5324 of title 31, United States Code,

the appropriate Federal banking agency may, if continued service or participation by such party [may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution,] *posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)),* by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the [affairs of the depository institution] *affairs of any depository institution*.

(B) PROVISIONS APPLICABLE TO NOTICE.—

(i) COPY.—A copy of any notice under subparagraph (A) shall also be served upon [the depository institution] *any depository institution that the subject of the notice is affiliated with at the time the notice is issued*.

* * * * * * *

(C) REMOVAL OR PROHIBITION.—

(i) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an institution-affiliated party in connection with a crime described in subparagraph (A)(i), at such time as such judgment is not subject to further appellate review, the appropriate Federal banking agency may, if continued service or participation by such party [may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution,] *posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, and relevant depository institution (as defined in subparagraph (E)),* issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the [affairs of the depository institution] *affairs of any depository institution* without the prior written consent of the appropriate agency.

(ii) REQUIRED FOR CERTAIN OFFENSES.—In the case of a judgment of conviction or agreement against an institution-affiliated party in connection with a violation described in subparagraph (A)(ii), the appropriate Federal banking agency shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the [affairs of the depository institution] *affairs of any depository institution* without the prior written consent of the appropriate agency.

(D) PROVISIONS APPLICABLE TO ORDER.—

(i) COPY.—A copy of any order under subparagraph (C) shall also be served upon [the depository institution] *any depository institution that the subject of the order is affiliated with at the time the order is issued*,

whereupon the institution-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such depository institution.

* * * * * * *

(E) RELEVANT DEPOSITORY INSTITUTION.—For purposes of this subsection, the term "relevant depository institution" means any depository institution of which the party is or was an institution-affiliated party at the time—

(i) the information, indictment or complaint described in subparagraph (A) was issued; or

(ii) the notice is issued under subparagraph (A) or the order is issued under subparagraph (C)(i).

* * * * * * *

(i)(1) * * *

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(3) NOTICE *OR ORDER* UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (including a separation caused by the closing of an insured depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice *or order* and proceed under this section against any such party, if such notice *or order* is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depository institution (whether such date occurs before, on, or after the date of the enactment of this paragraph).

* * * * * * *

(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

(1) * * *

* * * * * * *

(4) COORDINATION ON UNIFORM REQUIREMENTS.—In prescribing regulations under paragraph (1), the Federal banking agencies, acting through the Financial Institutions Examination Council, shall—

(A) consult with each other, the National Credit Union Administration Board, and the Secretary of the Treasury; and

(B) take such action as may be necessary to ensure that the requirements for procedures established pursuant to such regulations, and the examination standards for reviewing such procedures, are congruent and reasonably uniform (taking into account differences in the form and function of the institutions subject to such requirements).

* * * * * * *

SEC. 10. (a) * * *

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(d) ANNUAL ON-SITE EXAMINATIONS OF ALL INSURED DEPOSITORY INSTITUTIONS REQUIRED.—

(1) * * *

* * * * * * *

(4) 18-MONTH RULE FOR CERTAIN SMALL INSTITUTIONS.—Paragraphs (1), (2), and (3) shall apply with "18-month" substituted for "12-month" if—

(A) the insured depository institution has total assets of less than [$250,000,000] *$1,000,000,000*;

* * * * * * *

(5) WAIVER OF SCHEDULE WHEN NECESSARY TO ACHIEVE SAFE AND SOUND ALLOCATION OF EXAMINER RESOURCES.—Notwithstanding paragraphs (1), (2), (3), and (4), an appropriate Federal banking agency may make adjustments in the examination cycle for an insured depository institution if necessary to allocate available resources of examiners in a manner that provides for the safety and soundness of, and the effective examination and supervision of, insured depository institutions.

[(5)] *(6)* CERTAIN GOVERNMENT-CONTROLLED INSTITUTIONS EXEMPTED.—Paragraph (1) does not apply to—

(A) * * *

* * * * * * *

[(6)] *(7)* COORDINATED EXAMINATIONS.—To minimize the disruptive effects of examinations on the operations of insured depository institutions—

(A) * * *

* * * * * * *

[(7)] *(8)* SEPARATE EXAMINATIONS PERMITTED.—Notwithstanding [paragraph (6)] *paragraph (7)*, each appropriate Federal banking agency may conduct a separate examination in an emergency or under other exigent circumstances, or when the agency believes that a violation of law may have occurred.

[(8)] *(9)* REPORT.—At the time the system provided for in [paragraph (6)] *paragraph (7)* is established, the Federal banking agencies shall submit a joint report describing the system to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives. Thereafter, the Federal banking agencies shall annually submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives regarding the progress of the agencies in implementing the system and indicating areas in which enhancements to the system, including legislature improvements, would be appropriate.

[(9)] *(10)* STANDARDS FOR DETERMINING ADEQUACY OF STATE EXAMINATIONS.—The Federal Financial Institutions Examination Council shall issue guidelines establishing standards to be used at the discretion of the appropriate Federal banking agency for purposes of making a determination under paragraph (3).

[(10)] *(11)* AGENCIES AUTHORIZED TO INCREASE MAXIMUM ASSET AMOUNT OF INSTITUTIONS FOR CERTAIN PURPOSES.—At any time after the end of the 2-year period beginning on the date of enactment of the Riegle Community Development and

Regulatory Improvement Act of 1994, the appropriate Federal banking agency, in the agency's discretion, may increase the maximum amount limitation contained in paragraph (4)(C)(ii), by regulation, from $100,000,000 to an amount not to exceed $250,000,000 for purposes of such paragraph, if the agency determines that the greater amount would be consistent with the principles of safety and soundness for insured depository institutions.

* * * * * * *

[(f) The Corporation may cause any and all records, papers, or documents kept by it or in its possession or custody to be photographed or microphotographed or otherwise reproduced upon film, which photographic film shall comply with the minimum standards of quality approved for permanent photographic records by the National Bureau of Standards. Such photographs, microphotographs, or photographic film or copies thereof shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies and shall be admissible to prove any act, transaction, occurrence, or event therein recorded. Such photographs, microphotographs, or reproduction shall be preserved in such manner as the Board of Directors of the Corporation shall prescribe and the original records, papers, or documents may be destroyed or otherwise disposed of as the Board shall direct.]

(f) PRESERVATION OF AGENCY RECORDS.—

(1) IN GENERAL.—A Federal banking agency may cause any and all records, papers, or documents kept by the agency or in the possession or custody of the agency to be—

(A) photographed or microphotographed or otherwise reproduced upon film; or

(B) preserved in any electronic medium or format which is capable of—

(i) being read or scanned by computer; and

(ii) being reproduced from such electronic medium or format by printing or any other form of reproduction of electronically stored data.

(2) TREATMENT AS ORIGINAL RECORDS.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

(3) AUTHORITY OF THE FEDERAL BANKING AGENCIES.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be preserved in such manner as the Federal banking agency shall prescribe and the original records, papers, or documents may be destroyed or otherwise disposed of as the Federal banking agency may direct.

* * * * * * *

[(h) COORDINATION OF EXAMINATION AUTHORITY.—

[(1) IN GENERAL.—The appropriate State bank supervisor of a host State may examine a branch operated in such State by an out-of-State insured State bank that resulted from an interstate merger transaction approved under section 44 or a branch established in such State pursuant to section 5155(g) of the Revised Statutes or section 18(d)(4)—

[(A) for the purpose of determining compliance with host State laws, including those that govern banking, community reinvestment, fair lending, consumer protection, and permissible activities; and

[(B) to ensure that the activities of the branch are not conducted in an unsafe or unsound manner.

[(2) ENFORCEMENT.—If the State bank supervisor of a host State determines that there is a violation of the law of the host State concerning the activities being conducted by a branch described in paragraph (1) or that the branch is being operated in an unsafe and unsound manner, the State bank supervisor of the host State or, to the extent authorized by the law of the host State, a State law enforcement officer may undertake such enforcement actions and proceedings as would be permitted under the law of the host State as if the branch were a bank chartered by that host State.

[(3) COOPERATIVE AGREEMENT.—The State bank supervisors from 2 or more States may enter into cooperative agreements to facilitate State regulatory supervision of State banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations.

[(4) FEDERAL REGULATORY AUTHORITY.—No provision of this subsection shall be construed as limiting in any way the authority of an appropriate Federal banking agency to examine or to take any enforcement actions or proceedings against any bank or branch of a bank for which the agency is the appropriate Federal banking agency.]

(h) COORDINATION OF EXAMINATION AUTHORITY.—

(1) STATE BANK SUPERVISORS OF HOME AND HOST STATES.—

(A) HOME STATE OF BANK.—The appropriate State bank supervisor of the home State of an insured State bank has authority to examine and supervise the bank.

(B) HOST STATE BRANCHES.—The State bank supervisor of the home State of an insured State bank and any State bank supervisor of an appropriate host State shall exercise their respective authority to supervise and examine the branches of the bank in a host State in accordance with the terms of any applicable cooperative agreement between the home State bank supervisor and the State bank supervisor of the relevant host State.

(C) SUPERVISORY FEES.—Except as expressly provided in a cooperative agreement between the State bank supervisors of the home State and any host State of an insured State bank, only the State bank supervisor of the home State of an insured State bank may levy or charge State supervisory fees on the bank.

(2) HOST STATE EXAMINATION.—

(A) IN GENERAL.—With respect to a branch operated in a host State by an out-of-State insured State bank that re-

sulted from an interstate merger transaction approved under section 44 or that was established in such State pursuant to section 5155(g) of the Revised Statutes, the third undesignated paragraph of section 9 of the Federal Reserve Act or section 18(d)(4) of this Act, the appropriate State bank supervisor of such host State may—

(i) with written notice to the State bank supervisor of the bank's home State and subject to the terms of any applicable cooperative agreement with the State bank supervisor of such home State, examine such branch for the purpose of determining compliance with host State laws that are applicable pursuant to section 24(j) of this Act, including those that govern community reinvestment, fair lending, and consumer protection; and

(ii) if expressly permitted under and subject to the terms of a cooperative agreement with the State bank supervisor of the bank's home State or if such out-of-State insured State bank has been determined to be in a troubled condition by either the State bank supervisor of the bank's home State or the bank's appropriate Federal banking agency, participate in the examination of the bank by the State bank supervisor of the bank's home State to ascertain that the activities of the branch in such host State are not conducted in an unsafe or unsound manner.

(B) NOTICE OF DETERMINATION.—

(i) IN GENERAL.—The State bank supervisor of the home State of an insured State bank should notify the State bank supervisor of each host State of the bank if there has been a final determination that the bank is in a troubled condition.

(ii) TIMING OF NOTICE.—The State bank supervisor of the home State of an insured State bank should provide notice under clause (i) as soon as reasonably possible but in all cases within 15 business days after the State bank supervisor has made such final determination or has received written notification of such final determination.

(3) HOST STATE ENFORCEMENT.—If the State bank supervisor of a host State determines that a branch of an out-of-State State insured State bank is violating any law of the host State that is applicable to such branch pursuant to section 24(j) of this Act, including a law that governs community reinvestment, fair lending, or consumer protection, the State bank supervisor of the host State or, to the extent authorized by the law of the host State, a host State law enforcement officer may, with written notice to the State bank supervisor of the bank's home State and subject to the terms of any applicable cooperative agreement with the State bank supervisor of the bank's home State, undertake such enforcement actions and proceedings as would be permitted under the law of the host State as if the branch were a bank chartered by that host State.

(4) COOPERATIVE AGREEMENT.—

(A) IN GENERAL.—The State bank supervisors from 2 or more States may enter into cooperative agreements to facili-

tate State regulatory supervision of State banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations. For purposes of this subsection (h), the term "cooperative agreement" means a written agreement that is signed by the home State bank supervisor and host State bank supervisor to facilitate State regulatory supervision of State banks and includes nationwide or multi-state cooperative agreements and cooperative agreements solely between the home State and host State.

(B) RULE OF CONSTRUCTION.—Except for State bank supervisors, no provision of this subsection relating to such cooperative agreements shall be construed as limiting in any way the authority of home and host State law enforcement officers, regulatory supervisors, or other officials that have not signed such cooperative agreements to enforce host State laws that are applicable to a branch of an out-of-State insured State bank located in the host State pursuant to section 24(j) of this Act.

(5) FEDERAL REGULATORY AUTHORITY.—No provision of this subsection shall be construed as limiting in any way the authority of any Federal banking agency.

(6) STATE TAXATION AUTHORITY NOT AFFECTED.—No provision of this subsection (h) shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any bank, bank holding company, or foreign bank, to the extent such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

(7) DEFINITIONS.—For purpose of this section, the following definition shall apply:

(A) HOST STATE, HOME STATE, OUT-OF-STATE BANK.—The terms "host State", "home State", and "out-of-State bank" have the same meanings as in section 44(g).

(B) STATE SUPERVISORY FEES.—The term "State supervisory fees" means assessments, examination fees, branch fees, license fees, and all other fees that are levied or charged by a State bank supervisor directly upon an insured State bank or upon branches of an insured State bank.

(C) TROUBLED CONDITION.—Solely for purposes of subparagraph (2)(B) of this subsection (h), an insured State bank has been determined to be in "troubled condition" if the bank—

(i) has a composite rating, as determined in its most recent report of examination, of 4 or 5 under the Uniform Financial Institutions Ratings System (UFIRS); or

(ii) is subject to a proceeding initiated by the Corporation for termination or suspension of deposit insurance; or

(iii) is subject to a proceeding initiated by the State bank supervisor of the bank's home State to vacate, re-

voke, or terminate the charter of the bank, or to liquidate the bank, or to appoint a receiver for the bank.

(D) FINAL DETERMINATION.—For the purposes of paragraph (2)(B), the term "final determination" means the transmittal of a report of examination to the bank or transmittal of official notice of proceedings to the bank.

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SEC. 11. (a) * * *

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(c) APPOINTMENT OF CORPORATION AS CONSERVATOR OR RECEIVER.—

(1) * * *

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[(7) JUDICIAL REVIEW.—If the Corporation appoints itself as conservator or receiver under paragraph (4), the insured State depository institution may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to remove itself as such conservator or receiver, and the court shall, upon the merits, dismiss such action or direct the Corporation to remove itself as such conservator or receiver.**]**

(7) JUDICIAL REVIEW.—If the Corporation is appointed (including the appointment of the Corporation as receiver by the Board of Directors) as conservator or receiver of a depository institution under paragraph (4), (9), or (10), the depository institution may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such depository institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to be removed as the conservator or receiver (regardless of how such appointment was made), and the court shall, upon the merits, dismiss such action or direct the Corporation to be removed as the conservator or receiver.

* * * * * * *

(d) POWERS AND DUTIES OF CORPORATION AS CONSERVATOR OR RECEIVER.—

(1) * * *

* * * * * * *

(15) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) * * *

* * * * * * *

(D) **[**RECORDKEEPING REQUIREMENT.—After the end of the 6-year period**]** *RECORDKEEPING REQUIREMENT.—*

(i) IN GENERAL.—Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Corporation is appointed as receiver of an insured depository institution, the Corporation may destroy any records of such institution which the Corporation, in the Corporation's discretion, determines **[**to be un-

necessary] *are unnecessary and not relevant to any pending or reasonably probable future litigation* unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) OLD RECORDS.—In the case of records of an insured depository institution which—

(I) are at least 10 years old, as of the date the Corporation is appointed as the receiver of such depository institution; and

(II) are unnecessary and not relevant to any pending or reasonably probable future litigation, as provided in clause (i),

the Corporation may destroy such records in accordance with clause (i) any time after such appointment is final without regard to the 6-year period of limitation contained in such clause.

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SEC. 18. (a) [INSURANCE LOGO.—] *REPRESENTATIONS OF DEPOSIT INSURANCE.—*

(1) * * *

* * * * * * *

(3) REGULATIONS.—The Corporation shall prescribe regulations to carry out the purposes [of this subsection] *of paragraphs (1) and (2)*, including regulations governing the manner of display or use of such signs, except that the size of the sign prescribed under paragraph (1) shall be similar to that prescribed under paragraph (2)(A). [Initial regulations under this subsection shall be prescribed on the date of enactment of the Financial Institutions Recovery, Reform, and Enforcement Act of 1989.] For each day an insured depository institution continues to violate any provisions [of this subsection] *of paragraphs (1) and (2)* or any lawful provisions of said regulations, it shall be subject to a penalty of not more than $100, which the Corporation may recover for its use.

(4) FALSE ADVERTISING, MISUSE OF FDIC NAMES, AND MISREPRESENTATION TO INDICATE INSURED STATUS.—

(A) PROHIBITION ON FALSE ADVERTISING AND MISUSE OF FDIC NAMES.—No person may—

(i) use the terms "Federal Deposit", "Federal Deposit Insurance", "Federal Deposit Insurance Corporation", any combination of such terms, or the abbreviation "FDIC" as part of the business name or firm name of any person, including any corporation, partnership, business trust, association, or other business entity; or

(ii) use such terms or any other sign or symbol as part of an advertisement, solicitation, or other document,

to represent, suggest or imply that any deposit liability, obligation, certificate or share is insured or guaranteed by the Federal Deposit Insurance Corporation, if such deposit liability, obligation, certificate, or share is not insured or guaranteed by the Corporation.

(B) PROHIBITION ON MISREPRESENTATIONS OF INSURED STATUS.—No person may knowingly misrepresent—

(i) that any deposit liability, obligation, certificate, or share is federally insured, if such deposit liability, obligation, certificate, or share is not insured by the Corporation; or

(ii) the extent to which or the manner in which any deposit liability, obligation, certificate, or share is insured by the Federal Deposit Insurance Corporation, if such deposit liability, obligation, certificate, or share is not insured by the Corporation to the extent or in the manner represented.

(C) AUTHORITY OF FDIC.—The Corporation shall have—

(i) jurisdiction over any person that violates this paragraph, or aids or abets the violation of this paragraph; and

(ii) for purposes of enforcing the requirements of this paragraph with regard to any person—

(I) the authority of the Corporation under section 10(c) to conduct investigations; and

(II) the enforcement authority of the Corporation under subsections (b), (c), (d) and (i) of section 8, as if such person were a state nonmember insured bank.

(D) OTHER ACTIONS PRESERVED.—No provision of this paragraph shall be construed as barring any action otherwise available, under the laws of the United States or any State, to any Federal or State law enforcement agency or individual.

* * * * * * *

(c)(1) * * *

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[(4) In the interests of uniform standards, before acting on any application for approval of a merger transaction, the responsible agency, unless it finds that it must act immediately in order to prevent the probable failure of one of the banks or savings associations involved, shall request reports on the competitive factors involved from the Attorney General and the other Federal banking agencies referred to in this subsection. The reports shall be furnished within thirty calendar days of the date on which they are requested, or within ten calendar days of such date if the requesting agency advises the Attorney General and the other Federal banking agencies that an emergency exists requiring expeditious action. Notwithstanding the preceding sentence, a banking agency shall not be required to file a report requested by the responsible agency under this paragraph if such banking agency advises the responsible agency by the applicable date under the preceding sentence that the report is not necessary because none of the effects described in paragraph (5) are likely to occur as a result of the transaction.**]**

(4) REPORTS ON COMPETITIVE FACTORS.—

(A) REQUEST FOR REPORT.—In the interests of uniform standards and subject to subparagraph (B), the responsible agency shall, before acting on any application for approval of a merger transaction—

(i) request a report on the competitive factors involved from the Attorney General; and

(ii) provide a copy of the request to the Corporation (when the Corporation is not the responsible agency).

(B) CONCURRENT CONSIDERATION.—The responsible agency shall not be required to make a request under subparagraph (A) before acting on an application for approval of a merger transaction if—

(i) the agency finds that it must act immediately in order to prevent the probable failure of a depository institution involved in the transaction; or

(ii) the transaction consists of a merger between an insured depository institution and 1 or more affiliates of the depository institution.

(C) FURNISHING OF REPORT.—The report requested under subparagraph (A) shall be furnished by the Attorney General to the responsible agency—

(i) not more than 30 calendar days after the date on which the Attorney General received the request; or

(ii) not more than 10 calendar days after such date, if the requesting agency advises the Attorney General that an emergency exists requiring expeditious action.

* * * * * * *

(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable failure of one of the [banks or savings associations involved] *insured depository institutions involved, or if the proposed merger transaction is solely between an insured depository institution and 1 or more of affiliates of the depository institution,* and reports on the competitive factors have been dispensed with, the transaction may be consummated immediately upon approval by the agency. [If the agency has advised the Attorney General and the other Federal banking agencies of the existence of an emergency requiring expeditious action and has requested reports on the competitive factors within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency.] *If the agency has advised the Attorney General under paragraph (4)(C)(ii) of the existence of an emergency requiring expeditious action and has requested a report on the competitive factors within 10 days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency.* In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the agency or, if the agency has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval.

* * * * * * *

(d)(1) * * *

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(3) EXCLUSIVE AUTHORITY FOR ADDITIONAL BRANCHES.—

(A) * * *

* * * * * * *

(C) INTERSTATE BRANCHING BY SUBSIDIARIES OF COMMERCIAL FIRMS PROHIBITED.—

(i) IN GENERAL.—If the appropriate State bank supervisor of the home State of any industrial loan company, industrial bank, or other institution described in section 2(c)(2)(H) of the Bank Holding Company Act of 1956, or the appropriate State bank supervisor of any host State with respect to such company, bank, or institution, determines that such company, bank, or institution is controlled, directly or indirectly, by a commercial firm, such company, bank, or institution may not acquire, establish, or operate a branch in such host State.

(ii) COMMERCIAL FIRM DEFINED.—For purposes of this subsection, the term "commercial firm" means any entity at least 15 percent of the annual gross revenues of which on a consolidated basis, including all affiliates of the entity, were derived from engaging, on an on-going basis, in activities that are not financial in nature or incidental to a financial activity during at least 3 of the prior 4 calendar quarters.

(iii) GRANDFATHERED INSTITUTIONS.—Clause (i) shall not apply with respect to any industrial loan company, industrial bank, or other institution described in section 2(c)(2)(H) of the Bank Holding Company Act of 1956—

(I) which became an insured depository institution before October 1, 2003 or pursuant to an application for deposit insurance which was approved by the Corporation before such date; and

(II) with respect to which there is no change in control, directly or indirectly, of the company, bank, or institution after September 30, 2003, that requires an application under subsection (c), section 7(j), section 3 of the Bank Holding Company Act of 1956, or section 10 of the Home Owners' Loan Act.

(iv) TRANSITION PROVISION.—Any divestiture required under this subparagraph of a branch in a host State shall be completed as quickly as is reasonably possible.

(v) CORPORATE REORGANIZATIONS PERMITTED.—The acquisition of direct or indirect control of the company, bank, or institution referred to in clause (iii)(II) shall not be treated as a "change in control" for purposes of such clause if the company acquiring control is itself directly or indirectly controlled by a company that was an affiliate of such company, bank, or institution on the date referred to in clause (iii)(II), and remained an affiliate at all times after such date.

(4) [STATE "OPT-IN" ELECTION TO PERMIT INTERSTATE] *INTERSTATE* BRANCHING THROUGH DE NOVO BRANCHES.—

(A) IN GENERAL.—[Subject to subparagraph (B)] *Subject to subparagraph (B) and paragraph (3)(C)*, the Corporation may approve an application by an insured State nonmember bank to establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not [maintain a branch if—

[(i) there is in effect in the host State a law that—

[(I) applies equally to all banks; and

[(II) expressly permits all out-of-State banks to establish de novo branches in such State; and

[(ii) the conditions established in, or made applicable to this paragraph by, subparagraph (B) are met.] *maintain a branch.*

* * * * * * *

(D) HOME STATE DEFINED.—[The term] *For purposes of this subsection, the term* "home State" means the State by which a State bank is chartered.

(E) HOST STATE DEFINED.—[The term] *For purposes of this subsection, the term* "host State" means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(5) INTERSTATE FIDUCIARY ACTIVITY.—

(A) AUTHORITY OF STATE BANK SUPERVISOR.—The State bank supervisor of a State bank may approve an application by the State bank, when not in contravention of home State or host State law, to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in a host State in which State banks or other corporations which come into competition with national banks are permitted to act under the laws of such host State.

(B) NONCONTRAVENTION OF HOST STATE LAW.—Whenever the laws of a host State authorize or permit the exercise of any or all of the foregoing powers by State banks or other corporations which compete with national banks, the granting to and the exercise of such powers by a State bank as provided in this paragraph shall not be deemed to be in contravention of host State law within the meaning of this paragraph.

(C) STATE BANK INCLUDES TRUST COMPANIES.—For purposes of this paragraph, the term "State bank" includes any State-chartered trust company (as defined in section 44(g)).

(D) OTHER DEFINITIONS.—For purposes of this paragraph, the term "home State" and "host State" have the meanings given such terms in section 44.

* * * * * * *

(k) AUTHORITY TO REGULATE OR PROHIBIT CERTAIN FORMS OF BENEFITS TO INSTITUTION-AFFILIATED PARTIES.—

(1) * * *

(2) FACTORS TO BE TAKEN INTO ACCOUNT.—The Corporation shall prescribe, by regulation, the factors to be considered by

the Corporation in taking any action pursuant to paragraph (1) which may include such factors as the following:

(A) Whether there is a reasonable basis to believe that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the depository institution [or depository institution holding company] *or covered company* that has had a material affect on the financial condition of the institution.

[(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for the insolvency of the depository institution or depository institution holding company, the appointment of a conservator or receiver for the depository institution, or the depository institution's troubled condition (as defined in the regulations prescribed pursuant to section 32(f)).]

(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for—

(i) the insolvency of the depository institution or covered company;

(ii) the appointment of a conservator or receiver for the depository institution; or

(iii) the depository institution's troubled condition (as defined in the regulations prescribed pursuant to section 32(f)).

* * * * * * *

(F) The length of time the party was affiliated with the insured depository institution or [depository institution holding company] *covered company,* and the degree to which—

(i) * * *

* * * * * * *

(3) CERTAIN PAYMENTS PROHIBITED.—No insured depository institution or [depository institution holding company] *covered company* may prepay the salary or any liability or legal expense of any institution-affiliated party if such payment is made—

(A) in contemplation of the insolvency of such institution or [holding company] *covered company* or after the commission of an act of insolvency; and

* * * * * * *

(4) GOLDEN PARACHUTE PAYMENT DEFINED.—For purposes of this subsection—

(A) IN GENERAL.—The term "golden parachute payment" means any payment (or any agreement to make any payment) in the nature of compensation by any insured depository institution or [depository institution holding company] *covered company* for the benefit of any institution-affiliated party pursuant to an obligation of such institution or [holding company] *covered company* that—

(i) is contingent on the termination of such party's affiliation with the institution or [holding company] *covered company*; and

(ii) is received on or after the date on which—

(I) the insured depository institution or [depository institution holding company] *covered company*, or any insured depository institution subsidiary of such [holding company] *covered company*, is insolvent;

* * * * * * *

(5) OTHER DEFINITIONS.—For purposes of this subsection—

(A) INDEMNIFICATION PAYMENT.—Subject to paragraph (6), the term "indemnification payment" means any payment (or any agreement to make any payment) by any insured depository institution or [depository institution holding company] *covered company* for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the appropriate Federal banking agency which results in a final order under which such person—

(i) * * *

* * * * * * *

(D) COVERED COMPANY.—The term "covered company" means any depository institution holding company (including any company required to file a report under section 4(f)(6) of the Bank Holding Company Act of 1956), or any other company that controls an insured depository institution.

(6) CERTAIN COMMERCIAL INSURANCE COVERAGE NOT TREATED AS COVERED BENEFIT PAYMENT.—No provision of this subsection shall be construed as prohibiting any insured depository institution or [depository institution holding company] *covered company,* from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the institution [or holding company] *or covered company* which is described in paragraph (5)(A).

* * * * * * *

(r) SUBSIDIARY DEPOSITORY INSTITUTIONS AS AGENTS FOR CERTAIN AFFILIATES.—

(1) IN GENERAL.—Any [bank subsidiary] *depository institution subsidiary* of a [bank holding company] *depository institution holding company* may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for a depository institution affiliate.

(2) [BANK] *DEPOSITORY INSTITUTION* ACTING AS AGENT IS NOT A BRANCH.—Notwithstanding any other provision of law, [a bank acting] *a depository institution acting* as an agent in accordance with paragraph (1) for a depository institution affiliate shall not be considered to be a branch of the affiliate.

(3) PROHIBITIONS ON ACTIVITIES.—A depository institution may not—

(A) conduct any activity as an agent under paragraph (1) [or (6)] which such institution is prohibited from conducting as a principal under any applicable Federal or State law; or

(B) as a principal, have an agent conduct any activity under paragraph (1) [or (6)] which the institution is prohibited from conducting under any applicable Federal or State law.

* * * * * * *

(5) AGENCY RELATIONSHIP REQUIRED TO BE CONSISTENT WITH SAFE AND SOUND BANKING PRACTICES.—An agency relationship between depository institutions under paragraph (1) [or (6)] shall be on terms that are consistent with safe and sound banking practices and all applicable regulations of any appropriate Federal banking agency.

[(6) AFFILIATED INSURED SAVINGS ASSOCIATIONS.—An insured savings association which was an affiliate of a bank on July 1, 1994, may conduct activities as an agent on behalf of such bank in the same manner as an insured bank affiliate of such bank may act as agent for such bank under this subsection to the extent such activities are conducted only in—

[(A) any State in which—

[(i) the bank is not prohibited from operating a branch under any provision of Federal or State law; and

[(ii) the savings association maintained an office or branch and conducted business as of July 1, 1994; or

[(B) any State in which—

[(i) the bank is not expressly prohibited from operating a branch under a State law described in section 44(a)(2); and

[(ii) the savings association maintained a main office and conducted business as of July 1, 1994.]

* * * * * * *

(u) LIMITATION ON CLAIMS.—

(1) IN GENERAL.—No person may bring a claim against any Federal banking agency (including in its capacity as conservator or receiver) for the return of assets of an affiliate or controlling shareholder of the insured depository institution transferred to, or for the benefit of, an insured depository institution by such affiliate or controlling shareholder of the insured depository institution, or a claim against such Federal banking agency for monetary damages or other legal or equitable relief in connection with such transfer, if at the time of the transfer—

(A) * * *

[(B) the insured depository institution is undercapitalized (as defined in section 38 of this Act); and]

[(C)] *(B)* for that portion of the transfer that is made by an entity covered by section 5(g) of the Bank Holding Company Act of 1956 or section 45 of this Act, the Federal

banking agency has followed the procedure set forth in such section.

* * * * * * *

(x) PRIVILEGES NOT AFFECTED BY DISCLOSURE TO BANKING AGENCY OR SUPERVISOR.—

(1) IN GENERAL.—The submission by any person of any information to any Federal banking agency, State bank supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such agency, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such agency, supervisor, or authority.

(2) RULE OF CONSTRUCTION.—No provision of paragraph (1) may be construed as implying or establishing that—

(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

(B) any person would waive any privilege applicable to any information by submitting the information to any Federal banking agency, State bank supervisor, or foreign banking authority, but for this subsection.

SEC. 19. PENALTY FOR UNAUTHORIZED PARTICIPATION BY CONVICTED INDIVIDUAL.

(a) * * *

* * * * * * *

(c) NONINSURED BANKS.—Subsections (a) and (b) shall apply to a noninsured national bank and a noninsured State member bank, and any agency or noninsured branch (as such terms are defined in section 1(b) of the International Banking Act of 1978) of a foreign bank as if such bank, branch, or agency were an insured depository institution, except such subsections shall be applied for purposes of this subsection by substituting the agency determined under the following paragraphs for "Corporation" each place such term appears in such subsections:

(1) The Comptroller of the Currency, in the case of a noninsured national bank or any Federal agency or noninsured Federal branch of a foreign bank.

(2) The Board of Governors of the Federal Reserve System, in the case of a noninsured State member bank or any State agency or noninsured State branch of a foreign bank.

(d) BANK HOLDING COMPANIES.—Subsections (a) and (b) shall apply to any company (other than a foreign bank) that is a bank holding company and any organization organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act as if such bank holding company or organization were an insured depository institution, except such subsections shall be applied for purposes of this subsection by substituting "Board of Governors of the Federal Reserve System" for "Corporation" each place such term appears in such subsections.

(e) SAVINGS AND LOAN HOLDING COMPANIES.—Subsections (a) and (b) shall apply to any savings and loan holding company and any subsidiary (other than a savings association) of a savings and

loan holding company as if such savings and loan holding company or subsidiary were an insured depository institution, except such subsections shall be applied for purposes of this subsection by substituting "Director of the Office of Thrift Supervision" for "Corporation" each place such term appears in such subsections.

* * * * * * *

SEC. 43. DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE.

(a) ANNUAL INDEPENDENT AUDIT OF PRIVATE DEPOSIT INSURERS.—

(1) * * *

(2) PROVIDING COPIES OF AUDIT REPORT.—

(A) PRIVATE DEPOSIT INSURER.—The private deposit insurer shall provide a copy of the audit report—

(i) to each depository institution the deposits of which are insured by the private deposit insurer, not later than 14 days after the audit is completed; [and]

(ii) to the appropriate supervisory agency of each State in which such an institution receives deposits, not later than 7 days after the audit is completed[.]*;*

(iii) in the case of depository institutions described in subsection (f)(2)(A) the deposits of which are insured by the private insurer, the National Credit Union Administration, not later than 7 days after that audit is completed; and

(iv) in the case of depository institutions described in subsection (f)(2)(A) the deposits of which are insured by the private insurer which are members of a Federal home loan bank, the Federal Housing Finance Board, not later than 7 days after that audit is completed.

* * * * * * *

(C) CONSULTATION.—The appropriate supervisory agency of each State in which a private deposit insurer insures deposits in an institution described in subsection (f)(2)(A) which—

(i) lacks Federal deposit insurance; and

(ii) has become a member of a Federal home loan bank,

shall provide the National Credit Union Administration, upon request, with the results of any examination and reports related thereto concerning the private deposit insurer to which such agency may have in its possession.

(3) ENFORCEMENT BY APPROPRIATE STATE SUPERVISOR.—Any appropriate State supervisor of a private deposit insurer, and any appropriate State supervisor of a depository institution which receives deposits that are insured by a private deposit insurer, may examine and enforce compliance with this subsection under the applicable regulatory authority of such supervisor.

(b) DISCLOSURE REQUIRED.—Any depository institution lacking Federal deposit insurance shall, within the United States, do the following:

(1) PERIODIC STATEMENTS; ACCOUNT RECORDS.—Include conspicuously in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, [or

similar instrument evidencing a deposit] *or share certificate* a notice that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money.

[(2) ADVERTISING; PREMISES.—Include conspicuously in all advertising and at each place where deposits are normally received a notice that the institution is not federally insured.

[(3) ACKNOWLEDGEMENT OF DISCLOSURE.—

[(A) NEW DEPOSITORS.—With respect to any depositor who was not a depositor at the depository institution before June 19, 1994, receive any deposit for the account of such depositor only if the depositor has signed a written acknowledgement that—

[(i) the institution is not federally insured; and

[(ii) if the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

[(B) CURRENT DEPOSITORS.—Receive any deposit after the effective date of this paragraph for the account of any depositor who was a depositor before June 19, 1994, only if—

[(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

[(ii) the institution has complied with the provisions of subparagraph (C) which are applicable as of the date of the deposit.

[(C) ALTERNATIVE PROVISION OF NOTICE TO CURRENT DEPOSITORS.—

[(i) IN GENERAL.—Transmit to each depositor who was a depositor before June 19, 1994, and has not signed a written acknowledgement described in subparagraph (A)—

[(I) a card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

[(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

[(ii) MANNER AND TIMING OF NOTICE.—

[(I) FIRST NOTICE.—Make the transmission described in clause (i) via first class mail not later than September 12, 1994.

[(II) SECOND NOTICE.—Make a second transmission described in clause (i) via first class mail not less than 30 days and not more than 45 days after a transmission to the depositor in accordance with subclause (I), if the institution has not, by the date of such mailing, received from the depositor a card referred to in clause (i) which has been signed by the depositor.

[(III) THIRD NOTICE.—Make a third transmission described in clause (i) via first class mail not less than 30 days and not more than 45 days after a transmission to the depositor in accordance with subclause (II), if the institution has not, by

the date of such mailing, received from the depositor a card referred to in clause (i) which has been signed by the depositor.]

(2) ADVERTISING; PREMISES.—

(A) IN GENERAL.—Include clearly and conspicuously in all advertising, except as provided in subparagraph (B); and at each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page, a notice that the institution is not federally insured.

(B) EXCEPTIONS.—The following need not include a notice that the institution is not federally insured:

(i) Statements or reports of financial condition of the depository institution that are required to be published or posted by State or Federal law or regulation.

(ii) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution.

(iii) Small utilitarian items that do not mention deposit products or insurance if inclusion of the notice would be impractical.

(3) ACKNOWLEDGMENT OF DISCLOSURE.—

(A) NEW DEPOSITORS OBTAINED OTHER THAN THROUGH A CONVERSION OR MERGER.—With respect to any depositor who was not a depositor at the depository institution before the effective date of the Financial Services Relief Act of 2005, and who is not a depositor as described in subparagraph (B), receive any deposit for the account of such depositor only if the depositor has signed a written acknowledgement that—

(i) the institution is not federally insured; and

(ii) if the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

(B) NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking federal insurance after the effective date of the Financial Services Regulatory Relief Act of 2005, receive any deposit for the account of such depositor only if—

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution makes an attempt, as described in subparagraph (D) and sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment.

(C) CURRENT DEPOSITORS.—Receive any deposit after the effective date of the Financial Services Regulatory Relief

Act of 2005 for the account of any depositor who was a depositor on that date only if—

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution makes an attempt, as described in subparagraph (D) and sent by mail no later than 45 days after the effective date of the Financial Services Regulatory Relief Act of 2005, to obtain the acknowledgment.

(D) ALTERNATIVE PROVISION OF NOTICE TO CURRENT DEPOSITORS AND NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—

(i) IN GENERAL.—Transmit to each depositor who has not signed a written acknowledgement described in subparagraph (A)—

(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

* * * * * * *

[(e) ELIGIBILITY FOR FEDERAL DEPOSIT INSURANCE.—

[(1) IN GENERAL.—Except as permitted by the Federal Trade Commission, in consultation with the Federal Deposit Insurance Corporation, no depository institution (other than a bank, including an unincorporated bank) lacking Federal deposit insurance may use the mails or any instrumentality of interstate commerce to receive or facilitate receiving deposits, unless the appropriate supervisor of the State in which the institution is chartered has determined that the institution meets all eligibility requirements for Federal deposit insurance, including—

[(A) in the case of an institution described in section 19(b)(1)(A)(iv) of the Federal Reserve Act, all eligibility requirements set forth in the Federal Credit Union Act and regulations of the National Credit Union Administration; and

[(B) in the case of any other institution, all eligibility requirements set forth in this Act and regulations of the Corporation.

[(2) AUTHORITY OF FDIC AND NCUA NOT AFFECTED.—No determination under paragraph (1) shall bind, or otherwise affect the authority of, the National Credit Union Administration or the Corporation.]

[(f)] *(e)* DEFINITIONS.—For purposes of this section:

(1) * * *

[(2) DEPOSITORY INSTITUTION.—The term "depository institution" includes—

[(A) any entity described in section 19(b)(1)(A)(iv) of the Federal Reserve Act; and

[(B) any entity that, as determined by the Federal Trade Commission—

[(i) is engaged in the business of receiving deposits; and

[(ii) could reasonably be mistaken for a depository institution by the entity's current or prospective customers.]

(2) DEPOSITORY INSTITUTION.—The term "depository institution"—

(A) includes any entity described in section 19(b)(1)(A)(iv) of the Federal Reserve Act; and

(B) does not include any national bank, State member bank, or Federal branch.

[(g) ENFORCEMENT.—Compliance with the requirements of this section, and any regulation prescribed or order issued under this section, shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission.]

(f) ENFORCEMENT.—

(1) LIMITED FTC ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b) and (c), and any regulation prescribed or order issued under any such subsection, shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission.

(2) BROAD STATE ENFORCEMENT AUTHORITY.—

(A) IN GENERAL.—Subject to subparagraph (C), an appropriate State supervisor of a depository institution lacking Federal deposit insurance may examine and enforce compliance with the requirements of this section, and any regulation prescribed under this section.

(B) STATE POWERS.—For purposes of bringing any action to enforce compliance with this section, no provision of this section shall be construed as preventing an appropriate State supervisor of a depository institution lacking Federal deposit insurance from exercising any powers conferred on such official by the laws of such State.

(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisor may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of this section that is alleged in that complaint.

SEC. 44. INTERSTATE BANK MERGERS.

(a) APPROVAL OF INTERSTATE MERGER TRANSACTIONS AUTHORIZED.—

(1) IN GENERAL.—[Beginning on June 1, 1997, the] *The* responsible agency may approve a merger transaction under section 18(c) between [insured banks with different home States] *an insured bank and another insured depository institution or trust company with a different home State than the resulting insured bank*, without regard to whether such transaction is prohibited under the law of any State.

* * * * * * *

[(4) INTERSTATE MERGER TRANSACTIONS INVOLVING ACQUISITIONS OF BRANCHES.—

[(A) IN GENERAL.—An interstate merger transaction may involve the acquisition of a branch of an insured bank

without the acquisition of the bank only if the law of the State in which the branch is located permits out-of-State banks to acquire a branch of a bank in such State without acquiring the bank.

[(B) TREATMENT OF BRANCH FOR PURPOSES OF THIS SECTION.—In the case of an interstate merger transaction which involves the acquisition of a branch of an insured bank without the acquisition of the bank, the branch shall be treated, for purposes of this section, as an insured bank the home State of which is the State in which the branch is located.

[(5) PRESERVATION OF STATE AGE LAWS.—

[(A) IN GENERAL.—The responsible agency may not approve an application pursuant to paragraph (1) that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host State that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State.

[(B) SPECIAL RULE FOR STATE AGE LAWS SPECIFYING A PERIOD OF MORE THAN 5 YEARS.—Notwithstanding subparagraph (A), the responsible agency may approve a merger transaction pursuant to paragraph (1) involving the acquisition of a bank that has been in existence at least 5 years without regard to any longer minimum period of time specified in a statutory law of the host State.

[(6) SHELL BANKS.—For purposes of this subsection, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, an existing bank or branch shall be deemed to have been in existence for the same period of time as the bank or branch to be acquired.]

(4) TREATMENT OF BRANCHES IN CONNECTION WITH CERTAIN INTERSTATE MERGER TRANSACTIONS.—In the case of an interstate merger transaction which involves the acquisition of a branch of an insured depository institution or trust company without the acquisition of the insured depository institution or trust company, the branch shall be treated, for purposes of this section, as an insured depository institution or trust company the home State of which is the State in which the branch is located.

(5) APPLICABILITY TO INDUSTRIAL LOAN COMPANIES.—No provision of this section shall be construed as authorizing the approval of any transaction involving a industrial loan company, industrial bank, or other institution described in section 2(c)(2)(H) of the Bank Holding Company Act of 1956, or the acquisition, establishment, or operation of a branch by any such company, bank, or institution, that is not allowed under section 18(d)(3).

(b) PROVISIONS RELATING TO APPLICATION AND APPROVAL PROCESS.—

(1) * * *

(2) CONCENTRATION LIMITS.—

(A) * * *

(B) STATEWIDE CONCENTRATION LIMITS OTHER THAN WITH RESPECT TO INITIAL ENTRIES.—The responsible agency may not approve an application for an interstate merger transaction if—

(i) any [bank] *insured depository institution* involved in the transaction (including all insured depository institutions which are affiliates of any such [bank] *insured depository institution*) has a branch in any State in which any other [bank] *insured depository institution* involved in the transaction has a branch; and

* * * * * * *

(E) EXCEPTION FOR CERTAIN [BANKS] *INSURED DEPOSITORY INSTITUTIONS AND TRUST COMPANIES*.—This paragraph shall not apply with respect to any interstate merger transaction involving only affiliated [banks] *insured depository institutions or trust companies*.

(3) COMMUNITY REINVESTMENT COMPLIANCE.—In determining whether to approve an application for an interstate merger transaction in which the resulting bank would have a branch or [bank affiliate] *insured depository institution affiliate* immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or [bank affiliate] *insured depository institution affiliate* immediately before the transaction, the responsible agency shall—

(A) * * *

(B) take into account the most recent written evaluation under section 804 of the Community Reinvestment Act of 1977 of [any bank] *any insured depository institution* which would be an affiliate of the resulting bank; and

* * * * * * *

(4) ADEQUACY OF CAPITAL AND MANAGEMENT SKILLS.—The responsible agency may approve an application for an interstate merger transaction pursuant to subsection (a) only if—

(A) each [bank] *insured depository institution and trust company* involved in the transaction is adequately capitalized as of the date the application is filed; and

* * * * * * *

(5) SURRENDER OF CHARTER AFTER MERGER TRANSACTION.—The charters of [all banks] *all insured depository institutions and trust companies* involved in an interstate merger transaction, other than the charter of the resulting bank, shall be surrendered, upon request, to the Federal banking agency or State bank supervisor which issued the charter.

* * * * * * *

(d) OPERATIONS OF THE RESULTING BANK.—

(1) CONTINUED OPERATIONS.—A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that [any bank] *any insured depository institution or trust company* involved in an interstate merger transaction was operating as

a main office or a branch immediately before the merger transaction.

* * * * * * *

(e) EXCEPTION FOR [BANKS] *INSURED DEPOSITORY INSTITUTIONS* IN DEFAULT OR IN DANGER OF DEFAULT.—If an application under subsection (a)(1) for approval of a merger transaction which involves [1 or more banks] *1 or more insured depository institutions* in default or in danger of default or with respect to which the Corporation provides assistance under section 13(c), the responsible agency may approve such application without regard to subsection (b), or [paragraph (2), (4), or (5)] *paragraph (2)* of subsection (a).

(f) APPLICABLE RATE AND OTHER CHARGE LIMITATIONS.—

(1) * * *

* * * * * * *

(3) OTHER LENDERS.—In the case of any other lender doing business in the State described in paragraph (1), the maximum interest rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved from time to time in any loan, discount, or credit sale made, or upon any note, bill of exchange, financing transaction, or other evidence of debt issued to or acquired by any other lender shall be equal to not more than the greater of the rates described in subparagraph (A) or (B) of paragraph (1).

(4) OTHER LENDER DEFINED.—For purposes of paragraph (3), the term "other lender" means any person engaged in the business of selling or financing the sale of personal property (and any services incidental to the sale of personal property) in such State, except that, with regard to any person or entity described in such paragraph, such term does not include—

(A) an insured depository institution; or

(B) any person or entity engaged in the business of providing a short-term cash advance to any consumer in exchange for—

(i) a consumer's personal check or share draft, in the amount of the advance plus a fee, where presentment or negotiation of such check or share draft is deferred by agreement of the parties until a designated future date; or

(ii) a consumer authorization to debit the consumer's transaction account, in the amount of the advance plus a fee, where such account will be debited on or after a designated future date.

(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) * * *

* * * * * * *

(4) HOME STATE.—The term "home State"—

(A) means—

[(i) with respect to a national bank, the State in which the main office of the bank is located; and

[(ii) with respect to a State bank, the State by which the bank is chartered; and]

(i) with respect to a national bank or Federal savings association, the State in which the main office of the bank or savings association is located; and

(ii) with respect to a State bank, State savings association, or State-chartered trust company, the State by which the bank, savings association, or trust company is chartered; and

* * * * * * *

[(5) HOST STATE.—The term "host State" means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.]

(5) HOST STATE.—The term "host State" means—

(A) with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch; and

(B) with respect to a trust company and solely for purposes of section 18(d)(5), a State, other than the home State of the trust company, in which the trust company acts, or seeks to act, in 1 or more fiduciary capacities.

* * * * * * *

(10) RESPONSIBLE AGENCY.—The term "responsible agency" means the agency determined in accordance with [section 18(c)(2)] *paragraph (1) or (2) of section 18(c), as appropriate,* with respect to a merger transaction.

* * * * * * *

(12) TRUST COMPANY.—The term "trust company" means—

(A) any national bank;

(B) any savings association; and

(C) any bank, banking association, trust company, savings bank, or other banking institution which is incorporated under the laws of any State,

that is authorized to act in 1 or more fiduciary capacities but is not engaged in the business of receiving deposits other than trust funds (as defined in section 3(p)).

* * * * * * *

SEC. 47. INSURANCE CUSTOMER PROTECTIONS.

(a) * * *

* * * * * * *

(g) EFFECT ON OTHER AUTHORITY.—

(1) * * *

(2) COORDINATION WITH STATE LAW.—

(A) * * *

(B) PREEMPTION.—

(i) IN GENERAL.—If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, *the Director of the Office of Thrift Supervision,* and the Board of Directors of the Corporation determine jointly that the protection afforded by such provision for customers is greater than the protection provided by a comparable provision of

the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, the appropriate State regulatory authority shall be notified of such determination in writing.

* * * * * * *

SEC. 49. ENFORCEMENT OF AGREEMENTS.

(a) IN GENERAL.—Notwithstanding clause (i) or (ii) of section 8(b)(6)(A) or section 38(e)(2)(E)(i), an appropriate Federal banking agency may enforce, under section 8, the terms of—

(1) any condition imposed in writing by the agency on a depository institution or an institution-affiliated party (including a bank holding company) in connection with any action on any application, notice, or other request concerning a depository institution; or

(2) any written agreement entered into between the agency and an institution-affiliated party (including a bank holding company).

(b) RECEIVERSHIPS AND CONSERVATORSHIPS.—After the appointment of the Corporation as the receiver or conservator for any insured depository institution, the Corporation may enforce any condition or agreement described in paragraph (1) or (2) of subsection (a) involving such institution or any institution-affiliated party (including a bank holding company), through an action brought in an appropriate United States district court.

NATIONAL BANK CONSOLIDATION AND MERGER ACT

SEC. 2. CONSOLIDATION OF BANKS WITHIN THE SAME STATE.

(a) IN GENERAL.—Any national bank or any bank incorporated under the laws of any State may, with the approval of the Comptroller, be consolidated with one or more national banking associations located in the same State under the charter of a national banking association on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each association or bank proposing to consolidate, and be ratified and confirmed by the affirmative vote of the shareholders of each such association or bank owning at least two-thirds of its capital stock outstanding, or by a greater proportion of such capital stock in the case of such State bank if the laws of the State where it is organized so require, at a meeting to be held on the call of the directors after publishing notice of the time, place, and object of the meeting for four consecutive weeks in a newspaper of general circulation published in the place where the association or bank is located, or, if there is no such newspaper, then in the paper of general circulation published nearest thereto, and after sending such notice to each shareholder of record by certified or registered mail at least ten days prior to the meeting, except to those shareholders who specifically waive notice, but any additional notice shall be given to the shareholders of such State bank which may be required by the laws of the State where it is organized. **[**Publication of notice may be waived, in cases where the Comptroller determines that an emergency exists justifying such waiver, by unanimous action of the shareholders of the association or State bank**]** *Publication of notice may be waived if the Comptroller determines that an emer-*

gency exists justifying such waiver or if the shareholders of the association or State bank agree by unanimous action to waive the publication requirement for their respective institutions.

* * * * * * *

SEC. 3. (a) One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this Act, may merge into a national banking association located within the same State, under the charter of the receiving association. The merger agreement shall—

(1) be agreed upon in writing by a majority of the board of directors of each association or State bank participating in the plan of merger;

(2) be ratified and confirmed by the affirmative vote of the shareholders of each such association or State bank owning at least two-thirds of its capital stock outstanding, or by a greater proportion of such capital stock in the case of a State bank if the laws of the State where it is organized so require, at a meeting to be held on the call of the directors, after publishing notice of the time, place, and object of the meeting for four consecutive weeks in a newspaper of general circulation published in the place where the association or State bank is located, or, if there is no such newspaper, then in the newspaper of general circulation published nearest thereto, and after sending such notice to each shareholder of record by certified or registered mail at least ten days prior to the meeting, except to those shareholders who specifically waive notice, but any additional notice shall be given to the shareholders of such State bank which may be required by the laws of the State where it is organized. **[**Publication of notice may be waived, in cases where the Comptroller determines that an emergency exists justifying such waiver, by unanimous action of the shareholders of the association or State bank**]** *Publication of notice may be waived if the Comptroller determines that an emergency exists justifying such waiver or if the shareholders of the association or State bank agree by unanimous action to waive the publication requirement for their respective institutions*;

* * * * * * *

SEC. 4. INTERSTATE CONSOLIDATIONS AND MERGERS.

(a) * * *

[(b) SCOPE OF APPLICATION.—Subsection (a) shall not apply with respect to any consolidation or merger before June 1, 1997, unless the home State of each bank involved in the transaction has in effect a law described in section 44(a)(3) of the Federal Deposit Insurance Act.

[(c) DEFINITIONS.—The terms "home State" and "out-of-State bank" have the same meaning as in section 44(f) of the Federal Deposit Insurance Act.**]**

(b) MERGER OF NATIONAL BANK TRUST COMPANY WITH ANOTHER TRUST COMPANY.—A national bank that is a trust company may engage in a consolidation or merger under this Act with any trust company with a different home State, under the same terms and conditions that would apply if the trust companies were located within the same State.

(c) DEFINITIONS.—For purposes of this section, the terms "home State", "out-of-State bank", and "trust company" each have the same meaning as in section 44(g) of the Federal Deposit Insurance Act.

* * * * * * *

INTERNATIONAL BANKING ACT OF 1978

* * * * * * *

FEDERAL BRANCHES AND AGENCIES

SEC. 4. (a) * * *

* * * * * * *

(d) Notwithstanding any other provision of this section, a foreign bank shall not receive deposits *from citizens or residents of the United States* or exercise fiduciary powers at any Federal agency. A foreign bank may, however, maintain at a Federal agency for the account of others credit balances incidental to, or arising out of, the exercise of its lawful powers.

(e) No foreign bank may maintain both a Federal branch and a Federal agency in the same State *if the maintenance of both an agency and a branch in the State is prohibited under the law of such State*.

* * * * * * *

[(g)(1) Upon the opening of a Federal branch or agency in any State and thereafter, a foreign bank, in addition to any deposit requirements imposed under section 6 of this Act, shall keep on deposit, in accordance with such rules and regulations as the Comptroller may prescribe, with a member bank designated by such foreign bank, dollar deposits or investment securities of the type that may be held by national banks for their own accounts pursuant to paragraph "Seventh" of section 5136 of the Revised Statutes, as amended, in an amount as hereinafter set forth. Such depository bank shall be located in the State where such branch or agency is located and shall be approved by the Comptroller if it is a national bank and by the Board of Governors of the Federal Reserve System if it is a State Bank.

[(2) The aggregate amount of deposited in investment securities (calculated on the basis of principal amount or market value, whichever is lower) and dollar deposits for each branch or agency established and operating under this section shall be not less than the greater of (1) that amount of capital (but not surplus) which would be required of a national bank being organized at this location, or (2) 5 per centum of the total liabilities of such branch or agency, including acceptances, but excluding (A) accrued expenses, and (B) amounts due and other liabilities to offices, branches, agencies, and subsidiaries of such foreign bank. The Comptroller may require that the assets deposited pursuant to this subsection shall be maintained in such amounts as he may from time to time deem necessary or desirable, for the maintenance of a sound financial condition, the protection of depositors, and the public interest, but such additional amount shall in no event be greater than would be required to conform to generally accepted banking practices as

manifested by banks in the area in which the branch or agency is located.

[(3) The deposit shall be maintained with any such member bank pursuant to a deposit agreement in such form and containing such limitations and conditions as the Comptroller may prescribe. So long as it continues business in the ordinary course such foreign bank shall, however, be permitted to collect income on the securities and funds so deposited and from time to time examine and exchange such securities.

[(4) Subject to such conditions and requirements as may be prescribed by the Comptroller, each foreign bank shall hold in each State in which it has a Federal branch or agency, assets of such types and in such amount as the Comptroller may prescribe by general or specific regulation or ruling as necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors and the public interest. In determining compliance with any such prescribed asset requirements, the Comptroller shall give credit to (A) assets required to be maintained pursuant to paragraphs (1) and (2) of this subsection, (B) reserves required to be maintained pursuant to section 7(a) of this Act, and (C) assets pledged, and surety bonds payable, to the Federal Deposit Insurance Corporation to secure the payment of domestic deposits. The Comptroller may prescribe different asset requirements for branches or agencies in different States, in order to ensure competitive equality of Federal branches and agencies with State branches and agencies and domestic banks in those States.]

(g) CAPITAL EQUIVALENCY DEPOSIT.—

(1) IN GENERAL.—Upon the opening of a Federal branch or agency of a foreign bank in any State and thereafter, the foreign bank, in addition to any deposit requirements imposed under section 6, shall keep on deposit, in accordance with such regulations as the Comptroller of the Currency may prescribe in accordance with paragraph (2), dollar deposits, investment securities, or other assets in such amounts as the Comptroller of the Currency determines to be necessary for the protection of depositors and other investors and to be consistent with the principles of safety and soundness.

(2) LIMITATION.—Notwithstanding paragraph (1), regulations prescribed under such paragraph shall not permit a foreign bank to keep assets on deposit in an amount that is less than the amount required for a State licensed branch or agency of a foreign bank under the laws and regulations of the State in which the Federal agency or branch is located.

* * * * * * *

SEC. 15. COOPERATION WITH FOREIGN SUPERVISORS.

(a) * * *

* * * * * * *

(c) CONFIDENTIAL INFORMATION RECEIVED FROM FOREIGN SUPERVISORS.—

(1) IN GENERAL.—Except as provided in paragraph (3), a Federal banking agency shall not be compelled to disclose information received from a foreign regulatory or supervisory authority if—

(A) the Federal banking agency determines that the foreign regulatory or supervisory authority has, in good faith, determined and represented to such Federal banking agency that public disclosure of the information would violate the laws applicable to that foreign regulatory or supervisory authority; and

(B) the relevant Federal banking agency obtained such information pursuant to—

(i) such procedures as the Federal banking agency may establish for use in connection with the administration and enforcement of Federal banking laws; or

(ii) a memorandum of understanding or other similar arrangement between the Federal banking agency and the foreign regulatory or supervisory authority.

(2) TREATMENT UNDER TITLE 5, UNITED STATES CODE.—For purposes of section 552 of title 5, United States Code, this subsection shall be treated as a statute described in subsection (b)(3)(B) of such section.

(3) SAVINGS PROVISION.—No provision of this section shall be construed as—

(A) authorizing any Federal banking agency to withhold any information from any duly authorized committee of the House of Representatives or the Senate; or

(B) preventing any Federal banking agency from complying with an order of a court of the United States in an action commenced by the United States or such agency.

(4) FEDERAL BANKING AGENCY DEFINED.—For purposes of this subsection, the term "Federal banking agency" means the Board, the Comptroller, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision.

* * * * * * *

SECURITIES EXCHANGE ACT OF 1934

DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) * * *

* * * * * * *

(6) The term "bank" means (A) a banking institution organized under the laws of the United States *or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act*, (B) a member bank of the Federal Reserve System, (C) any other banking institution, *or savings association as defined in section 2(4) of the Home Owners' Loan Act,* whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87–722 (12 U.S.C. 92a), and which is supervised and examined by State or Federal authority having supervision over banks *or savings associations*, and which

is not operated for the purpose of evading the provisions of [this title, and (D) a receiver] *this title, (D) an insured credit union (as defined in section 101(7) of the Federal Credit Union Act) but only for purposes of paragraphs (4) and (5) of this subsection and only for activities otherwise authorized by applicable laws to which such credit unions are subject, and (E) a receiver*, conservator, or other liquidating agent of any institution or firm included in clauses [(A), (B), or (C)] *(A), (B), (C), or (D)* of this paragraph.

* * * * * * *

(34) The term "appropriate regulatory agency" means—

(A) When used with respect to a municipal securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank, or a subsidiary or a department or division of any such bank;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary or a department or division thereof, a bank holding company, a subsidiary of a bank holding company which is a bank other than a bank specified in clause [(i) or (iii)] *(i), (iii), or (iv)* of this subparagraph, or a subsidiary or a department or division of such subsidiary;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), or a subsidiary or department or division thereof; [and]

(iv) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding company; and

[(iv)] *(v)* the Commission in the case of all other municipal securities dealers.

(B) When used with respect to a clearing agency or transfer agent:

(i) * * *

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company, or a subsidiary of a bank holding company which is a bank other than a bank specified in clause [(i) or (iii)] *(i), (iii), or (iv)* of this subparagraph;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), or a subsidiary thereof; [and]

(iv) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in sec-

tion 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such savings association, or a savings and loan holding company; and

[(iv)**]** *(v)* the Commission in the case of all other clearing agencies and transfer agents.

(C) When used with respect to a participant or applicant to become a participant in a clearing agency or a person requesting or having access to services offered by a clearing agency:

(i) * * *

(ii) the Board of Governors of the Federal Reserve System in the case of a State member bank of the Federal Reserve System, a bank holding company, or a subsidiary of a bank holding company, or a subsidiary of a bank holding company which is a bank other than a bank specified in clause **[**(i) or (iii)**]** *(i), (iii), or (iv)* of this subparagraph when the appropriate regulatory agency for such clearing agency is not the Commission;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) when the appropriate regulatory agency for such clearing agency is not the Commission; **[**and**]**

(iv) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation, a savings and loan holding company, or a subsidiary of a savings and loan holding company when the appropriate regulatory agency for such clearing agency is not the Commission; and

[(iv)**]** *(v)* the Commission in all other cases.

(D) When used with respect to an institutional investment manager which is a bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act:

(i) * * *

(ii) the Board of Governors of the Federal Reserve System, in the case of any other member bank of the Federal Reserve System; **[**and**]**

(iii) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation; and

[(iii)**]** *(iv)* the Federal Deposit Insurance Corporation, in the case of any other insured bank.

* * * * * * *

(F) When used with respect to a person exercising investment discretion with respect to an account:

(i) the Comptroller of the Currency, in the case of a national bank;

(ii) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation; and

[(ii)] *(iii)* the Board of Governors of the Federal Reserve System in the case of any other member bank of the Federal Reserve System;

[(iii)] *(iv)* the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; and

[(iv)] *(v)* the Commission in the case of all other such persons.

* * * * * * *

(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—

(i) * * *

* * * * * * *

As used in this paragraph, the terms "bank holding company" and "subsidiary of a bank holding company" have the meanings given them in section 2 of the Bank Holding Company Act of 1956, and the term "District of Columbia savings and loan association" means any association subject to examination and supervision by the Office of Thrift Supervision under section 8 of the Home Owners' Loan Act of 1933. *As used in this paragraph, the term "savings and loan holding company" has the meaning given it in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).*

* * * * * * *

REGISTRATION AND REGULATION OF BROKERS AND DEALERS

SEC. 15. (a) * * *

* * * * * * *

(h) LIMITATIONS ON STATE LAW.—

(1) * * *

* * * * * * *

(4) SELLING AND OFFERING OF DEPOSIT PRODUCTS.—No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall directly or indirectly require any individual who is an agent of 1 Federal savings association (as such term is defined in section 2(5) of the Home Owners' Loan Act (12 U.S.C. 1462(5)) in selling or offering deposit (as such term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)) products issued by such association to qualify or register as a broker, dealer, associated person of a broker, or associated person of a dealer, or to qualify

or register in any other similar status or capacity, if the individual does not—

(A) accept deposits or make withdrawals on behalf of any customer of the association;

(B) offer or sell a deposit product as an agent for another entity that is not subject to supervision and examination by a Federal banking agency (as defined in section 3(z) of the Federal Deposit Insurance Act (12 U.S.C. 1813(z)), the National Credit Union Administration, or any officer, agency, or other entity of any State which has primary regulatory authority over State banks, State savings associations, or State credit unions;

(C) offer or sell a deposit product that is not an insured deposit (as defined in section 3(m) of the Federal Deposit Insurance Act (12 U.S.C. 1813(m)));

(D) offer or sell a deposit product which contains a feature that makes it callable at the option of such Federal savings association; or

(E) create a secondary market with respect to a deposit product or otherwise add enhancements or features to such product independent of those offered by the association.

* * * * * * *

INVESTMENT ADVISERS ACT OF 1940

* * * * * * *

TITLE II—INVESTMENT ADVISERS

* * * * * * *

DEFINITIONS

SEC. 202. (a) When used in this title, unless the context otherwise requires, the following definitions shall apply:

(1) * * *

(2) "Bank" means (A) a banking institution organized under the laws of the United States *or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act*, (B) a member bank of the Federal Reserve System, (C) any other banking institution*, savings association as defined in section 2(4) of the Home Owners' Loan Act,* or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks *or savings associations*, and which is not operated for the purpose of evading the provisions of [this title, and (D) a receiver] *this title, (D) an insured credit union (as defined in section 101(7) of the Federal Credit Union Act) but only for activities otherwise authorized by applicable laws to which such credit unions are subject, and (E) a receiver*, conservator, or other liquidating agent of any institution or firm

included in clauses [(A), (B), or (C)] *(A), (B), (C), or (D)* of this paragraph.

* * * * * * *

SEC. 210A. CONSULTATION.

(a) EXAMINATION RESULTS AND OTHER INFORMATION.—

(1) The appropriate Federal banking agency shall provide the Commission upon request the results of any examination, reports, records, or other information to which such agency may have access—

(A) with respect to the investment advisory activities of any—

(i) bank holding company *or savings and loan holding company*;

* * * * * * *

(B) in the case of a bank holding company *or savings and loan holding company* or bank that has a subsidiary or a separately identifiable department or division registered under that section, with respect to the investment advisory activities of such bank or bank holding company *or savings and loan holding company*.

(2) The Commission shall provide to the appropriate Federal banking agency upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any bank holding company *or savings and loan holding company*, bank, or separately identifiable department or division of a bank, which is registered under section 203 of this title.

* * * * * * *

(b) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to such bank holding company *or savings and loan holding company* (or affiliates or subsidiaries thereof), bank, or subsidiary, department, or division or a bank under any other provision of law.

(c) DEFINITION.—For purposes of this section, the term "appropriate Federal banking agency" shall have the same meaning as given in section 3 of the Federal Deposit Insurance Act *and includes the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act)*.

* * * * * * *

SECTION 10 OF THE INVESTMENT COMPANY ACT OF 1940

AFFILIATIONS OF DIRECTORS

SEC. 10. (a) * * *

* * * * * * *

(c) No registered investment company shall have a majority of its board of directors consisting of persons who are officers, directors, or employees of any one bank (together with its affiliates and sub-

sidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 2 of the Bank Holding Company Act of 1956) *or any one savings and loan holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 10 of the Home Owners' Loan Act)*, except that, if on March 15, 1940, any registered investment company had a majority of its directors consisting of persons who are directors, officers, or employees of any one bank, such company may continue to have the same percentage of its board of directors consisting of persons who are directors, officers, or employees of such bank.

* * * * * * *

HOME OWNERS' LOAN ACT

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Home Owners' Loan Act".

TABLE OF CONTENTS

SEC. 3. DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.

(a) * * *

* * * * * * *

(c) APPOINTMENT; TERM.—

(1) * * *

* * * * * * *

(3) [VACANCY.—A vacancy in the position of Director]

(A) IN GENERAL.—A vacancy in the position of Director which occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established in paragraph (1) and the Director appointed to fill such vacancy shall be appointed only for the remainder of such term.

(B) ACTING DIRECTOR.—

(i) IN GENERAL.—In the event of a vacancy in the position of Director or during the absence or disability of the Director, the Deputy Director shall serve as Acting Director.

(ii) SUCCESSION IN CASE OF 2 OR MORE DEPUTY DIRECTORS.—If there are 2 or more Deputy Directors serving at the time a vacancy in the position of Director occurs or the absence or disability of the Director commences, the First Deputy Director shall serve as Acting Director under clause (i) followed by such other Deputy Directors under any order of succession the Director may establish.

(iii) AUTHORITY OF ACTING DIRECTOR.—Any Deputy Director, while serving as Acting Director under this subparagraph, shall be vested with all authority, duties, and privileges of the Director under this Act and any other provision of Federal law.

* * * * * * *

[(5) TRANSITIONAL PROVISION.—Notwithstanding paragraphs (1) and (2), the Chairman of the Federal Home Loan Bank Board on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, shall be the Director until the date on which that individual's term as Chairman of the Federal Home Loan Bank Board would have expired.**]**

(5) DEPUTY DIRECTOR.—

(A) IN GENERAL.—The Secretary of the Treasury shall appoint a Deputy Director and may appoint up to 3 additional Deputy Directors.

(B) FIRST DEPUTY DIRECTOR.—If the Secretary of the Treasury appoints more than 1 Deputy Director of the Office, the Secretary shall designate one such appointee as the First Deputy Director.

(C) DUTIES.—Each Deputy Director appointed under this paragraph shall take an oath of office and perform such duties as the Director shall direct.

(D) COMPENSATION AND BENEFITS.—The Director shall fix the compensation and benefits for each Deputy Director in accordance with this Act.

* * * * * * *

SEC. 4. SUPERVISION OF SAVINGS ASSOCIATIONS.

[(a) FEDERAL SAVINGS ASSOCIATIONS.—**]** *(a) GENERAL RESPONSIBILITIES OF THE DIRECTOR.—*

(1) * * *

* * * * * * *

[SEC. 5. FEDERAL SAVINGS ASSOCIATIONS.]

SEC. 5. SAVINGS ASSOCIATIONS.

(a) IN GENERAL.—In order to provide thrift institutions for the deposit of funds and for the extension of credit for homes and other goods and services, the Director is authorized, under such regulations as the Director may prescribe—

(1) to provide for the **[**organization, incorporation,**]** *organization (as a corporation or other form of business organization provided under regulations prescribed by the Director under subsection (x)),* examination, operation, and regulation of associations to be known as Federal savings associations (including Federal savings banks), and

* * * * * * *

(c) LOANS AND INVESTMENTS.—To the extent specified in regulations of the Director, a Federal savings association may invest in, sell, or otherwise deal in the following loans and other investments:

(1) LOANS OR INVESTMENTS WITHOUT PERCENTAGE OF ASSETS LIMITATION.—Without limitation as a percentage of assets, the following are permitted:

(A) * * *

* * * * * * *

(V) AUTO LOANS.—Loans and leases for motor vehicles acquired for personal, family, or household purposes.

(W) SMALL BUSINESS LOANS.—Small business loans, as defined in regulations which the Director shall prescribe.

(2) LOANS OR INVESTMENTS LIMITED TO A PERCENTAGE OF ASSETS OR CAPITAL.—The following loans or investments are permitted, but only to the extent specified:

(A) COMMERCIAL AND OTHER LOANS.—Secured or unsecured loans for commercial, corporate, business, or agricultural purposes. The aggregate amount of loans made under this subparagraph may not exceed 20 percent of the total assets of the Federal savings association**[**, and amounts in excess of 10 percent of such total assets may be used under this subparagraph only for small business loans, as that term is defined by the Director**]**.

(B) NONRESIDENTIAL REAL PROPERTY LOANS.—

(i) IN GENERAL.—Loans on the security of liens upon nonresidential real property. Except as provided in clause (ii), the aggregate amount of such loans shall not exceed **[**400**]** *500* percent of the Federal savings association's capital, as determined under subsection (t).

* * * * * * *

(3) LOANS OR INVESTMENTS LIMITED TO 5 PERCENT OF ASSETS.—The following loans or investments are permitted, but not to exceed 5 percent of assets of a Federal savings association for each subparagraph:

[(A) COMMUNITY DEVELOPMENT INVESTMENTS.—Investments in real property and obligations secured by liens on real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under title I of the Housing and Community Development Act of 1974. No investment under this subparagraph in such real property may exceed an aggregate of 2 percent of the assets of the Federal savings association.**]**

(A) [Repealed].

* * * * * * *

(D) DIRECT INVESTMENTS TO PROMOTE THE PUBLIC WELFARE.—

(i) IN GENERAL.—A Federal savings association may make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families through the provision of housing, services, and jobs.

(ii) DIRECT INVESTMENTS OR ACQUISITION OF INTEREST IN OTHER COMPANIES.—Investments under clause (i) may be made directly or by purchasing interests in an entity primarily engaged in making such investments.

(iii) PROHIBITION ON UNLIMITED LIABILITY.—No investment may be made under this subparagraph which would subject a Federal savings association to unlimited liability to any person.

(iv) SINGLE INVESTMENT LIMITATION TO BE ESTABLISHED BY DIRECTOR.—Subject to clauses (v) and (vi), the Director shall establish, by order or regulation, limits on—

(I) the amount any savings association may invest in any 1 project; and

(II) the aggregate amount of investment of any savings association under this subparagraph.

(v) FLEXIBLE AGGREGATE INVESTMENT LIMITATION.—The aggregate amount of investments of any savings association under this subparagraph may not exceed an amount equal to the sum of 5 percent of the savings association's capital stock actually paid in and unimpaired and 5 percent of the savings association's unimpaired surplus, unless—

(I) the Director determines that the savings association is adequately capitalized; and

(II) the Director determines, by order, that the aggregate amount of investments in a higher amount than the limit under this clause will pose no significant risk to the affected deposit insurance fund.

(vi) MAXIMUM AGGREGATE INVESTMENT LIMITATION.—Notwithstanding clause (v), the aggregate amount of investments of any savings association under this subparagraph may not exceed an amount equal to the sum of 15 percent of the savings association's capital stock actually paid in and unimpaired and 15 percent of the savings association's unimpaired surplus.

(vii) INVESTMENTS NOT SUBJECT TO OTHER LIMITATION ON QUALITY OF INVESTMENTS.—No obligation a Federal savings association acquires or retains under this subparagraph shall be taken into account for purposes of the limitation contained in section 28(d) of the Federal Deposit Insurance Act on the acquisition and retention of any corporate debt security not of investment grade.

(4) OTHER LOANS AND INVESTMENTS.—The following additional loans and other investments to the extent authorized below:

(A) * * *

(B) SERVICE [CORPORATIONS] *COMPANIES*.—Investments in the capital stock, obligations, or other securities of any [corporation organized under the laws of the State in which the Federal savings association's home office is located, if such corporation's entire capital stock is available for purchase] *company, if the entire capital of the company is available for purchase* only [by savings associations of such State and by Federal associations having their home offices in such State] *by State and Federal depository insti-*

tutions. No Federal savings association may make any investment under this subparagraph if the association's aggregate outstanding investment under this subparagraph would exceed 3 percent of the association's assets. Not less than one-half of the investment permitted under this subparagraph which exceeds 1 percent of the association's assets shall be used primarily for community, inner-city, and community development purposes.

* * * * * * *

[(D) SMALL BUSINESS INVESTMENT COMPANIES.—A Federal savings association may invest in stock, obligations, or other securities of any small business investment company formed pursuant to section 301(d) of the Small Business Investment Act of 1958 for the purpose of aiding members of a Federal home loan bank. A Federal savings association may not make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 1 percent of the assets of such savings association.]

(D) SMALL BUSINESS INVESTMENT COMPANIES.—Any Federal savings association may invest in 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies formed under the Small Business Investment Act of 1958, except that the total amount of investments under this subparagraph may not at any time exceed the amount equal to 5 percent of capital and surplus of the savings association.

* * * * * * *

(d) REGULATORY AUTHORITY.—

(1) * * *

* * * * * * *

(3) REGULATIONS.—

(A) * * *

(B) MERGERS AND CONSOLIDATIONS WITH NONDEPOSITORY INSTITUTION AFFILIATES.—

(i) IN GENERAL.—Upon the approval of the Director, a Federal savings association may merge with any nondepository institution affiliate of the savings association.

(ii) RULE OF CONSTRUCTION.—No provision of clause (i) shall be construed as—

(I) affecting the applicability of section 18(c) of the Federal Deposit Insurance Act; or

(II) granting a Federal savings association any power or any authority to engage in any activity that is not authorized for a Federal savings association under any other provision of this Act or any other provision of law.

[(B)] *(C)* FDIC OR RTC AS CONSERVATOR OR RECEIVER.—In any case where the Federal Deposit Insurance Corporation or the Resolution Trust Corporation is the conservator or receiver, any regulations prescribed by the Director shall be consistent with any regulations prescribed by the

Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act.

* * * * * * *

(i) CONVERSIONS.—

(1) IN GENERAL.—Any savings association which is, or is eligible to become, a member of a Federal home loan bank may convert into a Federal savings association (and in so doing may change directly from the mutual form to the stock form, or from the stock form to the mutual form). Such conversion shall be subject to such regulations as the Director shall prescribe. Thereafter such Federal savings association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations [incorporated] *organized* pursuant to this Act.

* * * * * * *

(n) TRUSTS.—

(1) PERMITS.—The Director may grant by special permit to a Federal savings association applying therefor the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which compete with Federal savings associations are permitted to act under the laws of the State in which the Federal savings association is located. Subject to the regulations of the Director, [service corporations] *service companies* may invest in State or federally chartered corporations which are located in the State in which the home office of the Federal savings association is located and which are engaged in trust activities.

* * * * * * *

(11) FUNERAL- AND CEMETERY-RELATED FIDUCIARY SERVICES.—

(A) IN GENERAL.—A funeral director or cemetery operator, when acting in such capacity, (or any other person in connection with a contract or other agreement with a funeral director or cemetery operator) may engage any Federal savings association, regardless of where the association is located, to act in any fiduciary capacity in which the savings association has the right to act in accordance with this section, including holding funds deposited in trust or escrow by the funeral director or cemetery operator (or by such other party), and the savings association may act in such fiduciary capacity on behalf of the funeral director or cemetery operator (or such other person).

(B) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) CEMETERY.—The term "cemetery" means any land or structure used, or intended to be used, for the interment of human remains in any form.

(ii) CEMETERY OPERATOR.—The term "cemetery operator" means any person who contracts or accepts payment for merchandise, endowment, or perpetual care services in connection with a cemetery.

(iii) FUNERAL DIRECTOR.—The term "funeral director" means any person who contracts or accepts payment to provide or arrange—

(I) services for the final disposition of human remains; or

(II) funeral services, property, or merchandise (including cemetery services, property, or merchandise).

(o) CONVERSION OF STATE SAVINGS BANKS.—(1) Subject to the provisions of this subsection and under regulations of the Director, the Director may authorize the conversion of a State-chartered savings bank that is a Bank Insurance Fund member into a Federal savings bank, if such conversion is not in contravention of State law, and provide for the [organization, incorporation,] *organization (as a corporation or other form of business organization provided under regulations prescribed by the Director under subsection (x)),* operation, examination, and regulation of such institution.

* * * * * * *

(q) TYING ARRANGEMENTS.—(1) A savings association may not in any manner extend credit, lease, or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain additional credit, property, or service from such savings association, or from any [service corporation] *service company* or affiliate of such association, other than a loan, discount, deposit, or trust service;

(B) that the customer provide additional credit, property, or service to such association, or to any [service corporation] *service company* or affiliate of such association, other than those related to and usually provided in connection with a similar loan, discount, deposit, or trust service; and

(C) that the customer shall not obtain some other credit, property, or service from a competitor of such association, or from a competitor of any [service corporation] *service company* or affiliate of such association, other than a condition or requirement that such association shall reasonably impose in connection with credit transactions to assure the soundness of credit.

* * * * * * *

(r) OUT-OF-STATE BRANCHES.—(1) No Federal savings association may establish, retain, or operate a branch outside the State in which the Federal savings association has its home office, unless the association qualifies as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 or meets the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify, or qualifies as a qualified thrift lender, as determined under section 10(m) of this Act. [No out-of-State branch so established shall be retained or operated unless the total assets of the Federal savings association attributable to all branches of the Federal savings association in that State would qualify the branches as a whole, were they otherwise eligible, for treatment as a domestic building and loan association

under section 7701(a)(19) or as a qualified thrift lender, as determined under section 10(m) of this Act, as applicable.]

* * * * * * *

(t) CAPITAL STANDARDS.—

(1) * * *

* * * * * * *

[(4) SPECIAL RULES FOR PURCHASED MORTGAGE SERVICING RIGHTS.—

[(A) IN GENERAL.—Notwithstanding paragraphs (1)(C) and (9), the standards prescribed under paragraph (1) may permit a savings association to include in calculating capital for the purpose of the leverage limit and risk-based capital requirement prescribed under paragraph (1), on terms no less stringent than under both the capital standards applicable to State nonmember banks and (except as to the amount that may be included in calculating capital) the capital standards applicable to national banks, 90 percent of the fair market value of readily marketable purchased mortgage servicing rights.

[(B) TANGIBLE CAPITAL REQUIREMENT.—Notwithstanding paragraphs (1)(C) and (9)(C), the standards prescribed under paragraph (1) may permit a savings association to include in calculating capital for the purpose of the tangible capital requirement prescribed under paragraph (1), on terms no less stringent than under both the capital standards applicable to State nonmember banks and (except as to the amount that may be included in calculating capital) the capital standards applicable to national banks, 90 percent of the fair market value of readily marketable purchased mortgage servicing rights.

[(C) PERCENTAGE LIMITATION PRESCRIBED BY FDIC.—Notwithstanding paragraph (1)(C) and subparagraphs (A) and (B) of this paragraph—

[(i) for the purpose of subparagraph (A), the maximum amount of purchased mortgage servicing rights that may be included in calculating capital under the leverage limit and the risk-based capital requirement prescribed under paragraph (1) may not exceed the amount that could be included if the savings association were an insured State nonmember bank; and

[(ii) for the purpose of subparagraph (B), the Corporation shall prescribe a maximum percentage of the tangible capital requirement that savings associations may satisfy by including purchased mortgage servicing rights in calculating such capital.

[(D) QUARTERLY VALUATION.—The fair market value of purchased mortgage servicing rights shall be determined not less often than quarterly.]

(4) [Repealed].

* * * * * * *

(9) DEFINITIONS.—For purposes of this subsection—

(A) CORE CAPITAL.—Unless the Director prescribes a more stringent definition, the term "core capital" means

core capital as defined by the Comptroller of the Currency for national banks, less any unidentifiable [intangible assets, plus any purchased mortgage servicing rights excluded from the Comptroller's definition of capital but included in calculating the core capital of savings associations pursuant to paragraph (4).] *intangible assets.*

* * * * * * *

(u) LIMITS ON LOANS TO ONE BORROWER.—

(1) * * *

(2) SPECIAL RULES.—

(A) Notwithstanding paragraph (1), a savings association may make loans to one borrower under one of the following clauses:

(i) [for] *For* any purpose, not to exceed $500,000[; or].

(ii) [to] *To* develop domestic residential housing units, not to exceed the lesser of $30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus, if—

[(I) the purchase price of each single family dwelling unit the development of which is financed under this clause does not exceed $500,000;]

[(II)] *(I)* the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under subsection (t);

[(III)] *(II)* the Director, by order, permits the savings association to avail itself of the higher limit provided by this clause;

[(IV)] *(III)* loans made under this clause to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus; and

[(V)] *(IV)* such loans comply with all applicable loan-to-value requirements.

* * * * * * *

(x) HOME STATE CITIZENSHIP.—In determining whether a Federal court has diversity jurisdiction over a case in which a Federal savings association is a party, the Federal savings association shall be considered to be a citizen only of the States in which such savings association has its home office and its principal place of business (if the principal place of business is in a different State than the home office).

(y) ALTERNATIVE BUSINESS ORGANIZATION.—

(1) IN GENERAL.—The Director may prescribe regulations that—

(A) permit a Federal savings association to be organized other than as a corporation; and

(B) provide requirements for the organizational characteristics of a Federal savings association organized and operating other than as a corporation, consistent with the safety and soundness of the Federal savings association.

(2) EQUAL TREATMENT.—Except as otherwise provided in regulations prescribed under subsection (1), a Federal savings association that is operating other than as a corporation shall have the same rights and privileges and shall be subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations as a Federal savings association that is organized as a corporation.

* * * * * * *

SEC. 10. REGULATION OF HOLDING COMPANIES.

(a) DEFINITIONS.—

(1) IN GENERAL.—As used in this section, unless the context otherwise requires—

(A) SAVINGS ASSOCIATION.—The term "savings association" includes a savings bank or cooperative bank which is deemed by the Director to be a savings association under subsection (l) *and such term does not include an institution described in section 2(c)(2)(F) of the Bank Holding Company Act of 1956 for purposes of subsections (a)(1)(E), (c)(3)(B)(i), (c)(9)(C)(i), and (e)(3).*

* * * * * * *

(C) COMPANY.—The term "company" means any corporation, partnership, [trust,] *business trust,* joint-stock company, or similar organization, *or any other trust unless by its terms it must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust,* but does not include the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, any Federal home loan bank, or any company the majority of the shares of which is owned by the United States or any State, or by an instrumentality of the United States or any State.

* * * * * * *

(3) EXCLUSIONS.—Notwithstanding any other provision of this subsection, the term "savings and loan holding company" [does not include—

[(A) any company by virtue] *does not include any company by virtue* of its ownership or control of voting shares of a savings association or a savings and loan holding company acquired in connection with the underwriting of securities if such shares are held only for such period of time (not exceeding 120 days unless extended by the Director) as will permit the sale thereof on a reasonable basis[; and].

[(B) any trust (other than a pension, profit-sharing, shareholders', voting, or business trust) which controls a savings association or a savings and loan holding company if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and is (i) in existence on June 26, 1967, or (ii) a testamentary trust created on or after June 26, 1967.]

* * * * * * *

(e) ACQUISITIONS.—

(1) * * *

* * * * * * *

(3) INTERSTATE ACQUISITIONS.—No acquisition shall be approved by the Director under this subsection which will result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a multiple savings and loan holding company controlling savings associations in more than one State, unless—

(A) such acquisition would be permissible under section 3(d) of the Bank Holding Company Act of 1956 if the savings and loan holding company were a bank holding company and any savings association to be acquired were a bank;

[(A)] *(B)* such company, or a savings association subsidiary of such company, is authorized to acquire control of a savings association subsidiary, or to operate a home or branch office, in the additional State or States pursuant to section 13(k) of the Federal Deposit Insurance Act;

[(B)] *(C)* such company controls a savings association subsidiary which operated a home or branch office in the additional State or States as of March 5, 1987; or

[(C)] *(D)* the statutes of the State in which the savings association to be acquired is located permit a savings association chartered by such State to be acquired by a savings association chartered by the State where the acquiring savings association or savings and loan holding company is located or by a holding company that controls such a State chartered savings association, and such statutes specifically authorize such an acquisition by language to that effect and not merely by implication.

* * * * * * *

[(f) DECLARATION OF DIVIDEND.—Every subsidiary savings association of a savings and loan holding company shall give the Director not less than 30 days' advance notice of the proposed declaration by its directors of any dividend on its guaranty, permanent, or other nonwithdrawable stock. Such notice period shall commence to run from the date of receipt of such notice by the Director. Any such dividend declared within such period, or without the giving of such notice to the Director, shall be invalid and shall confer no rights or benefits upon the holder of any such stock.]

(f) DECLARATION OF DIVIDEND.—The Director may—

(1) require a savings association that is a subsidiary of a savings and loan holding company to give prior notice to the Director of the intent of the savings association to pay a dividend on its guaranty, permanent, or other nonwithdrawable stock; and

(2) establish conditions on the payment of dividends by such a savings association.

* * * * * * *

(m) QUALIFIED THRIFT LENDER TEST.—

(1) * * *

* * * * * * *

(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) * * *

* * * * * * *

(C) QUALIFIED THRIFT INVESTMENTS.—

(i) * * *

(ii) ASSETS INCLUDIBLE WITHOUT LIMIT.—The following assets are described in this clause for purposes of clause (i):

(I) * * *

* * * * * * *

(VIII) Loans and leases for motor vehicles acquired for personal, family, or household purposes.

(iii) ASSETS INCLUDIBLE SUBJECT TO PERCENTAGE RESTRICTION.—The following assets are described in this clause for purposes of clause (i):

(I) * * *

(II) Investments in the capital stock or obligations of, and any other security issued by, any [service corporation] *service company* if such [service corporation] *service company* derives at least 80 percent of its annual gross revenues from activities directly related to purchasing, refinancing, constructing, improving, or repairing domestic residential real estate or manufactured housing.

* * * * * * *

SECTION 4 OF THE FEDERAL HOME LOAN BANK ACT

ELIGIBILITY OF MEMBERS AND NONMEMBER BORROWERS

SEC. 4. (a) CRITERIA FOR ELIGIBILITY.—

(1) * * *

* * * * * * *

(5) CERTAIN PRIVATELY INSURED CREDIT UNIONS.—

(A) IN GENERAL.—A credit union which has been determined, in accordance with section 43(e)(1) of the Federal Deposit Insurance Act and subject to the requirements of subparagraph (B), to meet all eligibility requirements for Federal deposit insurance shall be treated as an insured depository institution for purposes of determining the eligibility of such credit union for membership in a Federal home loan bank under paragraphs (1), (2), and (3).

(B) CERTIFICATION BY APPROPRIATE SUPERVISOR.—

(i) IN GENERAL.—For purposes of this paragraph and subject to clause (ii), a credit union which lacks Federal deposit insurance and which has applied for membership in a Federal home loan bank may be treated as meeting all the eligibility requirements for Federal deposit insurance only if the appropriate supervisor of the State in which the credit union is chartered has determined that the credit union meets all the eligibility requirements for Federal deposit insurance as of the date of the application for membership.

(ii) CERTIFICATION DEEMED VALID.—If, in the case of any credit union to which clause (i) applies, the appropriate supervisor of the State in which such credit union is chartered fails to make a determination pursuant to such clause by the end of the 6-month period beginning on the date of the application, the credit union shall be deemed to have met the requirements of clause (i).

(C) SECURITY INTERESTS OF FEDERAL HOME LOAN BANK NOT AVOIDABLE.—Notwithstanding any provision of State law authorizing a conservator or liquidating agent of a credit union to repudiate contracts, no such provision shall apply with respect to—

(i) any extension of credit from any Federal home loan bank to any credit union which is a member of any such bank pursuant to this paragraph; or

(ii) any security interest in the assets of such credit union securing any such extension of credit.

* * * * * * *

FEDERAL CREDIT UNION ACT

* * * * * * *

TITLE I—FEDERAL CREDIT UNIONS

DEFINITIONS

SEC. 101. As used in this Act—

(1) * * *

* * * * * * *

(3) the term "Administration" means the National Credit Union Administration; [and]

* * * * * * *

(5) The terms "member account" and "account" mean a share, share certificate, or share draft [account account] *account* of a member of a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member, and, in the case of a credit union serving predominantly low-income members (as defined by the Board), such terms (when referring to the account of a nonmember served by such credit union) mean a share, share certificate, or share draft [account account] *account* of such nonmember which is of a type approved by the Board and evidences money or its equivalent received or held by such credit union in the usual course of business and for which it has given or is obligated to give credit to the account of such nonmember, and such terms mean share, share certificate, or share draft [account accounts] *account* of nonmember credit unions and nonmember units of Federal, State, or local governments and political subdivisions thereof enumerated in section 207 of this Act, and such terms mean custodial accounts established for loans sold

in whole or in part pursuant to section 107(13): *Provided,* That for purposes of insured State credit unions, reference in this paragraph to "share", "share certificate", or "share draft" accounts includes, as determined by the Board, the equivalent of such accounts under State law;

* * * * * * *

POWERS

SEC. 107. [A Federal credit union] *(a) IN GENERAL.—Any Federal credit union* shall have succession in its corporate name during its existence and shall have power—

(1) * * *

* * * * * * *

(5) [to make loans, the maturities of which shall not exceed twelve years except as otherwise provided herein] *to make loans, the maturities of which shall not exceed 15 years or any longer maturity as the Board may allow, in regulations, except as otherwise provided in this Act*, and extend lines of credit to its members, to other credit unions, and to credit union organizations and to participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following:

(A) Loans to members shall be made in conformity with criteria established by the board of directors: *Provided,* That—

(i) * * *

[(ii) a loan to finance the purchase of a mobile home, which shall be secured by a first lien on such mobile home, to be used by the credit union member as his residence, or a second mortgage loan secured by a residential dwelling which is the residence of a credit union member shall have a maturity not to exceed 15 years or any longer term which the Board may allow;]

[(iii)] *(ii)* a loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government, or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance, guarantee, or commitment is provided;

[(iv)] *(iii)* a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan which exceeds $20,000 plus pledged shares, be approved by the board of directors;

[(v)] *(iv)* loans to other members for which directors or members of the supervisory or credit committee act as guarantor or endorser be approved by the board of directors when such loans standing alone or when added to any outstanding loan or loans of the guarantor or endorser exceeds $20,000;

[(vi)] *(v)* the rate of interest may not exceed 15 per centum per annum on the unpaid balance inclusive of

all finance charges, except that the Board may establish—

(I) after consultation with the appropriate committees of the Congress, the Department of Treasury, and the Federal financial institution regulatory agencies, an interest rate ceiling exceeding such 15 per centum per annum rate, for periods not to exceed 18 months, if it determines that money market interest rates have risen over the preceding [six-month period and that prevailing interest rate levels] *6-month period or that prevailing interest rate levels* threaten the safety and soundness of individual credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth; and

* * * * * * *

[(vii)] *(vi)* the taking, receiving, reserving, or charging of a rate of interest greater than is allowed by this paragraph, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back from the credit union taking or receiving the same, in an action in the nature of an action of debt, the entire amount of interest paid; but such action must be commenced within two years from the time the usurious collection was made;

[(viii)] *(vii)* a borrower may repay his loan, prior to maturity in whole or in part on any business day without penalty, except that on a first or second mortgage loan a Federal credit union may require that any partial prepayments (I) be made on the date monthly installments are due, and (II) be in the amount of that part of one or more monthly installments which would be applicable to principal;

[(ix)] *(viii)* loans shall be paid or amortized in accordance with rules and regulations prescribed by the Board after taking into account the needs or conditions of the borrowers, the amounts and duration of the loans, the interests of the members and the credit unions, and such other factors as the Board deems relevant; *and*

[(x)] *(ix)* loans must be approved by the credit committee or a loan officer, but no loan may be made to any member if, upon the making of that loan, the member would be indebted to the Federal credit union upon loans made to him in an aggregate amount which would exceed 10 per centum of the credit union's unimpaired capital and surplus.

* * * * * * *

(E) Participation loans with other credit unions, credit union organizations, or financial organizations shall be in

accordance with written policies of the board of directors: *Provided,* That a credit union which originates a loan for which participation arrangements are made in accordance with this subsection shall retain an interest of at least 10 per centum of the face amount of the loan**[**.**]***;*

(6) to receive from its members, from other credit unions, from an officer, employee, or agent of those nonmember units of Federal, Indian tribal, State, or local governments and political subdivisions thereof enumerated in section 207 of this Act and in the manner so prescribed, from the central liquidity facility, and from nonmembers in the case of credit unions serving predominately low-income members (as defined by the Board) payments, representing equity, on—

(A) * * *

* * * * * * *

subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the Board**[**.**]***;*

(7) to invest its funds (A) in loans exclusively to members; (B) in obligations of the United States of America, or securities fully guaranteed as to principal and interest thereby; (C) in accordance with rules and regulations prescribed by the Board, in loans to other credit unions in the total amount not exceeding 25 per centum of its paid-in and unimpaired capital and surplus; (D) in shares or accounts of savings and loan associations or mutual savings banks, the accounts of which are insured by **[**the Federal Savings and Loan Insurance Corporation or**]** the Federal Deposit Insurance Corporation; (E) in obligations issued by banks for cooperatives, Federal land banks, Federal intermediate credit banks, Federal home loan banks, **[**the Federal Home Loan Bank Board,**]** *the Federal Housing Finance Board,* or any corporation designated in section 101 of the Government Corporation Control Act as a wholly owned Government corporation; or in obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National Mortgage Association; or in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act; or in obligations, participations, securities, or other instruments of, or issued by, or fully guaranteed as to principal and interest by any other agency of the United States and a Federal credit union may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act; (F) in participation certificates evidencing beneficial interests in obligations, or in the right to receive interest and principal collections therefrom, which obligations have been subjected by one or more Government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States (or the head thereof) has been named to act as trustee; (G) in shares or deposits of any central credit union in which such investments are specifically authorized by the board of directors of the Federal credit union making the investment; (H) in

shares, share certificates, or share deposits of federally insured credit unions; (I) in the shares, stocks, or obligations of any other organization, providing services which are associated with the routine operations of credit unions, [up to 1 per centum of the total paid] *up to 3 percent of the total paid* in and unimpaired capital and surplus of the credit union with the approval of the Board: *Provided, however,* That such authority does not include the power to acquire control directly or indirectly, of another financial institution, nor invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility or any other similar organization, corporation, or association, except as otherwise expressly provided by this Act; (J) in the capital stock of the National Credit Union Central Liquidity Facility (K) investments in obligations of, or issued by, any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision), except that no credit union may invest more than 10 per centum of its unimpaired capital and surplus in the obligations of any one issuer (exclusive of general obligations of the issuer)[.]*;*

* * * * * * *

(9) to borrow, in accordance with such rules and regulations as may be prescribed by the Board, from any source, in an aggregate amount not exceeding, except as authorized by the Board in carrying out the provisions of [subchapter] *title* III, 50 per centum of its paid-in and unimpaired capital and surplus: *Provided*, That any Federal credit union may discount with or sell to any Federal intermediate credit bank any eligible obligations up to the amount of its paid-in and unimpaired capital;

* * * * * * *

[(12) in accordance with rules and regulations prescribed by the Board, to sell to members negotiable checks (including travelers checks), money orders, and other similar money transfer instruments, and to cash checks and money orders for members, for a fee;]

(12) in accordance with regulations prescribed by the Board—

(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers); and

(B) to cash checks and money orders and receive international and domestic electronic fund transfers for persons in the field of membership for a fee;

(13) in accordance with rules and regulations prescribed by the Board, to purchase, sell, pledge, or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations (as defined by the Board) of its members and to purchase from any liquidating credit union notes made by individual members of the liquidating credit union at such prices as may be agreed upon by the board of directors of the liquidating credit union and the board of directors of the purchasing credit union, but no purchase may be made under authority of this paragraph if, upon the making of that purchase, the aggregate

of the unpaid balances of notes purchased under authority of this paragraph would exceed 5 per centum of the unimpaired capital and surplus of the credit union; [and]

* * * * * * *

(b) ADDITIONAL INVESTMENT AUTHORITY.—

(1) IN GENERAL.—In addition to any investments otherwise authorized, a Federal credit union may purchase and hold for its own account such investment securities of investment grade as the Board may authorize by regulation, subject to such limitations and restrictions as the Board may prescribe in the regulations.

(2) PERCENTAGE LIMITATIONS.—

(A) SINGLE OBLIGOR.—In no event may the total amount of investment securities of any single obligor or maker held by a Federal credit union for the credit union's own account exceed at any time an amount equal to 10 percent of the net worth of the credit union.

(B) AGGREGATE INVESTMENTS.—In no event may the aggregate amount of investment securities held by a Federal credit union for the credit union's own account exceed at any time an amount equal to 10 percent of the assets of the credit union.

(3) INVESTMENT SECURITY DEFINED.—

(A) IN GENERAL.—For purposes of this subsection, the term "investment security" means marketable obligations evidencing the indebtedness of any person in the form of bonds, notes, or debentures and other instruments commonly referred to as investment securities.

(B) FURTHER DEFINITION BY BOARD.—The Board may further define the term "investment security".

(4) INVESTMENT GRADE DEFINED.—The term "investment grade" means with respect to an investment security purchased by a credit union for its own account, an investment security that at the time of such purchase is rated in one of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization.

(5) CLARIFICATION OF PROHIBITION ON STOCK OWNERSHIP.—No provision of this subsection shall be construed as authorizing a Federal credit union to purchase shares of stock of any corporation for the credit union's own account, except as otherwise permitted by law.

SEC. 107A. LIMITATION ON MEMBER BUSINESS LOANS.

(a) IN GENERAL.—On and after the date of enactment of this section, no insured credit union may make any member business loan that would result in a total amount of such loans, *excluding loans made to nonprofit religious organizations,* outstanding at that credit union at any one time equal to more than the lesser of—

(1) * * *

* * * * * * *

MEMBERSHIP

SEC. 109. (a) * * *

* * * * * * *

(c) EXCEPTIONS.—

(1) * * *

(2) EXCEPTION FOR UNDERSERVED AREAS.—Notwithstanding subsection (b), in the case of a Federal credit union, the field of membership category of which is described in subsection (b)(2), the Board may allow the membership of the credit union to include any person or organization within a local community, neighborhood, or rural district if—

(A) the Board determines that the local community, neighborhood, or rural district—

(i) is an "investment area", as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994 **[**(12 U.S.C. 4703(16))**]**, and meets such additional requirements as the Board may impose; and

* * * * * * *

(d) MULTIPLE COMMON-BOND CREDIT UNION GROUP REQUIREMENTS.—

(1) * * *

(2) EXCEPTIONS.—In the case of any Federal credit union, the field of membership category of which is described in subsection (b)(2), the numerical limitation in paragraph (1) of this subsection shall not apply with respect to—

(A) * * *

(B) any group transferred from another credit union—

(i) * * *

(ii) by the Board in the Board's capacity as conservator or liquidating agent with respect to that other credit union; **[**or**]**

(C) any group transferred in connection with a voluntary merger, having received conditional approval by the Administration of the merger application prior to October 25, 1996, but not having consummated the merger prior to October 25, 1996, if the merger is consummated not later than 180 days after the date of enactment of the Credit Union Membership Access Act**[**.**]***; or*

(D) a merger involving any such Federal credit union approved by the Board on or after August 7, 1998.

* * * * * * *

(g) REGULATIONS REQUIRED FOR COMMUNITY CREDIT UNIONS.—

(1) * * *

* * * * * * *

(3) CRITERIA FOR CONTINUED MEMBERSHIP OF CERTAIN MEMBER GROUPS IN COMMUNITY CHARTER CONVERSIONS.—In the case of a voluntary conversion of a common-bond credit union described in paragraph (1) or (2) of subsection (b) into a community credit union described in subsection (b)(3), the Board shall prescribe, by regulation, the criteria under which the Board may determine that a member group or other portion of a credit union's existing membership, that is located outside the well-defined local community, neighborhood, or rural district that shall constitute the community charter, can be satisfac-

torily served by the credit union and remain within the community credit union's field of membership.

* * * * * * *

MANAGEMENT

SEC. 111. (a) The management of a Federal credit union shall be by a board of directors, a supervisory committee, and where the bylaws so provide, a credit committee. The board shall consist of an odd number of directors, at least five in number, to be elected annually by and from the members as the bylaws provide. Any vacancy occurring on the board shall be filled until the next annual election by appointment by the remainder of the directors. *The bylaws of a Federal credit union may limit the number of consecutive terms any person may serve on the board of directors of such credit union.*

* * * * * * *

(c) No member of the board or of any other committee shall, as such, be compensated, except that reasonable health, accident, similar insurance protection, and the reimbursement of reasonable expenses*, including lost wages,* incurred in the execution of the duties of the position shall not be considered compensation.

* * * * * * *

EXPULSION AND WITHDRAWAL

SEC. 118. (a) * * *

[(b) The board of directors of a Federal credit union may, by majority vote of a quorum of directors, adopt and enforce a policy with respect to expulsion from membership based on nonparticipation by a member in the affairs of the credit union. In establishing its policy, the board should consider a member's failure to vote in annual credit union elections or failure to purchase shares from, obtain a loan from, or lend to the Federal credit union. If such a policy is adopted, written notice of the policy as adopted and the effective date of such policy shall be mailed to each member of the credit union at the member's current address appearing on the records of the credit union not less than thirty days prior to the effective date of such policy. In addition, each new member shall be provided written notice of any such policy prior to or upon applying for membership.**]**

(b) POLICY AND ACTIONS OF BOARDS OF DIRECTORS OF FEDERAL CREDIT UNIONS.—

(1) EXPULSION OF MEMBERS FOR NONPARTICIPATION OR FOR JUST CAUSE.—The board of directors of a Federal credit union may, by majority vote of a quorum of directors, adopt and enforce a policy with respect to expulsion from membership, by a majority vote of such board of directors, based on just cause, including disruption of credit union operations, or on nonparticipation by a member in the affairs of the credit union.

(2) WRITTEN NOTICE OF POLICY TO MEMBERS.—If a policy described in paragraph (1) is adopted, written notice of the policy as adopted and the effective date of such policy shall be provided to—

(A) each existing member of the credit union not less than 30 days prior to the effective date of such policy; and

(B) each new member prior to or upon applying for membership.

* * * * * * *

CERTAIN POWERS OF BOARD

SEC. 120. (a) * * *

* * * * * * *

(h) The Board is authorized, empowered, and directed to require that every person appointed or elected by any Federal credit union to any position requiring the receipt, payment, or custody of money or other personal property owned by a Federal credit union, or in its custody or control as collateral or otherwise, give bond in a corporate surety company holding a certificate of authority from the Secretary of the Treasury under [the Act approved July 30, 1947 (6 U.S.C., secs. 6–13),] *chapter 93 of title 31, United States Code,* as an acceptable surety on Federal bonds. Any such bond or bonds shall be in a form approved by the Board with a view to providing surety coverage to the Federal credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction, or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the Board may determine to be reasonably appropriate or as elsewhere required by this Act. Any such bond or bonds shall be in such an amount in relation to the money or other personal property involved or in relation to the assets of the Federal credit union as the Board may from time to time prescribe by regulation for the purpose of requiring reasonable coverage. In lieu of individual bonds the Board may approve the use of a form of schedule or blanket bond which covers all of the officers and employees of a Federal credit union whose duties include the receipt, payment, or custody of money or other personal property for or on behalf of the Federal credit union. The Board may also approve the use of a form of excess coverage bond whereby a Federal credit union may obtain an amount of coverage in excess of the basic surety coverage.

* * * * * * *

SPACE IN FEDERAL BUILDINGS *OR FEDERAL LAND*

SEC. 124. [Upon application by any credit union] *Notwithstanding any other provision of law, upon application by any credit union* organized under State law or by any Federal credit union organized in accordance with the terms of this Act, which application shall be addressed to the officer or agency of the United States charged with the allotment of space *on lands reserved for the use of, and under the exclusive or concurrent jurisdiction of, the United States or* in the Federal buildings in the community or district in which such credit union does business, such officer or agency may in his or its discretion *lease land or* allot space to such credit union without charge for rent or services if at least 95 percent of the membership of the credit union to be served by the allotment of space *or the facility built on the lease land* is composed of persons

who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families, and if space is available. For the purpose of this section, the term "services" includes, but is not limited to, the providing of lighting, heating, cooling, electricity, office furniture, office machines and equipment, telephone service (including installation lines and equipment and other expenses associated with telephone service), and security systems (including installation of and other expenses associated with security systems). Where there is an agreement for the payment of costs associated with the provision of space or services, nothing in title 31, United States Code, or any other provision of law, shall be construed to prohibit or restrict payment by reimbursement to the miscellaneous receipts or other appropriate account of the Treasury.

* * * * * * *

TITLE II—SHARE INSURANCE

INSURANCE OF MEMBER ACCOUNTS AND ELIGIBILITY PROVISIONS

SEC. 201. (a) * * *

(b) Application for insurance of member accounts shall be made immediately by each Federal credit union and may be made at any time by a State credit union or a credit union operating under the jurisdiction of the Department of Defense. Applications for such insurance shall be in such form as the Board shall provide and shall contain an agreement by the applicant—

(1) * * *

* * * * * * *

(5) to maintain such regular reserves as may be required by the laws of the State, district, territory, or other jurisdiction pursuant to which it is organized and operated, in the case of a State-chartered credit union, or as may be required by **[**section 116 of**]** this Act, in the case of a Federal credit union;

* * * * * * *

REPORTS OF CONDITION; CERTIFIED STATEMENTS; PREMIUMS FOR INSURANCE

SEC. 202. (a)(1) * * *

* * * * * * *

(8) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Board (with respect to all insured credit unions, including a credit union for which the Corporation has been appointed conservator or liquidating agent) or an appropriate State commission, board, or authority having supervision of a State-chartered credit union, the Board may, in the Board's discretion, furnish any report of examination or other confidential supervisory information concerning any credit union or other entity examined by the Board under authority of any Federal law, to—

(A) any other Federal or State agency or authority with supervisory or regulatory authority over the credit union or other entity;

(B) any officer, director, or receiver of such credit union or entity; and

(C) any other institution-affiliated party of such credit union or entity the Board determines to be appropriate.

* * * * * * *

(h) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) * * *

* * * * * * *

(3) INSURED SHARES.—The term "insured shares", when applied to this section, includes share, share draft, share certificate, and other similar accounts as determined by the Board, but does not include amounts exceeding the insured account limit set forth in [section 207(c)(1)] *section 207(k)(1)*.

* * * * * * *

EXAMINATION OF INSURED CREDIT UNIONS

SEC. 204. (a) * * *

(b) In connection with examinations of insured credit unions, or with other types of investigations to determine compliance with applicable law and regulations, the Board, or its designated representatives, shall have power to administer oaths and affirmations, to examine and to take and preserve testimony under oath as to any matter in respect of the affairs of any such credit union, and to issue subpenas and subpenas duces tecum and to exercise such [others] *other* powers as are set forth in section 206(p) and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States court in any territory in which the principal office of the credit union is located or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpena.

* * * * * * *

REQUIREMENTS GOVERNING INSURED CREDIT UNIONS

SEC. 205. (a) * * *

* * * * * * *

(j) PRIVILEGES NOT AFFECTED BY DISCLOSURE TO BANKING AGENCY OR SUPERVISOR.—

(1) IN GENERAL.—The submission by any person of any information to the Administration, any State credit union supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such Board, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such Board, supervisor, or authority.

(2) RULE OF CONSTRUCTION.—No provision of paragraph (1) may be construed as implying or establishing that—

(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

(B) any person would waive any privilege applicable to any information by submitting the information to the Administration, any State credit union supervisor, or foreign banking authority, but for this subsection.

TERMINATION OF INSURANCE; CEASE-AND-DESIST PROCEEDINGS; SUSPENSION AND/OR REMOVAL OF DIRECTORS, OFFICERS, AND COMMITTEE MEMBERS; TAKING POSSESSION OF COMMITTEE MEMBERS

SEC. 206. (a) * * *

* * * * * * *

(e)(1) * * *

* * * * * * *

(3) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority to issue an order under this subsection and subsection (f) which requires an insured credit union or any institution-affiliated party to take affirmative action to correct any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such insured credit union or such party to—

(A) * * *

* * * * * * *

(D) dispose of any loan or asset involved; **[**and**]**

* * * * * * *

(f)(1) Whenever the Board shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the credit union or any institution-affiliated party pursuant to paragraph (1) of subsection (e) of this section, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the credit union, or is likely to weaken the condition of the credit union or otherwise prejudice the interests of its insured members prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (e) of this section, the Board may issue a temporary order requiring the credit union or such party to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under **[**subsection (e)(3)(B)**]** *subsection (e)(3)*. Such order shall become effective upon service upon the credit union or institution-affiliated party and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Administration shall dismiss the charges specified in such notice, or if a cease-and-

desist order is issued against the credit union or such party, until the effective date of such order.

* * * * * * *

(g) REMOVAL AND PROHIBITION AUTHORITY.—

(1) * * *

* * * * * * *

(7) INDUSTRYWIDE PROHIBITION.—

(A) * * *

* * * * * * *

(D) APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCY DEFINED.—For purposes of this paragraph [and subsection (1)], the term "appropriate Federal financial institutions regulatory agency" means—

(i) * * *

* * * * * * *

[(i)] *(i) SUSPENSION, REMOVAL, AND PROHIBITION FROM PARTICIPATION ORDERS IN THE CASE OF CERTAIN CRIMINAL OFFENSES.*—

(1) SUSPENSION OR PROHIBITION AUTHORIZED.—

(A) IN GENERAL.—Whenever any institution-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in—

(i) * * *

* * * * * * *

the Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in [the] *any* credit union, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of [the] *any* credit union.

(B) PROVISIONS APPLICABLE TO NOTICE.—

(i) COPY.—A copy of any notice under subparagraph (A) shall also be served upon the credit union *of which the subject of the order is, or most recently was, an institution-affiliated party*.

* * * * * * *

(C) REMOVAL OR PROHIBITION.—

(i) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an institution-affiliated party in connection with a crime described in subparagraph (A)(i), at such time as such judgment is not subject to further appellate review, the Board may, if continued service or participation by such party may pose a threat to the interests of [the] *any* credit union's members or may threaten to impair public confidence in [the] *any* credit union, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of [the] *any* credit union without the prior written consent of the Board.

(ii) REQUIRED FOR CERTAIN OFFENSES—In the case of a judgment of conviction or agreement against an institution-affiliated party in connection with a violation described in subparagraph (A)(ii), the Board shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of [the] *any* credit union without the prior written consent of the Board.

(D) PROVISIONS APPLICABLE TO ORDER.—

(i) COPY.—A copy of any order under subparagraph (C) shall also be served [upon such credit union] *upon the credit union of which the subject of the order is, or most recently was, an institution-affiliated party*, whereupon such party (if a director or an officer) shall cease to be a director or officer of such credit union.

* * * * * * *

(E) CONTINUATION OF AUTHORITY.—The Board may issue an order under this paragraph with respect to an individual who is an institution-affiliated party at a credit union at the time of an offense described in subparagraph (A) without regard to—

(i) whether such individual is an institution-affiliated party at any credit union at the time the order is considered or issued by the Board; or

(ii) whether the credit union at which the individual was an institution-affiliated party at the time of the offense remains in existence at the time the order is considered or issued by the Board.

* * * * * * *

(q) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

(1) * * *

* * * * * * *

(4) COORDINATION ON UNIFORM REQUIREMENTS.—In prescribing regulations under paragraph (1), the Board, acting through the Financial Institutions Examination Council, shall—

(A) consult with the Federal banking agencies and the Secretary of the Treasury; and

(B) take such action as may be necessary to ensure that the requirements for procedures established pursuant to such regulations, and the examination standards for reviewing such procedures, are congruent and reasonably uniform (taking into account differences in the form and function of the institutions subject to such requirements).

* * * * * * *

(t) REGULATION OF CERTAIN FORMS OF BENEFITS TO INSTITUTION-AFFILIATED PARTIES.—

(1) * * *

(2) FACTORS TO BE TAKEN INTO ACCOUNT.—The Board shall prescribe, by regulation, the factors to be considered by the

Board in taking any action pursuant to paragraph (1) which may include such factors as the following:

(A) * * *

(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for the insolvency of the credit union, the appointment of a conservator or liquidating agent for the credit union, or the credit union's troubled condition (as defined in *regulations* prescribed by the Board pursuant to paragraph (4)(A)(ii)(III)).

(C) Whether there is a reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had a material [affect] *effect* on the financial condition of the credit union.

* * * * * * *

(4) GOLDEN PARACHUTE PAYMENT DEFINED.—For purposes of this subsection—

(A) IN GENERAL.—The term "golden parachute payment" means any payment (or any agreement to make any payment) in the nature of compensation by any credit union for the benefit of any institution-affiliated party pursuant to an obligation of such credit union that—

(i) * * *

(ii) is received on or after the date on which—

(I) * * *

(II) any conservator or liquidating agent is appointed for such credit union; [or]

* * * * * * *

SEC. 206A. REGULATION AND EXAMINATION OF CREDIT UNION ORGANIZATIONS AND SERVICE PROVIDERS.

(a) REGULATION AND EXAMINATION OF CREDIT UNION ORGANIZATIONS.—

(1) * * *

(2) EXAMINATION BY OTHER BANKING AGENCIES.—The Board may authorize to make an examination of a credit union organization in accordance with paragraph (1)—

(A) any Federal [regulator] *regulatory* agency that supervises any activity of a credit union organization; or

* * * * * * *

PAYMENT OF INSURANCE

SEC. 207. (a)(1)(A) * * *

(B) Not later than [10] *30* days after the date on which the Board closes a credit union for liquidation pursuant to paragraph (1), or accepts appointment as liquidating agent pursuant to subsection (b), such insured credit union may apply to the United States district court for the judicial district in which the principal office of such insured credit union is located or the United States District Court for the District of Columbia, for an order requiring the Board to show cause why it should not be prohibited from continuing such liquidation. Except as otherwise provided in this sub-

paragraph, no court may take any action for or toward the removal of any liquidating agent or, except at the instance of the Board, restrain or affect the exercise of powers or functions of a liquidating agent.

* * * * * * *

(c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR LIQUIDATING AGENT.—

(1) * * *

* * * * * * *

(5) LEASES UNDER WHICH THE CREDIT UNION IS THE LESSOR.—

(A) * * *

(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; *and*

* * * * * * *

(d) PAYMENT OF INSURED DEPOSITS.—

(1) * * *

* * * * * * *

(3) RESOLUTION OF DISPUTES.—

(A) RESOLUTIONS IN ACCORDANCE [TO] *WITH* BOARD REGULATIONS.—In the case of any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit, the Board may resolve such disputed claim in accordance with regulations prescribed by the Board establishing procedures for resolving such claims.

* * * * * * *

(f) VALUATION OF CLAIMS IN DEFAULT.—

(1) * * *

* * * * * * *

(3) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) IN GENERAL.—The Board may, in its discretion and in the interests of minimizing its losses, use its own resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. The Board shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category [or] *of* claimants.

* * * * * * *

ADMINISTRATIVE PROVISIONS

SEC. 209. (a) In carrying out the purposes of this title, the Board may—

(1) * * *

* * * * * * *

(8) make examinations of and require information and reports from insured credit unions, as provided in this title**[**.**]***;*

* * * * * * *

SEC. 216. PROMPT CORRECTIVE ACTION.

(a) * * *

* * * * * * *

(n) OTHER AUTHORITY NOT AFFECTED.—This section does not limit any authority of the Board or a State to take action in addition to (but not in derogation of) *any action* that is required under this section.

(o) DEFINITIONS.—For purposes of this section the following definitions shall apply:

(1) * * *

(2) NET WORTH.—The term "net worth"—

(A) with respect to any insured credit union, means *the* retained earnings balance of the credit union, as determined under generally accepted accounting principles*, together with any amounts that were previously retained earnings of any other credit union with which the credit union has combined*; and

* * * * * * *

TITLE III—CENTRAL LIQUIDITY FACILITY

* * * * * * *

MEMBERSHIP

SEC. 304. (a) * * *

(b) A credit union or group of credit unions, primarily serving other credit unions, may be an Agent member of the Facility by—

(1) * * *

* * * * * * *

(3) agreeing to comply with rules and regulations the Board shall prescribe with respect to, but not limited to, management quality, asset and liability safety and soundness, internal operating and control practices and procedures, and participation of natural persons in the affairs **[**or**]** *of* such credit union or credit union group; and

* * * * * * *

ANNUAL REPORT

SEC. 310. The annual report required by **[**section 102(e)**]** *section 102(d)* shall include a full report of the activities of the Facility.

* * * * * * *

SECTION 7A OF THE CLAYTON ACT

SEC. 7A. (a) * * *

* * * * * * *

(c) The following classes of transactions are exempt from the requirements of this section—

(1) * * *

* * * * * * *

(7) transactions which require agency approval under section 10(e) of the Home Owners' Loan Act, section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), *section 205(b)(3) of the Federal Credit Union Act (12 U.S.C. 1785(b)(3)),* or section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 4(k) of the Bank Holding Company Act of 1956; and (B) does not require agency approval under section 3 of the Bank Holding Company Act of 1956;

* * * * * * *

FEDERAL RESERVE ACT

* * * * * * *

STATE BANKS AS MEMBERS.

SEC. 9. Any bank incorporated by special law of any State, or organized under the general laws of any State or of the United States, including Morris Plan banks and other incorporated banking institutions engaged in similar business, desiring to become a member of the Federal Reserve System, may make application to the Board of Governors of the Federal Reserve System, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. For the purposes of membership of any such bank the terms "capital" and "capital stock" shall include the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation. The Board of Governors of the Federal Reserve System, subject to the provisions of this Act and to such conditions as it may prescribe pursuant thereto may permit the applying bank to become a stockholder of such Federal reserve bank.

* * * * * * *

Any such State bank which, at the date of the approval of this Act, has established and is operating a branch or branches in conformity with the State law, may retain and operate the same while remaining or upon becoming a stockholder of such Federal reserve bank; but no such State bank may retain or acquire stock in a Federal reserve bank except upon relinquishment of any branch or branches established after the date of the approval of this Act beyond the limits of the city, town, or village in which the parent

bank is situated. *Provided, however,* That nothing herein contained shall prevent any State member bank from establishing and operating branches in the United States or any dependency or insular possession thereof or in any foreign country, on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by national banks except that the approval of the Board of Governors of the Federal Reserve System, instead of the Comptroller of the Currency, shall be obtained before any State member bank may hereafter establish any branch and before any State bank hereafter admitted to membership may retain any branch established after February 25, 1927, beyond the limits of the city, town, or village in which the parent bank is situated. The approval of the Board shall likewise be obtained before any State member bank may establish any new branch within the limits of any such city, town, or village. *A State member bank may establish and operate a de novo branch in a host State (as such terms are defined in section 18(d) of the Federal Deposit Insurance Act) on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of a de novo branch of a national bank in a host State under section 5155(g) of the Revised Statutes of the United States or are applicable to an insured State nonmember bank under section 18(d)(3) of the Federal Deposit Insurance Act". Such section 5155(g) shall be applied for purposes of the preceding sentence by substituting "Board of Governors of the Federal Reserve System" for "Comptroller of the Currency" and "State member bank" for "national bank".*

* * * * * * *

SEC. 22. (d) * * *

* * * * * * *

(g)(1) * * *

* * * * * * *

[(6) Whenever an executive officer of a member bank becomes indebted to any bank or banks (other than the one of which he is an officer) on account of extensions of credit of any one of the three categories respectively referred to in paragraphs (2), (3) and (4) in an aggregate amount greater than the aggregate amount of credit of the same category that could lawfully be extended to him by the bank, he shall make a written report to the board of directors of the bank, stating the date and amount of each such extension of credit, the security therefor, and the purposes for which the proceeds have been or are to be used.**]**

[(7)**]** *(6)* This subsection does not prohibit any executive officer of a member bank from endorsing or guaranteeing for the protection of the bank any loan or other asset previously acquired by the bank in good faith or from incurring any indebtedness to the bank for the purpose of protecting the bank against loss or giving financial assistance to it.

[(8)**]** *(7)* Each day that any extension of credit in violation of this subsection exists is a continuation of the violation for the purposes of section 8 of the Federal Deposit Insurance Act.

[(9) Each member bank shall include with (but not as part of) each report of condition and copy thereof filed under section 7(a)(3)

of the Federal Deposit Insurance Act a report of all loans under authority of this subsection made by the bank since its previous report of condition.]

[(10)] *(8)* The Board of Governors of the Federal Reserve System may prescribe such rules and regulations, including definitions of terms, as it deems necessary to effectuate the purposes and to prevent evasions of this subsection.

* * * * * * *

BANK HOLDING COMPANY ACT OF 1956

* * * * * * *

DEFINITIONS

SEC. 2. (a) * * *

* * * * * * *

(c) BANK DEFINED.—For purposes of this Act—

(1) * * *

(2) EXCEPTIONS.—The term "bank" does not include any of the following:

(A) * * *

* * * * * * *

(F) An institution, including an institution that accepts collateral for extensions of credit by holding deposits under $100,000, and by other means which—

(i) [engages only in credit card operations;] *engages only in—*

(I) credit card operations; and

(II) making investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs), in the manner and to the extent permitted for national banks under the paragraph designated the "Eleventh" of section 5136 of the Revised Statutes of the United States and regulations prescribed under such paragraph, except that the last sentence of such paragraph shall be applied for purposes of this subclause by substituting "5 percent" for "15 percent" each place such term appears;

* * * * * * *

(v) does not engage in the business of making commercial loans*, other than making or purchasing loans for the purposes described in and to the extent permitted in clause (i)(II)*.

* * * * * * *

[(I) The Investors Fiduciary Trust Company, located in Kansas City, Missouri, so long as such institution—

[(i) engages only in trust, fiduciary, and agency activities in which it was lawfully engaged on March 5, 1987;

[(ii) engages in such activities only at the same number of locations at which such activities were conducted on such date;

[(iii) does not accept demand deposits other than demand deposits which are maintained by such institution in—

[(I) a trust or fiduciary capacity;

[(II) the institution's capacity as a custodian or as a paying, transfer, shareholder servicing, securities clearing, escrow, or dividend disbursing agent; or

[(III) any capacity which is incidental to the trust or fiduciary activities of the institution;

[(iv) does not engage in the business of making commercial loans;

[(v) does not exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act; and

[(vi) is not directly or indirectly controlled by any company other than a company which directly or indirectly controlled such institution on March 5, 1987.

[(J) A savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) which—

[(i) is an insured bank (as defined in section 3(h) of such Act);

[(ii) is a subsidiary of the Great Western Financial Corporation as a result of an approval in writing by the State bank supervisor of the State of New York before June 30, 1987;

[(iii) meets or exceeds the investment requirements which an insured institution must meet in order to be a qualified thrift lender under section 408(o) of the National Housing Act; and

[(iv) does not, directly, or through insurance products such savings bank receives from or provides to the Great Western Financial Corporation, engage in the sale or underwriting of insurance,

except that this subparagraph shall cease to apply with respect to such savings bank or any successor institution if any deposits of any other subsidiary or affiliate of the Great Western Financial Corporation which are subject to an assessment of an insurance premium under subsection (b) or (c) of section 404 of the National Housing Act are, directly or indirectly by any device whatsoever, transferred to or acquired by such savings bank or any successor institution which would have the effect of materially reducing such premium assessments. The exemption provided by this subparagraph shall cease to apply if Great Western Financial Corporation uses such savings bank or any successor institution as a vehicle to move such Corporation from Federal Savings and Loan Insurance Corporation insurance to Federal Deposit Insurance Corporation insurance.]

* * * * * * *

(g) For the purposes of this Act—

(1) * * *

(2) shares held or controlled directly or indirectly by trustees for the benefit of (A) a company, (B) the shareholders or members of a company, or (C) the employees (whether exclusively or not) of a company, shall be deemed to be controlled by such company*, unless the Board determines that such treatment is not appropriate in light of the facts and circumstances of the case and the purposes of this Act*.

* * * * * * *

[(m) QUALIFIED SAVINGS BANK.—For purposes of this Act, the term "qualified savings bank"—

[(1) means any savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) which was organized on or before March 5, 1987; and

[(2) includes any cooperative bank that is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) and any interim savings bank that is established to facilitate a corporate reorganization, or the formation of a holding company, involving a savings bank described in paragraph (1).]

(m) [Repealed]

* * * * * * *

ACQUISITION OF BANK SHARES OR ASSETS

SEC. 3. (a) * * *

* * * * * * *

(d) INTERSTATE BANKING.—

(1) APPROVALS AUTHORIZED.—

(A) * * *

[(B) PRESERVATION OF STATE AGE LAWS.—

[(i) IN GENERAL.—Notwithstanding subparagraph (A), the Board may not approve an application pursuant to such subparagraph that would have the effect of permitting an out-of-State bank holding company to acquire a bank in a host State that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State.

[(ii) SPECIAL RULE FOR STATE AGE LAWS SPECIFYING A PERIOD OF MORE THAN 5 YEARS.—Notwithstanding clause (i), the Board may approve, pursuant to subparagraph (A), the acquisition of a bank that has been in existence for at least 5 years without regard to any longer minimum period of time specified in a statutory law of the host State.

[(C) SHELL BANKS.—For purposes of this subsection, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, an existing bank shall be deemed to have been in existence for the same period of time as the bank to be acquired.]

[(D)] *(B)* EFFECT ON STATE CONTINGENCY LAWS.—No provision of this subsection shall be construed as affecting the applicability of a State law that makes an acquisition

of a bank contingent upon a requirement to hold a portion of such bank's assets available for call by a State-sponsored housing entity established pursuant to State law, if—

(i) * * *

* * * * * * *

(5) EXCEPTION FOR BANKS IN DEFAULT OR IN DANGER OF DEFAULT.—The Board may approve an application pursuant to paragraph (1)(A) which involves—

(A) * * *

(B) an acquisition with respect to which assistance is provided under section 13(c) of the Federal Deposit Insurance Act;

without regard to subparagraph (B) [or (D)] of paragraph (1) or paragraph (2) or (3).

* * * * * * *

INTERESTS IN NONBANKING ORGANIZATIONS

SEC. 4. (a) * * *

* * * * * * *

(h) TYING PROVISIONS.—

(1) APPLICABLE TO CERTAIN EXEMPT INSTITUTIONS AND PARENT COMPANIES.—An institution described in subparagraph (D), (F), [(G), (H), (I), or (J) of section 2(c)(2)] *(G), or (H) of section 2(c)(2)* shall be treated as a bank, and a company that controls such an institution shall be treated as a bank holding company, for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section.

(2) APPLICABLE WITH RESPECT TO CERTAIN TRANSACTIONS.—A company that controls an institution described in subparagraph (D), (F), [(G), (H), (I), or (J) of section 2(c)(2)] *(G), or (H) of section 2(c)(2)* and any of such company"s other affiliates, shall be subject to the tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 in connection with any transaction involving the products or services of such company or affiliate and those of such institution, as if such company or affiliate were a bank and such institution were a subsidiary of a bank holding company.

* * * * * * *

(n) AUTHORITY TO RETAIN LIMITED NONFINANCIAL ACTIVITIES AND AFFILIATIONS.—

(1) * * *

* * * * * * *

(5) CROSS MARKETING RESTRICTIONS APPLICABLE TO COMMERCIAL ACTIVITIES.—

(A) * * *

(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as prohibiting an arrangement between a depository institution and a company owned or controlled pursuant to [subsection (k)(4)(I)] *subparagraph (H) or (I)*

of subsection (k)(4) for the marketing of products or services through statement inserts or Internet websites if—

(i) * * *

* * * * * * *

(C) THRESHOLD OF CONTROL.—Subparagraph (A) shall not apply with respect to a company described or referred to in clause (i) or (ii) of such subparagraph if the financial holding company does not own or control 25 percent or more of the total equity or any class of voting securities of such company.

* * * * * * *

SECTION 2 OF THE NATIONAL BANK RECEIVERSHIP ACT

[SECTION 2. The Comptroller of the Currency]

SEC. 2. APPOINTMENT OF RECEIVER FOR A NATIONAL BANK.

(a) IN GENERAL.—The Comptroller of the Currency may, without prior notice or hearings, appoint a receiver for any national bank (and such receiver shall be the Federal Deposit Insurance Corporation if the national bank is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act)) if the Comptroller determines, in the Comptroller's discretion, that—

(1) * * *

* * * * * * *

(b) JUDICIAL REVIEW.—If the Comptroller of the Currency appoints a receiver under subsection (a), the national bank may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such bank is located, or in the United States District Court for the District of Columbia, for an order requiring the Comptroller of the Currency to remove the receiver, and the court shall, upon the merits, dismiss such action or direct the Comptroller of the Currency to remove the receiver.

* * * * * * *

SECTION 106 OF THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970

SEC. 106. (a) * * *
(b)(1) * * *
(2)(A) * * *

* * * * * * *

[(G)(i) Each executive officer and each stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of an insured bank shall make a written report to the board of directors of such bank for any year during which such executive officer or shareholder has outstanding an extension of credit from a bank which maintains a corresponding account in the name of such bank. Such report shall include the following information:

[(1) the maximum amount of indebtedness to the bank maintaining the correspondent account during such year of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder, or which is controlled by such executive officer or stockholder;

[(2) the amount of indebtedness to the bank maintaining the correspondent account outstanding as of a date not more than ten days prior to the date of filing of such report of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder;

[(3) the range of interest rates charged on such indebtedness of such executive officer or stockholder of record; and

[(4) the terms and conditions of such indebtedness of such executive officer or stockholder of record.

[(ii) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by any bank or executive officer or principal shareholder thereof concerning any extension of credit by a correspondent bank to the reporting bank's executive officers or principal shareholders, or the related interests of such persons.]

[(H)] *(G)* For the purpose of this paragraph—

(i) * * *

* * * * * * *

[(I)] *(H)* NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such a bank (including a separation caused by the closing of such a bank) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such bank (whether such date occurs before, on, or after the date of the enactment of this subparagraph).

* * * * * * *

SECTION 203 OF THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT

SEC. 203. A management official of a depository institution or a depository holding company may not serve as a management official of any other depository institution or depository holding company not affiliated therewith if an office of one of the institutions or any depository institution that is an affiliate of such institutions is located within either—

(1) the same primary metropolitan statistical area, the same metropolitan statistical area, or the same consolidated metropolitan statistical area that is not comprised of designated pri-

mary metropolitan statistical areas as defined by the Office of Management and Budget, except in the case of depository institutions with less than [$20,000,000] *$100,000,000* in assets in which case the provision of paragraph (2) shall apply, as that in which an office of the other institution or any depository institution that is an affiliate of such institution is located, or

* * * * * * *

BANK SERVICE COMPANY ACT

SHORT TITLE AND DEFINITIONS

SECTION 1.
(a) * * *
(b) For the purpose of this Act—
(1) * * *
(2) the term "bank service company" means—
(A) any corporation—
(i) * * *
(ii) all of the capital stock of which is owned by 1 or more [insured banks] *insured depository institutions*; and
(B) any limited liability company—
(i) * * *
(ii) all of the members of which are 1 or more [insured banks] *insured depository institutions*.

* * * * * * *

(4) the term "depository institution" means*, except when such term appears in connection with the term "insured depository institution",* an insured bank, a financial institution subject to examination by the [Federal Home Loan Bank Board] *Director of the Office of Thrift Supervision* or the National Credit Union Administration Board, or a financial institution the accounts or deposits of which are insured or guaranteed under State law and are eligible to be insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration Board;

[(5) the term "insured bank" shall have the meaning provided in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));]

(5) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act;

* * * * * * *

(7) the term "limited liability company" means any company, partnership, trust, or similar business entity organized under the law of a State (as defined in section 3 of the Federal Deposit Insurance Act) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company; [and]

(8) the term "principal investor" means the [insured bank] *insured depository institution* that has the largest dollar

amount invested in the equity of a bank service company. In any case where two or more [insured banks] *insured depository institutions* have equal dollar amounts invested in a bank service company, the company shall, prior to commencing operations, select one of the [insured banks] *insured depository institutions* as its principal investor and shall notify [the bank's] *the depository institution's* appropriate Federal banking agency of that choice within 5 business days of its selection[.]*; and*

(9) the terms "State depository institution", "Federal depository institution", "State savings association" and "Federal savings association" have the meanings given the terms in section 3 of the Federal Deposit Insurance Act.

AMOUNT OF INVESTMENT IN BANK SERVICE COMPANY

SEC. 2. Notwithstanding any limitation or prohibition otherwise imposed by any provision of law exclusively relating to banks *or savings associations, other than the limitation on the amount of investment by a Federal savings association contained in section 5(c)(4)(B) of the Home Owners' Loan Act*, an [insured bank] *insured depository institution* may invest not more than 10 per centum of paid-in and unimpaired capital and unimpaired surplus in a bank service company. No [insured bank] *insured depository institution* shall invest more than 5 per centum of its total assets in bank service companies.

PERMISSIBLE BANK SERVICE COMPANY ACTIVITIES FOR DEPOSITORY INSTITUTIONS

SEC. 3. Without regard to the provisions of sections 4 and 5 of this Act, an [insured bank] *insured depository institution* may invest in a bank service company that performs, and a bank service company may perform, the following services only for depository institutions: check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a depository institution.

PERMISSIBLE BANK SERVICE COMPANY ACTIVITIES FOR OTHER PERSONS

SEC. 4. (a) * * *

(b) Except *as permissible under subsection (c), (d), or (e) or* with the prior approval of the Board under section 5(b) of this Act in accordance with subsection (f) of this section—

(1) * * *

* * * * * * *

(c) A bank service company in which a State bank *or State savings association* is a shareholder or member shall perform only those services that such State bank *or State savings association* shareholder or member is authorized to perform under the law of the State in which such State bank *or State savings association* operates and shall perform such services only at locations in the State in which such State bank *or State savings association* shareholder or member could be authorized to perform such services.

(d) A bank service company in which a national bank *or Federal savings association* is a shareholder or member shall perform only those services that such national bank *or Federal savings association* shareholder or member is authorized to perform under the law of the United States and shall perform such services only at locations in the State at which such national bank *or Federal savings association* shareholder or member could be authorized to perform such services.

[(e) A bank service company that has both national bank and State bank shareholders or members shall perform only those services that may lawfully be performed by both any shareholder or member of the company which is a national bank under the law of the United States and any shareholder or member of the company which is a State bank under the law of the State in which any such State bank operate and shall perform such services only at locations in the State at which both its State bank and national bank shareholders or members could be authorized to perform such services.]

(e) A bank service company may perform—

(1) only those services that each depository institution shareholder or member is otherwise authorized to perform under any applicable Federal or State law; and

(2) such services only at locations in a State in which each such shareholder or member is authorized to perform such services.

(f) Notwithstanding the other provisions of this section or any other provision of law, other than the provisions of Federal and State branching law regulating the geographic location of banks *or savings associations* to the extent that those laws are applicable to an activity authorized by this subsection, a bank service company may perform at any geographic location any service, other than deposit taking, that the Board has determined, by regulation, to be permissible for a bank holding company under section 4(c)(8) of the Bank Holding Company Act.

PRIOR APPROVAL FOR INVESTMENTS IN BANK SERVICE COMPANIES

SEC. 5. (a) No [insured bank] *insured depository institution* shall invest in the capital stock of a bank service company that performs any service under authority of subsection (c), (d), or (e) of section 4 of this Act without prior notice, as determined by the [bank's] *institution's* appropriate Federal banking agency.

(b) No [insured bank] *insured depository institution* shall invest in the capital stock of a bank service company that performs any service *authorized only* under authority of section 4(f) of this Act and no bank service company shall perform any activity *authorized only* under section 4(f) of this Act without the prior approval of the Board.

(c) In determining whether to approve or deny any application for prior approval or whether to approve or disapprove any notice under this section, the Board or the appropriate Federal banking agency, as the case may be, is authorized to consider the financial and managerial resources and future prospects of [the bank or banks] *any depository institution* and bank service company involved, including the financial [capability of the bank] *capability of the depository institution* to make a proposed investment under

this Act, and possible adverse effects such as undue concentration of resources, unfair or decreased competition, conflicts of interest, or unsafe or unsound banking practices.

* * * * * * *

REGULATION AND EXAMINATION OF BANK SERVICE COMPANIES

SEC. 7. (a) * * *

(b) A bank service company shall be subject to the provisions of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) as if the bank service company were an [insured bank] *insured depository institution*. For this purpose, the appropriate Federal banking agency shall be the appropriate Federal banking agency of the principal investor of the bank service company.

(c) Notwithstanding subsection (a) of this section, whenever [a bank] *a depository institution* that is regularly examined by an appropriate Federal banking agency, or any subsidiary or affiliate of such [a bank] *a depository institution* that is subject to examination by that agency, causes to be performed for itself, by contract or otherwise, any services authorized under this Act, whether on or off its premises—

(1) such performance shall be subject to regulation and examination by such agency to the same extent as if such services were being performed by [the bank] *the depository institution* itself on its own premises, and

(2) [the bank] *the depository institution* shall notify such agency of the existence of the service relationship within thirty days after the making of such service contract or the performance of the service, whichever occurs first.

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SECTION 804 OF THE COMMUNITY REINVESTMENT ACT OF 1977

SEC. 804. (a) * * *

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(d) ESTABLISHMENT OF ESOPS AND EWOCS.—

(1) IN GENERAL.—In assessing and taking into account, under subsection (a), the record of a financial institution, the appropriate Federal financial supervisory agency shall consider as a factor activities that support or enable the establishment of employee stock ownership plans or eligible worker-owned cooperatives, so long as the employer sponsoring the plan or cooperative is at least 51 percent owned by employees, including low to moderate income employees.

(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) EMPLOYEE STOCK OWNERSHIP PLAN.—The term "employee stock ownership plan" has the same meaning as in section 4975(e)(7) of the Internal Revenue Code of 1986.

(B) ELIGIBLE WORKER-OWNED COOPERATIVE.—The term "eligible worker-owned cooperative" has the same meaning

as in section 1042(c)(2) of the Internal Revenue Code of 1986.

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SECTION 503 OF THE GRAMM-LEACH-BLILEY ACT

SEC. 503. DISCLOSURE OF INSTITUTION PRIVACY POLICY.

(a) * * *

* * * * * * *

(c) EXCEPTION TO ANNUAL NOTICE REQUIREMENT.—A financial institution that—

(1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 502 or regulations prescribed under section 504(b);

(2) does not share information with affiliates under section 603(d)(2)(A) of the Fair Credit Reporting Act; and

(3) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this subsection,

shall not be required to provide an annual disclosure under this subsection until such time as the financial institution fails to comply with any criteria described in paragraph (1), (2), or (3).

(d) EXCEPTION TO NOTICE REQUIREMENT.—A financial institution shall not be required to provide any disclosure under this section if—

(1) the financial institution is licensed by a State and is subject to existing regulation of consumer confidentiality that prohibits disclosure of nonpublic personal information without knowing and expressed consent of the consumer in the form of laws, rules, or regulation of professional conduct or ethics promulgated either by the court of highest appellate authority or by the principal legislative body or regulatory agency or body of any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands; or

(2) the financial institution is licensed by a State and becomes subject to future regulation of consumer confidentiality that prohibits disclosure of nonpublic personal information without knowing and expressed consent of the consumer in the form of laws, rules, or regulation of professional conduct or ethics promulgated either by the court of highest appellate authority or by the principal legislative body or regulatory agency or body of any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

SECTION 1101 OF THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

DEFINITIONS

SEC. 1101. For the purpose of this title, the term—

(1) "financial institution", except as provided in section 1114, means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution *(including any lender who advances funds on pledges of personal property)*, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

* * * * * * *

SECTION 5313 OF TITLE 31, UNITED STATES CODE

§ 5313. Reports on domestic coins and currency transactions

(a) * * *

* * * * * * *

[(e) DISCRETIONARY EXEMPTIONS FROM REPORTING REQUIREMENTS.—

[(1) IN GENERAL.—The Secretary of the Treasury may exempt, pursuant to section 5318(a)(6), a depository institution from the reporting requirements of subsection (a) with respect to transactions between the depository institution and a qualified business customer of the institution on the basis of information submitted to the Secretary by the institution in accordance with procedures which the Secretary shall establish.

[(2) QUALIFIED BUSINESS CUSTOMER DEFINED.—For purposes of this subsection, the term "qualified business customer" means a business which—

[(A) maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act) at the depository institution;

[(B) frequently engages in transactions with the depository institution which are subject to the reporting requirements of subsection (a); and

[(C) meets criteria which the Secretary determines are sufficient to ensure that the purposes of this subchapter are carried out without requiring a report with respect to such transactions.

[(3) CRITERIA FOR EXEMPTION.—The Secretary of the Treasury shall establish, by regulation, the criteria for granting and maintaining an exemption under paragraph (1).

[(4) GUIDELINES.—

[(A) IN GENERAL.—The Secretary of the Treasury shall establish guidelines for depository institutions to follow in selecting customers for an exemption under this subsection.

[(B) CONTENTS.—The guidelines may include a description of the types of businesses or an itemization of specific businesses for which no exemption will be granted under this subsection to any depository institution.

[(5) ANNUAL REVIEW.—The Secretary of the Treasury shall prescribe regulations requiring each depository institution to—

[(A) review, at least once each year, the qualified business customers of such institution with respect to whom an exemption has been granted under this subsection; and

[(B) upon the completion of such review, resubmit information about such customers, with such modifications as the institution determines to be appropriate, to the Secretary for the Secretary's approval.

[(6) 2-YEAR PHASE-IN PROVISION.—During the 2-year period beginning on the date of enactment of the Money Laundering Suppression Act of 1994, this subsection shall be applied by the Secretary on the basis of such criteria as the Secretary determines to be appropriate to achieve an orderly implementation of the requirements of this subsection.]

(e) QUALIFIED CUSTOMER EXEMPTION.—

(1) IN GENERAL.—The Secretary of the Treasury shall prescribe regulations within 270 days of the enactment of the Financial Services Regulatory Relief Act of 2005 that exempt any depository institution from filing a report pursuant to this section in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes) with a qualified customer of the depository institution.

(2) QUALIFIED CUSTOMER DEFINED.—For purposes of this section, the term "qualified customer", with respect to a depository institution, has such meaning as the Secretary of the Treasury shall prescribe, which shall include any person that—

(A) is incorporated or organized under the laws of the United States or any State, including a sole proprietorship, or is registered as and eligible to do business within the United States or a State;

(B) has maintained a deposit account with the depository institution for at least 12 months; and

(C) has engaged, using such account, in multiple currency transactions that are subject to the reporting requirements of subsection (a).

(3) REGULATIONS.—

(A) IN GENERAL.—The Secretary of the Treasury shall prescribe regulations requiring a depository institution to file a 1-time notice of designation of exemption for each qualified customer of the depository institution.

(B) FORM AND CONTENT OF EXEMPTION NOTICE.—The Secretary shall by regulation prescribe the form, manner, content, and timing of the qualified customer exemption notice; such notice shall include information sufficient to identify the qualified customer and its accounts.

(C) AUTHORITY OF SECRETARY.—

(i) IN GENERAL.—The Secretary may suspend, reject or revoke any qualified customer exemption notice, in

accordance with criteria prescribed by the Secretary by regulation.

(ii) CONDITIONS.—The Secretary may establish conditions, in accordance with criteria prescribed by regulation, under which exempt qualified customers of an insured depository institution that is merged with or acquired by another insured depository institution will continue to be treated as designated exempt qualified customers of the surviving or acquiring institution.

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SECTION 1006 OF THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978

FUNCTIONS OF THE COUNCIL

SEC. 1006. (a) * * *

* * * * * * *

(h) MONETARY TRANSACTION RECORDKEEPING AND REPORTING REQUIREMENTS.—The Council and the Secretary of the Treasury shall jointly establish—

(1) uniform standards and principles applicable to the examination of financial institutions to ensure compliance with the requirements of subchapter II of chapter 53, United States Code, sections 8(s) and 21 of the Federal Deposit Insurance Act, and section 206(q) of the Federal Credit Union Act; and

(2) a clear policy statement on appropriate processes for resolving examiner-institution disagreements concerning the application of subchapter II of chapter 53, United States Code, sections 8(s) and 21 of the Federal Deposit Insurance Act, and section 206(q) of the Federal Credit Union Act to financial institutions.

SECTION 1306 OF TITLE 18, UNITED STATES CODE

§ 1306. Participation by financial institutions

Whoever knowingly violates section **[**5136A**]** *5136B* of the Revised Statutes of the United States, section 9A of the Federal Reserve Act, or section 20 of the Federal Deposit Insurance Act shall be fined under this title or imprisoned not more than one year, or both.

FAIR DEBT COLLECTION PRACTICES ACT

TITLE VIII—DEBT COLLECTION PRACTICES

Sec.
801. Short title.

* * * * * * *

818. Exception for certain bad check enforcement programs operated by private entities.
[818**]** *819*. Effective date.

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§ 801. Short title

This title may be cited as the "Fair Debt Collection Practices Act".

* * * * * * *

§ 809. Validation of debts

(a) * * *

(b) [If the consumer] *Collection activities and communications may continue during any 30-day period referred to in subsection (a). However, if the consumer* notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

* * * * * * *

(d) LEGAL PLEADINGS.—A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) NOTICE PROVISIONS.—The sending or delivery of any form or notice which does not request the payment of a debt and is expressly required by any other Federal or State law or regulation, including the Internal Revenue Code of 1986, title V of Gramm-Leach-Bliley Act, and any data security breach notice and privacy law shall not be treated as a communication in connection with debt collection.

* * * * * * *

§ 818. Exception for certain bad check enforcement programs operated by private entities

(a) IN GENERAL.—If—

(1) a State or district attorney establishes, within the jurisdiction of such State or district attorney and with respect to alleged bad check violations that do not involve a check described in subsection (c), a pretrial diversion program for alleged bad check offenders who agree to participate voluntarily in such program to avoid criminal prosecution and are not described in subsection (b);

(2) a private entity, that is subject to an administrative support services contract with a State or district attorney and operates under the direction, supervision and control of such State or district attorney, operates the pretrial diversion program described in paragraph (1); and

(3) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in paragraph (2)—

(A) complies with the penal laws of the State;

(B) conforms with the terms of the contract and directives of the State or district attorney;

(C) does not exercise independent prosecutorial discretion;

(D) contacts any alleged offender referred to in paragraph (1) for purposes of participating in a program referred to in such paragraph only—

(i) as a result of any determination by the State or district attorney that sufficient evidence of a bad check violation under State law exists and that contact with the alleged offender for purposes of participation in the program is appropriate; or

(ii) as otherwise permitted in response to evidence of a bad check;

(E) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that—

(i) the alleged offender may dispute the validity of any alleged bad check violation through a procedure established and supervised by the State or district attorney, together with an explanation of how such a dispute may be initiated; and

(ii) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft, or other fraud that is not the result of the alleged offender's conduct, the alleged offender may file a crime report with the appropriate law enforcement agency and have further contacts or restitution efforts suspended until the question of the theft or forgery of the check, identity theft, or other fraud has been resolved, together with clear instructions on how to file such crime report; and

(F) charges only fees in connection with services under the contract that—

(i) have been authorized by the contract with the State or district attorney; and

(ii) conform with the schedule of reasonable charges for such services which shall be established by the National District Attorney's Association, after consultation with the Commission and representatives of interested business and consumer organizations,

the private entity shall be treated as an officer of the State and excluded from the definition of debt collector, pursuant to the exception provided in section 803(6)(C), with respect to the entity's operation of the program described in paragraph (1) under the contract described in paragraph (2).

(b) CERTAIN OFFENDERS EXCLUDED.—An alleged bad check offender is described in this subsection if a private entity described in subsection (a)(2) can determine from available records that such offender—

(1) was convicted of a bad check offense in the 3 years prior to issuing the bad check under consideration; or

(2) participated in a pretrial diversion program in the 18 months prior to issuing the bad check under consideration.

(c) CERTAIN CHECKS EXCLUDED.—A check is described in this subsection if the check involves, or is subsequently found to involve—

(1) a postdated check presented in connection with a payday loan, or other similar transaction, where the holder of the check knew that the issuer had insufficient funds at the time the check was made, drawn or delivered;

(2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;

(3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn or delivered;

(4) a check for partial payment of a debt where the holder had previously accepted partial payment for such debt;

(5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn or delivered; or

(6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn or delivered.

(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) STATE OR DISTRICT ATTORNEY.—The term "State or district attorney" means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1, United States Code), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth's attorneys, solicitors, county attorneys, and state's attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.

(2) CHECK.—The term "check" has the same meaning as in section 3(6) of the Check Clearing for the 21st Century Act.

(3) BAD CHECK.—The term "bad check" means any check that—

(A) the issuer knew, or should have known, would not be paid upon presentment because the issuer—

(i) had no account with the drawee financial institution at the time the check was made, drawn, or delivered;

(ii) had closed the account upon with the check was made or drawn prior to the time the check was made, drawn, or delivered; or

(iii) used a false or altered check, or false or altered check account number; or

(B) was refused payment by the financial institution or other drawee for lack of sufficient funds and the issuer failed to pay the full amount of the check, together with reasonable costs as permitted by State law—

(i) after receiving written notice from the holder of the check that payment was refused by the drawee financial institution to the extent that the timing and mode of delivery of such written notice is in compliance

with the applicable State law for determining criminal liability for bad check offenses; or

(ii) in a case in which there are no applicable State law requirements as described in clause (i), within 30 days of receiving written notice, mailed to the issuer by certified mail to the address printed on the check, or given at the time the check was made, drawn or delivered or, otherwise, at the address where the alleged offender resides or is found, from the holder of the check that payment of 1 or more checks was refused by the drawee financial institution.

§ [818] *819*. Effective date

This title takes effect upon the expiration of six months after the date of its enactment, but section 809 shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date.

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