108TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 108–152
1st Session } { Part 1

FINANCIAL SERVICES REGULATORY RELIEF ACT OF 2003

JUNE 12, 2003.—Ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1375]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1375) 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.

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19–006

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 2003".

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

Sec. 1. Short title; table of contents.

TITLE I—NATIONAL BANK PROVISIONS

Sec. 101. National bank directors.
Sec. 102. Voting in shareholder elections.
Sec. 103. Simplifying dividend calculations for national banks.
Sec. 104. Repeal of obsolete limitation on removal authority of the Comptroller of the Currency.
Sec. 105. Repeal of intrastate branch capital requirements.
Sec. 106. Clarification of waiver of publication requirements for bank merger notices.
Sec. 107. Capital equivalency deposits for Federal branches and agencies of foreign banks.
Sec. 108. Equal treatment for Federal agencies of foreign banks.
Sec. 109. Maintenance of a Federal branch and a Federal agency in the same State.
Sec. 110. Business organization flexibility for national banks.
Sec. 111. Clarification of the main place of business of a national bank.

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.
Sec. 202. Investments by Federal savings associations authorized to promote the public welfare.
Sec. 203. Mergers and consolidations of Federal savings associations with nondepository institution affiliates.
Sec. 204. Repeal of statutory dividend notice requirement for savings association subsidiaries of savings and loan holding companies.
Sec. 205. Modernizing statutory authority for trust ownership of savings associations.
Sec. 206. Repeal of overlapping rules governing purchased mortgage servicing rights.
Sec. 207. Restatement of authority for Federal savings associations to invest in small business investment companies.
Sec. 208. Removal of limitation on investments in auto loans.
Sec. 209. Selling and offering of deposit products.
Sec. 210. Funeral- and cemetery-related fiduciary services.
Sec. 211. Repeal of qualified thrift lender requirement with respect to out-of-state branches.
Sec. 212. Small business and other commercial loans.
Sec. 213. Clarifying citizenship of Federal savings associations for Federal court jurisdiction.
Sec. 214. Clarification of applicability of certain procedural doctrines.

TITLE III—CREDIT UNION PROVISIONS

Sec. 301. Privately insured credit unions authorized to become members of a Federal home loan bank.
Sec. 302. Leases of land on Federal facilities for credit unions.
Sec. 303. Investments in securities by Federal credit unions.
Sec. 304. Increase in general 12-year limitation of term of Federal credit union loans to 15 years.
Sec. 305. Increase in 1 percent investment limit in credit union service organizations.
Sec. 306. Member business loan exclusion for loans to nonprofit religious organizations.
Sec. 307. Check cashing and money transfer services offered within the field of membership.
Sec. 308. Voluntary mergers involving multiple common-bond credit unions.
Sec. 309. Conversions involving common-bond credit unions.
Sec. 310. Credit union governance.
Sec. 311. Providing the National Credit Union Administration with greater flexibility in responding to market conditions.
Sec. 312. Exemption from pre-merger notification requirement of the Clayton Act.
Sec. 313. Treatment of credit unions as depository institutions under securities laws.

TITLE IV—DEPOSITORY INSTITUTION PROVISIONS

Sec. 401. Easing restrictions on interstate branching and mergers.
Sec. 402. Statute of limitations for judicial review of appointment of a receiver for depository institutions.
Sec. 403. Reporting requirements relating to insider lending.
Sec. 404. Amendment to provide an inflation adjustment for the small depository institution exception under the Depository Institution Management Interlocks Act.
Sec. 405. Enhancing the safety and soundness of insured depository institutions.
Sec. 406. Investments by insured savings associations in bank service companies authorized.
Sec. 407. Cross guarantee authority.
Sec. 408. Golden parachute authority and nonbank holding companies.
Sec. 409. Amendments relating to change in bank control.

TITLE V—DEPOSITORY INSTITUTION AFFILIATES PROVISIONS

Sec. 501. Clarification of cross marketing provision.
Sec. 502. Amendment to provide the Federal Reserve Board with discretion concerning the imputation of control of shares of a company by trustees.
Sec. 503. Eliminating geographic limits on thrift service companies.
Sec. 504. Clarification of scope of applicable rate provision.

TITLE VI—BANKING AGENCY PROVISIONS

Sec. 601. Waiver of examination schedule in order to allocate examiner resources.
Sec. 602. Interagency data sharing.
Sec. 603. Penalty for unauthorized participation by convicted individual.
Sec. 604. Amendment permitting the destruction of old records of a depository institution by the FDIC after the appointment of the FDIC as receiver.

Sec. 605. Modernization of recordkeeping requirement.
Sec. 606. Clarification of extent of suspension, removal, and prohibition authority of Federal banking agencies in cases of certain crimes by institution-affiliated parties.
Sec. 607. Streamlining depository institution merger application requirements.
Sec. 608. Inclusion of Director of the Office of Thrift Supervision in list of banking agencies regarding insurance customer protection regulations.
Sec. 609. Shortening of post-approval antitrust review period with the agreement of the Attorney General.
Sec. 610. Protection of confidential information received by Federal banking regulators from foreign banking supervisors.
Sec. 611. Prohibition on the participation in the affairs of bank holding company or Edge Act or agreement corporations by convicted individual.
Sec. 612. Clarification that notice after separation from service may be made by an order.
Sec. 613. Examiners of financial institutions.
Sec. 614. Parity in standards for institution-affiliated parties.
Sec. 615. Enforcement against misrepresentations regarding FDIC deposit insurance coverage.
Sec. 616. Compensation of Federal home loan bank directors.
Sec. 617. Extension of terms of Federal home loan bank directors.
Sec. 618. Biennial reports on the status of agency employment of minorities and women.
Sec. 619. Coordination of State examination authority.

TITLE VII—CLERICAL AND TECHNICAL AMENDMENTS

Sec. 701. Clerical amendments to the Home Owners' Loan Act.
Sec. 702. Technical corrections to the Federal Credit Union Act.
Sec. 703. Other technical corrections.
Sec. 704. Repeal of obsolete provisions of the Bank Holding Company Act of 1956.

TITLE I—NATIONAL BANK PROVISIONS

SEC. 101. NATIONAL BANK DIRECTORS.

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.".

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. 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. 108. 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. 109. 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. 110. 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. 111. 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".

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 10 percent of the savings association's capital stock actually paid in and unimpaired and 10 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. 78*o*(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 State in which such savings association has its main office.".

SEC. 214. CLARIFICATION OF APPLICABILITY OF CERTAIN PROCEDURAL DOCTRINES.

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

(1) by striking "LEGAL PROCEEDINGS.—Any judgment" and inserting "LEGAL PROCEEDINGS.—

"(1) IN GENERAL.—Any judgment"; and

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

"(2) CLARIFICATION OF APPLICABILITY OF CERTAIN PROCEDURAL DOCTRINES.—In any proceeding seeking a monetary recovery against the United States, or

an agency or official thereof, based upon actions of the Federal Savings and Loan Insurance Corporation prior to its dissolution, or the Federal Home Loan Bank Board prior to its dissolution, and arising from the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 or its implementation, and where any monetary recovery in such proceeding would be paid from the FSLIC Resolution Fund or any supplements thereto, neither the United States Court of Federal Claims, the United States Court of Appeals for the Federal Circuit, nor any other court of competent jurisdiction shall dismiss, or affirm on appeal the dismissal of, the claims of any party seeking such monetary recovery, on the basis of res judicata, collateral estoppel, or any similar doctrine, defense, or rule of law, based upon any decision, opinion, or order of judgment entered by any court prior to July 1, 1996. Unless some other defense is applicable, in any such proceeding, the United States Court of Federal Claims, the United States Court of Appeals for the Federal Circuit, and any other court of competent jurisdiction shall review the merits of the claims of the party seeking such monetary relief and shall enter judgment accordingly.''.

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) INVESTMENT FOR THE CREDIT UNION'S OWN ACCOUNT.—

"(1) IN GENERAL.—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 electronic fund transfers); and

"(B) to cash checks and money orders and receive 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)(vi)(I) of the Federal Credit Union Act (12 U.S.C. 1757(5)(A)(vi)(I)) (as so designated by section 303 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.

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) 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. 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);

(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), 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(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.

(8) 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.

(9) 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.".

(10) 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".

(11) 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), by striking "insured bank" and inserting "insured depository institution"; 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".

(12) 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".

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.".

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 in-

formation 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"; and

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

"(ii) OLD RECORDS.—In the case of records of an insured depository institution which are at least 10 years old as of the date the Corporation is appointed as the receiver of such depository institution, 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. 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 INSTITUTION.—

(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), by striking "the depository" each place such term appears and inserting "any depository";

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

(C) in subparagraph (C), by striking "the depository" each place such term appears and inserting "any depository";

(D) in subparagraph (D)(i), by inserting "of which the subject of the order is an institution-affiliated party" after "upon the depository institution"; and

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

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

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

"(ii) whether the depository institution 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 agency.".

(2) CLERICAL AMENDMENT.—Section 8(g) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)) is amended by striking "(g)" and inserting the following new subsection heading:

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

(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. 607. 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, before acting on any application for approval of a merger transaction, the responsible agency, unless the agency finds that it must act immediately in order to prevent the probable failure of a depository institution involved, shall—

"(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) 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.—The penultimate sentence of section 18(c)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(6)) is amended to read as follows: "If the agency has advised the Attorney General under paragraph (4)(B) 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. 608. 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. 609. SHORTENING OF POST-APPROVAL ANTITRUST REVIEW PERIOD WITH THE AGREEMENT OF THE ATTORNEY GENERAL.

(a) ANTITRUST REVIEWS UNDER THE BANK HOLDING COMPANY ACT OF 1956.—The 4th sentence of section 11(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1849(b) is amended by striking "15 calendar days" and inserting "5 calendar days".

(b) ANTITRUST REVIEWS UNDER THE FEDERAL DEPOSIT INSURANCE ACT.—The last sentence of section 18(c)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(6)) is amended by striking "15 calendar days" and inserting "5 calendar days".

SEC. 610. 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 may not be compelled to disclose information received from a foreign regulatory or supervisory authority if—

"(A) 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. 611. PROHIBITION ON PARTICIPATION BY CONVICTED INDIVIDUAL.

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 bank holding company, any subsidiary (other than a bank) of 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, subsidiary, 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. 612. 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. 613. EXAMINERS OF FINANCIAL INSTITUTIONS.

(a) OFFER OF CREDIT TO BANK EXAMINER.—Section 212 of title 18, United States Code, is amended to read as follows:

"§ 212. Offer of credit to bank examiner

"(a) Subject to section 213(b), whoever being an officer, director or employee of a financial institution extends credit to any examiner which the examiner is prohibited from accepting under section 213 shall be fined under this title or imprisoned not more than one year, or both; and may be fined a further sum equal to the amount of the credit extended.

"(b) For purposes of this section, the following definitions shall apply:

"(1) The term 'financial institution' does not include a credit union, a Federal reserve bank, a Federal home loan bank, or a depository institution holding company.

"(2) The term 'examiner' means any person—

"(A) appointed by a Federal financial institution regulatory agency or pursuant to the laws of any State to examine a financial institution; or

"(B) elected under the law of any State to conduct examinations of any financial institution.

"(3) The term 'Federal financial institution regulatory agency' means—

"(A) the Comptroller of the Currency;

"(B) the Board of Governors of the Federal Reserve System;

"(C) the Director of the Office of Thrift Supervision;

"(D) the Federal Deposit Insurance Corporation;

"(E) the Federal Housing Finance Board;

"(F) the Farm Credit Administration;

"(G) the Farm Credit System Insurance Corporation; and

"(H) the Small Business Administration.".

(b) ACCEPTANCE OF CREDIT BY A BANK EXAMINER.—Section 213 of title 18, United States Code, is amended to read as follows:

"§ 213. Acceptance of credit by bank examiner

"(a) Whoever, being an examiner, accepts an extension of credit from any financial institution that the examiner examines or has authority to examine, or from any person connected with any such financial institution, shall be fined under this title or imprisoned not more than one year, or both; and may be fined a further sum equal to the amount of the credit extended, and shall be disqualified from holding office as such examiner.

"(b) Notwithstanding subsection (a) or section 212, a Federal financial institution regulatory agency may, by regulation or by order on a case-by-case basis, permit a financial institution to extend credit to an examiner, and permit an examiner to accept an extension of credit from a financial institution, if the agency determines that the extension of credit would not likely affect the integrity of any examination of a financial institution. Before prescribing regulations or issuing any order under this subsection, a Federal financial institution regulatory agency shall consult with

each other Federal financial institution regulatory agency with regard to any such regulation or order. Any regulation prescribed by a Federal financial institution regulatory agency under this subsection, may exempt certain classes or categories of credit from the scope of this section or section 212, and shall provide procedures for examiners and financial institutions to request case-by-case exemption orders under this subsection, subject to subsection (c).

"(c) In considering any request by a financial institution or examiner for a case-by-case exemption order under subsection (b), a Federal financial institution regulatory agency shall consider such factors as the agency determines to be appropriate, including—

"(1) whether the terms and conditions of the credit being offered the examiner are generally comparable to those offered by the financial institution in connection with similar types of credit extended to other customers in similar circumstances;

"(2) the nature and extent of any other relationship the examiner has with the financial institution or any officer, director, or employee of the financial institution;

"(3) the proximity in time between any examination of the financial institution in which the examiner participated, or is scheduled to participate, and the extension, or the offer of an extension, of credit;

"(4) whether there are any other circumstances involving the transaction, or the proposed transaction, that may be perceived as providing the examiner with preferential treatment; and

"(5) any other fact or circumstance the agency may consider to be appropriate under the circumstances.

"(d) Notwithstanding subsection (a) or section 212, an examiner employed by a Federal financial institution regulatory agency may apply for and receive a credit card, or otherwise be approved as a cardholder, under any credit card account under an open end consumer credit plan, to the extent the terms and conditions applicable with respect to such account, and any credit extended under such account, are no more favorable generally to the examiner than the terms and conditions that are generally applicable to credit card accounts offered by the same financial institution to other cardholders under open end consumer credit plans.

"(e) For purposes of this section, the following definitions shall apply:

"(1) The terms 'examiner', 'Federal financial institution regulatory agency', and 'financial institution' have the same meaning as in section 212.

"(2) The term 'credit' means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

"(3) The term 'creditor' refers only to a person who both (A) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (B) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors.

"(4) The term 'consumer', when used with reference to an open end credit plan, means a credit plan under which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of any transaction under the plan are primarily for personal, family, or household purposes.

"(5) The term 'open end credit plan' means a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan which is an open end credit plan within the meaning of the preceding sentence is an open end credit plan even if credit information is verified from time to time.

"(6) The term 'credit card' means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

"(7) The term 'cardholder' means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

"(8) The term 'card issuer' means any person who issues a credit card, or the agent of such person with respect to such card.".

(c) CLERICAL AMENDMENTS.—The table of sections for chapter 11 of title 18, United States Code, is amended by striking the items relating to sections 212 and 213 and inserting the following new items:

"212. Offer of credit to bank examiner.
"213. Acceptance of credit by bank examiner.".

SEC. 614. PARITY IN STANDARDS FOR INSTITUTION-AFFILIATED PARTIES.

Section 3(u)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)(4)) is amended by striking "knowingly or recklessly".

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. COMPENSATION OF FEDERAL HOME LOAN BANK DIRECTORS.

Section 7(i) of the Federal Home Loan Bank Act (12 U.S.C. 1427(i)) is amended to read as follows:

"(i) DIRECTORS' COMPENSATION.—

"(1) IN GENERAL.—Each Federal home loan bank may pay the directors on the board of directors of the bank reasonable compensation for the time required of such directors, and reasonable expenses incurred by the directors, in connection with service on the board of directors, in accordance with resolutions adopted by the board of directors and subject to the approval of the board.

"(2) ANNUAL REPORT BY THE BOARD.—Information regarding compensation and expenses paid by the Federal home loan banks to the directors on the boards of directors of the banks shall be included in the annual report submitted to the Congress by the Board pursuant to section 2B(d).".

SEC. 617. EXTENSION OF TERMS OF FEDERAL HOME LOAN BANK DIRECTORS.

(a) IN GENERAL.—Section 7(d) of the Federal Home Loan Bank Act (12 U.S.C. 1427(d)) is amended—

(1) in the first sentence, by striking "3 years" and inserting "4 years"; and

(2) in the 2nd sentence—

(A) by striking "Federal Home Loan Bank System Modernization Act of 1999" and inserting "Financial Services Regulatory Relief Act of 2003"; and

(B) by striking "1/3" and inserting "1/4".

(b) PROSPECTIVE APPLICATION.—The amendment made by subsection (a) shall not apply to the term of office in which any director of a Federal home loan bank is serving as of the date of the enactment of this Act, including any director elected or appointed to fill a vacancy in any such term of office.

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

(a) IN GENERAL.—Before December 31, 2003, 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) IN GENERAL.—The appropriate State bank supervisor of the home State of an insured State bank has authority to examine and supervise the bank. The State bank supervisor of the home State of an insured State bank shall exercise its 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. Except as expressly provided in a cooperative agreement between the State bank supervisors of the home State and host State(s) 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.—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—

"(A) 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

"(B) 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. The State bank supervisor of the home State of an insured State bank shall 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. The State bank supervisor of the bank's home State shall provide such notice 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.—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. Except for State bank supervisors, no provision of this subsection (h) relating to such cooperative agree-

ments 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) The terms 'host State', 'home State', and 'out-of-State bank' have the same meanings as in section 44(g).

"(B) 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) 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) 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.".

TITLE VII—CLERICAL AND TECHNICAL AMENDMENTS

SEC. 701. 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. 702. 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 "under 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 section 207(c)(8)(D)(ii)(I), insert a closing parenthesis after "Act of 1934".

(23) In the heading for subparagraph (A) of section 207(d)(3), strike "TO" and insert "WITH".

(24) In section 207(f)(3)(A), strike "category or claimants" and insert "category of claimants".

(25) In section 209(a)(8), strike the period at the end and insert a semicolon.

(26) In section 216(n), insert "any action" before "that is required".

(27) In section 304(b)(3), strike "the affairs or such credit union" and insert "the affairs of such credit union".

(28) In section 310, strike "section 102(e)" and insert "section 102(d)".

SEC. 703. 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. 704. 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)".

PURPOSE AND SUMMARY

H.R. 1375, the Financial Services Regulatory Relief Act of 2003, is intended to alter or eliminate statutory banking provisions in order to reduce the regulatory compliance burden on insured depository institutions and improve their productivity, as well as to make needed technical corrections to current statutes. H.R. 1375 is also intended to counterbalance the additional regulatory burden placed on insured depository institutions in the USA Patriot Act to focus their compliance efforts on combating money laundering and terrorist financing.

BACKGROUND AND NEED FOR LEGISLATION

In 2001, Chairman Oxley requested that Federal and State financial regulators recommend legislative items that would provide regulatory relief for insured depository institutions. The regulators, as well as the financial services industry, submitted a number of wide-ranging proposals affecting banks, savings associations, and credit unions, resulting in the introduction of H.R. 3951, the Financial Services Regulatory Relief Act of 2002, which was approved last year by the Subcommittee on Financial Institutions and Consumer Credit and by the full Committee. Early this year, Chairman Oxley again requested that financial regulators recommend regulatory relief items. H.R. 1375, introduced by Congresswoman Capito, is essentially last year's bill with the addition of various provisions recommended by regulators.

For banks, H.R. 1375: (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: (1) removes lending limits on small business and auto loans and increases the limit on other business loans; (2) gives these institutions 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) permits investment in service companies without regard to geographic restrictions; and (5) gives thrifts the same authority as national and State banks to make investments primarily designed to promote community development.

For credit unions, the bill: (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 percent to 3 percent of shares and earnings; (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 resources in the most efficient manner; (2) allows the agencies to share confidential supervisory information concerning an examined institution; (3) modernizes agency recordkeeping requirements to allow use of optically imaged or computer scanned images; (4) clarifies that agencies may suspend or prohibit individuals charged with certain crimes from participation in the affairs of any depository institution and not only the institution with which the individual is associated; and (5) strengthens agency enforcement of written agreements when an institution-affiliated party or control-

ling shareholder agrees to provide capital to the depository institution.

All of these changes were the result of the Committee's hearing and consultation process with the affected parties, regulators, and the public. As a result of these, H.R. 1375 will allow financial institutions to devote more resources to the business of lending to consumers and less to compliance with outdated and unneeded regulations. Reducing regulatory burden should lower credit costs for consumers and help the economy recover.

HEARINGS

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on March 27, 2003, on H.R. 1375. The following witnesses testified: The Honorable Mark Olson, Member, Board of Governors of the Federal Reserve System; The Honorable Dennis Dollar, Chairman, National Credit Union Administration; 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; Ms. Carolyn Buck, Chief Counsel, Office of Thrift Supervision; Mr. Gavin M. Gee, Director of Finance, Idaho Department of Finance, on behalf of the Conference of State Bank Supervisors; and Ms. Jerrie J. Lattimore, Administrator, Credit Union Division, State of North Carolina, on behalf of the National Association of State Credit Union Supervisors.

COMMITTEE CONSIDERATION

The Subcommittee on Financial Institutions and Consumer Credit met in open session on April 9, 2003, and approved H.R. 1375 for full Committee consideration, as amended, by a voice vote.

The Committee on Financial Services met in open session on May 20, 2003, and ordered H.R. 1375 reported to the House, with an amendment, by a voice vote, a quorum being present.

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. A motion by Mr. Oxley to report the bill to the House with a favorable recommendation was agreed to by a voice vote.

The following amendment was considered by a record vote. The names of Members voting for and against follow:

> An amendment to the amendment in the nature of a substitute by Ms. Waters, no. 1b, striking section 609 (relating to the shortening of the antitrust review period), was not agreed to by a record vote of 27 yeas and 35 nays.

RECORD VOTE NO. FC–6

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Oxley		X		Mr. Frank (MA)	X		
Mr. Leach		X		Mr. Kanjorski	X		
Mr. Bereuter		X		Ms. Waters	X		
Mr. Baker		X		Mr. Sanders*	X		

RECORD VOTE NO. FC–6—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mrs. Maloney	X		
Mr. Castle				Mr. Gutierrez	X		
Mr. King		X		Ms. Velázquez	X		
Mr. Royce		X		Mr. Watt	X		
Mr. Lucas (OK)		X		Mr. Ackerman			
Mr. Ney		X		Ms. Hooley (OR)	X		
Mrs. Kelly		X		Ms. Carson (IN)	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. Inslee	X		
Mr. Manzullo		X		Mr. Moore		X	
Mr. Jones (NC)		X		Mr. Gonzalez			
Mr. Ose		X		Mr. Capuano	X		
Mrs. Biggert		X		Mr. Ford	X		
Mr. Green (WI)		X		Mr. Hinojosa	X		
Mr. Toomey		X		Mr. Lucas (KY)		X	
Mr. Shays				Mr. Crowley	X		
Mr. Shadegg		X		Mr. Clay			
Mr. Fossella				Mr. Israel	X		
Mr. Gary G. Miller (CA)				Mr. Ross			
Ms. Hart		X		Mrs. McCarthy (NY)			
Mrs. Capito		X		Mr. Baca	X		
Mr. Tiberi		X		Mr. Matheson	X		
Mr. Kennedy (MN)		X		Mr. Lynch	X		
Mr. Feeney		X		Mr. Miller (NC)	X		
Mr. Hensarling		X		Mr. Emanuel	X		
Mr. Garrett (NJ)		X		Mr. Scott (GA)	X		
Mr. Murphy		X		Mr. Davis (AL)	X		
Ms. Ginny Brown-Waite (FL)		X					
Mr. Barrett (SC)		X					
Ms. Harris		X					
Mr. Renzi		X					

*Mr. Sanders is an independent, but caucuses with the Democratic Caucus.

The Committee considered the following other amendments:

An amendment in the nature of a substitute by Mr. Oxley, no. 1a, making extensions of the terms of the Federal Home Loan Bank Directors prospective and clarifying the civil remedies that can be imposed by the Federal Deposit Insurance Corporation, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Lucas, no. 1b, clarifying the regulatory structure for State chartered, multi-State banks, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Bachus, no. 1c, striking section 614 (relating to standards for institution-affiliated parties), was withdrawn.

An amendment to the amendment in the nature of a substitute by Mr. Ackerman, no. 1d, requiring any depository institution who reports negative information to a consumer reporting agency disclose that information to the consumer, was withdrawn.

An amendment to the amendment in the nature of a substitute by Mr. Israel, no. 1e, providing protection of credit of people in combat or activated for military service, was withdrawn.

An amendment to the amendment in the nature of a substitute by Mr. Gutierrez, no. 1f, requiring disclosures for wire transfers, was withdrawn.

An amendment to the amendment in the nature of a substitute by Mr. Gillmor, no. 1g, prohibiting ILCs that are not financial in nature from exercising de novo branching authority, was withdrawn.

An amendment to the amendment in the nature of a substitute by Mr. Kanjorski, no. 1h, striking section 301 (relating to privately insured credit union membership in the Federal Home Loan Bank), was not agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Leach, no. 1i, prohibiting all ILCs from engaging in de novo branching, was not agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Gutierrez, no. 1j, requiring a study by the Federal Reserve Board on the use of matrícula consular cards, was withdrawn.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee 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 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 of 1974.

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, June 11, 2003.

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. 1375, the Financial Services Regulatory Relief Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathleen Gramp and Jenny Lin (for federal costs), Pam Greene (for revenues), Victoria Heid Hall (for the state and local impact), and Judith Ruud.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 1375—Financial Services Regulatory Relief Act of 2003

Summary: H.R. 1375 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, such as the establishment of de novo branches and interstate mergers. It would also give agencies more flexibility in sharing data, retaining records, and scheduling examinations, and would limit the legal defenses that the United States could use against certain claims for monetary damages.

CBO estimates that enacting this bill would reduce federal revenues by $37 million over the next five years and by a total of $117 million over the 2004–2013 period. In addition, we estimate that direct spending would increase by $17 million over the next five years and by a total of $22 million over the 2004–2013 period.

H.R. 1375 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost of complying with those requirements would not exceed the threshold for intergovernmental mandates established in UMRA ($59 million in 2003, adjusted annually for inflation).

H.R. 1375 contains several private-sector mandates. Those mandates would affect certain depository institutions, nondepository in-

stitutions that control depository institutions, uninsured banks, bank holding companies and their subsidiaries, savings and loan association holding companies and their subsidiaries, and Federal Home Loan banks. At the same time, the bill would relax some restrictions on the operations of certain financial institutions. CBO estimates that the aggregate direct cost of complying with the private-sector mandates in the bill would not exceed the annual threshold established in UMRA ($117 million in 2003, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1375 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—									
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
CHANGES IN REVENUES										
Estimated revenues:										
S Corporation status	−2	−5	−8	−9	−11	−13	−14	−12	−12	−13
Business organization flexibility	*	*	*	*	−1	−2	−2	−3	−4	−5
Total [1]	−2	−5	−8	−10	−12	−15	−17	−14	−16	−18
CHANGES IN DIRECT SPENDING [2]										
Estimated budget authority	1	1	1	7	7	1	1	1	1	1
Estimated outlays	1	1	1	7	7	1	1	1	1	1

[1] Negative revenues indicate a reduction in revenue collections.

[2] CBO estimates that implementing H.R. 1375 could affect spending subject to appropriation, but we estimate that any such effect would be insignificant.

Notes.—* = Revenue loss is 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: section 214, which would limit the government's legal defenses against certain claims for monetary damages; and section 302, which would allow certain federal credit unions to lease federal land at no charge. For this estimate, CBO assumes that H.R. 1375 will be enacted in the fall of 2003.

H.R. 1375 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 budget of the Securities and Exchange Commission (SEC) and Federal Trade Commission (FTC) would be subject to appropriation.

Revenues

CBO estimates that enacting H.R. 1375 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 75-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 $36 million over the next five years and by $100 million over the 2004–2013 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 2004 and 2006 and that national banks would convert earlier than state-chartered banks.

Business Organization Flexibility. Under section 110 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 Internal Revenue Service (IRS) currently taxes state-chartered bank-LLCs as C corporations. LLCs have 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 believes that it is quite possible that the OCC would alter its regulations to allow national banks to organize in noncorporate form. We expect that, over the next decade, most

states that do not currently allow banks to organize as LLCs will begin allowing them to do so in order to be competitive. Under H.R. 1375, future IRS tax treatment of bank-LLCs is uncertain. CBO assumes that the IRS may allow bank-LLCs to be taxed as partnerships at some point in the next decade. The estimated revenue effects of section 110 reflect CBO's estimate of the likelihood of such IRS actions. CBO anticipates that banks forming as LLCs would most likely be newly chartered institutions and that, 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 federal revenues by a total of $1 million over the next five years and by $17 million over the 2004–2013 period.

Civil and Criminal Penalties. H.R. 1375 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. 1375 would increase direct spending by a total of about $15 million over the 2004–2013 period to pay for increased litigation costs and larger payments for "goodwill" claims against the government. The bill also would reduce offsetting receipts collected from credit unions that lease federal facilities, and it could affect the cost of deposit insurance.

Monetary Damages in Goodwill Cases. Section 214 would preclude the use of certain legal defenses in claims for damages against the United States arising out of the implementation of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). CBO estimates that enacting this provision would increase the cost of litigating and resolving such claims by a total of $15 million over the next five years.

Background on Goodwill Cases. Under section 214, courts could not dismiss a claim arising out of the implementation of FIRREA on the basis of res judicata, collateral estoppel, or similar defenses if the defense was based on a decision, opinion, or order of judgment entered by any court prior to July 1, 1996. On that date, the Supreme Court decided *United States* v. *Winstar Corp.,* 518 U.S. 839 (1996), holding that the government became liable for damages in breach of contract when the accounting treatment of "supervisory goodwill" that it had previously approved was prevented by enactment of FIRREA. About 100 "goodwill" cases against the government are still pending before the courts, with claims totaling about $20 billion. CBO estimates that, under current law, such claims will cost the government about $1.5 billion over the 2004–2013 period. Judgments, settlements, and litigation expenses for

such claims are paid from the FSLIC Resolution Fund, and such payments do not require appropriation action.

By eliminating some defenses currently available to the United States in such cases, section 214 would increase the likelihood that some claims would reach a hearing on the merits, thereby allowing cases to proceed further in the judicial process than may otherwise be likely. According to the Department of Justice (DOJ) and the FDIC, this provision would affect only a few of the goodwill cases; claims in the affected cases could total about $200 million. (This provision also could affect cases in which the FDIC is the plaintiff as the receiver of a failed thrift, but any monetary awards to the FDIC would be intragovernmental payments and would have no affect on the federal budget.)

Estimated Cost of This Provision. CBO expects that enacting section 214 would increase the cost of litigation and potential settlements or judgments against the United States. Whether those costs are large or small would depend on the role those defenses would otherwise play in the outcome of each case. For example, the cost could be significant if the loss of those defenses resulted in a judgment for plaintiffs on the merits but could be negligible if the judgment were against the plaintiffs.

For this estimate, CBO assumes that defenses of res judicata and collateral estoppel would be just two of several possible defenses and other factors affecting awards of monetary damages and that barring them would therefore have a small effect on the potential costs of such claims. We estimate that enacting this provision would increase expected payments for such claims by about $10 million—or 5 percent of the roughly $200 million in claims that might be affected by this provision. Given the pace of such litigation, we expect that those added costs would occur in 2007 and 2008. In addition, CBO estimates that DOJ's administrative costs would increase by an average of about $1 million a year as a result of the added time and workload associated with those cases. This estimate is based on historical trends in the cost of litigating such claims.

Nongoodwill Cases. Because section 214 would not limit the affected claims to goodwill cases, this provision also could affect other types of claims for monetary damages arising out of the implementation of FIRREA that meet the criteria in the bill. This provision could encourage the filing of such claims that were resolved prior to July 1, 1996; however, DOJ is currently unaware of any such claims.

Offsetting Receipts From Federal 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 2008.

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, the 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 decease in costs would be offset by adjustments in the insurance premiums paid by banks, thrifts, or credit unions.

Spending subject to appropriation

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.

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. 1375 would preempt certain state laws and place new requirements on certain state agencies that regulate financial institutions. Both the preemptions and the new requirements would be mandates as defined in UMRA. CBO estimates that the cost of those mandates taken together would not exceed the threshold established in UMRA ($59 million in 2003, adjusted annually for inflation).

Section 209 would preempt certain state securities laws by prohibiting states from requiring agents representing 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.

Section 301 would authorize certain privately insured credit unions to apply for membership in a Federal Home Loan Bank (FHLB). Part of the application process would require state regulators of credit unions to determine whether an applicant is eligible for federal deposit insurance. This requirement would be a mandate, but because the regulators already make that determination under state law, the additional cost to comply with the requirement would be minimal.

Upon becoming members, those credit unions would be eligible for loans from the FHLB. To preserve the value of those loans, section 301 would preempt certain state contract laws that otherwise would allow defaulting credit unions to avoid certain contractual obligations. Because those credit unions are not currently eligible for membership in a federal home loan bank, and accordingly, have no contracts for credit, this preemption, while a mandate, would impose no costs on state, local, or tribal governments.

Section 302 would require state regulators of credit unions to provide certain information when requested by the NCUA. Because this provision would not require states to prepare any additional reports, merely to provide them to NCUA upon request, CBO estimates that the cost to states would be minimal.

Section 401 would expand an existing preemption of state laws related to mergers between insured depository institutions chartered in different states. Current law preempts state laws that restrict mergers between insured banks with different home states. This section would expand that preemption to cover mergers between insured banks and other insured depository institutions or trust companies with different home states. This expansion of a preemption would be a mandate under UMRA but would impose little or no cost on states.

Section 401 also would preempt state laws that regulate certain fiduciary activities performed by insured banks and other depository institutions. The bill would allow banks and trusts of a state (the home state) to locate a branch in another state (the host state) as long as the services provided by the branch are not in contravention of home state or host state law. Further, if the host state allows other types of entities to offer the same services as the branch bank or trust seeking to locate in the host state, home state approval of the branch would not be in contravention of host state law. This provision could preempt laws of the host state but would impose no costs on them.

Section 619 provides that, except where expressly provided in a cooperative agreement, only the bank supervisor of the home state of an insured state bank may impose supervisory fees on the bank. To the extent that state laws permit such charges, this provision would preempt state authority. However, based on information from the Conference of State Bank Supervisors, under current practice, host states rarely if ever charge such fees, and therefore, we estimate that enacting this provision would have no significant effect on state revenues.

Estimated impact on the private sector

H.R. 1375 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 estimated in UMRA ($117 million in 2003, adjusted annually for inflation).

Mandates

The bill would impose mandates on depository institutions controlled by companies other than depository institution holding companies; nondepository institutions that control insured depository institutions; uninsured banks; bank holding companies and their subsidiaries; savings and loan association holding companies and their subsidiaries; and Federal Home Loan Banks. Mandates in the bill include an expansion of the authority of the FDIC over certain insured depositories and companies that control insured depositories, a prohibition on participation in the affairs of financial institutions of people convicted of certain crimes, and additional reporting requirements for FHLBs.

Expansion of the FDIC's Authorities. 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). H.R. 1375 would amend current law to give the FDIC certain authorities concerning troubled or failing depository institutions held by those new forms of holding companies.

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 include 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.

In addition, 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. Institute-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.

Prohibitions 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 regulatory.

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.

Reporting Requirements for Federal Home Loan Banks. Section 616 would require the Federal Home Loan Banks to report the compensation and expenses paid to directors in their annual reports. CBO expects that the cost of complying with this mandate would be minimal.

Estimate prepared by: Federal costs: Kathleen Gramp and Jenny Lin; Federal revenues: Pam Greene; Impact of state, local, and tribal governments: Victoria Heid Hall; Impact on the private sector: Judith Ruud.

Estimate approved by: Robert A. Sunshine, 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 defense and general welfare of the United States), and clause 3 (relating to the power to regulate foreign and 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 2003," 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. 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 108. 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 109. 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 110. 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 111. 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.

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 gives thrift institutions parity with banks with respect to investment adviser and broker-dealer registration requirements.

Section 202. Investments by Federal savings associations authorized to promote the public welfare

This section gives 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 (OTS) 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 10 percent of its capital and surplus. 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 (HOLA). 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 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 percent to 20 percent of assets.

Section 213. Clarifying citizenship of Federal savings associations for Federal court jurisdiction

This section treats Federal savings associations for corporate purposes as being located in the State in which the thrift has its home office.

Section 214. Clarification of applicability of certain procedural doctrines

This section is intended to ensure that all institutions having claims for relief under the Supreme Court's 1996 decision in *United States* v. *Winstar*, 518 U.S. 839 (1996) which held that the government breached its contracts with institutions that purchased failing thrifts at the government's request when it implemented the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), are treated equally in seeking to have those claims adjudicated in the Federal courts.

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.

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 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 allow loan maturities up to 15 years, or longer terms as permitted by the National Credit Union Administration (NCUA) 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

Federal credit unions are currently authorized to provide check cashing and money transfer services to members. This section allows Federal credit unions to provide those services to anyone eligible to become a member.

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 flexibility to expel a member who is disruptive to the operations of the credit union, including harassing personnel and creating safety concerns, with-

out 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 exceptions, similar to those provided banks, from broker-dealer and investment adviser registration 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.

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. Those 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.

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 and 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.

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.

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 definitional 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.

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

Currently, 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 ten or more years old at the time of its appointment as receiver, 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 main-

taining the requirement that agencies prescribe the manner of the preservation of records, to ensure their reliability, regardless of the technology used.

Section 606. 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 charged with certain crimes 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 607. Streamlining depository institution merger application requirements

This section streamlines application requirements by eliminating the requirement that each Federal banking agency 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.

Section 608. 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 609. Shortening of post-approval antitrust review waiting period for bank acquisitions and mergers with the agreement of the Attorney General

Currently, banks and bank holding companies must delay consummating any bank acquisition or merger for at least 15 days after the transaction has been approved by a Federal banking agency. This waiting period is designed to allow the Attorney General to challenge the transaction, if the Attorney General believes the transaction would significantly harm competition. This section would allow the banking agency to reduce the waiting period to 5 days, only in cases where the Attorney General has agreed in advance that the acquisition or merger would not have serious anticompetitive effects. In such circumstances, a longer waiting period is not needed to allow the Attorney General to review the transaction and merely delays the ability of the banking organizations

to achieve their business objectives. This section does not shorten the time period for private parties to challenge the banking agency's approval of the transaction under the Community Reinvestment Act or banking laws.

Section 610. 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 611. 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 any of its nonbank subsidiaries 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.

Section 612. 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 613. Examiners of financial institutions

This section authorizes limited waivers from the prohibition on examiners accepting credit from a bank being examined, if the examiner fully discloses the nature and circumstances of the loan and receives a determination from the examiner's employer that the loan would not affect the integrity of the examination. Examiners are permitted to receive credit cards on terms and conditions no more favorable to the examiner than those generally applicable to other consumers.

Section 614. Parity in standards for institution-affiliated parties

In recent years, bank regulators have seen an increase in audit and internal control deficiencies at many insured institutions, some of which have caused operating losses and failures. Currently, independent contractors, such as accountants, attorneys, and appraisers, are treated more leniently from an enforcement standpoint than directors, officers, and others. To be within its enforcement jurisdiction, a bank regulator must first establish that an independent contractor is an "institution-affiliated party." This section holds independent contractors to a standard closer to other institu-

tion-affiliated parties, by removing a statutory requirement that the Federal banking agencies demonstrate that an independent contractor acted "knowingly or recklessly" when participating in violations of law or regulation, breaches of fiduciary duty, or unsafe or unsound practices.

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. Compensation of Federal Home Loan Bank directors

Currently, a limit is placed on the compensation of directors of Federal Home Loan Bank boards. This section allows each Federal Home Loan Bank to pay its board members reasonable compensation for the time required of them and necessary expenses.

Section 617. Extension of terms of Federal Home Loan Bank directors

Currently, the term of each Federal Home Loan Bank director, whether elected or appointed, is three years. This section extends the term to four years and provides that terms are staggered with one-quarter of the terms expiring each year. The extension would apply only prospectively, not to the terms of existing directors.

Section 618. Biennial reports on the status of agency employment of minorities and women

This section requires that, before December 31, 2003 and the end of each two-year period thereafter, each of the Federal banking agencies 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.

TITLE VII—CLERICAL AND TECHNICAL AMENDMENTS

Section 701. Clerical amendments to Home Owners' Loan Act

This section corrects the table of contents for the Home Owners' Loan Act (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 702. Technical corrections to the Federal Credit Union Act

This section makes technical and conforming amendments to the Federal Credit Union Act.

Section 703. Other technical corrections

This section makes technical corrections to title 18, United States Code.

Section 704. 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.

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 italics, existing law in which no change is proposed is shown in roman):

REVISED STATUTES OF THE UNITED STATES

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TITLE LXII.

NATIONAL BANKS.

CHAPTER ONE.

ORGANIZATION AND POWERS.

Sec.
5133. Formation of national banking associations.

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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. The name assumed by such association; which name shall include the word "national".

Second. [The place where its operations of discount and deposit are to be carried on] *The place where the main office of the national 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. To adopt and use a corporate seal.

* * * * * * *

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 di-

rects 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 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). 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) * * *

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(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 immediately 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.**]**

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(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.

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[5199. Dividends.]
5199. National bank dividends.

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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. 3. As used in this Act—

(a) * * *

* * * * * * *

(u) INSTITUTION-AFFILIATED PARTY.—The term "institution-affiliated party" means—

(1) * * *

* * * * * * *

(4) any independent contractor (including any attorney, appraiser, or accountant) who **[**knowingly or recklessly**]** participates in—

(A) * * *

* * * * * * *

SEC. 5. DEPOSIT INSURANCE.

(a) * * *

* * * * * * *

(e) LIABILITY OF COMMONLY CONTROLLED DEPOSITORY INSTITUTIONS.—

(1) * * *

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(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.

* * * * * * *

(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;

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SEC. 8. (a) * * *

* * * * * * *

(c)(1) * * *

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(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) * * *

* * * * * * *

(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—

(i) * * *

* * * * * * *

the appropriate Federal banking agency may, if continued service or participation by such party may pose a threat to the interests of [the depository] *any depository* institution's depositors or may threaten to impair public confidence in [the depository] *any depository* institution, 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] *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 *of which the subject of the order is 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 appropriate Federal banking agency may, if continued service or participation by such party may pose a threat to the interests of [the depository] *any depository* institution's depositors or may threaten to impair public confidence in [the depository] *any depository* institution, 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] *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] *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 *of which the subject of the order is an institution-affiliated party*, 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) CONTINUATION OF AUTHORITY.—A Federal banking agency may issue an order under this paragraph with respect to an individual who is an institution-affiliated party at a depository institution at the time of an offense described in subparagraph (A) without regard to—

(i) whether such individual is an institution-affiliated party at any depository institution at the time the order is considered or issued by the agency; or

(ii) whether the depository institution 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 agency.

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(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).

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SEC. 10. (a) * * *

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(d) ANNUAL ON-SITE EXAMINATIONS OF ALL INSURED DEPOSITORY INSTITUTIONS REQUIRED.—

(1) * * *

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(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) * * *

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[(6)**]** *(7)* COORDINATED EXAMINATIONS.—To minimize the disruptive effects of examinations on the operations of insured depository institutions—

(A) * * *

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[(7)**]** *(8)* SEPARATE EXAMINATIONS PERMITTED.—Notwithstanding paragraph **[**(6)**]** *(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)**]** *(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 Af-

fairs 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) IN GENERAL.—The appropriate State bank supervisor of the home State of an insured State bank has authority to examine and supervise the bank. The State bank supervisor of the

home State of an insured State bank shall exercise its 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. Except as expressly provided in a cooperative agreement between the State bank supervisors of the home State and host State(s) 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.—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—

(A) 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

(B) 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. The State bank supervisor of the home State of an insured State bank shall 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. The State bank supervisor of the bank's home State shall provide such notice 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 agree-

ment 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.—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. Except for State bank supervisors, no provision of this subsection (h) 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) The terms "host State", "home State", and "out-of-State bank" have the same meanings as in section 44(g).

(B) 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) 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) 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) * * *

* * * * * * *

[(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) * * *

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(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 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 are at least 10 years old as of the date the Corporation is appointed as the receiver of such depository institution, 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. 11A. FSLIC RESOLUTION FUND.

(a) * * *

* * * * * * *

(d) [LEGAL PROCEEDINGS.—Any judgment] *LEGAL PROCEEDINGS.—*

(1) IN GENERAL.—Any judgment resulting from a proceeding to which the Federal Savings and Loan Insurance Corporation was a party prior to its dissolution or which is initiated against the Corporation with respect to the Federal Savings and Loan Insurance Corporation or with respect to the FSLIC Resolution Fund shall be limited to the assets of the FSLIC Resolution Fund.

(2) CLARIFICATION OF APPLICABILITY OF CERTAIN PROCEDURAL DOCTRINES.—In any proceeding seeking a monetary recovery against the United States, or an agency or official thereof, based upon actions of the Federal Savings and Loan Insurance Corporation prior to its dissolution, or the Federal Home Loan Bank Board prior to its dissolution, and arising from the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 or its implementation, and where any monetary recovery in such proceeding would be paid from the FSLIC Resolution Fund or any supplements thereto, neither the United States Court of Federal Claims, the United States Court of Appeals for the Federal Circuit, nor any other court of competent jurisdiction shall dismiss, or affirm on appeal the dismissal of, the claims of any party seeking such monetary recovery, on the basis of res judicata, collateral estoppel, or any similar doctrine, defense, or rule of law, based upon any decision, opinion, or order of judgment entered by any court prior to July 1, 1996. Unless some other defense is applicable, in any such proceeding, the United States Court of Federal Claims, the United States Court of Appeals for the Federal Circuit, and any other court of competent jurisdiction shall review the merits of the claims of the party seeking such monetary relief and shall enter judgment accordingly.

* * * * * * *

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) * * *

* * * * * * *

[(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, before acting on any application for approval of a merger transaction, the responsible agency, unless the agency finds that it must act immediately in order to prevent the probable failure of a depository institution involved, shall—

(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) 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 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)(B) 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] *5* calendar days after the date of approval.

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(d)(1) * * *

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(4) [STATE "OPT-IN" ELECTION TO PERMIT INTERSTATE] *INTERSTATE* BRANCHING THROUGH DE NOVO BRANCHES.—

(A) IN GENERAL.—Subject to subparagraph (B), 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.*

* * * * * * *

(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] *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).

* * * * * * *

(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 con-

trolling 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) the insured depository institution is subject to any direction issued in writing by a Federal banking agency to increase its capital;

[(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.

* * * * * * *

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 bank holding company, any subsidiary (other than a bank) of 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, subsidiary, 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 sub-

stituting "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.

* * * * * * *

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.

(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)] 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 appro-

priate 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), 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 emergency exists justifying such waiver or if the shareholders of the asso-*

ciation 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) * * *

(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

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 may not be compelled to disclose information received from a foreign regulatory or supervisory authority if—

(A) 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 sub-*

section 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) * * *

(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 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

[(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) * * *

(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, re-

ports, 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 subsidiaries) 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. 1. Short title and table of contents.

* * * * * * *

[Sec. 5. Federal savings associations.
[Sec. 6. Liquid asset requirements.]
Sec. 5. Savings associations.
Sec. 6. [Repealed.]

* * * * * * *

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) * * *

* * * * * * *

(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].

* * * * * * *

(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 10 percent of the savings association's capital stock actually paid in and unimpaired and 10 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 institutions*. 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 sub-

paragraph 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.

* * * * * * *

(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**]** *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).

* * * * * * *

(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 op-

erated 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.*

* * * * * * *

(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 State in which such savings association has its main office.

* * * * * * *

SEC. 10. REGULATION OF HOLDING COMPANIES.

(a) DEFINITIONS.—

(1) IN GENERAL.—As used in this section, unless the context otherwise requires—

(A) * * *

* * * * * * *

(C) COMPANY.—The term "company" means any corporation, partnership, *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.]

* * * * * * *

[(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.

* * * * * * *

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.

* * * * * * *

MANAGEMENT OF BANKS

SEC. 7. (a) * * *

* * * * * * *

(d) The term of each director, whether elected or appointed, shall be [3] *4* years. The board of directors of each Federal home loan

bank and the Finance Board shall adjust the terms of members first elected or appointed after the date of the enactment of the [Federal Home Loan Bank System Modernization Act of 1999] *Financial Services Regulatory Relief Act of 2003* to ensure that the terms of the members of the board of directors are staggered with approximately [⅓] *¼* of the terms expiring each year. If any person, before or after, or partly before and partly after, the date of the enactment of this sentence, has been elected to each of three consecutive full terms as an elective director of a Federal home loan bank in any elective directorship or elective directorships and has served for all or part of each of said terms, such person shall not be eligible for election to an elective directorship of such bank for a term which begins earlier than two years after the expiration of the last expiring of said three terms. The Board is hereby authorized to prescribe such rules and regulations as it may deem necessary or appropriate for the nomination and election of directors of Federal home loan banks, including, without limitation on the generality of the foregoing, rules and regulations with respect to the breaking of ties and with respect to the inclusion of more than one directorship on a single ballot and the methods of voting and of determining the results of voting in such cases.

* * * * * * *

[(i) DIRECTORS' COMPENSATION.—

[(1) IN GENERAL.—Subject to paragraph (2), each bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, in accordance with the resolutions adopted by the such directors, subject to the approval of the board.

[(2) LIMITATION.—

[(A) IN GENERAL.—The annual salary of each of the following members of the board of directors of a Federal home loan bank may not exceed the amount specified:

In the case of the—	**[The annual compensation may not exceed—**
Chairperson	$25,000
Vice Chairperson	$20,000
All other members	$15,000.

[(B) ADJUSTMENT.—Beginning January 1, 2001, each dollar amount referred to in the table in subparagraph (A) shall be adjusted annually by the Finance Board, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.

[(C) EXPENSES.—Subparagraph (A) shall not be construed as prohibiting the reimbursement of expenses incurred by members of the board of directors of any Federal home loan bank in connection with service on the board of directors.]

(i) DIRECTORS' COMPENSATION.—

(1) IN GENERAL.—Each Federal home loan bank may pay the directors on the board of directors of the bank reasonable compensation for the time required of such directors, and reasonable expenses incurred by the directors, in connection with service on the board of directors, in accordance with resolutions

adopted by the board of directors and subject to the approval of the board.

(2) ANNUAL REPORT BY THE BOARD.—Information regarding compensation and expenses paid by the Federal home loan banks to the directors on the boards of directors of the banks shall be included in the annual report submitted to the Congress by the Board pursuant to section 2B(d).

* * * * * * *

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] 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 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] 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 III] *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 electronic fund transfers); and

(B) to cash checks and money orders and receive 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) INVESTMENT FOR THE CREDIT UNION'S OWN ACCOUNT.—

(1) IN GENERAL.—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 satisfactorily 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 mem-

bers 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.

* * * * * * *

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 credit union] *any credit union*, by written notice served upon such party, suspend such party from of-

fice or prohibit such party from further participation in any manner in the conduct of the affairs of [the credit union] *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 credit union's members or may threaten to impair public confidence in [the credit union] *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 credit union] *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 credit union] *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 of-

fense remains in existence at the time the order is considered or issued by the Board.

* * * * * * *

(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) the credit union is insolvent;

(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 subparagraph, 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*

* * * * * * *

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) * * *

* * * * * * *

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this subsection—

(i) * * *

(ii) SECURITIES CONTRACT.—The term "securities contract"—

(I) has the meaning given to such term in section 741 of title 11, United States Code, except that the term "security" (as used in such section) shall be deemed to include any mortgage loan, any mortgage-related security (as defined in section 3(a)(41) of the Securities Exchange Act of 1934*)*, and any interest in any mortgage loan or mortgage-related security; 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.

* * * * * * *

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.

Upon the conversion of a national bank into a State bank, or the merger or consolidation of a national bank with a State bank which is not a member of the Federal Reserve System, the resulting or continuing State bank may be admitted to membership in the Federal Reserve System by the Board of Governors of the Federal Reserve System in accordance with the provisions of this section, but, otherwise, the Federal Reserve bank stock owned by the national bank shall be canceled and paid for as provided in section 5 of this Act. Upon the merger or consolidation of a national bank with a State member bank under a State charter, the membership of the State bank in the Federal Reserve System shall continue.

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 (except within the District of Columbia.) *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. 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. (12 U.S.C. 375a).

* * * * * * *

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) * * *

* * * * * * *

[(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 exist-

ing 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) an acquisition of 1 or more banks in default or in danger of default; or

(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.

* * * * * * *

SAVING PROVISION

SEC. 11. (a) * * *

(b) ANTITRUST REVIEW.—

(1) IN GENERAL.—The Board shall immediately notify the Attorney General of any approval by it pursuant to section 3 of a proposed acquisition, merger, or consolidation transaction and, if the transaction also involves an acquisition under section 4, the Board shall also notify the Federal Trade Commission of such approval. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board or, if the Board 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 Board with the concurrence of the Attorney General, but in no event less than [15] *5* calendar days after the date of approval. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 3 shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 3 might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction

approved pursuant to section 3 on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the Board is directed to apply under section 3 of this Act. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 3 in compliance with this Act and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this Act shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

* * * * * * *

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 primary 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) * * *

* * * * * * *

(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 under authority of section 4(f) of this Act and no bank service company shall perform any activity 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.

* * * * * * *

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

* * * * * * *

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec.
201. Bribery of public officials and witnesses.
* * * * * * *
[212. Offer of loan or gratuity to bank examiner.
[213. Acceptance of loan or gratuity by bank examiner.]
212. Offer of credit to bank examiner.
213. Acceptance of credit by bank examiner.
* * * * * * *

[§ 212. Offer of loan or gratuity to bank examiner

[Whoever, being an officer, director or employee of a financial institution which is a member of the Federal Reserve System, or the deposits of which are insured by the Federal Deposit Insurance Corporation, or which is a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or which is an organization operating under section 25 or section 25(a) of the Federal Reserve Act, or of any Farm Credit Bank, bank for cooperatives, production credit association, Federal land bank association, agricultural credit association, Federal land credit association, service organization chartered under section 4.26 of the Farm Credit Act of 1971, the Farm Credit System Financial Assistance Corporation, the Federal Agricultural Mortgage Credit Corporation, the Federal Farm Credit Banks Funding Corporation, the National Consumer Cooperative Bank, or other institution subject to examination by a Farm Credit Administration examiner, or of any small business investment company, makes or grants any loan or gratuity, to any examiner or assistant examiner who examines or has authority to examine such bank, branch, agency, organization, corporation, or institution, shall be fined under this title or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given.

[The provisions of this section and section 213 of this title shall apply to all public examiners and assistant examiners who examine member banks of the Federal Reserve System, insured financial institutions, branches or agencies of foreign banks (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), organizations operating under section 25 or section 25(a) of the Federal Reserve Act, whether appointed by the Comptroller of the Currency, by the Board of Governors of the Federal Reserve System, by a Federal Reserve Agent, by a Federal Reserve bank, by the Federal Deposit Insurance Corporation, by the Office of Thrift Supervision, or by the Federal Housing Finance Board, or appointed or elected under the laws of any state; but shall not apply to private examiners or assistant examiners employed only by a clearinghouse association or by the directors of a bank.

[§ 213. Acceptance of loan or gratuity by bank examiner

[Whoever, being an examiner or assistant examiner of member banks of the Federal Reserve System, financial institutions the deposits of which are insured by the Federal Deposit Insurance Corporation, which are branches or agencies of foreign banks (as such

terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or which are organizations operating under section 25 or section 25(a) of the Federal Reserve Act, or a farm credit examiner, or an examiner of small business investment companies, accepts a loan or gratuity from any bank, branch, agency, corporation, association or organization examined by him or from any person connected herewith, shall be fined under this title or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given, and shall be disqualified from holding office as such examiner.]

* * * * * * *

§ 212. Offer of credit to bank examiner

(a) Subject to section 213(b), whoever being an officer, director or employee of a financial institution extends credit to any examiner which the examiner is prohibited from accepting under section 213 shall be fined under this title or imprisoned not more than one year, or both; and may be fined a further sum equal to the amount of the credit extended.

(b) For purposes of this section, the following definitions shall apply:

(1) The term "financial institution" does not include a credit union, a Federal reserve bank, a Federal home loan bank, or a depository institution holding company.

(2) The term "examiner" means any person—

(A) appointed by a Federal financial institution regulatory agency or pursuant to the laws of any State to examine a financial institution; or

(B) elected under the law of any State to conduct examinations of any financial institution.

(3) The term "Federal financial institution regulatory agency" means—

(A) the Comptroller of the Currency;

(B) the Board of Governors of the Federal Reserve System;

(C) the Director of the Office of Thrift Supervision;

(D) the Federal Deposit Insurance Corporation;

(E) the Federal Housing Finance Board;

(F) the Farm Credit Administration;

(G) the Farm Credit System Insurance Corporation; and

(H) the Small Business Administration.

§ 213. Acceptance of credit by bank examiner

(a) Whoever, being an examiner, accepts an extension of credit from any financial institution that the examiner examines or has authority to examine, or from any person connected with any such financial institution, shall be fined under this title or imprisoned not more than one year, or both; and may be fined a further sum equal to the amount of the credit extended, and shall be disqualified from holding office as such examiner.

(b) Notwithstanding subsection (a) or section 212, a Federal financial institution regulatory agency may, by regulation or by order on a case-by-case basis, permit a financial institution to extend

credit to an examiner, and permit an examiner to accept an extension of credit from a financial institution, if the agency determines that the extension of credit would not likely affect the integrity of any examination of a financial institution. Before prescribing regulations or issuing any order under this subsection, a Federal financial institution regulatory agency shall consult with each other Federal financial institution regulatory agency with regard to any such regulation or order. Any regulation prescribed by a Federal financial institution regulatory agency under this subsection, may exempt certain classes or categories of credit from the scope of this section or section 212, and shall provide procedures for examiners and financial institutions to request case-by-case exemption orders under this subsection, subject to subsection (c).

(c) In considering any request by a financial institution or examiner for a case-by-case exemption order under subsection (b), a Federal financial institution regulatory agency shall consider such factors as the agency determines to be appropriate, including—

(1) whether the terms and conditions of the credit being offered the examiner are generally comparable to those offered by the financial institution in connection with similar types of credit extended to other customers in similar circumstances;

(2) the nature and extent of any other relationship the examiner has with the financial institution or any officer, director, or employee of the financial institution;

(3) the proximity in time between any examination of the financial institution in which the examiner participated, or is scheduled to participate, and the extension, or the offer of an extension, of credit;

(4) whether there are any other circumstances involving the transaction, or the proposed transaction, that may be perceived as providing the examiner with preferential treatment; and

(5) any other fact or circumstance the agency may consider to be appropriate under the circumstances.

(d) Notwithstanding subsection (a) or section 212, an examiner employed by a Federal financial institution regulatory agency may apply for and receive a credit card, or otherwise be approved as a cardholder, under any credit card account under an open end consumer credit plan, to the extent the terms and conditions applicable with respect to such account, and any credit extended under such account, are no more favorable generally to the examiner than the terms and conditions that are generally applicable to credit card accounts offered by the same financial institution to other cardholders under open end consumer credit plans.

(e) For purposes of this section, the following definitions shall apply:

(1) The terms "examiner", "Federal financial institution regulatory agency", and "financial institution" have the same meaning as in section 212.

(2) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(3) The term "creditor" refers only to a person who both (A) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which

the payment of a finance charge is or may be required, and (B) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors.

(4) The term "consumer", when used with reference to an open end credit plan, means a credit plan under which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of any transaction under the plan are primarily for personal, family, or household purposes.

(5) The term "open end credit plan" means a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan which is an open end credit plan within the meaning of the preceding sentence is an open end credit plan even if credit information is verified from time to time.

(6) The term "credit card" means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(7) The term "cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(8) The term "card issuer" means any person who issues a credit card, or the agent of such person with respect to such card.

CHAPTER 61—LOTTERIES

* * * * * * *

§ 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.

* * * * * * *

ADDITIONAL VIEWS

Section 614 of this legislation would repeal a provision of title IX of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), which established a "knowingly and reckless" standard for banking agency administrative actions against "institution affiliated" parties, like appraisers, accountants or lawyers. The effect of this provision would be to subject independent contractors to the banking agencies' enforcement authority merely as a result of their status.

I have several concerns regarding section 614 of this bill, which I expressed in both the subcommittee and full committee. This provision would subject third parties—who do not participate in the financial institution's management—to the same enforcement penalties as management, even though they are not charged with the responsibility of running the institution. These outside contractors have no control over internal bank underwriting and operational decisionmaking. This proposed change in law would contradict the intent of FIRREA which enhanced the enforcement powers of the regulatory agencies in a way that recognized the distinction between powerful insiders who control their institutions and those hired independent contractors who perform specialized services for them.

Moreover, it is not clear to me that the agencies do not have sufficient authority to bring the necessary enforcement actions under current law. Under current law, the banking agencies are empowered to bring administrative enforcement proceedings against a depository institution or an "institution affiliated party" of that bank. Such proceedings include civil money penalties, suspension or removal, and temporary and permanent cease and desist orders. The agencies can assess massive fines of up to $1 million a day, seek restitution, or remove a professional from rendering services to an insured institution. Why would the agencies need any more authority?

Lastly, I don't understand why a provision that imposes new burdens on industry is being included in a bill that calls for regulatory relief. Section 614 is a new provision that was added to this year's Regulatory Relief bill at the eleventh hour in response to the banking regulators. The provision has not been the subject of any substantive debate nor has there been time for input from the affected industries.

We in Congress must be very deliberative before we grant broad administrative enforcement authority. Administrative enforcement actions are brought by agency staff, heard by an administrative law judge, and ultimately decided by the agency itself. The agencies are the judge and the jury, and in some cases their sentences can be draconian. Although a decision can be appealed in the federal courts, deference is traditionally given to the agencies. Such admin-

istrative process does not provide the type of due process that should be afforded to third party independent consultants who are not "insiders."

As this bill moves forward in the legislative process, I hope my concerns will be addressed.

SPENCER BACHUS.

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