GAO pp. 8, 9, 23

95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 95-1383

FINANCIAL INSTITUTIONS REGULATORY ACT OF 1978

JULY 20, 1978.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. REUSS, from the Committee on Banking, Finance and Urban Affairs, submitted the following

REPORT

together with

SUPPLEMENTAL, ADDITIONAL, AND MINORITY VIEWS

[To accompany H.R. 13471]

[Including cost estimate of the Congressional Budget Office]

The Committee on Banking, Finance and Urban Affairs, to whom was referred the bill (H.R. 13471) to strengthen the supervisory authority of Federal agencies which regulate depository institutions, to prohibit interlocking management and director relationships between financial institutions, to amend the Federal Deposit Insurance Act, to restrict conflicts of interest involving officials of financial supervisory agencies, to control the sale of insured financial institutions, to regulate the use of correspondent accounts, to establish a Federal Bank Examinataion Council, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

TABLE OF CONTENTS

HISTORY OF THE LEGISLATION

On September 13, 1977, Mr. Fernand J. St Germain introduced H.R. 9086, the "Safe Banking Act of 1977." The Subcommittee on Financial Institutions Supervision, Regulation and Insurance held extensive hearings on that proposal (September 6, 14, 19, 20, 21, 28, and 29, and October 3, 1977) and printed a 3,394-page hearing record. Testimony was heard from 52 witnesses including Members of Congress; officials of the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Reserve Board, the National Credit Union Administration, the Justice Department, the Treasury Department, and the Securities and Exchange Commission; financial institution trade associations; officials of banks and savings and loan associations; consumer organizations; and labor unions.

On October 17, 1977, Mr. St Germain, Mr. Annunzio, Mr. Cavanaugh, Mr. Patterson of California, Mr. Minish, Mr. Mitchell of Maryland, Ms. Oakar, and Mr. Blanchard introduced H.R. 9600, a revised bill based on the hearing record of the subcommittee. The subcommittee conducted markup in executive session on October 18, 19, 20, 25, and 27, 1977; and on May 8, 16, 17, 31, and June 5, and 6, 1978. On June 6, 1978, the subcommittee ordered reported to the Committee on Banking, Finance and Urban Affairs the bill with amendments and instructed the chairman of the subcommittee to introduce a clean bill.

On June 12, 1978, Mr. St Germain, Mr. Annunzio, Mr. Hanley, Mr. Patterson of California, Mr. LaFalce, Mr. Allen, Mr. Cavanaugh, Mr. Wylie, and Mr. Mitchell of Maryland introduced H.R. 13088. The Committee on Banking, Finance and Urban Affairs met in executive session on June 20, 21, 22, 26, 27, and 29, and July 11, 1978 and on a rollcall of 44 to 0 ordered H.R. 13088, as amended, reported with instructions to introduce a clean bill.

On July 13, 1978, Mr. St Germain, Mr. Reuss, Mr. Moorhead of Pennsylvania, Mr. Gonzalez, Mr. Minish, Mr. Annunzio, Mr. Hanley, Mr. Fauntroy, Mr. Patterson of California, Mr. Blanchard, Mr. LaFalce, Mr. Derrick, Mr. Hannaford, Mr. D'Amours, Mr. Pattison of New York, Mr. Cavanaugh, Ms. Oakar, Mr. Garcia, Mr. Stanton, Mr. Wylie, Mr. McKinney, Mr. Steers, Mr. Evans of Delaware, Mr. Mitchell of Maryland, Mr. Neal, Mrs. Spellman, Mr. AuCoin, Mr. Tsongas, Mr. Vento, Mr. Brown of Michigan, Mr. Hyde, Mr. Leach, Mr. Hollenbeck and Mr. Green, introduced the amended bill, entitled "The Financial Institutions Regulatory Act of 1978", and on July 18, 1978, on a 34-to-5 vote, the Committee on Banking, Finance and Urban Affairs ordered the bill reported favorably to the House of Representatives.

During the hearings and in the executive session markups, the banking agencies—the Comptroller of the Currency, the FDIC, the Board of Governors of the Federal Reserve, the Federal Home Loan Bank Board, and the National Credit Union Administration—offered valuable assistance to the committee as it considered this legislation.

Many of the bill's provisions reflect legislative proposals sent to the Congress by these agencies or they incorporate suggestions made by the agencies to improve the specific statutory language adopted by the committee. The Treasury Department which has a vital interest in and concern for banking legislation, worked closely with the committee on many of the key titles of H.R. 13471. The Department, on behalf of the administration, provided a focal point for involving the administration and the banking agencies in the process of providing needed financial institution reform legislation.

SUMMARY OF THE LEGISLATION

H.R. 13471 contains 20 titles which:

Upgrade and sharpen the machinery of Federal financial regulation;

Place ceilings on borrowing by bank insiders;

Place greater responsibility on boards of directors to oversee their financial institution;

Establish firm conflict of interest standards for policymaking officials who regulate financial institutions;

Give the financial supervisory agencies power to monitor and regulate takeovers of Federally-insured institutions;

Prohibit preferential treatment on loans to bank insiders where banks have placed their funds on deposit in correspondent accounts;

Provide additional disclosure to the supervisory agencies and the public of material facts on activities of banks and bank officials;

Provide mutual savings banks with the right to obtain a Federal charter, thus bringing this group of financial institutions under the dual Federal–State chartering system enjoyed by all other depository institutions;

Provides better coordination among financial supervisory agencies;

Limits access by the Federal Government to an individual's bank records without due process;

Prohibits bank holding companies from engaging in property and casualty insurance business, with exemptions for small communities and small holding companies;

Allows federally chartered thrift institutions to offer transaction accounts where States allow such accounts;

Allows federally chartered thrift institutions to offer alternative mortgage instruments where State-chartered institutions have this power; and

Makes permanent the prohibition on credit card surcharges.

Title I—Supervisory Authority Over Depository Institutions: Provides the financial institution supervisory agencies with additional powers over depository institutions. These powers are civil money penalties for violations of laws, regulations, and cease-and-desist orders; improved cease-and-desist authority; authority to require depository institution holding companies to divest nondepository subsidiaries if those subsidiaries are causing damage to the depository in-

stitution subsidiaries of holding companies. Limitations are placed on insider loans by commercial banks—executive officers and major stockholders are limited to loans to themselves, their affiliated companies, and their political committees which, in the aggregate, total no more than 10 percent of the capital accounts of the bank; overdrafts to directors and executive officers are prohibited; and all insider loans must be nonpreferential as to terms and conditions. Removal and suspension of financial institution insiders who threaten the safety and soundness of financial institutions is made easier while at the same time requiring the agencies to provide due process for individuals so affected.

Title II—Interlocking Directors: Prohibits interlocking directors among depository institutions (banks, savings and loan associations, credit unions, and mutual savings banks) which are in the same standard metropolitan statistical area; or in the same city, town, or village if not in an SMSA. The title also would prohibit such interlocks for large financial institutions regardless of their location.

Title III—Foreign Branching: Makes changes in the Federal Deposit Insurance Act requested by the Federal Deposit Insurance Corporation. These changes include giving the FDIC authority to approve foreign branches of State nonmember insured banks; providing expanded subpena power for bank supervisory agencies in carrying out investigations and examinations; giving FDIC authority to write regulations for laws which they enforce; providing protection for examiners against intimidation and threats; and several technical changes in statutes dealing with reports of condition of banks and the insurance of accounts.

Title IV—Conflicts of Interest: Places restrictions on officials of the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Home Loan Bank on postemployment activities. All of these officials would be prohibited from accepting employment with an institution over which they had jurisdiction if they did not complete the term for which they were appointed. Additionally, these officials would be prohibited from appearing before their former regulatory agency for a period of 2 years after their service regardless of whether they completed their term.

Title V—Credit Union Restructuring: Upgrades the agency which supervises insured credit unions by creating a three-member board (the National Credit Union Administration Board) and makes technical and conforming changes in the credit union statutes to reflect the creation of the board. Members of the new board would be subjected to the same conflict-of-interest provisions as those in title IV for the other four financial institution regulatory agencies.

Title VI—Change in Bank Control Act: Provides for prior notice to the appropriate banking agency of any proposed change of control of an insured bank or bank holding company. The agencies would have 60 days to review the information contained in the notice and could within that time period disapprove the proposed acquisition based on criteria specified in the title.

Title VII—Change in Savings and Loan Control Act: Provides for prior notice to the Federal Home Loan Bank Board of any proposed change of control of an insured savings and loan institution or savings

and loan holding company. The Federal Home Loan Bank Board would have 60 days to review the information contained in the notice and could within that time period disapprove the proposed acquisition based on criteria specified in the title.

Title VIII—Correspondent Accounts: Prohibits preferential treatment in the granting of loans to insiders where correspondent relationships exist. The banking agencies could levy civil money penalties for violations of the nonpreferential treatment provision. Each executive officer and major stockholder would be required to report annually to his board of directors the details of loans received from correspondent banks. Each bank would provide that information to the bank regulatory agencies. Each bank would also provide in a publicly available annual report a list of each insider receiving loans from correspondent banks and an aggregate amount for all such loans.

Title IX—Disclosure of Material Facts: Requires each insured bank to report annually a list of its major stockholders and the aggregate amount of all its loans to officers or major stockholders, their affiliated companies, and their political or campaign committees. The information required to be provided to the public in title VIII would be included in this report.

Title X—Federal Financial Institutions Examination Council: Establishes an examination council composed of top officials of the FDIC, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, and the National Credit Union Administration. The Council would develop uniform standards for examinations of financial institutions and improve coordination among the agencies on a variety of supervisory matters.

Title XI—Right to Financial Privacy: Gives individuals notice of, and a chance to challenge, Federal Government agency requests for their bank records. Access to individual bank records would be governed by the procedures provided by the title and would guarantee that the customer knows who is looking at his records. The agencies would be required to follow the procedures established by this title when they seek an individual's records and to provide a cost reimbursement to the financial institution providing the documents.

Title XII—Charters for Thrift Institutions: Provides mutual savings banks the option of seeking a Federal charter from the Federal Home Loan Bank Board. This gives these institutions the same option now available to commercial banks, credit unions, and savings and loans.

Title XIII—Holding Companies: Prohibits bank holding companies from providing insurance as a principal, agent, or broker unless the insurance is to insure the life of a debtor or is to provide indemnity for payments while a debtor is disabled. Bank holding companies in communities of less than 5,000 population or in communities which have inadequate insurance facilities, or a holding company having less than $50 million in assets would be exempt.

Title XIV—Amendments to the National Banking Laws: Repeals the 6 per cent dividend limitation on preferred stock offered by national banks; extends the time allowed for divesting of real estate acquired by national banks; gives the Comptroller of the Currency

authority to revoke a national bank's trust powers; gives the Comptroller authority to declare, in emergencies, national bank holidays when a Governor in a State declares an emergency State bank holiday; allows the Comptroller to delegate his powers; authorizes the Comptroller to issue rules and regulations; allows outside directors of national banks to qualify by owning holding company stock; and authorizes national bank investments in banker's banks.

Title XV—Termination of National Bank Closed Receivership Fund: Provides a procedure under which the Comptroller of the Currency may terminate the Closed Receivership Fund which operated prior to the establishment of the Federal Deposit Insurance Corporation in the 1930's.

Title XVI—Transaction Accounts: Allows federally chartered thrift institutions to offer non-interest-bearing transaction accounts if State-chartered institutions are given the power to offer such accounts.

Title XVII—Financial Regulation Simplification Act of 1978: Requires the five Federal financial institution supervisory agencies to review, streamline, and sharpen their regulations and to develop a procedure for issuing regulations which assure meaningful participation by interested parties and the public.

Title XVIII—Alternative Mortgage Instruments: Allows federally chartered thrift institutions to offer alternative mortgage instruments in those States which allow them for State-chartered institutions.

Title XIX—Prohibition on Credit Card Surcharges: Makes permanent the prohibition against charging an extra fee for a consumer who chooses to pay for merchandise or services using a credit card. A temporary prohibition enacted 2 years ago on a test basis expires on February 1, 1979.

Title XX—Effective Date: Provides that the act will take effect 120 days after enactment.

NEED FOR THE LEGISLATION

The need for reform and restructuring of the Nation's financial regulatory machinery has long been recognized and the highly publicized bank failures and bank problems extending from the early 1970's have intensified public demand for action.

Even bankers, although reluctant to break from the club-like atmosphere of the industry, have called attention to the need for change as the following letter from a southern bank officer indicates:

> Though I agree with Chairman Burns' recent statement that "generally high standards of behavior prevail in banking" I feel that the provisions of this bill (Safe Banking would greatly strengthen the banking industry by limiting and exposing "insider" credit transactions. While these prohibitions would, without a doubt, serve the public interest, they would also benefit stockholders of banking institutions because inevitably such loans are made at lower interest rates and on more liberal terms than other loans, thus reducing profits. Moreover, as a senior lending officer, I can testify that in some banks certain directors abuse their positions of

> responsibility by approaching lending officers with credit requests that are not in the best interests of their banks. Clear limitations on such loans would take the loan officer "off the spot" when declining loans to those who review his salary at the end of the year. In this regard, I consider overdrafts to be extensions of credit.
>
> I am proud to be a banker. However my profession, like yours, can and must be continually examined for the purpose of reevaluation and reform when it becomes clear that established practices do not serve the public welfare.

And a bank examiner and former banker working in the Southwest, wrote the committee urging action on a wide range of banking problems:

> At one time I was a bank vice president. For the last 10 years I have been a bank examiner—in fact, a thoroughly frustrated examiner at times. In some instances a bank director can be director of two or more banks. No person should be permitted to be a director of more than one insured bank. An amendment to the Clayton Antitrust Act may be necessary. I recently examined a bank and found the board chairman with $50,000 in overdrafts. The entire banking community and all banking authorities consider overdrafts as loans. The chairman in question merely had some stooge elected as chief executive officer to avoid a law that is poorly written. It should be a violation of the law for any officer, director, or substantial owner to be overdrawn, and it should be equally a violation for the person approving such an overdraft. Compensating balances are quite common as requirements for loans in most banks, but when a bank officer, director, or principal owner obtains a loan at a corresponding bank while agreeing to maintain balances there to obtain and enjoy preferential interest rates, something is wrong. Balances so maintained can only be considered a diversion of assets for their own benefit to the detriment of other stockholders.

While the banking system is fundamentally sound, problems exist in all regions of the country and in all classes of financial institutions in varying degrees of severity.

The General Accounting Office study of Federal Supervision of State and National Banks published last year noted:

> Examiners found problems in nearly all of the banks in our samples including those not on the agencies' problem lists.

The adequacy of the Nation's banking laws and the vigor of their administration by the Federal supervisory agencies came into sharp question with the failure of the one billion dollar U.S. National Bank of San Diego in 1973. Investigations conducted by the Subcommittee on Bank Supervision and Insurance of the House Banking and Currency Committee in 1973 and 1974 revealed massive insider abuses at this bank with the chief executive officer, C. Arnholt Smith, and his enterprises taking some $400 million in loans from the bank. The in-

vestigation also revealed that the Comptroller of the Currency's office had been aware of growing insider abuses since 1962—some 11 years before the bank had to close its doors—but had failed to take definitive action.

The next year, the $5 billion Franklin National Bank in New York collapsed, supplanting U.S. National as the Nation's biggest bank failure. In 1975, Hamilton National Bank of Chattanooga, the flagship of a multistate bank holding company, closed its doors.

These three big bank failures in scattered regions of the Nation brought renewed press and public interest in banking and bank regulation and, in early 1976, the Washington Post and the New York Times revealed a series of confidential records from the banking agencies on problem banks and bank holding companies.

Responding to the growing revelations of serious banking problems, the committee in 1976 ordered the General Accounting Office to conduct a study of all three Federal banking agencies and launched a massive series of studies and hearings on the structure, powers, and operation of financial institutions and the regulatory system—the FINE study (Financial Institutions and the Nation's Economy). Both the FINE and GAO reports clearly established the need for change and reform of the statutory and administrative approach to Federal regulation of financial institutions.

The committee's body of knowledge on banking and savings and loan problems was expanded in late 1976 in field hearings conducted in Texas by the Subcommittee on Financial Institutions Supervision, Regulation and Insurance. This investigation centered on the rapid takeover and sale of banks in the Southwest which became known as the Texas Rent-A-Bank scandal. The insider abuses, spawned in the aftermath of these quickie and unregulated transfers of ownership, brought down two State banks and resulted in the conviction of a number of bank officers and directors.

In mid-1977, banking problems moved back to the front pages with the revelation of massive insider dealings involving Bert Lance while he served as a bank officer in Georgia before becoming director of the Office of Management and Budget. These revelations were brought into American homes through television and provided a cram course for millions of families on the day-to-day activities of a bank insider.

Virtually all of the revelations of what has become known as the "Lance affair" covered activities and banking problems that had been discussed, studied and investigated for many years by the committee and which fill volume after volume of printed records.

Since financial institutions provide the lifeblood of communities—money and credit—the public's need for laws to assure a safe, sound, and responsive financial system is obvious. The credit and money powers of a banking institution can often decide whether there are jobs, whether a local industrial plant can stay afloat, whether a small businessman can get the needed funds to modernize, whether the farmer will have the loans to plant and market his crops and whether the individual consumer has a chance to own a home or to send his children to school. When these bank services are lost or diminished through failures, abuses, anticompetitive situations, mismanagement, or poor regulation the impact on a community and a neighborhood can be severe.

H.R. 13471 addresses the banking problems which have become so evident in recent years and provides the machinery to assure that financial institutions live up to the promises of their charter to serve the public in a safe, sound, and responsive manner.

INSIDERS—RESTRICTIONS AND RESPONSIBILITIES

Problem banks and insider abuses have been virtually synonomous. Nothing appears more often on the fever charts of sick financial institutions than self-dealing ailments.

The first item on loan problems called to the attention of examiners in the Comptroller's Handbook on Examination Procedure is "self-dealing". The Comptroller warns his examiners:

> Self-dealing is involved in almost all serious problem bank situations. It is generally found in the form of an overextension of credit on an unsound basis to large shareowners, or their interests, who have improperly used their positions as owners to take money from the bank in the form of unjustified loans (or sometimes as fees, salaries, or payments for goods or service). Active officers who hold their positions at the pleasure of the board and shareowners are subject to influence and therefore are not usually in a position to evaluate and reject these credits on the same basis as the credit requests of other bank customers. In a situation of this nature, active management will often vigorously defend the unsound loans or other self-dealing practices perpetrated upon the bank by the owners.

Your committee's bill provides a reasonable response to the problems associated with insider abuses of financial institutions and to the recognition that insiders have a special duty with respect to their institutions. Specifically, the bill places restrictions on insider loans from their banks and from their bank's correspondent banks; regulates interlocking directorships; and provides statutory language spelling out the board of directors' responsibilities with respect to insider loans. The bank regulatory agencies have requested limits on insider loans to help them curb the practices which have led to serious banking problems.

A. Loans To Insiders From Their Own Banks

Under current law, few restrictions exist on insider loans. This has created a banking system in which an insider or group of insiders, if they want to use their institution's funds for their own purposes, rather than providing services for a wider community, can borrow almost unlimited amounts of funds on terms and conditions which other nonaffiliated individuals may not be able to secure. Not only can this create discriminatory anticompetitive lending policies, but it has been the leading factor in bank failures.

The National Banking Act does limit loans to a single borrower to 10 percent of capital accounts of a national bank but this limit does not require aggregation of loans to affiliated companies or their political committee. Thus, one borrower, by using affiliated companies or entities may borrow amounts far exceeding the base limit.

State laws have varying standards and definitions concerning single borrower and insider limits, with many ranging from 25% of capital accounts and up. Although self-dealing and insider abuses have been demonstrated to be the No. 1 cause of banking problems and failures and thus the No. 1 impact on the Federal insurance fund, existing Federal law provides no real industrywide control over this practice.

Efforts to exempt 9,000 State-chartered bank from limits on insider borrowing were rejected on a 26-to-16 vote and your committee decided that all banks—insured by the Federal Deposit Insurance Corporation—should be treated on an equal basis.

In considering effective regulation, the need to include State-chartered, federally insured institutions under this provision is intensified by the fact that 80 percent of the failures between 1970 and 1976 were State-chartered banks.

State-chartered banks maintain over $400 billion in deposits, a substantial portion insured by the Federal Deposit Insurance Corporation. With the magnitude of this potential impact on the insurance fund, your committee believes that the FDIC and the Federal Reserve should have a full range of powers to limit insider abuses in institutions over which they have supervisory jurisdiction.

The inclusion of federally insured institutions under the 10-percent limitation assures that bank insiders in a given community or area will be treated alike. Your committee believes that this uniform standard will make it much easier for examiners to establish control over insider abuses and to back up their enforcement efforts with bank insiders. The efforts to provide a new emphasis on control of insider abuses are compromised when the insiders of a bank on one side of the street may borrow three times as much from their institution as the officers and other insiders may at the bank across the street—as would be the case if different limitations applied to state banks.

The importance of equal treatment among the various classes of banks is further highlighted by the fact that many holding companies have a multitude of different institutions under their ownership. It is not uncommon for bank holding companies to have national banks, State member banks, and State nonmember banks within their structure. Clearly, all of these subsidiary institutions have an impact on the holding company regardless of whether they are National or State banks and the application of varied insider standards could only complicate the already difficult problems associated with regulations of holding companies.

Viewing the overall banking situation, the Federal Deposit Insurance Corporation's study on bank failures between 1960 and 1975 demonstrated that insider loans were the principal cause of almost 60 percent of those failures. A review of the summaries of formal agreements or cease-and-desist orders by bank supervisors against banks over the last 5 years indicates that insider abuses are a significant factor leading to the imposition of such agreements and orders. Discussions of problem bank lists also provide evidence that insider self-dealing is a major reason for the deterioration of a bank's condition.

Evidence from failed bank investigations and the 1977 FDIC survey of banking practices indicate that not only is the volume of insider lending a problem but also the granting of preferential terms and

conditions on these loans. Interest rates below that charged other customers of the bank, liberal repayment terms, and the granting of loans in situations in which other customers would not be found creditworthy, have all been documented in hearings, records, and surveys.

H.R. 13471 would place insiders on the same level with the banking public and they would no longer be saved preferential spots in line before the loan windows.

The provisions of H.R. 13471 impose the following restrictions on insider loans:

1. Each executive officer and each 10-percent stockholder would be limited to loans totaling no more than 10 percent of capital and paid-in and unimpaired surplus of their bank. The 10 percent limit for each officer and stockholder would *include* loans to the officer or stockholder, loans to his affiliated companies, and loans to his political of campaign committees which are under his control or which operate for his benefit. Thus, these insiders would be subject to an aggregation rule. The total of loans to one insider, his affiliated companies, and his political or campaign committees could not exceed 10 percent of the capital accounts of the bank.

The 10 percent of capital accounts figure is intended to be a ceiling and should individual bank policy or State law apply a lower limit, that limit would apply.

One special exception is made for small banks. In banks located in a city, town, or village of less than 30,000 in population, stockholders would not be subject to the loan aggregation rule unless they owned 18 percent of any class of voting securities of the bank. This exception was included to facilitate the infusion of capital into banks located in areas where capital is in short supply.

The bill's language also defines executive officer by referring to the use of that term in the Federal Reserve Act. Based on that act, the Board of Governors has provided regulations which state that an executive officer is "an officer who participates or has authority to participate, otherwise than in the capacity of a director, in major policymaking functions of the bank, regardless of whether he has an official title or whether his title contains a designation of assistant and regardless of whether he is serving without salary or other compensation." That definition and examples provided in the regulation would govern this provision.

2. Insured banks would be prohibited from paying overdrafts of executive officers and directors. As the so-called Lance affair highlighted, and as studies of failed and problem banks document, overdrafts by insiders are not infrequent occurrences in such situations. This bill offers a simple solution—overdrafts are prohibited. The language does provide that the term "pay an overdraft" does not include a preauthorized *written* extension of credit (such as a check-o-matic or other line of credit tied to a checking account) or to a *written* preauthorized transfer of funds from another account of the insider at that bank.

3. The bill also requires all insider loans, including those to directors who are not also officers or stockholders, to be nonpreferential. Thus, the terms of such loans, including rates and

collateral, must be substantially the same as those prevailing at the time the loan is granted for comparable transactions with other persons. Unfavorable features such as a more than normal risk of repayment would also be prohibited.

B. Loans To Insiders From Correspondent Banks

The hearings last fall into the affairs of insiders at several Georgia banks indicated that bank insiders often received substantial loans from banks which maintained their bank's correspondent accounts. Often these loans were on preferential terms and conditions as compared to transactions with individuals who did not have such account relationships. This information builds upon that developed during other investigations and hearings.

Many bank regulators and some U.S. attorneys have been concerned for many years about the possible misuse of bank funds through correspondent accounts. At times, such accounts have appeared to be little more than a means of securing loans for bank insiders rather than being balances used to provide check clearing and other services associated with a correspondent relationship.

In the Dallas region of the FDIC alone, several hundred cases were referred to the U.S. attorney over a 3-year period. While other regions have not experienced these problems to that degree, there are few areas where questions have not been raised about whether correspondent accounts were helping the bank or the bank's insiders.

Since written policies governing the operation of correspondent accounts are not universally used in the banking system and because the kind of evidence needed to prosecute bank insiders for misapplication of bank funds through utilization of correspondent accounts has been difficult to pin down, the committee and the banking agencies recognized a need for legislation which would insure that correspondent accounts are used for the benefit of the bank. The bill uses the concept developed with respect to loans to insiders from their own banks. That is, loans based on a correspondent relationship may not be granted on preferential terms and conditions.

Title VIII provides that:

1. A bank which holds a correspondent account for another bank may not make a loan to an executive officer, director, or 10 percent stockholder of that other bank unless the extension of credit is on substantially the same terms as those prevailing for comparable transactions with other persons and does not involve more than normal risk of repayment or present other unfavorable features;

2. A bank which has an extension of credit outstanding to an insider of another bank may not open a correspondent account for that other bank unless the extension of credit outstanding is nonpreferential;

3. A bank which has a correspondent account at another bank may not extend credit to insiders of that bank unless the loans are nonpreferential;

4. A bank which has loans outstanding to insiders of another bank may not open a correspondent account at that other bank unless the extensions of credit to that other bank's insiders are nonpreferential.

Your committee believes that this approach to the correspondent account/insider loan problem is a reasonable one. Correspondent account relationships can continue but any loans to a bank's insiders based on the existence of such a correspondent relationship must be nonpreferential.

C. Interlocking Directors

Existing law dealing with interlocking directorships among financial institutions is outdated and H.R. 13471 attempts to bring this important area in line with the current realities of geography, population and the state of the financial community.

The current proscriptions apply only to banks and are tied to an outmoded concept of market area. Numerous studies by this and other committees of the Congress have documented the types of interlocking directorships which exist in the financial community and have expressed concern about their adverse effect upon competition.

Your committee believes that the public's interest is served by competition and that this is particularly important in an industry where competition is already diminished by limited chartering and other regulatory protections.

Anticompetitive interlocks can have an impact on the flow of credit and financial policies and practices to the detriment of communities, neighborhoods, small businessmen, home buyers, farmers, consumers, and others in need of credit on the best terms possible.

In recent years, the financial community has talked a great deal about innovation and new competition at the retail level of banking. This innovation and competition, however, will have little benefit to the bank customer if the financial institutions controlling these services and serving these areas have the same tight membership on their boards of directors, making the same policies, and balancing their conflicting interests.

The Board of Governors of the Federal Reserve System with the support of the other financial institution regulatory agencies proposed a substantial revision of interlocking directorship standards in 1976. Those recommendations recognized that interlocking relationships may reduce competition.

Your committee has built upon these recommendations and provided new restrictions upon interlocks. Basically, the provision prohibits interlocks within the same standard metropolitan statistical area or, in areas outside an SMSA, in the same city, town, or village or in any city, town, or village contiguous or adjacent thereto, and has a prohibition based on size regardless of geographic area.

More specifically, Title II, does the following:

1. It expands the present prohibition on bank to bank interlocks to include interlocks between all kinds of depository institutions—banks, savings and loans, credit unions, mutual savings banks, and their holding companies;

2. It limits coverage to management officials rather than any employee of a financial institution;

3. Interlocks are prohibited if the institutions are in the same SMSA; or the same city, town, or village; or in any city, town, or village contiguous or adjacent thereto. For institutions with

less than $20 million in assets, the SMSA market area will not apply. Rather, they will be subject to the city, town, or village test.

4. Prohibits interlocks between a depository institution with $1 billion in assets and a depository institution with $500 million in assets regardless of geographic area;

5. Exemptions are provided for affiliated companies, trust companies wholly owned by mutual savings banks, banker's banks either owned by other banks or officials of other banks (banker's banks are institutions formed to provide services for other depository institutions and not the public), depository institutions placed in liquidation or in the hands of a receiver, credit unions being served by officials of another credit union, and Edge Act corporations;

6. The provision grandfathers existing interlocking directorships for a period of 10 years from the date of enactment thus giving all affected directors a generous period of time within which to bring themselves into compliance with the provisions of the title. After enactment, if a change in circumstances brings a management official into violation of the title the financial institution regulatory agencies have authority to allow up to 15 months for that official to come into compliance with the title;

7. The title places authority to enforce the provisions with respect to each type of depository institution in the hands of the primary regulator for each depository institution and authorizes those agencies to refer violations to the Attorney General who shall have authority to enforce compliance with the title;

8. The provisions make conforming changes to the cease-and-desist powers of the agencies so that they may use those powers to enforce the title;

9. Rules and regulations, including rules and regulations to permit interlocks which would otherwise be prohibited, may be prescribed by the five depository institution regulatory agencies for the institutions they regulate. Thus, the agencies will have authority to exempt interlocks from the prohibitions of the title if the agency establishes that such an exemption has a pro-competitive effect.

D. Insider Responsibilities

Your committee's bill not only places restrictions upon the activities of insiders, including directors, but re-emphasizes that boards of directors of financial institutions have a fiduciary responsibility for the institution they are managing. Service on a board of directors is not simply an honorary position. It is a position charged with the responsibility for the operations of the institution, for the safety of depositor's money, for the stockholders' investments, and for fulfilling its charter's commitment to serve a community.

The responsibilities of directors are made very clear in the *Comptroller's Handbook of Examination Procedure:*

> Directors have been placed in positions of trust by the shareholders of the bank. Both statutory and common law have placed responsibility for the management of banks,

> whether it involves the lending or investing function, protection against internal fraud, or any other banking activity, firmly and squarely on the board of directors. The directors of a national bank may delegate the day-to-day routine of conducting the bank's business, but they cannot delegate to their officers and employees responsibility for the consequences resulting from unsound or imprudent policies and practices. The directorate is responsible to its shareholders and depositors for safeguarding their interests through the lawful, informed, efficient, and able administration of the institution . . . Unless bank directors realize the importance of their position and act accordingly, they are failing to discharge their obligations to the shareholders and depositors, and failing to take advantage of their opportunity to exercise a sound and beneficial influence on the economy of their community.

One provision of the bill requires that an institution's board of directors will be fully aware of insider transactions at their institution. All loans to officers, directors, or 10 percent stockholders, to their affiliated companies, and to their political or campaign committees, when they are in excess of $25,000, must be approved in advance by a majority of the board of directors of the bank with the interested party absent during such consideration. This requirement will assure that a board knows how much insiders are borrowing and that they can fulfill their fiduciary responsibility to the institution.

The interlocking directorship title described above also enforces the concept that a board of directors has a responsibility for its institution's service within a community undiminished by anti-competitive ties to other depository institutions.

Title VIII (correspondent accounts) not only requires that loans to other bank's insiders, based on a correspondent relationship, be nonpreferential, but also requires insiders to take steps to assure that their board of directors is fully aware of such loan relationships. Executive officers and 10 percent stockholders are required to provide annually to their board of directors a detailed report on all their loans from correspondent banks.

This report would include loans to the insider, to his affiliated companies, to his political or campaign committees, and the terms and conditions of such loans. In addition, the board of directors of each bank would be required to compile all such reports and file them annually with their bank regulatory agency. Thus, the insider receiving loans from a correspondent bank has a duty to report such loan relationships to his board and the board has a duty to examine these reports and to be cognizant of this aspect of banking.

SUPERVISORY POWERS OVER FINANCIAL INSTITUTIONS

As previously noted, the many hearings and investigations into bank failures and banking problems have supported the need for additional and sharper powers for the Federal supervisory agencies.

Studies of the General Accounting Office, including the recently released report entitled, "*Savings and Loan Associations: Changes Needed in the Regulation of Their Service Corporations*," have also supported the need for new and upgraded supervisory powers.

Regulatory agencies have often contended that their ability to control abuses by insiders and to see that financial institutions are operated in a safe and sound manner are too limited. The hearing records are filled with statements that the agency has the choice of either jawboning—sending letters to officials asking for their cooperation in correcting problems—or using a blunderbuss on the institution. Agency officials have asked for powers which lie somewhere between these two approaches so that they can tailor solutions and responses to specific problems and thus more effectively do their job. The bill provides the agencies with those tools, and its expects the regulatory agencies to vigorously utilize those powers to make the nation's financial institutions function properly.

H.R. 13471 gives the agencies four major tools: civil money penalties; improved cease-and-desist authority; improved removal and suspension of insider statutes; and control over changes in control of financial institutions.

A. Civil Money Penalties

The banking agencies have made sound arguments in support of authorization for imposing civil money penalties for violations of laws, rules, and orders. A monetary penalty tied to a violation can give an agency the flexibility it needs to secure compliance by individuals or institutions. Presently, an agency is often faced with the option of having to ignore a violation or imposing a penalty it often considers to be overkill. A cease-and-desist action against an institution or referral of a possible criminal action may be too severe for the criticized action. Daily money penalties should serve as deterrents to violations of laws, rules, regulations, and orders of the agencies. The bill, for example, provides civil money penalties for violations of:

1. Section 22 and 23A of the Federal Reserve Act. These sections place limitations on loans by member banks to affiliates and on loans to member bank insiders;
2. Section 19 of the Federal Reserve Act. This section prescribes limitations on the rate of interest paid on deposits and sets reserve requirements for member banks;
3. The National Banking Act. This act sets the standards for operating national banks:
4. The Bank Holding Company Act and the Savings and Loan Holding Company Act;
5. Insider loan limitations of state non-member banks;
6. Final cease-and-desist orders issued by the financial institution regulatory agencies;
7. The nonpreferential loan requirements of Title VIII of the bill;
8. The change in bank or savings and loan control titles of the bill.

The committee has provided that civil money penalties will take effect upon enactment and will only apply to violations which occur

after that date. In addition, the provisions require that the penalties may only be assessed and collected by written notice with the opportunity for a hearing under the Administrative Procedure Act and with the right to appeal a decision to the U.S. Circuit Court of Appeals. There is also a requirement that the agency, in determining the amount of the penalty to be assessed "shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the institution or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require". Your committee believes that these requirements will assure that the agencies are not arbitrary and capricious in their use of civil money penalties.

B. Cease-and-Desist Authority Against Individuals

Under present law, the financial institution regulatory agencies may issue a cease-and-desist order against an institution. In many cases, the agencies have argued, this may be inappropriate. For example, a bank which is controlled by one major stockholder who is firmly in control of the day-to-day management of the bank could be unjustly tainted if a cease-and-desist order is entered against the *institution* when the practices which are to be stopped by the order may have been the sole responsibility of the stockholder.

A more reasonable approach would be to institute cease-and-desist proceedings against the individual rather than the bank. H.R. 13471 provides the agencies with this option. As with the civil money penalty provisions, due process is provided by requiring opportunity for a hearing and appeal.

C. Removal and Suspension of Insiders

The agencies have also forcefully stated that present law authorizing removal of an insider from his position is unduly restrictive upon the agencies in their performance of their duties to insure that the nation has a safe and sound banking system. Presently, an individual may be removed only on a showing that the individual is engaging in unsafe and unsound practices which have an adverse effect on the institution and that the individual's activities involve personal dishonesty. This standard has hampered the agencies in their efforts to take timely action to make certain that individuals whose actions are seriously damaging the institution may be removed from their positions.

Your committee has provided statutory language which will give the regulatory agencies a less burdensome test under which they may institute removal proceedings. The provisions would authorize removal when an individual has evidenced personal dishonesty (current standard) *or* has demonstrated willful or continuing disregard for the safety and soundness of the financial institutions.

This new standard will allow the agencies the opportunity to move against individuals who may not be acting in a fraudulent manner but who are nonetheless acting in a manner which threatens the soundness of their institution. As with the other powers given the agencies, requirements for due process are built into the removal statute.

The languge in the bill also corrects existing law with respect to removal and suspension of individuals indicted or convicted of specified crimes. In the *Feinberg* v. *FDIC* case, the court held that the suspen-

sion and removal statute was deficient since it did not provide opportunity for hearing and review of an agency's action. Under the proivsions of H.R. 13471 an individual will now have that opportunity.

D. Holding Companies

Recent years have seen a rapid expansion in the number of bank and savings and loan holding companies. This expansion has not been without its problems however. These holding companies have moved out from traditional banking and savings and loan operations to encompass operations involving mortgage banking, insurance, factoring, real estate development, and other areas. Despite arguments that holding company operations are sources of strength for subsidiary depository institutions, there have been many cases in which the holding company, especially through its nondepository subsidiaries, have become financial drains on banks and savings and loan associations.

For example, the Hamilton National Bank in Chattanooga, Tenn., was part of a holding company. That bank failed as result of uncontrolled expansion of a mortgage subsidiary of its holding company. In still another case, Palmer Bancshares in Florida was liquidated after its mortgage and real estate operations threatened to bring its subsidiary banks down. The Board of Governors of the Federal Reserve System which regulates bank holding companies and the Federal Home Loan Bank Board have requested additional authority to allow them to take effective action to preclude such situations from occurring. These agencies asked for the power to require divestiture of a nondepository subsidiary if the operation of that subsidiary threatens the soundness of the depository institution subsidiaries. Your committee has provided these agencies with that authority.

If the Federal Reserve—in the case of bank holding companies—or the FHLBB—in the case of savings and loan holding companies—has cause to believe that the operation of a nondepository subsidiary is a serious risk to the financial safety, soundness, or stability of a holding company subsidiary depository institution, and that its operation is inconsistent with sound banking principles or with the holding company statutes or with the Financial Institutions Supervisory Act of 1966, the Federal Reserve or the FHLBB, as the case may be, can require the holding company to divest within 120 days such nondepository subsidiary. The provision does require that due notice of and opportunity for hearing are provided before the agency can take action.

E. Change in Control of Insured Institutions

One of the most glaring gaps in the regulatory structure for our depository institutions is the lack of control over transfers of ownership of banks and savings and loans between individuals or groups of individuals. When an institution is chartered, when it applies for insurance of accounts, when it plans to merge with another institution, when it wants to establish a branch, or when it becomes part of a holding company, an application has to be filed with, and approval obtained from, the appropriate regulatory authority.

However, when an individual or a group of individuals want to buy a bank or a savings and loan, Federal regulatory agencies have no authority over the transaction even though the institution has been granted a charter and has deposit insurance.

In fact, it has only been since 1966 that a bank or a savings and loan which is sold has to file with the institution's primary regulator, a form stating that the ownership has changed. And the requirement is after the fact.

The Subcommittee on Financial Institutions conducted field hearings in San Antonio, Tex., in 1976 into the failure of a small bank in South Texas. Those hearings and the investigations which preceded it produced ample evidence that additional supervision is needed in this area. Banks were bought and sold like used cars and the regulators considered themselves powerless to do anything about what became known as the "Texas Rent-A-Bank Scheme."

For example, one individual acquired six banks in less than a year financed primarily with borrowed money. One of these banks—the Citizens State of Carrizo Springs—was forced to close its doors because the new owner used the resources of the bank for self-dealing purposes. Other individuals and groups in the South and Southwest were discovered to be buying and selling banks in similar transactions. The regulators, in many cases, knew very little about the new owners of the institutions they were to regulate and in some cases the banks were resold before the regulators had gathered information about the first sale.

In recent months, public concern has grown about such takeovers. Stories about foreign nationals scouring the countryside for banks and savings and loans to buy have heightened the public's concern. The regulators in these cases find it even more difficult to secure information about acquiring parties since the individuals involved are not U.S. citizens.

Clearly, statutory language is needed to give financial institution regulators authority over such transfers of banks, savings and loans, and holding companies. Your committee, working on language developed by the Treasury Department, the Comptroller of the Currency, the FDIC and the Federal Home Loan Bank Board has developed statutory language which will accomplish the objective of giving the regulatory agencies meaningful powers over transfers of ownership of depository institutions and their holding companies.

The statutory language is contained in title VI: Change in Bank Control Act; and title VII: Change in Savings and Loan Control Act. Both titles provide the same authority over transfers. The only differences reflect the need for language that recognizes the particular regulatory structure for the two industries. Thus, the Bank Control title provides that notices of transfers shall be filed with the FDIC for nonmember banks; with the Comptroller for National Banks; and the Board of Governors for State member banks and for holding companies. The Federal Home Loan Bank Board has sole authority over savings and loans and their holding companies. Also, the savings and loan title retains the existing reporting requirement for a change in control or management for mutual—nonstock institutions—savings and loan associations.

The Change in Control titles provide the following:

1. When a person seeks to acquire control—power to vote 25 percent or more of the voting stock or to direct the management or policies of an institution—directly or indirectly through or in

concert with one or more persons, that person must file a written notice with the appropriate agency 60 days prior to the transfer.

The provision considers acquiring control to mean a purchase, assignment, transfer, pledge, or other disposition of voting stock. A pledge, however, should only be considered a transfer of control if the pledgee acquires voting control of the bank whose stock is pledged. The phrase "other disposition" is not meant to include a testamentary and intestate transfer of bank stock representing voting control. If an owner of a bank plans to transfer his ownership in a will to his family, that transfer is not considered a transfer subject to the provisions of these titles.

2. The titles require the Federal agencies receiving a notice affecting a State-chartered institution to forward a copy to the appropriate State regulatory agency and allow that agency to comment on the proposal and to take its views into account in its consideration of the proposal;

3. A notice filed pursuant to these titles must contain detailed information about the purchasers. This is clearly an improvement over the current situation in which a regulator may be forced to rely upon newspaper articles or second- and third-hand information. Specifically, information on the acquiring person, his background, his material business activities, and any pertinent legal proceedings, statements of assets and liabilities for the preceding 5 years—prepared in accordance with generally accepted accounting principles—the terms and conditions of the acquisition; detailed information about the financing of the acquisition; descriptions of any plans or proposals to make major changes in the institution being acquired; the identity and background of anyone employed to solicit stockholders about the acquisition; copies of tender offers or advertisements about tender offers; and other relevant information as determined by regulation or specific request by the agency must be included in the notice;

4. The agencies are given the authority, within the 60-day period, to disapprove a proposed acquisition if the acquisition would result in a monopoly or be in furtherance of an attempt to monopolize the banking or savings and loan business; the effect of the acquisition would be to substantially lessen competition in any section of the country unless the anticompetitive effects are clearly outweighed by the public interest; the financial condition of an acquiring party jeopardizes the financial stability of the institution or seriously threatens the interest of depositors; the competence, experience, or integrity of an acquiring party or designated management official is not in the interest of the depositors or the public; or a person filing a notice fails, neglects, or refuses to furnish the information required by the agency.

5. In the event an agency determines that an acquisition should be denied, provisions are included to insure that the acquiring party is given his "day in court". The agency must notify the person within three days of its decision and that notice must contain a statement of the basis for the denial. The acquiring party then has ten days after receipt of the disapproval notice to request a hearing by the agency conducted under the auspices of the Admin-

istrative Procedures Act. If after the hearing, and based on the hearing record, the agency still determines that it must disapprove the acquisition, the acquiring party may obtain review in a U.S. court of appeals closest to the home office of the institution sought to be acquired.

6. The titles also provide that insured institutions making loans on 25 percent or more of the voting stock of an insured institution promptly notify the appropriate Federal regulatory agency of the details of that loan;

7. Each agency is given authority to issue rules and regulations to carry out the titles;

8. Two years after enactment and every year thereafter, the agencies will report to the Congress on the administration of these titles.

9. Civil money penalties are provided for violations of these titles;

10. Transactions which are subject to approval under the Bank Holding Company or Savings and Loan Holding Company Acts are not subject to these titles.

The change in control titles worked out by your committee in consultation with the financial institution regulatory agencies are necessary to fill a regulatory void. The titles represent a judicious balance which provides control over transfers of ownership and proper consideration of due process in the exercising of that control.

IMPROVING THE FINANCIAL INSTITUTION REGULATORY AGENCIES

H.R. 13471 provides the Federal financial institution regulatory agencies with major new powers over financial institutions. The degree to which those agencies can vigorously and yet impartially enforce and implement these provisions will ultimately depend upon the relationship the agencies have with the institution they regulate, the degree of coordination among the agencies, and the process used to promulgate, and the nature of the regulations developed to implement this bill.

Your committee has included in the bill several provisions which will improve the regulatory process. These include title IV which provides revised conflict of interest rules for regulatory agency officials; title X which creates a Federal Financial Institutions Examination Council; title XVII, which requires the agencies to improve their rule-writing process; and title V which upgrades the National Credit Union Administration.

A. Conflicts of Interest

In the last few years, several studies of the relationships between regulatory agency officials and institutions these officials regulate have been published. Considerable discussion of the "revolving door" problem has occurred and the banking agencies have been in the forefront of many of these discussions. Effective regulation and regulation in which the public has confidence depends upon impartial agency officials who are not wedded to the industry being regulated.

The possibility of regulatory officials moving into positions within the financial industry is present and numerous examples of such re-

volving door situations can be cited. One former Comptroller of the Currency was first a lobbyist for a banking trade group, then became an Assistant Secretary of the Treasury, then Comptroller, and then left before completing his term to go to work for the holding company of a major bank.

A member of the Board of Governors of the Federal Reserve went to work for a bank holding company. A Chairman of the FDIC went to work for a holding company.

None of these examples are cited to indicate that improprieties have occurred. However, the appearance of a conflict of interest, the suggestions that regulatory actions could be affected by future job prospects, is often enough to affect morale and attitude among employees of an agency and to undercut public confidence in our financial institution regulatory structure.

Title IV of the bill addresses this issue in two ways. First, it contains a 2-year prohibition on employment with regulated institutions if an individual official does not complete the term for which he was appointed. Second, it prohibits contact by a former official on behalf of another party before his former agency whether he finished his term or not.

The employment prohibition applies to the three members of the board of the Federal Deposit Insurance—this including the Comptroller of the Currency who is a board member—the Governors of the Federal Reserve System, the members of the Federal Home Loan Bank Board, and the board members of the board of the National Credit Union Administration created in title V. Thus, an FDIC board member, if he did not complete his term, could not be employed for a period of 2 years by an insured bank, a holding company of an insured bank, or an affiliate of a holding company of an insured bank. The Federal Reserve prohibition would go to member banks and their holding companies. The FHLBB restriction would go to savings and loans and their holding companies. The NCUA provision would go to credit unions and companies owned by credit unions. These employment restrictions should encourage these officials to complete their terms and to exercise their regulatory responsibilities in an impartial and responsible manner.

The second restriction is upon contacts with a former agency. H.R. 13471 provides that former officials of the agencies may not for 2 years after leaving the agency appear before or contact the agency on behalf of any other person or act as agent or attorney for any other person before that agency.

The committee recognizes that sitting members of these agencies should not have the "rules of the game" changed at half-time. Thus, the title grandfathers all sitting members of the five financial institutions agencies. They will only be subject to the standards of existing law.

B. Financial Institutions Examination Council

The General Accounting Office study of February 1977, *Federal Supervision of State and National Banks*, clearly pointed out one of the major problems evident in financial institution regulation today—the lack of effective coordination among those agencies. This is particularly true with respect to the three banking agencies. As the holding

company movement spreads and as the banking industry becomes more sophisticated and complex, and as links between areas of the country become tighter, the need for better coordination and cooperation among these agencies becomes crucial.

Regulation of subsidiary banks within a holding company may well involve all three banking agencies and this fact means that each agency is affected by what the other agencies are doing and what they are learning about their banks. In some cases, a banker may own and operate more than one bank—each under a different jurisdiction, heightening the need for coordination.

There is a need to move the agencies toward greater coordination, better procedures, and more uniform standards. The failure to exchange information, the confusion created by different standards and classifications among the agencies, and the need to keep fully abreast of rapidly changing developments in the financial community require action.

Title X of the bill provides a mechanism which can be used to provide coordination and cooperation among the agencies. It creates a Federal Financial Institutions Examination Council which will prescribe uniform principles and standards for the Federal examination of financial institutions, make recommendations to promote uniformity in the supervision of financial institutions, and promote consistency in examinations and progressive and vigilant supervision of financial institutions.

The Council will be composed of the Comptroller of the Currency; a Governor of the Board of Governors of the Federal Reserve System; the chairman of the Federal Deposit Insurance Corporation; the chairman of the Federal Home Loan Bank Board; and the chairman of the National Credit Union Administration Board. The members of the Council will serve without additional compensation but will be provided with reasonable expenses incurred on official business. The expenses of the Council will be paid for by each of the agencies—each paying one-fifth of the costs.

The functions of the Council are:

1. To establish uniform principles and standards for examinations of financial institutions;
2. To make recommendations for uniformity in other supervisory matters—that is, country risk, institutions in need of special supervision, detection of fraud or questionable and illegal practices;
3. To develop uniform reporting systems for financial institutions;
4. To conduct schools for examiners which shall be open on terms set by the Council to State supervisory agency examiners; and
5. To provide Congress with an annual report on its activities.

The provisions of the title make clear that the creation and operation of the Council shall not limit or discourage each agency from developing new supervisory methods or from field-testing such methods.

Title X also provides that the Council will establish a liaison committee composed of representatives of State supervisory agencies to

encourage a flow of communication and ideas among Federal and State regulatory agencies. At a minimum, two meetings of the State liaison committee will be held each year. This committee and the provision allowing State examiners to participate in the Council's schools for examiners should begin to develop better coordination and cooperation between these two levels of government.

In performing its duties, the Council may hire personnel; may, with approval of the agencies, utilize the services of agency personnel; can obtain consultant services; and shall have access to the information of the agencies.

C. Improving Agency Regulations

Last March 23, the President issued Executive Order 12044 which directed every executive agency to adopt procedures to improve existing and future regulations issued by those agencies. The order sought to make Federal regulations clearer, less burdensome, more cost-effective, and to open up the process used to promulgate regulations. However, the order did not cover the independent regulatory agencies—including the banking agencies—in its coverage.

Your committee, in title XVII, would require each banking agency to undertake a review of their regulations and to make needed improvements in those regulations. The FDIC, the FHLBB, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Administrator of the National Credit Union Administration are all required to insure that:

1. The need for and purpose of their regulations are clearly
2. Timely participation by the public and all interested parties is available;
3. Alternatives to issuing regulations are considered before issuing regulations;
4. Compliance costs, paperwork and other burdens on the public are minimized; and
5. Conflicts, inconsistencies and duplications between the regulations issued by the agencies are avoided.

The committee intends that Federal financial regulatory agencies, in adopting regulations and complying with the policy of title XVII, as embodied in sections 2(c), (d), and (e) of that title, act consistent with and in furtherance of their statutory responsibilities. With respect, in particular, to the policy objective enunciated in section 2(e), whenever the Federal financial regulatory agencies adopt regulations implementing identical substantive statutory provisions, it is expected that they will endeavor, consistent with and in furtherance of their statutory responsibilities, to avoid conflicts, inconsistencies, and duplications in such regulations. The committee recognizes, however, that such regulations may vary because of differences between the classes of financial institutions, legal requirements, or methods for implementation of statutory or policy objectives.

The agencies would also be required to establish a program for periodic review of all existing regulations, such review to use the goals stated above. Each agency, beginning 6 months after enactment, will provide the House and Senate Banking Committees with reports on their progress in implementing this title.

This title should begin the process of making regulations issued by these agencies more understandable, less complex, and less burdensome on the public and the institution.

D. National Credit Union Administration Restructuring

Title V of the bill provides a restructuring of the National Credit Union Administration. Presently, NCUA is directed by a single Administrator. Other financial institutions regulatory agencies and other independent agencies operate under the direction of a board. For example, the Federal Reserve System, the Home Loan Bank System, the FDIC, the ICC, the FTC all have a board of directors or a commission which directs the operation of the agency.

The bill would provide a three-member board to replace the current Administrator. Each board member would be appointed by the President by and with the advice and consent of the Senate. The conflict would apply to these board members.

Title V makes technical and conforming changes to the Federal Credit Union Act to reflect the creation of the board, and makes other changes in the statute to upgrade the supervision of credit unions most importantly by providing a flexible fee structure.

IMPROVING THE PUBLIC'S KNOWLEDGE ABOUT THEIR BANKS

Your committee's bill provides the first industrywide disclosure of insiders and insider borrowing at all classes of insured banks.

Title IX of the bill is a step forward in providing the public with certain material facts about the banks on which the public depends for credit and banking services. The title would require that each insured bank provide annually a report containing:

1. A list of each stockholder owning more than 10 percent of the voting securities of the bank; and
2. A list by name of each executive officer and each 10 percent stockholder and the aggregate dollar amount of extensions of credit by the bank to executive officers or stockholders, their affiliated companies, and their political or campaign committees.

These reports would be available to the public either from the bank or the appropriate regulatory agency. This requirement will not only provide the public with better information, but will have a salutary effect upon bank management and will provide encouragement to control insider lending.

In addition to the information described above, the report which would be available to the public would also contain information required in title VIII—correspondent accounts. In that title, each bank would be required to provide a list of each executive officer or 10 percent stockholder who received loans from a correspondent bank and the aggregate amount of all extensions of credit by correspondent banks to executive officers or stockholders, their affiliated companies, and their political or campaign committees. This requirement is different from the detailed report each officer or stockholder must make to his bank on correspondent loans and differs from the detailed report each bank must provide the regulatory agencies of such correspondent loans.

In the past, regulators and the banks have been reluctant to disclose even the most surface information about their activities, but the fear of disclosure is abating as indicated in this excerpt from a recent speech by Chairman George LeMaistre of the Federal Deposit Insurance Corporation:

> Many regulators, and I include myself in this group, were mistaken about the extent of public disclosure of a bank's financial condition that could be sustained by a bank without damage . . . Not only was the public, including small investors and large sophisticated investors, secure in the face of these disclosures in the press, the public received without fright and rather welcomed the far more extensive disclosure requirements proposed by the SEC and the banking agencies . . . The long and short of this, it seems to me, is that the adversity of the period which we recently went through, combined with the pressure of the SEC for further disclosure and the bad news revealed in the press, demonstrated conclusively that the banking system can tolerate far more disclosure than most bankers and bank regulators have ever thought.

And in a July 6 *New York Times* article on Paul Volcker, president of the New York Federal Reserve Bank, the paper says:

> In retrospect, he (Volcker) and other officers of the New York Fed, who admit that they were extremely anxious about public reaction to news of the problem loans, feel that the exposure . . . has been highly constructive.

ADDITIONAL CHANGES IN BANKING STATUTES

The bill contains three titles which contain changes in banking statutes requested by the FDIC and the Comptroller of the Currency. Title III—Foreign Branching—generally referred to as an FDIC. "Housekeeping Title", upgrades the powers of the supervisory agencies. It gives the FDIC authority to approve the establishment of foreign branches or the acquisition of foreign bank stock by nonmember insured banks. Presently, the Federal Reserve has such authority with respect to member banks. Since foreign activities by a bank may affect the safety and soundness of the bank and since foreign operations are becoming more prevalent and more important to the banking system, the FDIC should have this authority with respect to nonmember banks.

Title III also conforms the definition of affiliate in the Federal Deposit Insurance Act to that used in the Bank Holding Company Act. This will give the FDIC the same authority as the Comptroller and the Federal Reserve to examine and supervise the operations of affiliates. Another provision clarifies the authority of the agencies to examine bank service contractors under the Bank Service Corporation Act.

The title also makes clear that the bank supervisory agencies have the power to take testimony and issue subpenas for bank records in connection with examinations and investigations. It also provides

protection for examiners and other personnel of these agencies by making it a felony to assault, impede, or intimidate or interfere with their efforts to examine banks and carry out related duties. Both of these provisions are needed to give the agencies the flexibility they need to carry out their basic functions. Other provisions of Title III make minor changes in requirements for reports of condition; accounting of deposits pledged for repayment of a loan; insurance of time deposits of a liquidated bank, assumed by another bank; and assuming foreign deposits of a failed institution. The title also gives the FDIC the authority to issue rules and regulations for statutes which it is required to enforce if the authority to issue regulations is not exclusively given to another agency.

Titles XIV and XV are amendments to the National Banking Act requested or supported by the Comptroller of the Currency. The provisions are either designed to make changes in national bank powers reflecting changes which have occurred in banking in the years since the enactment of the statute or to streamline and improve the administrative authority of the Comptroller.

The first change in national bank powers concerns real estate acquired by a national bank in satisfaction of a debt previously contracted. Currently, such banks may only hold such real estate for a period not to exceed 5 years. The amendment would allow national banks to apply to the Comptroller for an extension of up to an additional 5 years and to make improvements in the property to recover the total investment in the property. The committee expects that the Comptroller will use this authority judiciously and make certain that national banks do not become real estate developers. The provision is only intended to assist national banks dispose of collateral acquired through default. Second, the current 6-percent limitation on preferred stock dividends is removed. Presently, national banks are limited in their ability to issue preferred stock because the 6-percent limit is too low. Removal of that limit may assist national banks which want to increase the amount of equity capital they have by preferred rather than common stock. Again, the Comptroller is expected to carefully monitor the use of preferred stock and the overall capital structure of national banks.

The third change would allow a majority vote of dissenting shareholders rather than a unanimous one when they select an appraiser to determine the cash value of their national bank stock when that national bank is converting to a State charter.

Fourth, national banks will be authorized to invest in so-called banker's banks which provide correspondent services primarily for smaller independent banks. This authority requires that the banker's banks be owned entirely by other banks; be insured by the FDIC; and engage exclusively in providing banking services for other banks and their officers, directors, and employees. National banks would be limited in their investments in such banks and no one national bank could become a controlling influence over the banker's bank. The committee expects that the provisions contained in H.R. 13471—for example, insider loan limits, correspondent account loan restrictions, and disclosure requirements for insider correspondent account loans—will apply to these banker's banks. This authority should allow smaller national banks to develop a correspondent system apart from the larger correspondent systems.

Fifth, directors of national banks wholly owned by a holding company would be allowed to hold holding company stock rather than stock of the bank to qualify for service as a director. Current law requires ownership of bank stock and this has resulted in the creation of "bookkeeping" stock for wholly-owned banks.

The first change in the Comptroller's administrative authority would give the Comptroller the authority to revoke a national bank's trust powers. Currently, the Comptroller may grant a national that authority but he does not have the power to revoke those powers if they are unlawfully or unsoundly used. This corrects that situation.

Second, the Comptroller is given the power to declare a national bank holiday. Presently, there is no Federal law governing bank holidays for national banks. Thus, when a State declares a holiday in an emergency for State banks, National banks have not known what authority they had to comply with the State action.

Third, the Comptroller is given authority to delegate his powers. The FDIC and the Board of Governors of the Federal Reserve System have such authority and it is reasonable to allow the Comptroller the same administrative discretion.

Fourth, the Comptroller is given authority to examine national banks as often as he deems necessary rather than the current requirement of twice a year.

Fifth, the Comptroller, at the request of the Board of Governors of the Federal Reserve System will be allowed to assign his examiners to examine foreign operations of State member banks.

Sixth, the Comptroller's authority to issue rules and regulations to carry out his responsibilities is clarified. The Comptroller needs sufficient authority to carry out his responsibilities and to do this he needs clear rulemaking power. This is power to be exercised to carry out laws passed by the Congress and is not intended to provide the Comptroller with any extra-legal powers.

Title XV establishes a procedure by which the Comptroller may terminate the National Bank Closed Receivership Fund. This fund represents liquidating dividends which have not been claimed after a national bank was placed into receivership. With the establishment of the Federal deposit insurance system, the need for such a National Bank Fund ended. The provision will allow the Comptroller after adequate notice to terminate the fund and to transfer such funds into the general account of the Comptroller.

CHARTER OPTION FOR MUTUAL SAVINGS BANKS

Your committee's bill, in title XII, provides a chartering option for mutual savings banks. Presently, 17 States authorize the chartering of a mutual savings bank. However, unlike commercial banks, credit unions, and savings and loan associations, no authority exists for a Federal charter for such institutions.

Title XII provides authority for the Federal Home Loan Bank Board to allow a State-chartered mutual savings bank to convert to a Federal charter. Converting institutions would be known as "Federal mutual savings banks." The FHLBB was chosen as the agency to administer this authority since mutual savings banks are not stock companies like commercial banks but are similar to mutual savings and

loans. The converting institutions would be supervised and regulated by the FHLBB and insured under the auspices of the Federal Savings and Loan Insurance Corporation supervised by the FHLBB.

This chartering option is limited, however, because the FHLBB would not be allowed to grant de novo charters and could only allow a conversion to institutions located in States authorizing State-chartered mutual savings banks. Thus, the FHLBB would not be allowed to authorize charters for mutual savings banks in States which do not authorize State-chartered mutual savings banks.

Recognizing that mutual savings banks have powers which are different from the powers of Federal mutual savings and loan associations, the title provides converting institutions with a grandfather provision. This would permit converting savings banks to continue to carry on activities it was engaged in on December 31, 1977 and to retain and make investments of the type it held on that date.

Equity, corporate bond, and consumer loan investments would be limited to the average ratio of such investments to total assets for the 5-year period immediately preceding the filing of an application for conversion. These authorities will, however, be subject to authorization, supervision, and regulation by the FHLBB.

One activity engaged in by some mutual savings banks is the offering of savings bank life insurance. This service will continue to be primarily supervised and regulated by appropriate officials in their domiciliary States, much as insurance subsidiaries of bank holding companies are regulated by State insurance departments. However, the FHLBB will have authority to examine those activities and have access to all records to carry out its supervision of the mutual savings banks offering such services.

Title XII also requires that a converting savings banks would remain subject to State prohibitions against discrimination in the extension of home mortgage loans based on neighborhood or geographic area if the State requirement was more stringent than Federal law in this instance. The bill is silent as to the agency responsible for determining the applicable law. The committee believes that the FHLBB, which is the chartering and supervisory agency for converting mutual savings banks, should make that determination. The committee, of course, will expect the Board to keep the Congress informed as to its actions in this area.

The committee wishes to emphasize strongly its intent that the Board should exercise its chartering, regulatory and supervisory powers in such a way that Federal mutual savings banks' investments reflect the fact that the Home Loan Bank System was created and continues to be firmly committed to the housing needs of this country. It is further expected that the Community Reinvestment Act will be used by the Board to enhance the housing and community related orientation of federally chartered savings banks.

CHANGES OF AUTHORITIES FOR FINANCIAL INSTITUTIONS

The committee's bill contains three titles which affect the powers and authority of financial institutions—Title XVI, Transaction Accounts; Title XVIII, Alternative Mortgage Instruments; and Title XIII, Holding Companies.

A. Transaction Accounts

Title XVI provides that federally chartered savings and loan associations may offer transaction accounts if State institutions in which they are located are authorized to offer such services. These accounts, known as NINOW in some areas, are accounts which permit withdrawals or transfers of account on negotiable, transferable, or nonnegotiable check, order, or authorization. The title specifies that Federal institutions may offer comparable services only if the State in which they are located allows such services for State institutions. Additionally, the FHLBB has the authority to determine which services may be offered and how they shall be structured. The committee also included a provision which will authorize Federal savings and loans in the District of Columbia—there are no State-chartered savings and loans in the District—to offer such services if they are authorized for Federal associations located in Virginia or Maryland.

Presently in New York, the federally chartered thrift institutions are the only financial institutions which do not have transaction account authority. The Federal Savings and Loan Associations are thus working at a significant disadvantage. The State-chartered thrifts have had transaction account authority for over 2 years. Without transaction account authority, the Federal savings and loans can expect to continue to lose even more deposits to other financial institutions in the State. Transaction accounts would be authorized there only as non-interest-bearing accounts, thereby restoring parity.

B. Alternative Mortgage Instruments

Title XVIII of the committee's bill affects the type of mortgage instruments that federally chartered savings and loan associations may offer. The provision would allow such savings and loans to offer alternative mortgage instruments if the State in which they are located authorizes by law, rule, or regulation State-chartered savings and loans to offer such mortgages. For a number of years the standard type of mortgage instrument has been the conventional fixed-rate mortgage. This instrument has an interest rate which is fixed over the term of the loan, usually a 30-year amortization. In recent years other types of mortgages have been developed by the savings and loan industry. Examples are the variable rate mortgage (the interest rate is not fixed but may vary over the life of the loan); the graduated payment mortgage (in the early years of the loan payments are for interest only, then larger payments are made to include principal as well as interest); the reverse annuity mortgage (for individuals who have an equity in their home and want to take advantage of that equity), and the Canadian rollover (the loan has short term with the balance of the mortgage due at the end of the term and renegotiation of the mortgage occurring at that point).

The committee's provision would authorize Federal savings and loans to offer such instruments subject to rules and regulations of the FHLBB. The Board is instructed to provide regulations which provide adequate consumer safeguards and protections. Among those protections would be a documented choice between alternative and conventional fixed rate mortgages; a prohibition on prepayment penalties; and provisions to limit interest rate increases on variable rates mortgages. In addition, the Board would be required to provide a full

report to the Congress on the experience with alternative mortgages which this title authorizes. That report would include an analysis of the impact this experience has on interest rates and recommendations for legislative changes needed in the authority provided by the title.

Another feature of the provision is a requirement that a federally chartered savings and loan which offers alternative mortgage instruments must offer such mortgages to customers for a continuous 4-year period or time period determined by the Board. If, at the end of such period, an association may elect to discontinue offering the variable rate alternative mortgage instrument. However, should the association decide to reoffer such mortgages the time period requirement for offering both fixed and variable mortgages would apply. This provision recognizes that homebuyers do not have the expertise to forecast interest rates. Savings and loans, however, regularly utilize and evaluate expert forecasts of interest rate cycles. The provision will require associations to offer all types of mortgages over at least a cycle of 4 years.

C. Holding Companies and Insurance

Title XIII changes in one respect the authority of bank holding companies to engage in nonbanking activities. Under the original Bank Holding Company Act, enacted in 1956, the Federal Reserve Board had the authority, and did permit, the sale by bank holding companies and their subsidiaries of many kinds of insurance including all types of property and liability insurance.

Since the 1970 amendments to the Bank Holding Company Act, the types of insurance agency activities permitted have been somewhat more restrictive, with the Board generally requiring a direct relationship to an extension of credit. The Board's actions in this regard were upheld in part, overturned in part, and remanded in part by the Fifth Circuit Court of Appeals. The Supreme Court denied certiorari. [*Alabama Association of Insurance Agents* v. *Board of Governors of the Federal Reserve System* (533 F.2d. 224 (5th Circuit, 1976): rehearing denied, 558 F. 2d. 729 (5th Circuit, 1977); cert. denied February 27, 1978 (No. 77-668)]

Against this background, various proposals have been made over the years to restrict the insurance activities of bank holding companies. The committee has, as of the effective date of the title, provided a response to the issue in title XIII and found that the business of offering property and casualty insurance is not closely related to banking.

The title amends subparagraph 4(c)(8) of the Bank Holding Company Act so that in the future, it will not be permissible for bank holding companies to provide insurance as a principal, agent, or broker under the authority of that subparagraph, except for five categories of insurance activities, which are exempted from the restriction.

Specifically, the first exemption allows bank holding company sales of credit life, credit disability and mortgage redemption insurance—forms of insurance which historically have been sold by lending institutions, and which are able to be operationally integrated into credit transactions.

Second, the committee exempted bank holding company sales of any insurance in communities having a population not exceeding 5,000 (as shown by the last preceding decennial census). This exemp-

tion was intended to conform permissible insurance agency activities under the Bank Holding Company Act with those permitted under the National Bank Act (12 U.S.C. 92).

The Federal Reserve Board should promulgate regulations providing cessation of insurance activities once the community to which such operations relate attains a population (as shown by the last preceding decennial census) greater than 5,000.

The committee also exempted from the insurance prohibition bank holding company sales of insurance in communities where a bank holding company applicant, after notice and opportunity for a formal hearing on the record, demonstrated that there are inadequate insurance agency facilities. The committee recognized that it is in the public interest for people and communities to have access to adequate insurance agency facilities. For this reason, if any bank holding company demonstrates that a particular city, town, or village is not being adequately served, such holding company should be permitted to go into the insurance business and thereby provide a needed service to that community.

The third exemption is the bill's grandfather provision. Its overall purpose is generally to limit the nature of bank holding company agency operations to those achieved or applied for prior to June 6, 1978. It was recognized that it might work an undue hardship to require bank holding companies which have received authorization to engage in insurance agency activities prior to June 6, 1978, to divest themselves of those activities. For this reason, the committee permanently grandfathered insurance agency activities which were lawfully conducted by bank holding companies on June 6, 1978.

Additionally, there were approximately 24 completed applications pending with the Board for various insurance activities as of June 6, 1978. These applicant holding companies will still have to justify their application under the provisions of the Bank Holding Company Act and the Federal Reserve Board should carefully scrutinize the applications to assure that the "closely related" and "public benefits" tests of the 1970 amendments are met.

Finally, the committee felt it appropriate to exempt from the prohibition sales of insurance by a bank holding company if the total assets of the bank holding company and its subsidiaries in the aggregate are less than $50 million.

For purposes of this exemption, the size of the bank holding company is to be judged on the assets of the entire holding company system, and not just on the value of the investments and other assets as carried on the books of the holding company itself. The Board should promulgate regulations providing cessation of insurance activities once a holding company exceeds the $50 million asset figure.

RIGHT TO FINANCIAL PRIVACY

A. Purpose

Title XI is intended to protect the customers of financial institutions from unwarranted intrusion into their records while at the same time permitting legitimate law enforcement activity. Therefore, the title seeks to strike a balance between customers' right of privacy and the need of law enforcement agencies to obtain financial records pursuant to legitimate investigations.

The title is a congressional response to the Supreme Court decision in the *United States* v. *Miller* which held that a customer of a financial institution has no standing under the Constitution to contest Government access to financial records. The Court did not acknowledge the sensitive nature of these records, and instead decided that since the records are the "property" of the financial institution, the customer has no constitutionally recognizable privacy interest in them.

Nevertheless, while the Supreme Court found no constitutional right of privacy in financial records, it is clear that Congress may provide protection of individual rights beyond that afforded in the Constitution. This was made clear by the Supreme Court in the recently decided case of *Zurcher* v. *The Stanford Daily* where the majority stated that "Of course, the Fourth Amendment does not prevent or advise against legislative or executive efforts to establish nonconstitutional protections against possible abuses . . ."

B. History

There have been a number of legislative responses to the *Miller* decision; including many bills which have been introduced over several Congresses to protect the privacy of financial records. Additionally, the House Subcommittee on Financial Institutions held hearings on the subject in July of 1975.

Last year, Congressman Cavanaugh introduced H.R. 8133 which was based on many of the bills introduced in prior Congresses. This bill was introduced just before the release of the final report of the Privacy Protection Study Commission. Both the bill and the report were based on two key principles; one that the customer be given prior notice of the Government's attempt to gain access to his bank records, and two, that the customer be given an opportunity to contest Government access in court.

H.R. 8133 later became the basis for title XI of the Financial Institutions Regulatory Act and was the subject of a full day of hearings during the consideration of that act. In addition, nearly, every witness that testified on the other titles of the bill commented on title XI.

C. Committee Action

Title XI represents a substantial compromise between the original version of the title and the views of various law enforcement agencies. In the past, these agencies opposed any privacy legislation on the ground that such protections would unduly hamper law enforcement. However, these agencies now believe that privacy protection and effective law enforcement are compatible. Therefore, the agencies participated in extensive discussions with committee members to work out a bill which would be acceptable to all concerned.

At the full committee markup of title XI, Mr. Cavanaugh and Mr. LaFalce presented a substitute title which reflected these discussions. The committee considered several amendments to the substitute, and adopted it, as amended, by a vote of 39 to 3.

By a vote of 21 to 20 the committee did not adopt an amendment which would have replaced the customer challenge procedures in the substitute with those in the subcommittee bill, H.R. 13088. The purpose of the amendment was to remove the provisions in the substitute which put the initial burden of going to court to block Govern-

ment access upon the customer. Opponents of the amendment argued that while the substitute does require the customer to file an affidavit and motion in court, rather than simply submit a written objection as in H.R. 13088, the ultimate burden of proof still rests with the Government.

The committee adopted an amendment to section 1112, relating to interagency transfers of information. The substitute provided that such transfers would be governed by existing law, such as the Privacy Act which permits law enforcement agencies to share information. The substitute also provided that the customer would be notified after a transfer had been made. The committee replaced this language with the corresponding provision from H.R. 13088, section 1111. This section provides that information obtained under the title may not be used or retained for any purpose other than the specific statutory purpose for which the information was originally obtained, and that the information may not be transferred to another government agency without specific statutory authorization. The section provides, however, that supervisory agencies may share information.

The committee adopted an amendment which exempts grand jury subpoenas from the notice and challenge provisions of the legislation. Proponents of the amendment argued that reform of the grand jury system could better be undertaken in another context, and that since the grand jury operated under judicial scrutiny, grand jury subpoenas are less subject to abuse than other forms of process. Opponents argued that there was no reason why grand jury subpoenas should be exempted, since the Privacy Commission found that there has been abuse of the grand jury subpoena.

The committee did adopt an amendment which requires that use of financial records obtained pursuant to a grand jury subpoena be more strictly limited. The amendment requires that the records be actually presented to the grand jury and used only for the purposes of the grand jury investigation, i.e. indictment and prosecution.

The committee adopted an amendment to section 1105(b) which limited it to subpoenas issued by the Securities and Exchange Commission. As originally written, the section would have permitted any government agency with administrative subpoena power, if it followed the internal procedures outlined in the section, to dispense with the prior notice requirement. The committee bill now permits only the SEC to use this procedure and avoid prenotification.

By a vote of 21 to 21 the committee failed to adopt an amendment which would have replaced the limited reporting requirements in the substitute with a comprehensive provision. The amendment would have required agencies to compile statistics on the number of requests for access to financial records and the number of notice delays sought and obtained under each of the provisions of the title.

The committee adopted an amendment which deleted credit reporting agency records from the protections of the title, since government access to these records is already governed by the Fair Credit Reporting Act.

The committee adopted an amendment to section 1117(b) to make clear that the Civil Service Commission, and not the courts, will determine whether a government employee acted improperly with respect to the provisions of the title.

CREDIT CHARGE SURCHARGES

Title XIX of the bill repeals the expiration date for a provision in Public Law 94–222 which prohibited a merchant from levying a surcharge on customers who wish to pay by credit card rather than pay by cash. The current ban on such surcharges will expire in February 1979 unless this title is enacted. The bank on surcharges was approved by the House in 1976 (on a vote of 398 to 3) and has provided protection for credit card customers from surcharges, while encouraging merchants to offer a reduction from their regular prices to those who pay cash.

STATEMENTS REQUIRED IN ACCORDANCE WITH HOUSE RULES

In accordance with clauses 2(1)(2)(B), 2(1)(3), and 2(1)(4) of rule XI and clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statements are made:

Committee Vote (Rule XI, Clause 2(1)(2)(B)

A total of 34 votes was cast for reporting favorably and 5 votes were cast against reporting the bill.

The following committee members cast votes for reporting the bill: Reuss, Moorhead, St Germain, Gonzalez, Minish, Annunzio, Hanley, Mitchell, Fauntroy (by proxy), Patterson, Blanchard, Hubbard, LaFalce, Spellman, AuCoin, Derrick, Hannaford, D'Amours (by proxy), Lundine, Pattison, Cavanaugh, Oakar, Mattox, Vento, Stanton, Brown, Wylie, McKinney (by proxy), Hyde (by proxy), Fenwick, Leach, Evans (Del.) (by proxy), Hollenbeck (by proxy) and Green.

The following committee members cast votes against reporting the bill: Barnard, Watkins, Rousselot, Kelly and Grassley.

The following committee members did not cast a vote: Ashley, Neal, Tsongas, Evans (Ind.), Garcia, Hansen, Steers, and Caputo.

Oversight Findings [Rule XI, Clause 2(1)(3)(A) and Rule X, Clause 2(b)(1)]

The Subcommittee on Financial Institutions Supervision, Regulation and Insurance has held hearings and conducted investigations into on the subject matter contained in H.R. 13471. Based upon the evidence presented, the committee concludes that the provisions of H.R. 13471 are necessary to improve the supervision and regulation of financial institutions insured by agencies of the U.S. Government and to make financial institution regulatory agencies more efficient and effective.

Estimates of Costs to be Incurred [Rule XIII, Clause 7(a)(1)]

Your committee estimates that no additional costs to the government will be incurred as a result of the enactment of this legislation except with respect to section 1115 of title XI (Right to Financial Privacy). That section requires government authorities to reimburse financial institutions for providing records requested by the agency pursuant to the provisions of title XI. That provision does not take effect until October 1, 1979. The Congressional Budget Office report stated "there

is not sufficient information available to allow the CBO to estimate the cost of these provisions with any reasonable accuracy." The committee agrees that the only evidence to date is that provided by the Internal Revenue Service experience under the Tax Reform Act of 1976 and that is inconclusive and may not be comparable with the provisions in the bill.

Inflationary Impact Statement [*Rule XI, Clause 2(1) (4)*]

Your committee believes that this bill will have no inflationary impact.

Cost Estimate of the Congressional Budget Office Pursuant to Section 403 of the Congressional Budget Act of 1974 [*Rule XI, Clause 2 (1) (3) (C)*]

The Congressional Budget Office has submitted the following report:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., July 19, 1978

Hon. HENRY S. REUSS,
Chairman, Committee on Banking, Finance and Urban Affairs,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 13471, the Financial Institutions Regulatory Act of 1978, as ordered reported by the House Committee on Banking, Finance and Urban Affairs, July 18, 1978. This bill, if enacted, would amend certain laws effecting Federal regulation and supervision of financial institutions. In general, these laws would be strengthened to eliminate interlocking managements and directorships between institutions, to restrict conflicts of interest and to regulate the sale of insured financial institutions.

Based on this review, it appears that the only significant additional costs to the Federal Government upon enactment of this bill would result from provisions contained in title XI. XI specifies the circumstances and procedures under which an agency or officer of the U.S. Government may obtain information or records from a financial institution concerning that institution's customers. These provisions involve formal notification of the person whose records are being requested, procedures whereby the request can be challenged by that person, and reimbursement of the financial institution involved for expenses incurred pursuant to the request.

Unfortunately, at this time, there is not sufficient information available to allow the CBO to esstimate the cost of these provisions with any reasonable accuracy. It is not known how many times the agencies involved will request information pursuant to the proposed legislation nor can it be estimated how the prior notification provisions will affect the litigation costs of those agencies. A limited amount of related data is available from the Internal Revenue Service (IRS). At best, this information can only indicate the general magnitude of some of the costs involved. In January 1977, the IRS began compensating financial

institutions for the expenses of assembling and providing information on persons under investigation. In the first 6 months of fiscal year 1978, these payments amounted to about $280,000. The number of institutions taking advantage of this payment program is increasing and it is possible that IRS third-party payments could reach $1 million per year within the next few years. It should be emphasized that this number represents third-party payments only and does not include increased administrative or litigative expenses. And, again, it is not known how the number of IRS requests for information would compare to that of those agencies affected by the proposed legislation.

We regret not being able to furnish the committee with a cost estimate for this bill. The error inherent in any estimate that could be derived from the available information could very well detract, rather than add, to the debate on the legislation.

Sincerely,

JAMES BLUM,
Alice M. Rivlin, (For Director).

Section-by-Section Summary of the Financial Institutions Regulatory Act of 1978

The first section provides that the bill may be cited as the "Financial Institutions Regulatory Act of 1978".

Title I—Supervisory Authority Over Depository Institutions

Section 101 adds a new secttion to the Federal Reserve Act which would authorize the Board of Governors, in the case of member banks, and the Comptroller of the Currency, in the case of national banks, to assess civil money penalties against a member or national bank, or an individual participating in the affairs of such a bank, for any violation of sections 22 or 23A of the Federal Reserve Act. These sections limit loans to insiders and affiliates of the bank. A civil money penalty of not more than $1,000 per day for each violation may be assessed after notice and consideration of the appropriateness of the penalty with respect to the financial resources and good faith of the member bank or person charged, the gravity of the violation, the history of previous violations and the data, views and arguments of the bank or person against whom such civil penalty may be assessed. The person assessed is given a right to an agency determination based on a hearing on the record subject to appeal to a circuit court of appeals.

Section 102 adds a new section to the Federal Reserve Act which would authorize the assessment of a civil money penalty in the same manner as authorized under section 101 of this title for any violation of section 19 of the Federal Reserve Act. The amount of the penalty under this section, however, is limited to not more than $100 per day for each violation. Section 19 of the Federal Reserve Act provides for reserve requirements and limitations on the amount of interest which may be paid on deposits at member banks.

Section 103 adds a new section to the National Banking Act which would authorize the assessment by the Comptroller of the Currency of a civil money penalty in the same manner as authorized under section 101 of this title for any violation of the National Bank Act or any regulation issued pursuant thereto.

Section 104 would amend section 22 of the Federal Reserve Act and place additional restrictions on loans to executive officers, directors and persons who directly or indirectly own or control more than 10 percent of the voting shares of a member bank. The amendment would prohibit loans to an executive officer or 10 percent stockholder (except that this percentum is 18 percent for banks located in communities with less than 30,000 in population), companies controlled by such person, or his political or campaign committees, where the amount of the loan, when aggregated with all other loans outstanding to such person, his controlled companies and his political or campaign committees, would exceed the limits on loans to a single borrower established by section 5200 of the Revised Statutes (10 percent of the capital and surplus of the bank). This limit would be made to apply to national banks and State member banks alike. The amendment would also require the approval of a majority of the Board of Directors of a member bank before a loan could be made by the bank to an executive officer, a director or a 10 percent stockholder, to any company controlled by such a person or to any political or campaign committee of such a person, where the amount of the loan, when aggregated with all other loans outstanding to such person, his controlled companies and his political or campaign committee, would exceed $25,000. In the case of an executive officer these requirements would be an addition to the existing requirements established by section 22(g) of the Federal Reserve Act. All loans to executive officers, directors and 10 percent stockholders, to companies controlled by such persons and to political or campaign committees of such persons, must be made on substantially the same terms as those prevailing at the time for comparable transactions with other persons.

Member banks would be prohibited from honoring overdrafts of executive officers or directors unless the payment of the overdraft is tied to a written preauthorized extension of credit to such officer or director or to a written preauthorized transfer of funds from another account of such officer or director at that bank. The Board of Governors would be authorized to prescribe rules and regulations to effectuate the purposes and to prevent evasions of this section, as well as to establish a time period within which bank loans currently outstanding shall be reduced so as to conform to the limitations of this section.

Section 105(a) would authorize the Federal Reserve Board to require the divestiture of a nonbank subsidiary of a holding company, not a subsidiary of a bank, or the termination of such nonbank activities, wherever there is a reasonable cause to believe that such subsidiary or activity constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company's subsidiary bank and is inconsistent with sound banking principles or with the purposes of the Bank Holding Company Act. Such divestiture or termination is required to be consummated within 120 days or such longer period as the Federal Reserve Board, in its discretion, may direct in unusual circumstances.

Section 105(b) would authorize the Federal Savings and Loan Insurance Corporation, whenever it has reasonable cause to believe that the continuation by a savings and loan holding company of any

activity or of ownership or control of any of its noninsured subsidiaries, constitutes a serious risk to the safety, soundness, or stability of a subsidiary insured institution or institutions, and is inconsistent with the sound operation of an insured savings and loan association or with the purposes of section 408 or with the Financial Institutions Supervisory Act, to order the savings and loan holding company or any of its noninsured subsidiaries, after due notice and opportunity for a hearing, to terminate such activities or to terminate—within 120 days, or such longer period as the FSLIC in its sole discretion directs in unusual circumstances—its ownership or control of any such subsidiary.

Section 105(b)(2) would authorize the FHLBB to make contributions to insured savings and loan associations in distress similar to contributions authorized by law respecting insured banks.

Section 106(a) would authorize the assessment by the Board of Governors of a civil money penalty in the same manner as authorized under section 101 of this title for any violation of the Bank Holding Company Act or any regulation or order issued pursuant thereto.

Section 106(b) would authorize the Board or any designated representative thereof, to administer oaths and affirmations, to take depositions, and to issue, revoke, quash or modify subpoenas and subpoenas duces tecum in connection with any application, examination, investigation or other proceeding under the Bank Holding Company Act.

Section 106(c) would provide that any company which violates or any individual who participates in a violation of any provision of section 408 of the National Housing Act or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $1,000 per day per violation for each day during which such violation continues. The FSLIC would have the authority to assess such a civil penalty after notice and the following of procedures identical to those applicable under section 101.

Section 107(a)(1) would make clear that cease-and-desist proceedings and cease-and-desist orders may be issued under the Financial Institutions Supervisory Act directly against any director, officer, employee, agent, or any other person who participates in the conduct of the affairs of a bank.

Section 107(a)(2) would amend section 407 of the National Housing Act to expand the scope and effectiveness of cease-and-desist orders issued by the FSLIC. The amendment would make it clear that cease-and-desist proceedings could be instituted against directors, officers, employees, agents, or other persons participating in the conduct of the affairs of an insured institution, regardless of whether the insured institution itself is named in the proceeding. This section and section 107(a)(3) gives the FHLBB the authority to issue cease-and-desist orders against savings and loan holding companies, their subsidiaries and affiliates, and service corporations.

Section 107(a)(3) would provide the Federal Home Loan Bank Board with cease-and-desist powers, with respect to Federal savings and loan associations, similar to the powers subsection 107(a)(2) would provide to the FSLIC with respect to State-chartered insured savings and loan associations.

Section 107(a)(4) provides the NCUA with similar cease-and-desist authority over individuals as provided for in section 107(a)(1)-(3).

Section 107(b) would extend the cease-and-desist and removal powers of the Board under the Financial Institutions Supervisory Act to Edge Act and Agreement Corporations whether or not any such corporation is a subsidiary of a bank holding company. This section would also extend the removal powers of the Board under the Financial Institutions Supervisory Act to bank holding companies and their nonbank subsidiaries.

Section 107(c)(1) would make clear that temporary cease-and-desist orders under the Financial Institutions Supervisory Act may be issued directly against any director, officer, employee, agent, or other person participating in the conduct of the affairs of a bank. This section would also authorize the issuance of a temporary cease-and-desist order where the appropriate Federal banking agency finds that the violation of law or unsafe or unsound banking practice specified in the notice of charges is likely to seriously weaken the condition of the bank prior to the completion of the administrative proceedings required under the act.

Section 107(c)(2) would conform the FSLIC's temporary cease-and-desist authority with respect to State-chartered insured institutions, with changes in subsection 107(c)(1) respecting cease-and-desist actions against individuals or banks.

Section 107(c)(3) would conform the FHLBB's temporary cease-and-desist authority, with respect to Federal savings and loan associations, with changes proposed in subsection 107(c)(1) respecting cease-and-desist actions against individuals or banks.

Section 107(c)(4) would conform the NCUA's temporary cease-and-desist authority over credit unions to that contained in section 107(c)(1) for banks.

Section 107(d)(1) would authorize the institution of a proceeding to remove from office any director, officer, or other person participating in the affairs of a bank or to prohibit such a person from participating in any manner in the conduct of the affairs of a bank upon a showing that such individual has exhibited personal dishonesty in a transaction or has demonstrated a willful or a continuing disregard for the safety or soundness of the bank. Under this section, removal proceedings may be commenced against persons participating in the affairs of national banks by the Comptroller of the Currency. However, removal orders in such cases may be issued only by the Federal Reserve Board. This changes current law, under which the Comptroller may not initiate such a proceeding.

Section 107(d)(2) proposes to expand the criteria for the removal of a director or officer from an insured savings and loan institution. The amendment would authorize the FSLIC to remove a director or officer of an insured savings and loan association, under the criteria set forth under subsection (d)(1) with respect to insured banks.

Section 107(d)(3) would amend the Home Owner's Loan Act of 1933, as amended, to permit the FHLBB to remove an officer, or director of a Federal savings and loan association, under the criteria set

forth under subsection (d)(2) applying to the FSLIC with respect to State-chartered insured institutions.

Section 107(d)(4) would authorize the removal of officials of insured credit unions to the same extent as removals are authorized for financial institutions.

Section 107(a)(1) authorizes the assessment of civil money penalties of not more than $1,000 per day for a violation of any outstanding cease-and-desist order under the Financial Institutions Supervisory Act. The civil money penalties may be assessed and collected under this section in a similar manner to that provided under section 101 of this bill after consideration of the appropriateness of the penalty in light of, among other things, the size of financial resources of the bank or person charged.

Section 107(a)(2) would provide that any insured institution, savings and loan, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of an institution who violates a cease-and-desist order which has become final, shall forfeit and pay a civil penalty of not more than $1,000 per day violation for each day during which such violation continues. The amendment provides the FSLIC with authority to assess such a civil penalty, giving due consideration to the appropriateness of the penalty with respect to the size of financial resources of the institution or person charged in a similar manner as under section 101 of the bill.

Section 107(a)(3) would provide the FHLBB with the authority to assess a civil penalty against Federal savings and loan associations and persons similar to the authority vested in the FSLIC under subsection (e)(2).

Section 107(e)(4) would authorize the NCUA to assess civil money penalties not to exceed $1,000 for violations of its cease-and-desist orders in the same manner as is applicable to other financial institutions regulatory agencies.

Section 108 would make the requirements of section 22(h) of the Federal Reserve Act applicable to insured nonmember banks and would authorize civil money penalties to be assessed against insured nonmember banks for violations of sections 22(h) and 23A of the Federal Reserve Act to the same extent that civil money penalties may be assessed against member banks.

Section 109 makes clear that the civil money penalty provisions of this bill apply only to violations occurring after the date of the enactment of the bill.

Section 110 would amend section 22(g) of the Federal Reserve Act to increase the dollar limitations on loans which may be made by a member bank to its executive officers. Under this section, a member bank may make loans to individual executive officers of: $60,000 for the purpose of purchasing a home; $30,000 to finance the education of children; and $10,000 for any other purpose.

Section 111 would amend section 8(g) of the Federal Deposit Insurance Act to provide an opportunity for an informal hearing before the appropriate Federal banking agency for any officer, director, or other person participating in the conduct of the affairs of an insured bank who has been suspended or removed from office or prohibited from participating in the affairs of a bank as a result of

an indictment or conviction of a felony involving dishonesty or breach of trust. The agency would be required to notify the individual of its decision 60 days following the hearing and provide the individual with a statement as to the basis for its decision. The amendment would also require the agency, before it suspends or removes such an individual, to find that continued service to, or participation in the affairs of, the bank by such an individual may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank. Currently, this section of the statute does not provide an officer or director of a bank with an opportunity for hearing or contain standards to be applied by the agency in exercising its discretion.

Section 111(a) would make willful failure to comply with a subpena issued pursuant to the Financial Institutions Supervisory Act a misdemeanor, punishable by a fine of not more than $1,000 or by imprisonment for a term of not more than 1 year, or both.

Section 111 (b), (c), and (d) would require suspensions or removals after indictment or conviction of a crime of individuals under the jurisdiction of the FHLBB and NCUA to be conducted in accordance with section 111(a).

Section 112 would amend section 4(c) of the Bank Holding Company Act to eliminate the existing exemption from the prohibitions on nonbank acquisitions to bank holding companies. Firms which were, on January 1, 1977, tax-exempt labor, agricultural, or horticultural organizations would be grandfathered.

Title II—Management interlocks

Section 201 provides that title II may be cited as the "Depository Institutions Management Interlocks Act."

Section 202 defines the terms "depository institution," "depository holding company," "affiliate," "management official," and "office." The term "affiliate" would include holding company subsidiaries, companies 50 percent of the stock of which is owned by persons owning 50 percent of the depository institution, trust companies entirely owned by one or more mutual savings banks, and banks owned by and operated for other banks and not the public.

Section 203 prohibits a management official of a depository institution or a depository holding company from serving as a managerial official of another depository institution or depository holding company not affiliated therewith if their offices are located in the same SMSA or in the same or contiguous or adjacent city, town, or village. Depository institutions with less than $20 million in assets would be judged by the second geographical test (same or contiguous or adjacent city, town, or village) rather than the first (same SMSA).

Section 204 prohibits interlocking management relationships regardless of geographic location between a depository institution or a depository holding company with $1 billion in assets and a depository institution or a depository holding company with $500 million in assets.

Section 205 provides exemptions from the prohibitions of sections 203 and 204 for failing institutions, Edge Act Corporations, credit

unions, institutions with only incidental activities within the United States, State-chartered S. & L. guaranty corporations, Federal Home Loan Banks, and banks organized to serve depository institutions.

Section 206 grandfathers existing interlocking relationships for a period of 10 years and allows each Federal banking agency authority to allow up to 15 months for correction of any interlock which becomes subject to the prohibitions of sections 203 and 204 after the date of enactment.

Section 207 places concurrent jurisdiction to enforce the provisions of title II in the appropriate Federal regulatory agency and in the Department of Justice upon referral by one of the Federal regulatory agencies.

Section 208 provides conforming amendments to the cease-and-desist powers of the Federal regulatory agencies to cover enforcement of the interlock provisions.

Section 209 grants to each of the Federal regulatory agencies the authority to issue rules and regulations to implement title II, including the authority to permit interlocks that would otherwise be prohibited by section 203 or section 204.

Title III—Foreign branching

Section 301 would include a definition of "foreign branch" in the FDIC Act and would give the FDIC express authority over the establishment and operation of foreign branches and the acquisition of the shares of foreign banks by State nonmember-insured banks similar to that exercised by the Federal Reserve with respect to foreign branches and foreign bank acquisitions of member banks.

Section 302 would amend the Federal Deposit Insurance Act to permit the signatures of two directors or trustees to attest to the correctness of a report of condition of an insured nonmember bank. The signatures of two directors or trustees are currently permitted only if the bank does not have more than three directors or trustees. Accordingly, when the FDIC receives a report of condition attested by the signatures of two directors or trustees, it often must undertake time-consuming investigations to determine the total number of directors or trustees of the insured nonmember bank.

Section 303 would amend the subpena provisions of section 8(n) of the Federal Deposit Insurance Act (12 U.S.C. 1818(n)) to cover claims for insured deposits and examinations and investigations under section 10 of the Federal Deposit Insurance Act.

Section 304 would amend section 8(g) of the Federal Deposit Insurance Corporation Act (12 U.S.C. 1818(g)) to provide that where the deposit liabilities of an insured bank are assumed by another insured bank, the time deposits so assumed shall continue to be separately insured to the earliest maturity more than 6 months after the effective date of the assumption. Demand and savings deposits so assumed shall continue to be separately insured for a period of 6 months after the effective date of the assumption.

Section 305 would make clear that, in connection with an examination or other type of investigation for compliance with applicable law, the appropriate Federal banking agency is authorized to take testimony and subpena the records of institutions. The procedural require-

ments as to subpenas are deleted from section 10 of the act and those of section 8(n) of the Federal Deposit Insurance Act are incorporated by reference. Section 305 would also expand the definition of "affiliate" for this purpose to include any "affiliate" as that term is used in section 23A of the Federal Reserve Act (12 U.S.C. 371c), which in conjunction with section 18(j) of the Federal Deposit Insurance Act—12 U.S.C. 1828(j)—prohibits certain loans to affiliates of insured banks. The proposed amendment would conform the definitions of "affiliate" as used in these closely related contexts and thus conform the authority of the Corporation to examine a bank holding company of which a nonmember insured bank is a subsidiary, as well as any other subsidiary of such company to the definitions contained in the Bank Holding Company Act.

Section 306 would amend section 18(c)(1)(B) of the Federal Deposit Insurance Act—12 U.S.C. 1828(c)(1)(B)—to make clear that the Corporation's approval is necessary in connection with the assumption by an insured bank of the deposit liabilities of a foreign noninsured bank, notwithstanding the exclusion of such liabilities from the definition of the term "deposits" in section 3(1)(5) of that act—12 U.S.C. 1813(1)(5).

Section 307 would amend 18 U.S.C. 1114 to make it a felony to kill, or to forcibly assault, resist, oppose, impede, intimidate, or interfere with an FDIC attorney, liquidator, examiner, claim agent, or other FDIC employee as a result of the performance of his official duties. Such acts against Corporation employees arising out of their official duties are not presently Federal crimes, and the State sanctions which can be applied in these cases often differ in substance and application. The enactment of section 307 would equally proscribe such acts in all States. The provisions of this section would also apply to the Comptroller of the Currency, the Federal Reserve, the FHLBB, and the NCUA.

Section 308. Bank Service Corporation Act requires federally regulated banks and persons performing certain clerical services for such banks to give written assurances that such services will be subject to Federal regulations and examination to the same extent as if they were performed by the bank itself. Section 308 would eliminate the requirement to furnish such assurances and would make the performance of such services automatically subject to Federal regulation and examination. The proposed amendment would also require every such bank to notify the appropriate Federal bank regulatory agency within 30 days of the existence of a service relationship and would apply the act to subsidiaries of the bank which are themselves subject to examination by the agency which regularly examines the bank.

Section 309 amends the Federal Deposit Insurance Corporation Act to give the Board of Directors of the Corporation general rulemaking authority.

Section 310 amends section 7 of the Federal Deposit Insurance Act to exclude deposits accumulated for the repayment of personal loans from the definition of deposits for deposit insurance assessment purposes. Such deposits are currently deducted from a bank's deposit base prior to the computation of the insurance assessment, Accordingly, the amendment has no effect on the insurance assessment paid by

insured banks and brings reporting requirements for reports of condition submitted by insured banks into conformity with generally accepted accounting principles.

Title IV—Conflicts of interest

Section 491 provides that title IV may be cited as the "Depository Institutions Conflict of Interest Act."

Section 402 amends section 2 of the Federal Deposit Insurance Act (12 U.S.C. 1812) to prohibit the members of the Federal Deposit Insurance Corporation (includes the Comptroller of the Currency) from taking positions with insured banks, their holding companies, or with an affiliate of a holding company of an insured bank for a 2-year period if they do not complete the full term for which they were appointed. Former members, regardless of whether they complete their term or not, would be prohibited for a 2-year period after leaving the Corporation from contacting or appearing before the Corporation on behalf of any other person and from acting as an agent or attorney for any other person before the Corporation. These new restrictions apply only to future members and not to sitting members of the Corporation.

Section 403 amends section 10 of the Federal Reserve Act (12 U.S.C. 242) to apply the restrictions of section 402 to members of the Board of Governors of the Federal Reserve System. The only difference is that the employment prohibition goes to member banks and their holding companies rather than all insured banks.

Section 404 amends section 17 of the Federal Home Loan Bank Act (12 U.S.C. 1437) by adding a new section applying the restrictions of section 402 (except that the employment restrictions apply to positions with institutions regulated by the Federal Home Loan Bank Board) to members of the Federal Home Loan Bank Board.

Title V—Credit Union restructuring

Section 501 would amend section 102 of the Federal Credit Union Act (12 U.S.C. 1752a) to replace the Administrator of the National Administration (NCUA) with a reconstituted Board. Management of the NCUA would be vested in a Board, the Chairman of which would be responsible for implementing the Board's policies. The members of the Board would be prohibited from taking positions with a credit union or any financial institution in which a credit union owns stock for a 2-year period if they do not complete the full term for which they were appointed. Former members, regardless of whether they complete their term or not, would be prohibited for a 2-year period after leaving the Board from contacting or appearing before the Corporation on behalf of any other person and from acting as an agent or attorney for any other person before the Board.

Section 502 would make conforming changes throughout the Federal Credit Union Act to reflect the substitution of the Board for the Administrator. Section 502 would also provide that the Chairman of the Board is on level III of the executive schedule and the other members of the Board on level IV of the executive schedule.

Section 503 would amend the definition of the terms "member account" and "account" and "branch" in section 101 of the Federal Credit Union Act.

Section 504 would amend section 201 of the Federal Credit Union Act to add credit unions in trust territories to the list of credit unions

eligible for insurance and to eliminate the provisions relating to Federal credit unions that are disapproved for insurance.

Section 505 would amend the definition of the term "members account" for purposes of section 202 of the Federal Credit Union Act.

Section 506 would amend the title of section 208 of the Federal Credit Union Act.

Section 507 would amend the provisions of section 105 of the Federal Credit Union Act relating to the annual supervision or operating fee to be charged each Federal credit union.

Section 508 would make a conforming change to section 106 of the Federal Credit Union Act to reflect the changes made by section 507 in the annual fee provisions of the Federal Credit Union Act.

Section 509 provides that the Administrator shall continue to perform his functions under the Federal Credit Union Act until such time as all members of the reconstituted Board take office.

Title VI—Change in bank control

Section 601 provides that title VI may be cited as the "Change in Bank Control Act of 1978."

Section 602 would amend subsection (j) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) to provide that no person may acquire control of an insured bank or holding company of an insured bank unless the appropriate Federal banking agency has been given 60 days' prior written notice of the proposed acquisition. The Federal banking agency would be required to forward a copy of the notice to the appropriate State banking agency if the proposed acquisition involved a State-insured bank and to give due consideration to the views and recommendations of such State agency.

Section 602 would also provide that the notice include information about the finances and background of the acquiring person, the terms of the acquisition, the source and amount of any borrowed funds to be used to make the acquisition, any persons employed to make solicitations to stockholders in connection with the acquisition, any tender offers, and any plans the acquiring person might have to liquidate the bank or make any major change in its structure or management. Section 602 further provides that the Federal banking agency may disapprove any such acquisition if the acquisition would result in a monopoly or might substantially lessen competition, if the financial condition, competence, experience, or integrity of the acquiring person or designated management personnel is such that it would not be in the interest of the depositors or the public to permit such acquisition, or if any acquiring person fails to provide any of the information required by the Federal banking agency.

Section 602 further provides that each Federal banking agency is authorized to issue rules and regulations to carry out this title. Any person willfully violating this title or any regulation or order issued under this title would be subject to civil penalties.

Section 602 finally provides that the provisions of title IV do not apply to transactions subject to section 3 of the Bank Holding Company Act or the Bank Merger Act.

Title VII—Change in savings and loan control

Section 701 provides that title VII may be cited as the "Change in Savings and Loan Control Act of 1978."

Section 702 amends paragraph (6) of section 407(1) of the National Housing Act (12 U.S.C. 1730(1)(6)) to provide that the change in control and management reports required by that section apply only to mutual institutions.

Section 703 amends section 407 of the National Housing Act (12 U.S.C. 1730) by adding a new subsection to provide the Federal Home Loan Bank Board with the same power to disapprove proposed acquisitions of insured stock institutions or their holding companies under the National Housing Act that Federal banking agencies are granted in title VI in connection with insured banks.

Title VIII—Extensions of credit and correspondent balances

Section 801 would prohibit a correspondent bank from making an extension of credit to an executive officer or director or 10-percent shareholder of a bank for which it holds a correspondent account or from opening a correspondent account for a bank while it has outstanding an extension of credit to an executive officer, director, or 10-percent shareholder of that bank unless the extension of credit is on substantially the same terms as those prevailing for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features. Section 801 would also prohibit a bank which has a correspondent account at another bank from making an extension of credit to an executive officer, director or 10-percent shareholder of such other bank except on substantially the same terms as those prevailing at the time for comparable transactions with other persons. Finally, section 801 would prohibit a bank from opening a correspondent account at another bank if it has extensions of credit outstanding to an executive officer, director or 10-percent shareholder of such other bank on terms that are not substantially the same as those prevailing at the time for comparable transactions with other persons. In addition, it would authorize the assessment of civil money penalties in the same manner as authorized under section 101 of title I for violations of this section.

Section 801 would also require each executive officer and 10-percent stockholder to make to the board of directors of his bank a report providing full details, including terms and conditions, of all loans to himself, his affiliated companies, and his political or campaign committees received from correspondent banks of his bank. Each bank would also be required to compile the information provided by their officers and major stockholders and provide that information annually to the appropriate Federal banking agency. The information in these two reports would not be publicly disclosed. Each bank would also include in the report required in title IX a list of each officer and stockholder making a report on correspondent account loans and the aggregate amount of all such loans.

Title IX—Disclosure of material facts

Section 901 adds a new subsection to section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) which would require each insured bank to make an annual report to the appropriate Federal banking agency which would include:

(1) A list of each stockholder of record owning more than 10 percent of the stock of the bank, and

(2) A list of each executive officer and 10-percent stockholder and the aggregate amount of extensions of credit by the bank to such executive officers and stockholders, their companies, and their political or campaign committees.

This report could by regulation be incorporated into any other report required to be filed by the bank with the regulatory agency and would be available to the public upon request.

Title X—Federal Financial Institutions Examination Council

Section 1001 provides that this title may be cited as the "Federal Financial Institutions Examination Council Act of 1978."

Section 1002 provides that the purpose of the title is to establish a Financial Institutions Examination Council to prescribe uniform principles and standards for bank examinations and to make recommendations to promote uniformity in supervision.

Section 1003 defines the terms "Federal financial institutions regulatory agencies" and "Council."

Section 1004 provides that the Council is to consist of the Comptroller, the Chairman of the FDIC, a Governor of the Board of Governors of the Federal Reserve Board, the Chairman of the Federal Home Loan Bank Board, and the Chairman of the National Credit Union Administration Board. The first Chairman of the Council would be selected by the members of the Council and thereafter the chairmanship would rotate among the members.

Section 1005 provides that the costs of the Council are to be paid by annual assessments on each of the federal financial institutions regulatory agencies.

Section 1006 provides that the Council shall establish uniform principles and standards for financial institutions examination and shall make recommendations for uniformity in other supervisory matters. When a financial institution regulatory agency finds a recommendation of the Council unacceptable, it must set forth its reasons for opposing the recommendation in writing.

Section 1007 provides for liaison between the Council and state financial institutions regulatory agencies.

Section 1008 provides for the internal administration of the Council.

Section 1009 provides that the Council shall have access to all records and files of the federal financial institutions regulatory agencies.

Title XI—Right to Financial Privacy

Section 1100 provides that title XI may be cited as the "Right to Financial Privacy Act of 1978."

Section 1101 defines the terms "financial institutions," "financial records," "Government authority," "person," "customer," "supervisory agency," and "law enforcement."

The term "consumer finance institution" is intended to mean a consumer finance company, a sales finance company, a small loan company, a consumer discount company, or other similar institution.

The definitions of "financial records" and "customer," taken together, are intended to preclude application of the bill to anyone other than the person to whose account information the government seeks access. They would exclude, for example, the endorsers of checks and guarantors of loans.

31-277 O - 78 - 4

Section 1102(a) prohibits government access to financial records unless one of five procedures are used and the records are "reasonably described." This term is intended to mean that the records being sought must be described as specifically as possible, and that a blanket request for "all records" is insufficiently specific. The five procedures are as follows: (1) the customer authorizes the disclosure pursuant to section 1104; (2) an administrative subpoena or summons is used in accordance with section 1105; (3) a search warrant is issued after a finding of probable cause that a crime has been or may be committed; (4) a judicial subpoena is issued meeting the requirements of section 1107; or (5) a formal written request meeting the requirements of section 1108 is used.

Section 1103(a) prohibits a financial institution from disclosing records unless the requirements of the title are met.

Section 1103(b) provides that a financial institution may not release financial records until the Government authority seeking the records certifies in writing that it has complied with the provisions of the title. A government employee who submits a false certificate could be subject to criminal prosecution or administrative sanctions under other provisions of law. While government access under several of the exceptions in section 1113 may not require that a certificate be provided under this subsection, a government authority proceeding under these exceptions is not precluded from providing a financial institution with a certificate.

Section 1103(c) allows a financial institution to notify a government authority that it has information which may be relevant to a possible violation of any statute or regulation. This section is intended to permit such reports only if the bank volunteers the information. Government authorities may not provoke such disclosures by making inquiries. Once the government authority has received such a notification, it will be required to comply with the provisions of the title with respect to obtaining financial records and the information contained in them.

Section 1103(d) permits a financial institution to provide copies of financial records in order to perfect a security interest, prove a claim in bankruptcy or collect on a debt.

Section 1104(a) provides that a customer may authorize disclosure of his financial records if he signs a statement identifying the records and specifying the recipient and purpose of the disclosure. The authorization may not be effective for longer than 3 months and may be revoked at any time before the records are disclosed.

Section 1104(b) states that a financial institution may not require any authorization as a condition of doing business with the institution.

Section 1104(c) grants the customer the right to obtain a copy of the records a financial institution must keep of all instances in which a customer's records were disclosed to a government official unless the government authority obtains a court order under section 1109.

Section 1104(d) requires financial institutions to notify their customers of their rights under this title.

Section 1105(a) establishes the general procedures for using administrative subpenas and summons for government access to financial

records. These methods may be used only if (1) there is reason to believe that the process will produce the information relevant to a legitimate law enforcement purpose; (2) a copy of the summons or subpena is served or mailed to the customer on or prior to the date on the subpena or summons was served on the financial institution; (3) the customer has 10 days from the date of service or fourteen days from the date of mailing within which to file an affidavit and motion to quash. The phrase "reason to believe" used in this section and in sections 1107 and 1108 does not mean any reason, no matter how theoretical or remote, while the phrase "legitimate law enforcement purpose" is intended to impose a lower standard than "probable cause." The committee intends that these two phrases, taken together, will preclude intrusion into financial records unless the agency has a demonstrable reason to believe the records contain information which will aid in a legitimate investigation of violations of law within its jurisdiction.

Section 1105(b) establishes an alternative procedure for the Securities and Exchange Commission's administrative subpenas. This procedure may be used if—(1) the SEC determines that it is necessary to investigate a violation of Federal law within its jurisdiction; it is necessary to investigate matters of proper concern to the SEC or to secure information to serve as a basis for recommending further legislation; and (2) the SEC issues a formal order of investigation which specifies the date the order was issued, the subject matter of the investigation, the statutory provisions which may have been violated or other purpose of the investigation, the statutory authority for the investigation, and the names of the personnel empowered to conduct the investigation; and (3) the officer, employee or agent issuing the subpena deems the financial records subpenaed to be related to the investigation.

Paragraph (2) provides the fourteen days after the subpena or summons is issued the customer will be served or mailed a copy of it along with a notice which specifies that he may seek to prohibit the SEC from obtaining or using the records or information.

Paragraph (3) provides that the customer may petition in Federal district court to prevent the SEC from obtaining the records, or enjoin the use and require the return of any records improperly obtained.

Nothing in this subsection is intended to limit the duty of a financial institution outlined in section 1111 of this title.

Section 1106(a) provides that government officials may use search warrants to obtain financial records only if the warrant is obtained pursuant to Federal Rules of Criminal Procedure.

Section 1106(b) requires government officials to mail the search warrant to the customer within 90 days after serving the search warrant and to state the reason for seeking the records.

Section 1106(c) provides that a government official may obtain a 90-day delay in mailing the notice if a court finds that the notice would seriously jeopardize a continuing investigation of a felony. Additional delays may be obtained, but only in accordance with this subsection.

Section 1107 provides that judicial subpenas may be used only if (1) there is reason to believe the subpena will produce information relevant to a legitimate law enforcement purpose; (2) a copy of the subpena is served on or mailed to the customer; (3) the customer has

10 days from the date of service or 14 days from the date of mailing within which to file an affidavit and motion to quash.

Section 1108 provides procedures for obtaining access to financial records through use of a formal written request by government officials. Such access can be obtained only if (1) the government official does not have administrative summons or subpena for the purpose for which records are sought; (2) the request is authorized by regulations promulgated by the head of the agency or department; (3) the request is used to obtain information relevant to a legitimate law enforcement purpose; and (4) the customer is served with or mailed a copy of the request, the customer has 10 days from service or 14 days from mailing to file an affidavit and motion to quash the request.

Section 1108 authorizes a new, noncoercive, procedure for gaining access to financial records. This procedure is not intended to be used by agencies which do not now have authority to investigate violations of law. It is, therefore, not a general grant of authority to all government agencies. It is only intended to provide those agencies which have the authority to investigate violations of law but which lack administrative subpena power a means to obtain financial records they need to carry out their responsibilities.

The regulations which are issued to govern the use of the formal written request should specify the level of employee permitted to make such requests and should state that the authority may not be delegated. The regulations should also state the circumstances in which it may be used, the form it must take, and the information it must contain.

Section 1109(a) provides for a delay of the notices required under sections 1104(c), 1105(a)(2), 1106(c), 1107(2), or 1108(4), if a judge or magistrate finds (1) the investigation is within the jurisdiction of the government authority, (2) there is reason to believe the records will produce information relevant to a legitimate law enforcement purpose, and (3) there is reason to believe that notice would result in: danger to the life or safety of any person, flight from prosecution, destruction of evidence, intimidation of a witness, or otherwise seriously jeopardize an investigation or official proceeding or unduly delay a trial or ongoing official proceeding. The committee intends that delays be granted under section 1109(a)(3)(E) only if the harm to be avoided by the delay in notice rises to the severity of the example enumerated in 1109(a)(3)(A) through (D).

Section 1109(b) provides that if the court makes the findings required in subsection (a), it shall grant a delay not to exceed ninety days and prohibit the financial institution providing the records from disclosing that records have been requested or obtained. This section also permits an indefinite delay of notice if records have been sought under the Trading with the Enemy Act, the International Emergency Economic Powers Act, or the United Nations Participation Act and the court finds that there is reason to believe that notice may endanger the customer. This provision is intended to permit an indefinite delay of notice to customers living in certain foreign countries in which a notice may be intercepted by the government and result in physical harm to the customer.

Additional 90-day delays may be granted, but only in accordance with the subsection. After all delay periods have expired the customer

must be mailed a notice specifying the reason for the delay and the purpose of the investigation or official proceeding.

Section 1109(c) provides that a court granting a delay must report that fact and the details surrounding it to the Administrative Office of the U.S. Courts. The Director of the Administrative Office is required to report annually to Congress the number of applications for extension of delay and the number of applications granted and denied.

Section 1109(d) provides a notice procedure for access made pursuant to section 1114(b) (emergency access).

Section 1109(e) requires courts to preserve all documents filed in connection with a request for a delay in notice. The customer can petition the courts to see the records, which would be allowed unless such access would seriously jeopardize an investigation.

Section 1110 sets forth the procedures to be followed when a customer makes a challenge to a government authority's attempt to obtain his financial records pursuant to an administrative summons or subpena, a judicial subpena or a formal written request.

Section 1110(a) provides that the customer may, within 10 days of service of 14 days of mailing file in Federal district court a motion to quash a summons or subpena or an application to enjoin a formal written request. Service of the motion must also be made on the government authority, but it may be accomplished by "delivery", as that term is defined in rule 5(b) of the Federal Rules of Civil Procedure, or by mailing by registered or certified mail to the person, office or department specified on the notice form given to the customer. This form of service to initiate an action against a government agency is intended to give the government adequate notice but to be as simple as possible. It dispenses with the requirements of Rule 4 of the Federal Rules of Civil Procedure which require service on the U.S. attorney and the Attorney General as well as the agency.

The motion or application must be accompanied by an affidavit or sworn statement of the customer stating his relationship to the records sought and showing a factual basis for concluding that there is no reason to believe the financial records are being sought contain information relevant to a legitimate law enforcement purpose. This does not meant that the customer must prove that there is no legitimate law enforcement purpose involved. In fact, the ultimate burden or proof in these matters must rest with the government authority seeking access to the records, since it is the government, and not the customer that is in a position to meet the burden of proof. The requirement for showing a "factual basis" merely means that the customer must go beyond an allegation that the records are not being sought for a legitimate purpose. As Philip B. Heyman, Assistant Attorney General for the Criminal Division, stated in testimony before a House Judiciary Subcommittee on July 13, 1978, all the customer need do is make "an initial showing that access may be improper . . ." This section does not require a detailed evidentiary showing or require that the customer prove there is no legitimate law enforcement purpose for the government's attempt to obtain his records. However, it does require the customer to state facts to support his position. For example, he may state that to the best of his knowledge and belief he has no connection to the matters under investigation; he has not committed an offense

related to the investigation; or that he is the subject of harrassment as shown by prior unsuccessful attempts to obtain his records. Once the customer has met this minimal threshold showing, the burden of going forward must then shift back to the government authority.

Section 1110(b) provides that if the court finds the customer's filing under subsection (a) is sufficient, it must order the government authority to file a sworn response, which may be filed *in camera* if the government authority states its reasons for requesting such a filing. An *in camera* submission should only be permitted in instances where a public filing would seriously jeopardize a legistimate investigation. The court may then decide on the basis of the filings or conduct additional proceedings. The court must decide the customer challenge within 7 calendar days of the date the government's response is filed.

Section 1110(c) provides that the court may find in favor of the government authority and uphold its request, or block the request if it finds in favor of the customer. "Substantial compliance" with the provisions of the title is sufficient. This language is intended only to insure that minor and technical violations of the bill are not a basis for denying access.

Section 1110(d) provides that the customer may not appeal a court ruling in the Government's favor since it is not a final order. An appeal may be taken from a final order in any legal proceeding against the customer, or after a determination that no legal proceeding will be instituted.

Section 1110(e) provides that the challenge procedures of this title are the sole judicial remedies available to the customer to oppose disclosure of financial records.

Section 1110(f) provides that the title does not enlarge or restrict the rights of a financial institution and that the customer may not assert the rights of a financial institution.

Section 1111 requires financial institutions to begin collecting records requested by a government authority under sections 1105 or 1107 so that they will be available immediately after all delay periods expire, unless otherwise provided by law. The "unless" clause refers to the right of the financial institution to object to process on the ground that the demand for records is vague, overbroad or too burdensome.

Section 1112 provides that copies of or the information contained in financial records obtained pursuant to this title may not be used or retained in any form for any purpose other than the specific statutory purpose for which the information was originally obtained, and that the information or records may not be provided to any other government agency or department except where specificially authorized by statute. The section further provides that nothing in the title prohibits any supervisory agency from exchanging examination reports or providing information to an enforcement agency concerning a possible violation of a regulation or statute administered by the supervisory agency. The section also provides that nothing in the title authorizes a supervisor to withhold information from the Congress.

Section 1113 provides exceptions from the provisions of this title. The exceptions are: (a) disclosure of information which is not identifiable as records of an individual customer; (b) examination of records by supervisory agencies; (c) disclosures authorized under the

Tax Reform Act of 1976; (d) information required to be reported by Federal statute or regulation; (e) disclosure of records in connection with litigation to which the Government and customer are parties; (f) disclosure of records when the Government and the customer are parties to an administrative adjudicatory proceeding; (g) when the Government is seeking only the name, address, account number and type of account or when the Government is exercising financial controls over foreign accounts in the United States under certain statutes; (h) when the financial institution is the target of an investigation (but transfer of records to another agency is forbidden); (i) grand jury subpoenas.

Section 1114 provides for special procedures in the case of foreign intelligence, Secret Service protective functions and emergency situations. Though the committee believes that some privacy protections may well be necessary for financial records sought during a foreign intelligence investigation, there are special problems in this area which make consideration of such protections in other congressional forums more appropriate. Nevertheless, the committee intends that this exemption be used only for legitimate foreign intelligence investigations; investigations proceeding only under the rubric of "national security" do not qualify. Rather, this exception is available only to those U.S. Government officials specifically authorized to investigate the intelligence operations of foreign governments.

Section 1114(a) provides an exemption from the procedure of the title (except the 1103(b) certification and the 1115 reimbursement provisions) for foreign intelligence and Secret Service protective functions. The section also provides that the financial institution may not notify the customer and that the Government must compile an annual tabulation of the occasions in which the section is used.

Section 1114(b) provides for access without prior notice to the customer where delay in obtaining records would create a danger of physical injury to any person, serious property damage or flight to avoid prosecution. Under this provision the 1103(b) certificate must be signed by a supervisory official. Post notice will be provided to the customer under this subsection, and an annual tabulation of the times it is used will be kept.

Section 1115 requires the government to reimburse financial institutions for assembling and furnishing the requested documents. This provision will take effect on October 1, 1979.

Section 1116 places jurisdiction over actions to enforce the title in any U.S. district court and provides a 3-year statute of limitations for actions brought under the title.

Section 1117(a) provides civil penalties for unauthorized disclosures of $100 for each violation, actual damages, punative damages, and attorney's fees.

Section 1117(b) provides that the Civil Service Commission shall institute proceedings against a government employee if a court finds that the employee may have acted willfully or unintentionally and such actions have led to a successful suit against the Government.

Section 1117(c) provides that a financial institution will not be liable for disclosures made in good-faith reliance upon an 1103(b) certificate provided by a government authority.

Section 1117(d) provides that the remedies and sanctions of this title are the only judicial remedies available for violations of the title.

Section 1118 provides injunctive relief to ensure that the provisions of the title are complied with. This section is intended to give customers the opportunity to petition a court to require government compliance with any of the procedures of the title.

Section 1119 provides that any applicable statute of limitations will be tolled if a customer challenges access to financial records.

Section 1120 provides that information obtained by a Federal grand jury must be returned and actually presented to the grand jury; used only for the purposes of the grand jury, i.e., indictment and prosecution; destroyed or returned to the financial institution if not used for prosecution or sealed; and maintained only in the sealed records of the grand jury unless used as evidence in the crime for which the grand jury issued an indictment.

Title XII—Charters for Thrift Institutions

Section 1201 amends section 2(d) of the Home Owners Loan Act to broaden the definition of "association" to include federal mutual savings banks.

Section 1202 authorizes the Home Loan Bank Board to charter local mutual savings banks which wish to convert from a State charter to a Federal charter. The section permits converting institutions to continue activities engaged in on December 31, 1977, and retain or make investments held on that date except that the ratio of its equity, corporate bond, and consumer loan investments may not exceed the ratio of such investments to total assets for the 5-year period preceding conversion. The section provides that a converted savings bank will continue to be subject to State laws regarding discrimination in extension of home mortgage credit if State laws are more stringent than Federal laws.

Section 1203 makes a technical amendment to authorize the FSLIC to insure federally chartered savings banks.

Section 1204 makes a technical change in the Home Owners Loan Act to include mutual savings banks in the conversion provision of that act.

Section 1205 provides a transition formula for sharing losses between FDIC and FSLIC on any converted savings bank which fails during the first 5 years after conversion.

Title XIII—Holding Companies

Section 1301 amends section 4(c)(8) of the Bank Holding Company Act of 1956 to prohibit bank holding companies from providing insurance as a principal, agent or broker, except: (1) for credit life or credit disability insurance; (2) for any insurance sold in a community of less than 5,000 population; (3) for any insurance agency activity in a community where the bank holding company demonstrates after notice and opportunity for a hearing that there are inadequate insurance facilities; (4) for insurance activities engaged in by a holding company prior to June 8, 1978, or for which an application had been filed prior to June 8, 1978, with the Board of Governors of the Federal Reserve System; or (5) for any insurance agency activity engaged in by a bank holding company or any of its subsidiaries with assets of less than $50 million.

Title XIV—Amendments to the National Banking Laws

Section 1401 amends 12 U.S.C. 29 to authorize the Comptroller of the Currency to extend the current 5-year period, during which a national bank is permitted to hold real estate, for an additional 5 years upon a showing that (1) the bank has made a good-faith attempt to dispose of real estate within 5 years, and (2) disposal of that real estate within the allotted 5-year period would be detrimental to the bank. Subject to Comptroller supervision, a bank may, to recover its investment, expend funds to improve such real estate.

Section 1402 amends 12 U.S.C. 51b to remove the 6-percent limitation on national bank preferred stock dividends.

Section 1403 adds a new paragraph to 12 U.S.C. 92a to grant the Comptroller of the Currency authority to revoke the trust powers of a national bank when he determines, after hearing, that those powers are exercised unlawfully or unsoundly or that the bank has failed to exercised its trust powers for 5 consecutive years. The procedures for administrative and judicial review contained in the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1818(h)) are incorporated directly into this amendment.

Section 1404 amends 12 U.S.C. 95 to authorize the Comptroller of the Currency in the event of a local or national emergency to proclaim a legal banking holiday for the national banks so affected. When an authorized State official declares a legal banking holiday, that day automatically becomes a legal holiday for national banks within the State as well, unless the Comptroller of the Currency specifically countermands.

Section 1405 amends 12 U.S.C. 214a to require dissenting shareholders of a national bank which intends to convert, merge, or consolidate and the resulting bank will be State chartered to select an appraiser for their shares by majority, rather than unanimous, vote.

Section 1406 amends the National Bank Act to authorize the Comptroller of the Currency to delegate any of his powers.

Section 1407 amends the National Bank Act to clarify the rulemaking authority to the Comptroller of the Currency.

Section 1408 amends 12 U.S.C. 481 to allow the Comptroller of the Currency to establish the timetable for examination of national banks and to authorize the Comptroller to examine foreign operations of State member banks upon request from the Federal Reserve Board.

Section 1409 amends 12 U.S.C. 50b–1 to conform to the amendment contained in section 1002 of this title by removing the 6 percent limitation on national bank preferred stock dividends.

Section 1410 amends 12 U.S.C. 72 which requires directors of national banks to own stock in the national bank on whose board they serve to allow such directors to own bank holding company stock instead of bank stock if their national bank is controlled by a holding company.

Section 1411 amends 12 U.S.C. 24(7) to allow national banks to invest in the stock of State chartered banks, insured by FDIC, owned exclusively by other banks, and engaged exclusively in serving other banks or their officers, directors, or employees. The total amount of stock owned may not exceed 5 percent or a national bank's capital accounts and no national bank may own more than 5 percent of the voting securities of such bank.

Title XV—Termination of National Bank Closed Receivership Fund

Title XV establishes a procedure for disposing of the funds held by the Comptroller of the Currency in his capacity as successor to receivers of closed national banks. Twelve months after publication of general notice all such funds remaining unclaimed will be refunded to the Comptroller of the Currency.

Title XVI—Transaction Accounts

Section 1601 authorizes any federally chartered savings and loan association to offer transaction accounts if such accounts are authorized for State chartered and federally insured institutions in the State in which the federally chartered institution is located. Federal savings and loans in the District of Columbia (there are no State chartered savings and loans) would be so authorized if federally chartered savings and loans in Virginia or Maryland receive such authority.

Title XVII—Financial Regulation Simplification Act of 1978

Section 1701 states that Congress finds that the regulations issued by Federal financial institution regulatory agencies are imposing costly, duplicative, and often unnecessary burdens on financial institutions and customers and that such regulations should be simplified, should more efficiently achieve legislative goals, and should not impose unnecessary burdens and costs.

Section 1702 requires the agencies to insure that their regulations are needed; that the public and interested parties have opportunity to have their views considered; that alternatives to issuing regulations are considered; that costs and burdens are minimized; and that conflicts, inconsistencies, and duplication between regulations issued by the agencies are avoided.

Section 1703 requires the agencies to periodically review their existing regulations in light of the goals established in section 1702.

Section 1704 requires the agencies to report to the Senate and House banking committees on their progress in implementing this title.

Section 1705 terminates the authority of this title in 5 years.

Title XVIII—Alternative Mortgage Instruments

Section 1801 authorizes the Federal Home Loan Bank Board to allow Federal savings and loan associations to offer alternative mortgage instruments if the State in which a Federal savings and loan is located authorizes State chartered savings and loan associations to offer such instruments.

Section 1802 directs the Federal Home Loan Bank Board to write rules and regulations to carry out the title, such rules and regulations to include provisions for consumer safeguards and protections (including documented choice between alternative and convention mortgage instruments, prohibitions on prepayment penalties, and limits on interest rate increases).

Section 1803 directs the Federal Home Loan Bank Board to report within three years to Congress on the effect of this title.

Section 1804 requires a Federal savings and loan association offering alternative mortgage instruments to offer such instruments for a continuous 4-year period or other period determined by the Board. After such a period an association may elect to discontinue offering variable

rate mortgages. Should that association decide to resume offering variable rate mortgages, it would again be required to offer both fixed and variable rate mortgages for a 4-year period or such period as may be determined by the Board.

Title XIX—Prohibition on Credit Card Suracharges

Section 1901 repeals paragraph (2) of section 3(c) of Public Law 94–222 to permanently prohibit merchant imposed surcharges on credit card purchases.

Title XX—Effective Date

Section 2001 provides that the act will take effect 120 days after the date of its enactment.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

Federal Reserve Act

* * * * * * *

Sec. 10. The Board of Governors of the Federal Reserve System (hereinafter referred to as the "Board") shall be composed of seven members, to be appointed by the President, by and with the advice and consent of the Senate, after the date of enactment of the Banking Act of 1935, for terms of fourteen years except as hereinafter provided, but each appointive member o the Federal Reserve Board in office on such date shall continue to serve as a member of the Board until February 1, 1936, and the Secretary of the Treasury and the Comptroller of the Currency shall continue to serve as members of the Board until February 1, 1936. In selecting the members of the Board, not more than one of whom shall be selected from any one Federal Reserve district, the President shall have due regard to a fair representation of the financial, agricultural, industrial, and commercial interests, and geographical divisions of the country. The members of the Board shall devote their entire time to the business of the Board and shall each receive an annual salary of $15,000, payable monthly, together with actual necessary traveling expenses.

The members of the Board shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any member bank, except that this restriction shall not apply to a member who has served the full term for which he was appointed. *The members of the Board of Governors shall be ineligible, during the time they are in office and for a period of two years thereafter, to hold any office, position, or employment in a member bank, in a bank holding company or in an affiilate of a bank holding company, except that this restriction shall not apply to any individual who has served the full term for which he was appointed. Former members of the Board of Governors shall be prohibited from appearing before the*

Board, either formally or informally, contacting the Board, directly or indirectly, orally or in writing, or from acting as agent or attorney for any other person, other than the United States, before the Board for a period of two years immediately following their employment with the Board. The preceding sentence shall not apply to individuals who served on the Board before or upon the effective date of this sentence, and the prohibition upon holding any office, position, or employment in a holding company or an affiliate thereof shall not apply to individuals serving as members of the Board upon the effective date of this sentence. Upon the expiration of term of any appointive member of the Federal Reserve Board in office on the date of enactment of the Banking Act of 1935, the President shall fix the term of the successor to such member at not to exceed fourteen years, as designated by the President at the time of nomination, but in such manner as to provide for the expiration of the term of not more than one member in any two-year period, and thereafter each member shall hold office for a term of fourteen years from the expiration of the term of his predecessor, unless sooner removed for cause by the President. The chairman of the Board, subject to its supervision, shall be its active executive officer. Each member of the Board shall within fifteen days after notice of appointment make and subscribe to the oath of office. Upon the expiration of their terms of office, members of the Board shall continue to serve until their successors are appointed and have qualified. Any person appointed as a member of the Board after the date of enactment of the Banking Act of 1935 shall not be eligible for reappointment as such member after he shall have served a full term of fourteen years.

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SEC. 19. (a) * * *

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(i) No member bank shall, directly or indirectly, by any device whatsoever, pay any interest on any deposit which is payable on demand: *Provided*, That nothing herein contained shall be construed as prohibiting the payment of interest in accordance with the terms of any certificate of deposit or other contract entered into in good faith which is in force on the date on which the bank becomes subject to the provisions of this paragraph; but no such certificate of deposit or other contract shall be renewed or extended unless it shall be modified to conform to this paragraph, and every member bank shall take such action as may be necessary to conform to this paragraph as soon as possible consistently with its contractual obligations: *Provided further*, That this paragraph shall not apply to any deposit of such bank which is payable only at an office thereof located outside of the States of the United States and the District of Columbia: *Provided further*, That until the expiration of two years after the date of enactment of the Banking Act of 1935 this paragraph shall not apply (1) to any deposit made by a savings bank as defined in section 12B of this Act, as amended, or by a mutual savings bank, or (2) to any deposit of public funds made by or on behalf of any State, county, school district, or other subdivision or municipality, or to any deposit of trust funds if the payment of interest with respect to such deposit of public funds or of trust funds is required by State law. So much of existing law as

requires the payment of interest with respect to any funds deposited by the United States, by any Territory, District, or possession thereof (including the Philippine Islands), or by any public instrumentality, agency, or officer of the foregoing, as is inconsistent with the provisions of this section as amended, is hereby repealed.

(j) (1) Any member bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such member bank who violates any provision of this section, or any regulation or order issued by the Board pursuant thereto, shall forfeit and pay a civil money penalty of not more than $100 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Board by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(2) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the member bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) The member bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in paragraph (4). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(4) Any member bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the member bank is located, or the United States Court of Appeals for the Disrtict of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Board. The Board shall promptly certify and file in such court the record upon which the penalty was imposed. as provided in section 2112 of title 28, United States Code. The findings of the Board shall be set aside if found to be unsupported by substantial evidence as provided by section 706 (2) (E) of title 5, United States Code.

(5) If any member bank or person fails to pay an assessment after it has become a final and unappealable order or after the court of appeals has entered final judgment in favor of the agency, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(6) The Board shall promulgate regulations establishing procedures necessary to implement this subsection.

(7) All penalties collected under authority of this subsection shall be covered into the Treasury of the United States.

SEC. 22.

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(g) (1) Except as authorized under this subsection, no member bank may extend credit in any manner to any of its own executive officers. No executive officer of any member bank may become indebted to that member bank except by means of an extension of credit which the bank is authorized to make under this subsection. Any extension of credit under this subsection shall be promptly reported to the board of directors of the bank, and may be made only if—

(A) the bank would be authorized to make it to borrowers other than its officers;

(B) it is on terms not more favorable than those afforded other borrowers;

(C) the officer has submitted a detailed current financial statement; and

(D) it is on condition that it shall become due and payable on demand of the bank at any time when the officer is indebted to any other bank or banks 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 amount of credit of the same category that could be extended to him by the bank of which he is an officer.

(2) With the specific prior approval of its board of directors, a member bank may make a loan not exceeding [$30,000] *$60,000* to any executive officer of the bank if, at the time the loan is made—

(A) it is secured by a first lien on a dwelling which is expected, after the making of the loan, to be owned by the officer and used by him as his residence, and

(B) no other loan by the bank to the officer under authority of this paragraph is outstanding.

(3) A member bank may make extensions of credit to any executive officer of the bank, not exceeding the aggregate amount of [$10,000] *$20,000* outstanding at any one time, to finance the education of the children of the officer.

(4) A member bank may make extensions of credit not otherwise specifically authorized under this subsection to any executive officer of the bank, not exceeding the aggregate amount of [$5,000] *$10,000* outstanding at any one time.

(5) Except to the extent permitted under paragraph (4), a member bank may not extend credit to a partnership in which one or more of its executive officers are partners having either individually or together a majority interest. For the purposes of paragraph (4), the full amount of any credit so extended shall be considered to have been extended to each officer of the bank who is a member of the partnership.

(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) 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 indebtness to the bank for the purpose of protecting the bank against loss or giving financial assistance to it.

(8) 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) 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.

(h)(1) No member bank shall make any loan or extension of credit in any manner to any of its executive officers, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, except in the case of such a bank located in a city, town, or village with less than thirty thousand in population, in which case such per centum shall be 18 per centum, or to any company controlled by such an executive officer or person, or to any political or campaign committee the funds or services of which will benefit such an executive officer or person or which is controlled by such an executive officer or person, where the amount of such loan or extension of credit, when aggregated with the amount of all other loans or extensions of credit then outstanding by such bank to such executive officer or person and to all companies controlled by such executive officer or person and to all political or campaign committees the funds or services of which will benefit such executive officer or person or which are controlled by such executive officer or person, would exceed the limits on loans to a single borrower established by section 5200 of the Revised Statutes, as amended. For purposes of this paragraph, the provisions of section 5200 of the Revised Statutes, as amended, shall be deemed to apply to a State member bank as if such State member bank were a national banking association.

(2) No member bank shall make any loan or extension of credit in any manner to any of its executive officers or directors, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, or to any company controlled by such an executive officer, director, or person, or to any political or campaign committee the funds or services of which will benefit such executive, director, or person or which is controlled by such executive officer, director, or person, where the

amount of such loan or extension of credit, when aggregated with the amount of all other loans or extensions of credit then outstanding by such bank to such executive officer, director, or person and to all companies controlled by such executive officer, director, or person and to all political or campaign committees the funds or services of which will benefit such executive officer, director, or person or which are controlled by such executive officer, director, or person, would exceed $25,000, unless such loan or extension of credit is approved in advance by a majority of the entire board of directors with the interested party abstaining from participating directly or indirectly in the voting.

(3) No member bank shall make any loan or extension of credit in any manner to any of its executive officers or directors, or to any person who directly or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, or to any company controlled by such executive officer, director, or person, or to any political or campaign committee the funds or services of which will benefit such executive officer, director, or person or which is controlled by such executive officer, director, or person, unless such loan or extension of credit is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(4) No member bank may pay an overdraft on an account at such bank of an executive officer or director.

(5) For purposes of this subsection, an executive officer, director, or person shall be considered to have control of a company if such executive officer, director, or person, directly or indirectly or acting through or in concert with one or more other persons—

(A) owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the company;

(B) controls in any manner the election of a majority of the directors of the company; or

(C) has the power to exercise a controlling influence over the management or policies of such company.

(6) For the purposes of this subsection—

(A) the term "person" means an individual or company;

(B) the term "company" means any corporation, partnership, business trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, any other form of business entity not specifically listed herein, or any other trust, but shall not include any insured bank or any corporation the majority of shares of which is owned by the United States or by any State;

(C) the term "extension of credit" has the same meaning assigned such term in the fourth paragraph of section 23A of this Act;

(D) a person shall be deemed to be a "director" of a member bank or a "person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has power to vote more than 10 per centum of any class of voting securities of a member bank" if such person has such relationship with any

bank holding company of which such member is a subsidiary, as defined by the Bank Holding Company Act (12 U.S.C. 1841), or with any other subsidiary of such bank holding company;

(E) a person shall be deemed to be an "officer" of a member bank if such person is an officer of any bank holding company of which such member bank is a subsidiary, as defined by the Bank Holding Company Act (12 U.S.C. 1841), or with any other subsidiary of such bank holding company;

(F) the term "executive officer" has the same meaning assigned such term under section 22(g) of this Act; and

(G) the term "pay an overdraft on an account" means the payment by a member bank of an amount for an account holder in excess of the funds on deposit in the account and does not include a payment of funds by the member bank in accordance with either a written preauthorized, interest-bearing extension of credit specifying a method of repayment or a written preauthorized transfer of funds from another account of the account holder at that bank.

(7) 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. The Board may further prescribe rules providing a reasonable period of time after the date of enactment of this subsection within which the amount of outstanding loans or extensions of credit made prior to such date of enactment shall be reduced so as to conform to the limitations of this subsection.

* * * * * * *

SEC. 29. (a) Any member bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such member bank who violates any provision of section 22 or 23A of this Act, or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Comptroller of the Currency in the case of a national bank, or the Board in the case of a State member bank, by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(b) In determining the amount of penalty the Comptroller of the Currency or the Board, as the case may be, shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the member bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(c) The member bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be received only as provided in subsection (d). If no hear-

ing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(d) Any member bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the member bank is located, or the United State Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Comptroller of the Currency or the Board, as the case may be. The Comptroller of the Currency or the Board, as the case may be, shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Comptroller of the Currency or the Board, as the case may be, shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

(e) If any member bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Comptroller of the Currency or the Board, as the case may be, shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(f) The Comptroller of the Currency and the Board shall promulgate regulations establishing procedures necessary to implement this section.

(g) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

SEC. [29.] *30. If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.*

SEC. [30.] *31. The right to amend, alter, or repeal this Act is hereby expressly reserved.*

REVISED STATUTES OF THE UNITED STATES

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TITLE VII—THE DEPARTMENT OF THE TREASURY

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CHAPTER 9

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SEC. 327A. The Comptroller of the Currency may delegate any powers vested in him by law.

TITLE LXII—NATIONAL BANKS

CHAPTER 1—ORGANIZATION AND POWERS

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SEC. 5136. Upon duly making and filing articles of association and an organization certificate, a national banking association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. * * *

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Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this chapter. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: *Provided*, That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on August 23, 1935. As used in this section the term "investment securities" shall mean marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Trans-

portation under section 9 of the National Capital Transportation Act of 1969, or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives of any of them or the Federal Home Loan Banks, or obligations which are insured by the Secretary of Housing and Urban Development under title XI of the National Housing Act or obligations which are insured by the Secretary of Housing and Urban Development (hereafter in this sentence referred to as the "Secretary") pursuant to section 1713 of this title, if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States, or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, or mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 1454 or section 1455 of this title, or obligations of the Federal Financing Bank or obligations of the Environmental Financing Authority, or obligations or other instruments or securities of the Student Loan Marketing Association, or such obligations of any local public agency (as defined in section 1460(h) of Title 42) as are secured by an agreement between the local public agency and the Secretary in which the local public agency agrees to borrow from said Secretary, and said Secretary agrees to lend to said local public agency, monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest or such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments, or such obligations of a public housing agency (as defined in the United States Housing Act of 1937, as amended) as are secured (1) by an agreement between the public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Secretary if such contract shall contain the covenant by the Secretary which is authorized by section 1437d(g) of Title 42, and if the maximum sum and the maximum period specified in such contract pursuant to section 1437d(g) of Title 42 shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations, or (3) by a pledge of both annual contributions under an annual contributions contract containing the covenant by the Secretary which is authorized by section 1437d(g) of Title 42, and a loan under an agreement between the local public housing agency and the Secretary in which the public housing agency agrees to borrow

from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which (together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations) will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity: *Provided*, That in carrying on the business commonly known as the safe-deposit business the association shall not invest in the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business in an amount in excess of 15 per centum of the capital stock of the association actually paid in and unimpaired and 15 per centum of its unimpaired surplus. The limitations and restrictions herein contained as to dealing in and underwriting investment securities shall not apply to obligations issued by the International Bank for Reconstruction and Development, the Inter-American Development Bank or the Asian Development Bank, or obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes, which are at the time eligible for purchase by a national bank for its own account, nor to bonds, notes and other obligations issued by the Tennessee Valley Authority or by the United States Postal Service: *Provided*, That no association shall hold obligations, issued by any of said organizations as a result of underwriting, dealing, or purchasing for its own account (and for this purpose obligations as to which it is under commitment shall be deemed to be held by it) in a total amount exceeding at any one time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to sections 3931 to 3940 of Title 42, and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 3937(a) or 3937(c) of Title 42. Notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock issued by any State housing corporation incorporated in the State in which the association is located and may make investments in loans and commitments for loans to any such corporation: *Provided*, That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the association exceed at any time 5 per centum of its capital stock actually paid in and unimpaired plus 5 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. However, unless the association owns at least 80 per centum of the stock of such agricultural credit corporation the amount invested by the association at any one time in the stock of such corporation shall not exceed 20 per centum of the unimpaired capital

and surplus of the association: *Provided further that notwithstanding any other provision of this paragraph, the association may, to the extent permitted by State law for State chartered banks where it is located, purchase for its own account shares of stock of a State chartered bank insured by the Federal Deposit Insurance Corporation if the stock of such bank is owned exclusively by other banks and if such bank is engaged exclusively in providing banking services for other banks and their officers, directors or employees, but in no event shall the total amount of such stock held by the association exceed at any time 5 per centum of its capital stock and paid in and unimpaired surplus, and in no event shall the purchase of such stock result in the association's acquiring more than 5 per centum of any class of voting securities of such bank.*

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SEC. 5137. A national banking association may purchase, hold, and convey real estate for the following purposes, and for no others:

First. Such as shall be necessary for its accommodation in the transaction of its business.

Second. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

Third. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth. Such as it shall purchase at sales under judgments, decrees, or mortgages held by the association, or shall purchase to secure debts due to it.

But no such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years *except as otherwise provided in this statute.*

Upon application by a national banking association the Comptroller of the Currency may approve the possession of any such real estate by such association for a period longer than five years but not to exceed an additional five years if (1) the association has made a good faith attempt to comply with the five year period or (2) disposal within the five year period would be detrimental to the association. Subject to such conditions and limitations as the Comptroller of the Currency may prescribe, such association may expend such funds for the development and improvement of such real estate as are reasonably calculated to enable such association to recover its total investment.

SEC. 5146. Every director must during his whole term of service, be a citizen of the United States, and at least two-thirds 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. Every director must own in his own right shares of the capital stock of the association of which he is a director, *or of 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)*, the aggregate par value of which shall not be less than $1,000, unless the capital of the bank shall not exceed $25,-

000 in which case he must own in his own right shares of such capital stock the aggregate par value of which shall not be less than $500. 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.

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SEC. 5239. (*a*) If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this Title, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper circuit, district, or territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its share holders, or any other person, shall have sustained in consequence of such violation.

(*b*) (*1*) *Any national banking association which violates, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such association who violates any of the provisions of this chapter, or any regulation issued pursuant thereto, shall forfeit and pay a civil money penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Comptroller of the Currency by written notice. As used in the section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.*

(*2*) *In determining the amount of the penalty the Comptroller shall take into account the appropirateness of the penalty with respect to the size of financial resources and good faith of the association or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require*

(*3*) *The association or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in subsection (4). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.*

(*4*) *Any association or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the bank is located, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Comptroller. The Comptroller shall promptly certify and file in such court the record upon which*

the penalty was imposed, as provided in section 2112 of title 28. The findings of the Comptroller shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(e) of title 5.

(5) If any association or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Administrator shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(6) The Comptroller may, in his discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under this section.

(7) The Comptroller shall promulgate regulations establishing procedures necessary to implement this subsection.

(8) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

CHAPTER 4—DISSOLUTION AND RECEIVERSHIP

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SEC. 5239A. Except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to another regulatory agency, the Comptroller of the Currency is authorized to prescribe rules and regulations to carry out the responsibilities of this office.

SEC. 5240. [The Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall appoint examiners who shall examine every national bank twice in each calendar year, but the Comptroller, in the exercise of his discretion, may waive one such examination or cause such examinations to be made more frequently if considered necessary. The waiver of one such examination as above provided shall not be exercised more frequently than once during any two-year period.] *The Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall appoint examiners who shall examine every national bank as often as the Comptroller shall deem necessary.* The examiner making the examination of any national bank shall have power to make a thorough examination of all the affairs of the bank and in doing so he shall have power to administer oaths and to examine any of the officers and agents thereof under oath and shall make a full and detailed report of the condition of said bank to the Comptroller of the Currency: *Provided*, That in making the examination of any national bank the examiners shall include such an examination of the affairs of all its affiliates other than member banks as shall be necessary to disclose fully the relations between such bank and such affiliates and the effect of such relations upon the affairs of such bank; and in the event of the refusal to give any information required in the course of the examination of any such affiliate, or in the event of the refusal to permit such examination, all the rights, privileges, and franchises of the bank shall be subject to forfeiture in accordance with section 2 of the Federal Reserve Act, as amended (U.S.C., title 12, secs. 141, 222–225, 281–286, and 502). The Comp-

troller of the Currency shall have power, and he is hereby authorized, to publish the report of his examination of any national banking association or affiliate which shall not within one hundred and twenty days after notification of the recommendations or suggestions of the Comptroller, based on said examination, have complied with the same to his satisfaction. Ninety days' notice prior to such publicity shall be given to the bank or affiliate.

The examiner making the examination of any affiliate of a national bank shall have power to make a thorough examination of all the affairs of the affiliate, and in doing so he shall have power to administer oaths and to examine any of the officers, directors, employees, and agents thereof under oath and to make a report of his findings to the Comptroller of the Currency. The expense of examinations of such affiliates may be assessed by the Comptroller of the Currency upon the affiliates examined in proportion to assets or resources held by the affiliates upon the dates of examination of the various affiliates. If any such affiliate shall refuse to pay such expenses or shall fail to do so within sixty days after the date of such assessment, then such expenses may be assessed against the affiliated national bank and, when so assessed, shall be paid by such national bank: *Provided, however*, That, if the affiliation is with two or more national banks, such expenses may be assessed against, and collected from, any or all of such national banks in such proportions as the Comptroller of the Currency may prescribe. The examiners and assistant examiners making the examinations of national banking associations and affiliates thereof herein provided for and the chief examiners, reviewing examiners and other persons whose services may be required in connection with such examinations or the reports thereof, shall be employed by the Comptroller of the Currency with the approval of the Secretary of the Treasury; the employment and compensation of examiners, chief examiners, reviewing examiners, assistant examiners, and of the other employees of the office of the Comptroller of the Currency whose compensation is and shall be paid from assessments on banks or affiliates thereof shall be without regard to the provisions of other laws applicable to officers or employees of the United States. The funds derived from such assessments may be deposited by the Comptroller of the Currency in accordance with the provisions of section 5234 of the Revised Statutes (U.S.C., title 12, sec. 192) and shall not be construed to be Government funds or appropriated monies; and the Comptroller of the Currency is authorized and empowered to prescribe regulations governing the computation and assessment of the expenses of examinations herein provided for and the collection of such assessments from the banks and/or affiliates examined. If any affiliate of a national bank shall refuse to permit an examiner to make an examination of the affiliate or shall refuse to give any information required in the course of any such examination, the national bank with which it is affiliated shall be subject to a penalty of not more than $100 for each day that any such refusal shall continue. Such penalty may be assessed by the Comptroller of the Currency and collected in the same manner as expenses of examinations.

The Comptroller of the Currency shall fix the salaries of all bank examiners and make report thereof to Congress. The expense of the

examinations herein provided for shall be assessed by the Comptroller of the Currency upon national banks in proportion to their assets or resources. The assessments may be made more frequently than annually at the discretion of the Comptroller of the Currency. The annual rate of such assessment shall be the same for all national banks, except that banks examined more frequently than twice in one calendar year shall, in addition, be assessed the expense of these additional examinations.

In addition to the examinations made and conducted by the Comptroller of the Currency, every Federal reserve bank may, with the approval of the Federal reserve agent or the Federal Reserve Board, provide for special examination of member banks within its district. The expense of such examinations shall be borne by the bank examined. Such examinations shall be so conducted as to inform the Federal reserve bank of the condition of its member banks and of the lines of credit which are being extended by them. Every Federal reserve bank shall at all times furnish to the Federal Reserve Board such information as may be demanded concerning the condition of any member bank within the district of the said Federal reserve bank.

No bank shall be subject to any visitatorial powers other than such as are authorized by law, or vested in the courts of justice or such as shall be or shall have been exercised or directed by Congress, or by either House thereof or by any committee of Congress or of either House duly authorized.

The Federal Reserve Board shall, at least once each year, order an examination of each Federal reserve bank, and upon joint application of ten member banks the Federal Reserve Board shall order a special examination and report of the condition of any Federal reserve bank.

In adition to the expense of examination to be assessed by the Comptroller of the Currency as heretofore provided, all national banks exercising fiduciary powers and all banks or trust companies in the District of Columbia exercising fiduciary powers shall be assessed by the Comptroller of the Currency for the examination of their fiduciary activities a fee adequate to cover the expense thereof. *The Comptroller of the Currency, upon the request of the Board of Governors of the Federal Reserve System, is authorized to assign examiners appointed under this section to examine foreign operations of State member banks.*

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BANK HOLDING COMPANY ACT OF 1956

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INTERESTS IN NONBANKING ORGANIZATIONS

SEC. 4. (a) * * *

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(c) The prohibitions in this section shall not apply to [any bank holding company which is (i) a labor, agricultural, or horticultural

organization and which is exempt from taxation under section 501 of the Internal Revenue Code of 1954,] (*i*) *any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code of 1954, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred*, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors; and such prohibitions shall not, with respect to any other bank holding company, apply to—

(1) shares of any company engaged or to be engaged solely in one or more of the following activities: (A) holding or operating properties used wholly or substantially by any banking subsidiary of such bank holding company in the operations of such banking subsidiary or acquired for such future use; or (B) conducting a safe deposit business; or (C) furnishing services to or performing services for such bank holding company or its banking subsidiaries; or (D) liquidating assets acquired from such bank holding company or its banking subsidiaries or acquired from any other source prior to May 9, 1956, or the date on which such company became a bank holding company, whichever is later;

(2) shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previously contracted in good faith, but such shares shall be disposed of within a period of two years, from the date on which they were acquired, except that the Board is authorized upon application by such bank holding company to extend such period of two years from time to time as to such holding company for not more than one year at a time if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall extend beyond a date five years after the date on which such shares were acquired;

(3) shares acquired by such bank holding company from any of its subsidiaries which subsidiary has been requested to dispose of such shares by any Federal or State authority having statutory power to examine such subsidiary, but such bank holding company shall dispose of such shares within a period of two years from the date on which they were acquired;

(4) shares held or acquired by a bank in good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in section 2(b) and except as provided in paragraphs (2) and (3) of section 2(g);

(5) shares which are of the kinds and amounts eligible for investment by national banking associations under the provisions of section 5136 of the Revised Statutes;

(6) shares of any company which do not include more than 5 per centum of the outstanding voting shares of such company;

(7) shares of an investment company which is not a bank holding company and which is not engaged in any business other than investing in securities, which securities do not include more than 5 per centum of the outstanding voting shares of any company;

(8) shares of any company the activities of which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, *but for purposes of this subparagraph it is not closely related to banking or managing or controlling banks for a bank holding company to provide insurance as a principal, agent, or broker under this subsection except (i) where the insurance is limited to insuring the life of a debtor pursuant to or in connection with a specific credit transaction or providing indemnity for payments due on a specific loan or other credit transaction while the debtor is disabled; or (ii) any insurance sold in a community that (A) has a population not exceeding 5,000 (as shown by the last preceding decennial census), or (B) the bank holding company, after notice and opportunity for a hearing, demonstrates that a city, town, or village has inadequate insurance agency facilities; or (iii) where the insurance is being sold by a company owned directly or indirectly by a bank holding company which, prior to June 6, 1978, lawfully engaged, pursuant to the Bank Holding Company Act, directly or indirectly in insurance activities, or which bank holding company, prior to that date, had applied to the Board for authority to engage in insurance activities and received such authority subsequent to that date, or (iv) any insurance agency activity engaged in by a bank holding company, or any of its subsidiaries which bank holding company has assets of $50 million or less.* In determining whether a particular activity is a proper incident to banking or managing or controlling banks the Board shall consider whether its performance by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. In orders and regulations under this subsection, the Board may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern;

(9) shares held or activities conducted by any company organized under the laws of a foreign country the greater part of whose business is conducted outside the United States, if the Board by regulation or order determines that, under the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purpurposes of this Act and would be in the public interest;

(10) shares lawfully acquired and owned prior to May 9, 1956, by a bank which is a bank holding company, or by any of its wholly owned subsidiaries;

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ADMINISTRATION

SEC. 5. (a) * * *

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(d) Before the expiration of two years following the date of enactment of this Act, and each year thereafter in the Board's annual report

to the Congress, the Board shall report to the Congress the results of the administration of this Act, stating what, if any, substantial difficulties have been encountered in carrying out the purposes of this Act, and any recommendations as to changes in the law which in the opinion of the Board would be desirable.

(e) (1) *Notwithstanding any other provision of this Act, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the bank holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.*

(2) *The Board may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the holding company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in section 9 of this Act, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.*

(f) *In the course of or in connection with an application, examination, investigation or other proceeding under this Act, the Board, or any member or designated representative thereof, including any person designated to conduct any hearing under this Act, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and the Board is empowered to make rules and regulations to effectuate the purposes of this subsection. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this Act may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted or where the*

witness resides or carries on business, for the enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any service required under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Any court having jurisdiction of any proceeding instituted under this subsection may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpena of the Board, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

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PENALTIES

SEC. 8. (*a*) Any company which willfully violates any provision of this Act, or any regulation or order issued by the Board pursuant thereto, shall upon conviction be fined not more than $1,000 for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this Act shall upon conviction be fined not more than $10,000 or imprisoned not more than one year, or both. Every officer, director, agent, and employee of a bank holding company shall be subject to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of title 18, United States Code.

(*b*) (*1*) *Any company which violates or any individual who participates in a violation of any provision of this Act, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Board by written notice. As used in the section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.*

(*2*) *In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the company or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.*

(*3*) *The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United*

States Code. The agency determination shall be made by final order which may be reviewed only as provided in section 9. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(4) If any company or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Board, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(5) The Board shall promulgate regulations establishing procedures necessary to implement this subsection.

(6) All penalties collected under authority of this subsection shall be covered into the Treasury of the United States.

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NATIONAL HOUSING ACT

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INSURANCE OF ACCOUNTS AND ELIGIBILITY PROVISIONS

SEC. 403. (a) It shall be on the duty of the Corporation to insure the accounts of all Federal savings and loan associations *and Federal mutual savings banks*, and it may insure the accounts of building and loan, savings and loan, and homestead associations and cooperative banks organized and operated according to the laws of the State, District, Territory, or possession in which they are chartered or organized.

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LIQUIDATION OF INSURED INSTITUTIONS

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SEC. 406. (a) * * *

(f) *(1)* In order to prevent a default in an insured institution or in order to restore an insured institution in default to normal operation [as an insured institution], the Corporation is authorized, in its discretion, to make loans to, purchase the assets of, or make a contribution to, an insured institution or an insured institution in default; but no contribution shall be made to any such institution in an amount in excess of that which the Corporation finds to be reasonably necessary to save the expense of liquidating such institution.], *the Corporation is authorized, in its discretion and upon such terms and conditions as it may determine, to make loans to, to purchase the assets of, or to make a contribution to, an insured institution or an insured institution in default.*

(2) Whenever an insured institution is in default, or in the judgment of the Corporation, is in danger of default, the Corporation may, in order to facilitate a merger or consolidation of such insured insti-

tion with another insured institution or the sale of the assets of such insured institution and the assumption of its liabilities by another insured institution and upon such terms and conditions as the Corporation may determine, purchase any such assets or assume any such liabilities, or make loans to such other insured institution, or guarantee such other insured institution against loss by reason of its merging or consolidating with or assuming the liabilities and purchasing the assets of such insured institution in or in danger of default.

(3) No contribution or guarantee shall be made pursuant to paragraphs (1) or (2) of this subsection (f) in an amount in excess of that which the Corporation finds to be reasonably necessary to save the cost of liquidating such insured institution in or in danger of default, but if the Corporation determines that the continued operation of such institution is essential to provide adequate savings or home financing services in its community, such limitation upon the amount of a contribution or guarantee shall not apply.

TERMINATION OF INSURANCE AND ENFORCEMENT PROVISIONS

SEC. 407. TERMINATION OF INSURANCE AND ENFORCEMENT PROVISIONS.—

(a) * * *

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[(e) CEASE-AND-DESIST PROCEEDINGS.—(1) If, in the opinion of the Corporation, any insured institution or any institution any of the accounts of which are insured is engaging or has engaged, or the Corporation has reasonable cause to believe that the institution is about to engage, in an unsafe or unsound practice in conducting the business of such institution, or is violating or has violated, or the Corporation has reasonable cause to believe that the institution is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Corporation in connection with the granting of any appliaction or other request by the institution, or written agreement entered into with the Corporation, including any agreement entered into under section 403 of this title, the Corporation may issue and serve upon the institution a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Corporation at the request of the institution. Unless the institution shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing the Corporation shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Corporation may issue and serve upon the institution an order to cease and desist from any such violation or practice. Such order may, by provisions which may be manda-

tory or otherwise, require the institution and its directors, officers, employees, and agents to cease and desist from the same, and, further to take affirmative action to correct the conditions resulting from any such violation or practice.

[(2) A cease-and-desist order shall become effective at the expiration of thirty days after service of such order upon the institution concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Corporation or a reviewing court.]

(e) (1) If, in the opinion of the Corporation, any insured institution, institution which has insured accounts or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is engaging or has engaged, or the Corporation has reasonable cause to believe that the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is about to engage, in an unsafe or unsound practice in conducting the business of such institution, or is violating or has violated, or the Corporation has reasonable cause to believe that the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Corporation in connection with the granting of any application or other request by the institution or any written agreement entered into with the Corporation, including any agreement entered into under section 403 of this title, the Corporation may issue and serve upon the institution or such director, officer, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fixe a time and or the unsafe or unsound practice or practices, and shall fix a time and cease and desist therefrom should issue against the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Corporation at the request of any party so served. Unless the party or parties so served shall appear at the hearing by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the Corporation shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Corporation may issue and serve upon the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the institution or directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such institution to cease and desist from the same, and, further to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after service of such order upon the institution or the party or parties so served (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Corporation or a reviewing court.

(3) This subsection and subsections (f), (g), (h), (j), (k), (m), (3), (n), (o), (p), and (q) of this section shall apply to any savings and loan holding company, and to any subsidiary (other than an insured institution) of a savings and loan holding company, as those terms are defined in section 408 of this title, and to any affiliate service corporation of an insured institution in the same manner as they apply to insured institutions.

(f) TEMPORARY CEASE-AND-DESIST ORDERS.—(1) Whenever the Corporation 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 institution *or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution or any institution any of the accounts of which are insured* pursuant to *paragraph (1)* of subsection (e) [(1)] of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to [otherwise seriously prejudice the interest of its insured members or of the Corporation, the Corporation may issue a temporary order requiring the institution to cease and desist from any such violation or practice,] *seriously weaken the condition of the institution or otherwise seriously prejudice the interests of its insured members prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (c) of this section, the Corporation may issue a temporary order requiring the institution or such director, officer, employee, agent, or other person 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 shall become effective upon service upon the institution, *and/or such director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution* 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 Corporation shall dismiss the charges specified in such notice, or [,] if a cease-and-desist order is issued against the institution *or such director, officer, employee, agent, or other person*, until the effective date of any such order.

(2) Within ten days after the institution concerned *or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution* has been served with a temporary cease-and-desist order, the institution *or such director, officer, employee, agent, or other person* may apply to the United States district court for the judicial district in which the principal office of the institution is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting[,] or suspending the en-

forcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the institution *or such director, officer, employee, agent, or other person* under *paragraph (1)* of subsection (e) [(1)] of this section, and such court shall have jurisdiction to issue such injunction.

(3) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order, the Corporation may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the principal office of the institution is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(g) SUPENSION OR REMOVAL OF DIRECTOR OR OFFICER.—(1) Whenever, in the opinion of the Corporation, any director or officer of an insured institution has committed any violation of law, rule, or regulation[,] or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the institution[,] or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Corporation determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interests of its insured members could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty *or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty*, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, *or one which demonstrates a willful or continuing disregard for the safety or soundness of the institution*, the Corporation may serve upon such director or officer a written notice of its intention to remove him from office *or to prohibit his further participation in any manner in the conduct of the affairs of the institution.*

(2) Whenever, in the opinion of the Corporation, any director or officer of an insured institution, by conduct or practice with respect to another insured institution or other business institution which resulted in substantial financial loss or other damage, has evidenced *either* his personal dishonesty [and] *or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his* unfitness to continue as a director or officer[,] and, whenever, in the opinion of the Corporation, any other person participating in the conduct of the affairs of an insured institution, by conduct or practice with respect to such institution or other insured institution or other business institution which resulted in substantial financial loss or other damage, has evdenced *either* his personal dishonesty [and] *or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his* unfitness to participate in the conduct of [the] affairs of such insured institution, the Corporation may serve upon such director, officer, or other person a written notice of its intention to remove him from office [and/] or to prohibit his further participation in any manner in the conduct of the affairs of [such] *the* institution.

(3) In respect to any director or officer of an insured institution or any other person referred to in paragraph (1) or (2) of this subsection, the Corporation may, if it deems it necessary for the protection of the institution or the interests of its insured members or of the Corporation, by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the institution. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by paragraph (5) of this subsection, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1) or (2) of this subsection and until such time as the Corporation shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the institution of which he is a director or officer or in the conduct of whose affairs he has participated.

(4) A notice of intention to remove a director, officer, or other person from office and/or to prohibit his participation in the conduct of the affairs of an insured 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 Corporation at the request of (A) such director, officer, or other person and for good cause shown, or (B) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/or prohibition. In the event of such consent, or if upon the record made at any such hearing the Corporation shall find that any of the grounds specified in such notice has been established, the Corporation may issue such orders of suspension or removal from office, and/or prohibition from participation in the conduct of the affairs of the institution, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such institution and the director, officer, or other person concerned (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 Corporation or a reviewing court.

(5) Within ten days after any director, officer, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured institution under paragraph (3) of this subsection, such director, officer, or other person may apply to the United States district court for the judicial district in which the principal office of the institution is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director,

officer, or other person under paragraph (1) or (2) of this subsection, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(h) SUSPENSION OF DIRECTOR OR OFFICER CHARGED WITH FELONY.—(*1*) Whenever any director or officer of an insured institution, or other [person] persons participating in the conduct of the affairs of such institution, is charged in any information, indictment, or complaint authorized by a United States [Attorney] *attorney*, with the commission of or participation in a [felony] *crime* involving dishonesty or breach of trust *which is punishable by imprisonment for a term exceeding one year under State or Federal law*, the Corporation may, *if continued service or participation by the individual may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the institution*, by written notice served upon such director, officer, or other person, suspend him from office [and/]or prohibit him from further participation in any manner in the conduct of the affairs of the institution. A copy of such notice shall also be served upon the institution. Such suspension [and/]or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Corporation. In the event that a judgment of conviction with respect to such [offense] crime is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Corporation may, *if continued service or participation by the individual may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the institution*, issue and serve upon such director, officer, or other person an order removing him from office [and/]or prohibiting him from further participation in any manner in the conduct of the affairs of the institution except with the consent of the Corporation. A copy of such order shall also be served upon such institution, whereupon such director or officer shall cease to be a director or officer of such institution. A finding of not guilty or other disposition of the charge shall not preclude the Corporation from thereafter instituting proceedings to remove such director, officer, or other person from office [and/]or to prohibit further participation in institution affairs, pursuant to paragraph (1) [or (2)], (*2*), *or* (*3*) of subsection (g) of this section. *Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the Corporation.*

(*2*) *Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the director, officer, or other person concerned may request in writing an opportunity to appear before the Corporation to show that the continued service to or participation in the conduct of the affairs of the institution by such individual does not, or is not likely to, pose a threat to the interests of the institution's depositors or threaten to impair public confidence in the institution. Upon receipt of any such request, the Corporation shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, officer, or other person) and place at which the director officer, or other person may appear, personally or through counsel, before one*

or more members of the Corporation or designated employees of the Corporation to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the Corporation shall notify the director, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the institution will be continued, terminated or otherwise modified, or whether the order removing said director, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the institution will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Corporation's decision, if adverse to the director, officer, or other person. The Corporation is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(i) TERMINATION OF FEDERAL HOME LOAN BANK MEMBERSHIP.—Termination under this section or otherwise of the status of an institution as an insured institution shall automatically constitute a removal under subsection (i) of section 6 of the Federal Home Loan Bank Act of the institution from Federal home loan bank membership, if at the time of such termination such institution is a member of a Federal home loan bank; and removal of an institution from Federal home loan bank membership under subsection (i) of section 6 of the Federal Home Loan Bank Act or otherwise shall automatically constitute an order of termination under this section of the status of such institution as an insured institution, if such institution is at the time of such removal an insured institution.

(j) HEARINGS AND JUDICIAL REVIEW.—(1) Any hearing provided for in this section (*other than the hearing provided for in subsection (h)(3) of this section*) shall be held in the Federal judicial district or in the territory in which the principal office of the institution is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. Such hearing shall be private, unless the Corporation, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After such hearing, and within ninety days after the Corporation has notified the parties that the case has been submitted to it for final decision, the Corporation shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Corporation may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Corporation may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to the proceeding, or any person required by an order issued under this section to cease and desist from any of the violations

or practices stated therein, may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the institution or the director or officer or other person concerned, or an order issued under subsection (h)(*1*) of this section), by filing in the court of appeals of the United States for the circuit in which the principal office of the institution is located, or in the United States Court of Appeals for the District of Columbia Circuit within thirty days after the date of service of such order, a written petition praying that the order of the Corporation be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Corporation, and thereupon the Corporation shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Corporation. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provied in section 1254 of title 28 of the United States Code.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Corporation.

(k) JURISDICTION AND ENFORCEMENT.—(1) Notwithstanding any other provision of law, (A) the Corporation shall be deemed to be an agency of the United States within the meaning of section 451 of title 28 of the United States Code; (B) any civil action, suit, or proceeding to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy; and (C) the Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district and division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect: *Provided*, That any action, suit, or proceeding to which the Corporation is a party in its capacity as conservator, receiver, or other legal custodian of an insured State-chartered institution and which involves only the rights or obligations of investors, creditors, stockholders, and such institution under State law shall not be deemed to arise under the laws of the United States. No attachment or execution shall be issued against the Corporation or its property before final judgment in any action, suit, or proceeding in any court of any State or of the United States or any territory, or any other court.

(2) The Corporation may, in its discretion, apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the principal office of the institution is located, for the enforcement of any effective and outstanding notice or order issued by the Corporation under this section, and such courts shall have jurisdiction and power to order and require compliance

therewith; but except as otherwise provided in this section no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(3) (A) Any insured institution or any institution any of the accounts of which are insured which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such an institution who violates the term of any order which has become final and was issued pursuant to subsection (e) or (f) of this section shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Corporation by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(B) In determining the amount of the penalty the Corporation shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the insured institution or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(C) The insured institution or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(D) Any insured institution or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the insured institution is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation. The Corporation shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the agency shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2) (E) of title 5, United States Code.

(E) If any insured institution or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Corporation shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(F) The Corporation shall promulgate regulations establishing procedures necessary to implement this paragraph.

(G) All penalties collected under authority of this paragraph shall be covered into the Treasury of the United States.

(l) REPORTING REQUIREMENTS.—(1) Whenever a change occurs in the outstanding voting stock of any insured institution which will result in control or a change in the control of such institution, the president or other chief executive officer of such institution shall promptly report such facts to the Corporation upon obtaining knowledge of such change. As used in this subsection, the term "control" means the power to directly or indirectly direct or cause the direction of the management or policies of the insured institution. If there is any doubt as to whether a change in ownership or other change in the outstanding voting stock of any insured institution is sufficient to result in control or a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the Corporation.

(2) Whenever an insured institution or an insured bank of the Federal Deposit Insurance Corporation makes a loan or loans secured (or to be secured) by 25 per centum or more of the voting stock of an insured institution, the president or other chief executive officer of the lending insured institution or insured bank shall promptly report such fact to the Corporation upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more, or the stock is of a newly organized insured institution prior to its opening.

(3) The reports required by paragraphs (1) and (2) of this subsection shall contain the following information to the extent that it is known by the person making the report: (A) the number of shares involved, (B) the names of the sellers (or transferors), (C) the names of the purchasers (or transferees), (D) the names of the beneficial owners if the shares are of record in another name or other names, (E) the purchase price, (F) the total number of shares owned by the sellers (or transferors) the purchasers (or transferees) and the beneficial owners both immediately before and after the transaction, and in the case of a loan, (G) the name of the borrower, (H) the amount of the loan, and (I) the name of the institution issuing the stock securing the loan and the number of shares securing the loan. In addition to the foregoing, such reports shall contain such other information as may be available to inform the Corporation of the effect of the transaction upon control of the institution whose stock is involved. The reports required by this subsection shall be in addition to any reports that may be required pursuant to other provisions of law.

(4) Whenever such a change as is described in paragraph (1) of this subsection occurs, the insured institution involved shall report promptly to the Corporation any change or changes, or replacement or replacements, of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or director.

(5) Without limitation by or on the foregoing provisions of this subsection, the Corporation may require insured institutions and individuals or other persons who have or have had any connection with the management of any insured institution, as defined by the Corporation, to provide, in such manner and under such civil penalties (which shall be cumulative to any other remedies) as the Corporation may

prescribed, such periodic or other reports and disclosures, including proxy statements and the solicitation of proxies thereby, as the Corporation may determine to be necessary or appropriate for the protection of investors or the Corporation.

(6) As used in this subsection, the term "stock" means [such stock or other equity securities or equity interests in an insured institution, or rights, interests, or powers with respect thereto, regardless of whether such institution is a stock company, a mutual institution, or otherwise, as the Corporation may by regulation define for the purposes of this subsection.] *rights, interests, or powers with respect to a mutual institution and the term "insured institution" means a mutual insured institution.*

(m) ANCILLARY PROVISIONS.—(1) In making examinations of insured institutions, examiners appointed by the Federal Home Loan Bank Board shall have power, on behalf of the Corporation, to make such examinations of the affairs of all affiliates of such institutions as shall be necessary to disclose fully the relations between such institutions and their affiliates and the effect of such relations upon such institutions. The cost of examinations of such affiliates shall be assessed against and paid by the institution. For purposes of this subsection, the term "affiliate" shall have the same meaning as where used in section 2(b) of the Banking Act of 1933 (12 U.S.C. 221a(b)), except that the term "member bank" in said section 2(b) shall be deemed to refer to an insured institution.

(2) In connection with examinations of insured institutions and affiliates thereof, the Corporation, or its designated representatives, shall have power to administer oaths and affirmations and to examine and to take and preserve testimony under oath as to any matter in respect of the affairs or ownership of any such institution or affiliate thereof, and to issue subpenas and subpenas duces tecum, 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 institution or affiliate thereof 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.

(3) In the course of or in connection with any proceeding under this section, the Corporation or its designated representatives, including any person designated to conduct any hearing under this section, shall have power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and the Corporation is empowered to make rules and regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant

to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. All expenses of the Board or of the Federal Savings and Loan Insurance Corporation in connection with this section shall be considered as nonadministrative expenses. Any court having jurisdiction of any proceeding instituted under this section by an insured institution, or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the institution or from its assets.

(n) SERVICE.—Any service required or authorized to be made by the Corporation under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Corporation may by regulation or otherwise provide. Copies of any notice or order served by the Corporation upon any State-chartered institution or any director or officer thereof or other person participating in the conduct of its affairs, pursuant to the provisions of this section, shall also be sent to the appropriate State supervisory authority.

(o) NOTICE TO STATE AUTHORITIES.—In connection with any proceeding under subsection (e), (f)(1), or (g) of this section involving an insured State-chartered institution or any director or officer or other person participating in the conduct of its affairs, the Corporation shall provide the appropriate State supervisory authority with notice of the Corporation's intent to institute such a proceeding and the grounds therefor. Unless within such time as the Corporation deems appropriate in the light of the circumstances of the case (which time must be specified in the notice prescribed in the preceding sentence) satisfactory corrective action is effectuated by action of the State supervisory authority, the Corporation may proceed as provided in this section. No institution or other party who is the subject of any notice or order issued by the Corporation under this section shall have standing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

(p) PENALTIES.—(1) Any director or officer, or former director or officer of an insured institution or institution any of the accounts of which are insured, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under subsection (g)(3), (g)(4), or (h) of this section, and who (A) participates in any manner in the conduct of the affairs of such institution, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations in respect to any voting rights in such institution, or (B) without the prior written approval of the Corporation, votes for a director or serves or acts as a director, officer, or employee of any insured institution, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.

(2) Except with the prior written consent of the Corporation, no person shall serve as a director, officer, or employee of an insured institution who has been convicted, or who is hereafter convicted, of a

criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the institution involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Corporation may recover by suit or otherwise for its own use.

(q)(1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured institution through a purchase, assignment, transfer, pledge, or other disposition of voting stock of such insured institution unless the Corporation has been given sixty days' prior written notice of such proposed acquisition and within that time period the Corporation has not issued a notice disapproving the proposed acquisition or extending up to another thirty days the period during which a disapproval may issue. The period for disapproval may be further extended only if the Corporation determines that any acquiring party has not furnished all the information required under subsection (q)(6) or that in its judgment any material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the Corporation issues written notice of its intent not to disapprove the action. For purposes of this subsection (q), the term "insured institution" shall include any "savings and loan holding company" as that term is defined in Section 408 of the National Housing Act which has control of any such insured institution.

(2) Upon receiving any notice under this subsection, the Corporation shall forward a copy thereof to the appropriate State savings and loan association supervisory agency if the insured institution the voting shares of which are sought to be acquired is a State chartered institution, and shall allow thirty days within which the views and recommendations of such State supervisory agency may be submitted. The Corporation shall give due consideration to the views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this subsection (q)(2), if the Corporation determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the proable failure of the institution involved in the proposed acquisition, the Corporation may dispense with the requirement of this subsection (l)(2) or, if a copy of the notice is forwarded to the State supervisory agency, the Corporation may request that the views and recommendations of such State supervisory agency be submitted immediately in any form or by any means acceptable to the Corporation.

(3) Within three days after its decision to disapprove any proposed acquisition, the Corporation shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

(4) Within ten days of receipt of such notice of disapproval, the acquiring party may request an agency hearing on the proposed acquisition. In such hearing all issues shall be determined on the record pursuant to section 544 of title 5, United States Code. The length of the hearing shall be determined by the Corporation. At the conclusion thereof, the Corporation shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(5) Any person whose proposed acquisition is disapproved after agency hearing under this subsection may obtain review by the United

States court of appeals for the circuit in which the home office of the institution to be acquired is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of such appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation. The Corporation shall promptly certify and file in such court the record upon which the disapproval was based. The findings of the Corporation shall be set aside if found to be arbitrary or capricious or if found to violate precedures established by this subsection.

(6) Except as otherwise provided by regulation of the Corporation, a notice filed pursuant to this subsection shall contain the following information:

(A) The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a State or Federal court.

(B) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the filing of the notice.

(C) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

(D) The identity, source, and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons.

(E) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the institution, to sell its assets or merge it with any company or to make any other major change in its business or corporate structure or management.

(F) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation.

(G) Copies of all invitations or tenders or advertisements making a tender officer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

(H) Any additional relevant information in such form as the Corporation may require by regulation or by specific request in connection with any particular notice.

(7) The Corporation may disapprove any proposed acquisition if—

(A) the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States;

(B) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(C) the financial condition of any acquiring person is such as might jeopardize the financial stability of the institution or prejudice the interests of the depositors of the institution;

(D) the competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the institution or in the interest of the public to permit such person to control the institution; or

(E) any acquiring person neglects, fails, or refuses to furnish the Corporation all the information required by the Corporation.

(8) For the purposes of this subsection, the term—

(A) "person" means an individual or a corporation, partnership, business trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein; and

(B) "control" means the power, directly or indirectly, to direct the management or policies of an insured institution or to vote 25 per centum or more of any class of voting securities of an insured institution.

(9) Whenever any insured institution or an insured bank makes a loan or loans, secured, or to be secured, by 25 per centum or more of the outstanding voting stock of an insured institution, the president or other chief executive officer of the lending insured institution or insured bank shall promptly report such fact to the Corporation upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more or where the stock is that of the newly organized institution prior to its opening.

(10) The reports required by paragraph (9) of this subsection shall contain such of the information referred to in paragraph (6) of this subsection, and such other relevant information, as the Corporation may require by regulation or by specific request in connection with any particular report.

(11) Whenever a change in control occurs, each insured institution shall report promptly to the Corporation any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(12) Without limitation by or on the foregoing provisions of this subsection, the Corporation may require insured institutions and individuals or other persons who have or have had any connection with the management of any insured institution, as defined by the Corporation, to provide, in such manner as the Corporation may prescribe, such periodic or other reports and disclosures, including proxy statements and the solicitation of proxies thereby, as the Corporation may determine to be necessary or appropriate for the protection of investors or the Corporation.

(13) As used in this subsection, the term "stock" means such stock or other equity securities or equity interests in an insured institution which is a stock company, or rights, interests, or powers with respect thereto.

(14) The Corporation is authorized to issue rules and regulations to carry out this subsection.

(15) Within two years after the effective date of the Change in Savings and Loan Control Act of 1978 and each year thereafter in the Corporation's annual report to the Congress, the Corporation shall report to the Congress the results of the administration of this subsection, and make any recommendations as to changes in the law which in the opinion of the Corporation would be desirable.

(16) Any person who willfully violates any provision of this subsection, or any regulation or order issued by the Corporation pursuant thereto, shall forfeit and pay a civil penalty of not more than $10,000 per day for each day during which such violation continues. The Corporation shall have authority to assess such a civil penalty, after giving notice and an opportunity to the person to submit data, views, and arguments, and after giving due consideration to the appropriateness of the penalty with respect to the size of financial resources and good faith of the person charged, the gravity of the violation, and any data, views, and arguments submitted. The agency may collect such civil penalty by agreement with the person or by bringing an action in the appropriate United States district court, except that in any such action, the person against whom the penalty has been assessed shall have a right to a trial de novo.

(17) This subsection shall not apply to a transaction subject to section 408 of this Act (12 U.S.C. 1730a).

[q] (r) DEFINITIONS.—(1) As used in this section—

(A) The terms "cease-and-desist order which has become final" and "order which has become final" mean a cease-and-desist order, or an order, issued by the Corporation with the consent of the institution or the director or officer or other person concerned, or with respect to which no petition for review of the action of the Corporation has been filed and perfected in a court of appeals as specified in subsection (j)(2) of this section, or with respect to which the action of the court in which said petition is so filed is not subject to further

review by the Supreme Court of the United States in proceedings provided for in said subsection, or an order issued under subsection (h) of this section.

(B) The term "State" includes the Commonwealth of Puerto Rico.

(C) The term "territory" includes any possession of the United States and any place subject to the jurisdiction of the United States.

(D) The terms "district", "district court", "district court of the United States", and "judicial district' shall have the meanings defined in section 451 of title 28 of the United States Code.

(2) As used in subsection (f) of this section, the term "insolvency" means that the assets of an institution are less than its obligations to its creditors and others, including its members.

(3) As used in subsection (g) of this section, the term "violation" includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating, in counseling, or aiding or abetting a violation.

(4) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term "officer" as used in this subsection means an employee or officer with management functions, and the term "director" includes an advisory or honorary director, a trustee of an association under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

REGULATION OF HOLDING COMPANIES

SEC. 408. (a) * * *

* * * * * * *

(h) ADMINISTRATION AND ENFORCEMENT.—(1) The Corporation is authorized to issue such rules, regulations, and orders as it deems necessary or appropriate to enable it to administer and carry out the purposes of this section, and to require compliance therewith and prevent evasions thereof.

(2) The Corporation may make such investigations as it deems necessary or appropriate to determine whether the provisions of this section, and rules, regulations, and orders thereunder, are being and have been complied with by savings and loan holding companies and subsidiaries and affiliates thereof. For the purpose of any investigation under this section, the Corporation or its designated representatives shall have power to administer oaths and affirmations, to issue subpenas and subpenas duces tecum, to take evidence, and to require the production of any books, papers, correspondence, memorandums, or other records which may be relevant or material to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in any State or in any territory. The Corporation may apply to the United States district court for the judicial district or the United States court in any territory in which any witness or company subpenaed resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance therewith.

(3) (A) In the course of or in connection with any proceeding under subsection (a) (2) (D) *or under subsection (h) (5)* of this section, the Corporation or its designated representatives, including any person designated to conduct any hearing under said subsection, shall have power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and the Corporation is empowered to make rules and regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this paragraph may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to such proceedings may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

(B) Any hearing provided for in subsection (a) (2) (D) *or under subsection (h) (5)* of this section shall be held in the Federal judicial district or in the territory in which the principal office of the institution or other company is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code.

(4) Whenever it shall appear to the Corporation that any person is engaged or has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this section or of any rule, regulation, or order thereunder, the Corporation may in its discretion bring an action in the proper United States district court, or the United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, to enforce compliance with this section or any rule, regulation, or order thereunder, or to require the divestiture of an acquisition in violation of this section, or for any combination of the foregoing, and such courts shall have jurisdiction of such actions and upon a proper showing an injunction, decree, restraining order, order of divestiture, or other appropriate order shall be granted without bond.

(5) (A) Notwithstanding any other provision of this section, the Corporation may, whenever it has reasonable cause to believe that the continuation by a savings and loan holding company of any activity or of ownership or control of any of its noninsured subsidiaries constitutes a serious risk to the financial safety, soundness, or stability of a savings and loan holding company's subsidiary insured institution and is inconsistent with the sound operation of an insured savings and loan institution or with the purposes of this section or with the Financial Institutions Supervisory Act, order the savings and loan holding company or any of its subsidiaries, after due notice and opportunity for hearing, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Corporation directs in unusual circumstances) its ownership or con-

trol of any such noninsured subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the savings and loan holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing savings and loan holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

(B) The Corporation may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in subsection (k), no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

[5] *(6)* All expenses of the Federal Home Loan Bank Board or of the Corporation under this section shall be considered as nonadministrative expenses.

(i) PROHIBITED ACTS.—It shall be unlawful for—

(1) any savings and loan holding company or subsidiary thereof, or any director, officer, employee, or person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 per centum of the voting shares, of such holding company or subsidiary, to hold, solicit, or exercise any proxies in respect of any voting rights in an insured institution which is a mutual in institution;

(2) any director or officer of a savings and loan holding company, or any person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 per centum of the voting shares of such holding company (A), except with the prior approval of the Corporation, to serve at the same time as a director, officer, or employee of an insured institution or another savings and loan holding company, not a subsidiary of such holding company, or (B) to acquire control, or to retain control for more than two years after the enactment of this subsection of any insured institution not a subsidiary of such holding company; or

(3) any individual, except with the prior approval of the Corporation, to serve or act as a director, officer, or trustee of, or become a partner in, any savings and loan holding company after having been convicted of any criminal offense involving dishonesty or breach of trust.

(j) PENALTIES.—(1) Any company which willfully violates any provision of this section, or any rule, regulation, or order thereunder, shall upon conviction be fined not more than $1,000 for each day during which the violation continues.

(2) Any individual who willfully violates or participates in a violation of any provision of this section, or any rule, regulation, or order thereunder, shall upon conviction be fined not more than $10,000 or imprisoned not more than one year, or both.

(3) Every director, officer, partner, trustee, agent, or employee of a savings and loan holding company shall be subject to the same pen-

alties for false entries in any book, report, or statement of such savings and loan holding company as are applicable to officers, agents, and employees of an institution the accounts of which are insured by the Corporation for false entries in any books, reports, or statements of such institution under section 1006 of title 18 of the United States Code.

(4) (A) Any company which violates or any individual who participates in a violattion of any provision of this section, or any regulation or order issued pursuant thereto, shall forfeit and pays a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Corporation by written notice. As used in the section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(B) In determining the amount of the penalty the Corporation shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the company or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(C) The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(D) Any company or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the company is located, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation. The Corporation shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Corporation shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

(E) If any company or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Corporation shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(F) The Corporation shall promulgate regulations establishing procedures necessary to implement this paragraph.

(G) All penalties collected under authority of this paragraph shall be covered into the Treasury of the United States.

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SEC. 2. The management of the Corporation shall be vested in a Board of Directors consisting of three members, one of whom shall be the Comptroller of the Currency, and two of whom shall be citizens of the United States to be appointed by the President, by and with the advice and consent of the Senate. One of the appointive members shall be the Chairman of the Board of Directors of the Corporation and not more than two of the members of such Board of Directors shall be members of the same political party. Each such appointive member shall hold office for a term of six years. In the event of a vacancy in the office of the Comptroller of the Currency, and pending the appointment of his successor, or during the absence or disability of the Comptroller, the Acting Comptroller of the Currency shall be a member of the Board of Directors in the place and stead of the Comptroller. In the event of a vacancy in the office of the Chairman of the Board of Directors, and pending the appointment of his successor, the Comptroller of the Currency shall act as Chairman. The members of the Board of Directors shall be ineligible, during the time they are in office and for a period of two years thereafter, to hold any office, position, or employment in [any insured bank, except that this restriction shall not apply to any member who has served the full term for which he was appointed.] an insured bank, in a holding company of an insured bank, or in an affiliate of a holding company of an insured bank, except that this restriction shall not apply to any individual who has served the full term for which he was appointed. Former members of the Board of Directors shall be prohibited from appearing before the Board, either formally or informally, contacting the Board, directly or indirectly, orally or in writing, or from acting as agent or attorney for any other person, other than the United States, before the Board for a period of two years immediately following their employment with the Board. The preceding sentence shall not apply to individuals who served on the Board before or upon the effective date of this sentence and the prohibition upon holding any office, position, or employment in a holding company or an affiliate thereof shall not apply to individuals serving as members of the Board upon the effective date of this sentence. No member of the Board of Directors shall be an officer or director of any insured bank or Federal Reserve bank or hold stock in any insured bank; and before entering upon his duties as a member of the Board of Directors he shall certify under oath that he has complied with this requirement and such certification shall be filed with the secretary of the Board of Directors.

SEC. 3. As used in this Act—

(a) * * *

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(o) The term "*domestic* branch" includes any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin

Islands at which deposits are received or checks paid or money lent; *and the term "foreign branch" means any office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, or the Virgin Islands, at which banking operations are conducted.*

SEC. 7. (a) (1) * * *

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(3) Each insured State nonmember bank (except a District bank) shall make to the Corporation, each insured national bank and each insured District bank shall make to the Comptroller of the Currency, and each insured State member bank shall make to the Federal Reserve bank of which it is a member, four reports of condition annually upon dates which shall be selected by the Chairman of the Board of Directors, the Comptroller of the Currency, and the Chairman of the Board of Governors of the Federal Reserve System, or a majority thereof. The dates selected shall be the same for all insured banks, except that when any of said reporting dates is a nonbusiness day for any bank, the preceding business day shall be its reporting date. Two dates shall be selected within the semiannual period of January to June inclusive, and the reports on such dates shall be the basis for the certified statement to be filed in July pursuant to subsection (c) of this section, and two dates shall be selected within the semiannual period of July to December inclusive, and the reports on such dates shall be the basis for the certified statement to be filed in January pursuant to subsection (c) of this section. The deposit liabilities shall be reported in said reports of condition in accordance with and pursuant to paragraphs (4) and (5) of this subsection, and such other information shall be reported therein as may be required by the respective agencies. Each said report of condition shall contain a declaration by the president, a vice president, the cashier or the treasurer, or by any other officer designated by the board of directors or trustees of the reporting bank to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of said report of [condition] *conditions* shall be attested by the signatures of at least [three] *two* of the directors or trustees of the reporting bank other than the officer making such declaration, [or by at least two if there are not more than three directors or trustees, with the] *with a* declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct. At the time of making said reports of condition each insured national, District and State member bank shall furnish to the Corporation a copy thereof containing such signed declaration and attestations. Nothing herein shall preclude any of the foregoing agencies from requiring the banks under its jurisdiction to make additional reports of condition at any time.

(4) In the reports of condition required to be made by paragraph (3) of this subsection, each insured bank shall report the total amount of the liability of the bank for deposits in the main office and in any branch located in any State of the United States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam,

American Samoa, or the Virgin Inslands, according to the definition of the term "deposit" in and pursuant to subsection (1) of section 3 of this Act, without any deduction for indebtedness of despositors or creditors or any deduction for cash items in the process of collection drawn on others than the reporting bank: *Provided*, That the bank in reporting such deposits may (i) subtract from the deposit balance due to any bank the deposit balance due from the same bank (other than trust funds deposited by either bank) and any cash items in the process of collection due from or due to such banks shall be included in determining such net balance, except that balances of time deposits of any bank and any balances standing to the credit of private banks, of banks in foreign countries, of foreign branches of other American banks, and of American branches of foreign banks shall be reported gross without any such subtraction, and (ii) exclude any deposits received in any office of the bank for deposit in any other office of the bank: *And provided further*, That outstanding drafts (including advices and authorizations to charge bank's balance in another bank) drawn in the regular course of business by the reporting bank on banks need not be reported as deposit liabilities. The amount of trust funds held in the bank's own trust department, which the reporting bank keeps segregated and apart from its general assets and does not use in the conduct of its business, shall not be included in the total deposits in such reports, but shall be separately stated in such reports. *Deposits which are accumulated for the payment of personal loans and are assigned or pledged to assure payment of loans at maturity shall not be included in the total deposits in such reports, but shall be deducted from the loans for which such deposits are assigned or pledged to assure repayment.*

(5) The deposits to be reported on such reports of condition shall be segregated between (i) time and savings deposits and (ii) demand deposits. For this purpose and for the computation of assessments provided in subsection (b) of this section, the time and savings deposits shall consist of time certificates of deposit, time deposits-open account, [deposits accumulated for the payment of personal loans,] and savings deposits; and demand deposits shall consist of all deposits other than time and savings deposits.

* * * * * * *

(b) (1) * * *

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(6) The assessment base deductions shall be the amounts of—

(A) cash items in the bank's possession, drawn on itself, which have not been charged against deposit liabilities at the close of business on the date as of which the report of condition is made, either in their actual amount as shown on the books of the bank, or, if not so shown, in an amount determined by means of an experience factor pursuant to regulations prescribed by the Board of Directors;

[(B) deposits included in reported deposit liabilities which are accumulated for the payment of personal loans and are assigned or pledged to assure repayment of the loans at maturity;]

[(C)] (*B*) 1 per centum of the bank's adjusted time and savings deposits (as defined in paragraph (7)); and

[(D)] (C) 16⅔ per centum of the bank's adjusted demand deposits (as defined in paragraph (8)).

Each insured bank, as a condition to the right to make any such deduction in determining its assessment base, shall maintain such records as will readily permit verification of the correctness of its assessment base. No insured bank shall be required to retain such records for such purpose for a period in excess of five years from the date of the filing of any certified statement, except that when there is a dispute between the insured bank and the Corporation over the amount of any assessment the bank shall retain such records until final determination of the issue.

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[(j) (1) Whenever a change occurs in the outstanding voting-stock of any insured bank which will result in control or in a change in the control of the bank, the president or other chief executive officer of such bank shall promptly report such facts to the appropriate Federal banking agency upon obtaining knowledge of such change. As used in this subsection, the term "control" means the power to directly or indirectly direct or cause the direction of the management or policies of the bank. A change in ownership of voting stock which would result in direct or indirect ownership by a stockholder or an affiliated group of stockholders of less than 10 percent of the outstanding voting stock shall not be considered a change of control. If there is any doubt as to whether a change in the outstanding voting stock is sufficient to result in control thereof or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the appropriate Federal banking agency.

[(2) Whenever an insured bank makes a loan or loans, secured, or to be secured, by 25 per centum or more of the outstanding voting stock of an insured bank, the president or other chief executive officer of the lending bank shall promptly report such fact to the appropriate Federal banking agency of the bank whose stock secures the loan or loans upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more, or the stock is that of a newly organized bank prior to its opening.

[(3) The reports required by paragraph (1) and (2) of this subsection shall contain the following information to the extent that it is known by the person making the report: (a) the number of shares involved, (b) the names of the sellers (or transferors), (c) the names of the purchasers (or transferees), (d) the names of the beneficial owners if the shares are registered in another name, (e) the purchase price, (f) the total number of shares owned by the sellers (or transferors), the purchasers (or transferees) and the beneficial owners both immediately before and after the transaction, and in the case of a loan, (g) the name of the borrower, (h) the amount of the loan, and (i) the name of the bank issuing the stock securing the loan and the number of shares securing the loan. In addition to the foregoing, such reports shall contain such other information as may be available to inform the appropriate Federal banking agency of the effect of the transaction upon control of the bank whose stock is involved.

[(4) Whenever such a change as described in paragraph (1) of this subsection occurs, each insured bank shall report promptly to the appropriate Federal banking agency any changes or replacement of its chief executive officer or any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

[(5) The Comptroller of the Currency shall immediately furnish to the Board of Governors of the Federal Reserve System and to the Federal Deposit Insurance Corporation a copy of any such report required in this subsection and received by him, and the Board of Governors of the Federal Reserve System shall immediately furnish to the Federal Deposit Insurance Corporation a copy of any such report required in this subsection and received by it.]

(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 bank through a purchase, assignment, transfer, pledge, or other disposition of voting stock of such insured bank 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 extending for up to another thirty days the period during which such a disapproval may issue. The period for disapproval may be further extended only if the agency determines that any acquiring party has not furnished all the information required under section (j) (6) or that in its judgment any material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the agency issues written notice of its intent not to disapprove the action. For purposes of this subsection (j), the term "insured bank" shall include any "bank holding company" as that term is defined in section 2 of the Bank Holding Company Act which has control of any such insured bank.

(2) Upon receiving any notice under this subsection, the appropriate Federal banking agency shall forward a copy thereof to the appropriate State bank supervisory agency if the bank the voting shares of which are sought to be acquired is a State Bank, and shall allow thirty days within which the views and recommendations of such State bank supervisory agency may be submitted. The appropriate Federal banking agency shall give due consideration to the views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this subsection (j) (2), if the appropriate Federal banking agency determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the probable failure of the bank involved in the proposed acquisition, such Federal banking agency may dispense with the requirements of this subsection (j) (2) or, if a copy of the notice is forwarded to the State bank supervisory agency, such Federal banking agency may request that the views and recommendations of such State bank supervisory agency be submitted immediately in any form or by any means acceptable to such Federal banking agency.

(3) Within three days after its decision to disapprove any proposed acquisition, the appropriate Federal banking agency shall notify the

acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

(4) Within ten days of receipt of such notice of disapproval, the acquiring party may request an agency hearing on the proposed acquisition. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The length of the hearing shall be determined by the appropriate Federal banking agency. At the conclusion thereof, the appropriate Federal banking agency shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(5) Any person whose proposed acquisition is disapproved after agency hearings under this subsection may obtain review by the United States court of appeals for the circuit in which the home office of the bank to be acquired is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the disapproval was based. The findings of the appropriate Federal banking agency shall be set aside if found to be arbitrary or capricious or if found to violate procedures established by this subsection.

(6) Except as otherwise provided by regulation of the appropriate Federal banking agency, a notice filed pursuant to this subsection shall contain the following information:

(A) The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a State or Federal court.

(B) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the filing of the notice.

(C) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

(D) The identity, source and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons.

(E) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, to sell its assets or

merge it with any company or to make any other major change in its business or corporate structure or management.

(F) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation.

(G) Copies of all invitations or tenders or advertisements making a tender offer to stockhholders for purchase of their stock to be used in connection with the proposed acquisition.

(H) Any additional relevant information in such form as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular notice.

(7) The appropriate Federal banking agency may disapprove any proposed acquisition if—

(A) the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(B) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(C) the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(D) the competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit such person to control the bank; or

(E) any acquiring person neglects, fails, or refuses to furnish the appropriate Federal banking agency all the information required by the appropriate Federal banking agency.

(8) For the purposes of this subsection, the term—

(A) "person" means an individual or a corporation, partnership, business trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein; and

(B) "control" means the power, directly or indirectly, to direct the management or policies of an insured bank or to vote 25 per centum or more of any class of voting securities of an insured bank.

(9) Wherever any insured bank makes a loan or loans, secured, or to be secured, by 25 per centum or more of the outstanding voting stock of an insured bank, the president or other chief executive officer of the lending bank shall promptly report such fact to the appropriate Fed-

eral banking agency of the bank whose stock secures the loan or loans upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more or where the stock is that of the newly organized bank prior to its opening.

(10) The reports required by paragraph (9) of this subsection shall contain such of the information referred to in paragraph (6) of this subsection, and such other relevant information, as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular report.

(11) The Federal banking agency receiving a notice or report filed pursuant to paragraph (1) or (9) shall immediately furnish to the other Federal banking agencies a copy of such notice or report.

(12) Whenever such a change in control occurs, each insured bank shall report promptly to the appropriate Federal banking agency any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(13) The appropriate Federal banking agencies are authorized to issue rules and regulations to carry out this subsection.

(14) Within two years after the effective date of the Change in Bank Control Act of 1978, and each year thereafter in each appropriate Federal banking agency's annual report to the Congress, the appropriate Federal banking agency shall report to the Congress the results of the administration of this subsection, and make any recommendations as to changes in the law which in the opinion of the appropriate Federal banking agency would be desirable.

(15) Any person who willfully violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency pursuant thereto, shall forfeit and pay a civil penalty of not more than $10,000 per day for each day during which such violation continues. The appropriate Federal banking agency shall have authority to assess such a civil penalty, after giving notice and an opportunity to the person to submit data, views, and arguments, and after giving due consideration to the appropriateness of the penalty with respect to the size of financial resources and good faith of the person charged, the gravity of the violation, and any data, views, and arguments submitted. The agency may collect such civil penalty by agreement with the person or by bringing an action in the appropriate United States district court, except that in any such action, the person against whom the penalty has been assessed shall have a right to trial de novo.

(16) This subsection shall not apply to a transaction subject to section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) or section 18 of this Act (12 U.S.C. 1828).

(k) (1) Each insured bank shall make to the appropriate Federal banking agency an annual report which shall contain the following information with respect to the preceding calendar year:

(A) A list by name of 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 the bank.

(B) A list by name of each executive officer or 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 the bank and the aggregate amount of all extensions of credit by such bank during such year to: (i) such executive officers or stockholders of record, (ii) any company controlled by such executive officers, or stockholders, or (iii) any political or campaign committee the funds or services of which will benefit such executive officers or stockholders, or which is controlled by such executive officers or stockholders.

(2) For purposes of this subsection, the term "executive officer" shall have the same meaning given it under section 22(g) of the Federal Reserve Act.

(3) The appropriate Federal banking agencies are authorized to issue rules and regulations to carry out this subsection, including authority to incorporate the information required to be filed by this subsection in any other report required to be filed by all insured banks which would be available in its entirety to the public upon request.

(4) Copies of any report required to be filed under this subsection shall be made available, by the appropriate Federal banking agency or by the bank, upon request, to the public.

SEC. 8. (a) * * *

[(b)(1) If, in the opinion of the appropriate Federal banking agency, any insured bank or bank which has insured deposits is engaging or has engaged, or the agency has reasonable cause to believe that the bank is about to engage, in an unsafe or unsound practice in conducting the business of such bank, or is violating or has violated, or the agency has reasonable cause to believe that the bank is about to violate, a law, rule, or regulation, or any condition imposed in writing by the agency in connection with the granting of any application or other request by the bank, or any written agreement entered into with the agency, the agency may issue and serve upon the bank a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the bank. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the agency at the request of the bank. Unless the bank shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the agency shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the agency may issue and serve upon the bank an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the bank and its directors, officers, employees, and agents to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

[(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the bank con-

cerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.]

(b)(1) If, in the opinion of the appropriate Federal banking agency, any insured bank, bank which has insured deposits, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such a bank is engaging or has engaged, or the agency has reasonable cause to believe that the bank or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank is about to engage, in an unsafe or unsound practice in conducting the business of such bank, or is violating or has violated, or the agency has reasonable cause to believe that the bank or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank is about to violate, a law, rule, or regulation, or any condition imposed in writing by the agency in connection with the granting of any application or other request by the bank or any written agreement entered into with the agency, the agency may issue and serve upon the bank or such director, officer, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the bank or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the agency at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the agency shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the agency may issue and serve upon the bank or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the bank or its directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such bank to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the bank or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

[(3) This subsection and subsections (c), (d), (h), (i), (k), (l), (m), and (n) of this section shall apply to any bank holding company,

and to any subsidiary (other than a bank) of a holding company, as those terms are defined in the Bank Holding Company Act of 1956, in the same manner as they apply to a State member insured bank.]

(3) This subsection and subsections (c) through (f) and (h) through (n) of this section shall apply to any bank holding company, and to any subsidiary (other than a bank) of a bank holding company, as those terms are defined in the Bank Holding Company Act of 1956, and to any organization organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act, in the same manner as they apply to a State member insured bank. Nothing in this subsection or in subsection (c) of this section shall authorize any Federal banking agency, other than the Board of Governors of the Federal Reserve System, to issue a notice of charges or cease-and-desist order against a bank holding company or any subsidiary thereof (other than a bank or subsidiary of that bank).

[(c)(1) Whenever the appropriate Federal banking agency 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 bank pursuant to paragraph (1) of subsection (b) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank, or is likely to otherwise seriously prejudice the interests of its depositors, the agency may issue a temporary order requiring the bank to cease and desist from any violation or practice. Such order shall become effective upon service upon the bank 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 agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the bank, until the effective date of any such order.

[(2) Within ten days after the bank concerned has been served with a temporary cease-and-desist order, the bank may apply to the United States district court for the judicial district in which the home office of the bank is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the bank under paragraph (1) of subsection (b) of this section, and such court shall have jurisdiction to issue such injunction.]

(c)(1) Whenever the appropriate Federal banking agency 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 bank or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank pursuant to paragraph (1) of subsection (b) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank, or is likely to seriously weaken the condition of the bank or otherwise seriously prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to

paragraph (1) of subsection (b) of this section, the agency may issue a temporary order requiring the bank or such director, officer, employee, agent, or other person 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 shall become effective upon service upon the bank or such director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank 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 agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the bank or such director, officer, employee, agent, or other person, until the effective date of such order.

(2) Within ten days after the bank concerned or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank has been served with a temporary cease-and-desist order, the bank or such director, officer, employee, agent, or other person may apply to the United States district court for the judicial district in which the home office of the bank is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the bank or such director, officer, employee, agent, or other person under paragraph (1) of subsection (b) of this section, and such court shall have jurisdiction to issue such injunction.

[(e)(1) Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured State bank (other than a District bank) has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the bank, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the agency determines that the bank has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, the agency may serve upon such director or officer a written notice of its intention to remove him from office.

[(2) Whenever, in the opinion of the Comptroller of the Currency, any director or officer of a national banking association or a District bank has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the bank, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Comptroller determines that the bank has suffered or will probably suffer substantial financial loss or other damage or that

the interests of its depositors could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, the Comptroller of the Currency may certify the facts to the Board of Governors of the Federal Reserve System.

[(3) Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured State bank (other than a District bank), by conduct or practice with respect to another insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to continue as a director or officer and, whenever, in the opinion of the appropriate Federal banking agency, any other person participating in the conduct of the affairs of an insured State bank (other than a District bank), by conduct or practice with respect to such bank or other insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to participate in the conduct of the affairs of such insured bank, the agency may serve upon such director, officer, or other person a written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of the bank.

[(4) Whenever, in the opinion of the Comptroller of the Currency, any director or officer of a national banking association or a District bank, by conduct or practice with respect to another insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to continue as a director or officer and, whenever, in the opinion of the Comptroller, any other person participating in the conduct of the affairs of a national banking association or a District bank, by conduct or practice with respect to such bank or other insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to participate in the conduct of the affairs of such bank, the Comptroller of the Currency may certify the facts to the Board of Governors of the Federal Reserve System.

[(5) In respect to any director or officer of an insured State bank (other than a District bank) or any other person referred to in paragraph (1) or (3) of this subsection, the appropriate Federal banking agency may, if it deems it necessary for the protection of the bank or the interests of its depositors, by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the bank. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (f) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1) or (3) of this subsection and until such time as the agency shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice

shall also be served upon the bank of which he is a director or officer or in the conduct of whose affairs he has participated.

[(6) In respect to any director or officer of a national banking association or a District bank, or any other person referred to in paragraph (2) or (4) of this subsection, the Comptroller of the Currency may, if he deems it necessary for the protection of the bank or the interests of its depositors that such director or officer be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the bank, certify the facts to the Board of Governors of the Federal Reserve System.

[(7) In the case of a certification to the Board of Governors of the Federal Reserve System under paragraph (2) or (4) of this subsection, the Board may serve upon the director, officer, or other person involved, a written notice of its intention to remove him from office and/or to prohibit him from further participation in any manner in the conduct of the affairs of the bank. In the case of a certification to the Board of Governors of the Federal Reserve System under paragraph (6) of this subsection, the Board may by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the bank. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (f) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under the first sentence of this paragraph and until such time as the Board shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the bank of which he is a director or officer or in the conduct of whose affairs he has participated. For the purposes of this paragraph and paragraph (8) of this subsection, the Comptroller of the Currency shall be entitled in any case involving a national bank or a District bank to sit as a member of the Board of Governors of the Federal Reserve System and to participate in its deliberations on any such case and to vote thereon in all respects as a member of such Board.

[(8) A notice of intention to remove a director, officer, or other person from office and/or to prohibit his participation in the conduct of the affairs of an insured bank, 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 director or officer or other person, and for good cause shown, or (B) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/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 has been established, the agency

may issue such orders of suspension or removal from office, and/or prohibition from participation in the conduct of the affairs of the bank, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such bank and the director, officer, or other person concerned (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.]

(e) (1) Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured bank has committed any violation of law, rule, or regulation or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the bank, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the agency determines that the bank has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or one which demonstrates a willful or continuing disregard for the safety or soundness of the bank, the agency may serve upon such director or officer a written notice of its intention to remove him from office.

(2) Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured bank, by conduct or practice with respect to another insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to continue as a director or officer and, whenever, in the opinion of the appropriate Federal banking agency, any other person participating in the conduct of the affairs of an insured bank, by conduct or practice with respect to such bank or other insured bank or other business institution which resulted in substantial financial loss or other damage, has evidence either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such insured bank, the agency may serve upon such director, officer, or other person a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the bank.

(3) In respect to any director or officer of an insured bank or any other person referred to in paragraph (1) or (2) of this subsection, the appropriate Federal banking agency may, if it deems it necessary for the protection of the bank or the interests of its depositors by written notice to such effect served upon such director, officer, or other person, suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the bank. Such suspension or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection

(f) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1) or (2) of this subsection and until such time as the agency shall dismiss the charges specified in such notice, or, if an order of removal or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the bank of which he is a director or officer or in the conduct of whose affairs he has participated.

(4) A notice of intention to remove a director, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an insured bank, 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 director or officer or other person, and for good cause shown, or (B) the Attorney General of the United States. Unless such director, officer, or other person, and for good cause shown, or (B) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he 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 bank, as it may deem appropriate. In any action brought under this section by the Comptroller of the Currency in respect to any director, officer or other person with respect to a national banking association or a District bank, 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 bank and the director, officer, or other person concerned (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.

(5) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term "officer" as used in this subsection means an employee or officer with management functions, and the term "director" includes an advisory or honorary director, a trustee of a bank under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

* * * * * * *

[(g) (1) Whenever any director or officer of an insured bank, or other person participating in the conduct of the affairs of such bank, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the appropriate

Federal banking agency may, by written notice served upon such director, officer, or other person suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the bank. A copy of such notice shall also be served upon the bank. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the agency. In the event that a judgment of conviction with respect to such offense is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the agency may issue and serve upon such director, officer, or other person an order removing him from office and/or prohibiting him from further participation in any manner in the conduct of the affairs of the bank except with the consent of the appropriate agency. A copy of such order shall also be served upon such bank, whereupon such director or officer shall cease to be a director or officer of such bank. A finding of not guilty or other disposition of the charge shall not preclude the agency from thereafter instituting proceedings to remove such director, officer, or other person from office and/or to prohibit further participation in bank affairs, pursuant to paragraph (1), (2), (3), (4), or (7) of subsection (e) of this section.

[(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a national bank less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a national bank are suspended pursuant to this section, the Comptroller of the Currency shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the bank and their respective successors take office.]

(g) (1) Whenever any director or officer of an insured bank, or other person participating in the conduct of the affairs of such bank, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the appropriate Federal banking agency may, if continued service or participation by the individual may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank, by written notice served upon such director, officer, or other person, suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the bank. A copy of such notice shall also be served upon the bank. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the agency. In the event that a judgment of conviction with respect to such crime is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the agency may, if continued service or participation by the individual

may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank, issue and serve upon such director, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the bank except with the consent of the appropriate agency. A copy of such order shall also be served upon such bank, whereupon such director or officer shall cease to be a director or officer of such bank. A finding of not guilty or other disposition of the charge shall not preclude the agency from thereafter instituting proceedings to remove such director, officer, or other person from office or to prohibit further participation in bank affairs, pursuant to paragraph (1), (2), or (3) of subsection (e) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the agency.

(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a national bank less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a national bank are suspended pursuant to this section, the Comptroller of the Currency shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the bank and their respective successors take office.

(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the director, officer, or other person concerned may request in writing an opportunity to appear before the agency to show that the continued service to or participation in the conduct of the affairs of the bank by such individual does not, or is not likely to, pose a threat to the interests of the bank's depositors or threaten to impair public confidence in the bank. Upon receipt of any such request, the appropriate Federal banking agency shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, officer, or other person) and place at which the director, officer, or other person may appear, personally or through counsel, before one or more members of the agency or designated employees of the agency to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the agency shall notify the director, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the bank will be continued, terminated, or otherwise modified, or whether the order removing said director, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the bank will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the agency's decision, if adverse to the director, officer or other person. The Fed-

eral banking agencies are authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(h)(1) Any hearing provided for in this section (*other than the hearing provided for in subsection* (*g*)(c) *of this section*) shall be held in the Federal judicial district or in the territory in which the home office of the bank is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. Such hearing shall be private, unless the appropriate Federal banking agency, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After such hearing, and within ninety days after the appropriate Federal banking agency or Board of Governors of the Federal Reserve System has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (h). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the issuing agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the agency may modify, terminate, or set aside any such order with permission of the court.

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(i)(*1*) The appropriate Federal banking agency may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the bank is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such courts shall have jurisdiction and power to order and require compliance herewith; but except as otherwise provided in this section no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(*2*)(*i*) *Any insured bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such bank who violates the terms of any order which has become final and was issued pursuant to subsection* (*b*) *or* (*c*) *of this section, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the appropriate Federal banking agency by written notice. As used in this section, the term "violates" includes without any limitation any action* (*alone or with another or others*) *for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.*

(*ii*) *In determining the amount of the penalty the appropriate Federal banking agency shall take into account the appropriateness of the penalty with respect to the size of financial resources and good*

faith of the insured bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(iii) The insured bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (iv). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(iv) Any insured bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the insured bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The agency shall promptly certify and file in such Court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the agency shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

(v) If any insured bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the agency shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(vi) Each Federal banking agency shall promulgate regulations establishing procedures necessary to implement this paragraph.

(vii) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(j) Any director or officer, of former director or officer of an insured bank, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under subsections [(e)(5), (e)(7), (e)(8)] *(e)(3)*, *(e)(4)*, or (g) of this section, and who (i) participates in any manner in the conduct of the affairs of the bank involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such bank, or (ii) without the prior written approval of the appropriate Federal banking agency, votes for a director, serves or acts as a director, officer, or employee of any bank, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.

(k) As used in this section (1) the terms "cease-and-desist order which has become final" and "order which has become final" mean a cease-and-desist order, or an order, issued by the appropriate Federal

banking agency with the consent of the bank or the director or officer or other person concerned, or with respect to which no petition for review of the action of the agency has been field and perfected in a court of appeals as specified in paragraph (2) of subsection (h), or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in said paragraph, or an order issued under paragraph (1) *or (3)* of subsection (g) of this section, and (2) the term "violation" includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

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(n) In the course of or in connection with any proceeding under this section, *or in connection with any claim for insured deposits or any examination or investigation under section 10(c)*, the agency conducting the proceeding, *examination, or investigation or considering the claim for insured deposits*, or any member or designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and such agency is empowered to make rules and regulations with respect to any such proceedings; *claims, examinations, or investigations.* The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any *such agency or any* party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this [section] *subsection* shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an insured bank or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the bank or from its assets. *Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the appropriate Federal banking agency, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year or both.*

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[(q) Whenever the liabilities of an insured bank for deposits shall have been assumed by another insured bank or banks, the insured status of the bank whose liabilities are so assumed shall terminate on

the date of receipt by the Corporation of satisfactory evidence of such assumption with like effect as if its insured status had been terminated on said date by the Board of Directors after proceedings under subsection (a) of this section; *Provided*, That if the bank whose liabilities are so assumed gives to its depositors notice of such assumption within thirty days after such assumption takes effect, by publication or by any reasonable means, in accordance with regulations to be prescribed by the Board of Directors, the insurance of its deposits shall terminate at the end of six months from the date such assumption takes effect. Such bank shall be subject to the duties and obligations of an insured bank for the period its deposits are insured: *Provided*, That if the deposit are assumed by a newly insured bank, the bank whose deposits are assumed shall not be required to pay any assessment upon the deposits which have been so assumed after the semiannual period in which the assumption takes effect.]

(*q*) *Whenever the liabilities of an insured bank for deposits shall have been assumed by another insured bank or banks, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract (1) the insured status of the bank whose liabilities are so assumed shall terminate on the date of receipt by the Corporation of satisfactory evidence of such assumption; (2) the separate insurance of all deposits so assumed shall terminate at the end of six months from the date such assumption takes effect or, in the case of any deposit, the earliest maturity date after the six-month period; and (3) the assuming or resulting bank shall give notice of such assumption to each of the depositors of the bank whose liabilities are so assumed within thirty days after such assumption takes effect. Where the deposits of an insured bank are assumed by a newly insured bank, the bank whose deposits are assumed shall not be required to pay any assessment upon the deposits which have been so assumed after the semiannual period in which the assumption takes effect.*

SEC. 9. Upon the date of enactment of the Banking Act of 1933, the Corporation shall become a body corporate and as such shall have power—

First. To adopt and use a corporate seal.

Second. To have succession until dissolved by an Act of Congress.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend, in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the Corporation shall be a party be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy; and the Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect, except that any suit to which the Corporation is a party in its capacity as receiver of a State bank and which involves only the rights or obligations of depositors, creditors, stockholders, and such State bank under State law shall not be deemed to arise under the laws of the United States. No attachment or execution shall be issued against the Corporation or its property

before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court. The Board of Directors shall designate an agent upon whom service of process may be made in any State, Territory, or jurisdiction in which any insured bank is located.

Fifth. To appoint by its Board of Directors such officers and employees as are not otherwise provided for in this Act, to define their duties, fx their compensation, require bonds of them and fix the penalty thereof, and to dismiss at pleasure such officers or employees. Nothing in this or any other Act shall be construed to prevent the appointment and compensation as an officer or employee of the Corporation of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof.

Sixth. To prescribe, by its Board of Directors, bylaws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed.

Seventh. To exercise by its Board of Directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this Act, and such incidental powers as shall be necessary to carry out the power so granted.

Eighth. To make examinations of and to require information and reports from banks, as provided in this Act.

Ninth. To act as receiver.

Tenth. To prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of this Act *or of any other law which it has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency)*.

* * * * * * *

(b) The Board of Directors shall appoint examiners who shall have power, on behalf of the Corporation, to examine any insured State nonmember bank *or other institution* (except a District bank), any State nonmember bank making application to become an insured bank, and any closed insured bank, whenever in the judgment of the Board of Directors an examination of the bank is necessary. In addition to the examinations provided for in the preceding sentence, such examiners shall have like power to make a special examination of any State member bank and any national bank or District bank, whenever in the judgment of the Board of Directors such special examination is necessary to determine the condition of any such bank for insurance purposes. In making examinations of insured banks, examiners appointed by the Corporation shall have power on behalf of the Corporation to make such examinations of the affairs of all affiliates of such banks as shall be necessary to disclose fully the relations between such banks and their affiliates and the effect of such relations upon such banks. Each examiner shall have power to make a thorough examination of all of the affairs of the bank and its affiliates, and shall make a full and detailed report of the condition of the bank to the Corporation. The Board of Directors in like manner shall appoint claim agents who shall have power to investigate and examine all claims for insured deposits. [Each claim agent shall have power to administer oaths and affirma-

tions and to examine and to take and preserve testimony under oath as to any matter in respect to claims for insured deposits, and to issue subpenas and subpenas duces tecum, 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 main office of the bank or affiliate thereof 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.]

[(c) In connection with examinations of insured banks, and affiliates thereof, the appropriate Federal banking agency, or its designated representatives, shall have the power to administer oaths and affirmations and to examine and to take and preserve testimony under oath as to any matter in respect of the affairs or ownership of any such bank or affiliate thereof, and to issue subpenas and subpenas duces tecum, 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 main office of the bank or affiliate thereof 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. For purposes of this section, the term "affiliate" shall have the same meaning as where used in section 2(b) of the Banking Act of 1933 (12 U.S.C. 221a(b)) except that the term "member bank" in said section 2(b) shall be deemed to refer to an insured bank.

[(d) In cases of refusal to obey a subpena issued to, or contumacy by, any person, the Board of Directors may invoke the aid of any court of the United States within the jurisdiction of which such hearing, examination or investigation is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, records, or other papers. And such court may issue an order requiring such person to appear before the Board of Directors or member or person designated by the Board of Directors, there to produce records, if so ordered, or to give testimony touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or carries on business or wherever he may be found.]

(c) In connection with examinations of insured banks, State nonmember banks or other institutions making application to become insured banks, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, the appropriate Federal banking agency, or its designated representatives, are authorized to administer oaths and affirmations, and to examine and to take and preserve testimony under oath as to any matter in respect to the affairs or ownership of any such bank or institution or affiliate thereof, and to exercise such other powers as are set forth in section 8(n) of this Act.

(d) For purposes of this section, the term "affiliate" shall have the same meaning as in section 23A of the Federal Reserve Act, except that the term "member bank" in such section 23A and in section 2(b) of the Banking Act of 1933 shall be deemed to refer to an insured bank.

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SEC. 18. (a) * * *

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(c)(1) Except with the prior written approval of the responsible agency, which shall in every case referred to in this paragraph be the Corporation, no insured bank shall—

(A) merge or consolidate with any noninsured bank or institution;

(B) assume liability to pay any deposits (*including liabilities which would be "deposits" except for the proviso in section 3(1)(5) of this Act*) made in, or similar liabilities of, any noninsured bank or institution;

* * * * * * *

(d)(*1*) No State nonmember insured bank (except a District bank) shall establish and operate any new *domestic* branch unless it shall have the prior written consent of the Corporation, and no State nonmember insured bank (except a District bank) shall move its main office or any *such* branch from one location to another without such consent. The factors to be considered in granting or withholding the consent of the Corporation under this subsection shall be those enumerated in section 6 of this Act.

(*2*) *No State nonmember insured bank shall establish or operate any foreign branch, except with the prior written consent of the Corporation and upon such conditions and pursuant to such regulations as the Corporation may prescribe from time to time.*

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(j)(*1*) The provisions of section 23A of the Federal Reserve Act, as amended, relating to loans and other dealings between member banks and their affiliates, shall be applicable to every nonmember insured bank in the same manner and to the same extent as if such nonmember insured bank were a member bank; and for this purpose any company which would be an affiliate of a nonmember insured bank, within the meaning of section 2 of the Banking Act of 1933, as amended, and for the purposes of section 23A of the Federal Reserve Act, if such bank were a member bank shall be deeded to be an affiliate of such nonmember insured bank.

(*2*) *The provisions of section 22(h) of the Federal Reserve Act, as amended, relating to limits on loans and extensions of credit by a member bank to its executive officers or directors or to any person who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, except in the case of such a bank located in a city, town, or villege with less than thirty thousand in population, in which case such per centum shall be 18 per centum, or to companies controlled by such an executive officer, director, or person, or to political or campaign committees the funds or services to which will benefit such an officer, director, or person or which are controlled by such an officer, director, or person and relating to board of directors' approval of and terms of such loan, shall be applicable to every nonmember insured bank in the same manner and to the same extent as if such nonmember insured bank were a State member bank.*

(*3*)(*A*) *Any nonmember insured bank which violates or any officer, director, employee, agent, or other person participating in the con-*

duct of the affairs of such nonmember insured bank who violates any provision of section 23A or 22(h) of the Federal Reserve Act, as amended, or any lawful regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Corporation by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(B) In determining the amount of the penalty the Corporation shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the member bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(C) The nonmember insured bank or person charged shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided the assessment shall constitute a final and unappealable order.

(D) Any nonmember insured bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the member bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation. The Corporation shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Corporation shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

(E) If any nonmember insured bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Corporation shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(F) The Corporation shall promulgate regulations establishing procedures necessary to implement this paragraph.

(G) All penalties collected under the authority of this paragraph shall be covered into the Treasury of the United States.

(1) When authorized by State law, a State nonmember insured bank may, but only with the prior written consent of the Corporation and upon such conditions and under such regulations as the Corporation may prescribe from time to time, acquire and hold, directly or

indirectly, stock or other evidences of ownership in one or more banks or entities organized under the law of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the Board of Directors, shall be incidental to the international or foreign business of such foreign bank or entity; and, notwithstanding the provisions of subsection (j) of this section, such State nonmember insured bank may, as to such foreign bank or entity, engage in transactions that would otherwise be covered thereby, but only in the manner and within the limits prescribed by the Corporation by general or specific regulation or ruling.

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CONVERSION OF MUTUAL SAVINGS BANKS

SEC. 26. With respect to any State-chartered insured mutual savings bank which converts into a Federal savings bank or merges or consolidates into a Federal savings bank or a savings bank which is (or within sixty days after the merger or consolidation becomes) an insured institution within the meaning of section 401 of the National Housing Act, the Corporation shall indemnify the Federal Savings and Loan Insurance Corporation against any losses incurred by it which arise out of losses incurred by the converting bank prior to conversion as follows: One hundred per centum of such losses incurred by the Federal Savings and Loan Insurance Corporation during the first two years after conversion, 75 per centum during the third year, 50 per centum during the fourth year, and 25 per centum during the fifth year. The Corporation and the Federal Savings and Loan Insurance Corporation shall, within six months after enactment hereof, mutually agree on what shall be treated as "losses incurred by it which arise out of losses incurred by the converting bank prior to conversion" for purposes hereof and, failing such agreement, the General Accounting Office shall prescribe the meaning of those terms. Any conversion, merger, or consolidation covered by this section shall not be deemed a termination of insured status under section 8(a) of this Act.

HOME OWNER'S LOAN ACT OF 1933

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DEFINITIONS

SEC. 2. As used in this Act—

(a) The term "Board" means the Federal Home Loan Bank Board created under the Federal Home Loan Bank Act.

(b) The term "Corporation" means the Home Owners' Loan Corporation created under section 4 of this Act.

(c) The term "home mortgage" means a first mortgage on real estate in fee simple or on a leasehold under a renewable lease for not less than ninety-nine years, upon which there is located a dwelling for not more than four families, used by the owner as a home or held by him as his homestead, and having a value not exceeding $20,000; and the term "first mortgage" includes such classes of first liens as

are commonly given to secure advances on real estate under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

(d) The term "association" means a Federal Savings and Loan Association [chartered by the Board as provided in section 5 of this Act.] *or a Federal mutual savings bank chartered by the Board under section 5, and any reference in any other law to a Federal savings and loan association shall be deemed to be also a reference to a Federal mutual savings bank, unless the context indicates otherwise.*

* * * * * * *

FEDERAL SAVINGS AND LOAN ASSOCIATIONS

SEC. 5. (a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as "Federal Savings and Loan Association", *or "Federal mutual savings banks" (but only in the case of institutions which, prior to conversion, were State mutual savings banks located in States which authorize the chartering of State mutual savings banks)*, and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States. *An association which was formerly organized as a savings bank under State law may, to the extent authorized by the Board, continue to carry on any activities it was engaged in on December 31, 1977, and to retain or make any investments of a type it held on that date, except that its equity, corporate bond, and consumer loan investments may not exceed the average ratio of such investments to total assets for the five-year period immediately preceding the filing of an application for conversion. An association which was formerly organized as a savings bank under State law shall be subject to the requirements of existing State law in the State of its original charter pertaining to discrimination in the extension of home mortgage loans or adjustment in the terms of mortgage instruments based on neighborhood or geographical area if the existing State law imposes more stringent requirements than current Federal law and regulations.*

* * * * * * *

[(d)(1) The Board shall have power to enforce this section and rules and regulations made hereunder. In the enforcement of any provision of this section or rules and regulations made hereunder, or any other law or regulation, or in any other action, suit, or proceeding to which it is a party or in which it is interested, and in the administration of conservatorships and receiverships, the Board is authorized to act in its own name and through its own attorneys. Except as otherwise provided herein, the Board shall be subject to suit (other than suits on claims for money damages) by any Federal savings and loan association or director or officer thereof with respect to any matter under this section or any other applicable law, or rules or regulations thereunder, in the United States district court for the

judicial district in which the home office of the association is located, or in the United States District Court for the District of Columbia, and the Board may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.

[(2) (A) If, in the opinion of the Board, an association is violating or has violated, or the Board has reasonable cause to believe that the association is about to violate, a law, rule, regulation, or charter or other condition imposed in writing by the Board in connection with the granting of any application or other request by the association, or written agreement entered into with the Board, or is engaging or has engaged, or the Board has reasonable cause to believe that the association is about to engage, in an unsafe or unsound practice, the Board may issue and serve upon the association a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the association. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Board at the request of the association. Unless the association shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board may issue and serve upon the association an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the association and its directors, officers, employees, and agents to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

[(B) A cease-and-desist order shall become effective at the expiration of thirty days after service of such order upon the association concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.]

(2) (A) If, in the opinion of the Board, any association or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such association is engaging or has engaged, or the Board has reasonable cause to believe that the association or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such association is about to engage, in an unsafe or unsound practice in conducting the business of such association, or is violating or has violated or the Board has reasonable cause to believe that the association or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such association is about to violate, a law, rule, or regulation, or charter, or any condition imposed in writing by the Board in connection with the granting of any application or other request by the

association or any written agreement entered into with the Board, the Board may issue and serve upon the association or such director, officer, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the association or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such association. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Board at the request of any party so served. Unless the party or parties so served shall appear at the hearing by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the Board shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board may issue and serve upon the association or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such association an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require association or its directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such association to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(B) A cease-and-desist order shall become effective at the expiration of thirty days after service of such order upon the association or the party or parties so served (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

(C) This paragraph and paragraphs (3), (4), (5), (7), (8), (9), (10), (12) (A) and (B), (13), and (14) of this subsection (d) shall apply to any savings and loan holding company or to any subsidiary (other than an association) of a savings and loan holding company, as those terms are defined in section 408 of the National Housing Act (12 U.S.C. 1730a), as amended, and to any affiliate service corporation of an association in the same manner as they apply to an association.

(3) (A) 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 association *or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such association* pursuant to paragraph (2) (A) of this subsection, or the continuation thereof, is likely to cause insolvency (as defined in paragraph (6) (A) (i) of this subsection) or substantial dissipation of assets or earnings of the association, or is likely to *seriously weaken the condition of the association or* otherwise seriously prejudice the interests of its savings account holders[, the Board may issue a temporary order requiring the association to cease

and desist from any such violation or practice. Such order shall become effective upon service upon the association and, unless set aside, limited, or suspended by a court in proceedings authorized by subparagraph (B) of this paragraph, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Board shall dismiss the charges specified in such notice or, if a cease-and-desist order is issued against the association, until the effective date of any such order.] *prior to the completion of the proceedings conducted pursuant to paragraph (2) (A) of this subsection the Board may issue a temporary order requiring the association or such director, officer, employee, agent, or other person 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 shall become effective upon service upon the association or such director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution and, unless set aside, limited, or suspended by a court in proceedings authorized by subparagraph (B) of this paragraph, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Board shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the association or such director, officer, employee, agent, or other person, until the effective date of such order.*

(B) Within ten days after the association concerned *or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such association* has been served with a temporary cease-and desist order, the association *or such director, officer, employee, agent, or other person* may apply to the United States district court for the judicial district in which the home office of the association is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the [association] *bank or such director, officer, employee, agent, or other person* under paragraph (2) (A) of this subsection, and such court shall have jurisdiction to issue such injunction.

(4) (A) Whenever, in the opinion of the Board, any director or officer of an association has committed any violation of law, rule, or regulation[,] or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the association, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Board determines that the association has suffered or will probably suffer substantial financial loss or other damage or that the interests of its savings account holders could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, *or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty*, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, *or a willful or continuing disregard for the safety*

or soundness of the association, the Board may serve upon such director or officer a written notice of its intention to remove him from office *or to prohibit his further participation in any manner in the conduct of the affairs of the association.*

(B) Whenever, in the opinion of the Board, any director or officer of an association, by conduct or practice with respect to another savings and loan association or other business institution which resulted in substantial financial loss or other damage, has evidenced [his personal dishonesty and unfitness to continue as a director or officer, and, whenever, in the opinion of the Board, any other person participating in the conduct of the affairs of an association, by conduct or practice with respect to such association or other savings and loan association or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to participate in the conduct of the affairs of such association, the Board may serve upon such director, officer, or other person a written notice of its intention to remove him from office and/or] *either his personal dishonesty or a willfull or continuing disregard for its safety and soundness, and, whenever, in the opinion of the Board, any other person participating in the conduct of the affairs of an association, by conduct or practice with respect to such association or other savings and loan association or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willfull or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such association, the Board may serve upon such director, officer, or other person a written notice of its intention to remove him from office or* to prohibit his further participation in any manner in the conduct of the affairs of [such] *the* association.

(C) In respect to any director or officer of an association or any other person referred to in subparagraph (A) or (B) of this paragraph, the Board may, if it deems it necessary for the protection of the association or the interests of its savings account holders, by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the association. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subparagraph (E) of this paragraph, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served upon subparagraph (A) or (B) of this paragraph and until such time as the Board shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the association of which he is a director or officer or in the conduct of whose affairs he has participated.

(D) A notice of intention to remove a director, officer, or other person from office and/or to prohibit his participation in the conduct of the affairs of an association, 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 Board at the request of (i) such director, officer, or other person, and for good cause shown, or (ii) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/or prohibition. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any of the grounds specified in such notice has been established, the Board may issue such orders of suspension or removal from office, and/or prohibition from participation in the conduct of the affairs of the association, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such association and the director, officer, or other person concerned (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 Board or a reviewing court.

(E) Within ten days after any director, officer, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an association under subparagraph (C) of this paragraph, such director, officer, or other person may apply to the United States district court for the judicial district in which the home office of the association is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, or other person under subparagraph (A) or (B) of this paragraph, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(5) (A) Whenever any director or officer of an association, or other person participating in the conduct of the affairs of such association, is charged in any information, indictment, or complaint authorized by a United States Attorney, with the commission of or a participation in a [felony] *crime* involving dishonesty or breach of trust *which is punishable by imprisonment for a term exceeding one year under State or Federal law*, the Board may, *if continued service or participation by the individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the association*, by written notice served upon such director, officer, or other person[,] suspend him from office [and/] or prohibit him from further participation in any manner in the conduct of the affairs of the association. A copy of such notice shall also be served upon the association. Such suspension [and/] or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Board. In the event that a judgment of conviction with respect to such [offense] *crime* is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Board may *if continued service or par-*

ticipation by the individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the association, issue and serve upon such director, officer, or other person an order removing him from office [and/] or prohibiting him from further participation in any manner in the conduct of the affairs of the association except with the consent of the Board. A copy of such order shall be served upon such association, whereupon such director or officer shall cease to be a director or officer of such association. A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting proceedings to remove such director, officer, or other person from office [and/] or to prohibit further participation in association affairs, pursuant to subparagrraph (A) [or], (B) *or* (*C*) of paragraph (4) [of this subsection]. *Any notice of suspension or order of removal issued under this subparagraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under subparagraph* (*C*) *hereof unless terminated by the book.*

(B) [if] *If* at any time, because of the suspension of one or more directors pursuant to this [subsection (d)] *section*, there shall be on the board of directors of an association less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board [and] not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of an association are suspended pursuant to this [subsection (d)] *section*, the Board shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the association and their respective successors take office.

(*C*) *Within thirty days from service of any notice of suspension or order of removal issued pursuant to subparagraph* (*A*), *the director, officer, or other person concerned may request in writing an opportunity to appear before the Board to show that the continued service to or participation in the conduct of the affairs of the association by such individual does not, or is not likely to, pose a threat to the interests of the association's depositors or threaten to impair public confidence in the association. Upon receipt of any such request, the Board shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, officer, or other person) and place at which the director, officer, or other person may appear, personally or through counsel, before one or more members of the agency or designated employees of the Board to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the Board shall notify the director, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the association will be continued, terminated or otherwise modified, or whether the order removing said director, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the association will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Board's decision, if adverse to the director, officer, or*

other person. The Board is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

* * * * * * *

(7) (A) Any hearing provided for in this subsection (d) (*other than the hearing provided for in paragraph (5) (C) of this section*) shall be held in the Federal judicial district or in the territory in which the home office of the association is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. Such hearing shall be private, unless the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After such hearing, and within ninety days after the Board has notified the parties that the case has been submitted to it for final decision, the Board shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this subsection. Judicial review of any such order shall be exclusively as provided in this paragraph (7). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in subparagraph (B) of this paragraph, and thereafter until the record in the proceeding has been filed as so provided, the Board may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Board may modify, terminate, or set aside any such order with permission of the court.

* * * * * * *

(8) (*A*) The Board may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the association is located, for the enforcement of any effective and outstanding notice or order issued by the Board under this subsection (d), and such courts shall have jurisdiction and power to order and require compliance therewith; but except as otherwise provided in this subsection no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this subsection, or to review, modify, suspend, terminate, or set aside any such notice or order. Any court having jurisdiction of any proceeding instituted under this subsection by an association or a director or officer thereof, may allow to any such party such reasonable expenses and attorney's fees as it deems just and proper; and such expenses and fees shall be paid by the association or from its assets.

(*B*) (*i*) *Any association which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such an association who violates the terms of any order which has become final and was issued pursuant to paragraph (2) or (3) of this subsection, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Board by written notice.*

As used in this section, the term 'violates' includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(ii) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the association bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(iii) The association or person charged shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (iv). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(iv) Any association or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the association is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Board. The agency shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the agency shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

(v) If any association or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(vi) The Board shall promulgate regulations establishing procedures necessary to implement this paragraph.

(vii) All penalties collected under authority of this paragraph shall be covered into the Treasury of the United States.

* * * * * * *

(12)(A) Any director or officer, or former director or officer, of an association, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under paragraph (4)(C), (4)(D), [or] (5)(A), or 5(C) of this subsection, and who (i) participates in any manner in the conduct of the affairs of such association, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations in respect of any voting rights in such association, or (ii) without the prior written approval of the

Board, votes for a director or serves or acts as a director, officer, or employee of any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.

* * * * * * *

(13) (A) As used in this subsection—

(1) The terms "cease-and-desist order which has become final" and "order which has become final" mean a cease-and-desist order, or an order, issued by the Board with the consent of the association or the director or officer or other person concerned, or with respect to which no petition for review of the action of the Board has been filed and perfected in a court of appeals as specified in paragraph (7) (B) of this subsection, or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in said paragraph, or an order issued under paragraph (5) (A) *or* (*C*) of this subsection.

* * * * * * *

(15) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term "officer" as used in this subsection means an employee or officer with management functions, and the term "director" includes an advisory or honorary director, a trustee of an association under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

* * * * * * *

(i) Any member of a Federal Home Loan Bank (*including a savings bank*) may convert itself into a Federal savings and loan association under this Act upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefit of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act.

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FEDERAL CREDIT UNION ACT

* * * * * * *

TITLE I—FEDERAL CREDIT UNIONS

DEFINITIONS

SEC. 101. As used in this Act—

(1) the term "Federal credit union" means a cooperative association organized in accordance with the provisions of this chapter for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes;

[(2) the term "Administrator" means the Administrator of the National Credit Union Administration;]

(2) the term "Chairman" means the Chairman of the National Credit Union Administration Board;

(3) the term "Administration" means the National Credit Union Administration; and

(4) the term "Board" means the National Credit Union *Administration* Board.

[(4)] *(5)* The terms "member account" and "account" [(when referring to the account of a member of a credit union)] mean a [share, share certificate, or share deposit] *share or share certificate* account of a member of a credit union of a type approved by the [Administrator] *Board* which evidences money or its equivalent receiced 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 [Administrator] *Board*), such terms (when referring to the account of a nonmember served by such credit union) mean a [share, share certificate, or share deposit] *share or share certificate* account of such nonmember which is of a type approved by the [Administrator] *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 [those] *share or share certificate* accounts of nonmember credit unions and nonmember units of Federal, State, or local governments and political subdivisions thereof [in which payments are received by a credit union pursuant to section 107(6) of this Act;] *enumerated in section 207 of this Act: Provided, That for purposes of insured State credit unions, reference in this paragraph to "share" or 'share certificate' accounts includes, as determined by the Board, the equivalent of such accounts under State law;*

[(5)] *(6)* The terms "State credit union" and "State-chartered credit union" mean a credit union organized and operated according to the laws of any State, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, which laws provide for the organization of credit unions similar in principle and objectives to Federal credit unions;

[(6)] *(7)* The term "insured credit union" means any credit union the member accounts of which are insured in accordance with the provisions of title II of this Act, and the term "noninsured credit union" means any credit union the member accounts of which are not so insured;

[(7)] *(8)* the term 'Fund' means the National Credit Union Share Insurance Fund; and

[(8)] *(9)* The term "branch" includes any branch credit union, branch office, branch agency, additional office, or any branch place of business located in any State of the United States, the District of Columbia, the several territories, *including the trust territories*, and possessions of the United States, the Panama Canal Zone, or

The Commonwealth of Puerto Rico, at which member accounts are established or money lent. *The term "branch" also includes a sub-office, operated by a Federal credit union or by a credit union authorized by the Department of Defense, located on an American military installation in a foreign country or in the trust territories of the United States.*

CREATION OF ADMINISTRATION

[SEC. 102. (a) There is hereby established in the executive branch of the Government an independent agency to be known as the National Credit Union] Administration (hereinafter referred to as the 'Administration'). The Administration shall consist of a National Credit Union Board (hereinafter referred to as the 'Board'), and an Administrator of the National Credit Union Administration (hereinafter referred to as the 'Administrator').

[(b) The Administrator shall be appointed by the President, by and with the advice and consent of the Senate. He shall be the chief executive officer of the Administration and shall serve at the pleasure of the President.

[(c) The Board shall consist of a Chairman and one member from each of the Federal credit union regions to be appointed by the President, by and with the advice and consent of the Senate. The Chairman shall be appointed from the country at large and shall serve at the pleasure of the President. In making appointments to the Board, the President shall appoint persons of tested credit union experience.

[(d) The term of office of each member of the Board, other than the Chairman, shall be six years. However, the initial terms of the members taking office shall expire as follows: one on December 31, 1970, and one at the end of each succeeding calendar year thereafter. Of the members so appointed, the President shall designate one to serve as Vice Chairman for a term expiring upon the expiration of his term as a member, or upon the expiration of the then current term of the Chairman, whichever is earlier. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman. Any member of the Board may continue to serve as such after the expiration of his term of office until his successor has been appointed and has qualified.

[(e) The President shall call the first meeting of the Board, and thereafter the Board shall meet on a quarterly basis, and at such other times as the Chairman or the Administrator may request, or whenever one-third of the members so request. The Board shall adopt such rules as it may see fit for the transaction of its business and shall keep permanent and complete records and minutes of its acts and proceedings. A majority of the voting members of the Board shall constitute a quorum. The Administrator shall seek the advice, counsel, and guidance of the Board with respect to matters of policy relating to the activities an functions of the Administration under this Act. The Administrator shall make an annual report of the President for submission to the Congress summarizing the activities of the Administration and making such recommendations as he deems appropriate. Such report shall be made after full consultation with the Board and shall contain any recommenations or comments submitted by the Board for

inclusion in the report. The members of the Board shall be entitled to receive compensation at the rate of $75 for each day engaged in the business of the Administration pursuant to authorization by the Chairman, and shall be allowed travel expenses including per diem in lieu of subsistence as authorize by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

[(f) The financial transactions of the Administration shall be audited by the General Accounting Office in accordance with hte principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the Administration are kept.]

CREATION OF ADMINISTRATION

SEC. 102. (a) There is hereby established in the executive branch of the Government an independent agency to be known as the National Credit Union Administration. The Administration shall be under the management of a National Credit Union Administration Board.

(b) The Board shall consist of three members, who are broadly representative of the public interest, appointed by the President, by and with the advice and consent of the Senate. In appointing the members of the Board, the President shall designate the Chairman. Not more than two members of the Board shall be members of the same political party.

(c) The term of office of each member of the Board shall be six years, except that the terms of the two members, other than the Chairman, initially appointed shall expire one upon the expiration of two years after the date of appointment, and the other upon the expiration of four years after the date of appointment. Board members shall not be appointed to succeed themselves except the initial members appointed for less than a six-year term may be reappointed for a full six-year term and future members appointed to fill unexpired terms may be reappointed for a full six-year term. Any Board member may continue to serve as such after the expiration of said member's term until a successor has qualified.

(d) The management of the Administration shall be vested in the Board. The Board shall adopt such rules as it sees fit for the transaction of its business and shall keep permanent and complete records of minutes of its acts and proceedings. A majority of the Board shall constitute a quorum. Not later than April 1 of each calendar year, and at such other times as the Congress shall determine, the Board shall make a report to the President and to the Congress. Such a report shall summarize the operations of the Administration and set forth such information as is necessary for the Congress to review the financial program approved by the Board.

(e) The Chairman of the Board shall be the spokesman for the Board and shall represent the Board and the National Credit Union Administration in its official relations with other branches of the Government. The Chairman shall determine each Board member's area of responsibility and shall review such assignments biennially. It shall

be the Chairman's responsibility to direct the implementation of the adopted policies and regulations of the Board.

(f) The financial transactions of the Administration shall be subject to audit on a calendar year basis by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the Administration are kept.

(g) The Members of the Board shall be ineligible during the time they are in office and for a period of two years thereafter, to hold any office, position, or employment in a credit union or in any financial institution in which a credit union owns stock, except that this restriction shall not apply to any individual who has served the full term for which he was appointed. Former Members of the Board shall be prohibited from appearing before the Board, either formally or informally, contacting the Board directly or indirectly, orally or in writing, or from acting as agent or attorney for any other person, other than the United States, before the Board for a period of two years immediately following their employment with the Board. The preceding sentence shall not apply to individuals who served on the Board before or upon the effective date of this sentence, and the prohibition upon holding any office, position, or employment in a holding company or an affiliate thereof shall not apply to individuals serving as members of the Board upon the effective date of this sentence.

FEDERAL CREDIT UNION ORGANIZATION

SEC. 103. Any seven or more natural persons who desire to form a Federal credit union shall subscribe before some officer competent to administer oaths an organization certificate in duplicate which shall specifically state—

(1) the name of the association;

(2) the location of the proposed Federal credit union and the territory in which it will operate;

(3) the names and addresses of the subscribers to the certificate and the number of shares subscribed by each;

(5) the proposed field of membership, specified in detail;

(6) the term of the existence of the corporation which may be perpetual; and

(7) The fact that the certificate is made to enable such persons to avail themselves of the advantages of this Act.

Such organization certificate may also contain any provision approved by the [Administrator] *Board* for the management of the business of the association and for the conduct of its affairs and relative to the powers of tis directors, officers, or stockholders.

APPROVAL OF ORGANIZATION CERTIFICATE

SEC. 104. The organization certificate shall be presented to the [Administrator] *Board* for approval. Before any organization certificate is approved, an appropriate investigation shall be made for the purpose of determining (1) whether the organization certificate con-

forms to the provisions of this chapter; (2) the general character and fitness of the subscribers thereto; and (3) the economic advisability of establishing the proposed Federal credit union. Upon approval of such organization certificate by the [Administrator] *Board* it shall be the charter of the corporation, and one of the originals thereof shall be delivered to the corporation after the payment of the fee required therefor. Upon such approval the Federal credit union shall be a body corporate and as such, subject to the limitations herein contained, shall be vested with all the powers and charged with all of the liabilities conferred and imposed by this chapter upon corporations organized hereunder.

[FEES

[SEC. 105. For the purpose of paying the costs incident to the ascertainment of whether an organization certificate should be approved, the subscribers to any such certificate shall pay, at the time of filing their organization certificate, the amount prescribed by the Administrator, which shall not exceed $20 in any case; and on the approval of any organization certificate they shall also pay a fee of $5. Not later than January 31 of each calendar year, each Federal credit union shall pay to the Administration, for the preceding calendar year, a supervision fee in accordance with a graduated scale prescribed by regulation on the basis of assets as of December 31 of such preceding year, but such fee shall in no event be less than $10 nor more than the applicable amount specified in the following table;

Total assets	*Maximum fee*
$500,000 or less	30 cents per $1,000.
Over $500,000 and not over $1,000,000.	$150, plus 25 cents per $1,000 in excess of $500,000.
Over $1,000,000 and not over $2,000,000.	$275, plus 20 cents per $1,000 in excess of $1,000,000.
Over $2,000,000 and not over $5,000,000.	$475, plus 15 cents per $1,000 in excess of $2,000,000.
Over $5,000,000.	$925, plus 10 cents per $1,000 in excess of $5,000,000.

[All such fees shall be deposited with the Treasurer of the United States for the account of the Administration and may be expended by the Administrator for such administrative, supervisory, and other expenses incurred in carrying out the provisions of this chapter as he may determine to be proper, the purpose of such fees being to defray such expenses as far as practicable. No annual supervision fee shall be payable by the Federal credit union with respect to the year in which its charter is issued, or in which final distribution is made in its liquidation or the charter is otherwise canceled.]

FEES

SEC. 105. (a) In accordance with rules prescribed by the Board, each Federal credit union shall pay to the Administration an annual

operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.

(b) The fee assessed under this section shall be determined according to a schedule, or schedules, or other method determined by the Board to be appropriate, which gives due consideration to the expenses of the Administration in carrying out its responsibilities under this Act and to the ability of Federal credit unions to pay the fee. The Board shall, among other things, determine the periods for which the fee shall be assessed and the date or dates for the payment of the fee or increments thereof.

(c) If the annual operating fee is composed of separate charges, no supervision charge shall be payable by a Federal credit union, and the Board may waive payment of any or all other charges comprising the fee, with respect to the year in which its charter is issued, or in which final distribution is made in its liquidation or the charter is canceled.

(d) All operating fees shall be deposited with the Treasurer of the United States for the account of the Administration and may be expended by the Board to defray the expenses incurred in carrying out the provisions of this Act including the examination and supervision of Federal credit unions.

REPORTS AND EXAMINATIONS

SEC. 106. Federal credit unions shall be under the supervision of the [Administrator] *Board*, and shall make financial reports to [him as and when he] *it as and when it* may require, but at least annually. Each Federal credit union shall be subject to examination by, and for this purpose shall make its books and records accessible to, any person designated by the [Administrator. The Administrator shall fix a scale of examination fees to be paid by Federal credit unions, giving due consideration to the time and expense incident to such examinations, and to the ability of Federal credit unions to pay such fees, which fees shall be assessed against and paid by each Federal credit union promptly after the completion of such examination. Examination fees collected under the provisions of this section shall be deposited to the credit of the special fund created by section 105, and shall be available for the purposes specified in such section.] *Board.*

POWERS

SEC. 107. A Federal credit union shall have succession in its corporate name during its existence and shall have power—

(1) to make contracts;

(2) to sue and be sued;

(3) to adopt and use a common seal and alter the same at pleasure;

(4) to purchase, hold, and dispose of property necessary or incidental to its operations;

(5) to make loans, the maturities of which shall not exceed twelve years except as otherwise provided herein, 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) a residential real estate loan which is made to finance the acquisition of a one-to-four-family dwelling for the principal residence of a credit union member, the sales price of which is not more than 150 per centum of the median sales price of residential real property situated in the geographical area (as determined by the board of directors) in which the property is located, and which is secured by a first lien upon such dwelling, may have a maturity not exceeding thirty years, subject to the rules and regulations of the [Administrator] *Board*;

(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 for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member shall have a maturity not to exceed fifteen years unless such loan is insured or guaranteed as provided in subparagraph (iii);

(iii) a loan secured by the insurance or guarantee of the Federal Government, of 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 or guarantee is provided;

(iv) 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 $5,000 plus pledged shares, be approved by the board of directors;

(v) 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 $5,000;

(vi) the rate of interest not exceed 1 per centum per month on the unpaid balance inclusive of all service charges;

(vii) 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) a borrower may repay his loan, prior to maturity in whole or in part on any business day without penalty;

(ix) loans shall be paid or amortized in accordance with rules and regulations prescribed by the [Administrator] *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 [Administrator] *Board* deems relevant.

(B) A self-replenishing line of credit to a borrower may be established to a stated maximum amount on certain terms and conditions which may be different from the terms and conditions established for another borrower.

(C) Loans to other credit unions shall be approved by the board of directors.

(D) Loans to credit organizations shall be approved by the board of directors and shall not exceed 1 per centum of the paid-in and unimpaired capital and surplus of the credit union. A credit union organization means any organization as determined by the [Administrator] *Board*, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve.

(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, State, or local governments and political subdivisions thereof enumerated in section 207 of this Act and in the manner so prescribed, and from nonmembers in the case of credit unions serving predominately low-income members (as defined by the [Administrator] *Board*) payments on shares which may be issued at varying dividend rates, and payments on share certificates which may be issued at varying dividend rates and maturities, subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the [Administrator] *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 [Administrator] *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, or any corporation designated in section 846 of Title 31 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 or other instruments or securities of the Student Loan Marketing Association; (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; and (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 in and unimpaired capital and surplus of the credit union with the approval of the [Administrator] *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 insurnace company, trade association, liquidity facility or any other similar organization, corporation, or association, except as otherwise expressly provided by this Act;

(8) to make deposits in national banks and in State banks, trust companies, and mutual savings banks operating in accordance with the laws of the State in which the Federal credit union does business, and for Federal credit unions or credit unions authorized by the Department of Defense operating suboffices on American military installations in foreign countries or trust territories of the United States to maintain demand deposit accounts in banks located in those countries or trust territories, subject to such regulations as may be issued by the [Administrator] *Board* and provided such banks are correspondents of banks described in this paragraph;

(9) to borrow, in accordance with such rules and regulations as may be prescribed by the [Administrator] *Board*, from any source, in an aggregate amount not exceeding 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;

(10) to levy late charges, in accordance with the bylaws, for failure of members to meet promptly their obligations to the Federal credit union;

(11) to impress and enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him;

(12) in accordance with rules and regulations prescribed by the [Administrator] *Board*, to sell to members negotiable checks (including travelers checks) and money orders, and to cash checks and money orders for members, for a fee which does not exceed the direct and indirect costs incident to providing such service;

(13) in accordance with rules and regulations prescribed by the [Administrator] *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 [Administrator] *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;

(14) to sell all or a part of its assets to another credit union, to purchase all or part of the assets of another credit union and to assume the liabilities of the selling credit union and those of its members subject to regulations of the [Administrator] *Board*; and

(15) to exercise such incidental powers as shall be necessary or requisite to enable it to carry out effectively the business for which it is incorporated.

BYLAWS

SEC. 108. In order to simplify the organization of Federal credit unions the [Administrator] *Board* shall from time to time cause to be prepared a form of organization certificate and a form of bylaws, consistent with this chapter, which shall be used by Federal credit union incorporators, and shall be supplied to them on request. At the time of presenting the organization certificate the incorporators shall also submit proposed bylaws to the [Administrator] *Board* for his approval.

MEMBERSHIP

SEC. 109. Federal credit union membership shall consist of the incorporators and such other persons and incorporated and unincorporated organizations, to the extent permitted by rules and regulations prescribed by the [Administrator] *Board*, as may be elected to membership and as such shall each, subscribe to at least one share of its stock and pay the initial installment thereon and a uniform entrance fee if requested by the board of directors, except that Federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district. Shares may be issued in joint tenancy with right of survivorship with any persons designated by the credit union member, but no joint tenant shall be permitted to vote,

obtain loans, or hold office, unless he is within the field of membership and is a qualified member.

MEMBERS' MEETINGS

SEC. 110. The fiscal year of all Federal credit unions shall end December 31. The annual meeting of each Federal credit union shall be held at such time during the following January, February, or March and at such place as its bylaws shall prescribe. Special meetings may be held in the manner indicated in the bylaws. No member shall be entitled to vote by proxy, but a member other than a natural person may vote through an agent designated for the purpose. Irrespective of the number of shares held by him, no member shall have more than one vote.

MANAGEMENT

SEC. 111. The business affairs of a Federal credit union shall be managed by a board of not less than five directors, and a credit committee of not less than three members, all to be elected at the annual members' meeting by and from the members, and by a supervisory committee of not less than three members nor more than five members, one of whom may be a director other than the treasurer, to be appointed by the board. Any vacancy occurring in the supervisory committee shall be filled in the same manner as original appointments to such committee. All members of the board and of such committees shall hold office for such terms, respectively, as the bylaws may provide. A record of the names and addresses of the members of the board and such committees and of the officers of the credit union shall be filed with the Administration within ten days after their election or appointment. No member of the board or of either such committee shall, as such, be compensated: *Provided, however*, That reasonable health, accident, and similar insurance protection shall not be considered compensation under regulations promulgated by the [Administrator] *Board*.

OFFICERS

SEC. 112. At their first meeting after the annual meeting of the members, the director shall elect from their number a president, one or more vice presidents, a secretary, and a treasurer, who shall be the executive officers of the corporation. No executive officer, except the treasurer, shall be compensated as such. The offices of secretary and treasurer may be held by the same person. The duties of the officers shall be as determined by the bylaws. Before the treasurer shall enter upon his duties he shall give bond with good and sufficient surety, in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the [Administrator] *Board*, conditioned upon the faithful performance of his trust.

DIRECTORS

SEC. 113. The board of directors shall meet at least once a month and shall have the general direction and control of the affairs of the corporation. Minutes of all such meetings shall be kept. Among other

things they shall act upon applications for membership; require any officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the [Administrator] *Board*, and authorize the payment of the premium or premiums therefor from the funds of the Federal credit union; fill vacancies in the board and in the credit committee until successors elected at the next annual meeting have qualified; have charge of investments other than loans to members, except that the board may designate a committee of not less than two to act as an investment committee, such investment committee to have charge of making investments under rules and procedures established by the board of directors; determine from time to time the maximum number of shares and share certificates and the classes of shares and share certificates that may be held; subject to the limitations of this chapter, determine the interest rates on loans, the security, and the maximum amount which may be loaned or provided in lines of credit; subject to such regulations as may be issued by the [Administrator] *Board*, authorize an interest refund to members of record at the close of business on the last day of any dividend period in proportion to the interest paid by them during the dividend period; and provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee, and of loan officers appointed by the credit committee. The board may appoint an executive committee of not less than three directors to exercise such authority as may be delegated to it subject to such conditions and limitations as may be prescribed by the board. Such executive committee or one or more membership officers appointed by the board from among the members of the credit union, other than the treasurer, an assistant treasurer, or a loan officer, may be authorized by the board to approve applications for membership under such conditions as the board may prescribe; except that such committee or membership officer so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or the board may require. If a membership application is denied, the reasons therefor shall be furnished in writing to the person whose application is denied, upon written request.

CREDIT COMMITTEE

SEC. 114. The credit committee shall hold such meetings as the business of the Federal credit union may require and not less frequently than once a month to consider applications for loans and lines of credit. Reasonable notice of such meetings shall be given to all members of the committee. Except for those loans or lines of credit required to be approved by the board of directors in section 107(5) of this Act, approval of an application shall be by a majority of the entire committee and by all members of the committee who are present at the meeting at which the application is considered; except that the credit committee may appoint one or more loan officers, and delegate to him or them the power to approve loans and lines of credit. Each loan officer shall

furnish to the credit committee a record of each application approved or not approved by him within seven days of the date of the filing of the application therefor. All applications not approved by a loan officer shall be acted upon by the credit committee. No individual shall have authority to disburse funds of the Federal credit union with respect to any loan or line of credit for which the application has been approved by him in his capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer. Application for loans and lines of credit shall be made on forms prepared by such committee, which shall set forth the security, if any, and such other data as may be required. 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. For the purposes of this section an assignment of shares or the endorsement of a note shall be deemed security and, subject to such regulations as the [Administrator] *Board* may prescribe, insurance obtained under Title 1 of the National Housing Act shall be deemed adequate security.

SUPERVISORY COMMITTEE

SEC. 115. The supervisory committee shall make or cause to be made an annual audit and shall submit a report of that audit to the board of directors and a summary of the report of the members at the next annual meeting of the credit union; shall make or cause to be made such supplementary audits as it deems necessary or as may be ordered by the [Administrator] *Board*, and submit reports of the supplementary audits to the board of directors; may by a unanimous vote suspend any officer of the credit union or any member of the credit committee or of the board of directors, until the next members' meeting, which shall be held not less than seven nor more than fourteen days after any such suspension, at which meeting any such suspension shall be acted upon by the members; and may call by a majority vote a special meeting of the members to consider any violation of this chapter, the charter, or the bylaws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized. Any member of the supervisory committee may be suspended by a majority vote of the board of directors. The members shall decide, at a meeting held not less than seven nor more than fourteen days after any such suspension, whether the suspended committee member shall be removed from or restored to the supervisory committee. The supervisory comittee shall cause the passbooks and accounts of the members to be verified with the records of the treasurer from time to time, and not less frequently than once every two years. As used in this section, the term "passbook" shall include any book, statement of account, or other record approved by the [Administrator] *Board* for use by Federal credit unions.

RESERVES

SEC. 116. (a) At the end of each accounting period the gross income shall be determined. From this amount, there shall be set aside, as a regular reserve against losses on loans and against such other

losses as may be specified in regulations prescribed under this Act, sums in accordance with the following schedule:

(1) A credit union in operation for more than four years and having assets of $500,000 or more shall set aside (A) 10 per centum of gross income until the regular reserve shall equal 4 per centum of the total of outstanding loans and risk assets, then (B) 5 per centum of gross income until the regular reserve shall equal 6 per centum of the total of outstanding loans and risk assets.

(2) A credit union in operation less than four years or having assets of less than $500,000 shall set aside (A) 10 per centum of gross income until the regular reserve shall equal 7½ per centum of the total of outstanding loans and risk assets, then (B) 5 per centum of gross income until the regular reserve shall equal 10 per centum of the total of outstanding loans and risk assets.

(3) Whenever the regular reserve falls below the stated per centum of the total of outstanding loans and risk assets, it shall be replenished by regular contributions in such amounts as may be needed to maintain the stated reserve goals.

(b) The [Administrator] *Board* may decrease the reserve requirement set forth in subsection (a) of this section when in [his] *its* opinion such a decrease is necessary or desirable. The [Administrator] *Board* may also require special reserves to protect the interests of members either by regulation or for an individual credit union in any special case.

DIVIDENDS

SEC. 117. At such intervals as the board of directors may authorize, and after provision for required reserves, the board may declare, pursuant to such regulations as may be issued by the [Administrator] *Board*, a dividend to be paid at different rates on different types of shares and at different rates and maturity dates in the case of share certificates. Dividend credit may be accrued on various types of shares and share certificates as authorized by the board of directors.

EXPULSION AND WITHDRAWAL

SEC. 118. A member may be expelled by a two-thirds vote of the members of a Federal credit union present at a special meeting called for the purpose, but only after an opportunity has been given him to be heard. Withdrawal or expulsion of a member shall not operate to relieve him from liability to the Federal credit union. The amount to be paid a withdrawing or expelled member by a Federal credit union shall be determined and paid in the manner specified in the bylaws.

MINORS

SEC. 119. Shares may be issued in the name of a minor or in trust, subject to such conditions as may be prescribed by the bylaws. When shares are issued in trust, the name of the beneficiary shall be disclosed to the Federal credit union.

CERTAIN POWERS OF THE [ADMINISTRATOR] *BOARD*

SEC. 120. (a) The [Administrator] *Board* may prescribe rules and regulations for the administration of this chapter (including, but not

by way of limitation, the merger, consolidation, and dissolution of corporations organized under this chapter).

(b)(1) The [Administrator] *Board* may suspend or revoke the charter of any Federal credit union, or place the same in involuntary liquidation and appoint a liquidating agent therefor, upon his finding that the organization is bankrupt or insolvent, or has violated any of the provisions of its charter, its bylaws, this chapter, or any regulations issued thereunder.

(2) The [Administrator] *Board*, through such persons as he shall designate, may examine any Federal credit union in voluntary liquidation and, upon his finding that such voluntary liquidation is not being conducted in an orderly or efficient manner or in the best interests of its members, may terminate such voluntary liquidation and place such organization in involuntary liquidation and appoint a liquidating agent therefore.

(3) Such liquidating agent shall have power and authority, subject to the control and supervision of the [Administrator] *Board* and under such rules and regulations as the [Administrator] *Board* may prescribe, (A) to receive and take possession of the books, records, assets, and property of every description of the Federal credit union in liquidation, to sell, enforce collection of, and liquidate all such assets and property, to compound all bad or doubtful debts, and to sue in [his] *its* own name or in the name of the Federal credit union in liquidation, and defend such actions as may be brought against [him] *them* as liquidating agent or against the Federal credit union; (B) to receive, examine, and pass upon all claims against the Federal credit union in liquidation, including claims of members on member accounts; (C) to make distribution and payments to creditors and members as their interests may appear; and (D) to execute such documents and papers and to do such other acts and things which [he] *it* may deem necessary or desirable to discharge [his] *its* duties hereunder.

(4) Subject to the control and supervision of the [Administrator] *Board* and under such rules and regulations as the [Administrator] *Board* may prescribe, the liquidating agent of a Federal credit union in involuntary liquidation shall (A) cause notice to be given to creditors and members to present their claims and make legal proof thereof, which notice shall be published once a week in each of three successive weeks in a newspaper of general circulation in each county in which the Federal credit union in liquidation maintained an office or branch for the transaction of business on the date it ceased unrestricted operations; except that whenever the aggregate book value of the assets and property of a Federal credit union in involuntary liquidation is less than $1,000, unless the [Administrator] *Board* shall find that its books and records do not contain a true and accurate record of its liabilities, [he] *it* shall declare such Federal credit union in liquidation to be a "no publication" liquidation, and publication of notice to creditors and members shall not be required in such case; (B) from time to time make a ratable dividend on all such claims as may have been proved to [his] *its* satisfaction or adjudicated in a court of competent jurisdiction and, after the assets of such organization have been liquidated, make further dividends on all claims previously proved or adjudicated, and he may accept in lieu of a formal

proof of claim on behalf of any creditor or member the statement of any amount due to such creditor or member as shown on the books and records of the credit union; but all claims not filed before payment of the final dividend shall be barred and claims rejected or disallowed by the liquidating agent shall be likewise barred unless suit be instituted thereon within three months after notice of rejection or disallowance; and (C) in a "no publication" liquidation, determine from all sources available to [him] *them*, and within the limits of available funds of the Federal credit union, the amounts due to creditors and members, and after sixty days shall have elapsed from the date of his appointment distribute the funds of the Federal credit union to creditors and members ratably and as their interests may appear.

(5) Upon certification by the liquidating agent in the case of an involuntary liquidation, and upon such proof as shall be satisfactory to the [Administrator] *Board* in the case of a voluntary liquidation, that distribution has been made and that liquidation has been completed, as provided herein, the [Administrator] *Board* shall cancel the charter of such Federal credit union; but the corporate existence of the Federal credit union shall continue for a period of three years from the date of such cancellation of its charter, during which period the liquidating agent, or [his] *its* duly appointed successor, or such persons as the [Administrator] *Board* shall designate, may act on behalf of the Federal credit union for the purpose of paying, satisfying, and discharging any existing liabilities or obligations, collecting and distributing its assets, and doing all other acts required to adjust and wind up its business and affairs, and it may sue and be sued in its corporate name.

(c) After the expiration of five years from the date of cancellation of the charter of a Federal credit union the [Administrator] *Board* may, in his discretion, destroy any or all books and records of such Federal credit union in [his] *its* possession or under [his] *its* control.

(d) The [Administrator] *Board* is authorized and empowered to execute any and all functions and perform any and all duties vested in [him] *them* hereby, through such persons as [he] *it* shall designate or employ; and [he] *it* may delegate to any person or persons, including any institution operating under the general supervision of the Administration, the performance and discharge of any authority, power, or function vested in [him] *them* by this chapter.

(e) All books and records of Federal credit unions shall be kept and reports shall be made in accordance with forms approved by the [Administrator] *Board*.

(f)(1) The [Administrator] *Board* is authorized to make investigations and to conduct researches and studies of the problems of persons of small means in obtaining credit at reasonable rates of interest, and of the methods and benefits of cooperative saving and lending among such persons. [He] *It* is further authorized to make reports of such investigations and to publish and disseminate the same.

(2)(A) The [Administrator] *Board* is authorized to conduct directly, or to make grants to or contracts with colleges or universities, State or local educational agencies, or other appropriate public or

private nonprofit organizations to conduct, programs for the training of persons engaged, or preparing to engage, in the operation of credit unions, and in related consumer counseling programs, serving the poor. [He] *It* is authorized to establish a program of experimental development demonstration, and pilot projects, either directly or by grants to public or private nonprofit organizations, including credit unions, or by contracts with such organizations or other private organizations, designed to promote more effective operation of credit unions, and related consumer counseling programs, serving the poor.

(B) In carrying out [his] *its* authority under this paragraph, the [Administrator] *Board* shall consult with officials of the Office of Economic Opportunity and other appropriate Federal agencies responsible for the administration of projects or programs concerned with problems of the poor. The development and operation of programs and projects under this paragraph shall involve maximum feasible participation of residents of the areas and members of the groups served by such programs and projects, with community action agencies established under the provisions of the Economic Opportunity Act of 1964 serving, to the extent feasible, as the means through which such participation is achieved.

(C) In order to carry out the purposes of this paragraph, there is authorized to be appropriated, as a supplement to any funds that may be expended by the [Administrator] *Board* pursuant to section 105 and 106 for such purposes, not to exceed $300,000 for the fiscal year ending June 30, 1970, and not to exceed $1,000,000 for the fiscal year ending June 30, 1971.

(g) Any officer or employee of the Administration is authorized, when designated for the purpose by the [Administrator] *Board*, to administer oaths and affirmations and to take affidavits and depositions touching upon any matter within the jurisdiction of the Administration.

(h) The [Administrator] *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), as an acceptable surety on Federal bonds. Any such bond or bonds shall be in form approved by the [Administrator] *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 [Administrator] *Board* may determine to be reasonably appropriate or as elsewhere required by this chapter. 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 [Administrator] *Board* may from time to time prescribe by regulation for the purpose of requiring reasonable coverage. In lieu of individual bonds the [Administrator] *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 [Administrator] *Board* may also approve the use of a form of coverage bond whereby a Federal credit union may obtain an amount of coverage in excess of the basic surety coverage.

(i) In addition to the authority conferred upon [him] *them* by other sections of this Act, the [Administrator] *Board* is authorized in carrying out [his] *its* functions under this Act—

(1) to appoint such personnel as may be necessary to enable the Administration to carry out its functions;

(2) to expend such funds, enter into such contracts with public and private organizations and persons, make such payments in advance or by way of reimbursement, and perform such other functions or acts as [he] *it* may deem necessary or appropriate to carry out the provisions of this Act; and

(3) to pay stipends, including allowances for travel to and from the place of residence, to any individual to study in a program assisted under this Act upon a determination by the [Administrator] *Board* that assistance to such individual in such studies will be in furtherance of the purposes of this Act.

FISCAL AGENTS AND DEPOSITORIES

Sec. 121. Each Federal credit union organized under this chapter, when requested by the Secretary of the Treasury, shall act as fiscal agent of the United States and shall perform such services as the Secretary of the Treasury may require in connection with the collection of taxes and other obligations due the United States and the lending, borrowing, and repayment of money by the United States, including the issue, sale, redemption, or repurchase of bonds, notes, Treasury certificates of indebtedness, or other obligations of the United States; and to facilitate such purposes the [Administrator] *Board* shall furnish to the Secretary of the Treasury from time to time the names and addresses of all Federal credit unions with such other available information concerning them as may be requested by the Secretary of the Treasury. Any Federal credit union organized under this chapter, when designated for that purpose by the Secretary of the Treasury, shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary of the Treasury.

TAXATION

Sec. 122. The Federal credit unions organized hereunder, their property, their franchises, capital, reserves, surpluses, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by an State, Territorial, or local taxing authority; except that any real property and any tangible personal property of such Federal credit unions shall be subject to Federal, State, Terriorial, and local taxation to the same extent as other similar property is taxed. Nothing herein contained shall prevent holdings in the any Federal credit union organized hereunder from

being included in the valuation of the personal property of the owners or holders thereof in assessing taxes imposed by authority of the State or political subdivision thereof in which the Federal credit union is located; but the duty or burden of collecting or enforcing the payment of such a tax shall not be imposed upon any such Federal credit union and the tax shall not exceed the rate of taxes imposed upon holdings in domestic credit unions.

PARTIAL INVALIDITY; RIGHT TO AMEND

SEC. 123. (a) If any provision of this chapter or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(b) The right to alter, amend, or repeal this chapter or any part thereof, or any charter issued pursuant to the provisions of this chapter, is expressly reserved.

SPACE IN FEDERAL BUILDINGS

SEC. 124. Upon application by any credit union organized under State law or by any Federal credit union organized in accordance with the term of this chapter, at least 95 per centum of the membership of which is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families, which application shall be addressed to the officer or agency of the United States charged with the allotment of space 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 allot space to such credit union if space is available, without charge for rent or services.

CONVERSION FROM FEDERAL TO STATE CREDIT UNION AND FROM STATE TO FEDERAL CREDIT UNION

SEC. 125. (a) A Federal credit union may be converted into a State credit union under the laws of any State, the District of Columbia, the several Territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, by complying with the following requirements:

(1) The proposition for such conversion shall first be approved, and a date set for a vote thereon by the members (either at a meeting to be held on such date or by written ballot to be filed on or before such date), by a majority of the directors of the Federal credit union. Written notice of the proposition and of the date set for the vote shall then be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty nor less than seven days prior to such date. Approval of the proposition for conversion shall be by the affirmative vote of a majority of the members, in person or in writing.

(2) A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the Administration within ten days after the vote is taken.

(3) Promptly after the vote is taken and in no event later than ninety days thereafter, if the proposition for conversion was approved by such vote, the credit union shall take such action as may be necessary under the applicable State law to make it a State credit union, and within ten days after receipt of the State credit union charter there shall be filed with the Administration a copy of the charter thus issued. Upon such filing the credit union shall cease to be a Federal credit union.

(4) Upon ceasing to be a Federal credit union, such credit union shall no longer be subject to any of the provisions of this chapter. The successor State credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the Federal credit union to the same extent as though the conversion had not taken place.

(b) (1) A State credit union, organized under the laws of any State, the District of Columbia, the several Territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, may be converted into a Federal credit union by (A) complying with all State requirements requisite to enabling it to convert to a Federal credit union or to cease being a State credit union, (B) filing with the Administration proof of such compliance, satisfactory to the [Administrator] *Board*, and (C) filing with the Administration an organization certificate as required by this chapter:

(2) When the [Administrator] *Board* has been satisfied that all of such requirements, and all other requirements of this chapter, have been complied with the [Administrator] *Board shall* approve the organization certificate. Upon such approval, the State credit union shall become a Federal credit union as of the date it ceases to be a State credit union. The Federal credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the State credit union to the same extent as though the conversion had not taken place.

TERRITORIAL APPLICATION OF CHAPTER

SEC. 126. The provisions of this chapter shall apply to the several States, the District of Columbia, the several Territories, including the trust territories, and possessions of the United States, the Panama Canal Zone, and the Commonwealth of Puerto Rico.

GIFTS

SEC. 127. The [Administrator] *Board* is authorized to accept gifts of money made unconditionally by will or otherwise for the carrying out of any of the functions under this chapter. A conditional gift of money made by will or otherwise for such purposes may be accepted and used in accordance with its conditions, but no such gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from income thereof unless the [Administrator] *Board* determines that supplementation of such gift from the fees he may expend pursuant to sections 1755 and 1756 of this title or from any funds appropriated pursuant to section 1756(f)(2)(C) of this title for the purpose of making such expenditure will not adversely affect the sound administration of this chapter. Any such gift shall be deposited in the Treasury of the United States for the account of

the Administration and may be expended in accordance with section 105 or as provided in the preceding sentence.

TITLE II—SHARE INSURANCE

INSURANCE OF MEMBER ACCOUNTS AND ELIGIBILITY PROVISIONS

SEC. 201. (a) The [Administrator] *Board*, as hereinafter provided, shall insure the member accounts of all Federal credit unions and he may insure the member accounts of (1) credit unions organized and operated according to the laws of any State, the District of Columbia, the several territories, *including the trust territories*, and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, and (2) credit unions organized and operating under the jurisdiction of the Department of Defense if such credit unions are operating in compliance with the requirements of title I of this Act and regulations issued thereunder.

(b) Application for insurance of member accounts shall be made immediately by each Federal credit unoin 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 [Administrator] *Board* shall provide and shall contain an agreement by the applicant—

(1) to pay the reasonable cost of such examinations as the [Administrator] *Board* may deem necessary in connection with determining the eligibility of the applicant for insurance: *Provided*, That examinations required under title I of this Act shall be so conducted that the information derived therefrom may be utilized for share insurance purposes, and examinations conducted by State regulatory agencies shall be utilized by the [Administrator] *Board* for such purposes to the maximum extent feasible;

(2) to permit and pay the reasonable cost of such examinations as in the judgment of the [Administrator] *Board* may from time to time be necessary for the protection of the fund and of other insured credit unions;

(3) to permit the [Administrator] *Board* to have access to any information or report with respect to any examination made by or for any public regulatory authority, including any commission, board, or authority having supervision of a State-chartered credit union, and furnish such additional information with respect thereto as the [Administrator] *Board* may require.

(4) to provide protection and indemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates;

(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;

(6) to maintain such special reserves as the [Administrator] *Board*, by regulation or in special cases, may require for protecting the interest of members or to assure that all insured credit unions maintain regu-

lar reserves which are not less than those required under title I of this Act;

(7) not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the [Administrator] *Board* except for accounts authorized by State law for State credit unions;

(8) to pay the premium charges for insurance imposed by this title; and

(9) to comply with the requirements of this title and of regulations prescribed by the [Administrator] *Board* pursuant thereto.

(c)(1) Before approving the application of any credit union for insurance of its member accounts, the [Administrator] *Board* shall consider—

(A) the history, financial condition, and management policies of the applicant;

(B) the economic advisability of insuring the applicant without undue risk of the fund;

(C) the general character the fitness of the applicant's management;

(D) the convenience and needs of the members to be served by the applicant; and

(E) whether the applicant is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

(2) The [Administrator] *Board* shall disapprove the application of any credit union for insurance of its member accounts if he finds that its reserves are inadequate, that its financial condition and policies are unsafe or unsound, that its management is unfit, that insurance of its member accounts would otherwise involve undue risk to the fund, or that its powers and purposes are inconsistent with the promotion of thrift among its members and the creation of a source of credit for provident or productive purposes.

[(d) In the case of any Federal credit union whose application for insurance is disapproved, if such Federal credit union has annually transferred such a percentage of its gross income to its reserves as is required under section 116(a) and notwithstanding any reserving requirements established under section 116(b) of this Act, the Administrator shall nonetheless issue to such Federal credit union a certificate of insurance which shall be valid for a period of two years. The Administrator shall suspend or revoke the charter of any Federal credit union which has failed, upon the expiration of such two-year period of insurance, to file an application for insurance which is approved by the Administrator in accordance with subsection (c). A Federal credit union which is insured under this subsection for a period of two years is an insured credit union under the provisions of this title for such period of two years. The Administrator shall, having regard to the purposes of this subsection, make every reasonable effort to prevent the closing of any Federal credit union which is insured for a period of two years under this subsection and is found to be in financial difficulties, if he determines that with the technical assistance and management training and counseling authorized to be provided under this subsection there is reasonable assurance that such difficulties

can be sufficiently resolved within such two-year period so as to minimize the expenses of the Fund. The Administrator shall offer technical assistance, management training, and management counseling to all credit unions whose application for insurance has been disapproved so as to enable the maximum number of such credit unions to meet the standards for insurance required by this title. In furnishing such technical assistance, management training, and management counseling, the Administrator may utilize moneys in the National Credit Union Share Insurance Fund as provided under section 203(a) of this title. The Administrator shall also encourage to the maximum extent feasible, that such technical assistance, management training, and management counseling be made available through State stabilization funds, similar funds, or similar State credit union organizations. The Administrator shall also encourage State Credit Union Stabilization Funds or similar funds to reimburse the Credit Union Share Insurance Fund for any insurance payments made on behalf of accounts at insured credit unions whose applications for insurance have been disapproved.]

[(e)] (*d*) Upon the approval of any application for insurance, the [Administrator] *Board* shall notify the applicant and shall issue to it a certificate evidencing the fact that it is, as of the date of issuance of the certificate, an insured credit union under the provisions of this title.

REPORT OF CONDITION; CERTIFIED STATEMENTS; PREMIUMS FOR INSURANCE

SEC. 202. (a) (1) Each insured credit union shall make reports of condition to the [Administrator] *Board* upon dates which shall be selected by [him] *them*. Such reports of condition shall be in such form and shall contain such information as the [Administrator] *Board* may require. The reporting dates selected for reports of condition shall be the same for all insured credit unions except that when any of said reporting dates is a non-business day for any credit union the preceding business day shall be its reporting date. The total amount of the member accounts of each insured credit union as of each reporting date shall be reported in such reports of condition in accordance with regulations prescribed by the [Administrator] *Board*. Each report of condition shall contain a declaration by the president, by a vice president, by the treasurer, or by any other officer designated by the board of directors of the reporting credit union to make such declaration, that the report is true and correct to the best of [his] *such officer's* knowledge and belief. Unless such requirement is waived by the Administrator, the correctness of each report of condition shall be attested by the signatures of three of the officers of the reporting credit union with the declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct.

(2) The [Administrator] *Board* may call for such other reports as he may from time to time require.

(3) The [Administrator] *Board* may require reports of condition to be published in such manner, not inconsistent with any applicable law, as [he] *it* may direct. Every insured credit union which will-

fully fails to make or publish any such report within ten days shall be subject to a penalty of not more than $100 for each day of such failure, recoverable by the [Administrator] *Board* for his use.

(4) The [Administrator] *Board* may accept any report of condition made to any commission, board, or authority having supervision of a State-chartered credit union and may furnish to any such commission, board, or authority reports of condition made to the [Administrator] *Board*.

(5) Reports required under title I of this Act shall be so prepared that they can be used for share insurance purposes. To the maximum extent feasible, the [Administrator] *Board* shall use for insurance purposes reports submitted to State regulatory agencies by State-charatered credit unions.

(b) On or before January 31 of each insurance year, each insured credit union which became insured prior to the beginning of that year shall file with the [Administrator] *Board* a certified statement showing the total amount of the member accounts in the credit union at the close of the preceding insurance year and the amount of the premium charge for insurance due to the fund for that year, as computed under subsection (c) of this section. The certified statements required to be filed with the [Administrator] *Board* pursuant to this subsection shall be in such form and shall set forth such supporting information as the [Administrator] *Board* shall require. Each such statement shall be certified by the president of the credit union, or by any officer of the credit union designated by its board of directors, that to the best of [his] *its* knowledge and belief the statement is true, correct, and complete and in accordance with this title and regulations issued thereunder.

(c) (1) Except as provided in paragraphs (2) and (3) of this subsection, each insured credit union, on or before January 31 of each insurance year, shall pay to the fund a premium charge for insurance equal to one-twelfth of 1 per centum of the total amount of the member accounts in such credit union at the close of the preceding insurance year.

(2) Each credit union which was in existence prior to the enactment of this title and which becomes insured under this title after January 1 of any insurance year shall pay to the fund, for the insurance year in which it becomes insured, a premium charge for insurance equal to one-twelfth of 1 per centum of the total amount of the member accounts in such credit union at the close of the month before the month in which it becomes insured, reduced by an amount proportionate to the number of calendar months elapsed since the beginning of such insurance year and prior to the month in which it becomes insured. Such payment shall be made within thirty days after the date on which the credit union receives the certificate of insurance issued to it under section 201 of this title.

(3) Each credit union which is chartered after enactment of this title and which becomes insured under this title in the insurance year in which it is chartered shall pay to the fund, for the insurance year in which it is chartered, a premium charge for insurance computed in the following manner:

(A) To the total amount of the member acounts in the credit union at the close of the month in which it becomes insured, add the total

amount of such member accounts in the credit union at the close of each succeeding month of the insurance year and divide the total by the number of such months (including the month in which it becomes insured).

(B) From the figure obtained under subparagraph (A), subtract $10,000.

(C) Multiply the figure obtained under subparagraph (B) by one-twelfth of 1 per centum.

(D) Reduce the figure obtained under subparagraph (C) by an amount proportionate to the number of calendar months elapsed since the beginning of such insurance year and prior to the month in which the credit union becomes insured. The figure obtained under this subparagraph is the amount of the premium charge for insurance due to the fund. Such premium charge shall be paid on or before January 31 of the insurance year following the year in which the credit union was chartered.

(4) When any loans to the fund from the Federal Government and the interest thereon have been repaid and the amount in the fund equals or exceeds the normal operating level, the [Administrator] *Board* may reduce the premium charge for insurance, but not below the amount necessary, in [his] *its* judgment, to maintain the fund at the normal operating level. Any such reduction shall be effective only so long as the amount in the fund equals or exceeds the normal operating level and no loan to the fund from the Federal Government is outstanding.

(5) If in any year expenditures from the fund exceed the income of the fund, the [Administrator] *Board* may require each insured credit union to pay to the fund for such year, in addition to the regular premium charge for insurance payable under paragraph (1), (2), or (3) of this subsection, a special premium charge which shall not exceed an amount equal to the amount of the regular premium charge.

(6) (A) An insured cerdit union which is closed for liquidation because of insolvency or otherwise is entitled to a rebate of premiums paid by it to the fund. Rebates shall be paid in accordance with the regulations prescribed by the [Administrator] *Board*, but no payment of rebate shall be made during any period in which

(i) a loan to the fund from the Federal Government is outstanding; or

(ii) the [Administrator] *Board* determines that the payment would unduly jeopardize the financial condition of the fund.

A credit union otherwise entitled to a rebate of premiums shall not lose its entitlement because payment thereof cannot at any given time be made under the limitations prescribed in clause (i) or (ii).

(B) The amount of rebate of premiums to which a credit union is entitled under subparagraph (A) shall be computed as follows: To the total amount of premiums paid to the fund by the credit union, plus interest on such payments at the average rate of interest earned by the fund on its assets during each of the years in which the payments were made; subtract the sum of

(i) the credit union's prorata share of the fund's administrative expenses during the period in which the credit union had an insured status;

(ii) the credit union's prorata share of the net insurance payments (other than those referred to in clause (iii)) chargeable to the fund for claims arising during such period; and

(iii) the net insurance payments chargeable to the fund for claims arising in connection with the liquidation of the credit union.

A credit union's prorata share of the fund's administrative expenses or net insurance payments for any year (or part thereof) shall be determined by dividing the total amount credited to member and nonmember accounts in the credit union at the end of such year (or part thereof), by the total amount credited to all such accounts in all credit unions having an insured status at the end of such year (or part thereof).

(d) (1) Any insured credit union which fails to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by it in connection with determining the amount of any premium charge for insurance may be compelled to make such report or to file such statement by mandatory injunction or other appropriate remedy in a suit brought for such purpose by the [Administrator] *Board* against the credit union and any officer or officers thereof. Any such suit may be brought in any court of the United States of competent jurisdiction in the district or territory in which the principal office of the credit union is located.

(2) Any insured credit union which willfully fails or refuses to file any certified statement or to pay any premium charge for insurance required under this title shall be subject to a penalty of not more than $100 for each day that such violation continues, which penalty the [Administrator] *Board* may recover for [his] *its* use. The provisions of this paragraph shall not be applicable in any case in which the refusal to pay the premium charge for insurance is due to a dispute between the insured credit union and the [Administrator] *Board* over the amount of the premium charge due to the fund if the credit union deposits security satisfactory to the [Administrator] *Board* for payment of the premium charge upon final determination of the issue.

(3) No insured credit union shall pay any dividends on its member accounts or distribute any of its assets while it remains in default in the payment of any premium charge for insurance due to the fund. Any director or officer of any insured credit union who knowingly participates in the declaration or payment of any such dividend or in any such distribution shall upon conviction, be fined not more than $1,000 or imprisoned not more than one year, or both. The provisions of this paragraph shall not be applicable in any case in which the default is due to a dispute between the credit union and the [Administrator] *Board* over the amount of the premium charge due to the fund if the credit union deposits security satisfactory to the [Administrator] *Board* for payment of the premium charge upon final determination of the issue.

(e) The [Administrator] *Board*, in a suit brought at law or in equity in any court of competent jurisdiction, shall be entitled to recover from any insured credit union the amount of any unpaid premium charge for insurance lawfully payable by the credit union to the fund, whether or not such credit union shall have made any report of condition under subsection (a) of this section or filed any certified statement

required under subsection (b) of this section and whether or not suit shall have been brought to compel the credit union to make any such report or to file any such statement. No action or proceeding shall be brought for the recovery of any premium charge due to the fund, or for the recovery of any amount paid to the fund in excess of the amount due it, unless such action or proceeding shall have been brought within five years after the right accrued for which the claim is made. Where the insured credit union has made or filed with the [Administrator] *Board* a false or fraudulent certified statement with the intent to evade, in whole or in part, the payment of any premium charge, the claim shall not be deemed to have accrued until the discovery by the [Administrator] *Board* of the fact that the certified statement is false or fraudulent.

(f) Should any Federal credit union fail to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed under subsection (b) of this section or to pay any premium charge for insurance required to be paid under any provision of this title, and should the credit union fail to correct such failure within thirty days after written notice has been given by the [Administrator] *Board* to an officer of the credit union, citing this subsection and stating that the credit union has failed to make any such report or file any such statement or pay any such premium charge as required by law, all the rights, privileges, and franchises of the credit union granted to it under title I of this Act shall be thereby forfeited. Whether or not the penalty provided in this subsection has been incurred shall be determined and adjudged by any court of the United States of competent jurisdiction in a suit brought for that purpose in the district or territory in which the principal office of such credit union is located, under direction of and by the [Administrator] *Board* in [his] *its* own name, before the credit union shall be declared dissolved. The remedies provided in this subsection and in subsections (d) and (e) of this section shall not be construed as limiting any other remedies against any insured credit union but shall be in addition thereto.

(g) Each insured credit union shall maintain such records as will readily permit verification of the correctness of its reports of condition, certified statements, and premium charges for insurance. However, no insured credit union shall be required to retain such records for such purposes for a period of the making of any such report, the filing of any such statement, or the payment of any premium charge, except that when there is a dispute between the insured credit union and the [Administrator] *Board* over the amount of any premium charge for insurance the credit union shall retain such records until final determination of the issue.

(h) For the purposes of this section—

(1) the term "insurance year" means the period beginning on January 1 and ending on the following December 31, both dates inclusive;

(2) the term "normal operating level," when applied to the Fund, means an amount equal to 1 per centum of the aggregeate amount of the member accounts in all insured credit unions; and

[(3) the term "members accounts" when applied to the premium charge for insurance of the accounts of federally insured credit

unions shall not include amounts in excess of the insured account limit set forth in section 207 (c).

(3) The term "member account" when applied to the premium charge for insurance accounts shall not include amounts received from other federally insured credit unions in excess of the insured account limit set forth in section 207(c)(1).

NATIONAL CREDIT UNION SHARE INSURANCE FUND

SEC. 203. (a) There is hereby created in the Treasury of the United States a National Credit Union Share Insurance Fund which shall be used by the [Administrator] *Board* as a revolving fund for carrying out the purposes of this title. Money in the fund shall be available upon requisition by the [Administrator] *Board*, without fiscal year limitation, for making payments of insurance under section 207 of this title, for providing assistance and making expenditures under section 208 of this title in connection with the liquidation or threatened liquidation of insured credit unions, and for such administrative and other expenses incurred in carrying out the purposes of this title as he may determine to be proper.

(b) All premium charges for insurance paid pursuant to the provisions of section 202 of this title and all fees for examinations and all penalties collected by the [Administrator] *Board* under any provision of this title shall be deposited in the National Credit Union Share Insurance Fund.

(c) The [Administrator] *Board* may authorize the Secretary of the Treasury to invest and reinvest such portions of the fund as the [Administrator] *Board* may determine are not needed for current operations in any interest-bearing securities of the United States or in any securities guaranteed as to both principal and interest by the United States or in bonds or other obligations which are lawful investments for fiduciary, trust, and public funds of the United States, and the income therefrom shall constitute a part of the fund.

(d) (1) If, in the judgment of the [Administrator] *Board*, a loan to the fund is required at any time for carrying out the purposes of this title, the Secretary of the Treasury shall make the loan, but loans under this paragraph shall not exceed in the aggregate $100,000,000 outstanding at any one time. Except as otherwise provided in this subsection and in subsection (e) of this section, each loan under this paragraph shall be made on such terms as may be fixed by agreement between the [Administrator] *Board* and the Secretary of the Treasury.

(2) Interest shall accrue to the Treasury on the amount of any outstanding loans made to the fund pursuant to paragraph (1) of this subsection on the basis of the average daily amount of such outstanding loans determined at the close of each fiscal year with respect to such year, and the [Administrator] *Board* shall pay the interest so accruing into the Treasury as miscellaneous receipts annually from the fund. The Secretary of the Treasury shall determine the applicable interest rate in advance by calculating the average yield to maturity (on the basis of daily closing market bid quotations during the month of June of the preceding fiscal year) on outstanding marketable public debt obligations of the United States having a maturity date

of five or less years from the first day of such month of June and by adjusting such yield to the nearest one-eighth of 1 per centum.

(3) For the purpose of making loans under paragraph (1) of this subsection, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under the Second Liberty Bond Act, as amended, are hereby extended to include such loans. All loans and repayments under this section shall be treated as public debt transactions of the United States.

(e) So long as any loans to the fund are outstanding, the [Administrator] *Board* shall from time to time, not less often than annually, determine whether the balance in the fund is in excess of the amount which, in his judgment, is needed to meet the requirements of the fund and shall pay such excess to the Secretary of the Treasury, to be credited against the loans to the fund.

EXAMINATION OF INSURED CREDIT UNIONS

SEC. 204. (a) The [Administrator] *Board* shall appoint examiners who shall have power, on [his] *its* behalf, to examine any insured credit union, any credit union making application for insurance of its members accounts, or any closed insured credit union whenever in the judgment of the [Administrator] *Board* an examination is necessary to determine the condition of any such credit union for insurance purposes. Each examiner shall have power to make a thorough examination of all of the affairs of the credit union and shall make a full and detailed report of the condition of the credit union to the [Administrator] *Board*. The [Administrator] *Board* in like manner shall appoint claim agents who shall have power to investigate and examine all claims for insured member accounts. Each claim agent shall have power to administer oaths and affirmations, to examine and to take and preserve testimony under oath as to any matter in respect to claims for insured accounts, and to issue subpenas and subpenas duces tecum 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.

(b) In connection with examinations of insured credit unions, the [Administrator] *Board*, or his 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, 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 such subpena.

(c) In cases of refusal to obey a subpena issued to, or contumacy by, any person, the [Administrator] *Board* may invoke the aid of any

court of the United States within the jurisdiction of which such hearing, examination, or investigation is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, records, or other papers. Such court may issue an order requiring such person to appear before the [Administrator] *Board*, or before a person designated by [him] *them*, there to produce records, if so ordered, or to give testimony touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or carries on business or wherever [he] *it* may be found. No person shall be excused from attending and testifying or from producing books, records, or other papers in obedience to a subpena issued under the authority of this title on the ground that the testimony or evidence, documentary or otherwise, required of [him] *them* may tend to incriminate [him] *them* or subject [him] *them* to penalty or forfeiture, but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(d) The Administration may accept any report of examination made by or to any commission, board, or authority having supervision of a State-chartered credit union and may furnish to any such commission, board, or authority reports of examination made on behalf of the [Administrator] *Board*.

REQUIREMENTS GOVERNING INSURED CREDIT UNIONS

SEC. 205. (a) Every insured credit union shall display at each place of business maintained by it a sign or signs indicating that its member accounts are insured by the [Administrator] *Board* and shall include in all of its advertisements a statement to the effect that its member accounts are insured by the [Administrator] *Board*. The [Administrator] *Board* may exempt from this requirement advertisements which do not relate to member accounts or advertisements in which it is impractical to include such a statement. The [Administrator] *Board* shall prescribe by regulation the forms of such signs, the manner of display, the substance of any such statement, and the manner of use.

(b) (1) Except with the prior written approval of the [Administrator] *Board*, no insured credit union shall—

(A) merge or consolidate with any noninsured credit union or institution;

(B) assume liability to pay any member accounts in, or similar liabilities of, any noninsured credit union or institution;

(C) transfer assets to any noninsured credit union or institution in consideration of the assumption of liabilities for any portion of the member accounts in such insured credit union; or

(D) convert into a noninsured credit union or institution.

(2) Except with the prior written approval of the [Administrator] *Board*, no insured credit union shall merge or consolidate with any other insured credit union or, either directly or indirectly, acquire the assets of, or assume liability to pay any member accounts in, any other insured credit union.

(c) In granting or withholding approval or consent under subsection (b) of this section, the [Administrator] *Board* shall consider—

(1) the history, financial condition, and management policies of the credit union;

(2) the adequacy of the credit union's reserves;

(3) the economic advisability of the transaction;

(4) the general character and fitness of the credit union's management;

(5) the convenience and needs of the members to be served by the credit union; and

(6) whether the credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

(d) Except with the written consent of the [Administrator] *Board*, no person shall serve as a director, officer, committee member, or employee of an insured credit union who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the credit union involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the [Administrator] *Board* may recover for his use.

(e)(1) The [Administrator] *Board* shall promulgate rules establishing minimum standards with which each insured credit union must comply with respect to the installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts.

(2) The rules shall establish the time limits within which insured credit unions shall comply with the standards and shall require the submission of periodic reports with respect to the installation, maintenance, and operation of security devices and procedures.

(3) An insured credit union which violates a rule promulgated pursuant to this subsection shall be subject to a civil penalty which shall not exceed $100 for each day of the violation.

TERMINATION OF INSURANCE; CEASE-AND-DESIST PROCEEDINGS; SUSPENSION AND/OR REMOVAL OF DIRECTORS, OFFICERS, AND COMMITTEE MEMBERS

SEC. 206. (a)(1) Any insured credit union other than a Federal credit union may, upon not less than ninety days' written notice to the [Administrator] *Board* and upon the affirmative vote of a majority of its members within one year prior to the giving of such notice, terminate its status as an insured credit union.

(2) Any insured credit union, other than a Federal credit union, which has obtained a new certificate of insurance from a corporation authorized and duly licensed to insure member accounts may upon not less than ninety days' written notice to the [Administrator] *Board*

convert from status as an insured credit union under this Act: *Provided*, That at the time of giving notice to the [Administrator] *Board* the provisions of paragraph (b) (1) of this section are not being invoked against the credit union.

(b) (1) Whenever, in the opinion of the [Administrator] *Board*, any insured credit union is engaging or has engaged in unsafe or unsound practices in conducting the business of such credit union, or is in an unsafe or unsound condition to continue operations as an insured credit union, or is violating or has violated an applicable law, rule, regulation, order, or any condition imposed in writing by the [Administrator] *Board* in connection with the granting of any application or other request by the credit union, or is violating or has violated any written agreement entered into with the [Administrator] *Board*, the [Administrator] *Board* shall serve upon the credit union a statement with respect to such practices or conditions or violations for the purpose of securing the correction thereof. In the case of an insured State-chartered credit union, the [Administrator] *Board* shall send a copy of such statement to the commission, board, or authority, if any, having supervision of such credit union. Unless such correction shall be made within one hundred and twenty days after service of such statement, or within such shorter period of not less than twenty days after such service as the [Administrator] *Board* shall require in any case where [he] *it* determines that the insurance risk with respect to such credit union could be unduly jeopardized by further delay in the correction of such practices or conditions or violations, or as the commission, board, or authority having supervision of such credit union, if any, shall require in the case of an insured State-chartered credit union, the [Administrator] *Board*, if [he] *it* shall determine to proceed further, shall give to the credit union not less than thirty days' written notice of his intention to terminate the status of the credit union as an insured credit union. Such notice shall contain a statement of the facts constituting the alleged unsafe and unsound practices or conditions or violations and shall fix a time and place for a hearing thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the [Administrator] *Board* at the request of the credit union. Unless the credit union shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured credit union. In the event of such consent, or if upon the record made at any such hearing the [Administrator] *Board* shall find that any unsafe or unsound practice or condition or violation specified in the notice has been established and has not been corrected within the time above-prescribed in which to make such correction, the [Administrator] *Board* may issue and serve upon the credit union an order terminating its status as an insured credit union on a date subsequent to the date of such finding and subsequent to the expiration of the time specified in the notice.

(2) Any credit union whose insured status has been terminated by order of the [Administrator] *Board* under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (i) of this section.

(c) In the event of the termination of a credit union's status as an insured credit union as provided under subsection (a) (1) or (b) of

this section, the credit union shall give prompt and reasonable notice to all of its members whose accounts are insured that it has ceased to be an insured credit union. It may include in such notice a statement of the fact that member accounts insured on the effective date of such termination, to the extent not withdrawn, remain insured for one year from the date of such termination, but it shall not further represent itself in any manner as an insured credit union. In the event of failure to give the notice as herein provided to members whose accounts are insured, the [Administrator] *Board* is authorized to give reasonable notice.

(d) (1) After the termination of the insured status of any credit union as provided under subsection (a) or (b) of this section, insurance of its member accounts to the extent that they were insured on the effective date of such termination, less any amounts thereafter withdrawn which reduce the accounts below the amount covered by insurance on the effective date of such termination, shall continue for a period of one year, but no shares issued by the credit union or deposits made after the date of such termination shall be insured by the [Administrator] *Board*. The credit union shall continue to pay premiums to the [Administrator] *Board* during such period as in the case of an insured credit union and the [Administrator] *Board* shall have the right to examine such credit union from time to time during the period during which such insurance continues. Such credit union shall, in all other respects, be subject to the duties and obligations of an insured credit union for the period of one year from the date of such termination. In the event that such credit union shall be closed for liquidation within such period of one year, the [Administrator] *Board* shall have the same powers and rights with respect to such credit union as in the case of an insured credit union.

(2) No credit union shall convert from status as an insured credit union under this Act as provided under subsection (a) (2) of this section until the proposition for such conversion has been approved by a majority of all the directors of the credit union, and by affirmative vote of a majority of the members of the credit union who vote on the proposition in a vote in which at least 20 per centum of the total membership of the credit union participates. Following approval by the directors, written notice of the proposition and of the date set for the membership vote shall be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty nor less than seven days prior to such date. The membership shall be given the opportunity to vote by mail ballot. If the proposition is approved by the membership, prompt and reasonable notice of insurance conversion shall be given to all members.

(3) In the event of a conversion of a credit union from status as an insured credit union under this Act as provided under subsection (a) (2) of this section, premium charges payable under section 202(c) of this Act shall be reduced by an amount proportionate to the number of calendar months for which the converting credit union will no longer be insured under this Act. As long as a converting credit union remains insured under this Act, it shall remain subject to all of the provisions of chapter II of this Act.

[(e)(1) If, in the opinion of the Administrator, any insured credit union or any credit union any of the member accounts of which are insured is engaging or has engaged, or the Administrator has reasonable cause to believe that the credit union is about to engage, in an unsafe or unsound practice in conducting the business of such credit union, or is violating or has violated, or the Administrator has reasonable cause to believe that the credit union is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Administrator in connection with the granting of any application or other request by the credit union, or any written agreement entered into with the Administrator, the Administrator may issue and serve upon the credit union a notice of charges in respect thereof, the notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or practices or violation or violations and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the credit union. Such hearing shall be fixed for a date, not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or later date is set by the Administrator at the request of the credit union. Unless the credit union shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing the Administrator shall find that any unsafe or unsound practice or violation specified in the notice of charges has been established, the Administrator may issue and serve upon the credit union an order to cease and desist from any such practice or violation. Such order may, by provisions which may be mandatory or otherwise, require the credit union and its directors, officers, committee members, employees and agents to cease and desist from the same and, further, to take affirmative action to correct the conditions resulting from any such practice or violation.

[(2) A cease-and-desist order shall become effective at the expiration of thirty days after service of such order upon the credit union concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein) and shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court.]

(e)(1) If, in the opinion of the Board, any insured credit union, credit union which has insured accounts, or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such a credit union is engaging or has engaged, or the Board has reasonable cause to believe that the credit union or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union is about to engage, in an unsafe or unsound practice in conducting the business of such credit union, or is violating or has violated, or the Board has reasonable cause to believe that the credit union or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Board in connection with the granting of any applica-

tion or other request by the credit union or any written agreement entered into with the Board, the Board may issue and serve upon the credit union or such director, officer, committee member, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the credit union or the director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Board at the request of any party so served. Unless the party or parties so served shall appear at the hearing by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the Board shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board may issue and serve upon the credit union or the director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the credit union or its directors, officers, committee members, employees, agents, and other persons participating in the conduct of the affairs of such credit union to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the credit union or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

[(f)(1) Whenever the Administrator shall determine that the unsafe or unsound practice or practices or violation or threatened violation specified in the notice of charges served upon the credit union pursuant to subsection (e)(1) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the credit union, or is likely to otherwise seriously prejudice the interests of its insured members, the Administrator may issue a temporary order requiring the credit union to cease and desist from any such practice or violation. Such order shall become effective upon service upon the credit union 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 Administrator shall dismiss the charges specified in such notice or, if a cease-and-desist order is issued against the credit union, until the effective date of any such order.

[(2) Within ten days after the credit union concerned has been served with a temporary cease-and-desist order, the credit union may

apply to the United States district court for the judicial district in which the principal office of the credit union is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the credit union under subsection (e)(1) of this section, and such court shall have jurisdiction to issue such injunction.

[(3) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order, the Administrator may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the principal office of the credit union is located for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.]

(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 director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union pursuant to paragraph (1) of subsection (e) of this section, or the combination thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the credit union, or is likely to seriously weaken the condition of the credit union or otherwise seriously 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 director, officer, committee member, employee, agents, or other person 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 shall become effective upon service upon the credit union or such director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union 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 director, officer, committee member, employee, agent, or other person, until the effective date of such order.

(2) Within ten days after the credit union concerned or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union has been served with a temporary cease-and-desist order, the credit union or such director, officer, committee member, employee, agent, or other person may apply to the United States district court for the judicial district in which the home office of the credit union is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or

effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the credit union or such director, officer, committee member, employee, agent, or other person under paragraph (1) of subsection (e) of this section, and such court shall have jurisdiction to issue such injunction.

[(g) (1) Whenever, in the opinion of the Administrator, any director, officer, or committee member of an insured credit union has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the credit union, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director, officer, or committee member and the Administrator determines that the credit union has suffered or will probably suffer substantial financial loss or other damage or that the interests of its insured members could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, the Administrator may serve upon such director, officer, or committee member a written notice of his intention to remove him from office.

[(2) Whenever, in the opinion of the Administrator, any director, officer, or committee member of an insured credit union, by conduct or practice with respect to another insured credit union or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonety or unfitness to continue as a director, officer, or committee member, and, whenever, in the opinion of the Administrator, any other person participating in the conduct of the affairs of an insured credit union by conduct or practice with respect to such credit union or other insured credit union or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty or unfitness to participate in the conduct of the affairs of such insured credit union, the Administrator may serve upon such director, officer, committee member, or other person a written notice of his intention to remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of such credit union.

[(3) In respect to any director, officer, or committee member of an insured credit union or any other person referred to in paragraph (1) or (2) of this subsection, the Administrator may, if he deems it necessary for the protection of the credit union or the interest of its insured members, by written notice to such effect served upon such director, officer, committee member, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the credit union. Such suspension and/or prohibition shall become effective upon service of such notice and unless stayed by a court in proceedings authorized by paragraph (5) of this subsection, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1) or (2) of this subsection and until such time as the Administrator shall dismiss the charges specified in such notice or, if an order of removal and/or prohibition is issued against the director, officer, committee member, or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the credit

union of which he is a director, officer, or committee member or in the conduct of whose affairs he has participated.

[(4) A notice of intention to remove a director, officer, committee member, or other person from office and/or to prohibit his participation in the conduct of the affairs of an insured credit union shall contain a statement of the facts constituting the 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 Administrator at the request of such director, officer, committee member, or other person, and for good cause shown, or at the request of the Attorney General of the United States. Unless such director, officer, committee member, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/or prohibition. In the event of such consent, or if upon the record made at any such hearing the Administrator shall find that any of the grounds specified in such notice has been established, the Administrator may issue such orders of suspension or removal from office and/or prohibition from participation in the conduct of the affairs of the credit union as he may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such credit union and the director, officer, committee member, or other person concerned (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 Administrator or a reviewing court.]

(g) (1) Whenever, in the opinion of the Board, any director, committee member, or officer of an insured credit union has committed any violation of law, rule, or regulation or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with a credit union, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director, committee member, or officer, and the Board determines that the credit union has suffered or will probably suffer substantial financial loss or other damage or that the interest of its members could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, or that the director, committee member, or officer recived financial gain by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director, committee member, or officer, or one which demonstrates a willful or continuing disregard for the safety or soundness of the credit union, the Board may serve upon such director, committee member, or officer a written notice of his intention to remove him from office.

(2) Whenever, in the opinion of the Board, any director, committee member, or officer of an insured credit union, by conduct or practice with respect to another insured credit union or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or con-

tinuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to continue as a director or officer and, whenever, in the opinion of the Board, any other person participating in the conduct of the affairs of an insured credit union, by conduct or practice with respect to such credit union or other insured credit union or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such insured credit union, the Board may serve upon such director, officer, or other person a written notice of its intention to remove them from office or to prohibit its further participation in any manner in the conduct of the affairs of the credit union.

(3) In respect to any director, committee member, or officer of an insured credit union or any other person referred to in paragraph (1) or (2) of this subsection, the Board may, if it deems it necessary for the protection of the credit union or the interests of its members, by written notice to such effect served upon such director, committee member, officer, or other person, suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the credit union. Such suspension or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by paragraph (5) of this subsection, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1) or (2) of this subsection and until such time as the Board shall dismiss the charges specified in such notice, or, if an order of removal and prohibition is issued against the director, committee member, or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the credit union of which he is a director, committee member, or officer or in the conduct of whose affairs he has participated.

(4) A notice of intention to remove a director, committee member, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an insured credit union, 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 Board at the request of (A) such director, committee member, or officer or other person, and for good cause shown, or (B) the Attorney General of the United States. Unless such director, committee member, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he 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 Board shall find that any of the grounds specified in such notice have been established, the Board may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the credit union, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such credit union and the director, committee

member, officer, or other person concerned (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 Board or a reviewing court.

(5) Within ten days after any director, officer, committee member, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured credit union under paragraph (3) of this subsection, such director, officer, committee member, or other person may apply to the United States district court for the judicial district in which the principal office of the credit union is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, committee member, or other person under paragraph (1) or (2) of this subsection, and such court shall have jurisdiction to stay such suspenion and/or prohibition.

[(h)(1) Whenever any director, officer, or committee member of an insured credit union, or other person participating in the conduct of the affairs of such credit union, is charged in any complaint authorized by a United States attorney or in any information or indictment, with the commission of or participation in a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon such director, officer, committee member, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the credit union. A copy of such notice shall also be served upon the credit union. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Administrator. In the event that a judgment of conviction with respect to such offense is entered against such director, officer, committee member, or other person, and at such time as such judgment is not subject to further appellate review, the Administrator may issue and serve upon such director, officer, committee member, or other person an order removing him from office and/or prohibiting him from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the Administrator. A copy of such order shall also be served upon such credit union, whereupon such director, officer, or committee member shall cease to be a director, officer, or committee member of such institution. A finding of not guilty or other disposition of the charge shall not preclude the Administrator from thereafter instituting proceedings to remove such director, officer, committee member, or other person from office and/or to prohibit further participation in the affairs of the credit union pursuant to paragraph (1) or (2) of subsection (g) of this section.

[(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a Federal credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of

the board of directors. In the event all of the directors of a Federal credit union are suspended pursuant to this section, the Administrator shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their respective successors have been elected by the members at an annual or special meeting and have taken office. Directors appointed temporarily by the Administrator shall, within thirty days following their appointment, call a special meeting for the election of new directors, unless during the thirty-day period (A) the regular annual meeting is scheduled, or (B) the suspensions giving rise to the appointment of temporary directors are terminated.]

(h) (1) Whenever any director, committee member, or

(h) (1) Whenever any director, committee member, or officer of an insured credit union, or other person participating in the conduct of the affairs of such credit union, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Board may, if continued service or participation by the individual may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, by written notice served upon such director, committee member, officer, or other person suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the credit union. A copy of such notice shall also be served upon the credit union. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Board. In the event that a judgment of conviction with respect to such crime is entered against such director, committee member, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Board may, if continued service or participation by the individual may pose a threat to the interests of the credit union's depositors or may threaten to impair public confidence in the credit union, issue and serve upon such director, committee member, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the Board. A copy of such order shall also be served upon such credit union, whereupon such director or officer shall cease to be a director, committee member, or officer of such credit union. A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting proceedings to remove such director, committee member, officer, or other person from office or to prohibit further participation in the affairs of the credit union, pursuant to subsection (g) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the Board.

(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a

Federal credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a Federal credit union are suspended pursuant to this section, the Board shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their respective successors have been elected by the members at an annual or special meeting and have taken office. Directors appointed temporarily by the Board shall, within thirty days following their appointment, call a special meeting for the election of new directors, unless during the thirty-day period (A) the regular annual meeting is scheduled, or (B) the suspensions giving rise to the appointment of temporary directors are terminated.

(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the director, committee member, officer, or other person concerned may request in writing an opportunity to appear before the Board to show that the continued service to or participation in the conduct of the affairs of the credit union by such individual does not, or is not likely to, pose a threat to the interests of the credit union's members or threaten to impair public confidence in the credit union. Upon receipt of any such request, the Board shall fixe a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, committee member, officer, or other person) and place at which the director, committee member, officer, or other person may appear, personally or through counsel, before the Board or its designee to submit written materials (or, at the discretion of the Board, oral testimony) and oral argument. Within sixty days of such hearing, the Board shall notify the director, committee member, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the credit union will be continued, termiated or otherwise modified, or whether the order removing said director, committee member, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the credit union will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Board's decision, if adverse to the director, committee member, officer or other person. The Board is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(i) (1) Any hearing provided for in this section (*other than the hearing provided for in subsection (h) (3) of this section*) shall be held in the Federal judicial district or in the territory in which the principal office of the credit union is located, unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. Such hearing shall be private unless the [Administrator] *Board*, in [his] *its* discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to

protect the public interest. After such hearing, and within ninety days after the [Administrator] *Board* has notified the parties that the case has been submitted to [him] *them* for final decision, [he] *it* shall render [his] *its* decision (which shall include findings of fact upon which [his] *its* decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (i). Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (2) of this subsection, and therafter until the record in the proceeding has been filed as so provided, the [Administrator] *Board* may at any time, upon such notice and in such manner as he may deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the [Administrator] *Board* may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to the proceeding, or any person required by an order issued under this section to cease and desist from any of the practices or violations stated therein, may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the credit union or the director, officer, committee member, or other person concerned or an order issued under subsection (h)(*1*) of this section) by filing in the court of appeals of the United States for the circuit in which the principal office of the credit union is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the [Administrator] *Board* be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the [Administrator] *Board*, and thereupon the [Administrator] *Board* shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the [Administrator] *Board*. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the [Administrator] *Board*.

(j)(*1*) The [Administrator] *Board* may in [his] *its* discretion apply to the United States district court, or the United States court of any territory within the jurisdiction of which the principal office of the credit union is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such courts shall have jurisdiction and power to order and require compliance therewith. However, except as otherwise provided in this section, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section or to

review, modify, suspend, terminate, or set aside any such notice or order.

(2)(A) Any insured credit union which violates or any officer, director, committee member, employee, agent, or other person participating in the conduct of the affairs of such a credit union who violates the terms of any order which has become final and was issued pursuant to subsection (e) or (f) of this section, shall forfeit and pay a civil penalty of not more than $1,000 per day for each during which such violation continues. The penalty shall be assessed and collected by the Board by written notice. As used in this section, the term "violates" includes without limitation any action (alone or with another or others) for or toward causing, bringing out, participating in, counseling, or aiding or abetting a violation.

(B) In determining the amount of the penalty, the Board shall take into account the appropriateness of the penalty wtih respect to the size of financial resources and good faith of the insured credit union or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(C) The insured credit union or person charged shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The Administrator's determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(D) Any insured credit union or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by a United States court of appeals for the circuit in which the home office of the insured credit union is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Administrator. The Administrator shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Administrator shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

(E) If any insured credit union or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Board, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(F) The Board shall promulgate regulations establishing procedures necessary to implement this paragraph.

(G) All penalties collected under authority of this paragraph shall be covered into the Treasury of the United States.

(k) Any director, officer, or committee member, or former director, officer, or committee member, of an insured credit union or of a credit

union any of the member accounts of which are insured, or any other person against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, committee member, or other person under subsections (g)(3), (g)(4), or (h) of this section and who (i) participates in any manner in the conduct of the affairs of the credit union involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such credit union, or (ii) without the prior written approval of the [Administrator] *Board* votes for a director, serves or acts as a director, officer, committee member, or employee of any credit union, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.

(l) As used in this section (1) the terms "cease-and-desist order which has become final" and "order which has become final" means a cease-and-desist order, or an order issued by the [Administrator] *Board* with the consent of the credit union or the director, officer, committee member, or other person concerned, or with respect to which no petition for review of the action of the [Administrator] *Board* has been filed and perfected in a court of appeals as specified in paragraph (2) of subsection (i) of this section, or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in said paragraph, or an order issued under subsection (h) of this section, and (2) the term "violation" includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(m) Any service required or authorized to be made by the [Administrator] *Board* under this section may be made by registered mail or in such other manner reasonably calculated to give actual notice as the [Administrator] *Board* may by regulation or otherwise provide. Copies of any notice or order served by the [Administrator] *Board* upon any State-chartered credit union or any director, officer, or committee member thereof or other person participating in the conduct of its affairs, pursuant to the provisions of this section, shall also be sent to the commission, board, or authority, if any, having supervision of such credit union.

(n) In connection with any preceeding under subsection (e), (f) (1), or (g) of this section involving an insured State-chartered credit union or any director, officer, committee member, or other person participating in the conduct of its affairs, the [Administrator] *Board* shall provide the commission, board, or authority, if any, having supervision of such credit union, with notice of his intent to institute such a proceeding and the grounds thereof. Unless within such time as the [Administrator] *Board* deems appropriate in the light of the circumstances of the case (which time must be specified in the notice prescribed in the preceding sentence) satisfactory corrective action is effectuated by action of such commission, board, or authority, the [Administrator] *Board* may proceed as provided in this section. No credit union or other party who is the subject of any notice or order issued by the

[Administrator] *Board* under this section shall have standing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

(o) In the course of or in connection with any proceeding under this section, the [Administrator] *Board*, or any designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum, and the [Administrator] *Board* is empowered to make rules and regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to the proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction, and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an insured credit union or a director, officer, or committee member thereof may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper, and such expenses and fees shall be paid by the credit unior or from its assets.

PAYMENT OF INSURANCE

SEC. 207. (a) (1) Upon his finding that a Federal credit union insured under this title is bankrupt or insolvent, the [Administrator] *Board* shall close such credit union for liquidation and appoint himself liquidating agent therefore.

(2) Notwithstanding any other provision of law, it shall be the duty of the [Administrator] *Board* as such liquidating agent to cause notice to be given, by advertisement in such newspapers as [he] *it* may direct, to all persons having claims against such closed credit union, to present their claims within four months from the date such advertisement first appeared; to realize upon the assets of such closed credit union, having due regard to the condition of credit in the locality; and to wind up the affairs of such closed credit union in conformity with the provisions of law relating to the liquidation of bankrupt or insolvent Federal credit unions, except as herein otherwise provided. The [Administrator] *Board* as such liquidating agent shall pay to himself for his own account such portion of the amounts realized from such liquidation as [he] *it* shall be entitled to receive on account of [his] *its* subrogation to the claims of members, and [he] *it* shall pay to members and other creditors the net amounts available for distribution to them. The [Administrator] *Board* as such liquidating agent, however, may, in [his] *its* discretion, pay dividends on

proved claims at any time after the expiration of the period of advertisement made pursuant to the first sentence of this paragraph, and no liability shall attach to the [Administrator] *Board* [himself] *itself* for as such liquidating agent by reason of any such payment for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(3) Notwithstanding any other provision of law, the [Administrator] *Board* as liquidating agent of a closed Federal credit union insured under this title shall not be required to furnish bond and shall have the right to appoint an agent or agents to assist [him] *them* in [his] *its* duties as such liquidating agent. All fees, compensation, and expenses of liquidation and administration thereof shall be fixed by the [Administrator] *Board* and may be paid by [him] *them* out of funds coming into [his] *its* possession as such liquidating agent.

(b) Whenever any insured State-chartered credit union shall have been closed by action of its board of directors or by the commission, board, or authority having supervision of such credit union, as the case may be, or by a court of competent jurisdiction, on account of bankruptcy or insolvency, the [Administrator] *Board* shall accept appointment as liquidating agent therefor, if such appointment is tendered by the commission, board, or authority having supervision of such credit union, or by a court of competent jurisdiction, and is authorized or permitted by State law. With respect to any such State-chartered credit union, the [Administrator] *Board* as such liquidating agent shall possess all the rights, powers, and privileges granted by State law to a liquidating agent of a State-chartered credit union. For the purposes of this subsection, the term "liquidating agent" includes a liquidating agent, receiver, conservator, commission person, or other agency charged by law with the duty of winding up the affairs of a credit union.

(c) (1) Whenever an insured credit union shall have been closed for liquidation on account of bankruptcy or insolvency, payment of the insured accounts in such credit union shall be made by the [Administrator] *Board* as soon as possible, subject to the provisions of subsection (d) of this section. Subject to the provisions of paragraph (2), for the purposes of this subsection, the term "insured account" means the total amount of the account in the member's name (after deducting offsets) less any part thereof which is in excess of $40,000. Such amount shall be determined according to such regulations as the [Administrator] *Board* may prescribe, and, in determining the amount due to any member, there shall be added together all accounts in the credit union maintained by him for his own benefit either in his own name or in the names of others. The [Administrator] *Board* may define, with such classifications and exceptions as [he] *it* may prescribe, the extent of the insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy. The [Administrator] *Board*, in [his] *its* descretion, may require proof of claims to be filed before paying the insured accounts, and in any case where [he] *it* is not satisfied as to the validity of a claim for an insured account, [he] *it* may require the final determination or a court of competent jurisdiction before paying such claim.

(2) (A) Notwithstanding any limitation in this Act or in any other provision of law relating to the amount of insurance available for the

account of any one depositor or member, in the case of a depositor or member who is——

(i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this title;

(ii) an officer, employee, or agent of any State of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this title in such State;

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this title in the District of Columbia; or

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, of the Panama Canal Zone, or of any territory or possession of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this title in the Commonwealth of Puerto Rico, the Panama Canal Zone, or any such territory or possession, respectively; his account shall be insured in an amount not to exceed $100,000 per account.

(B) The [Administrator] *Board* may limit the aggregate amount of funds that may be invested or deposited in any credit union insured in accordance with this title by any depositor or member referred to in subparagraph (A) on the basis of the size of any such credit union in terms of its assets.

(d) In the case of a closed Federal credit union, the [Administrator] *Board*, upon the payment to any member as provided in subsection (c) of this section, shall be subrogated to all rights of the member against such closed credit union to the extent of such payment. In the case of any other closed insured credit union, the [Administrator] *Board* shall not make any payment to any member until the right of the [Administrator] *Board* to be subrogated to the rights of such member on the same basis as provided in the case of a closed Federal Credit union shall have been recognized either by express provision of State law, by allowance of claims by the commission, board, or authority having supervision of such credit union, by assignment of claims by members, or by any other effective method. In the case of any closed insured credit union, such subrogation shall include the right on the part of the [Administrator] *Board* to receive the same dividends from the proceeds of the assets of such closed credit union as would have been payable to the member on a claim for the insured account, but such member shall retain his claim for any uninsured portion of his account. The rights of members and other creditors of any State-chartered credit union shall be determined in accordance with the applicable provisions of State law.

(e) Payment of an insured account to any person by the [Administrator] *Board* shall discharge the [Administrator] *Board* to the same extent that payment to such person by the closed insured credit union would have discharged it from liability for the insured account.

(f) Except as otherwise prescribed by the [Administrator] *Board*, the [Administrator] *Board* shall not be required to recognize as the owner of any portion of an account appearing on the records of the closed credit union under a name other than that of the claimant any person whose name or interest as such owner is not disclosed on the records of such closed credit union as part owner of such account, if such recognition would increase the aggregate amount of the insured accounts in such closed credit union.

(g) The [Administrator] *Board* may withhold payment of such portion of the insured account of any member of a closed credit union as may be required to provide for the payment of any direct or indirect liability of such member to the closed credit union or its liquidating agent, which is not offset against a claim due from such credit union, pending the determination and payment of such liability by such member or any other person liable therefor.

(h) If, after the [Administrator] *Board* shall have given at least four months' notice to the member by mailing a copy thereof to his last-known address appearing on the records of the closed credit union, any member of the closed credit union shall fail to claim his insured account from the [Administrator] *Board* within 18 months after the appointment of the liquidating agent for the closed credit union, all rights of the member against the [Administrator] *Board* with respect to the insured account shall be barred, and all rights of the member against the closed credit union, or the estate to which the [administrator] *Board* may have become subrogated, shall thereupon revert to the member.

(i) (1) Liquidating agents of insured credit unions closed for liquidation on account of bankruptcy or insolvency may offer the assets of such credit unions for sale to the [Administrator] *Board* or as security for loans from the [Administrator] *Board*, upon receiving permission from the commission, board, or authority having supervision of such credit union, in the case of an insured State-chartered credit union, in accordance with express provisions of State law. The proceeds of every such sale or loan shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such credit unions. The [Administrator] *Board*, in his discretion may make loans on the security of or may purchase and liquidate or sell any part of the assets of an insured credit union closed for liquidation on account of bankruptcy or insolvency, but in any case in which the [Administrator] *Board* is acting as liquidating agent of a closed insured credit union, no such loan or purchase shall be made without the approval of a court of competent jurisdiction.

(2) No agreement which tends to diminish or defeat the right, title, or interest of the [Administrator] *Board* in any asset acquired by him under this subsection, either as security for a loan or by purchase, shall be valid against the [Administrator] *Board* unless such agreement—

(A) shall be in writing;

(B) shall have been executed by the credit union and the person or persons claiming an adverse interest thereunder including the obligor, contemporaneously with the acquisition of the asset by the credit union;

(C) shall have been approved by the board of directors of the credit union, which approval shall be reflected in the minutes of such board; and

(D) shall have been, continuously, from the time of its execution, an official record of the credit union.

SPECIAL ASSISTANCE [TO AVOID LIQUIDATION] *FOR FEDERALLY INSURED CREDIT UNIONS*

SEC. 208. (a) (1) In order to reopen a closed insured credit union or in order to prevent the closing of an insured credit union which the [Administrator] *Board* has determined is in danger of closing or in order to assist in the voluntary liquidation of a solvent credit union, the [Administrator] *Board*, in [his] *its* discretion, is authorized to make loans to, or purchase the assets of, or establish accounts in such insured credit union upon such terms and conditions as [he] *it* may prescribe. Except with the respect to the voluntary liquidation of a solvent credit union, such loans shall be made and such accounts shall be established only when, in the opinion of the [Administrator] *Board*, such action is necessary to protect the fund or the interests of the members of the credit union.

(2) Whenever in the judgment of the [Administrator] *Board* such action will reduce the risk or avert a threatened loss to the fund and will facilitate a merger or consolidation of an insured credit union with another insured credit union, or will facilitate the sale of the assets of an open or closed insured credit union to and assumption of its liability by another person, the [Administrator] *Board* may, upon such terms and conditions as [he] *it* may determine, make loans secured in whole or in part by assets of an open or closed insured credit union, which loans may be in subordination to the rights of members and creditors of such credit union, or the [Administrator] *Board* may purchase any of such assets or may guarantee any person against loss by reason of [his] *its* assuming the liabilities and purchasing the assets of an open or closed insured credit union. For purposes of this paragraph, the term "person" means any credit union, individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(3) No agreement which tends to diminish or defeat the right, title, or interest of the Administrator, in any asset acquired by him under this subsection, either as security for a loan or by purchase, shall be valid against the [Administrator] *Board* unless such agreement—

(A) shall be in writing;

(B) shall have been executed by the credit union and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the credit union;

(C) shall have been approved by the board of directors of the credit union, which approval shall be reflected in the minutes of such board; and

(D) shall have been continuosly, from the time of its execution, an official record of the credit union.

(b) For the protection of the Fund, the [Administrator] *Board*, without regard to the Federal Property and Administrative Services Act of 1949, may—

(1) deal with, complete, reconstruct, rent, renovate, modernize, insure, make contracts for the management of, sell for cash or credit, or lease, in [his] *its* discretion, any real property acquired or held by [him] *them* under this section; and

(2) assign or sell at public or private sale, or otherwise dispose of, any evidence of debt, contract, claim, personal property, or security assigned to or held by [him] *them* under this section.

Section 3709 of the Revised Statutes of the United States shall not apply to any purchase or contract for services or supplies made or entered into by the [Administrator] *Board* under this section if the amount thereof does not exceed $1,000, or to any contract for hazard insurance on any real property acquired or held by him under this section.

(c) In connection with the liquidation of any insured credit union, the [Administrator] *Board* shall have the power to carry on the business of and collect all obligations to the credit union, to settle, compromise, or release claims in favor of or against the credit union, and to do all other things that may be necessary in connection therewith, subject to the regulation of the court or other public body having jurisdiction over the matter.

(d) Money received by the [Administrator] *Board* in carrying out this section shall be paid into the Fund.

ADMINISTRATIVE PROVISIONS

SEC. 209. (a) In carrying out the purposes of this title, the [Administrator] *Board* may—

(1) make contracts;

(2) sue and be sued, complain and defend, in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the [Administrator] *Board* shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy. The [Administrator] *Board* may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect, except that any such suit to which the [Administrator] *Board* is a party in [his] *its* capacity as liquidating agent of a State chartered credit union and which involves only the rights or obligations of members, creditors, and such State credit union under State law shall not be deemed to arise under the laws of the United States. No attachment or execution shall be issued against the [Administrator] *Board* or [his] *its* property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court. The [Administrator] *Board* shall designate an agent upon whom service of process may be made in any State, territory, or jurisdiction in which any insured credit union is located;

(3) pursue to final disposition by way of compromise or otherwise claims both for and against the United States (other than tort claims, claims involving administrative expenses, and claims

in excess of $5,000 arising out of contracts for construction, repairs, and the purchase of supplies and materials) which are not in litigation and have not been referred to the Department of Justice;

(4) to appoint such officers and employees as are not otherwise provided for in this Act, to define their duties, fix their compensation, require bonds of them and fix the penalty thereof, and to dismiss at pleasure such officers or employees. Nothing in this or any other Act shall be construed to prevent the appointment and compensation as an officer or employee of the Administration of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof;

(5) employ experts and consultants or organizations thereof, as authorized by section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a);

(6) prescribe the manner in which his general business may be conducted and the privileges granted to him by law may be exercised and enjoyed;

(7) exercise all powers specifically granted by the provisions of this title and such incidental powers as shall be necessary to carry out the powers so granted;

(8) make examinations of and require information and reports from insured credit unions, as provided in this title.

(9) act as liquidating agent;

(10) delegate to any officer or employee of the Administration such of his functions as he deems appropriate; and

(11) prescribe such rules and regulations as he may deem necessary or appropriate to carry out the provisions of this title.

(b) With respect to the financial operations arising by reason of this title, the [Administrator] *Board* shall—

(1) prepare annually and submit a business-type budget as provided for wholly owned Government corporations by the Government Corporation Control Act; and

(2) maintain an integral set of accounts, which shall be audited by the General Accounting Office in accordance with principles and procedures applicable to commercial corporate transactions as provided by section 850 of Title 31.

NONDISCRIMINATORY PROVISION

SEC. 210. It is not the purpose of this title to discriminate in any manner against State-chartered credit unions and in favor of Federal credit unions, but it is the purpose of this title to provide all credit unions with the same opportunity to obtain and enjoy the benefits of this title.

SECTION 1114 OF TITLE 18, UNITED STATES CODE

Chapter 51—HOMICIDE

* * * * * * *

§ 1114. Protection of officers and employees of the United States

Whoever kills any judge of the United States, any United States At-

torney any Assistant United States Attorney, or any United States marshal or deputy marshal or persons employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the Secret Service or of the Drug Enforcement Administration, any officer or enlisted man of the Coast Guard, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty in, the field service of the Bureau of Land Management, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare, the Consumer Product Safety Commission, or of the Department of Labor or of the Department of Agriculture assigned to perform investigative, inspection, or law enforcement functions, while engaged in the performance of his official duties, or on account of the performance of his official duties, *or any attorney, liquidator, examiner, claim agent, or other employee of the FederalDeposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration engaged in or on account of the performance of his official duties shall be punished as provided under sections 1111 and 1112 of this title.*

SECTION 5 OF THE BANK SERVICE CORPORATION ACT

[SEC. 5. (a) No bank subject to examination by a Federal supervisory agency may cause to be performed, by contract or otherwise, any bank services for itself, whether on or off its premises, unless assurances satisfactory to the agency prescribed in subsection (b) of this section are furnished to such agency by both the bank and the party performing such services that the performance thereof will be subject to regulation and examination by such agency to the same extent as

if such services were being performed by the bank itself on its own premises.

[(b) The assurances required by subsection (a) of this section shall be given, in the case of—

[(1) a national banking association or a bank operatingg under the code of laws for the District of Columbia, to the Comptroller of the Currency;

[(2) a bank (other than a bank described in paragraph (1)) which is a member of the Federal Reserve System, to the Board of Governors of the Federal Reserve System; and

[(3) a bank (other than a bank described in paragraph (1) or (2) whose deposits are insured by the Federal Deposit Insurance Corporation, to the Board of Directors of the Federal Deposit Insurance Corporation.]

SEC. 5. Whenever any bank which is regularly examined by a Federal supervisory agency, or any subsidiary or affiliate of such bank which is subject to examination by that agency, causes to be performed, by contract or otherwise, any bank services for itself, 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 the services were being performed by the bank itself on its own premises, and

(2) the bank shall notify such agency of the existence of a service relationship within 30 days after the making of such service contract or the performance of the service, whichever occurs first.

SECTION 17 OF THE FEDERAL HOME LOAN BANK ACT

FEDERAL HOME LOAN BANK BOARD

SEC. 17. (a) * * *

* * * * * * *

(c) The members of the board shall be ineligible during the time they are in office and for a period of two years thereafter to hold any office, position, or employment in an insured institution, in a holding company of an insured institution, or in an affiliate of a holding company of an insured institution, except that this restriction shall not apply to any individual who has served the full term for which he was appointed. As used in this subsection, the term "insured institution" has the same meaning as in section 401 of the National Housing Act. Former members of the board shall be prohibited from appearing before the board, either formally or informally, contacting the board, directly or indirctly, orally or in writing, or from acting as agent or attorney for any other person, other than the United States, before the board for a period of two years immediately following their employment with the board. The preceding sentence shall not apply to individuals who served on the Board before or upon the effective date of this sentence, and the prohibition upon holding any office, position, or employment in a holding company or an affiliate thereof shall ot apply to individuals serving as members of the Board upon the effective date of this sentence.

TITLE 5, UNITED STATES CODE

* * * * * * *

§ 5108. Classification of positions at GS–16, 17, and 18

(a) A majority of the Civil Service Commissioners may establish, and from time to time revise, the maximum numbers of positions (not to exceed an aggregate of [3,301,] *3,310* in addition to any professional engineering positions primarily concerned with research and development and professional positions in the physical and natural sciences and medicine which may be placed in these grades, and in addition to 340 administrative law judge positions under section 3105 of this title which may be placed in GS–16 and 9 such positions which may be placed in GS–17) which may be placed in GS–16, 17, and 18 at any one time. However, under this authority, not to exceed 25 percent of the aggregate number may be placed in GS–17 and not to exceed 12 percent of the aggregate number may be placed in GS–18. A position may be placed in GS–16, 17, or 18 only by action of, or after prior approval of, by a majority of the Civil Service Commissioners.

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5381 of this title:

(1) * * *

* * * * * * *

(*66*) *Chairman, National Credit Union Administration Board.*

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * * * *

(2) Repealed. Pub. L. 89–670, § 10(e), Oct. 15, 1966, 80 Stat. 948.

(3) Deputy Administrator of General Services.

(4) Associate Administrator of the National Aeronautics and Space Administration.

* * * * * * *

(93) [Administrator of the] *Members*, National Credit Union Administration *Board* (*2*).

* * * * * * *

SECTION 106 OF THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970

SEC. 106. (a) * * *

(b)(*1*) A bank shall 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—

[(1)](*A*) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

[(2)](B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

[(3)](C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

[(4)](D) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or

[(5)](E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The Board may by regulation or order permit such exceptions to the foregoing prohibition as it considers will not be contrary to the purposes of this section.

(2)(A) No bank which maintains a correspondent account in the name of another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(B) No bank shall open a correspondent account at another bank while such bank has outstanding an extension of credit to an executive officer or director of, or other person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, the bank desiring to open the account, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(C) No bank which maintains a correspondent account at another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(D) No bank which has outstanding an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns,

controls, or has the power to vote more than 10 per centum of any class of voting securities of, another bank shall open a correspondent account at such other bank, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(E) For purposes of this paragraph, the term 'extension of credit' shall have the same meaning given it in section 23A of the Federal Reserve Act and the term "executive officer" shall have the same meaning given it under section 22(g) of the Federal Reserve Act.

(F)(i) Any bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such bank who violates any provision of sections 106(b)(2)(A) through 106(b)(2)(E) of this section, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, or the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank, by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or pthers) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(ii) In determining the amount of the penalty the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(iii) The bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 to title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subsection (iv). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(iv) Any bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be. The Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings

of the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall be set aside if found to be unsupported by substantial evidence as provided by section 706 (2) (E) of title 5, United States Code.

(v) If any bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(vi) The Comptroller of the Currency, the Board and the Federal Deposit Insurance Corporation shall promulgate regulations establishing procedures necessary to implement this section.

(vii) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(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 correspondent 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) Each insured bank shall compile the reports filed pursuant to subparagraph (G) (i) and forward such compilation to the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, and the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank.

(iii) Each insured bank shall include in the report required to be made under subsection (k) (1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(k) (1)) a list by name of each executive officer or

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 the bank who files information required by subparagraph (G) (i) and the aggregate amount of all extensions of credit by correspondent banks to such executive officers or stockholders of record, any company controlled by such executive officers or stockholders, and any political or campaign committee the funds or services of which will benefit such executive officers or stockholders, or which is controlled by such executive officers or stockholders.

ACT OF MARCH 9, 1933

AN ACT To provide relief in the existing national emergency in banking, and for other purposes

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TITLE I

* * * * * * *

SEC. 4. (*a*) In order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the National Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be precribed by the Secretary of the Treasury, with the approval of the President. Any individual, partnership, corporation, or association, or any director, officer or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdimeanor and, upon conviction thereof, shall be fined not more than $10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years. Each day that any such violation continues shall be deemed a separate offense.

(*b*) *In the event of natural calamity, riot, insurrection, war, or other emergency conditions occurring in any State whether caused by acts of nature or of man, the Comptroller of the Currency may designate by proclamation any day a legal holiday for the national banking associations located in that State. In the event that the emergency conditions affect only part of a State, the Comptroller of the Currency may designate the part so affetced and may proclaim a legal holiday for the national banking associations located in that affected part. In the event that a State or a State official authorized by law designates any day as a legal holiday for either emergency or ceremonial reasons for all banks chartered by that State to do business within that State, that same day shall be a legal holiday for all national banking associations chartered to do business within that State unless the Comp-*

troller of the Currency shall by written order permit all national banking associations located in that State to remain open. For the purposes of this subsection the term "State" includes any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory, dependency, or insular possession of the United States.

* * * * * * *

TITLE III

* * * * * * *

SEC. 302. (a) Notwithstanding any other provision of law, whether relating to restriction upon the payment of dividends upon capital stock or otherwise, the holders of such preferred stock shall be entitled to receive such cumulative dividends [at a rate not exceeding 6 per centum per annum] and shall have such voting and conversion rights and such control of management, and such stock shall be subject to retirement in such manner and upon such conditions, as may be provided in the articles of association with the approval of the Comptroller of the Currency. The holders of such preferred stock shall not be held individually responsible as such holders for any debts, contracts, or engagements of such association, and shall not be liable for assessments to restore impairments in the capital of such association as now provided by law with reference to holders of common stock.

(b) No dividends shall be declared or paid on common stock until the cumulative dividends on the preferred stock shall have been paid in full; and, if the association is placed in voluntary liquidation or a conservator or a receiver is appointed therefor, no payments shall be made to the holders of the common stock until the holders of the preferred stock shall have been paid in full the par value of such stock plus all accumulated dividends.

* * * * * * *

SECTION 1 OF THE ACT OF SEPTEMBER 28, 1962

AN ACT To place authority over the trust powers of national banks in the Comptroller of the Currency

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right 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 which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

(b) * * *

* * * * * * *

(k) In addition to the authority conferred by other law, if, in the opinion of the Comptroller of the Currency, a national banking asso-

ciation is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise, the powers granted by this section or otherwise fails or has failed to comply with the requirements contained therein, the Comptroller may issue and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this section. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should issue against the association. Such hearing shall be conducted in accordance with the provisions of subsection (h) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), as amended, and subject to judicial review as therein provided, and shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or later date is set by the Comptroller at the request of any association so served. Unless the association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent, or if upon the record made at any such hearing, the Comptroller shall find that any allegation specified in the notice of charges has been established, the Comptroller may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this section, except that such order shall permit the association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination. A revocation order shall become effective not earlier than the expiration of thirty days after service of such order upon the association so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

SECTION 2 OF THE ACT OF AUGUST 17, 1950

AN ACT To provide for the conversion of national banking associations into and their merger or consolidation with State banks, and for other purposes.

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CONVERSION OF NATIONAL BANK INTO AND MERGER OR CONSOLIDATION WITH STATE BANK; PROCEDURE

SEC. 2. A national banking association may, by vote of the holders of at least two-thirds of each class of its capital stock, convert into, or merge or consolidate with, a State bank in the same State in which the national banking association is located, under a State charter, in the following manner:

(a) * * *

(b) A shareholder of a national banking association who votes against the conversion, merger, or consolidation, or who has given notice in writing to the bank at or prior to such meeting that he dissents from the plan, shall be entitled to receive in cash the value of the shares held by him, if and when the conversion, merger, or consolidation is consummated, upon written request made to the resulting State bank at any time before thirty days after the date of consummation of such conversion, merger, or consolidation, accompanied by the surrender of his stock certificates. The value of such shares shall be determined as of the date on which the shareholders' meeting was held authorizing the conversion, merger, or consolidation, by a committee of three persons, one to be selected by [unanimous] *majority* vote of the dissenting shareholders entitled to receive the value of their shares, one by the directors of the resulting State bank, and the third by the two so chosen. The valuation agreed upon by any two of three appraisers thus chosen shall govern; but, if the value so fixed shall not be satisfactory to any dissenting shareholder who has requested payment as provided herein, such shareholder may within five days after being notified of the appraised value of his shares appeal to the Comptroller of the Currency, who shall cause a reappraisal to be made, which shall be final and binding as to the value of the share of the appellant. If, within ninety days from the date of consummation of the conversion, merger, or consolidation, for any reason one or more of the appraisers is not selected as herein provided, or the appraisers fail to determine the value of such shares, the Comptroller shall upon written request of any interested party, cause an appraisal to be made, which shall be final and binding on all parties. The expenses of the Comptroller in making the reappraisal, or the appraisal as the case may be, shall be paid by the resulting State bank. The plan of conversion, merger, or consolidation shall provide the manner of disposing of the shares of the resulting State bank not taken by the dissenting shareholders of the national banking association.

SECTION 345 OF THE BANKING ACT OF 1935

SEC. 345. If any part of the capital of a national bank, State member bank, or bank applying for membership in the Federal Reserve System consists of preferred stock, the determination of whether or not the capital of such bank is impaired and the amount of such impairment shall be based upon the par value of its stock even though the amount which the holders of such preferred stock shall be entitled to receive in the event of retirement or liquidation shall be in excess of the par value of such preferred stock. If any such bank or trust company shall have outstanding any capital notes or debentures of the type which the Reconstruction Finance Corporation is authorized to purchase pursuant to the provisions of section 304 of the Emergency Banking and Bank Conservation Act, approved March 9, 1933, as amended, the capital of such bank may be deemed to be unimpaired if the sound value of its assets is not less than its total liabilities, including capital stock; but excluding such capital notes or debentures and any obligations of the bank expressly subordinated thereto. Notwithstanding

any other provision of law, the holders of preferred stock issued by a national banking association pursuant to the provisions of the Emergency Banking and Bank Conservation Act, approved March 9, 1933, as amended, shall be entitled to receive such cumulative dividends [at a rate not exceeding six per centum per annum] on the purchase price received by the association for such stock and, in the event of the retirement of such stock, to receive such retirement price, not in excess of such purchase price plus all accumulated dividends, as may be provided in the articles of association with the approval of the Comptroller of the Currency. If the association is placed in voluntary liquidation, or if a conservator or a receiver is appointed therefor, no payment shall be made to the holders of common stock until the holders of preferred stock shall have been paid in full such amount as may be provided in the articles of association with the approval of the Comptroller of the Currency, not in excess of such purchase price of such preferred stock plus all accumulated dividends.

PUBLIC LAW 94-222

An act to extend the State Taxation of Depositories Act

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SEC. 3. (a) * * *

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(c)(1) Section 167(a) of the Truth in Lending Act (15 U.S.C. 1666f) is amended by inserting "(1)" immediately after "(a)" and by adding at the end thereof the following new paragraph:

"(2) No seller in any sales transaction may impose a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means.".

[(2) The amendment made by paragraph (1) shall cease to be effective upon the expiration of three years after the date of enactment of this Act.]

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ADDITIONAL VIEWS OF MR. ST GERMAIN

This legislation did not arrive solely by way of Calhoun, Ga. It had stops on the way at such scattered points as San Diego, Calif.; Garden City, N.Y.; Chattanooga, Tenn.; Carrizo Springs, Tex.; Notsaluga, Ala.; Chicago, Ill. * * * all sites of bank failures in recent years.

Few bills have been sent to the floor with more studies, investigations, hearings and debate to support their provisions. Studies of banking problems with which this legislation deals, extend back more than a decade in the committee. Our subcommittee has conducted hearings and investigations in Washington and in the field of the major bank failures since 1973. Many of the provisions of H.R. 13471 have been before the committee in various forms in previous Congresses and the markup on the current bill extends over two sessions of this Congress.

The end product is a good solid piece of reform legislation that can, if properly administered, mean a new day for bank regulation in this nation. It clearly emphasizes that bankers and savings and loan executives are operating with other people's money and that charters for financial institutions are not franchises to establish playpens for insiders.

No one suggests that H.R. 13471 will solve all problems, but if the regulators will take these new powers seriously and follow the letter and spirit of the statutory guidelines, it is reasonable to suggest that the situations which brought down U.S. National Bank, Franklin National Bank, and Hamilton National Bank can be avoided and that statewide, Rent-A-Bank schemes and other quickie takeovers can be curbed. More importantly, this legislation gives new emphasis to the interests of the public in safe, sound and responsive banking and these reforms should do much to increase and maintain the people's confidence in our financial system.

As the American Bankers Association is fond of reminding us, the U.S. financial system is sound and strong. No one seriously questions its overall stability. But, this does not give either the Congress or the Federal supervisory agencies an excuse to ignore and paper over the problems that do exist or to describe every bank failure as an "isolated incident."

The American public will no longer buy such head-in-the-sand approaches. It is unrealistic to expect consumers—people who use bank services—to deluge the Congress with mail on this subject or to compete with the manufactured "grass roots" expressions of the American Bankers Association's contact banker network. But, we are deluding ourselves if we under estimate the public on these issues. The public is aware and concerned and awaiting action by its elected representatives.

Many credit Bert Lance's troubles for bringing this legislation to the forefront. This is a gross exaggeration because Mr. Lance and his banking colleagues in Georgia did not invent insider self dealing and this committee was attempting to address these issues before the Lance affair became a long-running show on the evening news.

However, it is fact that Bert Lance and the banking practices at Calhoun National and the National Bank of Georgia did serve a massive educational purpose. Suddenly, the arcane banking phrases of correspondent accounts and compensating balances appeared on the front pages of the newspapers and the prime news slots of radio and television. The public quickly became aware that a bank insider—under the current state of the art of regulation—could pretty well do what he pleased with his bank. People became aware that banks, despite the high-sounding phrases of the charters, could be operated in large part for insiders, rather than the public.

The public has not forgotten these crash banking courses and H.R. 13471 attempts to make certain that insider activities have some definite limits.

The committee, in my opinion, failed to live up to the high standards of the overall bill in three areas: (1) interlocking directorships, (2) holding companies; and (3) variable rate mortgages.

While the bill provides important prohibitions against interlocks among depository institutions, it fails to address the very real problems of interlocks between depository and nondepository institutions—essentially banks and insurance companies. Efforts to close the loopholes in the Clayton Act which threaten to leave these interlocks unchallenged—even in highly anti-competitive situations—were defeated in the committee.

The closing of the loopholes was strongly supported by the Justice Department, the Treasury Department, and the Federal Reserve Board. Both the Comptroller of the Currency and the Federal Deposit Insurance Corporation endorsed earlier versions of the legislation which contained the provisions closing the loophole. Despite this array of support, the committee defeated efforts to assure that anticompetitive situations could be challenged.

The effort to close this loophole is not an esoteric question of antitrust. We are talking about the lifeline of housing, community development, job-producing industries and the critical need for a free flow of credit into these areas. Anticompetitive interlocks can tie up credit resources, create unproductive and discriminatory financial decisions to the detriment of communities and the entire Nation. Anticompetitive situations stifle opportunity and the Congress should not sit idly by on this issue.

The sad part about the situation is that the big insurance companies and the big banks have already conceded in sworn statements that they are in substantial competition with each other and that they do maintain interlocking directorates.

A quote from just one stipulation in a pending case illustrates the point:

> All signatories hereby stipulate and agree that Bank of America and Bankers Trust, by virtue of their business and location of operations, have been and are now competitors of

Prudential in interstate commerce in the extension of mortgage and real estate loans and that such competition is not insubstantial.

But the insurance companies and the banks, while admitting the facts, tell the courts, in effect, "Judge we're guilty but the law doesn't apply to us."

So far, this argument is prevailing in the courts, and it is up to the Congress to close the loophole and end the favored treatment for these giant institutions that control so much of the Nation's credit.

The committee also made a serious mistake in approving by a 4-vote margin—24 to 30—authorization for variable rate mortgages where State law allows such instruments. Neither the subcommittee or the full committee conducted hearings on this important issue—an issue which will have heavy impact on consumers all over this Nation.

While I must sincerely question the idea of shifting the burden for inflation to the homebuyer by allowing lenders to vary rates during the life of a mortgage, I am even more appalled that an issue of such magnitude would be undertaken—and accepted—without testimony, without knowledge of the ultimate impact, and without assuring consumers of necessary protections. The House should have an opportunity to correct the committee's error.

The committee also missed a great opportunity to provide long overdue repairs to the Bank Holding Company Act. We did stop bank holding company raids on independent insurance agents, but we should have done more.

Particularly, the committee should have retained provisions that would have given the Federal Reserve a stronger anticompetitive test on acquisition of banks by holding companies and provided greater procedural safeguards for the public and small businessmen threatened by holding company takeovers.

Today holding companies control more than two-thirds of the Nation's banking assets and in some States one or two holding companies are dominating the financial scene. It is time for the Congress to provide strong guidelines for the regulation of these institutions and to prevent them from swallowing up, willy nilly, small businesses and independent banks.

Despite these three major areas where the committee fell short, H.R. 13471 is a very good piece of legislation, well worth the year-long effort to bring it to the floor. It addresses the public's demand for action in an area the Congress has too long ignored.

FERNAND J. ST GERMAIN.

ADDITIONAL VIEWS OF CONGRESSMAN FRANK ANNUNZIO ON H.R. 13471 THE FINANCIAL INSTITUTIONS REGULATORY REFORM ACT

Although I voted favorably to report H.R. 13471, I stand in total opposition to an amendment to title XVII allowing federally chartered savings and loans to offer variable rate mortgages in States where State chartered savings and loans currently offer these alternative mortgage instruments.

This amendment is in total disregard to the best interest of our Nation's consumers and homebuyers. If passed into law, this will surely result in higher interest rates and cause great uncertainty and confusion to borrowers.

The Variable Rate Mortgage (VRM) is the most controversial of several loan plans springing up across the country, which are commonly referred to as Alternative Mortgage Instruments (AMIs). While I support some of these plans, specifically the Graduated Mortgage Payment loan (GPM) and the Reverse Annuity Mortgage (RAM), I do not believe that the VRM contains the consumer benefits these other plans offer.

In defining the VRM, many of the problems in the loan plan become readily apparent. A VRM is a loan by which the interest rate changes periodically to reflect changes in the money market. The interest rate is tied to some reference index that corresponds money changes, so future payments are not known at the time the loan is originated.

Theoretically, the interest rate can go either up or down. However, the truth is that interest rates have been climbing steadily for the past 25 years and there is little or no evidence this trend will be reversed. In 1950, the interest rate on a home mortgage rounded out at about 4 percent. By the early 1960's, the prevailing rate was fast approaching 6 percent. By 1970, the rate had reached 8½ percent. And today's interest rates on homes are approaching 10 percent in most parts of the country.

Consider the homeowner who opted for a VRM in 1950, had they been available at that time, compared to a homeowner who chose the standard fixed rate mortgage. Further assume that both parties had not sold their homes but were still paying on a 30-year mortgage. The homeowner with the fixed rate would still be paying 4-percent interest, while the homeowner who opted for a VRM would be paying two and one half times as much in interest.

Of course, it is not very probable that we will experience as dramatic an increase in interest rates in the next two decades. But, even a slight increase in the rate means a hefty price increase for consumers and represents a tremendous profit for the thrift institutions.

I do realize the need for alternative mortgage instruments in our country, for the benefit of the thrift institutions and consumers alike.

Consumers have expressed a great deal of interest in some of the plans, especially the GMP and the RAM. GPM loans are designed with the young homeowner in mind and allow the monthly payments to rise in accordance to raises in the young homeowner's income. Both the rate of increase and the interest rate are fixed throughout the life of the loan. This type of loan would allow an estimated two and one half million young couples to buy homes now.

Of even greater interest to a wide segment of our population is the RAM, which allows the older homeowner to draw a monthly check based on the equity of their home without being forced to sell. As property taxes spiral, many older Americans cannot afford to continue living in homes they have bought and paid for in full.

H.R. 12052, the American Dream Act, would allow federally chartered savings and loans to offer GPMs and RAMs. This legislation has been co-sponsored by 16 members of the Banking Committee and I feel it is the appropriate vehicle to initiate a wider use of AMIs. This legislation would allow the two plans that consumers have shown the greatest interest in being made available on a wider scale. Consumers are eager to try alternative mortgage plans. A recent survey on AMIs showed that 87 percent of the people surveyed want AMIs instead of being limited to the conventional fixed payment type system. However, when the survey broke down the consumer reaction to each type of AMI, a different picture emerged. Some 82 percent of those surveyed indicated they did not favor the VRM. And countless consumer, labor and civil rights groups have actively opposed VRMs.

Another problem occurs in defining VRMs. As already stated, the interest rate is determined by "some reference index" that reflects changes in the money market. What this index is would presumably be left to the individual financial institution. This means that the market index would vary not only from State to State but from thrift institution to institution. This would surely add to the already large problems of relating the technicalities of VRMs to consumers. With all other problems put aside, and there are many, this uncertainty alone warrants careful consideration.

For VRMs to be acceptable to consumers, they must contain substantial consumer safeguards. This is true of all AMIs, but is most vital in the case of the VRM. For the VRM, the consumer safeguards should be specific and detailed. As the amendment stands, it calls for some safeguards but in vague terms. The specifics are left to the discretion of the financial institutions with limited guidelines from the Federal Home Loan Bank Board (FHLBB). I feel the problems inherent in VRMs warrant Congressional consideration and debate upon publication of the FHLBB's guidelines for VRMs. This amendment is giving the FHLBB carte blanche to regulate VRMs as they choose.

Another problem with the VRM relates to the Federal Reserve Board's regulation Q, which sets interest rate ceilings on time and savings deposits. Congress has considered abolishing this rate control authority several times since enactment of regulation Q in 1966, and has yet to reach any agreement on this issue. With regulation Q in mind, it becomes even more apparent why VRMs are far too lopsided in favor of the thrift institutions. Much of the rationale for VRMs is that it will allow the thrift institutions to provide more funds for

housing and permit the saver-depositor to receive a higher rate of interest on his savings. For this argument to hold water precludes the elimination of regulation Q. As it stands, VRMs would allow the nation's thrift institutions to pass on the burden of inflation to consumers without allowing the saver-depositor to see a greater return on his investment. In essence, we would be authorizing a system which offers the best of both worlds to the financial institutions while offering the consumer the worst possible deal.

The California Experiment

Although VRMs are offered by a small number of thrift institutions in other parts of the country, the only widespread use of VRMs has been in California. Prior to 1975, only a few thrift institutions in California offered the plan, but in 1975 the five largest State chartered savings and loans in California began offering VRMs to homeowners either on a partial or exclusive basis. All five of these savings and loans were among the 10 largest associations in the country. They were soon joined by other large and small institutions. An estimated three quarters of all mortgages on one to four-family homes extended by California savings and loans since April 1975 have been VRMs. According to California's Department of Savings and Loan, VRMs now comprise an estimated $13 billion of the total $70.7 billion in outstanding mortgages in the State.

How are consumers reacting to the loans? To find this out, the FHLBB initiated a major research undertaking know as the Alternative Mortgage Instruments Study (AMIS). The study's purpose was to provide a comprehensive review and evaluation of a number of proposed new mortgage instruments, including the VRMs. Included in the three-volume study was a survey of consumer reaction to VRMs in California.

One of the main arguments for initiating VRMs is that they give the consumer a broader choice in home financing. Before VRMs, the prospective home buyer's only choice in California was a conventional fixed rate mortgage (FRM). the AMIS shows that many Californians still only have one choice in home financing, but now that single choice is the VRM. California residents often accept the VRM without considering any other alternatives because the VRM is the only loan plan being offered by many state chartered savings and loans. Also, it seems the possibility of the FRM is not even discussed with most homeowners who "choose" VRMs. Of those surveyed in the AMIS, only 37 percent of those who "choose" VRMs were offered the FRM as an alternative means of financing their homes.

Consumer reaction to VRMs in California is also to be considered. The study asked homeowners with FRMs and VRMs to rate their perspective mortgage plans. I quote from the study:

> The data clearly shows that fixed rate mortgage (FRM) respondents were considerably more loyal to the FRM than VRM respondents were to the VRM. At the same time, VRM respondents were the most likely to switch (from VRMs to FRM) * * * In addition to merely reporting whether they would repeat or switch, respondents also provided some rea-

> sons for their hypothetical behavior * * * The most frequent reasons reported for switching among VRM respondents were that there is no advantage to the borrower, the VRM is unstable, and there is a real threat that interest rates will increase.

At the time this study was conducted, the interest rate had not yet risen on VRMs that had been issued since 1975. If consumer reaction is already negative to VRMs without an increase in the interest rate, consider consumer reaction this October when the rates are raised. An article in the Wall Street Journal, July 6, 1978, was headlined, "Cost of Variable Rate Mortgage Expected to Rise for Many Californians in October." Analysts predicted that mortgage rates will probably rise 15 to 22 basis points, or 0.15 to 0.22 percentage points. This translates to an increase of $4.50 per monthly payment on a 30 year, $40,000 loan made in 1976 at 9-percent interest. If the homeowner chose to extend his monthly payments at the same rate per month, rather than increase the monthly payment, this would extend this hypothetical mortgage a full two years. And there was no assurance from the savings and loans that the interest rates will not rise again in 1978.

VRMs are also posing problems to persons trying to sell their homes in California. In many cases, the sellers of existing homes have required buyers to borrow from the same lender they borrowed from in order to avoid prepayment penalties that can run as high as $1,000. However, some people are refusing to buy homes after discovering that in taking the existing mortgage, they must gamble wtih a variable rate. This will surely be a source of greater problems to many homeowners when the VRMs rise in October and if they continue to rise, which seems highly possible.

There is no way for me to cover all of the possible problems VRMs could pose to consumers in this short space. I have attempted to highlight on some of the major problems occurring in California. And if this amendment is passed, California is not the only State which will experience interest rate increases under VRMs. The other States affected by this amendment are: Connecticut, Iowa, Indiana, Kansas, Louisiana, Maine, Massachusetts, Missouri, New Hampshire, New Jersey, North Carolina, Nebraska, Ohio, Vermont, Washington, and Wisconsin.

And even more States will be affected by the VRM. In fact, this legislation could throw the entire home loan market in disarray. As the VRM becomes available and accepted in more and more States, the mortgages funds will quickly become concentrated in these areas because of the higher interest rates. We will shortly see a severe shortage of funds in States without VRM. This could effectively cripple the housing industry and further drive up interest rates.

I find it particularly ironic that California's homeowners who currently hold VRMs will soon be experiencing interest rate increases. Last month, California citizens enacted Proposition 13 as a signal to all levels of government that taxpayers are fed up with runaway taxes. With the advent of VRM rate increases, homeowners may find their savings in property taxes eaten up by interest rate increases on their home mortgages.

I also find it ironic that this amendment would come under the guise of regulatory reform of our nation's financial institutions. By allow-

ing VRMs, we may be perpertrating one of the biggest consumer rip-offs to ever come out of Congress. I view this legislation as nothing more than a governmental sanction to legalize loan sharking.

MANNER OF LEGISLATION

I also greatly oppose this amendment because of the nature in which it was legislated. The impact of allowing VRMs is too great to be hastily added on this bill, in a back door fashion, without hearings and a concerted effort to gauge the full effects of VRMs on our economy and on consumers. If VRMs are to be ultimately judged in the best interest of consumers, extensive consumer safeguards are mandatory. FHLBB proposals for VRM regulations have never met with Congressional or consumer group approval in the past and it is mere conjecture to assume that regulation pending this Act would be satisfactory.

With so many conflicting claims surrounding VRMs, I feel Congress is the only appropriate agency to determine these safeguards. Congress has considered allowing VRMs before, in May of 1975. At that time the Congress voted by a two to one margin to prohibit the FHLBB from permitting Federal savings and loans to offer VRMs. The reasons cited then imposing the prohibition still hold true—consumer safeguards as proposed by the FHLBB are not sufficient, regulation Q is still in effect, and the mortgage plan has not been in use long enough to guage its full impact on the economy.

Looking back to the past vote on VRMs, it becomes apparent that the majority of California Congressmen did not favor VRMs. When voting to prohibit VRMs, in 1975, 26 California Congressmen voted to prohibit VRMs, while only 14 California members voted for VRMs. And in talking with California members recently, it is my impression that the majority of the California Delegation still oppose VRMs.

When this amendment was considered by the Banking Committee on June 28, 1978, it passed by a 24–20 vote. This slim margin of approval indicates that a great deal of controversy still surrounds the VRM. Before we saddle our Nation's consumers with high interest rates, we should consider all the consequences. It is totally unfair to use consumer's hard earned money as a testing ground for the success or failure of VRMs.

For all of these reasons, I plan to do everything I can to see that this amendment is defeated on the House floor.

FRANK ANNUNZIO.

ADDITIONAL VIEWS ON TITLE 18, ALTERNATE MORTGAGE INSTRUMENTS, OF HON. GERRY M. PATTERSON, HON. MARK W. HANNAFORD, AND HON. JOHN H. ROUSSELOT

The Current Situation and the Need for Title 18

Title 18 is important to the dual-banking system and to the consumer served by that banking system. We would, therefore, like to outline the basic issues involved in authorization of alternative mortgage instruments (AMI's).

In a number of States, State-chartered savings and loan associations and commercial banks now offer alternative mortgage instruments. Federally chartered savings and loans may not. For example, in California, State-chartered associations have been offering variable rate mortgages (VRM's) for several years and other alternative mortgages since early 1978. Currently, the 10 largest savings and loans in that State have over 50 percent of their portfolios in alternative mortgages with great public acceptance. In addition, a number of the large commercial banks in the State are heavily into AMI's. The only group currently excluded from competing on an equal footing is the smaller group of federally chartered savings and loan associations. Similar situations exist in a number of other States.

These events have created a severe competitive imbalance between State and federally chartered savings and loans in certain States primarily in California. With the authorization of new money market certificates and the current rising interest rates, the imbalance will become more noticeable as State-chartered institutions are able to deal more effectively with the cost of money factor. Unless Congress grants competitive parity now, the only answer for some Federal savings institutions may be to convert to State charters. We do not believe that such action will be necessary if Congress and the Federal regulators act now to pass and implement Title 18, Alternative Mortgages, of H.R. 13471.

This title simply authorizes use of alternative mortgages for federally chartered institutions in those States where State-chartered institutions have such authority. The title also specifies certain consumer safeguards such as documented choice between fixed-rate and alternative mortgages, prohibitions against prepayment penalties and limitations on interest-rate increases. Additionally, title 18 specifies that an institution electing to offer alternative mortgages must do so for 4 years or such time as specified by the Federal Home Loan Bank Board (FHLBB).

We believe that these provisions are reasonable and constructed so as to protect the consumer while enhancing the competitive balance between State and federally chartered savings and loan institutions.

TITLE 18 IS PRO-CONSUMER

This title provides for ample consumer safeguards. The language specifies that the FHLBB's regulations contain "adequate consumer safeguards and protections, including documented choice between alternative and conventional fixed rate mortgage instruments, prohibitions against prepayment penalties and limitations on interest rate increases." (See section 1802.) It is clear that the FHLBB's regulations to authorize alternative mortgages for Federal savings and loans will recommend a number of consumer safeguards which will include but not be limited to the protections outlined above. By letter dated July 13, 22 members of the Banking, Finance and Urban Affairs Committee, including 18 Democrats, requested that the FHLBB issue proposed consumer safeguards as soon as possible.

In addition, section 1804 further protects the consumer by requiring that alternative instruments when offered should be available for a "continuous period of 4 years or whatever time period the FHLBB determines is appropriate." This provision, therefore, would prevent situations in which variable rate mortgages would be offered solely during periods of forecasted interest rate increases. Without this provision, there could be a serious lack of competitive parity in the offering of VRM's.

Extending to federally chartered savings and loans the authority to offer AMI's also grants consumers the right to choose the type of instruments which best suits their needs. The FHLBB's "Alternative Mortgage Instruments Research Study" completed in November 1977, reports that surveys conducted during the course of the study indicate that "most households want a choice of AMIs . . .". Furthermore, the Board states "that an overwhelming percentage of borrowers like the idea of having a choice among alternative mortgage forms. They consider mortgage alternatives as 'pro-consumer' and want alternatives to the standard fixed payment mortgage." It is difficult to understand how the consumer could possibly be disadvantaged by being afforded a *free choice* of mortgage instruments.

With respect to the VRM, a type of alternative instrument, a popular criticism is that its benefits would accrue chiefly to families and individuals of greater upward mobility. To the contrary, the FHLBB study says that VRMs would not discriminate against low-income and minority groups:

> Analysis of the California VRM experiment to date * * * indicates that this is not the case. In fact, survey results indicate that the socio-economic profile of VRM borrowers appears virtually indistinguishable from that of SFPM (standard fixed price mortgage) borrowers.

Finally, during debate of the provisions of this title in full Committee, several recommendations were outlined for consideration by the FHLBB in drafting regulations to implement a VRM program. These recommendations deserve the Board's careful attention and are listed below:

> 1. The cost of funds index should be a composite of more than one index and should reflect declines as well as increases over time.

In this manner, consumers will have a better opportunity for decreased interest payment.

2. The frequency of upward adjustments of variable rate mortgage payments should be limited to once a year. Downward changes should, however, take place as often as the index indicates they should.

3. Annual changes in interest rates should be limited to no more than one-half of 1 percent. Also, over the life of the instrument, interest rate increases should be permitted to increase by no more than 2.5 percent.

4. Downward adjustments in the rate, as indicated by the index, should be mandatory.

5. The initial grace period during which no interest rate increase will occur should be 1 year. However, downward adjustments as indicated by the index during this time should be implemented.

6. Consumers must be given the right to reasonable notice of proposed rate changes—especially rate increases. It is recommended that 45 days notice be provided whenever a rate increase becomes necessary.

7. Borrowers should be given the option of reducing scheduled increases by extending the term of the mortgage up to a maximum of 40 years. Similarly, borrowers should be permitted to opt for a shorter term in lieu of a scheduled decrease.

Why Arguments Against Title 18 Are Unfounded

During the consideration of the alternative mortgage title by the Banking, Finance and Urban Affairs Committee, some questions were raised which we feel should be rebutted in this committee report.

One of the points raised against authorization of alternative mortgages at this time was a question of the need for further hearings. We believe that this is not a valid argument for several reasons. First, hearings have been held in previous Congresses on this topic by the Banking committees of both Houses. In addition, during the 95th Congress, the Home Ownership Task Force of the Housing Subcommittee has held extensive hearings on this and other topics. The FHLBB in November 1977 issued a three-volume report "Alternative Mortgage Instrument Research Study" which we are confident the Board has made available to all members of this Committee and will gladly make available to any other Member of Congress. Further, we have the practical experience of the State of California where State-chartered institutions have offered AMIs. These items provide us with substantial data upon which to act. If we delay any longer for more hearings, we only put federally chartered institutions further behind their competitors. We must face the fact that AMIs are here and here to stay.

A fear has been voiced that this title puts the states in the position of setting policy for federally chartered savings institutions. With the additional safeguards written into the title and with the latitude in regulatory authority given to the FHLBB, we do not view this title as encroaching upon federal policy-making ability. The state authorization in this Title is simply a triggering mechanism based

upon political realities of the time. In the long-run, we hope that the Congress and the FHLBB will take the lead in devising a thorough, innovative program for AMIs nationwide.

During committee consideration of title 18, a threat was raised to use this new authority to deprive thrift institutions of the differential provided by regulation Q. We believe this is absurd. Regulation Q is a method of encouraging needed allocation of money to housing. We do not believe that the granting of certain powers to federally chartered savings and loans—powers which are already available to State-chartered savings and loan and commercial banks—can justifiably be used as an excuse to deprive all thrift institutions of the differential. The problem here is not one of competition for deposits between all thrifts and the commercial banning sector. It is one of the lack of competitive parity for one group of thrifts versus the entire financial community.

A financial argument used in Committee labeled AMIs as being anti-consumer. Title 18 mandates choice in the selection of mortgage instruments. It is, indeed, difficult to comprehend how such a choice can be construed as being anti-consumer. Secondly, there are numerous consumer safeguards included in the legislative language. Third, AMIs will serve the diverse needs of consumers more effectively than is possible under the present standard fixed prime mortgage system.

It has also been argued that the AMIs, and particularly the VRM, shift the burden of risk from the institution to the consumer. It is imperative that we realize that this is not the case. When the cost of money goes up, that cost is passed on to borrowers seeking loans at that time. Under the current system, such costs include some margin to cover loans in the institution's portfolio which were made at lower rates. Variable rate mortgages will spread the risk among all mortgage holders having VRMs rather than having one class of borrowers (those entering the mortgage market) subsidizing another (those who already hold mortgages at cheaper interest rates).

We believe that the provisions of title 18 are important to the consumer and to the survival of long-term mortgage lenders. While AMIs do not provide answers to all of our housing problems, they will contribute to meeting the needs of families and individuals in the housing market.

MARK W. HANNAFORD.
JERRY M. PATTERSON.
JOHN H. ROUSSELOT.

ADDITIONAL VIEWS OF MR. LAFALCE

The efforts of all of the members of the subcommittee and the committee in reaching the final accord on this bill were substantial, and it was a most satisfying process. The final product merits the support of the Members of the House.

RIGHT TO PRIVACY

Title XI creating the right of the individual to financial privacy is a significant step in many respects. Of particular note is the support by Federal law enforcement agencies of the concept of financial privacy and their assent to this title. Until recently, agencies such as the Justice Department, the Treasury Department, and the Securities and Exchange Commission simply opposed any such legislation. During the consideration of title XI in subcommittee and committee, however, these agencies worked long and hard with members of the committee to achieve a piece of legislation which would be workable, and which they could support. These agencies are to be highly commended for their recognition of the need for this legislation and the basic shift in philosophy which enables them to now support the concept, and, in great part, this bill.

The process of amending this title was carried on only in the full committee, the subcommittee having agreed to defer consideration until that time. Two amendments adopted by the committee are troublesome to me because of the adverse impact they would have on the efficient enforcement of Federal laws. The right to financial privacy must be balanced with the right of members of our society to full and efficient enforcement of our Federal laws, and it is my belief that these two amendments would upset the very delicate balance that was achieved in the long and arduous discussions over the compromise which John Cavanaugh and I offered.

The broader of the two amendments provides that financial records obtained pursuant to title XI "shall not be used or retained in any form for any purpose other than the specific statutory purpose for which the [records were] originally obtained," and further that such records shall not be transferred to another Government agency "except where the transfer . . . is specifically authorized by statute."

Restricting the use of lawfully acquired information to the original purpose for which it was obtained is contrary to established legal principles found both in case law and the Privacy Act of 1974. The generally applicable rule is that, once the privacy interest in records has been legitimately breached through the use of legal process such as a subpena or a warrant, unanticipated information in such records disclosing a separate crime or civil violation may be used by law enforcement authorities to investigate or prosecute that separate offense.

Some of the practical effects resulting from passage of this amendment in its current form would be the following:

(1) The provision adopted by the House Banking Committee will create the anomaly that, if the Government acquired financial records pertaining to an individual from his bank, it could not use information contained therein for a purpose other than the "specific statutory purpose" for which the records were obtained, but if it seized the records lawfully from the individual's home or office, no such restriction would apply. Thus, the more intrusive means of gathering the information would result in acquiring information which could be used with fewer restrictions. Law enforcement officials would have little incentive to use the less invasive means of obtaining bank records rather than the individual's own records. This does not appear to be consistent with the aim of establishing greater safeguards for personal privacy.

(2) Each time an agency seeks to use the records to investigate a violation of law independent of the one which caused the record to be initially secured, it would presumably somehow have to "reobtain" the record for the specific purpose, or, if the violation were of a law within the jurisdiction of another agency, notify that other agency to obtain the records from it, using the statutory procedures. For example, if the IRS acquired tax records for the purpose of investigating suspected tax exasion and, in the process of reviewing financial records, discovered a different violation of the tax laws, the language of the amendment would seem to require that the same records be obtained again because a new "statutory purpose" is involved. This would seem to require unnecessary administrative burdens and unreasonable delays in law enforcement activities.

(3) The other aspect of this amendment prohibits the physical transfer of financial records lawfully obtained under title XI to another Government agency except where the transfer is "specifically authorized by statute." It seems that this prohibition is intended to overturn the "routine use" concept embodied in the Privacy Act of 1974, and to preclude the transfer of financial records between Government agencies unless a statute affirmatively and specifically authorizes such transfer. This would preclude, to take one example, the transfer of records from IRS to the Tax Division of the Justice Department. To require Government agencies to reobtain records from the financial institution would subject the financial institution and Government agencies to needless delay and costs. We believe that comparable privacy protection would be insured if the customer were given notice, within a reasonable time period, of any transfers of records, between Government agencies.

The second and narrower of the two amendments that was adopted by the House Banking Committee relates to the use of financial records obtained by means of a Federal grand jury subpena. The amendment provides that financial records (1) must be actually presented to the grand jury, (2) shall be used only for the purpose of considering whether to issue an indictment by the grand jury, and of prosecuting a crime for which an indictment is issued, (3) shall be destroyed or returned to the financial institution if not used in the prosecution of a crime and is not made a part of the sealed records of the grand jury,

and (4) shall not be maintained, nor a description of the contents of the records maintained, other than in the sealed records of the grand jury, by any Government authority unless the records were used in the prosecution of a crime for which the grand jury issued an indictment.

The requirement that financial records shall be used only for the purpose of considering whether to issue an indictment by the grand jury, and of prosecuting a crime for which the indictment is returned, is in stark opposition to rule 6(e) of the Federal Rules of Criminal Procedure, as amended as recently as October 1977. Rule 6(e), which governs the use of grand jury information generally, permits a Federal prosecutor to use grand jury information, without a court order, for any purpose consistent with the proper performance of his official duties; the rule also permits a prosecutor to disclose grand jury information to any other Government personnel (a) without a court order if the disclosure is designed to assist the prosecutor in enforcing criminal laws, or (b) with a court order if the disclosure is designed to assist in enforcing noncriminal laws. The problems with the Mattox amendment thus include the following:

(1) The bill creates much greater restrictions on the ways in which financial records can be used in a grand jury setting than on the ways in which more personal types of records, such as medical records, can be used in the same setting. We do not feel that a piecemeal approach to the problem of grand jury use of information is a wise or proper way to proceed.

(2) The amendment would produce the anomalous situation that if the financial records are obtained by a grand jury from a financial institution under the statute, they could not be used in the investigation of any noncriminal violation, nor by the prosecutor with respect to whether a criminal information charging a misdemeanor should be issued; but if the same financial records were subpenaed by the grand jury from the individual himself, the broader provisions of rule 6(e) would be available. Thus, for example, if financial records were sought with respect to a felony investigation, a Government prosecutor would be precluded from using that same information if a civil or misdemeanor criminal violation were disclosed. Again, the result may be that the records will be sought from the individual directly rather than from the financial institution so that the less restrictive provisions of rule 6(e) will apply.

(3) Another problem with the amendment as currently written is its requirement that no description of the contents of third-party financial records obtained by a Federal grand jury may be maintained by any Government authority (other than in the sealed records of the grand jury), unless the records have been used in the prosecution of a crime for which the grand jury issued an indictment. This would mean, for example, that routine Government memorandums, reporting on the progress of an investigation, or summarizing its findings, could not be retained, insofar as information regarding the contents of bank records was included in such memorandums, if the Government or grand jury for any reason determined not to return an indictment, or if the court dismissed the indictment prior to trial. This requirement would prove nearly impossible to enforce.

(4) Finally, the requirement that no description of the financial records obtained by a Federal grand jury be retained unless an indict-

ment was returned would preclude keeping an inventory of subpenaed records. This could have at least two unhappy results: First, if one investigation for which records were obtained does not result in any indictment immediately and later evidence links up with the original evidence, that original evidence would have to be obtained anew thus delaying the investigation. Second, if no inventory of records were kept, a new prosecutor would have no way of knowing of any possible connection between new evidence and old financial records that were previously obtained. It is quite possible that without such an inventory, no connection will ever be made to establish a pattern of criminal activity and valuable prosecutions might be lost.

The administration has indicated a willingness to talk further about these problems, and the Judiciary Committee has also indicated that it has an interest in seeing these two amendments modified along the lines described above. Our colleague, Robert Kastenmeier, chairman of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, has stated in a letter dated July 18, 1978, to Chairman Reuss "that it is essential that reference be made, in the text of the bill, to the new rule 6(e) of the Rules of Criminal Procedure for the U.S. District Courts . . . Without making reference to the Rules of Criminal Procedure the bill could result in confused criminal process, inconsistent handling of grand jury information, and an inability of criminal law enforcement agencies to pursue their responsibilities to the fullest extent possible." With regard to the restrictions on the use of information, he said, "I believe strongly that, unless a modification is made, this amendment will unduly restrict the legitimate law enforcement use of information legally obtained under the bill and will not result in greater privacy protection for the citizen." I anticipate further discussions among the primary parties in interest concerning these difficulties, and hope that an agreement can be reached for presentation when the bill is considered on the floor.

I include at the end of my additional views a more complete sectional analysis of the privacy title which, in my judgment, reflects more fully the agreements which were reached during the discussion on the compromise.

ALTERNATIVE MORTGAGE INSTRUMENTS

On the subject of Alternative Mortgage Instruments, I think it is important that the financial community be encouraged to be creative in the services and options which it offers to customers. At the same time, it is vital that the consumer be protected from institutions which would foist less favorable types of mortgages on to him without full and complete notice of the choices and protections available. The position is consistent with that of the sponsor of the amendment, Jerry Patterson, and with the position taken by the Federal Home Loan Bank Board in the past.

The title itself contains what I consider to be the the first and most important protection—the requirement that any alternative mortgage instrument be presented to consumers side-by-side with the terms and conditions applying to the standard fixed-rate mortgage. This "documented choice" provision, which is not now required of the State-

chartered institutions in California, so far as I know, goes a long way toward differentiating what we do here from what was done there a few years ago.

But there are other issues—identified at length in the Bank Board's Alternative Mortgage Instruments Study—which also warrant our consideration and careful attention by the Board when it writes regulations on this matter.

1. *Choice of Index.*—The Bank Board's study pointed out that the index used to determine interest rate changes in California—the California S. & L. Cost of Funds Index—is not particularly volatile and, historically, tends not to show many declines. The study recommneded that an index, or a composite of more than one index, be chosen which shows, historically, drops as well as increases, so that the consumer will have at least the chance of decreases in payments as well as increases under the variable rate option. I think this is proper and should be included in our report.

2. *Limit on Frequency of Upward Changes.*—California permits variable rate mortgages to be changed as often as every 6 months. Yet substantial numbers of consumers receive annual salaries that are unchanged for a full 12 months. The Bank Board's study recommended limiting changes to once a year, and I think we should endorse this for upward changes—downward changes, however, should take place whenever and as often as the index indicates they should.

3. California rules now prohibit annual changes in interest rates of more than one-half of 1 percent; they also prohibit more than 2.5 percent overall change in the rate over the life of the instrument. The Bank Board study concluded that these were reasonable standards, and again I agree when it comes to upward changes. Of course, any downward change indicated by the index should take place, regardless.

4. Consistent with both California existing program and the Bank Board's study, we should endorse the requirement that scheduled decreases should be mandatory. Increases should be at the lender's option.

5. *Initial Grace Period—Guarantee of No Upward Change.*—In California today, the variable rate instrument can change within 6 months should the index so indicate. Consistent with my recommendation, based on the bank Board's study, that increases be limited to no more than once a year, this grace period under our amendment should also be a full year. Of course, indicated decreases can and should be implemented within the initial year and any time.

6. *Notice of Upward Changes.*—Consumers should get reasonable notice of proposed changes, especially upward changes. I think the Bank Board should adopt a requirement that mortgagees provide at least 45 days—the number recommended in its study—when an upward change will be imposed under a variable rate mortgage.

7. *Maturity Changes and Maximum Length of Term.*—The Bank Board's study recommended that the borrower be given the option of reducing scheduled increases, in whole or in part, by opting to extend the term of the mortgage up to a maximum of 40 years. This would enable a borrower to maintain more constant monthly payments, if he or she desires, rather than increasing payments on a fixed term. By the same token, consumers should be able to opt for a shorter term in lieu of

a scheduled decrease. California already has both of these provisions, and I think the program we authorize here should as well.

JOHN J. LAFALCE.

SECTION-BY-SECTION ANALYSIS OF CAVANAUGH-LAFALCE SUBSTITUTE TITLE XI OF H.R. 13088

TITLE XI—RIGHT TO FINANCIAL PRIVACY

Section 1100. This title may be cited as the "Right to Financial Privacy Act of 1978."

Section 1101. Definitions. For purposes of the bill, the following terms are defined:

(1) A "financial institution" includes any office located anywhere in the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands of any type of depository institution, consumer finance institution, or credit card issuer as defined in section 103 of the Consumer Credit Protection Act (15 U.S.C. § 1602 (h)).

(2) The "financial records" protected by the bill include all originals and copies of records held by financial institutions that (a) contain information pertaining to the customer's relationship with the institution and (b) individually identify the customer of such institution.

(3) The "Government authorities" whose actions are restricted by the bill include any agency or department of the United States, as well as any officer, employee or agent thereof.

(4) A "person" is defined as an individual human being or a partnership consisting of five or fewer individuals. It does not include larger partnerships, nor corporations, associations, trusts or other legal entities.

(5) A "customer" in turn, is a person who uses a service of a financial institution, or for whom the institution acts as a fiduciary, but only in relation to an account maintained in the person's name. The definitions of "financial records" and "customer", taken together, are intended to preclude application of the bill to anyone other than the person to whose account information the Government seeks access. They would exclude, for example, the endorsers of checks and guarantors of loans.

(6) A "supervisory agency" is defined to include a list of Federal agencies that have been given by law regulatory and supervisory responsibility over one or more types of financial institutions. The Secretary of the Treasury is a "supervisory agency" only with respect to the Bank Secrecy Act and the Currency and Foreign Transaction Reporting Act.

(7) The term "law enforcement" includes either administration or enforcement of any law, whether criminal, civil, or regulatory, as well as administration or enforcement of regulations, rules, or orders issued pursuant to statutory authority.

Section 1102. Confidentiality of Records—Government Authorities. This section establishes the basic restriction on Government access to records. It prohibits a Government authority from obtaining copies of or access to any financial records, or any information contained in them, from a financial institution, unless a special exception to the act is met, or unless the procedures spelled out for ordinary methods of access are followed. The special exceptions are provided in sections 1103, 1113 and 1114. There are five normal methods of access: customer authorization (section 1104), administrative subpoena or summons (section 1105), judicial subpoena (section 1106), search warrant (section 1107), and a "formal written request" from a Government authority (section 1108). To obtain records using any of the five normal methods of access, the Government authority must see that the records sought are reasonably described.

Section 1103. Confidentiality of Records—Financial Institutions. This section imposes a duty on financial institutions to maintain confidentiality of customer records. It prohibits institutions, and their officers, employees and agents, from providing access to customer records, or to information contained in them, except as permitted by the act. Subsection (b) prohibits financial institutions from releasing records even when they are sought in accordance with the act unless the Government authority seeking the records certifies in writing that it has complied with any applicable provisions of the act. If the financial institution receives such a certificate it is relieved of civil liability for any failures by the Government authority to comply with the act (see section 1117(c)). This is intended to encourage financial institutions to comply promptly with Government requests for records, and to give the customer a remedy against the Government where it is the Government that has violated the act. A Government employee submitting a false certificate could be subject to criminal prosecution or administrative sanctions.

Subsection 1103(c) permits financial institutions and their officers, employees and agents, like all other citizens, to notify appropriate Government authorities that they have information which may be relevant to a possible violation of any statute or regulation. A bank could, and should, report to the appropriate officials information pertaining to the cashing of a forged check, the passing of counterfeit currency or bonds, or the use of its services to facilitate a fraudulent scheme. This section is intended to permit such reports only if the bank volunteers the information. Government authorities may not provoke such disclosures by making inquiries. Once information is received by Government authorities, they must obtain any pertinent records that they seek in accordance with the procedures of the bill. Subsection (d) permits a financial institution to provide copies of pertinent financial records to Government officials where that is necessary to perfect a security interest, to provide a claim in bankruptcy, or otherwise to collect a debt owed to the bank itself or to the bank as fiduciary.

Section 1104. Customer Authorizations. This section establishes the first means of government access to records—voluntary authorization by the customer. Many customers under investigation may wish to cooperate. Their authorization must be in writing, signed and dated. It must identify the records which are authorized to be disclosed

(i.e., cancelled checks, loan application, et cetera) and the Government agency to which and the purposes for which disclosure is authorized. An authorization is valid for a specified period up to 3 months, and it may be revoked at any time, although not with respect to records that have already been disclosed. The bank is prohibited from making an authorization a condition of doing business with it. Subsection (c) requires the bank to keep a record of all instances where a customer record is disclosed pursuant to an authorization, and to record as well the recipient agency. The customer is entitled to a copy of that record unless the Government has obtained a court order barring disclosure under section 1109.

Section 1105. Administrative Subpoena and Summons. The Government may obtain financial records using an administrative subpoena or summons. Authority to issue such process must be granted by some other provision of law. Such process may be used only if there is reason to believe that it will produce information relevant to a legitimate law enforcement purpose. This standard is comparable to that in existing law for testing subpoenas. It is considerably less than and conceptually different from probable cause, as the process would often be used in the early stages of an investigation, long before sufficient facts had been developed to establish probable cause. "Law enforcement" is broadly defined in section 1101, but the requirement that the purpose be "legitimate" is an important safeguard. It is intended to prevent an agency from acting outside the scope of its statutory authority, (e.g., investigating a violation over which it has no jurisdiction), as well as from pursuing an investigation in bad faith to harass or intimidate its subject.

Unless a delay of notice is obtained pursuant to section 1109, a customer must be notified of the Government's summons or subpoena for his records. The customer must be served with or mailed by registered or certified mail to his last known address a copy of the process and the notifice form specified in the statute. This notice is intended to spell out clearly for the customer the steps he must take in order to initiate a proceeding to challenge the Government's right to obtain his records. The Government agent must fill in the appropriate court in which to bring the proceeding and the name and address of the Government official or agency on whom the papers raising a challenge must be served. Attached to the notice would be blank forms for the affidavit and motion which the customer must file to initiate a challenge under section 1110. The challenge proceeding must be commenced by filing the requisite affidavit and motion within 10 days if the customer was notified by means of personal service and within 14 days of the date of mailing if the customer was notified of the summons or subpoena by mail. Accordingly, if the Government authority needs the records quickly, it should serve the customer personally rather than mailing the notice. If a challenge proceeding is not commenced, the Government authority may obtain the records at the expiration of the prescribed time for filing a challenge. If a challenge proceeding is begun, the records may not be produced unless and until it is resolved in favor of the Government.

Subsection 1105(b) provides an alternative customer notice and challenge procedure that is applicable if special safeguards are ap-

plied. Where an administrative summons or subpoena is issued in accordance with the formal procedures provided, the records may be obtained without prior notice to the customer. To issue a summons or subpoena pursuant to this subsection the agency or department must: (1) determine that the investigation is necessary to a rulemaking, adjudicatory or investigative function within the agency's jurisdiction; (2) issue a formal order of investigation specifying details of the nature, scope and authority for the investigation, and the persons authorized to conduct it; and (3) determine that the financial records sought are related to the investigation. If these conditions are met, the agency may serve the summons or subpoena on the financial institution and obtain the records without notifying the customer. The customer must be given notice within 14 days after issuance of the process. The customer then has 10 days from receipt of the notice to challenge the legality of the investigation under the standards of the bill and its compliance with the procedures of the bill. The customer may obtain an order enjoining further access by the agency in violation of the act, and enjoining the use and requiring the return of improperly obtained records.

Section 1106. Search Warrants. Search warrants may be used to gain access to records if they are obtained pursuant to the Federal Rules of Criminal Procedure. A search warrant would require a showing of probable cause under the fourth amendment, a higher standard than the other forms of process necessitate. Because of the increased privacy protection provided by this high standard, and the traditional *ex parte* nature of proceedings to issue warrants, the pre-notice and challenge provisions applicable to other forms of process do not cover search warrants. However, a customer whose records are obtained pursuant to a search warrant must be notified of that fact within 90 days after execution of the warrant by mailing of a copy of the warrant and the notice specified in subsection (b). Under subsection (c), a delay of up to 180 days in the giving of this notice may be granted if a court, upon application of the Government authority, makes the findings specified in section 1109(a) governing delay of notice. Further 90 day delays may be granted under the same conditions. Upon expiration of all periods of delay a copy of the warrant and the notice specified in subsection (c) must be mailed to the customer.

Section 1107. Judicial Subpoena. This section permits access to financial records by means of judicial subpoenas. This would cover any type of subpoena issued by a Federal court, including grand jury subpoenas, subpoenas for trial, orders to produce documents, etc. The order must be one that the court is authorized by statutory or common law to issue and there must be reason to believe that the subpoena will produce information relevant to a legitimate law enforcement purpose. Unless a delay of notice is obtained pursuant to section 1109, the subpoena may not be executed until the customer has been served with a copy of the subpoena and the notice prescribed by section 1107(2), and provided an opportunity to challenge the Government's access (section 1107(3)). The notice for challenge are similar to those for administrative summonses.

Section 1108. Formal Written Request. This method of access would be created for the first time by this bill. It is necessary because

many agencies of the Government with vital criminal and civil enforcement responsibilities do not now have administrative summons authority. These agencies include the Federal Bureau of Investigation, all of the Justice Department's litigating and law enforcement divisions except the Antitrust Division and the Drug Enforcement Administration; the Secret Service, and a number of other Treasury Department agencies. In order to provide these agencies with continued access to financial records for legitimate law enforcement purposes, the bill creates the "formal written request." In effect, the formal written request will formalize the current modes of informal access to records used by Government agencies.

The formal written request is a document issued by a Government authority where there is reason to believe that the request will produce information relevant to a legitimate law enforcement purpose. This is the same standard applicable under the bill to other forms of process except search warrants. The formal written request is not intended to replace the administrative summons or subpoena; it may be used only where no administrative summons or subpoena authority reasonably appears to be available to the Government agency to use in obtaining the records sought for the particular purpose for which they are sought. The "particular purpose" qualification is necessary because some agencies do have an administrative summons or subpoena authority limited to certain purposes. The formal written request must also be issued in accordance with regulations promulgated by the head of the Government agency or department. These regulations should specify such limitations on the formal written request as the circumstances in which it may be used, the form it must take, the information it must contain, and the officials who may issue it. Paralleling the requirements for other forms of process, section 1108(4) provides that the customer must be notified of the request, unless a delay of notice is obtained pursuant to section 1109, and afforded an opportunity to challenge its validity before records may be obtained. A customer challenge to a formal written request is technically a motion to enjoin the request rather than a motion to quash as in the case of other forms of process. If the motion is successful, the Government would be enjoined from pursuing the request from the financial institution. If the customer loses, however, it should be noted that—unlike an administhe request rather than a motion to quash as in the case of other forms a financial institution to comply with the request. Unlike the other forms of process, the request is just that—a plea for cooperation from the recordkeeper. A financial institution receiving such a request would be free even after an unsuccessful customer challenge, just as it is when an agency seeks informal access to records today, to refuse to disclose the records. In contrast to a summons or subpoena, the request is not enforceable. On the other hand, the formal written request does meet one of the major goals of privacy legislation—it provides a "paper trail" to record Government access to records, and it affords the customer a vehicle through which to exercise his or her prenotice and standing rights. Giving a statutorily sanctioned structure to current informal modes of access should promote voluntary cooperation with Government agencies seeking records legitimately.

Section 1109. Delayed Notice—Preservation of Records. Section 1109(a) permits a Government authority to obtain from a court a

delay in the customer notices that otherwise must be given when access to records is sought or obtained by any method under the bill. A delay may be granted upon the Government's application only if the court finds that there is reason to believe that notifying the customer will result in endangering the life or physical safety of any person, flight from prosecution, destruction or tampering with evidence, or intimidation of witnesses. In addition, subsection 1109(a) (3) (E) is a general harm provision designed to accommodate unanticipated needs for delay of notice. It is intended to be used only where the potential harm to an investigation is of a magnitude similar to the listed jeopardizing factors, or in the case of a trial or other ongoing official proceeding, where notice would unduly delay the proceeding. The last exception is a narrow one designed, for example, to permit the use of trial subpoenas for records immediately before or during a proceeding. A judge would be free in such a situation simply to shorten the time for customer response if service on the customer would otherwise not jeopardize the proceeding. Since a delay of notice permits the agency to obtain records before the customer has an opportunity to challenge the legitimacy of the request, the court must also make two other findings: (1) that the investigation is within the agency's lawful jurisdiction, and (2) that there is reason to believe that the records sought will produce evidence relevant to a legitimate law enforcement purpose.

Subsection (b) (1) specifies that if the requisite findings are made, the court shall enter an ex parte order granting a delay of notice for up to 90 days. In addition, the bank shall be ordered not to disclose the fact of the request or that records have been obtained. The Government may apply for further extensions of the delay under subsection (b) (2), but in each such case, it must make the factual showing of need required by subsection (a). At the end of any period of delay, the customer must be served or mailed a copy of the process or request and the notice specified in subsection (b) (3) giving the reason for the delay and purpose of the investigation.

A proviso is included in subsection (b)(1) to deal with a unique problem faced by the Office of Foreign Assets Control of the Department of the Treasury. This Agency administers the Trading with the Enemy Act, the International Emergency Economic Powers Act, and the United Nations Participation Act. Under these statutes the Board may enter orders blocking transactions in American bank accounts owned or controlled by nationals of certain foreign nations, generally countries unfriendly to the United States. While there is usually no reason not to notify such customers of these actions, there may be situations where doing so would endanger the life or physical safety of the customer himself, his relatives or associates. Where the customer remains in contact with his native land, and the government there is an enemy of the United States or a totalitarian regime, that government may well learn of the existence of the account if notice is sent to the customer. Upon learning that the customer has assets in the United States, the foreign regime may threaten the customer with violence or death as a reprisal, or an inducement to turn the money over to the government. Only if a court finds that such a danger to a person somehow associated with the account exists, may it order an indefinite delay of notice to protect the customer.

Subsection (c) requires courts granting delays of notice under this section to report essential information concerning the delays to the Administrative Office of the United States Courts. The Administrative Office is required to compile an annual report for Congress summarizing and analyzing the use of the delay provisions. This reporting requirement is similar to one imposed by the Federal wiretap laws, 18 U.S.C. §§ 2510 et seq., and should assist in evaluation of the effectiveness of the bill.

Subsection (d) spells out the notice procedures to be followed when the Government obtains records using the Emergency Access provision (section 1114(b)). A copy of the process used must be served upon or mailed to the customer as soon as practicable after the records are obtained, together with the notice specified in the statute. A delay of this notice may be obtained, however, pursuant to sections 1109 (a) and (b).

Subsection (e) directs the court to which a delay application is made to preserve all materials pertaining to the application. The customer may petition the court for disclosure of the records, which should be granted unless the court makes the findings required in section 1109 (a).

Section 1110. Customer Challenge Provisions. This section establishes the customer's right to challenge government access to his or her financial records. It applies to all methods of access covered by the bill except search warrants, which retain their traditional ex parte character.

Subsection (a) gives the customer 10 days from the date of service or 14 days from the date of mailing of a notice to move to halt the Government's access. The customer must file a motion to quash an administrative summons or subpoena or a court order. Since a formal written request is not technically a form of legal process that may be quashed, the customer must make an application to enjoin the agency from obtaining records pursuant to such a request. Procedurally, such an application should be treated no differently from a motion to quash. The motion or application could be filed in the U.S. district court where the bank holding the records is located. Service of the motion must be made on the Government authority, but it may be accomplished by "delivery," as that term is defined in rule 5(b) of the Federal Rules of Civil Procedure, or by mailing by registered or certified mail to the person, office, or department specified on the notice form given to the customer. This form of service to initiate an action against a Government agency is intended to give the Government adequate notice but to be as simple as possible. It dispenses with the requirements of rule 4 of the Federal Rules of Civil Procedure necessitating service on the U.S. attorney and the Attorney General as well as the agency. Since service is made on the person, office, or department specified in the notice itself, it allows the Government agency using the process to assure itself of prompt notice.

Under the bill, when he brings a challenge proceeding in court, the customer must show by affidavit or sworn statement first, that he is a person having standing to contest access under the bill—a customer whose financial records are being sought; and second, that there is a factual basis for concluding that there is no reason to believe that the records being sought contain information relevant to a legitimate law

enforcement purpose, or that there has not been substantial compliance with the provisions of the bill. In making this limited showing, the customer might allege, for example, that he has committed no offense over which the agency has jurisdiction, that the investigation is for some reason not a legitimate one for the agency to conduct, or that it is being conducted solely to harass or intimidate him, as by showing the existence of an "enemies list," or a political basis for the investigation, or frequent recent unsuccessful probes of his affairs.

If the customer's papers fail to make the *prima facie* showing required by subsection 1110(a) (1) and (2), the court should deny the motion or application. If, however, the requisite showing is made, the court should order the Government to file a sworn response that should set forth the reasons why the investigation is proper and why the records meet the relevancy test. The Government would bear the burden of proving compliance with the bill's requirements for access.

In order to prevent abuse of the challenge procedure as a method of pretrial discovery by punative criminal defendants, the bill permits the Government to file this response *in camera* if it gives the reasons which make *in camera* review appropriate. *In camera* review should be used only if necessary to protect the investigation or to avoid improper discovery practices. The court is empowered thereafter to conduct any additional proceedings that it deems appropriate, in such manner as it finds proper.

In order to prevent delay of investigations, all supplementary proceedings must be completed and the motion decided within 7 calendar days of the filing of the Government's response. There is no specified time limit for the court to rule on the sufficiency of the customer's initial filing of challenge papers, but it is intended that this be done as promptly as possible. It should be noted, however, that if the investigation is particularly urgent, the Government could obtain a decision within a week simply by filing a response without waiting for the court to rule on the sufficiency of the customer's challenge papers or to order the filing of a response.

The bill contemplates that magistrates rather than district judges will hear many of the mations or applications. The use of magistrates for this purpose is encouraged, and the proposed Magistrates Act of 1978, S. 1613, will further facilitate their use.

Subsection (c) spells out the results that follow when the court makes particular findings under the bill. These are straightforward. "Substantial compliance" with the provisions of the bill would entitle an agency to prevail. This language is intended only to ensure that minor technical violations of the bill are not the basis for denying access.

Subsection (d) provides that if a motion or application to prevent access is denied, there is not a final order from which an interlocutory appeal might be taken. The intent is to treat such orders in the manner as civil discovery motions or criminal warrants—as evidentiary matters which are part of the record for appeal purposes after judgment, but as to which there is no appeal before that time. If a legal proceeding using the records is commenced against the customer, he or she may appeal the issue as part of, and in accordance with the requirements for, any appeal from a final judgment in that

proceeding. The phrase "arising out of or based upon the financial records" is intended to cover any proceeding in which records are used in any way, e.g., as evidence or for investigatory purposes.

Where no legal proceeding against the customer is to be commenced, an appeal may be taken within 30 days of a notification to that effect. Subsection (d) requires an agency obtaining records to give the customer such notification promptly after a determination not to proceed is made. If no such determination is made within 180 days, a certification to that effect must be filed in court, and at reasonable intervals thereafter further certifications may be required by the court until the investigation is completed.

A customer could also challenge the propriety of a procedure that allowed access to records by bringing an action for civil penalties under section 1119, but section 1110(e) provides that the challenge procedures are the sole judicial remedy available to a customer to oppose disclosure of records pursuant to this bill.

Subsection (f) is intended to preserve current law with respect to the rights of a financial institution to contest a summons or subpena for its records. If an institution now has standing to claim a subpena is vague, overbroad, or that compliance with it would be unduly burdensome, such claims remain open to it. Similarly, an institution remains free to refuse access based on the noncoercive formal written request. A customer, however, does not have standing under the bill to raise claims that are based solely on the rights of the institution, such as the burdensomeness of compliance. If an institution does intend to contest coercive process, it may intervene as a party in a customer challenge proceeding.

Section 1111. Duty of Financial Institutions. This section is intended to insure that financial institutions continue to process government requests for records pending the giving of notice and duration of customer challenge proceedings under the bill. By the end of these time periods, the requested records must be assembled and ready for delivery or disclosure to the agency if the bill's provisions are complied with and the financial institution is presented with the section 1103(b) certificate to that effect. If the bank is contesting the request as, e.g., overboard or burdensome, it is protected from having to assemble the records in the meantime by the "unless otherwise provided by law" clause.

Section 1112. Use of Information. Provides that copies of or the information contained in financial records obtained pursuant to this title may not be used or retained in any form for any purpose other than the specific statutory purpose for which the information was originally obtained, and that the information or records may not be provided to any other government agency or department except where specifically authorized by statute. The section further provides that nothing in the title prohibits any supervisory agency from exchanging examination reports or providing information to an enforcement agency concerning a possible violation of a regulation or statute administered by the supervisory agency. The section also provides that nothing in the title authorizes a supervisory agency to withhold information from the Congress.

Section 1113. Exceptions. This section brings together a number of areas to which the bill, for one reason or another, does not apply.

(a) Nonidentifiable information. This exception makes it clear that the bill does not restrict the dissemination of financial information that is not identified with, or identifiable as derived from, the financial records of any particular customer.

(b) Supervisory agencies. This section allows supervisory agencies, as defined in section 1101(b), access to and authority to disclose financial records solely in the exercise of their supervisory, regulatory, and monetary functions.

(c) Internal Revenue Service summonses. Administrative summonses issued by the Internal Revenue Service are already subject to privacy safeguards under section 1205 of the Tax Reform Act of 1976 (26 U.S.C. § 7609). Accordingly, they are exempted from the procedures of this bill.

(d) Required reports. This exception permits the disclosure of financial records or information required to be reported by other laws, or rules or regulations promulgated under them. Instead of attempting to list all such provisions, which might inadvertently result in omissions, the subsection covers generally "any statute or regulation." This subsection is intended, for example, to allow the reporting of information and the making of reports or returns required by the Internal Revenue Code, the Bank Secrecy Act, the Federal Deposit Insurance Act, the National Housing Act, and the Currency and Foreign Transactions Reporting Act.

(e) Government litigation with a customer. Where the customer and a federal agency are already engaged in civil or criminal litigation, the right to notice before access to records is obtained, and to object to the relevancy of any request for records, is provided by rules of court and the ability to move to quash process or move for a protective order in the proceeding itself. The entire process is subject to direct judicial supervision. Thus, this exemption allows access to records through discovery pursuant to the Federal Rules of Civil and Criminal Procedure to replace access procedures under the act.

(f) Administrative proceeding against a customer. This exception parallels the previous exception for judicially-supervised discovery. It covers situations where the government authority and the customer are parties in an administrative adjudicatory proceeding subject to 5 U.S.C. § 554. In such proceedings, the customer's privacy rights would be protected by the administrative law judge's supervision of discovery proceedings. See 5 U.S.C. § 555(d).

(g) Identity of account used for suspicious transaction. This section is intended to allow the government to learn the identity of a customer whose account was involved in what appears to be a suspicious transaction. In this purpose, it is similar to a provision of the Tax Reform Act of 1976 called the "John Doe summons," but it is drawn more narrowly to reflect the needs of the affected agencies. The provision would be used in situations where, for example, the agency knows only that a large sum of cash was deposited in the bank (see *United States* v. *Bisceglia*, 420 U.S. 141(1975)), or that the bank has been used to transmit funds to an enemy nation, or that the bank processed a forged check or other instrument. Such transactions would clearly appear to involve violations of law, but in order to investigate further the agency needs to know the name and address of the customer, and the account

number and type of account involved. This section would allow that information to be obtained. This is basically the information contained on an account signature card; it is not the record of a series of financial transactions by a customer, which could only be obtained by following the other procedures of the bill. Only the notice and challenge provisions of the bill are made inapplicable by this subsection, so that the government must use some form of process to get even the limited information allowed.

Because of the special nature of Foreign Assets Control and certain other functions performed by the Department of the Treasury, subsection (h)(1) is written to allow disclosure of basic account information concerning one or all transactions through a bank connected with, e.g., a particular foreign country. Such transactions may be unlawful or subject to regulation under the Bank Secrecy Act, the Currency and Foreign Transactions Reporting Act, the Trading with the Enemy Act, the International Emergency Economic Powers Act, or the United Nations Participation Act. In addition, subsection (h)(2) permits identification of customers to the Office of Foreign Assets Control on the sole basis that they are associated with a particular foreign country. This is necessary because the blocking orders for accounts owned or controlled by nationals of nations unfriendly to the interests of the United States which must be issued under the last three acts mentioned above do not depend upon the occurrence or nature of any particular transactions in those accounts.

(h) Financial institutions as investigatory target. This exemption assures access to records where an investigation or examination is not directed at any individual customer, but nevertheless must use customer records to investigate the financial institution itself. Where it is the financial institution that is the "target" of an investigation or examination, customer notice and standing is inappropriate, as the Privacy Protection Study Commission recognized. The same principle applies whether the agency seeking access to records is the Federal Reserve Board auditing a bank's lending or accounting practices, the Civil Rights Division investigating a charge of redlining or credit discrimination against the bank, or the Securities and Exchange Commission investigating questionable stock dealings by the institution.

Accordingly, subsection (h) grants an exemption from customer notice and standing requirements to requests for records sought by a government authority in connection with an official proceeding, investigation, examination, or inspection directed at the financial institution.

There are two important safeguards against abuse of this exception. First, the agency must give the bank a certificate stating that the records are sought for an exempt purpose. Second, where records of an individual customer are obtained in the course of an investigation of a bank, they may not be transferred to another agency. If the inspecting agency does discover evidence of a potential violation of a civil, criminal or regulatory statute administered by another agency, it may notify that agency of relevant information, such as the identity of the customer and the nature of the violation. The second agency may only obtain the records itself, however, by using the methods of access provided by the act. For example, if the Civil Rights Division,

while investigating a bank's credit practices, discovers in a customer account record evidence of a fraudulent scheme, the Division could notify the appropriate law enforcement officials, who could then seek the customer's records by, say, a formal written request, with notice to and an opportunity for challenge by the customer.

(i) Grand juries. Nothing in the bill except the bank payment requirement and section 1120 applies to any aspect of the proceedings before a Federal grand jury. This is, of course designed to exempt grand jury subpoenas from the bill. The grand jury is the single most important investigative tool of criminal law enforcement. In addition, grand jury procedures are already subject to judicial scrutiny. Furthermore, the Supreme Court decisions indicate that the constitutional status of the grand jury protects it from burdensome delays. Finally, grand juries are protected by rules keeping their proceedings secret. Expanded notice and challenge rights might diminish grand jury secrecy and threaten the privacy of individuals being investigated.

Section 1114. Special Procedures. This section allows access to records in two narrow sets of circumstances that are essential to the nation: where records are needed for foreign intelligence or Secret Service protective functions, and where records are needed in a serious emergency situation.

Subsection (a) exempts foreign intelligence and protective activities from all provisions of the bill, except the civil penalties of section 1117 and the requirement of section 1115 that financial institutions be reimbursed for searching for and copying records. The foreign intelligence activities covered are limited to counter-intelligence functions (i.e., monitoring the activities of enemy agents in the United States), and the collection of foreign positive intelligence regarding the activities of enemy nations. The Secret Service protective functions are solely those set out in two statutes, 18 U.S.C. §3056 and 3 U.S.C. § 202, mandating protection of the President, the Vice President, and candidates for those offices, families of such persons, and certain foreign dignitaries.

Records may be obtained only for use for one of the exempt purposes by an agency authorized to conduct intelligence activities or by the Secret Service. To prevent abuse, subsection (a) (2) requires the agency to submit to the financial institution the certificate of compliance with the act required by section 1103(b). It must be signed by a supervisory agent of a rank designated by the agency head, not by a street-level agent. In effect, the certificate in such a case would be certifying that the records were legitimately necessary for the intelligence or protective activity. Subsection (a) (4) requires any government authority that uses this exemption to compile an annual tabulation of its use. It is intended that the congressional committees having oversight jurisdiction over the agencies will review these tabulations as further protection against misuse of the exemptions. In order to assure the absolute secrecy needed for the investigations covered by the exemptions, subsection (a) (3) prohibits a financial institution from disclosing to any person that access has been sought or records obtained pursuant to these exemptions.

Subsection (b) permits the government to obtain records without giving the customer notice in advance where a serious emergency

exists. This provision is designed for use in those very rare situations where access to records is needed so quickly that there is not even time to apply to a court for a delay of notice. Indeed, in many such cases, giving notice *per se* is not the problem; the time it takes is. The cases are those in which a delay in obtaining records would create imminent danger of physical injury, serious property damage, or flight to avoid prosecution. The use of bank records to investigate an ongoing kidnaping is an example.

Records may be obtained in such cases if a section 1103(b) certificate is presented to the financial institution and it is signed by a supervisory official of a rank designated by the agency head. The certificate in such a case would, in effect, be certifying that one of the enumerated harmful events would occur if access were delayed. Within 5 days thereafter, a sworn statement justifying the need for emergency access must be filed in court by a supervisory level official designed by regulation by the head of the agency. Thereafter, notice to the customer must be given as provided in section 1109(d). If a customer believes that access was improperly obtained, he or she may then request the government's justifying documents under section 1109(e), and could seek civil penalties under section 1117. Subsection (b)(4) requires an annual tabulation of instances in which emergency access is obtained to be compiled by agencies using it. As in the case of intelligence and protective functions, it is intended that the appropriate oversight committees of the Congress will use these tabulations to monitor compliance with the act.

Section 1115. Cost Reimbursement. In order to reimburse financial institutions for the expense of complying with requests for financial records, this section requires a government authority obtaining records to pay such reasonably necessary costs that an institution has directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required to be and actually produced. The rates and conditions for such repayment of costs will be established by Federal Reserve Board regulations. The Budget Act requires that the effective date of this section be delayed until October 1, 1979.

Section 1116. Jurisdiction. This section grants jurisdiction to the Federal courts to hear any action to enforce a provision of the bill. It also provides a 3-year statute of limitations for actions brought under it. The limitations period runs from the date on which the claim arises or the date of its discovery, whichever is later.

Section 1117. Civil Penalties. In order to enforce the limitations on access and the procedures mandated by the bill, customers are granted a right of action for civil penalties. This right runs against an agency or department of the United States, but not against an individual employee or agent, and against a financial institution, which obtains or discloses financial records or information contained in them in violation of the bill. The right encompasses any violation of the bill, including improper use of an exemption from the bill's coverage.

Four elements of damages may be recovered: (1) An automatic $100 penalty for each collective or transactional violation. Thus, if a bank improperly discloses on two separate occasions a batch of fifty and then a batch of one hundred cancelled customer checks, the bank would be liable for $200—$100 for each collective improper disclosure. Similarly, if two government agencies separately obtain the same financial

records, each in violation of the bill, each agency would be liable to the customer for $100, no matter what the volume of records involved. (2) The customer may recover any actual damages resulting from a violation of the act in conformity with traditional tort principles of causation. (3) If a violation is intentional or willful, the customer may recover such punitive damages as may be allowed. (4) If the customer proves liability under this section, he is also entitled to recover the costs of the action and his reasonable attorneys fees.

While individual government employees or agents may not be held personally liable for damages under the bill, subsection (b) provides an administrative punishment system designed to deter violations of the act. It is based on a similar provision of the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(F). It provides for commencement of disciplinary proceedings by the Civil Service Commission whenever a court finds that a government agency or department has violated the act and that the circumstances surrounding the violation raise questions whether an agent or employee acted willfully or intentionally with respect to the violation. After proceedings described in the bill, the Civil Service Commission is directed to recommend appropriate corrective action for the agency or department to take.

Subsection (c) provides a financial institution with a defense to any action for civil penalties if it can show good faith reliance on a certificate of a government authority. A bank is protected if it receives a certificate of compliance with the act required by section 1103(b) that appears proper and legitimate on its face. If statements in such a certificate prove to be inaccurate, the customer would have recourse only against the government authority. On the other hand, if a bank grants access to records based only on an oral request—which is nowhere permitted by the bill—it would not be acting in good faith.

Subsection (d) provides that the remedies and sanctions described in the bill shall be the only authorized judicial remedies and sanctions for violations of its provisions.

Section 1118. Injunctive Relief. This section permits a court to grant injunctive relief solely for the purpose of requiring that the procedures of the bill are complied with. For example, upon a proper showing of abuse, an agency could be enjoined from obtaining records without giving the required customer notice. If an injunctive action is successful, attorney's fees would be awarded to the plaintiff.

Section 1119. Suspension of Statute of Limitations. This section tolls the running of any applicable statute of limitations during the pendency of a customer's challenge to government access. It will insure that a challenge proceeding is not used to avoid criminal liability by delaying an investigation until a limitation period expires. The period of suspension is limited, however, to the time over which the customer has control—the period from the filing of a motion or application challenging access to the date of decision on the claim.

Section 1120. Provides that information obtained by a Federal grand jury must be returned and actually presented to the grand jury; used only for the purposes of the grand jury, i.e., indictment and prosecution; destroyed or returned to the financial institution if not used for prosecution or sealed; and maintained only in the sealed records of the grand jury unless used in the prosecution of a crime for which the grand jury issued an indictment.

ADDITIONAL VIEWS OF HON. MARY ROSE OAKAR

The work of the Committee on Banking with respect to the Financial Institutions Regulatory Act is to be commended. The chairman of the Subcommittee on Financial Institutions as well as our distinguished full committee chairman have shepherded a comprehensive and controversial bill through rough legislative straits. Still this omnibus bill has provisions that are not in the best interests of the banking public.

Privacy of financial records

Title XI emerged with little of the important protections that were provided by the original draft of this bill (H.R. 8133). While agreement to the Cavanaugh-LaFalce Substitute (as amended) is a step toward a more reasonable arrangement than that set forth by the Miller decision which effectively gave the government the right to invade the financial domain of any individual, these protections are still too slim and place too much a burden on the individual. Individuals will learn of government inspection of their records after this invasion has transpired. The recourse of the individual is to appeal this inspection. In many cases, the damage to the individual is not recouped by a successful appeal, so this postinspection notification serves as too small a protection. Amendments by Congressman McKinney to restore, or at least approximate, the language as reported from subcommittee were more sensitive to the needs of the banking public and the demonstrated abuses of the recent past. I would hope that members of this committee will be seeking to further the safeguards that will be established by this legislation. Surely, it is possible to provide a reasonable assurance of financial records privacy without hamstringing the work of our government agencies.

Bank holding companies

The committee's action on title XIII provides a little more than an admonishment to the bank holding companies that they should restrict their expansion to bank-related activities. With a 10-year grandfathering of existing holding company operations, we have given little reason for the bankers to reassess their acquisitions and the advisability of such acquisition in light of stronger congressional law. I suspect that holding companies will continue their unfettered growth, and this has the potential for an unneeded concentration of economic power within any one State or throughout an entire region. While I agree with several of my colleagues that the provisions of title XIII, as reported from Subcommittee, were too restrictive, I believe that the title reported from the full committee is without the necessary guidelines for prosperous, yet controlled, holding company growth and operation.

MARY ROSE OAKAR.

SUPPLEMENTAL VIEWS OF HON. JOHN H. ROUSSELOT, HON. GEORGE HANSEN, HON. HENRY J. HYDE, HON. RICHARD KELLY, AND HON. CHARLES E. GRASSLEY ON H.R. 13471

The undersigned members join our minority colleagues in the belief that H.R. 13471 represents a vast improvement over the original "Safe Banking Act" and that it contains many constructive provisions. Nevertheless, we have a number of reservations concerning this legislation:

(1) The present title I calls for the application to State-chartered banks of insider loan limits which are established by the Federal Reserve Board. It seems elementary to us that, under the dual banking system, the responsibility for the supervision and regulation of State-chartered institutions rests with the appropriate State authorities. We therefore find it difficult to understand why this bill contains a provision which constitutes a fundamental breach of the existing lines of authority, especially since no compelling need for such a breach has been demonstrated. Accordingly, we intend to support an amendment which will probably be offered on the floor to permit State authorities to retain the power which they presently exercise with respect to loan limits on State-chartered institutions.

(2) We are uneasy regarding the manner in which it was decided to apply to federally chartered and insured thrift institutions the same cease-and-desist powers which would be applied to banks under title I of this bill. Throughout the consideration of this bill the main justification for application of additional cease-an-desist authority to thrift institutions has been that similar authority is being granted with respect to commercial banks, and the new grants of authority to the Federal Home Loan Bank Board simply parallel those being made to the respective Federal banking agencies. We understand that the provision of new cease-and-desist authority to the banking agencies is based on a long series of hearings on problem banks. These hearings identified a number of unsafe and unsound banking practices, some of which involved abuses by insiders, which have been associated with bank failures. Our concern is that the hearings and other studies regarding the supervision and regulation of thrift institutions have been strikingly sparse compared to those regarding commercial banks. This is not to say that there may not be sufficient justification for the application of additional cease-and-desist authority to thrift institutions, but we feel uncomfortable with the assumption that hearings on problems relating to commercial banks can serve as a proxy for a thorough consideration of the issues which relate specifically to thrift institutions.

(3) Title IV, concerning conflicts of interest of members of the Federal agencies which supervise and regulate financial institutions, may be, as its proponents suggest, a fair provision to apply to those officials. Nevertheless, we have consistently stated our preference for

more comprehensive legislation, such as H.R. 1 and S. 555, which would apply conflict of interest restrictions to members of independent and supervisory and regulatory bodies throughout government. We would, therefore, prefer deletion of this title to enactment of a piecemeal bill which singles out the members of a few Federal agencies for special treatment.

On the whole, we believe that the balance between the desirable and undesirable provisions of this bill is a delicate one. Accordingly, we recommend to our colleagues that they follow the progress of this legislation very closely as it proceeds to the Rules Committee, to the floor, and to conference, and that they reserve judgment concerning their votes on final passage until they know exactly what the final product will contain. This recommendation applies especially to the product which will ultimately emerge from the conference, because it is impossible to predict at this time what additional provisions may be attached by the Senate. Since the Senate's bill, S. 71, is modest by comparison with this bill, the temptation to add significant amendments and entire bills to S. 71 may be too great to resist. There is nothing fanciful about these concerns; they are based upon years of experience with previous financial institutions legislation.

(4) One of the strangest provisions of this bill is the new section 106(b) (2) (G)(iii) which would be added, as part of title VII of this bill, to the Bank Holding Company Act of 1970. This provision, which can be found at the top of page 140 of H.R. 13471, would require each insured bank to include in its reports to the FDIC submitted pursuant to subsection (k) (1) of the Federal Deposit Insurance Act a list of the names of executive officers and 10 percent shareholders and of the aggregate amounts of extensions of credit to such officers and shareholders. Members who were concerned that personal financial information might be disclosed under the Freedom of Information Act—a legitimate concern in view of the fact that this bill contains a widely heralded "Right to Financial Privacy Act" contained in title XI—sought assurances that the information supplied to the FDIC could not be made public under the Freedom of Information Act, and these assurances were given by subcommittee Chairman St Germain. These assurances vanish, however, when one looks at title IX, "Disclosure of Material Facts." Lo and behold, the very same information which we were assured would not be disclosed under the Freedom of Information Act would be disclosed to the public under title IX. There may be many instances where the number of loans to officers and 10-percent shareholders may be small enough that it would be possible to obtain from the publicly available reports information concerning the financial affairs of individuals. Of course, banks can make this more difficult by making more insider loans, so that the aggregate figures would be less revealing.

This would, of course, be a perverse and unintended effect which would undermine the features of this bill which are designed to protect the financial privacy of individuals and the safety and soundness of the banking system. We will support the correction of this anomaly by a floor amendment.

JOHN H. ROUSSELOT.
GEORGE HANSEN.
HENRY J. HYDE.
RICHARD KELLY.
CHARLES E. GRASSLEY.

ADDITIONAL VIEWS OF HON. STEWART B. McKINNEY

My views on H.R. 13471, the Financial Institutions Regulatory Act, are to a large extent similar to those expressed in the minority views in this report. There are, however, several points on which my feelings were much stronger than those expressed by my Republican colleagues, both in support and in dissent.

This legislation represents substantial progress toward needed reforms in the regulation of Federal financial institutions. It is probably as broad as we should make it, covering so many different areas as it does. But it should not be considered the end of the road since it is truly only the first step in reacting to changes in our society, whether they be technological or ethical.

I am pleased that what was conceived in the heat of emotional reaction to the "Lance affair" has emerged from our committee in more realistic form. My colleagues on the Financial Institutions Subcommittee have performed a valuable service by molding and shaping these myriad proposals into a workable bill that could be accepted by the full committee. I would also like to applaud the fairness of Messr. Reuss and St Germain in protecting the rights of all members of the Banking Committee to voice dissenting opinions during markup.

One point which I have repeated frequently is that Congress by its inaction has forced the regulators to act to fill the void. These regulators are restricted in how much they can do by administrative action, however, since Congress insists that they follow our intent in implementing the laws that we passed. This bill should provide the administrators with some valuable tools to protect the soundness of the banking system and restore public confidence in the financial industry to traditional levels.

There are a number of specific points in this bill which I would like to address. As a cosponsor with Representative Hanley and others of legislation to permit Federal chartering of thrift institutions, I was pleased to see this proposal incorporated as title XII. Although this was not a highly controversial issue per se, an amendment which would have required that 60 percent of the Federally-chartered mutual savings banks' assets be invested in residential mortgage loans was clearly rejected by the committee on solid grounds. There is no basis on which to discriminate against these institutions. Historically, they have invested primarily in housing-related loans. Such a restriction on their investment opportunities could possibly have an adverse effect if mutuals decide to reduce their investment level to 60 percent. Basically, I object to Congress setting numerical levels which are cast in cement. This industry is best qualified to determine how high its investment percentage should be. Historically, it has been housing-oriented and I believe we should not try to impose arbitrary restrictions with one hand while broadening their competitive ability with the other.

Another broadening measure which I supported was title XVIII, alternative mortgage instruments. The authority to offer such mortgages to federally chartered savings and loans in California was proposed by Representative Patterson. I amended that to extend the authority to any State which permits State-charatered savings and loans to offer such mortgages, of which there are currently 17.

This was intended to allow the Federal Home Loan Bank Board to examine the results of this practice in a broader spectrum than one State and report back to Congress within 3 years on the effects of this authority. The Federal Home Loan Bank Board is required to publish rules and regulations which must include consumer safeguards "including documented choice between alternative and conventional fixed rate mortgages" as well as other consumer protection clauses.

Our committee has examined these mortgages; the Federal Home Loan Bank Board has studied them; preliminary statistics from the Department of Housing and Urban Development indicate that they are needed. It is time that we stop looking at this theoretically and expand to actual practice. This is one instance where Congress can permit action, rather than call for continued studies of the issue.

The matter of interlocking directorships as addressed in title II bothers me and I may attempt to amend this on the House floor. I support strongly the intent of the committee, especially as it relates to the very large corporations and institutions. I believe that the language of H.R. 13471 is too restrictive as it relates to the size of assets tests. If we use a limitation of assets of $20 million we are unduly restraining the ability of many small communities to employ the best talents of their businessmen. I am unequivocally opposed to the abuses of interlocks in larger businesses because of the potential conflicts of interest and other ethical questions that may be raised, but I think we need to give small bankers and small businessmen the opportunity to work together to the benefit of the communities.

The committee's exceptions that were provided to bank holding companies with respect to their insurance business also gives me some concern. I think that some insurance business should be available through banks where there are inadequate facilities provided by independent agents or as grandfathered by this bill for smaller holding companies. The other provisions of title XIII relating to insurance business present too many opportunities for banks to limit the options available to their customers. A person looking for a home mortgage should not be presented with a package which includes insurance as well. Freedom of choice should include the right to get loans from bankers and insurance from insurance agents. These feelings which I have about title XIII support my views about title II. We should be promoting the surivival of small businessmen within the free enterprise system rather than suffocating this important element of our economic system.

My final point concerns one of the most important elements of this bill, title XI, the right to financial privacy. The name of the title means one thing to me but the statutory language says something else entirely. During full committee markup I attempted to amend several sections of the LaFalce-Cavvanaugh substitute title which was subse-

quently adopted. I was successful in restoring to the bill language from the subcommittee version which limits to some extent the ability of various departments or agencies in the executive branch to transfer records or other information obtained from financial institutions.

Under present law, the so-called Privacy Act of 1974, government agencies can exchange information just by writing a letter requesting such. Under the proposed language, 30 days after the exchange, you—the customer—would be notified of the exchange. My amendment added two protections: one, notice was to be given that the records were being sought; and two, standing to object before the transfer not after the exchange.

I respect the men who head our government agencies, but I am not so sure that respect always goes down the chain of command. I—as a result of Watergate and from what I have learned on the Assassinations Committee—have a fear of lower-echelon employees carrying on personal vendettas by transferring information and of collusion between agencies that goes right on down the line of sins that only the large bureaucracy can get away with. For us to allow this to continue, to give it official endorsement is unbelievable. I think we should once again try to protect the rights of the American citizen.

The amendment I offered to this title which failed would have restored Subcommittee language to several sections in lieu of the substitute. I was attempting to place the burden on the government to prove the necessity for wandering through someone's financial records. We have seen enough abuses of the civil rights of Americans, yet the language in this bill weakens the American citizen's right to have his personal records kept private before the government proves a need for that information. The Privacy Protection Study Commission recommended that it is critical to protect private information of a financial nature. But still the Justice and Treasury Departments coerced the members of the Banking Committee into rejecting that recommendation.

The whole idea that government can transfer records, the whole idea that the government can go through your financial records without your being given prior notice or without making the government go to court first to prove the necessity—this I think is a terrible mistake.

The privacy title is a "first" and the executive branch reacted as I would expect any administration to do. But we cannot trample on the rights of all citizens just to insure that we catch a few. The vote in full committee was 20–21 and my amendment was defeated. If this language remains in the bill, more than an amendment will have been defeated, however. Even one of the authors of the substitute wrote in a letter that he had

> not incorporated all of the Justice-Treasury bill into (his) substitute ... because the language will have altered the intent of title XI, most important by one, opening up vast exemptions in the blanket coverage privilege covered by XI ... (and) two, changing the procedure by which a customer objects to government access by an administrative subpoena. Justice would require the customer to object in court rather than in writing to financial institutions and the burden of proof would shift to the citizen.

Legal semantics are a wonderous thing. The key word here is "burden." The average citizen will now be faced with the burden of going forward. My colleagues, I advise you to read that as being faced with a condition of talking on the whole U.S. Government and that is, quite correctly, one terrific burden. Let's write this correctly—as it was expressed in H.R. 13088— and tell the executive branch of the Government that we are tired of the American citizen having to take on this whole government.

The gentlemen who worked out the compromise as reflected in most of title XI put in many hard hours in good conscience to force the Justice Department to yield any ground on this issue. In spite of their efforts, I still believe the compromise was one-sided and what was given away was our right to privacy from "big brother." All I am asking is that the government be required to prove in court that reason exists to suspect an American citizen rather than notifying that citizen 30 days after the fact that he has to prove why the government did not have to do what was already done. If we don't have that right, then we have precious little lift in this country.

The only question that might be raised concerning the minority views involves variable rate mortgages. Although I favor the concept of reverse annuity mortgages, I have grave reservations about variable rate mortgages and cannot subscribe to the endorsement accorded them in the minority views.

MILLICENT FENWICK.

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MINORITY VIEWS ON H.R. 13471

The committee approval of H.R. 13471, the "Financial Institutions Regulatory Act," is a step toward a goal which most Members of the committee—Majority and Minority—have sought for several years, namely, the enactment of improvements in the administrative processes and supervisory powers of the Federal financial regulatory agencies.

Committee consideration of this legislation has been extensive. Many of the bill's provisions have been pending before the committee for several sessions. Moreover, actions on this specific bill have consumed over nine months. Fortunately, all this effort has not been wasted. Although the original version of this legislation included numerous provisions which were highly objectionable, most of these have been modified to the point where we believe the legislation can and should be viewed as a constructive response to contemporary problems.

It is a long and complex bill which addresses such a diverse range of issues that no Member reasonably could be expected to fully endorse every provision. Nonetheless, Members should recognize that the bill provides some long overdue revisions in the authority of the Federal agencies which regulate depository institutions.

The Senate has acted on legislation (S. 71) which includes some of the provisions of H.R. 13471. The sponsors of the House legislation presented the committee with the so-called "Safe Banking Act" which contained the key provisions of S. 71 and numerous other proposals. Some of these additional proposals were sound, most were not. Four substantial bills were considered and over 20 amendments were made to the subcommittee bill. Thus, while the committee expended a great deal of time on this legislation, most of that effort was directed at modifying many of these additional proposals. Therefore, both Members who will consider this measure in the House and administrators who will later implement its provisions, if it is enacted, would be well advised to review the legislative history of this measure because we believe the bill deserves support as much for what is no longer in it as for what it presently provides.

OVERVIEW

The overriding concern of the Federal banking agencies and most of the committee Members is the safety and soundness of the Nation's banking system as a whole. To put this legislation in perspective, it should be recognized that the safety and soundness of the system as a whole will be affected very little by the fate of this bill.

Any real threat to the system as a whole is more likely to stem from an excessive concentration of loans to risky debtors or from other errors of business judgment than from the abuses of individuals. Moreover, there have been so few bank failures over the past several decades

that even some supervisors of financial institutions have suggested that banking has become so "safe" that it is not competitive enough to respond to the ever-changing needs of the marketplace.

However, we are also concerned that a substantial percentage of the few bank failures which have occurred in recent years has resulted from abuses by individuals. This fact has been established by numerous hearings held by the Financial Institutions Subcommittee, including hearings on the failure of the U.S. National Bank of San Diego, the failures of several State-chartered banks in Texas, and the activities of T. Bertram Lance as chief operating officer of two national banks in Georgia.

Legislation to give the Federal supervisory authorities the additional powers they need to confront abuses by individual bankers is needed, not because the nature and scope of the abuses threaten the safety and soundness of the banking system as a whole but because the abuses threaten to undermine public confidence in the nation's banking system and in the supervisory process itself. A bill responsive to these demonstrated needs, in our judgment, can and should be enacted to meet this need.

Finally, it should be recognized that public confidence in the safety and soundness of the banking system depends not only on the adequacy of statutory authority for the supervision of financial institutions, but also the willingness and ability of the supervisors to enforce the laws which are on the books. Members of Congress are aware of the tendency to deal with a public demand to "do something" about a real or imagined problem by passing legislation when what is really needed is timely action on the part of supervisory authorities. The public perceives that Congress has used legislation to "cover up" an administrative failure, and the whole experience contributes to increased cynicism regarding the supervisory and legislative processes.

One of the most dramatic illustrations of this phenomenon in recent years has been the "Matters Relating to T. Bertram Lance."

It would be difficult to imagine that the effect of these highly publicized events on the public consciousness could be other than to raise serious doubts concerning the integrity of the administration and the quality of the supervisory process. It would also be unreasonable to expect that these doubts could be resolved as a result of the enactment of this bill alone.

BACKGROUND ON THE NEED FOR LEGISLATION

The committee report gives some indication of the long history of hearings, field trips and other activities of the Subcommittee on Financial Institutions Supervision, Regulation and Insurance which have been carried out over the last several years. No one would deny that it was apparent 5 or 6 years ago that procedures for examination and supervision of our financial institutions were in need of some updating.

Banking, like other industries, has advanced on many fronts since the last major regulatory reform in the 1930's. The sizes of many institutions have grown, corporate forms have changed, risk factors have been materially altered by all manner of changes not only within the lending industries and the parties to whom loans are made but also

by the geographic expansion of lending horizons, domestically and internationally. Add to this major technological changes and we think all would agree that a modernization of the regulatory process and authorities is appropriate. Despite the fact that the regulatory authorities have pointed out the need for certain new powers for some time, the persistence of some Members of Congress in attaching extreme legislative additions to these desirable proposals has accounted for the failure to enact supervisory amendments in the past. While one hardly can look at this bill with its twenty titles without asking, "Isn't this happening again?," the fact is that much of this bill has been debated ad nauseam four to ten years. As hard as it has been to reach agreement on the proper solutions to the problems, we commend our colleague, the subcommittee Chairman Mr. St Germain, for his perseverance over more than 5 years in directing subcommittee resources and allocating subcommittee time to these problems.

Pertinent Issues

In the following comments concerning specific titles, we explain the reasons for our support of many provisions of the bill, our reservations concerning several provisions, and our opposition to some of the more extreme proposals which were offered during consideration of this legislation at the subcommittee and full committee levels.

TITLE I—SUPERVISORY AUTHORITY OVER DEPOSITORY INSTITUTIONS

Provisions contained in H.R. 13471 would grant to the Federal supervisory authorities the power to impose cease-and-desist orders and civil fines upon individual officers and directors as well as to remove recalcitrant officers and directors, subject to prescribed hearing and appeal procedures. Heretofore a supervisory agency could act only against an institution. Such an action might be eschewed by the supervisor because it would be unfair to innocent officers and directors of an institution and, in any case, would be ineffective against an officer or director who moved from an institution which was the subject of supervisory action to another institution, there to continue the objectionable practices until the authorities would act again. H.R. 13471, as reported, would give Federal supervisory authorities the means to deal with individuals who have committed abuses, wherever they may be employed.

With the exception of one provision, the minority strongly supports title I as adopted by this committee.

The minority was divided on one amendment which, although defeated in committee, may be offered again on the floor. The amendment offered by Mr. D'Amours would have made banks which are not members of the Federal Reserve System subject to state insider loan limitations rather than the provisions of title I. Some Members favored the amendment on the basis that such regulation is more properly the domain of the State. Others opposed the amendment because state restrictions are not as stringent as the provisions of title I and Chairman Miller of the Federal Reserve Board has indicated that such an amendment would have a harmful effect on the already sagging membership in the Federal Reserve System.

TITLE II—INTERLOCKING DIRECTORS

The primary concern of the minority with regard to this title has been to make certain that the conflicts of interest involved in some interlocking directorates will be adequately regulated. However, it is also imperative that the legislation permit sufficient flexibility to allow the vast pool of expertise available in the financial community to work together in a procompetitive atmosphere. The minority believes that these two goals have been achieved in this bill.

It should be noted that the bank interlock provisions of section 8 of the Slayton Act are today subject to enforcement by both the Justice Department and the Federal Reserve Board. Indeed, the bank interlock provisions of section 8 specifically provide that the Federal Reserve Board may issue rules and regulations to carry out the provisions of the section. The potential overlap between the provisions of title II, and the existing bank interlock provision of section 8 of the Clayton Act can be eliminated only through an amendment to the Clayton Act itself. The Senate chose in S. 71 to amend the Clayton Act to remove the bank interlock provisions, thus eliminating the overlap. Because the minority believes that the Banking Committee lacks jurisdiction over the provisions of the Clayton Act, most minority members supported deletion of the Clayton Act amendments which were contained in the original "Safe Banking Act."

In an attempt to minimize the duplication, however, the minority offered and your committee accepted an amendment to the provisions of title II to provide that the Federal bank regulator shall be the initial enforcing agency for the prohibitions contained in title II. At the same time, the amendment made it clear that the appropriate Federal regulator could invoke aid of the Justice Department in enforcing these provisions. Hence, under this amendment the Justice Department could act in conjunction with the Federal regulator in those cases when the Federal regulator seeks assistance.

TITLE IV—CONFLICTS OF INTEREST

The intent of the Depository Institutions Conflict of Interest Act is to close a loophole in existing law which permits bank regulatory agency heads to terminate their Government positions and take jobs in the industry which they are charged with regulating.

There was considerable concern that any excessive restrictions on future employment might make it very difficult to recruit competent administrators to the public service. The minority feels that this title as amended strikes a delicate balance which will allow specialists from the private sector to serve in the Government and allow them to continue, after their public service has been completed, to be employed in their respective fields. We do not believe that the "no contact" provision in this title will unduly discourage talented individuals from serving in a public capacity.

This title would provide for complete grandfathering so that the new restrictions would apply only to future agency members. Those who, previous to enactment of this legislation, have accepted positions with the Federal bank regulatory agencies would be exempted from this act.

It is also the Minority's intent to make it clear that this act, which attempts to minimize conflicts of interest in the bank regulatory agencies, should be extended to all branches of Government. This act should not be considered to be a chastisement of these agencies but rather an attempt by the Banking Committee to set an example for other agencies. There currently exists a number of pieces of legislation before both the Senate Governmental Affairs and House Government Operations Committees which would deal with the conflict of interest problem on a government-wide basis. The minority would still support that effort.

TITLES VI AND VII—CHANGE IN CONTROL OF DEPOSITORY INSTITUTIONS

Titles VI and VII, entitled "Change in Bank Control" and "Change in Savings and Loan Control," respectively, are based on the principle that one who acquires control of a financial institution should undergo scrutiny similar to that which an applicant for a new charter must undergo. We believe it is essential to the effective performance of their responsibilities that the supervisory authorities know basic facts concerning persons who control financial institutions. This need is especially acute when controlling persons are beyond the jurisdiction of the U.S. Government.

The minority has supported several important improvements that have been made in these titles since their introduction:

1. The original, overly stringent requirement that changes in control of financial institutions be approved in advance by the appropriate Federal supervisory agency has been removed in favor of a provision which would allow the agency to disapprove a proposed acquisition within a 60-day period (which could be extended an additional 30 days) if any of the conditions set forth in the bill are not met. This procedure is adequate to enable the supervisory authorities to meet their responsibilities without unduly disrupting the acquisition process.
2. The original requirement that acquiring parties provide audited financial data for 5 years has been made more flexible. The supervisory agencies will be authorized to require whatever information it may require in order to determine whether or not to disapprove a proposed change of control. If certified financial data is not needed to make the statutory determination, it will not be required by the agency. The information required will be tailored to the situation at hand so that the agency can meet its responsibilities without erecting needless barriers to the consummation of legitimate transactions.
3. Finally, a potential loophole in each of the titles was closed by an amendment which provides that a takeover of a financial institutions holding company will be subject to the same provisions as those which would apply to the takeover of the financial institution itself.

TITLE VIII—CORRESPONDENT ACCOUNTS

This title would prohibit preferential loans to bank officers or stockholders with more than a 10 percent interest in the bank when a correspondent relationship exists. It was designed to curb the abusive use

of correspondent accounts to secure below-market terms for personal loans. During its studies of insider abuses, the Financial Institutions Subcommittee discovered that few, if any, banks have formal procedures for handling insider loans related to correspondent accounts. Hopefully, this title will inhibit some of the unusual banking practices which have been identified during the extensive hearings which the Subcommittee has held on this subject.

The full committee adopted an amendment offered by Messrs. St Germain and Derrick which would require each executive officer and stockholder with more than a 10 percent interest in the bank to file a written report with the board of directors for any year that they have outstanding an extension of credit from a bank which maintains a correspondent account with their bank. This report would then be forwarded to the respective supervisory agency. The report would require disclosure of confidential, detailed information regarding loans to these individuals and the organizations with which they are associated.

Section G(iii) of the amendment would require that banks, reporting under the previously described sections of this amendment, make public in their annual report a list of the names of all executive officers, 10 percent shareholders, and affiliated companies and political committees of such individuals which have received extensions of credit from banks where a correspondent relationship exists. Furthermore, G(iii) would provide that the aggregate amounts of these loans be published in the annual reports.

We believe a further amendment is needed to clarify this provision. It is now unclear whether or not the confidential information requested in sections G(i) and (ii) could be subject to a freedom of information request. Furthermore, the wording which requires aggregate loan amounts to be included in the report is ambiguous. Conceivably, the language could be construed to require that each individual, company, or political committee publish the aggregate amount of its loans from correspondent banks. It is also unclear whether or not the words "aggregate amount" include the dollar amount as well as the number of loans made in a specific category. It will no doubt be possible to determine from the information disclosed by some of the smaller banks who specifically received loans and for what amounts. This is contrary to the intent of the committee and will cause much hardship for individuals who never received preferential terms for their loans.

Although Mr. St Germain assured the Members during debate on the amendment that the confidentiality of the data would be protected, a closer examination of the amendment discloses that it must be read in conjunction with the language of title IX. The amendment specifically requires the information to be included in the report required under subsection (k)(1) of the Federal Deposit Insurance Act. At present there is no such subsection. It would only exist if title IX is enacted and subsection (k)(4) of that title specifically provides that the reports shall be available "upon request to the public." We have supported these two titles because they are designed to give boards of directors and supervisory agencies information to help them better supervise the activities of so-called insiders. We believe that most of these transactions are perfectly honest business transactions and, un-

der the circumstances, details about them should not be available to the public any more than anyone else's loan records.

We will therefore support an amendment to correct this situation.

TITLE IX—DISCLOSURE OF MATERIAL FACTS

This title would require each insured bank to submit a report annually to its respective supervisory agency with the following information: (1) A list of all stockholders who own, control, or have the power to vote more than 10 percent of any class of voting securities of their bank; and (2) a list of all executive directors or 10-percent stockholders and the aggregate amount of all extensions of credit to such individuals, any company controlled by them, and any affilated political or campaign committee.

We are very concerned about publishing the names of individuals who have received non-preferential correspondent related loans. The general public may assume that all of these people have received preferential loans. In order to defend themselves, the major stockholders and executive officers will have to release confidential information about the interest rates and terms and conditions of their loans. We do not believe it was the intent of this committee to force innocent people to disclose such information to save their reputations. The costs of compliance would seem to clearly exceed any benefits to be derived from this disclosure requirement. Since it appears likely that this provision will have a chilling effect on the willingness of talented individuals to serve as directors, some experience with the provision of information to the supervisory agencies should be gained before the additional and potentially onerous requirement of public disclosure is imposed.

TITLE X—FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978

The purpose of the Council is to "prescribe uniform principles and standards in the Federal examination" of financial institutions and "to insure progressive and vigilant supervision" of those institutions. Under the amended title, the Council would be composed of the Comptroller of the Currency and the Chairman of the Federal Deposit Insurance Corporation, the Federal Reserve Board of Governors, the Federal Home Loan Bank Board, and the National Credit Union Administration. Provision has also been made for the establishment of a liaison committee composed of five representatives of State agencies which supervise financial institutions. In addition, the Council would be empowered to "make recommendations for uniformity in other supervisory matters," but it was established clearly during the subcommittee deliberations that these recommendations are to be non-binding upon the members of the Council. This principle is important to the Minority, for we believe that the agencies have a sufficient interest in making the new Council work to obviate the need for the use of coercion to compel cooperation in supervisory matters.

TITLE XI—RIGHT TO FINANCIAL PRIVACY

An indication of the tremendous interest in privacy is the fact that more than 100 privacy bills have been introduced during the 95th Con-

gress. Many of these bills reflected the recommendations of the Privacy Protection Study Commission and many covered aspects of financial privacy. On June 30, 1977, Mr. Cavanaugh introduced H.R. 8133 with cosponsors from both sides of the aisle on the Banking Committee. That bill hewed very closely to the Commission report. Eventually the "Cavanaugh bill, H.R. 8133" was incorporated as title XI of H.R. 13088.

When it became apparent that the "Financial Institutions Regulatory Act of 1978" had a good chance of passage, the Departments of Justice and of the Treasury lobbied intensively in an 11th-hour effort to make substantial changes. These changes were embraced in the so-called Cavanuagh-LaFalce substitute. It had been agreed during the subcommittee markup that the privacy title would be reported unamended to the full committee. There the Cavanaugh-LaFalce substitute was offered and rewritten in the course of a morning's work. Controversy focused on three areas: (1) Whether the title should apply to grand jury process; (2) which party should be required to go to court first to challenge the release of financial records, and (3) when notification should be provided to the party whose financial records are sought.

Privacy Report

Hundreds of pages in the final report of the Privacy Protection Study Commission solidly document the need for an overhaul of national privacy laws. Central to the recommendations made by the Privacy Commission is the critical need to protect private information of a financial nature—checks, credit card receipts, bill payments, ledgers, financial statements and personal accounts, to name a few.

Perhaps the two most important principles that would nearly guarantee privacy protection against unwarranted intrusions are: (1) "Prior notification" to the customer of the expected release of records or information; and (2) "standing" to challenge the release of the records or information in court.

In its assessment of the safeguards provided by the Privacy Act of 1974, the Privacy Commission was unequivocal. The report said that the flow of information within government was relatively unrestricted. Moreover, individuals have little, if any, power to protect themselves from improper use of disclosure within government. The growth of Federal compusory reporting statutes is, in itself, one of the greatest threats to privacy. Frequently, an agency can obtain from another government agency what it cannot get from the individual directly.

Law Enforcement

Any fears of unnecessary governmental restriction should be put to rest by the healthy set of exceptions that have been carved out in the act. The most important of these would provide for delay of notification by court order under the Judicial Subpena provisions in the event of an emergency.

Chief among the competing considerations which had to be addressed was the extent to which law enforcement efforts would be hampered by privacy legislation. Virtually every white-collar criminal conviction is made on a documentary basis. Access to confidential ma-

terial by enforcement personnel today is unstructured and informal—by phone, letter, or personal visit. Rarely is the customer notified of the exchange of information, and even if he is notified he has no standing to challenge the exchange of that information. Relying on the experience under the administrative summons provisions of the Tax Reform Act of 1976, the Departments of Justice and of the Treasury insisted that the burden of going to court first be on the customer. It was pointed out that under the Tax Reform Act this initial burden is placed on the Government. In the past year, the Government has won hundreds of cases by default judgments inasmuch as people instinctively object to the disclosure of their records or have merely frivolous objections. The net result has been the expenditure of a lot of money and the creation of considerable delay in the investigation of cases. Other Federal law enforcement institutions claim that this experience will be repeated if the burden of going to court first is put upon them.

Against the needs of the government, it is necessary to balance the need for privacy of each individual. A delicate balance must be struck because claims on both sides are legitimate. With notable exceptions the most effective way to prevent abuse in the acquisition of private financial information is by requiring prior notification and that the burden of going to court be shouldered by the Government. In its current form, the bill reverses this burden and places it squarely on the customer. A nice distinction is made between the burden of going to court first and the subsequent burden of proof. In any event, the burden of proof always falls on the Government. An amendment to place the burden of going forward on the Government was defeated in full committee by a vote of 20 to 21.

Grand Jury

The grand jury is the single most effective investigative tool in criminal law enforcement. Its authority is Constitutionally based, with 200 years of legal precedent defining its reach, protecting its secrecy, and circumscribing its procedure. Grand jury practices may well be in need of reform, but the Banking Committee is not the place to do it. Besides, the Judiciary Committee has conducted extensive hearings on the matter accompanied by a number of bills to accomplish that purpose. Because we believe it is neither necessary nor desirable that this committee invade the jurisdiction of the Judiciary Committee, we supported the exception of grand jury procedures from this title.

However, a second amendment was offered and adopted affecting grand jury procedures with which we have no quarrel because it would have little, if any, impact on the ability of the grand jury to acquire information. It would, however, establish some standards in handling the private financial information once the grand jury has acquired private financial records. It would penalize the prosecution for negligently handling an individual's private records.

Administrative Subpoena

Post-notification, according to the Privacy Commission, is a useless exercise. What privacy is there to protect once the Government agency has the information? Subsequent notice seems to add insult to injury.

An amendment to the Cavanaugh-LaFalce substitute was adopted which would require agencies seeking private financial information from third parties to provide notification prior to the release of records or information, so that the customer may have the opportunity to challenge that release. A single exception has been made for the Securities and Exchange Commission, in recognition of its rigorous internal procedures, and of the credible threat the agency's objections to the title would have posed if the exception had not been granted.

Conclusion

Finally, it is important to note that the scope of this title is limited to officials of Federal agencies and departments and to employees of the United States. This limitation reflects our belief that legislation affecting state and local government is the proper province of the respective State governments and of the Conference of Commissioners on Uniform State laws. We believe that grave constitutional and political issues would have been raised if this title had applied to other levels of Government. Several States, most notably California, have enacted financial privacy statutes of their own. This is a movement which deserves both our support and our forbearance.

TITLE XII—CHARTERS FOR THRIFT INSTITUTIONS

Title XII authorizes Federal charters for mutual savings banks previously chartered as state mutual savings banks. This means that in those 18 States that charter mutual savings banks, a bank so chartered may convert to a Federal charter should it elect to do so. No de novo Federal charters would be authorized in any State.

The only real controversy on this title was whether or not to require Federally chartered mutual savings banks to invest sixty percent of their assets in residential mortgage loans. Opinions on this were divided, but the prevailing opinion in your committee was that such a requirement was not desirable. An amendment striking the 60 percent requirement was passed in subcommittee by a vote of 10 to 6 and this action was sustained in full committee by a 25 to 12 vote.

The argument in favor of the investment requirement is basically that if mutual savings banks are to continue to have the one-quarter percent interest rate differential advantage over commercial banks under regulation Q, they should be required to invest some significant percentage of their funds in home mortgages. It was pointed out that savings and loan associations which also have the one-quarter percent differential must do this, but opponents pointed out that the incentive for savings and loans to do so is not really the banking laws but the Internal Revenue Code.

More important, we believe, was the fact that various commissions have for some years recommended that thrift institutions should have their investment authorities broadened to enable them to compete with commercial banks for savings funds. As mutual savings banks have always had broad investment authorities and have still invested principally in housing related loans, it would be unrealistic to require a narrowing of their investment opportunities as a price for Federal charters.

Recognizing the desire to maximize availability of home mortgage funds and thus keep mortgage money costs as low as possible, your committee did not find it easy to reject these amendments. However, your committee rejected the amendments because making funds available for the construction of apartments, home modernization, stores, churches, and bonds for municipal improvements of all sorts is just as important to balanced community development as providing funds for single-family mortgages.

Should an amendment be offered on the floor to impose such a limitation on the investments of mutual savings banks, we believe it should be defeated.

TITLE XIII—HOLDING COMPANIES

Title XIII—Holding companies—as amended by the committee represents a fundamental and complete revision of the title as originally introduced on September 13, 1977, in H.R. 9086. In the first version of the so-called "Safe Banking Act," the title affecting bank holding companies was highly controversial and was opposed by both the regulators, particularly by the Federal Reserve Board, and the bankers alike.

For example, one section of the original title would have placed the Federal Reserve Board, rather than the shareholders, in the position of deciding who would be the directors of a bank holding company. Another section would have established new antitrust standards for bank holding companies which would have been more stringent than the competitive tests for any other industry. Jurisdictional issues also were confused in the original title: in one section the Federal Reserve Board would have superseded the Comptroller of the Currency's authority to determine permissible activities for national banks, while in another section the Board would have been given the authority to set capital standards for State banks affiliated with bank holding companies. Two other sections would have established new and cumbersome procedural requirements which would have hindered the Federal Reserve Board's ability to review applications for the nonbanking activities of bank holding companies.

During the committee markup, title XIII was stricken and a new title establishing standards for bank holding company entry into bank-related activities was substituted. This new title, which incorporated an amendment first offered during the subcommittee markup, would prohibit bank holding companies from providing insurance as a principal, agent, or broker, except: (1) For credit life or credit disability insurance; (2) for any insurance sold in a community of less than 5,000 population; (3) for any insurance agency activity in a community where the bank holding company demonstrates that there are inadequate insurance facilities; (4) where insurance already is being sold by a company owned directly or indirectly by a bank holding company as of June 6, 1978; or (5) for any insurance agency activity engaged in by a bank holding company or any of its subsidiaries with assets of less than $50 million. An amendment to delete the second and third exceptions above was rejected by the committee. In our judgment this new title XIII, which was adopted by a two-to-one margin in the committee markup, represents an effective balance between the interests of the banking and insurance industries.

TITLE XVII—FINANCIAL REGULATION SIMPLIFICATION ACT OF 1978

The Financial Regulation Simplification Act of 1978, introduced by Mr. Stanton, and adopted unanimously by the committee would establish a program which assures the periodic review of existing regulations to determine whether those regulations achieve specific policy goals. As set forth in section 1702, these policy goals state in part that regulations issued by the Federal financial regulatory agencies shall ensure that the need for and purposes of the regulation are established clearly and that compliance costs, paperwork and other burdens on both financial institutions and consumers are minimized. This act would assure that the Congress and your committee will be informed of the progress made by the agencies to reduce both unnecessary paperwork burdens and the costs imposed by regulations.

Since Government redtape and regulatory burden often are cited as contributing factors to structural inflation in our society, the act will help fight inflation, albeit in a small way, because the intent is to lessen the regulatory burden on both financal institutions and consumers. Title XVII, moreover, is in keeping with the scope, intent and purposes of the Financial Institutions Regulatory Act of 1978.

TITLE XVIII—ALTERNATIVE MORTGAGE INSTRUMENTS

Title XVIII would provide authority to offer alternative mortgage instruments to Federally chartered savings and loan associations in States permitting State-chartered savings and loans to make such mortgage loans. As originally introduced at full committee by Representative Patterson, the title would only have extended this authority to Federally chartered savings and loans in California. However, under an amendment offered by Representative McKinney the title was expanded to apply to all states (currently 17), where State chartered savings and loans may offer alternative mortgage instruments.

The committee also approved an amendment offered by Representatives Wylie and Stanton which provides that a Federally chartered savings and loan offering variable rate mortgages must do so for at least 4 years at a time, or a period set by the Federal Home Loan Bank Board. The basis for this amendment is that it would be unfair for a financial institution to offer a variable rate mortgage only when it expected interest rates to rise. Furthermore, it would be a truer test of the working of alternative mortgages, in response to many criticisms, if they were offered for a full interest rate cycle, rather than only for a portion of the cycle.

Critics of alternative mortgage instruments, and especially VRM's, have chiefly offered the following objections: (1) Congress has not adequately examined the issue; and (2) these mortgages are anti-consumer, as rates and hence payments will likely only move upward. In response to these criticisms, one can, however, offer several rebuttals:

(1) Many rounds of hearings have been held on this subject including: VRM's and Reg Q in 1975; the FINE Study, 1975–76; and the current Home Ownership Task Force hearings, held around the country. Clearly, the Congress has devoted much time to this issue.

(2) Alternative mortgage instruments, as provided under this title, would have many pro-consumer features including: (a) They provide the consumer a wider range of options for their mortgages and each customer must be offered a documented choice between an alternative mortgage and a traditional "fixed rate" mortgage.

(b) rates can and will fluctuate up or down, with a maximum upward limit fixed. Moreover, upward adjustments are permitted to be made, while downward adjustments are required to be made; (c) no prepayment penalties are attached to VRM's if rates go above the consumers' original mortgage agreement; (d) by allowing financial institutions to more closely align their incomes with money market conditions, these instruments can enable higher payment of interest on deposits; and (e) VRM's permit financial institutions to continue to offer mortgage money, even in times of a credit crunch, as they can better manage their funds. Thus, VRM's make posssible better support of the housing and construction industry.

For all of the above reasons, therefore, enabling Federally-chartered savings and loans to offer alternative mortgages for a full interest rate cycle appears to be an excellent method of determining the viability and desirability of these instruments.

J. WILLIAM STANTON
GARRY BROWN
CHALMERS P. WYLIE
JOHN H. ROUSSELOT
GEORGE HANSEN
HENRY J. HYDE
CHARLES E. GRASSLEY.
MILLICENT FENWICK
JAMES A. S. LEACH
THOMAS B. EVANS, Jr.
BILL GREEN.

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