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No. S199074

In the Supreme Court of the State of California

HAROLD ROSE AND KIMBERLY LANE,

Plaintiffs and Appellants,

vs.

BANK OF AMERICA, N.A.,

Defendant and Respondent.

SUPREME COURT
FILED

JUL 17 2012

Frank A. McGuire Clerk

Deputy

EXHIBITS IN SUPPORT OF MOTION FOR JUDICIAL NOTICE (VOL. 1 OF 1, PAGES 1-371)

After A Decision By The Court Of Appeal,
Second Appellate District, Division Two, Case No. B230859

On Appeal From A Judgment Of Dismissal
Los Angeles County Superior Court, Case No. BC433460
Honorable Jane L. Johnson

Service On The Los Angeles District Attorney And
The California Attorney General Required By
Cal. Bus. & Prof. Code § 17209 and Cal. R. Ct. 8.29(b)

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EXHIBIT A

Bill Summary & Status
104th Congress (1995 - 1996)
H.R.1362
CRS Summary

H.R.1362
Latest Title: Financial Institutions Regulatory Relief Act of 1995
Sponsor: Rep Bereuter, Doug [NE-1] (introduced 3/30/1995) Cosponsors (63)
Related Bills: H.R.1858
Latest Major Action: 6/15/1995 House committee/subcommittee actions. Status: Forwarded by Subcommittee to Full Committee (Amended) by the Yeas and Nays: 13 - 6.

SUMMARY AS OF:
3/30/1995--Introduced.

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Subtitle B: Streamlining of Government Regulations;

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Financial Institutions Regulatory Relief Act of 1995 - **Title I: Reductions in Government Overregulation - Subtitle A: The Home Mortgage Process** - Amends the Real Estate Settlement Procedures Act (RESPA) to transfer regulatory authority to the Board of Governors of the Federal Reserve System (the Board) from the Secretary of Housing and Urban Development. Eliminates redundant regulators by adding certain administrative enforcement provisions.

(Sec. 102) Amends the Truth in Lending Act (TILA) and RESPA to provide for comparability of terms.

(Sec. 103) Provides for increased regulatory flexibility and exemptive authority for the Board under TILA.

(Sec. 104) Provides for reductions in RESPA regulatory burdens with respect to: (1) lenders' disclosures to federally related mortgage loan applicants relating to assignment, sale, or transfer of loan servicing; (2) second mortgages; and (3) consistency of RESPA and TILA exemption of business loans.

(Sec. 105) Provides for alternative disclosures for adjustable rate mortgages under TILA.

(Sec. 106) Amends TILA with respect to treatment of certain charges, including third party fees, taxes on security instruments or evidences of indebtedness, preparation of loan documents, and fees relating to pest infestations, inspections, and hazards.

(Sec. 107) Exempts from rescission, under TILA, certain transactions (other specified types of mortgages) which constitute refinancings or consolidations of existing extensions of credit and which are secured by a first lien.

(Sec. 108) Adds to TILA provisions relating to tolerances for accuracy and to the basis of disclosure for per diem interest.

(Sec. 109) Amends TILA to establish certain limitations on liability, including: (1) limitations on liability for disclosures relating to certain fees and charges other than finance charges; and (2) an exemption from liability for finance charge disclosures within tolerance limits.

(Sec. 111) Sets forth a limitation on the rescission period under TILA.

(Sec. 112) Revises TILA provisions for the calculation of actual damages.

(Sec. 113) Makes assignees liable, under specified TILA provisions, only if violations are apparent on the face of transaction documents. Provides that a servicer of a consumer credit transaction shall not be treated as: (1) an assignee for liability purposes unless the servicer is the owner of the obligation; or (2) the owner on the basis of an assignment for administrative convenience.

(Sec. 114) Revises certain TILA provisions for recovery of fees.

(Sec. 115) Repeals a provision of the Housing and Urban Development Act of 1968 for homeownership debt counseling notification.

(Sec. 116) Amends the Home Mortgage Disclosure Act of 1975 to revise exemption provisions. Exempts from coverage under such Act specified types of institutions with total assets, in their last full fiscal year, of $50 million or less (currently $10 million or

less). Authorizes the Board to exempt those with greater assets where the burden of compliance outweighs the usefulness of the information required to be disclosed. Provides that a depository institution satisfies certain public availability of information requirements if: (1) such information is kept at the home office; (2) notice that such information is available through request to the home office is posted at the specified branch locations; and (3) the information is supplied to the requester in a paper copy or, if acceptable to the requester, via a form of electronic medium.

Subtitle B: Community Reinvestment Act Amendments - Amends the Community Reinvestment Act of 1977 (CRA) to revise the expression of congressional intent.

(Sec. 122) Exempts a regulated financial institution from the examination requirements of, or any regulations issued under, CRA if: (1) its main office (and each branch) is located in a local government unit with a population of not more than 30,000, which is not part of a metropolitan statistical area; and (2) the institution and its parent bank holding company have aggregate assets of not more than $100 million (to be adjusted annually by the annual percentage increase in the consumer price index for urban wage earners and clerical workers).

(Sec. 123) Provides for self-certification of CRA compliance by qualifying financial institutions, with certain public notice requirements.

(Sec. 124) Adds provisions for community input and conclusive rating, including requirements for publication of exam schedule, opportunity for comment, evaluation by the appropriate Federal financial supervisory agency, and procedures for requests for reconsideration of rating.

(Sec. 125) Directs Federal financial supervisory agencies, in conducting certain CRA assessments, to develop compliance standards consistent with the specific nature of special purpose banks (which do not generally accept retail deposits, such as credit card banks and trust banks).

(Sec. 126) Gives institutions credit, for purposes of satisfying CRA requirements, for investments in, and loans, to: (1) minority or women's depository institutions; and (2) joint ventures or other entities or projects providing benefits to distressed communities (whether such institutions or communities are located within or outside of the regulated financial institution's service area.

(Sec. 127) Prohibits regulations requiring certain additional recordkeeping and reporting under CRA.

(Sec. 128) Applies a requirement of metropolitan area distinctions only to institutions that maintain domestic branches in two or more States.

(Sec. 129) Amends the Federal Home Loan Bank Act to make certain reporting requirements inapplicable to members receiving an outstanding or satisfactory grade under specified CRA provisions.

Subtitle C: Consumer Banking Reforms - Amends the Truth in Savings Act (TISA) to prohibit depository institutions or deposit broker from making misleading or inaccurate advertisements or disclosures. Repeals TISA provisions relating to disclosure of interest rates and terms of accounts, account schedules, disclosure requirements for certain

accounts, distribution of schedules, periodic statements, civil liability, and effect on State law. Revises provisions for regulations and definitions.

(Sec. 132) Amends the Electronic Fund Transfer Act (EFTA) to revise provisions relating to unauthorized electronic fund transfers.

(Sec. 133) Amends TILA to add provisions relating to cardholder liability for unauthorized use of credit cards.

(Sec. 134) Amends the Federal Deposit Insurance Act to revise provisions for regulations governing insured banks to allow depository institutions or their affiliates or subsidiaries to transfer information among themselves without any restriction or limitation if such possible information sharing is disclosed and the consumer is given the opportunity to direct that such information not be so communicated, prior to initial communication.

(Sec. 135) Revises EFTA definitions of: (1) accepted card or other means of access; and (2) account.

Subtitle D: Equal Credit Opportunity Act Amendments - Equal Credit Opportunity Act Amendments of 1995 - Combines and simplifies the adverse action notification requirements of the Equal Credit Opportunity Act (ECOA) and the Fair Credit Reporting Act (FCRA).

(Sec. 143) Revises ECOA requirements for written notifications of, and statements of reasons for, adverse actions to be given to credit applicants. Exempts from liability for a violation of such requirements any persons who show by a preponderance of the evidence that at the time of the alleged violation they maintained reasonable procedures to assure compliance with such requirements.

(Sec. 144) Revises specified FCRA requirements on users of consumer reports to eliminate coverage of credit denials and of adverse actions based on reports of persons other than consumer reporting agencies.

(Sec. 145) Amends ECOA and the Fair Housing Act to add incentives for self-testing.

(Sec. 146) Provides that creditors shall be deemed in compliance with ECOA nondiscrimination requirements with respect to any credit decision based solely on the use of an empirically derived, demonstrably and statistically sound, credit scoring system if such system does not use: (1) any protected category; or (2) any criterion so directly associated as to be a functional equivalent of such a category. (Does not preclude using age as a factor in such a system as otherwise permitted under ECOA.)

Subtitle E: Consumer Leasing Act Amendments - Consumer Leasing Act Amendments of 1995 - Amends the Consumer Credit Protection Act (CCPA) to direct the Board to: (1) write regulations or staff commentary to update and clarify requirements and definitions for lease disclosures, contracts, and other issues related to consumer leasing which would carry out the purposes of the Consumer Leasing Act; and (2) publish model disclosure forms and clauses to facilitate compliance with such disclosure requirements and aid the consumer in understanding the transaction.

(Sec. 154) Revises CCPA provisions for consumer lease disclosures to require prior separate leasing disclosures of specified items in a tabular format.

(Sec. 155) Revises CCPA provisions relating to consumer lease advertising.

Subtitle F: Federal Home Loan Bank Amendments - Amends the Federal Home Loan Bank Act (FHLBA) to revise an FHLB system membership eligibility location requirement to allow institutions to apply for membership in an adjoining district, for the institution's convenience, with Federal Housing Finance Board (FHFB) approval.

(Sec. 162) Revises FHLBA audit provisions to: (1) prohibit the FHFB from participating in the hiring of external auditors by banks; (2) permit the FHFB to establish requirements for external audit contracts and accounting standards; and (3) require all 12 banks to contract for an annual audit with a single provider.

Title II: Streamlining Government Regulations - Subtitle A: Regulatory Approval Issues - Amends the Bank Holding Company Act (BHCA) to revise and streamline notice and other requirements relating to both nonbanking and bank acquisitions by well-capitalized and well-managed banking organizations.

(Sec. 203) Amends the Federal Deposit Insurance Act to eliminate: (1) Bank Merger Act filing and approval requirements for insured depository institutions already controlled by the same holding company; and (2) redundant approval requirements for "Oakar" transactions (generally, conversion, by acquisition or similar means, of a Bank Insurance Fund member to a Savings Association Insurance Fund member, or vice versa).

(Sec. 205) Amends the Home Owners' Loan Act to eliminate duplicative requirements imposed on bank holding companies.

(Sec. 206) Eliminates a BHCA requirement that approval be obtained for divestitures.

(Sec. 207) Eliminates specified requirements for certain branch applications by: (1) national banking associations, under the Revised Statutes relating to banks and banking; (2) State member banks, under the Federal Reserve Act (FRA); and (3) State nonmember banks, under the Federal Deposit Insurance Act (FDIA).

(Sec. 208) Eliminates branch applications and requirements for automatic teller machines (ATMs) and similar facilities, under the Revised Statutes and FDIA.

(Sec. 209) Eliminates a requirement for approval of investments in bank premises for well-capitalized and well-managed banks.

(Sec. 210) Eliminates specified filing requirements under FDIA for officer and director appointments.

(Sec. 211) Streamlines the BHCA process for determining new nonbanking activities.

Subtitle B: Streamlining of Government Regulations; Miscellaneous Provisions - Eliminates the per-branch capital requirement for national banks and State member banks under the Revised Statutes.

(Sec. 222) Revises FDIA requirements relating to notification of branch closures to exempt specified entities under certain conditions.

(Sec. 223) Amends the Depository Institutions Management Interlocks Act to exempt management officials of depository institutions or holding companies with small market shares from prohibitions against dual service with unaffiliated institutions or companies in the same area, town, or village. Revises provisions relating to dual service among

larger organizations. Extends a specified grandfather exemption which allows certain management officials to continue to serve despite interlocks prohibitions.

(Sec. 224) Abolishes the Appraisal Subcommittee established under the Federal Financial Institutions Council Act of 1978, and consolidates its functions into the Financial Institutions Examination Council.

Amends the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) to revise provisions relating to rosters of State certified or licensed appraisers. Provides for reduction of assessments on appraisers.

(Sec. 225) Eliminates certain recordkeeping and reporting requirements relating to loans to executive officers under FRA and BHCA. Permits extensions of credit made under certain FRA provisions pursuant to a benefit or compensation program widely available to employees of the member bank.

(Sec. 226) Amends FDIA to provide for expanded regulatory discretion for small bank examinations.

(Sec. 227) Amends the Right to Financial Privacy Act to revise cost reimbursement provisions to specifically include corporate customers under references to customer records.

(Sec. 228) Amends specified Federal law relating to money and finance to eliminate certain provisions requiring depository institutions to identify their nonbank financial institution customers.

(Sec. 229) Requires each appropriate Federal banking agency to conduct a paperwork reduction review.

(Sec. 230) Repeals certain reporting requirements under the Federal Deposit Insurance Corporation Improvement Act of 1991.

(Sec. 231) Directs the Secretary of the Treasury to revise a specified regulation under the Securities Exchange Act of 1934 to provide for daily confirmations for hold-in-custody repurchase transactions.

(Sec. 232) Requires the Financial Institutions Examining Council to carry out, and report to the Congress on, a regulatory review of regulations.

(Sec. 233) Amends the International Lending Supervision Act to: (1) grant Federal banking agencies discretion in imposing certain country risk requirements with respect to reserves; and (2) repeal certain additional country risk reserve requirements.

(Sec. 234) Revises specified FDIA audit provisions with respect to exemptions due to costs. Authorizes the Federal Deposit Insurance Corporation and the appropriate Federal banking agency to designate certain information in such audits as privileged, confidential, and not available to the public.

(Sec. 235) Sets forth certain due process protections under FDIA and the Federal Credit Union Act.

(Sec. 236) Revises FDIA provisions relating to: (1) culpability standards for outside directors; and (2) rules on deposit taking.

(Sec. 238) Amends the Riegle Community Development and Regulatory Improvement Act of 1994 to revise the transition period for new regulations.

(Sec. 239) Amends the International Banking Act of 1978 to revise provisions relating to foreign bank applications and examinations.

(Sec. 241) Amends TILA to revise provisions relating to second mortgages.

Title III: Lender Liability - Amends FDIA to add provisions relating to lender, fiduciary, and Government agency environmental liabilities.

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EXHIBIT B

Bill Summary & Status
104th Congress (1995 - 1996)
H.R.1858
All Information

H.R.1858
Latest Title: Financial Institutions Regulatory Relief Act of 1995
Sponsor: Rep Leach, James A. [IA-1] (introduced 6/15/1995) Cosponsors (None)
Related Bills: H.R.1362, H.R.2520
Latest Major Action: 6/18/1996 Supplemental report filed by the Committee on Banking and Financial Services, H. Rept. 104-193, Part II.
House Reports: 104-193, 104-193 Part 2

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SUMMARY AS OF:
7/18/1995--Reported to House amended. (There is 1 other summary)

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Title IV: Annual Study and Report on Impact on Lending to

Small Business

Financial Institutions Regulatory Relief Act of 1995 - **Title I: Reductions in Government Overregulation - Subtitle A: The Home Mortgage Process** - Amends the Real Estate Settlement Procedures Act (RESPA) to: (1) transfer certain rulemaking authority over disclosure requirements from the Secretary of Housing and Urban Development (HUD) to the Board of Governors of the Federal Reserve System (the Board); and (2) declare that the purpose of the Act is to eliminate kickbacks or referrals without directly regulating

settlement services prices or wages to bona fide employees that are not designed as a subterfuge to facilitate kickbacks among affiliated companies.

(Sec. 101) Precludes the Secretary of HUD from publishing a proposed or final regulation unless the Secretary has used a certain negotiated rulemaking procedure to attempt to negotiate and develop the rule.

Distributes administrative enforcement authority regarding kickbacks and referrals among HUD, the Federal banking agencies, the National Credit Union Administration, the Board, and the Director of the Office of Thrift Supervision. Mandates that such agencies cooperate with one another in developing enforcement guidelines.

Declares a statutory preference for administrative enforcement over criminal enforcement, except in appropriate cases. Restricts criminal sanctions to willful violations of law (current law penalizes unwillful and unintentional violations as well). Redesignates "a controlled business arrangement" as "an affiliated business arrangement."

Repeals mandates for projects demonstrating: (1) a land parcel recordation system; and (2) preparation of statements of settlement costs for insertion into special information booklets.

(Sec. 102) Sets a deadline by which the Board must take action under RESPA and the Truth in Lending Act (TILA) to simplify and provide a single format for credit transaction disclosures.

(Sec. 103) Exempts from TILA disclosure requirements any transactions that the Board determines: (1) are not necessary to effectuate the Act's purposes; or (2) do not provide a measurable benefit in the form of useful information or consumer protection.

(Sec. 104) Amends RESPA to repeal requirements that for certain federally related mortgage loans the lender disclose: (1) that it has previously assigned, sold, or transferred the servicing of such loans, or, during the most recent three-year period, a specified percentage of them; and (2) in the case of a lender who does not service federally related loans, a present intent to assign, sell or transfer them. Repeals the mandate for model disclosure statements.

Excises from the definition of "federally related mortgage loan" any loan secured by a subordinate lien on residential real property (thereby removing second mortgages from RESPA requirements).

Directs the Board to ensure that regulations pertaining to the business credit exemption from RESPA jurisdiction include all business credit exempted from TILA.

(Sec. 105) Revises disclosure requirements to permit alternative disclosures for adjustable rate home mortgages which state that a monthly payment may increase or decrease significantly due to annual percentage rate increases. (Current law requires illustrations how a rate increase or decrease affects monthly payments.)

Grants creditors the option of disclosing, in any variable interest rate residential mortgage transaction secured by the consumer's principal dwelling with greater than a one-year term, either a statement that the monthly payment may change substantially, or an historical example illustrating the effects of interest rate changes implemented according to the loan program.

Mandates additional disclosures pertaining to note rates and points for residential mortgage transactions, and a statement that the terms are subject to change.

(Sec. 106) Excludes from the determination of finance charge for any consumer credit transaction fees imposed by third party closing agents (including settlement agents, attorneys, escrow and title companies) that are neither expressly required nor retained by the creditor (thereby exempting them from TILA disclosure requirements).

Modifies the determination of finance charge to: (1) include mortgage broker fees; and (2) exclude specified property and liability insurance charges or premiums if the creditor furnishes a separate statement about such charges.

Exempts from the required computation of finance charge: (1) certain taxes on security instruments or evidences of indebtedness (if they are otherwise itemized and disclosed); and (2) fees for preparation of loan documents, as well as appraisal fees related to pest infestations, premises and structural inspections, and flood hazards.

Instructs the Board to report to the Congress on statutory or regulatory changes necessary to: (1)

ensure that finance charges more accurately reflect the cost of credit; and (2) address abusive refinancing practices intended to avoid rescission.

(Sec. 107) Denies the right of rescission to certain refinancings or debt consolidations secured by a lien on a consumer's principal dwelling.

(Sec. 108) Permits finance charge disclosures to vary within specified accuracy tolerance limits for certain consumer credit transactions secured by real property or a dwelling.

Sets disclosure accuracy guidelines for per diem interest rate disclosures on consumer credit transactions.

(Sec. 109) Amends TILA to shield a creditor or assignee from liability in connection with disclosures of: (1) certain fees and charges; and (2) finance charges that fall within certain statutory tolerance limits.

(Sec. 110) Restricts rescission liability arising from the form of written notice used by the creditor.

(Sec. 111) Provides for damages ranging from $250 to $2,500 for an individual consumer credit transaction not under an open end credit plan that is secured by real property or a dwelling.

(Sec. 112) Modifies assignee liability guidelines to: (1) apply them to consumer credit transactions secured by real property; and (2) provide that a violation is apparent on the face of the disclosure statement if the disclosure does not use the format required by law.

States that the servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of an obligation unless the servicer owns it.

(Sec. 113) Identifies circumstances under which a consumer has a right to rescind a consumer credit transaction upon a creditor's action to foreclose on the consumer's primary dwelling securing the debt.

(Sec. 114) Revises certain TILA provisions for recovery of fees.

(Sec. 115) Amends the Housing and Urban Development Act of 1968 to repeal the mandate for homeownership debt counseling availability notification.

(Sec. 116) Amends the Home Mortgage Disclosure Act of 1975 to increase the maximum asset-size of institutions exempt from its purview from $10 million to $50 million. Authorizes the Board to exempt from the Act's disclosure requirements institutions whose asset-size is over $50 million if the burden of compliance outweighs the usefulness of the requisite information, unless it is reasonable to believe that the institution is not fulfilling its obligations to serve the housing needs of the communities and neighborhoods in which it is located.

Declares that a depository institution shall be deemed to have satisfied the public availability notification requirements for its mortgage loan transactions if its branch offices provide notice of the availability upon request of the information from the home office.

Subtitle B: Community Reinvestment Act Amendments - Amends the Community Reinvestment Act of 1977 (CRA) to revise the expression of congressional intent to prohibit a supervisory agency from imposing additional burden, recordkeeping, or reporting when examining financial institutions.

(Sec. 122) Exempts a regulated financial institution from CRA examination requirements if the institution and its parent bank holding company have aggregate assets of not more than $100 million.

(Sec. 123) Provides for self-certification of CRA compliance by certain "satisfactory" or "outstanding" financial institutions with assets of $250 million or less, subject to certain public notice requirements. Prohibits a Federal regulatory agency from imposing additional self-certification requirements.

(Sec. 124) Sets forth community input and conclusive rating requirements, including requirements for publication of exam schedule, opportunity for comment, evaluation by the appropriate Federal financial supervisory agency of how the institution meets community needs, and procedures for requests for reconsideration of the resulting rating.

(Sec. 125) Mandates that, in conducting assessments of financial institutions, the appropriate Federal regulatory agency: (1) consider the nature of the business of special purpose financial institutions; (2) assess and take into account the institution's record commensurate with the amount of deposits it has received; and (3) develop standards under which they may be deemed to comply with CRA requirements consistent with the specific nature of such businesses.

Defines a "special purpose institution" as one that does not generally accept retail deposits from the

public in amounts of less than $100,000, such as wholesale, credit card, and trust institution.

(Sec. 126) Requires the appropriate Federal financial supervisory agency, in assessing and taking into account the records of a regulated financial institution for purposes of CRA compliance, to consider as a positive factor the institution's investments and loans to: (1) any minority or women's depository institution or low-income credit union; (2) any joint ventures, entities, or projects providing benefits to distressed communities (regardless of whether or not the recipient institutions or communities are located within the regulated financial institution's chartered service area); and (3) targeted low- and moderate-income communities, including real property loans to such communities. Specifies other related positive factors to be considered.

(Sec. 127) Prohibits regulations requiring additional CRA recordkeeping and loan data collection.

(Sec. 128) Applies a requirement of metropolitan area distinctions, with respect to the public section of written institution evaluations, only to institutions that maintain domestic branches in two or more States.

(Sec. 129) Amends the Federal Home Loan Bank Act to exempt from certain community investment or service reporting requirements members who receive a CRA rating of outstanding or satisfactory.

(Sec. 130) Expresses the sense of the Congress that the appropriate congressional committees should exercise aggressive oversight of the adoption and implementation of any CRA regulation by a Federal supervisory agency after the date of enactment of this Act. Requires such an agency to report to the Congress on the implementation of all CRA regulations.

(Sec. 131) Amends the Federal Deposit Insurance Act (FDIA) to direct each Federal banking agency to ensure that its banking examiners consult on examination activities and resolve any inconsistent recommendations given to a depository institution.

(Sec. 132) Amends the CRA to prohibit a Federal agency from prescribing any regulation which would: (1) require a financial institution to make any loan or enter into any agreement on the basis of any discriminatory criteria prohibited under Federal law; (2) make any loan to, or enter into any other agreement with, an uncreditworthy person that would jeopardize the institution's safety and soundness; or (3) hinder the institution's full responsibility to provide credit to all community segments.

Subtitle C: Consumer Banking Reforms - Amends the Truth in Savings Act (TISA) to: (1) repeal the finding of the Congress that uniformity in the disclosure of terms and conditions on which interest is paid and fees are assessed would strengthen consumer ability to verify deposit accounts and make informed decisions; and (2) replace the current purpose requiring clear, uniform disclosure of interest rates and fees, with one requiring depository institutions to pay interest on the daily full amount of principal in interest-bearing consumer deposit accounts at the agreed-upon rate of interest.

(Sec. 141) Repeals TISA disclosure requirements pertaining to interest rates and terms of accounts, including: (1) Board authority to prescribe regulations regarding account schedule information; (2) the mandate for readily understandable account terminology; (3) Board authority to prescribe annual percentage yield disclosures; (4) schedule distribution guidelines; (5) the mandate for clear, conspicuous disclosure of earned interest, yield, and charges in periodic statements; (6) civil liability for depository institution non-compliance with disclosure requirements; (7) non-preemption of State law with regard to disclosure requirements; and (9) definitions of annual percentage yield, annual rate of simple interest, and multiple rate account.

(Sec. 142) Amends the FDIA to allow depository institutions (including affiliates and subsidiaries) to exchange information without limitation if such information sharing is disclosed and the consumer has opportunity beforehand to direct that the information not be communicated.

(Sec. 143) Revises the Electronic Fund Transfer Act (EFTA) definitions of: (1) accepted card or other means of access; and (2) account.

(Sec. 144) Amends TILA to permit full creditor restitution payments of adjusted finance charges to a person over an extended period if the enforcing agency determines that this is necessary to avoid causing the creditor to become undercapitalized.

Subtitle D: Equal Credit Opportunity Act Amendments - Equal Credit Opportunity Act Amendments of 1995 - States that the purpose of this Act is to combine the adverse action notification requirements of the Equal Credit Opportunity Act (ECOA) and the Fair Credit Reporting Act (FCRA) with respect to consumer credit applications, and to make the information which must be furnished more understandable.

(Sec. 153) Revises ECOA notification requirements regarding adverse actions against credit applicants.

Shields from liability for non-compliance persons who show by a preponderance of the evidence that they maintained reasonable procedures to ensure compliance at the time of the alleged violation.

(Sec. 154) Revises specified FCRA disclosure requirements for users of consumer reports to eliminate such requirements for credit denials and adverse actions based on reports of persons other than consumer reporting agencies.

(Sec. 155) Amends ECOA and the Fair Housing Act (the Acts) to add incentives for creditor self-testing and voluntary corrective action by prohibiting review, examination, or acquisition by an applicant in any legal proceeding of a creditor or other person's self-procured test or review of its lending activities, including residential real estate lending, if the self-test has identified discriminatory practices and the creditor or other person has taken or is taking appropriate corrective action to address the discrimination. Specifies circumstances in which an applicant or Government department or agency may obtain and use the results of a self-test in a proceeding or civil action.

(Sec. 156) States that creditors shall be deemed in compliance with ECOA nondiscrimination requirements with respect to any credit decision based solely on the use of an empirically derived, demonstrably and statistically sound credit scoring system if it does not use: (1) any protected category of applicant; (2) any criterion so directly associated as to be a functional equivalent of such a category; and (3) any criterion that has a disparate impact on a protected category unless such use is justified by business necessity and there is no less discriminatory alternative available. (Does not preclude using age as a factor in such a system to the extent otherwise permitted under ECOA.)

(Sec. 157) Requires the Attorney General to consult with the appropriate agency before bringing a civil action in connection with creditor self-testing under the Acts.

Subtitle E: Consumer Leasing Act Amendments - Consumer Leasing Act Amendments of 1995 - Amends the Consumer Credit Protection Act (CCPA) to direct the Board to: (1) write regulations or staff commentary to update and clarify requirements and definitions for lease disclosures, contracts, and other issues related to consumer leasing which would carry out the purposes of the Consumer Leasing Act; and (2) publish model disclosure forms and clauses to facilitate compliance with such disclosure requirements and aid the consumer in understanding the transaction.

(Sec. 164) Revises CCPA provisions relating to consumer lease advertising, repealing special requirements for radio advertisements.

(Sec. 165) Limits creditor liability for statutory penalties for failure to provide specified consumer lease disclosures.

Subtitle F: Federal Home Loan Bank Amendments - Amends the Federal Home Loan Bank Act (FHLBA) to revise an FHLB system membership eligibility location requirement.

(Sec. 172) Revises FHLBA audit provisions to: (1) prohibit the Federal Housing Finance Board (FHFB) from participating in the hiring of external auditors by banks; (2) permit the FHFB to establish requirements for external audit contracts and accounting standards; and (3) require all 12 banks to contract for an annual audit with a single provider.

Title II: Streamlining Government Regulations - Subtitle A: Regulatory Approval Issues - Amends the Bank Holding Company Act (BHCA) to identify criteria for a well-capitalized and well-managed banking organization under which an acquisition of shares in a nonbanking or another banking organization by a bank holding company, or a merger or consolidation between registered bank holding companies, shall be deemed to be approved. (Current law requires prior Board approval.)

(Sec. 203) Amends the FDIA and the National Bank Consolidation and Merger Act to cite conditions under which prior approval is not required for any merger, consolidation, asset acquisition, or liabilities assumption involving only insured depository institution subsidiaries of the same depository institution holding company.

(Sec. 204) Permits any insured depository institution to participate in optional conversion transactions between members of the Bank Insurance Fund and the Savings Association Insurance Fund (Oakar transactions) without the prior written approval of the responsible agency. Repeals guidelines for agency approval of such transactions (but retains the proscription against transactions which result in the transfer of any insured depository institution's Federal deposit insurance from one Federal deposit insurance fund to the other).

(Sec. 205) Amends the Home Owners' Loan Act (HOLA) to remove from its regulatory purview a bank holding company subject to the BHCA, and exclude it from the definition of "savings and loan holding

company."

Amends the BHCA of 1956 to mandate cooperation between the Board and the Director of the Office of Thrift Supervision regarding supervision and enforcement over bank holding companies that control savings associations.

Amends HOLA to provide that any savings association which meets specified Internal Revenue Code requirements shall be deemed to be a qualified thrift lender.

(Sec. 206) Amends the BHCA to repeal the provision that shares transferred by a bank holding company to a transferee under its control are deemed to be under such holding company's control unless the Board determines otherwise and approves the divestiture.

(Sec. 207) Amends the Revised Statutes, the Federal Reserve Act (FRA), and the FDIA to delineate conditions under which prior approval is not required for well-capitalized and well-managed banks to establish and operate a branch or seasonal agency.

(Sec. 208) Amends the Revised Statutes and the FDIA to exclude from the definition of "branch" an automated teller machine or remote service unit (thus exempting those entities from approval requirements of such Acts).

(Sec. 209) Amends the FRA to exempt well-capitalized and well-managed banks from the approval requirement for investments in bank premises.

(Sec. 210) Amends the FDIA to authorize the appropriate Federal banking agency to waive, on a case-by-case basis, prior notice requirements pertaining to new officer or director appointments of certain undercapitalized or troubled institutions.

(Sec. 211) Repeals the requirement for a hearing in the determination of new nonbanking activities. Permits bank holding companies to own insurance affiliates in accordance with State insurance laws. Directs the Board to prescribe regulations concerning insurance affiliations that provide equivalent treatment for stock and mutual fund insurance companies that control or are affiliated with a bank.

(Sec. 212) Authorizes the Board to extend from five years to ten years the period during which a bank holding company may retain shares acquired in a loan foreclosure.

(Sec. 213) Amends the Federal Credit Union Act to increase from $10,000 to $50,000 the aggregate amount of loans to Credit Union officials that may be made without approval of the board of directors.

Subtitle B: Streamlining of Government Regulations; Miscellaneous Provisions - Amends the Revised Statutes to repeal the aggregate minimum per-branch capital requirements imposed upon a national banking association and its branches.

(Sec. 222) Amends the FDIA to exclude automated teller machines and bank branches in specified merger or relocation situations from the definition of "bank branch" (thus exempting them from Federal bank closure notification requirements). Makes such exemption retroactive to the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(Sec. 223) Amends the Depository Institutions Management Interlocks Act to exempt management officials of depository institutions or holding companies with small (under 20 percent) market shares from prohibitions against dual service with unaffiliated institutions or companies in the same geographic banking market.

Raises from $1 billion to $2.5 billion the asset-size ceiling beneath which a depository institution or depository holding company may retain directors and management officials performing dual service for nonaffiliated institutions whose total assets do not exceed $1.5 billion (currently $500 million). Authorizes Federal regulatory agencies to adjust such ceiling annually for cost-of-living increases.

Extends a specified grandfather exemption which allows certain management officials to continue dual service despite interlocks prohibitions (thus permitting them to continue their dual service permanently).

(Sec. 224) Directs the Appraisal Subcommittee of the Financial Institutions Examination Council to accelerate repayment of specified funds to the Treasury.

(Sec. 225) Amends the FRA to permit loans to executive officers, directors, or principal shareholders (insider lending) made pursuant to a benefit or compensation program widely available to employees of the member bank.

Expands the Board's authority to exempt specified executive officers and directors from the proscription against preferential lending terms.

Repeals the requirement that: (1) an executive officer indebted to a bank over a certain lawful amount submit a written report of such debt to the board of directors; and (2) a member bank include in its condition of report all loans to executive officers made since its previous report.

Amends the FDIA to repeal Federal banking agency authority to require banks to disclose loans made to their executive officers or principal shareholders.

Amends the Bank Holding Company Act Amendments of 1970 to repeal the requirement that bank executive officers and stockholders who own more than a ten percent controlling interest report to the bank's board of directors those loans made to them by a bank maintaining a correspondent account.

Amends the FRA to permit a member bank to make available to its executive officers: (1) home equity lines of credit of up to $100,000; and (2) loans secured by readily marketable assets.

(Sec. 226) Amends the FDIA to allow the appropriate Federal banking agency to increase from $175 million to $250 million the asset-size ceiling on certain small depository institutions whose mandatory periodic on-site examinations make take place every 18 months instead of annually.

Requires the Federal banking agencies to report semiannually to the Congress regarding implementation of a coordinated Federal bank examination system until it is in place and provides full coordination of examinations of State depository institutions with State bank supervisors.

(Sec. 227) Amends the Right to Financial Privacy Act to require a Government authority to reimburse a financial institution for assembling or providing the financial records of corporate customers.

(Sec. 228) Amends specified Federal monetary law to repeal the requirement that depository institutions identify domestic nonbank financial institution customers.

(Sec. 229) Requires each appropriate Federal banking agency and the National Credit Union Administration to conduct a paperwork reduction review, and eliminate any requirements for unnecessary internal written policies.

(Sec. 230) Instructs the Secretary of the Treasury to revise the daily confirmation requirement under the Securities Exchange Act of 1934 concerning hold-in custody repurchase agreements to permit the counterparty to the agreement to waive such confirmation upon receipt of certain disclosures.

(Sec. 231) Requires the Financial Institutions Examination Council and each Federal banking agency represented on it to review and identify unnecessary regulations every ten years and report thereon to the Congress.

(Sec. 232) Amends the International Lending Supervision Act to change from mandatory to discretionary the duty of each appropriate Fed: l banking agency to: (1) require a banking institution to maintain a special reserve whenever the quality of its assets has been impaired by protracted inability of debtors in a foreign country to make payments; (2) analyze the results of foreign loan rescheduling negotiations and attendant loan risks; and (3) ensure that bank capital and reserve positions are adequate to accommodate potential losses on foreign loans.

(Sec. 233) Amends FDIA financial management accountability guidelines to: (1) repeal certain internal control evaluation and reporting attestation requirements for independent public accountants; (2) permit Federal agencies to designate certain required reports of financial condition as privileged and confidential and not available to the public; and (3) exempt well-capitalized and well-managed insured depository institutions from mandatory financial management status reports (although not from the requirement of independent financial audits).

(Sec. 234) Amends the FDIA to exclude outside directors from the primary definition of an "institution-affiliated party" but include them in such definition as independent contractors if they have knowingly or recklessly participated in certain prohibited activities.

(Sec. 235) Amends the International Banking Act of 1978 to: (1) prescribe guidelines under which the Board may approve a foreign bank application to establish a U.S. presence even though it is not subject to comprehensive supervision on a consolidated basis in its home country; and (2) authorize termination of a foreign bank office if the appropriate authorities in its home country are not making progress in establishing arrangements for such supervision.

(Sec. 236) Directs the Board to avoid unnecessary duplication of foreign bank examinations. Subjects foreign banks to the same on-site examination schedule and examination fee collections as apply to domestic banks.

(Sec. 237) Amends the TILA to redefine "mortgage" as a consumer credit transaction secured by a subordinate mortgage on the consumer's principal dwelling. Repeals the exclusion of a residential mortgage transaction from such definition (thus permitting its inclusion). Dismisses all TILA administrative enforcement proceedings regarding high-cost, non-subordinate residential mortgage transactions pending upon the date of enactment of this Act.

(Sec. 238) Revises FDIA guidelines to approve new activities of a State bank and its subsidiaries if the FDIC has not disapproved the bank's prior 60-day written notice of intent to engage in such activities.

(Sec. 239) Amends the Revised Statutes to repeal the requirement that three bank directors, in addition to the officer making the declaration, attest in writing the correctness of reports of condition.

(Sec. 240) Amends the Revised Statutes to prescribe parameters for State regulation of national bank insurance activities. States that neither the Revised Statutes nor the FRA restrict State authority to regulate such activities. Prohibits State insurance regulations from discriminating against national banks. Restricts the interpretive authority of the Comptroller of the Currency with respect to activities incidental to banking.

(Sec. 241) Prescribes parameters within which the Comptroller of the Currency may approve a national bank's application to conduct insurance activities in an economically distressed community (empowerment zone).

(Sec. 242) Retitles the Bank Service Corporation Act the "Bank Service Company Act" and amends it to authorize banks under the Act to own limited liability companies.

(Sec. 243) Amends the FRA to increase from ten percent to 25 percent the amount of capital and surplus that a national bank may invest in the stock of Edge Act subsidiaries and certain financial service corporations held by a member bank's non-U.S. branches.

(Sec. 244) Requires each appropriate Federal banking agency to report to certain congressional committees on its actions to reconcile Regulatory Accounting Principles and Generally Accepted Accounting Principles, thereby eliminating inconsistent or duplicative accounting and reporting requirements applicable to mandatory reports filed by insured depository institutions.

(Sec. 245) Permits the Comptroller of the Currency to waive the residency requirement for national bank directors. **Title III: Lender Liability** - Amends the FDIA to prescribe guidelines for lender, fiduciary, and Federal banking and lending agency environmental liabilities.

Title IV: Annual Study and Report on Impact on Lending to Small Business - Directs the following agencies to submit a joint annual report to the Congress on the extent to which the regulatory reductions under this Act have resulted in increased lending to small businesses: (1) the Federal Reserve Board; (2) the Director of the Office of Thrift Supervision; (3) the Comptroller of the Currency; and (4) the FDIC Board of Directors.

MAJOR ACTIONS:

6/15/1995	Introduced in House
7/18/1995	Reported (Amended) by the Committee on Banking and Financial Services. H. Rept. 104-193, Part I.
6/18/1996	Supplemental report filed by the Committee on Banking and Financial Services, H. Rept. 104-193, Part II.

ALL ACTIONS: (Floor Actions/Congressional Record Page References)

6/15/1995:
Referred to the House Committee on Banking and Financial Services.

6/15/1995:
For Previous Action See H.R.1362.
6/15/1995:
For Previous Action See H.R.1362.

6/21/1995:
Committee Consideration and Mark-up Session Held.
6/22/1995:
Committee Consideration and Mark-up Session Held.
6/27/1995:
Committee Consideration and Mark-up Session Held.
6/28/1995:
Committee Consideration and Mark-up Session Held.
6/28/1995:
Ordered to be Reported in the Nature of a Substitute by the Yeas and Nays: 27 - 23.

7/18/1995 6:27pm:
Reported (Amended) by the Committee on Banking and Financial Services. H. Rept. 104-193, Part I.
7/18/1995 6:28pm:
Placed on the Union Calendar, Calendar No. 98.
6/18/1996 6:21pm:
Mr. Leach asked unanimous consent that the Committee on Banking and Financial Services be permitted to file a supplemental report on the bill. Agreed to without objection.
6/18/1996 6:45pm:
Supplemental report filed by the Committee on Banking and Financial Services, H. Rept. 104-193, Part II.

TITLE(S): (*italics indicate a title for a portion of a bill*)

- SHORT TITLE(S) AS INTRODUCED:
  Financial Institutions Regulatory Relief Act of 1995
  Consumer Leasing Act Amendments of 1995
  Equal Credit Opportunity Act Amendments of 1995

- SHORT TITLE(S) AS REPORTED TO HOUSE:
  Financial Institutions Regulatory Relief Act of 1995
  Consumer Leasing Act Amendments of 1995
  Equal Credit Opportunity Act Amendments of 1995

- OFFICIAL TITLE AS INTRODUCED:
  To reduce paperwork and additional regulatory burdens for depository institutions.

COSPONSOR(S):

NONE

COMMITTEE(S):

Committee/Subcommittee:	**Activity:**
House Banking and Financial Services	Referral, Markup, Reporting

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RELATED BILL DETAILS: (additional related bills may be indentified in Status)

Bill:	**Relationship:**
H.R.1362	Related bill as identified by House committee
H.R.2520	Related bill as identified by House committee

AMENDMENT(S):

NONE

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EXHIBIT C

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104TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 104–193

FINANCIAL INSTITUTIONS REGULATORY RELIEF ACT OF 1995

JULY 18, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. LEACH, from the Committee on Banking and Financial Services, submitted the following

REPORT

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany H.R. 1858]

[Including cost estimate of the Congressional Budget Office]

The Committee on Banking and Financial Services, to whom was referred the bill (H.R. 1858) to reduce paperwork and additional regulatory burdens for depository institutions, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Financial Institutions Regulatory Relief Act of 1995".

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

Sec. 1. Short title; table of contents.

TITLE I—REDUCTIONS IN GOVERNMENT OVERREGULATION

Subtitle A—The Home Mortgage Process

Sec. 101. Regulatory authority over disclosures and escrow accounts under RESPA transferred to Federal Reserve Board.
Sec. 102. Simplification and unification of disclosures required under RESPA and TILA for mortgage transactions.
Sec. 103. Increased regulatory flexibility under the Truth in Lending Act.
Sec. 104. Reductions in RESPA regulatory burdens; clarifying amendments.
Sec. 105. Disclosures for adjustable rate mortgages.
Sec. 106. Certain charges.
Sec. 107. Exemptions from rescission.
Sec. 108. Tolerances; basis of disclosures.
Sec. 109. Limitation on liability.
Sec. 110. Limitation on rescission liability.

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Sec. 111. Calculation of damages.
Sec. 112. Assignee liability.
Sec. 113. Rescission rights in foreclosure.
Sec. 114. Recovery of fees.
Sec. 115. Home ownership debt counseling notification.
Sec. 116. Home Mortgage Disclosure Act.
Sec. 117. Applicability.

Subtitle B—Community Reinvestment Act Amendments

Sec. 121. Expression of congressional intent.
Sec. 122. Community Reinvestment Act exemption.
Sec. 123. Self-certification of CRA compliance.
Sec. 124. Community input and conclusive rating.
Sec. 125. Special purpose financial institutions.
Sec. 126. Increased incentives for lending to low- and moderate-income communities.
Sec. 127. Prohibition on additional reporting under CRA.
Sec. 128. Technical amendment.
Sec. 129. Duplicative reporting.
Sec. 130. CRA congressional oversight.
Sec. 131. Consultation among examiners.
Sec. 132. Limitation on regulations.

Subtitle C—Consumer Banking Reforms

Sec. 141. Truth in Savings.
Sec. 142. Information sharing.
Sec. 143. Electronic Fund Transfer Act clarification.
Sec. 144. Limit on restitution for Truth in Lending violations if safety and soundness of violator would be affected.

Subtitle D—Equal Credit Opportunity Act Amendments

Sec. 151. Short title.
Sec. 152. Findings and purpose.
Sec. 153. Equal Credit Opportunity Act amendments.
Sec. 154. Fair Credit Reporting Act amendments.
Sec. 155. Incentives for self-testing.
Sec. 156. Credit scoring systems.
Sec. 157. Consultation by Attorney General required in nonreferral cases.
Sec. 158. Effective date.

Subtitle E—Consumer Leasing Act Amendments

Sec. 161. Short title.
Sec. 162. Congressional findings and declaration of purpose.
Sec. 163. Regulations.
Sec. 164. Consumer lease advertising.
Sec. 165. Statutory penalties.

Subtitle F—Federal Home Loan Bank Amendments

Sec. 171. Application for membership in the FHLB System.
Sec. 172. Federal home loan bank external auditors.

TITLE II—STREAMLINING GOVERNMENT REGULATIONS

Subtitle A—Regulatory Approval Issues

Sec. 201. Streamlined nonbanking acquisitions by well capitalized and well managed banking organizations.
Sec. 202. Streamlined bank acquisitions by well capitalized and well managed banking organizations.
Sec. 203. Eliminate filing and approval requirements for insured depository institutions already controlled by the same holding company.
Sec. 204. Eliminate redundant approval requirement for Oakar transactions.
Sec. 205. Elimination of duplicative requirements imposed upon bank holding companies and other regulatory relief under the Home Owners' Loan Act.
Sec. 206. Eliminate requirement that approval be obtained for divestitures.
Sec. 207. Eliminate unnecessary branch applications.
Sec. 208. Eliminate branch applications and requirements for ATMs and similar facilities.
Sec. 209. Eliminate requirement for approval of investments in bank premises for well capitalized and well managed banks.
Sec. 210. Eliminate unnecessary filing for officer and director appointments.
Sec. 211. Streamlining process for determining new nonbanking activities.
Sec. 212. Disposition of foreclosed assets.
Sec. 213. Increase in certain credit union loan ceilings.

Subtitle B—Streamlining of Government Regulations; Miscellaneous Provisions

Sec. 221. Eliminate the per-branch capital requirement for national banks and State member banks.
Sec. 222. Branch closures.
Sec. 223. Amendments to the Depository Institutions Management Interlocks Act.
Sec. 224. Acceleration of repayment to Treasury.
Sec. 225. Eliminate unnecessary and duplicative recordkeeping and reporting requirements relating to loans to executive officers and permit participation in employee benefit plans.
Sec. 226. Expanded regulatory discretion for small bank examinations.
Sec. 227. Cost reimbursement.
Sec. 228. Identification of foreign nonbank financial institution customers.
Sec. 229. Paperwork reduction review.
Sec. 230. Daily confirmations for hold-in-custody repurchase transactions.
Sec. 231. Required regulatory review of regulations.
Sec. 232. Country risk requirements.
Sec. 233. Audit costs.
Sec. 234. Standards for director and officer liability.

Sec. 235. Foreign bank applications.
Sec. 236. Duplicate examination of foreign banks.
Sec 237. Second mortgages.
Sec. 238. Streamlining FDIC approval of new State bank powers.
Sec. 239. Repeal of call report attestation requirement.
Sec. 240. Authority of the Comptroller of the Currency.
Sec. 241. National bank community development insurance activities.
Sec. 242. Authorizing bank service companies to organize as limited liability partnerships.
Sec. 243. Bank investments in Edge Act and agreement corporations.
Sec. 244. Report on the reconciliation of differences between regulatory accounting principles and generally accepted accounting principles.
Sec. 245. Waivers authorized for residency requirement for national bank directors.

TITLE III—LENDER LIABILITY

Sec. 301. Lender liability.

TITLE IV—ANNUAL STUDY AND REPORT ON IMPACT ON LENDING TO SMALL BUSINESS

Sec. 401. Annual study and report.

TITLE I—REDUCTIONS IN GOVERNMENT OVERREGULATION

Subtitle A—The Home Mortgage Process

SEC. 101. REGULATORY AUTHORITY OVER DISCLOSURES AND ESCROW ACCOUNTS UNDER RESPA TRANSFERRED TO FEDERAL RESERVE BOARD.

(a) IN GENERAL.—Sections 4, 5, 6, and 10(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) are amended by striking "Secretary" each place such term appears and inserting "Board".

(b) CLARIFICATION OF PURPOSE.—Section 2(b)(2) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601(b)(2)) is amended by inserting the following before the semicolon at the end: "without—

"(A) directly regulating settlement services prices; or

"(B) directly regulating wages to bona fide employees that are not designed as a subterfuge to facilitate kickbacks among affiliated companies".

(c) BOARD DEFINED.—Section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602) is amended—

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

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

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

"(9) the term 'Board' means the Board of Governors of the Federal Reserve System.".

(d) NEGOTIATED REGULATIONS UNDER SECTIONS 8 AND 9.—Section 8 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607) is amended by adding at the end the following new subsection:

"(e) NEGOTIATED REGULATIONS.—

"(1) IN GENERAL.—The Secretary may not publish a proposed or final regulation under this section and section 9 after the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995 unless the Secretary has used the negotiated rulemaking procedure established under subchapter III of chapter 5 of title 5, United States Code, to attempt to negotiate and develop the rule.

"(2) CONSISTENCY WITH PURPOSE.—Any regulation prescribed in accordance with paragraph (1) shall be consistent with the purposes of this title as set forth in section 2.".

(e) ADMINISTRATIVE ENFORCEMENT OF PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES.—Section 8 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607) is amended by adding after subsection (e) (as added by subsection (d) of this section) the following new subsection:

"(f) ADMINISTRATIVE ENFORCEMENT.—

"(1) IN GENERAL.—Compliance with the requirements of this section and sections 9 and 12 shall be enforced under this Act—

"(A) in the case of an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), by the appropriate Federal banking agency (as defined in such section);

"(B) in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act), by the National Credit Union Administration;

"(C) in the case of a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956) and any affiliate of any such holding company (other than an insured depository institution), by the Board;

"(D) in the case of a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act) and any affiliate of any such holding company (other than an insured depository institution), by the Director of the Office of Thrift Supervision; and

"(E) in the case of any other person, by the Secretary.

"(2) SPECIAL RULES RELATING TO DETERMINATION OF APPROPRIATE REGULATOR.—

"(A) CASES OF MORE THAN 1 APPROPRIATE REGULATOR.—If, under paragraph (1), a company may be regulated by more than 1 agency, the Board shall determine which agency shall be the responsible agency, notwithstanding paragraph (1).

"(B) CASES INVOLVING JOINT VENTURES, PARTNERSHIPS, AND OTHER AFFILIATED BUSINESS ARRANGEMENTS.—If any insured depository institution is involved in a joint venture, partnership, or other affiliated business arrangement with any person who is not an insured depository institution, the agency responsible for enforcing this section and sections 9 and 12 with respect to such insured depository institution shall be the agency with such responsibility with respect to such joint venture, partnership, or other affiliated business arrangement.

"(3) INTERAGENCY COOPERATION AND ENFORCEMENT GUIDELINES.—All the agencies referred to in any subparagraph of paragraph (1) shall cooperate with each other to develop enforcement guidelines and other means for achieving effective compliance with this section and sections 9 and 12.

"(4) PREFERENCE FOR CIVIL ENFORCEMENT OVER CRIMINAL ENFORCEMENT.—As part of the cooperative efforts required under paragraph (3), the agencies referred to in paragraph (1) shall consider means for achieving compliance with this section and section 9 through the exercise of administrative enforcement authority under this subsection without resorting to criminal enforcement actions under subsection (d) except in appropriate cases.

"(5) EFFECTIVE DATE.—Paragraphs (1) and (2) shall not take effect until joint interagency cooperation and enforcement guidelines are adopted by all the agencies to which paragraphs (1) and (2) apply and the enforcement authority of the Secretary with respect to this section and sections 9 and 12 shall continue until such paragraphs take effect.".

(f) INCREASED SCIENTER REQUIREMENT FOR CRIMINAL PENALTY.—Section 8(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607(d)) is amended—

(1) in paragraph (1), by inserting "willfully" after "persons who"; and

(2) in paragraph (3), by striking "was not intentional and".

(g) REDESIGNATION OF CONTROLLED BUSINESS ARRANGEMENTS AS AFFILIATED BUSINESS ARRANGEMENTS.—The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended—

(1) in section 3(7), by striking "controlled business arrangement" and inserting "affiliated business arrangement"; and

(2) in subsections (c)(4) and (d)(6) of section 8, by striking "controlled business arrangements" and inserting "affiliated business arrangements".

(h) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 4(a) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2603(a)) is amended by striking "Federal Home Loan Bank Board" and inserting "Director of the Office of Thrift Supervision".

(2) Section 8(d)(4) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607(d)(4)) is amended by inserting "any other agency described in subsection (f)(1)," after "the Secretary,".

(3) Section 10(c)(1)(C) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609(c)(1)(C)) is amended by striking "Not later than the expiration of the 90-day period beginning on the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the" and inserting "The".

(4) Section 16 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2614) is amended by striking "Secretary," and inserting "Board, an agency referred to in any subparagraph of section 8(f)(1),".

(5) Section 18 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2616) is amended—

(A) by striking "Secretary is authorized to" and inserting "Board and Secretary may jointly";

(B) by striking "Secretary" each place such term appears other than the 1st place and inserting "Board and Secretary"; and

(C) by striking "determines that such laws" and inserting "determine that such laws".

(6) Section 19(a) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2617(a)) is amended to read as follows:

"(a) REGULATIONS.—

"(1) IN GENERAL.—Subject to paragraph (2), the Secretary and the Board may prescribe such regulations, make such interpretations, and grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of this Act.

"(2) APPLICATION.—

"(A) BOARD.—The authority of the Board under paragraph (1) shall apply with respect to—

"(i) sections 4, 5, 6, 10, and 12; and

"(ii) sections 3, 7, 17, and 18 to the extent such sections are applicable with respect to the sections described in clause (i).

"(B) SECRETARY.—The authority of the Secretary under paragraph (1) shall apply with respect to—

"(i) sections 8 and 9; and

"(ii) sections 3, 7, 17, and 18 to the extent such sections are applicable with respect to the sections described in clause (i). ".

(7) Section 19(b) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2617(b)) is amended by inserting ", the Board," after "the Secretary".

(8) Section 19(c) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2617(c)) is amended—

(A) in paragraph (1)—

(i) by striking "Secretary" the 1st place such term appears and inserting "Board, with respect to any action to enforce section 4, 5, 6, or 10, and each agency referred to in any subparagraph of section 8(f)(1), with respect to any action to enforce section 8, 9, or 12,"; and

(ii) by striking "Secretary" each place such term appears other than the 1st place and inserting "Board or such other agency"; and

(B) in paragraph (2), by striking "Secretary" and inserting "Board or an agency referred to in any subparagraph of section 8(f)(1)".

(9) The heading for section 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2617) is amended to read as follows:

"AUTHORITY OF THE SECRETARY AND THE FEDERAL RESERVE BOARD".

(i) REPEAL OF OBSOLETE PROVISIONS.—The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended by striking sections 13, 14, and 15.

SEC. 102. SIMPLIFICATION AND UNIFICATION OF DISCLOSURES REQUIRED UNDER RESPA AND TILA FOR MORTGAGE TRANSACTIONS.

(a) IN GENERAL.—With respect to credit transactions which are subject to the Real Estate Settlement Procedures Act of 1974 and the Truth in Lending Act, the Board of Governors of the Federal Reserve System shall take such action as may be necessary before the end of the 3-month period beginning on the date of the enactment of this Act—

(1) to simplify the disclosures applicable to such transactions under such Acts, including the timing of the disclosures; and

(2) to provide a single format for such disclosures which will satisfy the requirements of each such Act with respect to such transactions.

(b) REGULATIONS.—To the extent that it is necessary to prescribe any regulation in order to effect any changes required to be made under subsection (a), the proposed regulation shall be published in the Federal Register before the end of the 3-month period referred to in subsection (a).

(c) RECOMMENDATIONS FOR LEGISLATION.—If the Board of Governors of the Federal Reserve System finds that legislative action may be necessary or appropriate in order to simplify and unify the disclosure requirements under the Real Estate Settlement Procedures Act of 1974 and the Truth in Lending Act, the Board shall submit a report containing recommendations to the Congress concerning such action.

SEC. 103. INCREASED REGULATORY FLEXIBILITY UNDER THE TRUTH IN LENDING ACT.

(a) REGULATORY FLEXIBILITY.—Section 104 of the Truth in Lending Act (15 U.S.C. 1603) is amended by adding at the end the following new paragraph:

"(7) Transactions for which the Board, by regulation, determines that coverage under the Act is not needed to carry out the purposes of the Act.".

(b) EXEMPTIVE AUTHORITY.—Section 105 of the Truth in Lending Act (15 U.S.C. 1604) is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively; and

(2) by inserting after subsection (a) the following new subsection:

"(b) EXEMPTIVE AUTHORITY.—

"(1) IN GENERAL.—The Board shall exempt from all or parts of this title any class of transactions for which, in the Board's judgment, coverage under all or part of this title does not provide a measurable benefit to consumers in the form of useful information or protection.

"(2) FACTORS TO BE CONSIDERED.—In determining which classes of transactions to exempt in whole or in part, the Board shall consider, among other factors, the following:

"(A) The amount of the loan or closing costs and whether the disclosures, right of rescission, and other provisions are necessary, particularly for small loans.

"(B) Whether the requirements of this title complicate, hinder, or make more expensive the credit process for the class of transactions.

"(C) The status of the borrower, including, the borrowers' related financial arrangements, the financial sophistication of the borrower relative to the type of transaction, and the importance of the credit and related supporting property to the borrower.".

SEC. 104. REDUCTIONS IN RESPA REGULATORY BURDENS; CLARIFYING AMENDMENTS.

(a) UNNECESSARY DISCLOSURE.—Section 6(a) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) is amended to read as follows:

"(a) DISCLOSURE TO APPLICANT RELATING TO ASSIGNMENT, SALE, OR TRANSFER OF LOAN SERVICING.—

"(1) IN GENERAL.—Each person who makes a federally related mortgage loan shall disclose to each person who applies for any such loan, at the time of application for the loan, whether the servicing of any such loan may be assigned, sold, or transferred to any other person at any time while such loan is outstanding.

"(2) SIGNATURE OF APPLICANT.—Any disclosure of the information required under paragraph (1) shall not be effective for purposes of this section unless the disclosure is accompanied by a written statement, in such form as the Secretary shall develop before the expiration of the 180-day period beginning on the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995, that the applicant has read and understood the disclosure and that is evidenced by the signature of the applicant at the place where such statement appears in the application.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 180 days after the date of the enactment of this Act.

(c) SECOND MORTGAGES.—Section 3(1)(A) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602(1)(A)) is amended by striking "or subordinate".

(d) CONSISTENCY OF RESPA AND TRUTH IN LENDING ACT EXEMPTION OF BUSINESS LOANS.—Section 7 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2606) is amended—

(1) by inserting "(a) IN GENERAL.—" before "This Act"; and

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

"(b) INTERPRETATION.—In issuing regulations pursuant to section 19(a) of this Act, the Board shall ensure that, with regard to subsection (a), the exemption for business credit includes all business credit which is exempt from the Truth in Lending Act in accordance with section 226.3(a) of the regulations prescribed by the Board known as 'regulation Z' (12 C.F.R. 226.3(a)), as in effect on the date of enactment of the Financial Institutions Regulatory Relief Act of 1995.".

SEC. 105. DISCLOSURES FOR ADJUSTABLE RATE MORTGAGES.

(a) IN GENERAL.—Section 127A(a)(2)(G) of the Truth in Lending Act (15 U.S.C. 1637a(a)(2)(G)) is amended by inserting before the semicolon ", or a statement that the monthly payment may increase or decrease significantly due to increases in the annual percentage rate".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 127A(b)(3) of the Truth in Lending Act (15 U.S.C. 1637a(b)(3)) is amended by striking "required under" and inserting "referred to in".

(c) ALTERNATIVE TO HISTORICAL EXAMPLE.—Section 128(a) of the Truth in Lending Act (15 U.S.C. 1638(a)) is amended by inserting at the end the following new paragraph:

"(14) In any variable rate transaction secured by the consumer's principal dwelling with a term greater than 1 year, at the creditors' option, a statement that the monthly payment may increase or decrease substantially, or a historical example illustrating the effects of interest rate changes implemented according to the loan program.".

(d) ENSURING HONORING OF LOCK-IN PROMISES.—Section 128(b) of the Truth in Lending Act (15 U.S.C. 1638(b)) is amended by adding at the end the following new paragraph:

"(3) In the case of a residential mortgage transaction, the disclosures under subsection (a) shall include the following:

"(A) The note rate and points, and a statement, if applicable, that these terms are subject to change.

"(B) A statement that the creditor must include the disclosed note rate and points in the credit agreement unless, in relation to either or both of those terms—

"(i) the disclosure clearly and conspicuously indicates that the term is subject to change, or

"(ii) in the case of any term to which clause (i) does not apply—

"(I) the creditor has clearly and conspicuously indicated that the term is conditioned on closing the transaction within a prescribed time;

"(II) the creditor has promptly and clearly communicated to the consumer the information and documentation that the consumer is required to provide to the creditor; and

"(III) the consumer has failed to provide such information and documentation within a reasonable time after receiving that communication.".

SEC. 106. CERTAIN CHARGES.

(a) THIRD PARTY FEES.—Section 106(a) of the Truth in Lending Act (15 U.S.C. 1605(a)) is amended by adding after the 2d sentence the following new sentence: "The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not expressly require the imposition of the charges or the services provided and does not retain the charges.".

(b) MORTGAGE BROKER FEES.—Section 106(a) of the Truth in Lending Act (15 U.S.C. 1605(a)) is amended by adding at the end the following new paragraph:

"(6) Mortgage broker fees.".

(c) TREATMENT OF CERTAIN DEBT CANCELLATION AND DEFICIENCY WAIVER CONTRACTS.—Section 106(c) of the Truth in Lending Act (15 U.S.C. 1605(c)) is amended to read as follows:

"(c) TREATMENT OF CERTAIN DEBT CANCELLATION AND DEFICIENCY WAIVER CONTRACTS.—Charges or premiums for any insurance or for any voluntary noninsurance product, written in connection with any consumer credit transaction, that provides protections against loss of or damage to property or against part or all of the debtor's liability for amounts in excess of the value of the collateral securing the debtor's obligation, or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance or product if obtained from or through the creditor, and stating that the person to whom credit is extended may choose the person through which the insurance or product is to be obtained.".

(d) TAXES ON SECURITY INSTRUMENTS OR EVIDENCES OF INDEBTEDNESS.—Section 106(d) of the Truth in Lending Act (15 U.S.C. 1605(d)) is amended by adding at the end the following new paragraph:

"(3) Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a precondition for recording the instrument securing the evidence of indebtedness.".

(e) PREPARATION OF LOAN DOCUMENTS.—Section 106(e)(2) of the Truth in Lending Act (15 U.S.C. 1605(e)(2)) is amended to read as follows:

"(2) Fees for preparation of loan-related documents and for attending or conducting settlement.".

(f) FEES RELATING TO PEST INFESTATIONS, INSPECTIONS, AND HAZARDS.—Section 106(e)(5) of the Truth in Lending Act (15 U.S.C. 1605(e)(5)) is amended by inserting ", including fees related to pest infestations, premises and structural inspections, and flood hazards" before the period.

(g) ENSURING FINANCE CHARGES REFLECT COST OF CREDIT.—

(1) REPORT.—

(A) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall submit to the Congress a report containing recommendations on any regulatory or statutory changes necessary—

(i) to ensure that finance charges imposed in connection with consumer credit transactions more accurately reflect the cost of providing credit; and

(ii) to address abusive refinancing practices engaged in solely for the purpose of avoiding rescission.

(B) REPORT REQUIREMENTS.—In preparing the report under this paragraph, the Board shall—

(i) consider the extent to which it is feasible to include in finance charges all charges payable directly or indirectly by the consumer to whom credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit (especially those charges excluded from finance charges under section 106 of the Truth in Lending Act as of the date of the enactment of this Act), excepting only those charges which are payable in a comparable cash transaction; and

(ii) consult with and consider the views of affected industries and consumer groups.

(2) REGULATIONS.—The Board of Governors of the Federal Reserve System shall prescribe any appropriate regulation in order to effect any change included in the report under paragraph (1), and shall publish the regulation in the Federal Register before the end of the 1-year period beginning on the date of enactment of this Act.

SEC. 107. EXEMPTIONS FROM RESCISSION.

(a) CERTAIN REFINANCING.—Section 125(e) of the Truth in Lending Act (15 U.S.C. 1635(e)) is amended—

(1) by striking "or" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; or"; and

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

"(5) a transaction, other than a mortgage referred to in section 103(aa), which—

"(A) is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction as defined in section 103(w), or is any subsequent refinancing of such a transaction; and

"(B) does not provide any new consolidation or new advance.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 125(e)(2) of the Truth in Lending Act (15 U.S.C. 1635(e)(2)) is amended by inserting ", other than a transaction described in subsection (e)(5)," after "a refinancing or consolidation (with no new advances)".

SEC. 108. TOLERANCES; BASIS OF DISCLOSURES.

(a) TOLERANCES FOR ACCURACY.—Section 106 of the Truth in Lending Act (15 U.S.C. 1605) is amended by adding at the end the following new subsection:

"(f) TOLERANCES FOR ACCURACY.—In connection with credit transactions not under an open end credit plan that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge—

"(1) except as provided in paragraph (2), shall be treated as being accurate for purposes of this title if the amount disclosed as the finance charge—

"(A) does not vary from the actual finance charge by more than an amount equal to ½ of the numerical tolerance corresponding to, and generated by, the tolerance provided by section 107(c) with respect to the annual percentage rate, but in no case may the tolerance under this paragraph be less than $25 or greater than $200; or

"(B) is greater than the amount required to be disclosed under this title; and

"(2) shall be treated as being accurate for purposes of section 125 if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to 0.5 percent of the total amount of credit extended.".

(b) BASIS OF DISCLOSURE FOR PER DIEM INTEREST.—Section 121(c) of the Truth in Lending Act (15 U.S.C. 1631(c)) is amended by adding at the end the following new sentence: "In the case of any consumer credit transaction a portion of the interest on which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of inter-

est shall be deemed to be accurate for purposes of this title if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction.".

SEC. 109. LIMITATION ON LIABILITY.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following new section:

"SEC. 139. CERTAIN LIMITATIONS ON LIABILITY.

"(a) LIMITATIONS ON LIABILITY.—For any consumer credit transaction subject to this title that is consummated before the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995, a creditor or any assignee of a creditor shall have no civil, administrative, or criminal liability under this title for, and a consumer shall have no extended rescission rights under section 125(f) with respect to—

"(1) the creditor's treatment, for disclosure purposes, of—

"(A) taxes described in section 106(d)(3);

"(B) fees and amounts described in section 106(e) (2) and (5);

"(C) fees and amounts referred to in the 3rd sentence of section 106(a); or

"(D) mortgage broker fees referred to in section 106(a)(6);

"(2) the form of written notice used by the creditor to inform the obligor of the rights of the obligor under section 125 if the creditor provided the obligor with a properly dated form of written notice published and adopted by the Board or a comparable written notice; or

"(3) any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed—

"(A) may be treated as accurate pursuant to section 106(f), or

"(B) is greater than the amount or percentage required to be disclosed under this title.

"(b) EXCEPTIONS.—Subsection (a) shall not apply to—

"(1) any individual action or counterclaim brought under this title which was filed before June 1, 1995;

"(2) any class action brought under this title for which a final order certifying a class was entered before January 1, 1995;

"(3) the named individual plaintiffs in any class action brought under this title which was filed before June 1, 1995; or

"(4) any consumer credit transaction with respect to which a timely notice of rescission was sent to the creditor before June 1, 1995.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 138 the following new item:

"139. Certain limitations on liability.".

SEC. 110. LIMITATION ON RESCISSION LIABILITY.

Section 125 of the Truth in Lending Act (15 U.S.C. 1635) is further amended by adding at the end the following new subsection:

"(h) LIMITATION ON RESCISSION.—An obligor shall have no rescission rights arising from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Board, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor.".

SEC. 111. CALCULATION OF DAMAGES.

Section 130(a)(2)(A) of the Truth in Lending Act (15 U.S.C. 1640(a)(2)(A)) is amended—

(1) by striking "or (ii)" and inserting "(ii)"; and

(2) by inserting before the semicolon at the end the following: ", or (iii) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than $250 or greater than $2,500".

SEC. 112. ASSIGNEE LIABILITY.

(a) VIOLATIONS APPARENT ON THE FACE OF TRANSACTION DOCUMENTS.—Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is amended by adding at the end the following new subsection:

"(e) LIABILITY OF ASSIGNEE FOR CONSUMER CREDIT TRANSACTIONS SECURED BY REAL PROPERTY.—

"(1) IN GENERAL.—Except as otherwise specifically provided in this title, any civil action against a creditor for a violation of this title, and any proceeding under section 108 against a creditor, with respect to a consumer credit transaction secured by real property may be maintained against any assignee of such creditor only if—

"(A) the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with such transaction pursuant to this title; and

"(B) the assignment to the assignee was voluntary.

"(2) VIOLATION APPARENT ON THE FACE OF THE DISCLOSURE DESCRIBED.—For the purpose of this section, a violation is apparent on the face of the disclosure statement if—

"(A) the disclosure can be determined to be incomplete or inaccurate from the face of the disclosure statement, any itemization of the amount financed, or any other disclosure of disbursement; or

"(B) the disclosure statement does not use the terms or format required to be used by this title.".

(b) SERVICER NOT TREATED AS ASSIGNEE.—Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is amended by inserting after subsection (e) (as added by subsection (a) of this section) the following new subsection:

"(f) TREATMENT OF SERVICER.—

"(1) IN GENERAL.—A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of such obligation for purposes of this section unless the servicer is the owner of the obligation.

"(2) SERVICER NOT TREATED AS OWNER ON BASIS OF ASSIGNMENT FOR ADMINISTRATIVE CONVENIENCE.—A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of the owner of the obligation or the master servicer of the obligation.

"(3) SERVICER DEFINED.—For purposes of this subsection, the term 'servicer' has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974.".

SEC. 113. RESCISSION RIGHTS IN FORECLOSURE.

Section 125 of the Truth in Lending Act (15 U.S.C. 1635) is amended by inserting after subsection (h) (as added by section 110) the following new subsection:

"(i) RESCISSION RIGHTS IN FORECLOSURE.—

"(1) IN GENERAL.—Notwithstanding section 139, and subject to the time period provided in subsection (f), in addition to any other right of rescission available under this section for a transaction, upon an action of a creditor to execute foreclosure on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if—

"(A) a mortgage brokers fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

"(B) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the Board or a comparable written notice, or was not properly completed by the creditor.

"(2) TOLERANCE FOR DISCLOSURES.—Notwithstanding section 106(f), and subject to the time period provided in subsection (f), for the purposes of exercising any rescission rights following an action by a creditor to foreclose on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than $35 or is greater than the amount required to be disclosed under this title.".

SEC. 114. RECOVERY OF FEES.

Section 125(b) of the Truth in Lending Act (15 U.S.C. 1635) is amended—

(1) in the 1st sentence, by inserting ", except any charge for an appraisal report or credit report" after "other charge"; and

(2) in the 2d sentence, by striking "otherwise" and inserting "as otherwise required under this subsection".

SEC. 115. HOME OWNERSHIP DEBT COUNSELING NOTIFICATION.

Section 106(c) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)) is amended by striking paragraph (5).

SEC. 116. HOME MORTGAGE DISCLOSURE ACT.

(a) Section 309 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2808) is amended—

(1) in the 2d sentence, by striking "$10,000,000" and inserting "$50,000,000"; and

(2) by inserting at the end the following new sentences: "The Board may also, by regulation, exempt from the provisions of this Act institutions specified in section 303(2)(A) which have total assets as of their last full fiscal year of $50,000,000 or greater where the burden of complying with this Act on such institutions outweighs the usefulness of the information required to be disclosed. The exemptions provided under this section shall not be applicable to an institution which the Board, by order, has found a reasonable basis to believe is not fulfilling its obligations to serve the housing needs of the communities and neighborhoods in which it located. An institution subject to such an order shall be required to comply with the requirements of this Act for loans made after the time that the order is issued at such time and for such period as the Board deems appropriate. The dollar amount in this section shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.".

(b) Section 304 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803) is amended by adding at the end the following new subsection:

"(m) OPPORTUNITY TO REDUCE COMPLIANCE BURDEN.—

"(1) A depository institution shall be considered to have satisfied the public availability requirements of subsection (a) if such institution keeps the information required under that subsection at its home office and provides notice at the branch locations specified in such subsection that such information is available upon request from the home office of the institution. A home office of the depository institution receiving a request for such information pursuant to this subsection shall provide the information pertinent to the location of the branch in question within fifteen days of the receipt of the written request.

"(2) In complying with paragraph (1), a depository institution may provide the individual requesting such information, at the institution's choice, with—

"(A) a paper copy of the information requested; or

"(B) if acceptable to the individual, the information through a form of electronic medium, such as computer disc.".

SEC. 117. APPLICABILITY.

(a) IN GENERAL.—The amendments made by subsections (a), (d), (e), and (f) of section 106 and sections 108, 112, and 113 shall apply to all consumer credit transactions in existence or consummated on or after the date of enactment of this Act.

(b) EXCEPTION.—Notwithstanding subsection (a), in the case of—

(1) an individual action or a counterclaim referred to in section 139(b)(1) of the Truth in Lending Act, as amended by section 109(a) of this Act;

(2) a class action referred to in section 139(b)(2) of that Act;

(3) a claim of an individual as a named individual plaintiff in a class action referred to in section 139(b)(3) of that Act; or

(4) a claim relating to a consumer credit transaction referred to in section 139(b)(4) of that Act;

the Truth in Lending Act shall apply as in effect on the date of the consummation of the consumer credit transaction that is the subject of the individual action, counterclaim, class action, or claim, respectively.

Subtitle B—Community Reinvestment Act Amendments

SEC. 121. EXPRESSION OF CONGRESSIONAL INTENT.

Subsection (b) of section 802 of the Community Reinvestment Act of 1977 (12 U.S.C. 2901) is amended to read as follows:

"(b) It is the purpose of this title to require each appropriate Federal financial supervisory agency to use its authority, when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions. When examining financial institutions, a supervisory agency shall not impose additional burden, recordkeeping, or reporting upon such institutions.".

SEC. 122. COMMUNITY REINVESTMENT ACT EXEMPTION.

The Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) is amended by adding at the end the following new section:

"SEC. 809. EXAMINATION EXEMPTION.

"(a) IN GENERAL.—A regulated financial institution shall not be subject to the examination requirements of this title or any regulations issued under this section if the institution and any bank holding company which controls such institution have aggregate assets of not more than $100,000,000.

"(b) ANNUAL ADJUSTMENT.—The dollar amount in subsection (a) shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.".

SEC. 123. SELF-CERTIFICATION OF CRA COMPLIANCE.

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

"(c) SELF-CERTIFICATION OF CRA COMPLIANCE.—

"(1) CERTIFICATION.—In lieu of being evaluated under section 806A and receiving a written evaluation under section 807, a qualifying financial institution may elect to self-certify to the appropriate Federal financial supervisory agency that such institution is in compliance with the goals of this title.

"(2) QUALIFYING INSTITUTION.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'qualifying institution' means a financial institution which—

"(i) has not more than $250 million in assets;

"(ii) has not been found to have engaged in a pattern or practice of illegal discrimination under the Fair Housing Act or the Equal Credit Opportunity Act for the preceding 5-year calendar period; and

"(iii) received rating under section 807(b)(2) of 'satisfactory or outstanding' in the most recent evaluation of such institution under this title.

"(B) ANNUAL ADJUSTMENT.—The dollar amount in subparagraph (A) shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

"(3) PUBLIC NOTICE.—

"(A) IN GENERAL.—A qualifying institution shall maintain in every branch a public notice stating that—

"(i) the institution has self-certified that the institution is satisfactorily helping to meet the credit needs of its community;

"(ii) the institution maintains—

"(I) at the main office of such institution, a public file which contains a copy of the self-certification to the appropriate Federal financial supervisory agency; and

"(II) a map delineating the community served by the institution;

"(iii) a list of the types of credit and services that the institution provides to the community served by the institution;

"(iv) such other information that the institution believes demonstrates the institution's record of helping to meet the credit needs of its community; and

"(v) every public comment or letter to the institution (and any response by the institution) received within the previous 2-year period about the record of the institution of helping to meet the credit needs of its community.

"(B) PUBLIC FILE.—A qualifying institution shall maintain a public file containing the contents described in this paragraph at the institution's main office

"(4) RATING.—

"(A) IN GENERAL.—A qualifying institution shall be deemed to have a rating of a 'satisfactory record of meeting community credit needs' for the purposes of this section and section 806A(c).

"(B) PUBLICATION.—Each Federal financial supervisory agency shall publish in the Federal Register once each month a list of institutions that have self-certified during the previous month.

"(C) PUBLICATION CONSTITUTES DISCLOSURE.—Publication of the name of the institution in the Federal Register as having self-certified shall constitute disclosure of the rating of the institution to the public for purposes of sections 806A and 807.

"(5) REGULATORY REVIEW.—

"(A) ASSESSMENT.—During each examination for safety and soundness, a qualifying institution's supervisory agency shall, as part of the agency's review of the institution's loans, assess whether the institution's basis for its self-certification is reasonable based on the public notice and the information contained in the public file pursuant to paragraph (3).

"(B) EXAMINATION IF SELF-CERTIFICATION IS NOT REASONABLE.—If the agency determines that the institution's basis for the institution's self-certification is not reasonable, the agency shall schedule an examination of the institution for the purpose of assessing the institution's record of helping to meet the credit needs of its community.

"(C) REVOCATION OF SELF-CERTIFICATION.—If an assessment pursuant to subparagraph (B) results in a less than 'satisfactory' rating, the agency shall revoke the institution's self-certification and substitute a written evaluation as provided under section 807.

"(D) PERIOD OF INELIGIBILITY FOR SELF-CERTIFICATION.—An institution whose self-certification has been revoked may not self-certify pursuant to this subsection during the 5 years succeeding the year in which the self-certification is revoked.

"(E) SUBSEQUENT ELIGIBILITY.—After the end of the period of ineligibility described in subparagraph (D), an institution which meets the requirements for self-certification may elect to self-certify.

"(6) PROHIBITION ON ADDITIONAL REQUIREMENTS.—No appropriate Federal financial supervisory agency may impose any additional requirements, whether by regulation or otherwise, relating to the self-certification procedure under this subsection.".

SEC. 124. COMMUNITY INPUT AND CONCLUSIVE RATING.

(a) CONFORMING AMENDMENT.—Section 804(a) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903) is amended by inserting "conducted in accordance with section 806A," after "financial institution,".

(b) COMMUNITY INPUT AND CONCLUSIVE RATING.—The Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) is amended by inserting after section 806 the following new section:

"SEC. 806A. COMMUNITY INPUT AND CONCLUSIVE RATING.

"(a) PUBLICATION OF EXAM SCHEDULE AND OPPORTUNITY FOR COMMENT.—

"(1) PUBLICATION OF NOTICE.—Each appropriate Federal financial supervisory agency shall—

"(A) publish in the Federal Register, 30 days before the beginning of a calendar quarter, a listing of institutions scheduled for evaluation for compliance with this title during such calendar quarter; and

"(B) provide opportunity for written comments from the community on the performance, under this title, of each institution scheduled for evaluation.

"(2) COMMENT PERIOD.—Written comments may not be submitted to an appropriate Federal financial supervisory agency pursuant to paragraph (1) after the end of the 30-day period beginning on the first day of the calendar quarter.

"(3) COPY OF COMMENTS.—The agency shall provide a copy of such comments to the institution.

"(b) EVALUATION.—The appropriate Federal financial supervisory agency shall—

"(1) evaluate the institution in accordance with the standards contained in section 804; and

"(2) prepare and publish a written evaluation of the institution as required under section 807.

"(c) RECONSIDERATION OF RATING.—

"(1) REQUEST FOR RECONSIDERATION.—A reconsideration of an institution's rating referred to in section 807(b)(1)(C), may be requested within 30 days of the rating's disclosure to the public.

"(2) PROCEDURES FOR REQUEST.—Any such request shall be made in writing and filed with the appropriate Federal financial supervisory agency, and may be filed by the institution or a member of the community.

"(3) BASIS FOR REQUEST.—Any request for reconsideration under this subsection shall be based on significant issues of a substantive nature which are relevant to the delineated community of the institution and, in the case of a request by a member of the community, shall be limited to issues previously raised in comments submitted pursuant to subsection (a).

"(4) COMPLETION OF REVIEW.—The appropriate Federal financial supervisory agency shall complete any requested reconsideration within 30 days of the filing of the request.

"(d) CONCLUSIVE RATING.—

"(1) IN GENERAL.—An institution's rating shall become conclusive on the later of—

"(A) 30 days after the rating is disclosed to the public; or

"(B) the completion of any requested reconsideration by the Federal financial supervisory agency.

"(2) RATING CONCLUSIVE OF MEETING COMMUNITY CREDIT NEEDS.—An institution's rating shall be the conclusive assessment of the institution's record of meeting the credit needs of its community for purposes of section 804 until the institution's next rating, developed pursuant to an examination, becomes conclusive.

"(3) SAFE HARBOR.—Institutions which have received a 'satisfactory' or 'outstanding' rating shall be deemed to have met the purposes of section 804.

"(4) RULE OF CONSTRUCTION.—Notwithstanding any other provision of law, no provision of this section shall be construed as granting a cause of action to any person.".

(c) OVERALL EVALUATION OF INSTITUTION.—Paragraph (2) of section 804(a) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(a)) is amended to read as follows:

"(2) take such record into account in the overall evaluation of the condition of the institution by the appropriate Federal financial supervisory agency.".

SEC. 125. SPECIAL PURPOSE FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Section 804 of the Community Reinvestment Act of 1977 (12 U.S.C. 2903) is amended by inserting after subsection (c) (as added by section 123 of this title) the following new subsection:

"(d) SPECIAL PURPOSE INSTITUTIONS.—

"(1) IN GENERAL.—In conducting assessments pursuant to this section at any special purpose institution, the appropriate Federal financial supervisory agency shall—

"(A) consider the nature of business such institution is involved in; and

"(B) assess and take into account the record of the institution commensurate with the amount of deposits (as defined in section 3(1) of the Federal Deposit Insurance Act) received by such institution.

"(2) STANDARDS.—Each appropriate Federal financial supervisory agency shall develop standards under which special purpose institutions may be deemed to have complied with the requirements of this title which are consistent with the specific nature of such businesses.".

(b) SPECIAL PURPOSE INSTITUTION DEFINED.—Section 803 of the Community Reinvestment Act of 1977 (12 U.S.C. 2902) is amended by adding at the end the following new paragraph:

"(5) SPECIAL PURPOSE INSTITUTIONS.—The term 'special purpose institution' means a financial institution that does not generally accept deposits from the public in amounts of less than $100,000, such as wholesale, credit card, and trust institutions.".

SEC. 126. INCREASED INCENTIVES FOR LENDING TO LOW- AND MODERATE-INCOME COMMUNITIES.

(a) IN GENERAL.—Section 804(b) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(b)) is amended to read as follows:

"(b) POSITIVE CONSIDERATION OF CERTAIN LOANS AND INVESTMENTS.—In assessing and taking into account the records of a regulated financial institution under subsection (a), the appropriate Federal financial supervisory agency shall—

"(1) consider as a positive factor, consistent with the safe and sound operation of the institution, the institution's investment in or loan to—

"(A) any minority depository institution or women's depository institution (as such terms are defined in section 808(b)) or any low-income credit union;

"(B) any joint venture or other entity or project which promotes the public welfare in any distressed community (as defined by such agency) whether

or not the distressed community is located in the local community in which the regulated financial institution is chartered to do business; and

"(C) targeted low- and moderate-income communities, including real property loans to such communities; and

"(2) consider equally with other factors capital investment, loan participation, and other ventures undertaken by the institution in cooperation with—

"(A) minority- and women-owned financial institutions and low-income credit unions to the extent that these activities help meet the credit needs of the local communities in which such institutions are chartered; and

"(B) community development corporations in extending credit and other financial services principally to low- and moderate-income persons and small businesses to the extent that such community development corporations help meet the credit needs of the local communities served by the majority-owned institution.".

(b) AMENDMENT TO DEFINITIONS.—Section 803 of the Community Reinvestment Act of 1977 (12 U.S.C. 2902) is amended by inserting after paragraph (5) (as added by section 125(b) of this subtitle) the following new paragraph:

"(6) STATE BANK SUPERVISOR.—The term 'State bank supervisor' has the same meaning as in section 3(r) of the Federal Deposit Insurance Act.".

(c) TECHNICAL CORRECTION.—The 1st of the 2 paragraphs designated as paragraph (2) of section 803 of the Community Reinvestment Act of 1977 (12 U.S.C. 2902) is amended to read as follows:

"(D) the Director of the Office of Thrift Supervision with respect to any savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and any savings and loan holding company (other than a company which is a bank holding company);".

SEC. 127. PROHIBITION ON ADDITIONAL REPORTING UNDER CRA.

Section 806 of the Community Reinvestment Act of 1977 (12 U.S.C. 2905) is amended to read as follows:

"SEC. 806. REGULATIONS.

"(a) IN GENERAL.—

"(1) PUBLICATION REQUIREMENT.—Regulations to carry out the purposes of this title shall be published by each appropriate Federal financial supervisory agency.

"(2) PROHIBITION ON ADDITIONAL RECORDKEEPING.—Regulations prescribed and policy statements, commentary, examiner guidance, or other supervisory material issued under this title shall not impose any additional recordkeeping on a financial institution.

"(3) PROHIBITION ON LOAN DATA COLLECTION.—No loan data may be required to be collected and reported by a financial institution and no such data may be made public by any Federal financial supervisory agency under this title.".

SEC. 128. TECHNICAL AMENDMENT.

Section 807(b)(1)(B) of the Community Reinvestment Act (12 U.S.C. 2906) is amended by striking "The information" and inserting "In the case of a regulated financial institution that maintains domestic branches in 2 or more States, the information".

SEC. 129. DUPLICATIVE REPORTING.

Section 10(g) of the Federal Home Loan Bank Act (12 U.S.C. 1430(g)) is amended by adding at the end the following new paragraph (3):

"(3) SPECIAL RULE.—This subsection shall not apply to members receiving a grade of 'outstanding' or 'satisfactory' under section 807 of the Community Reinvestment Act of 1977.".

SEC. 130. CRA CONGRESSIONAL OVERSIGHT.

(a) SENSE OF CONGRESS RELATING TO AGGRESSIVE OVERSIGHT.—It is the sense of the Congress that the appropriate committees of the House of Representatives and the Senate should exercise aggressive oversight of the adoption and implementation of any regulation by any appropriate Federal financial supervisory agency under the Community Reinvestment Act of 1977 after the date of the enactment of this Act.

(b) AGENCY REPORTS REQUIRED.—

(1) IN GENERAL.—Each appropriate Federal financial supervisory agency shall submit a report to the Congress by December 31, 1996, and by December 31, 1997, on the implementation of all regulations prescribed by such agency under the Community Reinvestment Act of 1977 after the date of the enactment of this Act.

(2) REQUIREMENTS RELATING TO PREPARATION OF REPORTS.—In preparing each report required under paragraph (1), each appropriate Federal financial supervisory agency shall—

(A) solicit and include comments from regulated financial institutions with respect to the regulations which are the subject of the report; and

(B) include quantifiable measures of the cost savings achieved under the regulations which are the subject of the report and the effectiveness of such regulations in achieving the purposes of the Community Reinvestment Act of 1977.

(3) DEFINITIONS.—For purposes of this section, the terms "appropriate Federal financial supervisory agency" and "regulated financial institution" have the same meanings as in section 803 of the Community Reinvestment Act of 1977.

SEC. 131. CONSULTATION AMONG EXAMINERS.

Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by adding at the end the following new subsection:

"(j) CONSULTATION AMONG EXAMINERS.—

"(1) IN GENERAL.—Each appropriate Federal banking agency shall take such action as may be necessary to ensure that examiners employed by the agency—

"(A) consult on examination activities with respect to any depository institution; and

"(B) achieve an agreement and resolve any inconsistencies on the recommendations to be given to such institution as a consequence of any examinations.

"(2) EXAMINER-IN-CHARGE.—Each agency shall consider appointing an examiner-in-charge with respect to a depository institution to ensure consultation on examination activities among all of the agency's examiners involved in examinations of such institution.".

SEC. 132. LIMITATION ON REGULATIONS.

Section 806 of the Community Reinvestment Act of 1977 (12 U.S.C. 2905) (as amended by section 127) is amended by adding at the end the following new subsections:

"(b) LIMITATION ON REGULATIONS.—No regulation may be prescribed under this title by any Federal agency which would—

"(1) require any regulated financial institution to

"(A) make any loan or enter into any other agreement on the basis of any discriminatory criteria prohibited under any law of the United States; or

"(B) make any loan to, or enter into any other agreement with, any uncreditworthy person that would jeopardize the safety and soundness of such institution; or

"(2) prevent or hinder in any way a financial institution's full responsibility to provide credit to all segments of the community.

"(c) ENCOURAGE LOANS TO CREDITWORTHY BORROWERS.—Regulations prescribed under this title shall encourage regulated financial institutions to make loans and extend credit to all creditworthy persons, consistent with safety and soundness.".

Subtitle C—Consumer Banking Reforms

SEC. 141. TRUTH IN SAVINGS.

(a) PURPOSE.—Section 262 of the Truth in Savings Act (12 U.S.C. 4301) is amended to read as follows:

"SEC. 262. PURPOSE.

"It is the purpose of this subtitle to ensure that consumers can make a meaningful comparison between the competing claims of depository institutions with regard to deposit accounts by requiring that institutions offering interest-bearing accounts pay interest on the full amount of principal each day in a consumer deposit account at the rate agreed to be paid by the institution.".

(b) PROHIBITION ON MISLEADING OR INACCURATE ADVERTISEMENTS AND DISCLOSURES.—Section 263 is amended to read as follows:

"SEC. 263. PROHIBITION ON MISLEADING OR INACCURATE ADVERTISEMENTS AND DISCLOSURES.

"No depository institution or deposit broker shall make any advertisement, announcement, solicitation or disclosure relating to a deposit account that is inaccurate or misleading, including any inaccurate or misleading description of a free or no-cost account, or that misrepresents its deposit contracts.".

(c) ACCOUNT INFORMATION UPON OPENING AN ACCOUNT.—Section 264 of the Truth in Savings Act (12 U.S.C. 4304) is amended to read as follows:

"SEC. 264. ACCOUNT INFORMATION.

"(a) IN GENERAL.—Each depository institution shall disclose fees, charges, penalties, and interest rates applicable to each class of accounts offered by the institution in accordance with this section.

"(b) INFORMATION ON FEES AND CHARGES.—Each depository institution shall disclose the following information with respect to any account to a consumer at the time the account is opened, or at such earlier time as a consumer may request (and no additional information may be required to be disclosed under this subtitle by regulation or otherwise with respect to such account):

"(1) A description of all fees, periodic service charges, penalties, and interest rates which may be charged or assessed against the account (or against the account holders in connection with such account), the amount of any such fees, charges, or penalties (or the method by which such amount will be calculated), and the conditions under which any such amount will be assessed.

"(2) All minimum balance requirements that affect fees, charges, and penalties, including a clear description of how each such minimum balance is calculated.

"(3) Any minimum amount required with respect to the initial deposit in order to open the account.

"(c) INFORMATION ON INTEREST RATES.—The disclosures required under subsections (a) and (b) with respect to any account shall include the following information:

"(1) Any annual rate of simple interest.

"(2) The frequency with which interest will be compounded and credited.

"(d) NO REGULATIONS AUTHORIZED.—No regulations may be prescribed with respect to this section by the Board or any agency referred to in this title, including any regulation to define any terms used in this section.".

(d) DISCLOSURE OF CHANGE IN TERMS.—Section 265 of the Truth in Savings Act (12 U.S.C. 4304) is amended to read as follows:

"SEC. 265. DISCLOSURE OF CHANGE IN TERMS.

"If any change is made in any item required to be disclosed under section 264, all account holders who may be affected by such change shall be notified by mail and provided with a description of such change at least 30 days before the effective date of the change.".

(e) REPEAL OF SECTIONS.—Sections 266, 268, 271, and 273 of the Truth in Savings Act (12 U.S.C. 4304, 4305, 4307, 4310, and 4312, respectively) are hereby repealed.

(f) REDESIGNATION OF SECTIONS.—Section 267, 270, 272 of the Truth in Savings Act (12 U.S.C. 4306, 4309, and 4311) are redesignated as sections 266, 268, and 269, respectively.

(g) REDESIGNATION AND AMENDMENT OF SECTION 269.—Section 269 of the Truth in Savings Act (12 U.S.C. 4308) (as determined before the redesignation made by subsection (f) of this section) is amended to read as follows:

"SEC. 267. REGULATIONS.

"(a) IN GENERAL.—The Board, after consultation with each agency referred to in section 268(a) and public notice and opportunity for comment, shall prescribe regulations to carry out the purpose and provisions of this subtitle.

"(b) EFFECTIVE DATE OF REGULATIONS.—The provisions of this subtitle shall not apply with respect to any depository institution before the effective date of regulations prescribed by the Board under this subsection."

(h) REDESIGNATION AND AMENDMENT OF SECTION 274.—Section 274 of the Truth in Savings Act (12 U.S.C. 4313) is amended to read as follows:

"SEC. 270. DEFINITIONS.

"For the purposes of this subtitle, the following definitions shall apply:

"(1) ACCOUNTS.—The term 'account' means any account intended for use by and generally used by a consumer primarily for personal, family, or household purposes that is offered by a depository institution.

"(2) DEPOSIT BROKER.—The term 'deposit broker'—

"(A) has the meaning given to such term in section 29(f)(1) of the Federal Deposit Insurance Act; and

"(B) includes any person who solicits any amount from any other person for deposit in an insured depository institution.

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

"(A) means an institution described in clause (i), (ii), (iii), (iv), (v), or (vi) of section 19(b)(1)(A) of the Federal Reserve Act; and

"(B) does not include nonautomated credit unions which were not required to comply with the requirements of this title as of the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995 pursuant to the determination of the National Credit Union Administration Board.

"(4) INTEREST.—The term 'interest' includes dividends paid with respect to share accounts which are accounts within the meaning of paragraph (1).

"(5) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.".

(i) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the effective date of regulations prescribed by the Board of Governors of the Federal Reserve System to implement such amendments.

(2) AUTHORITY TO ISSUE REGULATIONS.—Notwithstanding paragraph (1), the Board of Governors of the Federal Reserve System shall prescribe regulations in accordance with the amendment made by subsection (g).

(3) CONTINUED APPLICABILITY OF PROVISIONS UNTIL EFFECTIVE DATE OF NEW REGULATIONS.—The Truth in Savings Act, as in effect on the day before the date of the enactment of this Act, shall continue to apply on and after such date until the effective date of the amendments to such Act under this section.

SEC. 142. INFORMATION SHARING.

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

"(s) CUSTOMER ACCESS TO PRODUCTS.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, any depository institution, or any affiliate or subsidiary of any depository institution, may share or exchange information or otherwise transfer information between or among themselves without any restriction or limitation if it is clearly and conspicuously disclosed that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons.

"(2) DEFINITION.—For purposes of this subsection, the term 'information' means any and all data, records, or other information and material obtained or maintained by any depository institution or any affiliate or subsidiary thereof in the ordinary course of its business that relates in any way to a person (as such term is defined in section 603(b) of the Fair Credit Reporting Act) who applies for, maintains, or has maintained an account or credit relationship with or applied for, purchased or obtained other products or services from any depository institution or any affiliate or subsidiary of any depository institution, regardless of the source or manner in which the information is obtained or furnished.

"(3) RULE OF CONSTRUCTION.—Any depository institution, or any affiliate or subsidiary of any depository institution, relying on this subsection shall not be deemed to be a consumer reporting agency, user, or third party, and the information itself shall not constitute a consumer report, within the meaning of the Fair Credit Reporting Act or other similar law.".

SEC. 143. ELECTRONIC FUND TRANSFER ACT CLARIFICATION.

(a) DEFINITION OF ACCEPTED CARD OR OTHER MEANS OF ACCESS.—Section 903(1) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(1)) is amended by inserting before the semicolon at the end the following: ", but such term does not include a card, device, or computer that a person may use to pay for transactions through use of value stored on, or assigned to, the card, device, or computer itself, except for those transactions where such card, device, or computer is actually used to access an account to effect such transaction".

(b) DEFINITION OF ACCOUNT.—Section 903(2) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(2)) is amended by inserting before the semicolon at the end the following: "and does not include any value which is stored on, or assigned to, a card, device, or computer itself that enables a person to pay for transactions through use of that stored value".

SEC. 144. LIMIT ON RESTITUTION FOR TRUTH IN LENDING VIOLATIONS IF SAFETY AND SOUNDNESS OF VIOLATOR WOULD BE AFFECTED.

Section 108(e)(3)(A) of the Truth in Lending Act (15 U.S.C. 1607(e)(3)(A)) is amended—

(1) by striking "in any such case, the agency may require" and inserting "in any such case, the agency may (i) require";

(2) by striking ", except that with respect to any transaction consummated after the effective date of section 608 of the Truth in Lending Simplification and Reform Act, the agency shall" and inserting "; or (ii)"; and

(3) by striking "reasonable," and inserting "reasonable if, in the case of an agency referred to in paragraph (1), (2), or (3) of subsection (a), the agency determines that a partial adjustment or the making of partial payments over an extended period is necessary to avoid causing the creditor to become undercapitalized (as determined in accordance with regulations prescribed by such agency under section 38 of the Federal Deposit Insurance Act);".

Subtitle D—Equal Credit Opportunity Act Amendments

SEC. 151. SHORT TITLE.

This subtitle may be cited as the "Equal Credit Opportunity Act Amendments of 1995".

SEC. 152. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that both the Equal Credit Opportunity Act (15 U.S.C. 1691, et seq.) and the Fair Credit Reporting Act (15 U.S.C. 1681, et seq.) contain requirements that applicants for consumer credit be given certain information in the event that adverse action is taken on the application. These requirements differ in both scope and content and for that reason are confusing to both the consumer who receives the information and the party required to furnish the information.

(b) PURPOSE.—It is the purpose of this subtitle to combine and simplify the adverse action notification requirements of the Equal Credit Opportunity Act and the Fair Credit Reporting Act regarding applications for consumer credit and to make the information that is required to be furnished more understandable.

SEC. 153. EQUAL CREDIT OPPORTUNITY ACT AMENDMENTS.

(a) NOTICE OF ADVERSE ACTION.—Section 701(d)(2)(B) of the Equal Credit Opportunity Act (15 U.S.C. 1691(d)(2)(B)) is amended to read as follows:

"(B) giving written notification of adverse action which discloses—

"(i) the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days after such notification;

"(ii) if credit is denied or the charge for such credit is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency—

"(I) that fact and the name, address, and telephone number of the consumer reporting agency making the report;

"(II) the consumer's right to obtain, under section 612, a free copy of a consumer report on the consumer, from the consumer reporting agency referred to in subclause (I) within the 30-day period provided under such section; and

"(III) the consumer's right to dispute, under section 611, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

"(iii) if credit is denied or the charge for credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living, that fact and the right to receive disclosure of the nature of the information so received, within a reasonable period of time, upon the consumer's written request for information within 60 days after learning of such adverse action; and

"(v) the identity of the person or office from which such notification may be obtained.

Such statement of reasons may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 701(d)(3) of the Equal Credit Opportunity Act (15 U.S.C. 1691(d)(3)) is amended by striking the period at the end and adding the following: "and, to the extent applicable, the name, address, and telephone number of the consumer reporting agency identified in accordance

with the requirements of subsection (d)(3)(ii) and a statement of the right to obtain disclosure of the nature of the information upon which adverse action was taken as required by such subsection.".

(c) REASONABLE PROCEDURES TO ASSURE COMPLIANCE.—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended by adding at the end the following new subsection:

"(l) REASONABLE PROCEDURES TO ASSURE COMPLIANCE.—No person shall be held liable for any violation of subsection 701(d) if such person shows by a preponderance of the evidence that at the time of the alleged violation the person maintained reasonable procedures to assure compliance with the provisions of the subsection.".

SEC. 154. FAIR CREDIT REPORTING ACT AMENDMENTS.

(a) Section 615(a) of the Fair Credit Reporting Act (15 U.S.C. 1681m(a)) is amended by striking "credit or" each place such term appears.

(b) Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended by striking subsection (b) and redesignating subsection (c) as subsection (b).

(c) Section 615(b) (as redesignated by this section) of the Fair Credit Reporting Act (15 U.S.C. 1681m(b)) is amended by striking "subsections (a) and (b)" and inserting "subsection (a)".

SEC. 155. INCENTIVES FOR SELF-TESTING.

(a) EQUAL CREDIT OPPORTUNITY.—

(1) IN GENERAL.—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended by inserting after section 704 the following new section:

"SEC. 704A. INCENTIVES FOR SELF-TESTING AND SELF-CORRECTION.

"(a) IN GENERAL.—If a creditor—

"(1) conducts, or authorizes an independent third party to conduct, a self-test of the creditor's lending or any part of the creditor's lending operations in order to determine the level or effectiveness of compliance with this title by the creditor; and

"(2) has identified discriminatory practices and has taken or is taking appropriate corrective actions to address the discrimination,

any report or results of such a self-test may not be obtained or used by any applicant, department, or agency in any proceeding or civil action brought under this title.

"(b) RESULTS OF SELF-TESTING.—No provision of this section shall be construed as preventing an applicant, department, or agency from obtaining and using the results of any self-testing in any proceeding or civil action brought under this title if—

"(1) the creditor or any other entity conducted such activity at the request of a department or agency;

"(2) the creditor or any other entity, or any person acting on behalf of the creditor or other entity—

"(A) voluntarily releases or discloses all, or any part of, such results; or

"(B) refers to or describes such results as a defense to charges of unlawful discrimination against such creditor, person, or entity; or

"(3) the results are sought by the applicant, department, or agency by means of a discovery request for the purposes of determining an appropriate penalty or remedy for a violation of this title.

"(c) REGULATIONS.—The appropriate Federal department or agency shall prescribe regulations, after notice and opportunity for comment, which determine what types of 'self-tests' are sufficiently extensive so as to constitute a determination of the level or effectiveness of a creditor's compliance with this title.".

(2) REFERRALS TO THE ATTORNEY GENERAL.—Section 706(g) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(g)) is amended—

(A) by striking "(g) The agencies" and inserting "(g) REFERRALS TO THE ATTORNEY GENERAL.—

"(1) IN GENERAL.—The agencies"; and

(B) by adding at the end the following new paragraphs:

"(2) LIMITATION ON REFERRALS OF SELF-TESTING RESULTS.—

"(A) IN GENERAL.—No agency shall be required to refer any report or results of a self-test relating to any creditor to the Attorney General if the creditor—

"(i) has already identified discriminatory practices as the result of self-testing instituted by the creditor to determine compliance with this title; and

"(ii) has taken or is taking appropriate corrective actions to address the discrimination.

"(3) ENFORCEMENT UNDER OTHER LAWS.—No provision of this section shall be construed as limiting the authority of the agency to enforce the provisions of this title under any other provision of law.".

(3) REFERRALS TO HUD.—Section 706(k) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(k)) is amended by adding at the end the following: "No such agency shall be required to notify the Secretary of Housing and Urban Development or the applicant that the agency has reason to believe that a violation of this title or the Fair Housing Act occurred if the reason is based on a result of self-testing instituted by the creditor to determine compliance with this title, and the creditor has already identified the possible violation and has taken or is taking appropriate corrective actions to address the possible violation. No provisions of this section shall be construed as limiting the authority of the agency to enforce the provisions of this title under any other provision of law.".

(4) CLERICAL AMENDMENT.—The table of sections for title VII of the Consumer Credit Protection Act is amended by inserting after the item relating to section 704 the following new item:

"704A. Incentives for self-testing and self-correction.".

(b) FAIR HOUSING.—The Fair Housing Act (42 U.S.C. 3601 et seq.) is amended by inserting after section 814 the following new section:

"SEC. 814A. SELF-TESTING ENHANCEMENT.

"(a) IN GENERAL.—If any person—

"(1) conducts, or authorizes an independent third party to conduct, a self-test of that person's residential real estate related lending activities, or any part of such activities, in order to determine the level or effectiveness of compliance with this title by the person; and

"(2) has identified discriminatory practices and has taken or is taking appropriate corrective actions to address the discrimination,

any report or results of such a self-test may not be obtained or used by any aggrieved person, complainant, department, or agency in any proceeding or civil action brought under this title.

"(b) RESULTS OF SELF-TESTING.—No provision of this section shall be construed as preventing an aggrieved person, complainant, department, or agency from obtaining and using the results of any self-testing as described in subsection (a) in any proceeding or civil action brought under this title if—

"(1) the creditor or any other entity conducted such activity at the request of a department or agency;

"(2) the creditor or any other entity, or any person acting on behalf of the creditor or other entity—

"(A) voluntarily releases or discloses all, or any part of, such results; or

"(B) refers to or describes such results as a defense to charges of unlawful discrimination against such creditor, person, or entity; or

"(3) the results are sought by the aggrieved person, complainant, department, or agency by means of a discovery request for the purposes of determining an appropriate penalty or remedy for a violation of this title.

"(c) REGULATIONS.—The appropriate Federal department or agency shall prescribe regulations, after notice and opportunity for comment, which determine what types of 'self-tests' are sufficiently extensive so as to constitute a determination of the level or effectiveness of a creditor's compliance with this title.".

SEC. 156. CREDIT SCORING SYSTEMS.

Section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended by adding at the end the following new subsection:

"(f) CREDIT SCORING SYSTEM.—

"(1) IN GENERAL.—A creditor shall be deemed to be in compliance with subsection (a) with respect to any credit decision made by the creditor which is based solely on the use of an empirically derived, demonstrably and statistically sound, credit scoring system (as defined by the Board in regulations prescribed under this title) if such system—

"(A) does not utilize any category protected under subsection (a);

"(B) does not use as a factor in such system any criterion which is so directly associated with such a category as to be the functional equivalent of such a category; and

"(C) does not use as a factor in such system any criterion that has a disparate impact on a category protected under subsection (a) unless use of the criterion is justified by business necessity and there is no less discriminatory alternative available.

"(2) AGE AS A FACTOR.—No provision of this subsection shall be construed as precluding a creditor from using age as a factor in a credit scoring system under paragraph (1) to the extent otherwise permitted under this title.".

SEC. 157. CONSULTATION BY ATTORNEY GENERAL REQUIRED IN NONREFERRAL CASES.

(a) EQUAL CREDIT OPPORTUNITY.—Section 706(h) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(h)) is amended by adding at the end the following new sentence: "Before bringing a civil action against any creditor described in paragraph (1), (2), or (3) of section 704(a), the Attorney General shall consult with the appropriate agency under such paragraph.".

(b) FAIR HOUSING ACT.—Section 814(a) of the Fair Housing Act (42 U.S.C. 3614(a)) is amended by adding at the end the following new sentence: "Before bringing a civil action under the preceding sentence against any person or group of persons described in paragraph (1), (2), or (3) of section 704(a) of the Equal Credit Opportunity Act with respect to a violation of 805(a) of this title, the Attorney General shall consult with the appropriate agency under such paragraph.".

SEC. 158. EFFECTIVE DATE.

(a) IN GENERAL.—Except with respect to the requirements of subsection (b), this Act shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.

(b) IMPLEMENTING REGULATIONS.—The Board of Governors of the Federal Reserve System shall prescribe regulations to implement this Act and such regulations shall be published in final form before the end of the 180-day period beginning on the date of the enactment of this Act.

Subtitle E—Consumer Leasing Act Amendments

SEC. 161. SHORT TITLE.

This subtitle may be cited as the "Consumer Leasing Act Amendments of 1995".

SEC. 162. CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) Competition among the various financial institutions and other firms engaged in the business of consumer leasing is greatest when there is informed use of leasing. The informed use of leasing results from an awareness of the cost of leasing by consumers.

(2) There has been a continued trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that leasing product advances have occurred such that lessors have been unable to provide consistent industry-wide disclosures to fully account for the competitive progress that has occurred.

(b) PURPOSES.—

(1) It is the purpose of this subtitle to assure a simple, meaningful disclosure of leasing terms so that the consumer will be able to compare more readily the various leasing terms available to the consumer and avoid the uninformed use of leasing, and to protect the consumer against inaccurate and unfair leasing practices.

(2) To provide for adequate cost disclosures that reflect the marketplace without impairing competition and the development of new leasing products, it is the purpose of this subtitle to provide the Board with the regulatory authority to assure a simplified, meaningful definition and disclosure of the terms of certain leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to the lessee, enable comparison of lease terms with credit terms where appropriate and to assure meaningful and accurate disclosures of lease terms in advertisements.

SEC. 163. REGULATIONS.

(a) IN GENERAL.—Chapter 5 of title I of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following new section:

"SEC. 187. REGULATIONS.

"(a) REGULATIONS AUTHORIZED.—

"(1) IN GENERAL.—The Board shall write regulations or staff commentary, if appropriate, to update and clarify the requirements and definitions for lease disclosures, contracts, and any other specific issues related to consumer leasing which would carry out the purposes of this chapter, to prevent any circumven-

tion of the chapter, and to facilitate compliance with the requirements of the chapter.

"(2) CLASSIFICATIONS, ADJUSTMENTS.—The regulations prescribed under paragraph (1) may contain classifications and differentiations and may provide for adjustments and exceptions for any class of transaction.

"(b) MODEL DISCLOSURES.—The Board shall publish model disclosure forms and clauses to facilitate compliance with the disclosure requirements and to aid the consumer in understanding the transaction. In designing forms, the Board shall consider the use by lessors of data processing or similar automated equipment. Use of the models shall be optional. A lessor who properly uses the material aspects of the models shall be deemed to be in compliance with the disclosure requirements.

"(c) EFFECTIVE DATES.—

"(1) IN GENERAL.—Any regulation of the Board, or any amendment or interpretation of any regulation of the Board, that requires a disclosure different from the disclosures previously required shall have an effective date of the October 1 that follows the date of promulgation by at least 6 months.

"(2) LONGER PERIOD.—The Board may, in the Board's discretion, lengthen the period of time referred to in paragraph (1) to permit lessors to adjust their forms to accommodate new requirements.

"(3) SHORTER PERIOD.—The Board may also shorten the period of time referred to in paragraph (1) if the Board makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive practices.

"(4) COMPLIANCE BEFORE EFFECTIVE DATE.—Lessors may comply with any newly promulgated disclosure requirement before the effective date of such requirement.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 5 of title I of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by inserting after the item relating to section 186 the following new item:

"187. Regulations.".

SEC. 164. CONSUMER LEASE ADVERTISING.

Section 184 of the Consumer Credit Protection Act (15 U.S.C. 1667c) is amended to read as follows:

"SEC. 184. CONSUMER LEASE ADVERTISING.

"(a) IN GENERAL.—If an advertisement for a consumer lease states the amount of any payment or states that any or no initial payment is required, the advertisement must also clearly and conspicuously state the following terms, as applicable:

"(1) That the transaction advertised is a lease.

"(2) The total of initial payments required at or before consummation of the lease or delivery of the property, whichever is later.

"(3) That a security deposit is required.

"(4) The number, amounts, and timing of scheduled payments.

"(5) For a lease in which the consumer's liability at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.

"(b) ADVERTISING MEDIUM NOT LIABLE.—Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.".

SEC. 165. STATUTORY PENALTIES.

Section 185(a) of the Consumer Credit Protection Act (15 U.S.C. 1667d(a)) is amended by adding at the end the following new sentence: "Notwithstanding the preceding sentence, a creditor shall only have liability determined under section 130(a)(2) for failing to comply with the requirements of paragraph (2), (8), (9), or (10) of section 182 or for failing to comply with disclosure requirements under State law for any term which the Board has determined to be substantially the same in meaning under section 186 as any of the terms referred to in section 182.".

Subtitle F—Federal Home Loan Bank Amendments

SEC. 171. APPLICATION FOR MEMBERSHIP IN THE FHLB SYSTEM.

Section 4(b) of the Federal Home Loan Bank Act (12 U.S.C. 1424) is amended to read as follows:

"(b) MEMBERSHIP BASED ON CONVENIENCY.—An institution eligible to become a member of a Federal home loan bank under this section may become a member by submitting the institution's application for membership to the bank in the district where the applicant's principal place of business is located. An application for membership shall be approved by the bank if, in the judgment of the bank, the applicant meets the criteria for eligibility contained in this section. An institution eligible to become a member under this section may apply for membership in an adjoining district, if appropriate for the convenience of the institution and then only with the approval of the Board.".

SEC. 172. FEDERAL HOME LOAN BANK EXTERNAL AUDITORS.

Section 11(j) of the Federal Home Loan Bank Act (12 U.S.C. 1431(j)) is amended to read as follows:

"(j) AUDITS.—

"(1) Notwithstanding any other provision of law, audits by the Comptroller General of the United States of the financial transactions of a Federal home loan bank shall not be limited to periods during which Government capital has been invested in the bank. The provisions of section 9107(c)(2) and 9108(d)(1) of title 31, of such Code, shall not apply to any Federal home loan bank.

"(2) Notwithstanding any other provision of law, the Board shall not participate in the hiring of an external auditor by the banks; except, that the Board may establish requirements for external audit contracts and, that all 12 banks shall contract for an annual audit with a single provider.".

TITLE II—STREAMLINING GOVERNMENT REGULATIONS

Subtitle A—Regulatory Approval Issues

SEC. 201. STREAMLINED NONBANKING ACQUISITIONS BY WELL CAPITALIZED AND WELL MANAGED BANKING ORGANIZATIONS.

(a) NOTICE REQUIREMENTS.—Section 4(j) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j) is amended—

(1) in paragraph (1)(A), by striking "No" and inserting "Except as provided in paragraph (3), no"; and

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

"(3) NO NOTICE REQUIRED FOR CERTAIN TRANSACTIONS.—No notice under paragraph (1) or subsections (c)(8) or (a)(2)(B) is required for a proposal by a bank holding company to engage in any activity or acquire the shares or assets of any company if the proposal qualifies under paragraph (4).

"(4) CRITERIA FOR STATUTORY APPROVAL.—A proposal qualifies under this paragraph if all of the following criteria are met:

"(A) FINANCIAL CRITERIA.—Both before and immediately after the proposed transaction—

"(i) the acquiring bank holding company is well capitalized;

"(ii) the lead insured depository institution of such holding company is well capitalized;

"(iii) well capitalized insured depository institutions control at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company; and

"(iv) no insured depository institution controlled by such holding company is undercapitalized.

"(B) MANAGERIAL CRITERIA.—

"(i) WELL MANAGED.—At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 90 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company are well managed.

"(ii) LIMITATION ON POORLY MANAGED INSTITUTIONS.—Except with respect to insured depository institutions described in paragraph (6), no insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 lowest composite ratings at the later of the institution's most recent examination or subsequent review.

"(C) ACTIVITIES PERMISSIBLE.—Following consummation of the proposal, the bank holding company engages directly or through a subsidiary solely in—

"(i) activities that are permissible under subsection (c)(8), as determined by the Board by regulation or order thereunder, subject to all of the restrictions, terms and conditions of such subsection and such regulation or order; and

"(ii) such other activities as are otherwise permissible under this section, subject to the restrictions, terms and conditions, including any prior notice or approval requirements, provided in this section.

"(D) SIZE OF ACQUISITION.—

"(i) ASSET SIZE.—The book value of the total assets to be acquired does not exceed 10 percent of the consolidated total risk-weighted assets of the acquiring bank holding company; and

"(ii) CONSIDERATION.—The gross consideration to be paid for the securities or assets does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company.

"(E) NOTICE NOT OTHERWISE WARRANTED.—For proposals described in paragraph (5)(B), the Board has not, before the conclusion of the period provided in paragraph (5)(B), advised the bank holding company that a notice under paragraph (1) is required.

"(F) COMPLIANCE CRITERION.—During the 12-month period ending on the date on which the bank holding company proposes to commence an activity or acquisition, no administrative enforcement action has been commenced, and no cease and desist order has been issued pursuant to section 8 of the Federal Deposit Insurance Act, against the bank holding company or any depository institution subsidiary of the holding company and no such enforcement action, order, or other administrative enforcement proceeding is pending as of such date.

"(5) NOTIFICATION.—

"(A) COMMENCEMENT OF ACTIVITIES APPROVED BY RULE.—A bank holding company that qualifies under paragraph (4) and that proposes to engage de novo, directly or through a subsidiary, in any activity that is permissible under subsection (c)(8), as determined by the Board by regulation, may commence that activity without prior notice to the Board and must provide written notification to the Board no later than ten business days after commencing the activity.

"(B) ACTIVITIES PERMITTED BY ORDER AND ACQUISITIONS.—

"(i) IN GENERAL.—At least 12 business days before commencing any activity pursuant to paragraph (3) (other than an activity described in subparagraph (A)) or acquiring shares or assets of any company pursuant to paragraph (3), the bank holding company shall provide written notice of the proposal to the Board, unless the Board determines that no notice or a shorter notice period is appropriate.

"(ii) DESCRIPTION OF ACTIVITIES AND TERMS.—A notification under this subparagraph shall include a description of the proposed activities and the terms of any proposed acquisition.

"(6) RECENTLY ACQUIRED INSTITUTIONS.—Insured depository institutions which have been acquired by a bank holding company during the 12-month period preceding the date on which the company proposes to commence an activity or acquisition pursuant to paragraph (3) may be excluded for purposes of paragraph (4)(B)(ii) if—

"(A) the bank holding company has developed a plan for the institution to restore the capital and management of the institution which is acceptable to the appropriate Federal banking agency; and

"(B) all such insured depository institutions represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the bank holding company.

"(7) ADJUSTMENT OF PERCENTAGES.—The Board may, by regulation, adjust the percentages and the manner in which the percentages of insured depository institutions are calculated under paragraph (4)(B)(i), (4)(D), or paragraph (6)(B) if the Board determines that any such adjustment is consistent with safety and soundness and the purposes of this Act.".

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

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

"(1) CAPITAL TERMS.—

"(A) INSURED DEPOSITORY INSTITUTIONS.—With respect to insured depository institutions, the terms 'well-capitalized', 'adequately capitalized', and 'uncapitalized' have the meaning given those terms in section 38(b) of the Federal Deposit Insurance Act.

"(B) BANK HOLDING COMPANY.—

"(i) ADEQUATELY CAPITALIZED.—The term 'adequately capitalized' means a level of capitalization which meets or exceeds all applicable Federal regulatory capital standards.

"(ii) WELL CAPITALIZED.—A bank holding company is 'well capitalized' if it meets the required capital levels for well capitalized bank holding companies established by the Board.

"(C) OTHER CAPITAL TERMS.—The terms 'Tier 1' and 'risk-weighted assets' have the meaning given those terms in the capital guidelines or regulations established by the Board for bank holding companies."; and

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

"(8) LEAD INSURED DEPOSITORY INSTITUTIONS.—

"(A) IN GENERAL.—The term 'lead insured depository institution' means the largest insured depository institution controlled by the bank holding company at any time, based on a comparison of the average total risk-weighted assets controlled by each insured depository institution during the previous 12-month period.

"(B) BRANCH OR AGENCY.—For purposes of this paragraph and section 4(j)(4), the term 'insured depository institution' shall also include any branch or agency operated in the United States by a foreign bank.

"(9) WELL MANAGED.—The term 'well managed' means—

"(A) in the case of any company or depository institution which receives examinations, the achievement of—

"(i) a CAMEL composite rating of 1 or 2 (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of such company or institution; and

"(ii) at least a satisfactory rating for management, if such rating is given; or

"(B) in the case of a company or depository institution that has not received an examination rating, the existence and use of managerial resources which the Board determines are satisfactory.".

SEC. 202. STREAMLINED BANK ACQUISITIONS BY WELL CAPITALIZED AND WELL MANAGED BANKING ORGANIZATIONS.

Section 3 of the Bank Holding Company Act (12 U.S.C. 1842) is amended by adding at the end the following new subsection:

"(h) NO APPROVAL REQUIRED FOR CERTAIN TRANSACTIONS.—

"(1) IN GENERAL.—Notwithstanding paragraph (3) or (5) of subsection (a) and subject to paragraphs (5) and (6), an acquisition of shares by a registered bank holding company, or a merger or consolidation between registered bank holding companies, shall be deemed approved at the conclusion of the period specified in subparagraph (G) if all of the following conditions have been met:

"(A) FINANCIAL AND MANAGERIAL CRITERIA.—

"(i) WELL CAPITALIZED BANK HOLDING COMPANY.—Both at the time of and immediately after the proposed transaction, the acquiring bank holding company is well capitalized.

"(ii) WELL CAPITALIZED LEAD INSURED DEPOSITORY INSTITUTION.—Both at the time of and immediately after the proposed transaction, the lead insured depository institution of the acquiring bank holding company is well capitalized.

"(iii) CAPITAL OF OTHER INSURED DEPOSITORY INSTITUTIONS.—At the time of the transaction, well capitalized insured depository institutions control at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by the acquiring bank holding company.

"(iv) NO UNDERCAPITALIZED INSURED DEPOSITORY INSTITUTIONS.—At the time of the transaction, no insured depository institution controlled by the acquiring bank holding company is undercapitalized.

"(v) WELL MANAGED.—

"(I) IN GENERAL.—At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 90 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company are well managed.

"(II) NO POORLY MANAGED INSTITUTIONS.—Except with respect to insured depository institutions described in paragraph (2), no insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 lowest composite ratings at the

later of the institution's most recent examination or subsequent review.

"(B) NO UNSATISFACTORY CRA RATINGS.—Except with respect to insured depository institutions described in paragraph (3), no insured depository institution controlled by the acquiring bank holding company has received a 'needs to improve' or 'substantial noncompliance' composite rating as a result of the institution's most recent examination under the Community Reinvestment Act of 1977.

"(C) COMPETITIVE CRITERIA.—Consummation of the proposal complies with guidelines established by the Board by regulation, after consultation with the Attorney General, that identify proposals that are not likely to have a significantly adverse effect on competition in any relevant market.

"(D) SIZE OF ACQUISITION.—

"(i) ASSET SIZE.—The book value of the total assets to be acquired does not exceed 10 percent of the consolidated total risk weighted assets of the acquiring bank holding company.

"(ii) CONSIDERATION.—The gross consideration to be paid for the securities or assets does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company.

"(E) INTERSTATE ACQUISITIONS.—Board approval of the transaction is not prohibited under subsection (d).

"(F) COMPLIANCE CRITERION.—During the 12-month period ending on the date of the transaction, no administrative enforcement action has been commenced, and no cease and desist order has been issued pursuant to section 8 of the Federal Deposit Insurance Act, against any bank holding company involved in the transaction or any depository institution subsidiary of any such holding company and no such enforcement action, order, or other administrative enforcement proceeding is pending as of such date.

"(G) OTHER CONSIDERATIONS.—Board approval of the transaction is not prohibited under subsection (c)(3).

"(H) NOTIFICATION.—The acquiring bank holding company provides written notice of the transaction, including a description of the terms of the transaction, to the Board and the Attorney General, simultaneously, at least 15 business days (or such shorter period as permitted by the Board) before the transaction is consummated.

"(I) NO BOARD DISAPPROVAL.—Before the end of the 15-day period (or the shorter period) referred to in subparagraph (H), the Board has not required an application under subsection (a).

"(2) SPECIAL RULE RELATING TO THE REQUIREMENT FOR WELL MANAGED INSTITUTIONS.—Insured depository institutions which have been acquired by a bank holding company during the 12-month period preceding the date of the transaction may be excluded for purposes of paragraph (1)(A)(v)(II) if—

"(A) the bank holding company has developed a plan for the institution to restore the capital and management of the institution which is acceptable to the appropriate Federal banking agency; and

"(B) all such insured depository institutions represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the holding company.

"(3) SPECIAL RULE RELATING TO THE REQUIREMENT FOR COMMUNITY INVESTMENT.—Insured depository institutions acquired during the 12-month period preceding the date of the transaction may be excluded for purposes of paragraph (1)(B) if the bank holding company has developed a plan to restore the performance of the institution to at least a 'satisfactory' rating under the Community Reinvestment Act of 1977 which is acceptable to the appropriate Federal banking agency.

"(4) ADJUSTMENT OF PERCENTAGES.—The Board may by regulation adjust the percentages and the manner in which the percentages of insured depository institutions are calculated under subparagraph (A)(v)(I) or (D) of paragraph (1) or paragraph (2)(B) if the Board determines that such adjustment is consistent with safety and soundness and the purposes of this Act.

"(5) ADVICE OF ATTORNEY GENERAL.—The Attorney General shall advise the Board during the period referred to in paragraph (1)(H) in writing if any competitive concerns exist with respect to the transaction.

"(6) WAIVER OF POSTAPPROVAL WAITING PERIOD.—If the Attorney General advises the Board that no competitive concerns exist with respect to the transaction, the provisions of section 11(b) relating to a postapproval waiting shall not apply with respect to such transaction.".

SEC. 203. ELIMINATE FILING AND APPROVAL REQUIREMENTS FOR INSURED DEPOSITORY INSTITUTIONS ALREADY CONTROLLED BY THE SAME HOLDING COMPANY.

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

"(12) The provisions of this subsection shall not apply to any merger, consolidation, acquisition of assets or assumption of liabilities involving only insured depository institutions that are subsidiaries of the same depository institution holding company if—

"(A) the responsible agency would not be prohibited from approving the transaction under section 44, if applicable;

"(B) the acquiring, assuming, or resulting institution complies with all applicable provisions of section 44, if any, as if the merger, consolidation, or acquisition were approved under this subsection;

"(C) the acquiring, assuming, or resulting institution provides written notification of the transaction to the appropriate Federal banking agency for the institution at least 10 days prior to consummation of the transaction; and

"(D) after receiving such notice, the agency does not require the institution to submit an application with respect to such transaction and so notifies the institution.".

(b) NATIONAL BANK CONSOLIDATION AND MERGER ACT.—

(1) CONSOLIDATIONS.—Section 2 of the National Bank Consolidation and Merger Act (12 U.S.C. 215) is amended—

(A) in subsection (a), by adding at the end the following new sentence: "No approval by the Comptroller of the Currency is required under this subsection for a transaction which involves the consolidation of banks that, at the time of the consolidation, are all subsidiaries (as defined in section 3 of the Federal Deposit Insurance Act) of the same company."; and

(B) in subsection (b)—

(i) by striking ", and thereafter the consolidation shall be approved by the Comptroller"; and

(ii) by striking "when such consolidation is approved by the Comptroller".

(2) MERGERS.—Section 3 of the National Bank Consolidation and Merger Act (12 U.S.C. 215a) is amended—

(A) in subsection (a), by adding at the end the following new sentence: "No approval by the Comptroller of the Currency is required under this subsection for a transaction which involves the merger of banks that, at the time of the merger, are all subsidiaries (as defined in section 3 of the Federal Deposit Insurance Act) of the same company."; and

(B) in subsection (b)—

(i) by striking ", and thereafter the merger shall be approved by the Comptroller"; and

(ii) by striking "when such merger shall be approved by the Comptroller".

SEC. 204. ELIMINATE REDUNDANT APPROVAL REQUIREMENT FOR OAKAR TRANSACTIONS.

(a) IN GENERAL.—Section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)) is amended—

(1) in subparagraph (A), by striking "with the prior written approval of the responsible agency under section 18(c)(2)";

(2) in subparagraph (E)—

(A) by striking clause (iv) and inserting the following new clause:

"(iv) A transaction shall not be authorized under this paragraph unless the acquiring, assuming, or resulting depository institution will meet all applicable capital requirements upon consummation of the transaction.";

(B) by striking clauses (i) and (ii); and

(C) by redesignating clauses (iii) and (iv) (as amended by subparagraph (A) of this paragraph) as clauses (i) and (ii), respectively; and

(3) by striking subparagraph (G) and redesignating the subsequent subparagraphs accordingly.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 5156A(b)(1) of the Revised Statutes of the United States (12 U.S.C. 215c(b)(1)) is amended by striking "section 5(d)(3) of the Federal Deposit Insurance Act or".

(c) CLERICAL AMENDMENT.—The heading for section 5(d)(3)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)(E)) is amended by striking "FOR APPROVAL, GENERALLY".

SEC. 205. ELIMINATION OF DUPLICATIVE REQUIREMENTS IMPOSED UPON BANK HOLDING COMPANIES AND OTHER REGULATORY RELIEF UNDER THE HOME OWNERS' LOAN ACT.

(a) EXEMPTION FOR BANK HOLDING COMPANIES.—Section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a) is amended by adding at the end the following new subsection:

"(t) EXEMPTION FOR BANK HOLDING COMPANIES.—This section shall not apply to a bank holding company that is subject to the Bank Holding Company Act of 1956 or any company controlled by such bank holding company (other than a savings association).".

(b) DEFINITION OF SAVINGS AND LOAN HOLDING COMPANY.—Section 10(a)(1)(D) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(D)) is amended to read as follows:

"(D) SAVINGS AND LOAN HOLDING COMPANY.—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'savings and loan holding company' means any company which directly or indirectly controls a savings association or controls any other company which is a savings and loan holding company.

"(ii) EXCEPTION FOR BANK HOLDING COMPANY.—The term 'savings and loan holding company' does not include any company which is registered under, and subject to, the provisions of the Bank Holding Company Act of 1956, or any company directly or indirectly controlled by such company.".

(c) AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.—Section 4(i) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(i)) is amended by adding at the end the following new paragraphs:

"(4) SOLICITATION OF VIEWS.—

"(A) NOTICE TO DIRECTOR.—Upon receiving any application or notice by a bank holding company to acquire directly or indirectly a savings association under subsection (c)(8), the Board shall solicit the Director's comments and recommendations with respect to such acquisition.

"(B) COMMENT PERIOD.—The comments and views of the Director under subparagraph (A) with respect to any acquisition subject to such subparagraph shall be transmitted to the Board within 30 days of the receipt by the Director of the notice relating to such acquisition (or such shorter period as the Board may specify if the Board advises the Director that an emergency exists which requires expeditious action).

"(5) EXAMINATION.—

"(A) SCOPE.—The Board shall consult with the Director, as appropriate, in establishing the scope of an examination by the Board of a bank holding company that controls directly or indirectly a savings association.

"(B) ACCESS TO INSPECTION REPORTS.—Upon the request of the Director, the Board shall furnish the Director with a copy of any inspection report, additional examination materials, or supervisory information relating to any bank holding company which directly or indirectly controls a savings association.

"(6) COORDINATION OF ENFORCEMENT EFFORTS.—The Board and the Director shall cooperate in any enforcement action against any bank holding company which controls a savings association, if the relevant conduct involves such association.

"(7) DIRECTOR DEFINED.—For purposes of this section, the term 'Director' means the Director of the Office of Thrift Supervision.".

(d) ALTERNATIVE TEST.—Section 10(m) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)) is amended—

(1) in paragraph (1), by striking "(2) and (7)" and inserting "(2), (7), and (8)"; and

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

"(8) ALTERNATIVE TEST.—Any savings association which meets the requirements set forth in section 7701(a)(19)(C) of the Internal Revenue Code of 1986 shall be deemed to be a qualified thrift lender and any qualified thrift lender shall be deemed to meet the requirements of such section.".

SEC. 206. ELIMINATE REQUIREMENT THAT APPROVAL BE OBTAINED FOR DIVESTITURES.

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

(1) by striking paragraph (3);

(2) by inserting "and" after the semicolon at the end of paragraph (1); and

(3) by striking "; and" at the end of paragraph (2) and inserting a period.

SEC. 207. ELIMINATE UNNECESSARY BRANCH APPLICATIONS.

(a) NATIONAL BANK BRANCH APPLICATIONS.—Section 5155(i) of the Revised Statutes (12 U.S.C. 36(i)) is amended—

(1) by striking "(i) No branch" and inserting "(i) RELOCATION.—

"(1) APPROVAL REQUIRED.—Except as provided in paragraph (2), no branch"; and

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

"(2) NO APPROVAL REQUIRED FOR CERTAIN BRANCHES.—Notwithstanding this subsection or subsection (b) or (c), the consent and approval of the Comptroller of the Currency shall not be required for a national bank to establish and operate, or to retain and operate, a branch or seasonal agency if—

"(A) the bank is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act and regulations prescribed by the Comptroller of the Currency under such section);

"(B) the bank received a composite CAMEL rating of '1' or '2' under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of its most recent examination;

"(C) the bank did not receive a 'needs to improve' or 'substantial noncompliance' composite rating at its most recent examination under the Community Reinvestment Act of 1977; and

"(D) the Comptroller of the Currency is otherwise authorized to grant approval under this section to such bank to establish and operate, or to retain and operate, a branch or seasonal agency at the proposed location.

"(3) CERTAIN BRANCHES DEEMED TO HAVE APPROVED APPLICATIONS.—A branch or seasonal agency established by a national bank under paragraph (2) shall be deemed to have been established and operated pursuant to an application approved under this section.".

(b) STATE MEMBER BANK BRANCH APPLICATIONS.—The third undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 321) is amended by adding at the end the following: "Notwithstanding the preceding 2 sentences, the approval of the Board shall not be required for a State member bank to establish and operate a branch or seasonal agency if—

"(A) the State member bank is well-capitalized (as defined in section 38 of the Federal Deposit Insurance Act and regulations prescribed by the Board under such section);

"(B) the State member bank received a composite CAMEL rating of '1' or '2' under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system);

"(C) the State member bank did not receive a 'needs to improve' or 'substantial noncompliance' composite rating at its most recent examination under the Community Reinvestment Act of 1977; and

"(D) the Board is otherwise authorized to grant approval under this section to such State member bank to establish and operate a branch or seasonal agency at the proposed location.

A branch or seasonal agency established by a State member bank under the previous sentence shall be deemed to have been established and operated pursuant to an application approved under this section.".

(c) STATE NONMEMBER BANK BRANCH APPLICATIONS.—Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by adding at the end the following new paragraphs:

"(5) APPLICATION EXEMPTION FOR CERTAIN BANKS.—Notwithstanding paragraph (1), the consent of the Corporation shall not be required for a State nonmember insured bank to establish and operate any domestic branch if—

"(A) the bank is well-capitalized (as defined in section 38 and regulations prescribed by the Corporation under such section);

"(B) the bank received a composite CAMEL rating of '1' or '2' under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of its most recent examination;

"(C) the bank did not receive a 'needs to improve' or 'substantial noncompliance' composite rating as result of the bank's most recent examination under the Community Reinvestment Act of 1977; and

"(D) the Corporation is otherwise authorized to give consent under this section to such bank to establish and operate a domestic branch at the proposed location.

"(6) APPROVAL GRANTED.—A branch established by a State member bank under paragraph (5) shall be deemed to have been established and operated pursuant to an application approved under this section.".

SEC. 208. ELIMINATE BRANCH APPLICATIONS AND REQUIREMENTS FOR ATMs AND SIMILAR FACILITIES.

(a) DEFINITION OF BRANCH UNDER NATIONAL BANK ACT.—Section 5155(j) of the Revised Statutes (12 U.S.C. 36(j)) is amended—

(1) by striking "(j) The term" and inserting "(j) BRANCH.—
"(1) IN GENERAL.—The term"; and

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

"(2) CERTAIN PROPRIETARY ATMS AND REMOTE SERVICING UNITS.—The term 'branch' does not include any automated teller machine or remote service unit which is owned and operated by a depository institution—

"(A) primarily for the benefit of the institution and the affiliates of the institution; and

"(B) which could operate a branch at the location of such machine or unit.".

(b) DEFINITION OF BRANCH UNDER FEDERAL DEPOSIT INSURANCE ACT.—Section 3(o) of the Federal Deposit Insurance Act (12 U.S.C. 1813(o)) is amended—

(1) by striking "(o) The term" and inserting "(o) DEFINITIONS RELATING TO BRANCHES.—

"(1) DOMESTIC BRANCH.—

"(A) IN GENERAL.—The term"; and

(2) by striking "lent; and the term" and inserting "lent.

"(B) CERTAIN PROPRIETARY ATMS AND REMOTE SERVICING UNITS.—The term 'domestic branch' does not include any automated teller machine or remote service unit which is owned and operated by a depository institution—

"(i) primarily for the benefit of the institution and the affiliates of the institution; and

"(ii) which could operate a branch at the location of such machine or unit.

"(2) FOREIGN BRANCH.—The term".

SEC. 209. ELIMINATE REQUIREMENT FOR APPROVAL OF INVESTMENTS IN BANK PREMISES FOR WELL CAPITALIZED AND WELL MANAGED BANKS.

Section 24A of the Federal Reserve Act (12 U.S.C. 371d) is amended by inserting before the period in that section the following: "or, in the case of a bank which received a composite CAMEL rating of '1' or '2' under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of its most recent examination and, both before and immediately following the investment or loan, is well capitalized (as defined under section 38 of the Federal Deposit Insurance Act), the amount which is equal to 150 percent of the capital stock and surplus of such bank".

SEC. 210. ELIMINATE UNNECESSARY FILING FOR OFFICER AND DIRECTOR APPOINTMENTS.

Section 32(d) of the Federal Deposit Insurance Act (12 U.S.C. 1831i(d)) is amended to read as follows:

"(d) ADDITIONAL INFORMATION.—

"(1) IN GENERAL.—Any notice submitted to an appropriate Federal banking agency with respect to an individual by any insured depository institution or depository institution holding company pursuant to subsection (a) shall include—

"(A) the information described in section 7(j)(6)(A) about the individual; and

"(B) such other information as the agency may prescribe by regulation.

"(2) WAIVER.—An appropriate Federal banking agency may waive the requirement of this section by regulation or on a case-by-case basis consistent with safety and soundness.".

SEC. 211. STREAMLINING PROCESS FOR DETERMINING NEW NONBANKING ACTIVITIES.

Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended—

(1) by striking "and opportunity for hearing"; and

(2) by striking "approval by the Board prior to January 1, 1971." and inserting the following: "approval by the Board prior to January 1, 1971, except that, after March 30, 1997, it shall be closely related to banking or managing or controlling banks and a proper incident thereto to provide insurance as a principal, agent, or broker in any State, in full compliance with the laws and regulations of such State that apply uniformly to each type of insurance license or authorization in that State, including laws that restrict a bank in that State from having an affiliate, agent, or employee in that State licensed to provide insurance

as principal, agent, or broker. The Board shall prescribe regulations concerning insurance affiliations that provide equivalent treatment for all stock and mutual fund insurance companies that control or are affiliated with a bank, and fully accommodate and are consistent with State law.".

SEC. 212. DISPOSITION OF FORECLOSED ASSETS.

Section 4(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(2)) is amended—

(1) by striking "for not more than one year at a time"; and

(2) by striking "but no such extensions shall extend beyond a date five years" and inserting "and, in the case of a bank holding company which has not disposed of such shares within 5 years of the date such shares were acquired, the Board may, upon the application of such company, grant additional exemptions if, in the Board's judgment, such extension would not be detrimental to the public interest and either the bank holding company has made a good faith attempt to dispose of such shares during such 5-year period or the disposal of such shares during such 5-year period would have been detrimental to the company, but the aggregate duration of such extensions shall not extend 10 years".

SEC. 213. INCREASE IN CERTAIN CREDIT UNION LOAN CEILINGS.

Section 107(5)(A) of the Federal Credit Union Act (12 U.S.C. 1757(5)(A)) is amended—

(1) in clause (iv), by striking "$10,000" and inserting "$50,000"; and

(2) in clause (v), by striking "$10,000" and inserting "$50,000".

Subtitle B—Streamlining of Government Regulations; Miscellaneous Provisions

SEC. 221. ELIMINATE THE PER-BRANCH CAPITAL REQUIREMENT FOR NATIONAL BANKS AND STATE MEMBER BANKS.

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

(1) by striking subsection (h); and

(2) by redesignating subsections (i) (as amended by section 207(a) of this Act), (j) (as amended by section 208(a) of this Act), (k), and (l) as subsections (h), (i), (j), and (k), respectively.

SEC. 222. BRANCH CLOSURES.

(a) In General.—Section 42 of the Federal Deposit Insurance Act (12 U.S.C. 1831r-1) is amended by adding at the end the following new subsection:

"(e) Scope of Application.—

"(1) In general.—This section shall not apply with respect to—

"(A) an automated teller machine;

"(B) a branch which—

"(i) has been acquired through merger, consolidation, purchase, assumption, or other method; and

"(ii) is located—

"(I) within 2.5 miles of another branch of the acquiring institution; or

"(II) within a neighborhood currently being served by another branch of the acquiring institution,

if such other branch of the acquiring institution is expected to continue to provide banking services to substantially all of the customers currently served by the branch acquired;

"(C) a branch which is closing and reopening at a location which is—

"(i) within 2.5 miles of the location of the branch being closed; or

"(ii) within the same neighborhood as the branch being closed,

if the branch at the new location is expected to continue to provide banking services to substantially all of the customers served by the branch at the former location;

"(D) a branch that is closed in connection with—

"(i) an emergency acquisition under—

"(I) section 11(n); or

"(II) subsections (f) or (k) of section 13; or

"(ii) any assistance provided by the Corporation under section 13(c); and

"(E) any other branch closure whose exemption from the notice requirements of this section would not produce a result inconsistent with the purposes of this section.

"(2) REGULATIONS.—The appropriate Federal banking agency shall, by regulation, determine the circumstances under which any exemption under paragraph(1)(E) may be granted.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply as if such amendment had been included in section 42 of the Federal Deposit Insurance Act as of the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991.

SEC. 223. AMENDMENTS TO THE DEPOSITORY INSTITUTIONS MANAGEMENT INTERLOCKS ACT.

(a) DUAL SERVICE IN SAME AREA, TOWN, OR VILLAGE.—Section 203 of the Depository Institution Management Interlocks Act (12 U.S.C. 3202) is amended—

(1) by inserting "(a) PROHIBITIONS.—" before "A management official"; and

(2) by adding after subsection (a) the following new subsection:

"(b) SMALL MARKET SHARE EXEMPTION.—

"(1) IN GENERAL.—This section shall not be construed as prohibiting a management official of a depository institution or depository holding company from serving as a management official of another depository institution or depository holding company not affiliated with such institution or holding company if the depository institutions or depository holding companies with which the management official serves hold, together with all the affiliates of such institutions or holding companies, in the aggregate no more that 20 percent of the deposits in each relevant geographic banking market where offices of the depository institutions or depository holding companies or their affiliates are located.

"(2) RELEVANT GEOGRAPHIC BANKING MARKET DEFINED.—For purposes of paragraph (1), the term 'relevant geographic banking market' means—

"(A) the area defined by the boundaries identified by the Board of Governors of the Federal Reserve System;

"(B) if the Board has not defined such boundaries, the area defined by the boundaries of the Ranally Metropolitan Area in which the office of the depository institution or the depository institution holding company is located; and

"(C) if the office of such institution or company is not located within a Ranally Metropolitan Area, the area defined by the county (or an equivalent area of general local government) in which such office is located.".

(b) DUAL SERVICE AMONG LARGER ORGANIZATIONS.—Section 204 of the Depository Institution Management Interlocks Act (12 U.S.C. 3203) is amended to read as follows:

"SEC. 204. DUAL SERVICE AMONG LARGER ORGANIZATIONS.

"(a) IN GENERAL.—If a depository institution, depository institution holding company, or depository institution affiliate of any such institution or company has total assets exceeding $2,500,000,000, a management official of such institution, company, or affiliate may not serve as a management official of any other depository institution, depository institution holding company, or depository institution affiliate of any such institution or company which—

"(1) is not an affiliate of the institution, company, or affiliate of which such person is a management official; and

"(2) has total assets exceeding $1,500,000,000.

"(b) CPI ADJUSTMENTS.—The dollar amounts in this section shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.".

(c) EXTENSION OF GRANDFATHER EXEMPTION.—Section 206 of the Depository Institution Management Interlocks Act (12 U.S.C. 3205) is amended—

(1) in subsection (a), by striking "for a period of, subject to the requirements of subsection (c), 20 years after the date of enactment of this title";

(2) in subsection (b), by striking the 2d sentence; and

(3) by striking subsection (c).

(d) RULES OR REGULATIONS.—Section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. 3207) is amended—

(1) by striking "(a) IN GENERAL.—Rules" and inserting "Rules";

(2) by inserting ", including rules or regulations which permit service by a management official which would otherwise be prohibited by section 203 or section 204," after "title"; and

(3) by striking subsections (b) and (c).

SEC. 224. ACCELERATION OF REPAYMENT TO TREASURY.

The Appraisal Subcommittee of the Financial Institutions Examination Council shall repay to the Secretary of the Treasury the funds specified in section 1108 of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by not later than September 30, 1998, and the Secretary shall deposit such funds in the general fund of the Treasury.

SEC. 225. ELIMINATE UNNECESSARY AND DUPLICATIVE RECORDKEEPING AND REPORTING REQUIREMENTS RELATING TO LOANS TO EXECUTIVE OFFICERS AND PERMIT PARTICIPATION IN EMPLOYEE BENEFIT PLANS.

(a) AMENDMENTS TO SECTION 22(h) OF THE FEDERAL RESERVE ACT.—

(1) EMPLOYEE BENEFIT PLANS.—Section 22(h)(2) of the Federal Reserve Act (12 U.S.C. 375b(2)) is amended—

(A) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively, and moving the left margins of such clauses 2 ems to the right;

(B) by striking "(2) PREFERENTIAL TERMS PROHIBITED.—A member bank" and inserting "(2) PREFERENTIAL TERMS PROHIBITED.—

"(A) IN GENERAL.—A member bank"; and

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

"(B) EXCEPTION.—No provision of this paragraph shall be construed as prohibiting extensions of credit that constitute a benefit or compensation program that is widely available to and used by employees of the member bank, including employees who are not executive officers of the bank.".

(2) EXCEPTION FOR EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS AND DIRECTORS OF NONBANK AFFILIATES.—Section 22(h)(8)(B) of the Federal Reserve Act (12 U.S.C. 375b(8)(B)) is amended to read as follows:

"(B) EXCEPTION.—The Board may, by regulation, make exceptions to subparagraph (A) for an executive officer or director of a subsidiary of a company that controls the member bank if—

"(i) the executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank; and

"(ii) the assets of such subsidiary do not exceed 10 percent of the consolidated assets of a company that controls the member bank and such subsidiary (and is not controlled by any other company).".

(3) RECORDKEEPING REQUIREMENTS.—Section 22(h)(10) of the Federal Reserve Act (12 U.S.C. 375b(10)) is amended by adding at the end the following: "The Board shall specify by regulation the recordkeeping required of member banks to ensure compliance with this section.".

(b) REPORTING REQUIREMENTS.—

(1) UNNECESSARY REPORTS.—Section 22(g) of the Federal Reserve Act (12 U.S.C. 375a) is amended—

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

(B) by redesignating paragraphs (7), (8), and (10) as paragraphs (8), (9), and (10), respectively.

(2) UNNECESSARY REPORTS.—Section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended by striking subsection (k).

(3) UNNECESSARY REPORTS REGARDING LOANS FROM CORRESPONDENT BANKS.—Section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(2)) is amended—

(A) by striking subparagraph (G); and

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

(c) AMENDMENTS RELATING TO LOANS TO EXECUTIVE OFFICERS.—Section 22(g) of the Federal Reserve Act (12 U.S.C. 375a) (as amended by subsection (a) of this section) is amended—

(1) in paragraph (1)(D), by striking "of any one of the three categories respectively referred to in paragraphs (2), (3), and (4)" and inserting "of any category referred to in paragraph (2), (3), (4), (5), or (6)";

(2) by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively;

(3) by inserting after paragraph (3) the following new paragraph:

"(4) HOME EQUITY LINES OF CREDIT.—A member bank may make a revolving open-end extension of credit to any executive officer of the bank if the credit—

"(A) does not exceed $100,000; and

"(B) is secured by a dwelling that is owned by such officer and used by the officer as a residence.

"(5) LOANS SECURED BY MARKETABLE ASSETS.—A member bank may extend credit to any executive officer of the bank if the credit is secured by readily marketable assets of a value not exceeding such amount as the Board may establish by regulation."; and

(4) in paragraph (7) (as so redesignated by paragraph (2) of this subsection) by striking "(4)" each place such term appears and inserting "(6)".

SEC. 226. EXPANDED REGULATORY DISCRETION FOR SMALL BANK EXAMINATIONS.

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

(1) by redesignating paragraph (9) as paragraph (10);

(2) by redesignating the 2d of the 2 paragraphs designated as paragraph (8) as paragraph (9); and

(3) in paragraph (9) (as so redesignated), by striking "$175,000,000" and inserting "$250,000,000".

(b) INFLATION ADJUSTMENT.—Section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)) is amended by inserting after paragraph (10) (as so redesignated in subsection (a)(1) of this section) the following new paragraph:

"(11) ANNUAL CPI ADJUSTMENT.—The dollar amount in this section shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.".

(c) COORDINATED FEDERAL AND STATE EXAMINATIONS.—The Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) shall submit semiannual reports to the Congress on the progress made by such agencies in implementing the requirements of section 10(d)(6) of the Federal Deposit Insurance Act until such agencies submit a final report that—

(1) the examination system provided for in such section is in place; and

(2) such system provides for full coordination of examinations of State depository institutions with State bank supervisors.

SEC. 227. COST REIMBURSEMENT.

Section 1115 of the Right to Financial Privacy Act (12 U.S.C. 3415) is amended by inserting "(including corporate customers)" after "pertaining to a customer".

SEC. 228. IDENTIFICATION OF FOREIGN NONBANK FINANCIAL INSTITUTION CUSTOMERS.

(a) IN GENERAL.—Section 5327(a)(1) of title 31, United States Code, is amended to read as follows:

"(1) is a financial institution (other than a foreign bank (as defined in section 101(b) of the International Banking Act of 1978)) which is a foreign person; and".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The heading for section 5327 of title 31, United States Code, is amended by inserting "foreign nonbank" after "of".

(c) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by striking the item relating to section 5327 and inserting the following new item:

"5327. Identification of foreign nonbank financial institutions.".

SEC. 229. PAPERWORK REDUCTION REVIEW.

Not later than 180 days after the date of enactment of this Act, each appropriate Federal banking agency and the National Credit Union Administration, in consultation with insured depository institutions, insured credit unions, and other interested parties, shall—

(1) review the extent to which current regulations require insured depository institutions and insured credit unions to produce unnecessary internal written policies; and

(2) eliminate such requirements, where appropriate.

For purposes of this section, the terms "insured depository institution" and "appropriate Federal banking agency" have the same meanings as in section 3 of the Federal Deposit Insurance Act and the term "insured credit union" has the same meaning as in section 101(7) of the Federal Credit Union Act.

SEC. 230. DAILY CONFIRMATIONS FOR HOLD-IN-CUSTODY REPURCHASE TRANSACTIONS.

Before the end of the 1-year period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall revise the regulation under section 15C of the Securities Exchange Act of 1934 relating to the obligations of financial institutions and of brokers and dealer registered under such Act holding custody of securities subject to a repurchase agreement to confirm, daily and in writing, the securities that are subject to such repurchase agreement. Such revision shall permit the

counterparty to such agreement to waive in writing the right to obtain such daily written confirmation if the counterparty has received a clear and conspicuous disclosure before entering into any side agreement, in a form prescribed by the Secretary, that adequately informs the counterparty of the benefits of receiving such daily written confirmations.

SEC. 231. REQUIRED REGULATORY REVIEW OF REGULATIONS.

(a) IN GENERAL.—Not less frequently than once every 10 years, the Financial Institutions Examination Council (hereafter in this section referred to as the "Council") and each appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) represented on the Council shall conduct a review of all regulations prescribed by the Council or by any such agency, respectively, in order to identify outdated or otherwise unnecessary regulatory requirements imposed upon insured depository institutions.

(b) PROCESS.—In conducting the review under subsection (a), the Council or the appropriate Federal banking agency shall—

(1) categorize the regulations by type (such as consumer regulations, safety and soundness regulations, or such other designations as determined by the Council); and

(2) at regular intervals, provide notice and solicit public comment on a particular category or categories of regulations, requesting commentators to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome.

(c) COMPLETE REVIEW.—The Council or the appropriate Federal banking agency shall ensure that the notice and comment period described in subsection (b)(2) is conducted with respect to all regulations described in subsection (a) not less frequently than once every 10 years.

(d) REGULATORY RESPONSE.—The Council or the appropriate Federal banking agency shall—

(1) publish in the Federal Register a summary of the comments received under this section, identifying significant issues raised and providing comment on such issues; and

(2) eliminate unnecessary regulations to the extent that such action is appropriate.

(e) REPORT TO CONGRESS.—Not later than 30 days after carrying out subsection (d)(1), the Council shall provide to the Congress a report, which shall include—

(1) a summary of any significant issues raised by public comments received by the Council and the appropriate Federal banking agencies under this section and the relative merits of such issues; and

(2) an analysis of whether the appropriate Federal banking agency involved is able to address the regulatory burdens associated with such issues by regulation, or whether such burdens must be addressed by legislative action.

SEC. 232. COUNTRY RISK REQUIREMENTS.

Subsections (a)(1) and (b) of section 905 of the International Lending Supervision Act of 1983 (12 U.S.C. 3904) are amended by striking "shall" and inserting "may".

SEC. 233. AUDIT COSTS.

(a) IN GENERAL.—

(1) AUDITOR ATTESTATIONS.—Section 36 of the Federal Deposit Insurance At (12 U.S.C. 1831m) is amended—

(A) in subsection (a)(2)(A)(ii), by striking "subsections (c) and (d)" and inserting "subsection (c)";

(B) by striking subsections (c) and (e); and

(C) by redesignating subsections (d), (f), (g), (h), (i), and (j) as subsections (c), (d), (e), (f), (g), and (h), respectively.

(2) PUBLIC AVAILABILITY.—Section 36(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1831m(a)(3)) is amended by inserting at the end the following new sentence: "Notwithstanding the preceding sentence, the Corporation and the appropriate Federal banking agencies may designate certain information as privileged and confidential and not available to the public.".

(b) EXEMPTION FOR WELL-CAPITALIZED AND WELL-MANAGED INSURED DEPOSITORY INSTITUTIONS.—Section 36 of the Federal Deposit Insurance Act (12 U.S.C. 1831m) (as amended by subsection (a) of this section) is amended by adding at the end the following new subsection:

"(i) EXEMPTION FOR WELL-CAPITALIZED AND WELL-MANAGED INSURED DEPOSITORY INSTITUTIONS.—No provision of this section other than subsection (c) shall apply with respect to any insured depository institution which is well-capitalized and well-managed.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Paragraph (1)(B) of section 36(e) of the Federal Deposit Insurance Act (as so redesignated by subsection (a)(1)(C) of this section) is amended by striking "(b)(2), (c), and (d)" and inserting "(b)(2) and (c)".

(2) Paragraph (1) of section 36(g) of the Federal Deposit Insurance Act (as so redesignated by subsection (a)(1)(C) of this section) is amended by striking "(d)" and inserting "(c)".

SEC. 234. STANDARDS FOR DIRECTOR AND OFFICER LIABILITY.

Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)) is amended--

(1) in paragraph (1), by inserting "(other than an outside director)" after "director";

(2) in paragraph (3), by inserting "(other than an outside director)" after "any other person"; and

(3) in paragraph (4), by inserting "or outside director" after "or accountant)".

SEC. 235. FOREIGN BANK APPLICATIONS.

(a) PROVISIONS RELATING TO ESTABLISHMENT OF BANK OFFICES.—Section 7(d) of the International Banking Act of 1978 (12 U.S.C. 3105(d)) is amended—

(1) in paragraph (2), by striking "The" and inserting "Except as provided in paragraph (6), the";

(2) in paragraph (5), by striking "Consistent with the standards for approval in paragraph (2), the" and inserting "The"; and

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

"(6) EXCEPTION.—

"(A) IN GENERAL.—If the Board is unable to find under paragraph (2) that a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve an application under paragraph (1) by such foreign bank if—

"(i) the appropriate authorities in the home country of such foreign bank are working to establish arrangements for the consolidated supervision of such bank; and

"(ii) all other factors are consistent with approval.

"(B) ADDITIONAL CONDITIONS.—The Board, after requesting and considering the views of the appropriate State bank supervisor or the Comptroller of the Currency, as the case may be, may impose such conditions or restrictions relating to activities or business operations of the proposed branch, agency, or commercial lending company subsidiary, including restrictions on sources of funding, as are considered appropriate in the public interest.

"(C) MODIFICATION OF CONDITIONS.—Any condition or restriction imposed by the Board under this subsection in connection with the approval of an application may be varied or withdrawn where such modification is consistent with the public interest.

"(7) TIME PERIOD FOR BOARD ACTION.—

"(A) FINAL ACTION.—The Board shall take final action on any application under paragraph (1) within 180 days of receipt of the application, except that the Board may extend for an additional 180 days the period within which to take final action on such application, after providing notice of, and the reasons for, the extension to the applicant foreign bank and any appropriate State bank supervisor or the Comptroller of the Currency, as the case may be.

"(B) FAILURE TO SUBMIT INFORMATION.—The Board may deny any application if it has not received information requested from the applicant foreign bank or appropriate authorities in the home country in sufficient time to permit the Board to evaluate such information adequately within the time periods for final action set forth in subparagraph (A).

"(C) WAIVER.—A foreign bank may waive the applicability of subparagraph (A) with respect to any such application.".

(b) PROVISION RELATING TO TERMINATION OF BANK OFFICES.—Section 7(e)(1)(A) of the International Banking Act of 1978 (12 U.S.C. 3105(e)(1)(A)) is amended—

(1) by striking "(A)" and inserting "(A)(i)";

(2) by striking "; or" and inserting "; and"; and

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

"(ii) the appropriate authorities in the home country are not making progress in establishing arrangements for the comprehensive supervision or regulation of such foreign bank on a consolidated basis; or".

(c) UNIFORM TERMINATIONS OF FOREIGN BANK OFFICES, AGENCIES, BRANCHES, AND SUBSIDIARIES BY THE FEDERAL RESERVE SYSTEM.—

(1) IN GENERAL.—Section 7(e)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(e)(1)) is amended—

(A) by inserting "or the Comptroller of the Currency" after "State bank supervisor";

(B) by inserting "or a Federal branch or agency" after "commercial lending company subsidiary" the 1st place such term appears; and

(C) in the last sentence, by inserting "or a Federal branch or agency" after "commercial lending company subsidiary".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 7(e) of the International Banking Act of 1978 (12 U.S.C. 3105(e)) is amended—

(A) by striking paragraph (5); and

(B) by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

SEC. 236. DUPLICATE EXAMINATION OF FOREIGN BANKS.

Section 7(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(1)) is amended—

(1) by adding after clause (ii) of subparagraph (B) the following new clause:

"(iii) AVOIDANCE OF DUPLICATION.—In exercising its authority under this paragraph, the Board shall take all reasonable measures to reduce burden and avoid unnecessary duplication of examinations.";

(2) by striking subparagraph (C) and inserting the following:

"(C) ON-SITE EXAMINATION.—Each Federal branch or agency, and each State branch or agency, of a foreign bank shall be subject to on-site examination by a Federal banking agency or State bank supervisor as frequently as would a national bank or State bank, respectively, by its appropriate Federal banking agency."; and

(3) by amending subparagraph (D) to read as follows:

"(D) COST OF EXAMINATIONS.—The cost of any examination undertaken pursuant to subparagraph (A) shall be assessed against and collected from the foreign bank or the foreign company that controls the foreign bank, as the case may be, but only to the same extent that fees are collected by the Board for examination of any State member insured bank.".

SEC. 237. SECOND MORTGAGES.

(a) IN GENERAL.—Section 103(aa)(1) of the Truth in Lending Act (15 U.S.C. 1602(aa)(1)) is amended—

(1) by inserting "a subordinate mortgage on" after "secured by"; and

(2) by striking "a residential mortgage transaction".

(b) EFFECT ON PENDING CASES.—Any administrative enforcement proceeding or other action which—

(1) is pending on the date of the enactment of this Act; and

(2) is based on regulations in effect as of such date under the Truth in Lending Act with respect to high-cost residential mortgage transactions which are not subordinate mortgages,

shall be dismissed as of such date.

SEC. 238. STREAMLINING FDIC APPROVAL OF NEW STATE BANK POWERS.

(a) IN GENERAL.—Section 24(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(a)) is amended to read as follows:

"(a) ACTIVITIES GENERALLY.—

"(1) IN GENERAL.—An insured State bank may not engage as principal in any type of activity that is not permissible for a national bank unless—

"(A) the bank has given the Corporation written notice of the bank's intention to engage in such activity at least 60 days before commencing to engage in the activity and within such 60-day period (or within the extended period provided under paragraph (2)) the Corporation has not disapproved the activity; and

"(B) the State bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

"(2) EXTENSION OF PERIOD.—The Corporation may extend the 60-day period referred to in paragraph (1) for issuing a notice of disapproval with respect to any activity for an additional 30 days.

"(3) CONTENTS OF NOTICE.—Any notice submitted by a State bank under paragraph (1)(A) shall contain such information as the Corporation may require.

"(4) BASIS FOR DISAPPROVAL.—The Corporation may disapprove an activity for a State bank under this subsection unless the Corporation determines that the activity would pose no significant risk to the appropriate insurance fund.".

(b) SUBSIDIARIES OF INSURED STATE BANKS.—Section 24(d)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(d)(1)) is amended to read as follows:

"(1) ACTIVITIES GENERALLY.—

"(A) IN GENERAL.—A subsidiary of an insured State bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless—

"(i) the subsidiary has given the Corporation written notice of the subsidiary's intention to engage in such activity at least 60 days before commencing to engage in the activity and within such 60-day period (or within the extended period provided under paragraph (2)) the Corporation has not disapproved the activity; and

"(ii) the bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

"(B) EXTENSION OF PERIOD.—The Corporation may extend the 60-day period referred to in subparagraph (A) for issuing a notice of disapproval with respect to any activity for an additional 30 days.

"(C) CONTENTS OF NOTICE.—Any notice submitted by a subsidiary of an insured State bank under subparagraph (A)(i) shall contain such information as the Corporation may require.

"(D) BASIS FOR DISAPPROVAL.—The Corporation may disapprove an activity for a subsidiary of an insured State bank under this paragraph unless the Corporation determines that the activity would pose no significant risk to the appropriate insurance fund.".

SEC. 239. REPEAL OF CALL REPORT ATTESTATION REQUIREMENT.

Section 5211(a) of the Revised Statutes (12 U.S.C. 161(a)) is amended by striking the 4th sentence.

SEC. 240. AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.

(a) STATE SUPERVISION.—Chapter 1 of Title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended—

(1) by redesignating section 5136A as section 5136C; and

(2) by inserting after section 5136 (12 U.S.C. 24) the following new section:

"SEC. 5136A. STATE SUPERVISION OF INSURANCE.

"(a) STATE LICENSING OF INSURANCE ACTIVITIES.—

"(1) IN GENERAL.—Subject to paragraph (2), no provision of section 5136, any other section of this title, or section 13 of the Federal Reserve Act may be construed as limiting or otherwise impairing the authority of any State to regulate—

"(A) the extent to which, and the manner in which, a national bank may engage within the State in insurance activities pursuant to section 5136B of this chapter or section 13 of the Federal Reserve Act;

"(B) the manner in which a national bank may engage within the State in insurance activities pursuant to section 5136(b)(2)(B) of the Revised Statutes of the United States; or

"(C) the manner in which a national bank may engage within the State in insurance activities pursuant to section 5136(b)(2)(A) of the Revised Statutes of the United States through, and limited to, consumer disclosure requirements or licensing requirements, procedures, and qualifications as described in paragraph (2)(C).

"(2) PROHIBITION ON STATE DISCRIMINATION AGAINST NATIONAL BANKS.—Notwithstanding paragraph (1)—

"(A) PROVIDING INSURANCE AS AGENT OR BROKER.—No State may impose any insurance regulatory requirement relating to providing insurance as an agent or broker that treats a national bank differently than all other persons who are authorized to provide insurance as agents or brokers in such State, unless there is a legitimate and reasonable State regulatory purpose for the requirement for which there is no less restrictive alternative.

"(B) PROVIDING INSURANCE AS PRINCIPAL, AGENT, OR BROKER.—

"(i) No State may impose on a national bank any insurance regulatory requirement relating to providing insurance as principal, agent, or broker that treats the national bank more restrictively than any other depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(1)) operating in the State.

"(ii) Nothing in this subparagraph shall affect the validity of a State law that—

"(I) prevents a national bank from engaging in insurance activities within the State to as great an extent as a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(1)) may engage in such activities within the State; and

"(II) was in effect on June 1, 1995.

"(C) LICENSING QUALIFICATIONS AND PROCEDURES.—No State may discriminate against a national bank with respect to the following requirements, procedures, and qualifications as such requirements, procedures, and qualifications relate to the authority of the national bank to provide insurance in such State as an agent or broker:

"(i) License application and processing procedures.

"(ii) Character, experience, and educational qualifications for licenses.

"(iii) Testing and examination requirements for licenses.

"(iv) Fee requirements for licenses.

"(v) Continuing education requirements.

"(vi) Types of licenses required.

"(vii) Standards and requirements for renewal of licenses.

"(b) AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.—A national bank may not provide insurance as a principal, agent, or broker except as specifically provided in this section, the paragraph designated as the 'Seventh' of section 5136(a) of this chapter, section 5136(b) or 5136B of this chapter, or section 13 of the Federal Reserve Act.

"(c) PRESERVATION OF FEDERALLY AUTHORIZED BANK ACTIVITIES IN PERMISSIVE STATES.—No provision of this section may be construed as affecting the authority, pursuant to section 5136B of this chapter or section 13 of the Federal Reserve Act, of a national bank to act as insurance agent or broker consistent with State law.

"(d) PRESERVATION OF NATIONAL BANK AUTHORITY CONSISTENT WITH STATE BANK AUTHORITY.—Except as provided in subsection (a)(2)(B), no provision of this section or section 5136(b)(1) shall have the effect of enabling a State to deny a national bank authority that the bank otherwise possesses to provide a product in a State, including as agent, broker, or principal, where the bank is not providing the product in the State other than to an extent and in a manner that a State bank (as defined in section 3(a)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(a)(2)) is permitted by the law of the State to provide such product, except that nothing in this subsection shall be construed as granting any new authority to a national bank to provide any product because the law of the State has authorized State banks to provide such product.

"(e) DEFINITIONS.—For purposes of this section, sections 5136 and 5136B, and section 13 of the Federal Reserve Act, the following definitions shall apply:

"(1) INSURANCE.—The term 'insurance' means any product defined or regulated as insurance, consistent with the relevant State insurance law, by the insurance regulatory authority of the State in which such product is sold, solicited, or underwritten, including any annuity contract the income on which is tax deferred under section 72 of the Internal Revenue Code of 1986.

"(2) STATE.—The term 'State' has the same meaning as in section 3(a)(3) of the Federal Deposit Insurance Act.

"(f) GRANDFATHER PROVISION.—

"(1) IN GENERAL.—Any national bank which, before January 1, 1995, was providing insurance as agent or broker under section 13 of the Federal Reserve Act may provide insurance as an agent or broker under such section, to no less extent and in a no more restrictive manner as such bank was providing insurance as agent or broker under such section on January 1, 1995, notwithstanding contrary State law, subject to final, controlling judgment in a pending action.

"(2) TERMINATION.—This subsection shall cease to apply with respect to any national bank described in paragraph (1) if—

"(A) the bank is subject to an acquisition, merger, consolidation, or change in control, other than a transaction to which section 18(c)(12) of the Federal Deposit Insurance Act applies; or

"(B) any bank holding company which directly or indirectly controls such bank is subject to an acquisition, merger, consolidation, or change in control, other than a transaction in which the beneficial ownership of such bank holding company or of a bank holding company which controls such company does not change as a result of the transaction.

"(g) PRESERVATION OF BANKING PRODUCTS.—Nothing in this section shall be construed as affecting the ability of a national bank, or a subsidiary of a national bank,

to engage in any activity, including any activity authorized pursuant to the paragraph designated the "Seventh" of section 5136(a), that is part of, and not merely incidental to, the business of banking.".

(b) INTERPRETIVE AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.—Section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended—

(1) by striking "Upon duly making and filing articles of association" and inserting "(a) IN GENERAL.—Upon duly making and filing articles of association"; and

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

"(b) INTERPRETIVE AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.—

"(1) IN GENERAL.—Subject to paragraph (2), it shall not be incidental to banking for a national bank to provide insurance as a principal, agent, or broker.

"(2) SCOPE OF APPLICATION.—Notwithstanding paragraph (1), it shall be incidental to banking for a national bank to engage in the following activities:

"(A) Providing, as an agent or broker, any annuity contract the income on which is tax deferred under section 72 of the Internal Revenue Code of 1986.

"(B) Providing, as a principal, agent, or broker, any type of insurance, other than an annuity or title insurance, which the Comptroller of the Currency specifically determined, before May 1, 1995, to be incidental to banking with respect to national banks.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The 11th undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 92) is amended by inserting ", and subject to section 5136A of the Revised Statutes of the United States," after "the laws of the United States".

(2) The paragraph designated the "Seventh" of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended by striking "subject to law," and inserting "subject to subsection (b), section 5136A, and any other provision of law,".

(3) Section 1306 of title 18, United States Code, is amended by striking "5136A" and inserting "5136C".

(d) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title LXII of the Revised Statutes of the United States is amended—

(1) by redesignating the item relating to section 5136A as section 5136C; and

(2) by inserting after the item relating to section 5136 the following new item:

"5136A. State supervision of insurance.".

(e) PRESERVATION OF BANK HOLDING COMPANY INSURANCE AUTHORITY.—No provision of this section, and no amendment made by this section to any other provision of law, may be construed as affecting the authority of a bank holding company to engage in insurance agency activity pursuant to section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)).

SEC. 241. NATIONAL BANK COMMUNITY DEVELOPMENT INSURANCE ACTIVITIES.

(a) IN GENERAL.—Chapter 1 of Title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136A (as added by section 240(a) of this Act) the following new section:

"SEC. 5136B. INSURANCE SALES IN EMPOWERMENT ZONES.

"(a) AUTHORITY TO SELL INSURANCE AS AGENT FROM EMPOWERMENT ZONES.—The Comptroller of the Currency may approve an application by a national bank maintaining a main office or full-service branch in an empowerment zone to act as an agent or broker from such office or branch for any fire, life, or other insurance company authorized to do business in the State in which the customer is located if—

"(1) the bank provides sufficient evidence that the availability of competitively priced insurance in the empowerment zone is inadequate; and

"(2) the insurance is sold only in the empowerment zone.

"(b) APPLICATION OF STATE LAW.—State laws which regulate conducting the business of insurance shall apply to national banks and their employees that sell insurance as agent or broker under this section to the same extent as such laws apply to other entities and persons not affiliated with depository institutions except—

"(1) in any case in which the Comptroller of the Currency determines, after notice to and comment by the appropriate State insurance officials, that the application of a State law would have an unreasonably discriminatory effect upon the sale of insurance by national banks or their employees in comparison with the effect the application of the State law would have with respect to sale of insurance by other entities; or

"(2) when State law by its own terms does not apply to national banks or employees of such banks.

"(c) AUTHORITY OF COMPTROLLER OF THE CURRENCY.—

"(1) IN GENERAL.— The Comptroller of the Currency may prescribe regulations governing sales of insurance by national banks pursuant to this section.

"(2) ENFORCEMENT OF STATE LAW.—The provisions of any State law to which a national bank is subject under this section shall be enforced with respect to such bank by the Comptroller of the Currency.

"(d) DEFINITIONS.—

"(1) EMPOWERMENT ZONE.—The term 'empowerment zone' means an area that meets the standards for designation as an empowerment zone or enterprise community under section 1392 of the Internal Revenue Code of 1986 or an Indian reservation.

"(2) FULL-SERVICE BRANCH.—The term 'full-service branch' means a staffed facility which has been approved as a branch and offers loan and deposit services.

"(3) INDIAN RESERVATION.—The term 'Indian reservation' has the meaning given such term by section 168(j)(6) of the Internal Revenue Code of 1986.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136A (as added by section 240(d) of this title) the following new item:

"5136B. Insurance sales in empowerment zones.".

SEC. 242. AUTHORIZING BANK SERVICE COMPANIES TO ORGANIZE AS LIMITED LIABILITY PARTNERSHIPS.

(a) AMENDMENT TO SHORT TITLE.—Section 1 of the Bank Service Corporation Act (12 U.S.C. 1861(a)) is amended by striking subsection (a) and inserting the following new subsection:

"(a) SHORT TITLE.—This Act may be cited as the 'Bank Service Company Act'.";

(b) AMENDMENTS TO DEFINITIONS.—Section 1(b) of the Bank Service Corporation Act (12 U.S.C. 1861(b)) is amended—

(1) by striking paragraph (2) and inserting the following new paragraph:

"(2) the term 'bank service company' means—

"(A) any corporation—

"(i) which is organized to perform services authorized by this Act; and

"(ii) all of the capital stock of which is owned by 1 or more insured banks; and

"(B) any limited liability company—

"(i) which is organized to perform services authorized by this Act; and

"(ii) all of the members of which are 1 or more insured banks.";

(2) in paragraph (6)—

(A) by striking "corporation" and inserting "company"; and

(B) by striking "and" after the semicolon;

(3) by redesignating paragraph (7) as paragraph (8) and inserting after paragraph (6) the following new paragraph:

"(7) the term 'limited liability company' means any company organized under the law of a State (as defined in section 3 of the Federal Deposit Insurance Act) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company; and"; and

(4) in paragraph (8) (as so redesignated)—

(A) by striking "corporation" each place such term appears and inserting "company"; and

(B) by striking "capital stock" and inserting "equity".

(c) AMENDMENTS TO SECTION 2.—Section 2 of the Bank Service Corporation Act (12 U.S.C. 1862) is amended—

(1) by striking "corporation" and inserting "company";

(2) by striking "corporations" and inserting "companies"; and

(3) in the heading for such section, by striking "CORPORATION" and inserting "COMPANY".

(d) AMENDMENTS TO SECTION 3.—Section 3 of the Bank Service Corporation Act (12 U.S.C. 1863) is amended—

(1) by striking "corporation" each place such term appears and inserting "company"; and

(2) in the heading for such section, by striking "CORPORATION" and inserting "COMPANY".

(e) AMENDMENTS TO SECTION 4.—Section 4 of the Bank Service Corporation Act (12 U.S.C. 1864) is amended—

(1) by striking "corporation" each place such term appears and inserting "company";

(2) in subsection (b), by inserting "or members" after "shareholders" each place such term appears;

(3) in subsections (c) and (d), by inserting "or member" after "shareholder" each place such term appears;

(4) in subsection (e)—

(A) by inserting "or members" after "national bank and State bank shareholders";

(B) by striking "its national bank shareholder or shareholders" and inserting "any shareholder or member of the company which is a national bank";

(C) by striking "its State bank shareholder or shareholders" and inserting "any shareholder or member of the company which is a State bank";

(D) by striking "such State bank or banks" and inserting "any such State bank"; and

(E) by inserting "or members" after "State bank and national bank shareholders";

(5) in subsection (f), by inserting "or providing insurance as principal, agent, or broker (except to the extent permitted under subparagraph (A) or (E) of section 4(c)(8) of the Bank Holding Company Act of 1956)" after "or deposit taking"; and

(6) in the heading for such section, by striking "CORPORATION" and inserting "COMPANY".

(f) AMENDMENTS TO SECTION 5.—Section 5 of the Bank Service Corporation Act (12 U.S.C. 1865) is amended—

(1) by striking "corporation" each place such term appears and inserting "company"; and

(2) in the heading for such section, by striking "CORPORATIONS" and inserting "COMPANIES".

(g) AMENDMENTS TO SECTION 6.—Section 6 of the Bank Service Corporation Act (12 U.S.C. 1866) is amended—

(1) by striking "corporation" each place such term appears and inserting "company";

(2) by inserting "or is not a member of" after "does not own stock in";

(3) by striking "the nonstockholding institution" and inserting "such depository institution";

(4) by inserting "or is a member of" after "that owns stock in";

(5) in paragraphs (1) and (2), by inserting "or nonmember" after "nonstockholding"; and

(6) in the heading for such section by inserting "OR NONMEMBERS" after "NONSTOCKHOLDERS".

(h) AMENDMENTS TO SECTION 7.—Section 7 of the Bank Service Corporation Act (12 U.S.C. 1867) is amended—

(1) by striking "corporation" each place such term appears and inserting "company";

(2) in subsection (a)—

(A) by inserting "or principal member" after "principal shareholder"; and

(B) by inserting "or member" after "other shareholder"; and

(3) in the heading for such section, by striking "CORPORATIONS" and inserting "COMPANIES".

SEC. 243. BANK INVESTMENTS IN EDGE ACT AND AGREEMENT CORPORATIONS.

The 10th undesignated paragraph of section 25A of the Federal Reserve Act (12 U.S.C. 618) is amended by striking the last sentence and inserting the following: "Any national bank may invest in the stock of any corporation organized under this section. The aggregate amount of stock held by any national bank in all corporations engaged in business of the kind described in this section or section 25 shall not exceed an amount equal to 10 percent of the capital and surplus of such bank unless the Board determines that the investment of an additional amount by the bank would not be unsafe or unsound and, in any case, shall not exceed an amount equal to 25 percent of the capital and surplus of such bank.".

SEC. 244. REPORT ON THE RECONCILIATION OF DIFFERENCES BETWEEN REGULATORY ACCOUNTING PRINCIPLES AND GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

Before the end of the 180-day period beginning on the date of the enactment of this Act, each appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) shall submit to the Committee on Banking and Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the actions taken and to be taken by the agency to eliminate or conform inconsistent or duplicative accounting

and reporting requirements applicable to reports or statements filed with any such agency by insured depository institutions, as required by section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

SEC. 245. WAIVERS AUTHORIZED FOR RESIDENCY REQUIREMENT FOR NATIONAL BANK DIRECTORS.

The 1st sentence of section 5146 of the Revised Statutes of the United States (12 U.S.C. 72) is amended by inserting "(1) the Comptroller of the Currency may, in the Comptroller's discretion, waive the residency requirement in the case of any director of a national bank to whom the requirement would otherwise apply, and (2)" after "except that".

TITLE III—LENDER LIABILITY

SEC. 301. LENDER LIABILITY.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding after section 44, the following new section:

"SEC. 45. LENDER, FIDUCIARY, AND GOVERNMENT AGENCY ENVIRONMENTAL LIABILITIES.

"(a) LENDER ENVIRONMENTAL LIABILITY.—

"(1) IN GENERAL.— Notwithstanding any other provision or rule of Federal law, no lender, acting as defined in this section, shall be liable pursuant to a Federal environmental law, except as provided in this section.

"(2) ACTUAL PARTICIPATION REQUIRED.—A lender shall only be liable pursuant to a Federal environmental law when the lender actually participates in management of another person's activities which create liability under the same Federal environmental law.

"(3) DEFINITIONS.—The following definitions shall apply for purposes of this section:

"(A) PARTICIPATE IN MANAGEMENT.—The term 'participate in management' means actually participating in the management or operational affairs of other persons' activities, and does not include merely having the capacity to influence, or the unexercised right to control such activities;

"(B) PARTICIPATE IN MANAGEMENT.—A person shall be considered to participate in management' while a borrower is still in possession of property, only if such person—

"(i) exercises decisionmaking control over the environmental compliance of a borrower, such that the person has undertaken responsibility for the hazardous substance handling or disposal practices of the borrower; or

"(ii) exercises control at a level comparable to that of a manager of the enterprise of the borrower, such that the person has assumed or manifested responsibility for the overall management of the enterprise encompassing day-to-day decisionmaking with respect to environmental compliance, or with respect to substantially all of the operational aspects (as distinguished from financial or administrative aspects) of the enterprise, other than environmental compliance.

"(C) PARTICIPATE IN MANAGEMENT.—The term 'participate in management' does not include engaging in an act or failing to act before the time that an extension of credit is made or a security interest is created in property.

"(D) PARTICIPATE IN MANAGEMENT.—The term 'participate in management' does not include, unless such actions rise to the level of participating in management (as defined in subparagraphs (A) and (B))—

"(i) holding an extension of credit or a security interest or abandoning or releasing an extension of credit or a security interest;

"(ii) including in the terms of an extension of credit, or in a contract or security agreement relating to such an extension, covenants, warranties, or other terms and conditions that relate to environmental compliance;

"(iii) monitoring or enforcing the terms and conditions of an extension of credit or security interest;

"(iv) monitoring or undertaking 1 or more inspections of property, except that monitoring or undertaking any such inspection, although not required by this subsection, shall provide probative evidence that a holder of a security interest is acting to preserve and protect the prop-

erty during the time the holder may have possession or control of such property;

"(v) requiring or conducting a response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with property prior to, during, or upon the expiration of the term of an extension of credit;

"(vi) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the property;

"(vii) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of an extension of credit or security interest, or exercising forbearance; or

"(viii) exercising other remedies that may be available under applicable law for the breach of any term or condition of the extension of credit or security agreement.

"(E) When a lender did not participate in management of property prior to foreclosure, then the lender shall not be liable even if such person forecloses on property, sells, re-leases, or liquidates property, maintains business activities, winds up operations, or undertakes any response action with respect to property, or takes other measures to preserve, protect, or prepare property prior to sale or disposition, if such person seeks to sell, release, or otherwise divest the property at the earliest practical, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

"(4) LIMITATION ON LIABILITY.—The liability of any lender that is liable under any Federal environmental law shall be limited to only the cost of any response action or corrective action to the extent and in the amount that the lender actively and directly contributed to the hazardous substance release. A lender shall not be liable for the cost of any response action or corrective action relating to the release of a hazardous substance which commences before and continues after the lender obtains a security interest in the property so long as the lender does not actively and directly contribute to the hazardous substance release.

"(b) FIDUCIARY ENVIRONMENTAL LIABILITY.—

"(1) IN GENERAL.— Notwithstanding any other provision or rule of Federal law, no fiduciary, acting as defined in this section, shall be liable pursuant to any Federal environmental law, except as provided in this section.

"(2) LIABILITY OF FIDUCIARY.—

"(A) Subject to subparagraphs (B) and (C), a fiduciary holding title to property or otherwise affiliated with property solely in a fiduciary capacity shall be personally subject to the obligations and liabilities of any person under any Federal environmental law, to the same extent as if the property were held by the fiduciary free of trust.

"(B) The personal obligations and liabilities of a fiduciary referred to in subparagraph (A) shall be limited to the extent to which the assets of the trust or estate are sufficient to indemnify the fiduciary, unless—

"(i) the obligations and liabilities would have arisen even if the person had not served as a fiduciary;

"(ii) the fiduciary's own failure to exercise due care with respect to property caused or contributed to the release of hazardous substances following establishment of the trust, estate, or fiduciary relationship; or

"(iii) the fiduciary had a role in establishing the trust, estate, or fiduciary relationship, and such trust, estate, or fiduciary relationship has no objectively reasonable or substantial purpose apart from the avoidance or limitation of liability under an environmental law.

Nothing in the preceding sentence shall be construed as requiring indemnification by an employee benefit plan (within the meaning of paragraph (3) of section 3 of Employee Retirement Income Security Act of 1974), or by any trust forming a part thereof, of any fiduciary of such plan contrary to the terms of the plan or in an amount in excess of the amount permitted under the terms of such plan.

"(C) A fiduciary shall not be personally liable for undertaking or directing another to undertake a response action.

"(3) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as affecting the liability, if any, of any person who—

"(A)(i) acts in a capacity other than a fiduciary capacity; and

"(ii) directly or indirectly benefits from a trust or fiduciary relationship; or

"(B)(i) is a beneficiary and a fiduciary with respect to the same fiduciary estate; and

"(ii) as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable laws.

"(c) DEFINITIONS.—For purposes of subsections (a) and (b), the following definitions shall apply:

"(1) FEDERAL ENVIRONMENTAL LAW.—The term 'Federal environmental law' means any Federal statute or rule of common law with the purpose of protection of the environment and any Federal regulation promulgated thereunder and any State statute or regulation created as a federally approved or delegated program implementing these laws, including the following:

"(A) The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

"(B) The Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

"(C) The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

"(D) The Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

"(E) The Clean Air Act (42 U.S.C. 7401 et seq.).

"(F) The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

"(G) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

"(H) The Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.).

"(2) EXTENSION OF CREDIT.—The term 'extension of credit' means the making or renewal of any loan, a granting of a line of credit or extending credit in any manner, such as an advance by means of an overdraft or the issuance of a standby letter of credit, and a lease finance transaction—

"(A) in which the lessor does not initially select the leased property and does not, during the lease term, control the daily operation or maintenance of the property; or

"(B) that conforms with regulations issued by the appropriate Federal banking agency or the appropriate State bank supervisory (as these terms are defined in section 3 of the Federal Deposit Insurance Act or with regulations issued by the National Credit Union Administration Board, as appropriate.

"(3) FIDUCIARY.—The term 'fiduciary' means a person who acts for the exclusive benefit of another person as a bona fide fiduciary within the meaning of section 3(21) of the Employee Retirement Income Security Act of 1974, trustee, executor, administrator, custodian, guardian, conservator, receiver, committee of estates of lunatics or other disabled persons, or personal representative; except, that the term 'fiduciary' does not include any person—

"(A) who owns, or controls, is affiliated with, or takes any action with respect to property on behalf of or for the benefit of a lender or takes any action to protect a lender's extension of credit or security interest (any such person shall be treated as a lender under subsection (a) of this section); or

"(B) who is acting as a fiduciary with respect to a trust or other fiduciary estate that—

"(i) was not created as part of, or to facilitate, one or more estate plans or pursuant to the incapacity of a natural person; and

"(ii) was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit.

"(4) FINANCIAL OR ADMINISTRATIVE ASPECT.—The term 'financial or administrative aspect' means a function such as a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or any similar function.

"(5) FORECLOSURE, FORECLOSE.—The terms 'foreclosure' and 'foreclose' means, respectively, acquiring, and to acquire, property through—

"(A) purchase at sale under a judgment or decree, a power of sale, a nonjudicial foreclosure sale, or from a trustee, deed in lieu of foreclosure, or similar conveyance, or through repossession, if such property was security for an extension of credit previously contracted;

"(B) conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

"(C) any other formal or informal manner by which the person acquires, for subsequent disposition, possession of collateral in order to protect the security interest of the person.

"(6) HAZARDOUS SUBSTANCE.—The term 'hazardous substance' means any chemical, biological, organic, inorganic, or radioactive pollutants, contaminants,

materials, waste, or other substances regulated under, defined, listed, or included in any Federal environmental law.

"(7) LENDER.—The term 'lender' means—

"(A) a person that makes a bona fide extension of credit to or takes a security interest from another person and includes a successor or assign of the person which makes the extension of credit or takes the security interest;

"(B) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or other entity that in a bona fide manner is engaged in the business of buying or selling loans on interests therein;

"(C) any person engaged in the business of insuring or guaranteeing against a default in the repayment of an extension of credit, or acting as a surety with respect to an extension of credit, to other persons; or

"(D) any person regularly engaged in the business of providing title insurance who acquires property as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

"(8) OPERATIONAL ASPECT.—The term 'operational aspect' means a function such as a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

"(9) PERSON.—The term 'person' means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

"(10) PROPERTY.—The term 'property' means real, personal, and mixed property.

"(11) RESPONSE ACTION.—The term 'response action' shall have the same meaning as that term is defined in section 101 of the Comprehensive Environmental Response, Compensation and Liability Act.

"(12) SECURITY INTEREST.—The term 'security interest' means a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease, or any other right accruing to a person to secure the repayment of money, the performance of a duty, or some other obligation.

"(d) SAVINGS CLAUSE.—Nothing in subsections (a) (b), or (c), shall—

"(1) affect the rights or immunities or other defenses that are already available to lenders or fiduciaries under any Federal environmental law;

"(2) be construed to create any liability for any lender or fiduciary; or

"(3) create a private right of action against any lender or fiduciary.

"(e) FEDERAL BANKING AND LENDING AGENCY ENVIRONMENTAL LIABILITY.—

"(1) GOVERNMENTAL ENTITIES.—

"(A) BANKING AND LENDING AGENCIES.—Except as provided in paragraph (C), a Federal banking or lending agency shall not be liable under any law imposing strict liability for the release or threatened release of petroleum or a hazardous substance at or from property (including any right or interest therein) acquired—

"(i) in connection with the exercise of receivership or conservatorship authority, or the liquidation or winding up of the affairs of an insured depository institution, including any of its subsidiaries, and bridge bank;

"(ii) in connection with the provision of loans, discounts, advances, guarantees, insurance, or other financial assistance; or

"(iii) in connection with property received in any civil or criminal proceeding, or administrative enforcement action, whether by settlement or order.

"(B) APPLICATION OF STATE LAW.—Nothing in paragraph (e) shall be construed as preempting, affecting, applying to, or modifying any State law, or any rights, actions, cause of action, or obligations under State law, except that liability under State law shall not exceed the value of the agency's interest in the asset giving rise to such liability. Nothing in this section shall be construed to prevent a Federal banking or lending agency from agreeing with a State to transfer property to such State in lieu of any liability that might otherwise be imposed under State law.

"(C) LIMITATION.—Notwithstanding paragraph (A), and subject to section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, a Federal banking or lending agency that directly caused or materially contributed to the release of petroleum or a hazardous

substance may be liable for removal, remedial, or other response action pertaining to that release.

"(D) SUBSEQUENT PURCHASER.—The immunity provided by paragraphs (A) and (B) shall extend to the first subsequent purchaser of property described in such paragraph from a Federal banking or lending agency, unless such purchaser—

"(i) would otherwise be liable or potentially liable for all or part of the costs of the removal, remedial, or other response action due to a prior relationship with the property;

"(ii) is or was affiliated with or related to a party described in subparagraph (i);

"(iii) fails to agree to take reasonable steps necessary to abate the release or threatened release or to protect public health and safety in a manner consistent with the purposes of applicable Federal environmental laws; or

"(iv) directly causes or significantly and materially contributes to any additional release or threatened release on the property.

"(E) FEDERAL OR STATE ACTION.—Notwithstanding subparagraph (D), if a Federal agency or State environmental agency is required to take remedial action due to the failure of a subsequent purchaser to carry out, in good faith, the agreement described in subparagraph (D)(iii), such subsequent purchaser shall reimburse the Federal or State environmental agency for the costs of such remedial action. Any such reimbursement shall not exceed the increase in the fair market value of the property attributable to the remedial action.

"(2) LIEN EXEMPTION.—Notwithstanding any other provision of law, any property held by a subsequent purchaser referred to in paragraph (1)(D) or held by a Federal banking or lending agency shall not be subject to any lien for costs or damages associated with the release or threatened release of petroleum or a hazardous substance existing at the time of the transfer.

"(3) EXEMPTION FROM COVENANTS TO REMEDIATE.—A Federal banking or lending agency shall be exempt from any law requiring such agency to grant covenants warranting that a removal, remedial, or other response action has been, or will in the future be, taken with respect to property acquired in the manner described in paragraph (c)(1)(A).

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

"(A) FEDERAL BANKING OR LENDING AGENCY.—The term 'Federal banking or lending agency' means the Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, a Federal Reserve Bank, a Federal Home Loan Bank, the Department of Housing and Urban Development, the National Credit Union Administration Board, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Farm Credit System Assistance Board, the Farmers Home Administration, the Rural Electrification Administration, the Small Business Administration, and any other Federal agency acting in a similar capacity, in any of their capacities, and their agents or appointees.

"(B) HAZARDOUS SUBSTANCE.—The term 'hazardous substance' has the same meaning as in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

"(C) RELEASE.—The term 'release' has the same meaning as in section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and includes the use, storage, disposal, treatment, generation, or transportation of a hazardous substance.

"(5) SAVINGS CLAUSE.—Nothing in subsection (e) shall—

"(A) affect the rights or immunities or other defenses that are available under this Act or other applicable law to any party, subject to the provisions of this section;

"(B) be construed to create any liability for any party; or

"(C) create a private right of action against an insured depository institution or lender or against a Federal banking or lending agency.".

(b) EFFECTIVE DATE.—This section shall take effect upon the date of the enactment of this Act and shall apply to any claim against any lender, fiduciary, or government agency under any Federal environmental law that has not been finally resolved by adjudication or settlement before such date.

TITLE IV—ANNUAL STUDY AND REPORT ON IMPACT ON LENDING TO SMALL BUSINESS

SEC. 401. ANNUAL STUDY AND REPORT.

Not later than 12 months after the date of the enactment of this Act, and annually thereafter, the Board of Governors of the Federal Reserve System, the Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Board of Directors of the Federal Deposit Insurance Corporation shall jointly conduct a study and submit to the Congress a report on the extent to which this Act and the amendments made by this Act have, through reductions in regulatory burdens, resulted in increased lending to small businesses.

BACKGROUND AND NEED FOR LEGISLATION

The Financial Institutions Regulatory Relief Act of 1995 advances the effort begun by the 102nd Congress to remove unnecessary and redundant regulations imposed on the nation's financial institutions without affecting safety and soundness. Over the past 25 years, a variety of new laws and regulations in the areas of safety and soundness and consumer protections has been imposed on financial institutions. Over the course of time, however, some of these laws and regulations have proven to be duplicative and counterproductive causing bank resources to be dedicated to costly paperwork and compliance review processes instead of commercial and consumer lending. Needless regulations result in inefficiency and increased costs to both financial institutions and consumers. In addition, the added cost of regulation produces disintermediation—the movement of savings dollars from traditional federally insured institutions to other venues where regulatory requirements are less burdensome and thus less costly. Ironically, the volume of information required to be provided to consumers under the numerous Federal consumer protection laws is so overwhelming that consumers are frequently more confused than informed. By removing excessive regulation this legislation is designed to encourage operational efficiency and to support the competitiveness of financial institutions without compromising the safety and soundness mechanisms or consumer protections required to uphold the integrity of the U.S. banking system.

The complex regulatory environment of the early 1990s evolved in response to a variety of problems that occurred in financial markets during the 1970s and 1980s, including the savings and loans crisis. In an effort to respond to economic immediacies, Congress enacted a series of statutes designed to improve the supervision of savings associations and to curtail investments and other activities that posed unacceptable risks to the Federal deposit insurance funds.

While it is clear that many of the safety and soundness provisions enacted as a result of the financial conditions in the 1980s, such as those mandating strong capital requirements and accurate accounting standards, are necessary, other provisions are generally considered to be unnecessary burdens by regulators and the banking industry. In addition, these legislative actions were followed by an avalanche of implementing regulations that have overwhelmed the management of many depository institutions regardless of size.

Other significant factors in the growth of regulatory burden are the numerous Federal consumer protection laws enacted by Congress. These statutes include the Real Estate Settlement Procedures Act of 1977 (RESPA), the Truth in Lending Act (TILA), the Home Mortgage Disclosure Act (HMDA), the Equal Credit Opportunity Act (ECOA), the Fair Credit Reporting Act (FCRA), the Fair Housing Act (FHA), the Electronic Fund Transfer Act (EFTA), and the Fair Debt Collection Practices Act (FDCPA). Again, while the objectives of these laws may be worthwhile, implementation of these and other new requirements has increased reporting, disclosure, and recordkeeping which, in turn, has increased the cost of extending credit and offering deposit products. Moreover, experience has shown that inundating consumers with a countless array of documents written in legal, technical language generally fails to provide consumers with the types of useful information intended by the above laws.

As a result of all of these statutory and regulatory developments, depository institutions today bear a heavy regulatory burden. Three years ago, the banking industry estimated that the cost of compliance was into the billions of dollars. Various other studies over the past few years have estimated that compliance with regulatory requirements imposes significant direct costs on banks, some portion of which is passed on to the consumer. At times, the burden falls disproportionately on insured banks and thrifts, as compared with other types of financial institutions. Given the increased competition in the financial services market from nonbank entities not subject to federal regulations, regulatory burdens should not unnecessarily place banks at a competitive disadvantage.

It is also important to recognize that regulatory burden generally has a significantly greater impact on smaller institutions. For example, one-quarter of the banks supervised by the Federal Deposit Insurance Corporation (FDIC) have fewer than 13 employees on a full-time basis. A labor force of this size cannot deal with the complexity and sheer volume of regulatory and legislative requirements, whereas larger institutions can more easily integrate such requirements into their business operations.

In short, the need for this legislation arises from the fact that the regulatory environment is too complex, the cost compliance is too high, and the resulting competitive disadvantages facing financial institutions are too great. In order to ensure the integrity, the competitiveness, and the continued success of the nation's banking system, certain legislative action must be taken to reduce the unnecessary regulatory burdens currently imposed on financial institutions.

PURPOSE AND SUMMARY

The purpose of this legislation is to streamline, rationalize, and modernize the regulation of financial institutions and to maintain the safety and soundness of the nation's financial systems and necessary consumer protections. This threefold objective is principally achieved by removing unnecessary reporting, disclosure, or recordkeeping requirements or by making appropriate modifications thereto. By reducing regulatory burdens, this legislation strives to significantly lower the cost of compliance and to promote competi-

tion among all types of financial institutions both within and outside of the United States. At the same time, this legislation deliberately preserves the legislative safeguards already in law that pertain to safety and soundness and consumer protection. This legislation, ultimately, is intended to provide the consumer with greater choices and lower prices for financial products and services.

TITLE I—REDUCTIONS IN GOVERNMENT OVERREGULATION

SUBTITLE A—THE HOME MORTGAGE PROCESS

1. Rationalizing the home mortgage lending process

Government overregulation of the nation's home mortgage lending process has resulted in higher costs, excessive paperwork, and consumer frustration to the detriment of both financial institutions and consumers. Legislation is needed to rationalize the regulatory framework that governs the home mortgage lending process in order to eliminate unnecessary costs, burdens, and complexity while providing more useful information to consumers.

Currently, the home mortgage lending process is governed by the TILA and the RESPA. The TILA was enacted to enable consumers to shop comparatively for consumer credit by requiring lenders to disclose interest rates and other information about credit terms and costs in a uniform way. The TILA governs disclosures required for all consumer credit transactions, a uniform way. The TILA governs disclosures required for all consumer credit transactions, including home mortgages. The RESPA was enacted to ensure that consumers are provided with greater and more timely information on the nature and costs of the real estate settlement process and are protected from unnecessarily high settlement charges and fees.

Under this system of dual supervision, there is considerable overlap in regulatory requirements, especially with respect to disclosure statements. Duplicative disclosure statements unnecessarily increase the costs of compliance and ultimately lessen the financial institution's ability to engage in mortgage lending. Moreover, redundancy in disclosure statements is frequently confusing to the consumer and often needlessly complicates the settlement process. In order to reduce the statutory overlap and to eliminate unnecessary paperwork, this legislation would transfer rulemaking authority relating to the disclosure provisions under the RESPA from the Department of Housing and Urban Development (HUD) to the Federal Reserve Board, which currently has rulemaking authority under the TILA. Furthermore, this legislation mandates the Board to reconcile differences between the disclosure provisions found in the TILA and the RESPA, to simplify disclosures, including the timing thereof, and to create a single format for such disclosures. These changes would reduce compliance costs and provide more meaningful information to the consumer.

The current enforcement structure with regard to disclosures under the RESPA and the TILA is also problematic. Not only do these statutes have two different mechanisms for providing similar information in real estate transactions, but they are presently interpreted by two different regulators. By transferring interpretive authority for RESPA disclosures to the Board, along with instruc-

tions to eliminate duplicative and unnecessary requirements, real estate transactions will be greatly simplified.

All other sections of RESPA pertaining to settlement services, including section 8, remain under the jurisdiction of HUD. In light of the fact that HUD is currently not providing any clear and consistent regulatory guidance to settlement service providers under RESPA, this legislation requires HUD to utilize a negotiated rulemaking process provided for under the Negotiated Rulemaking Act of 1990 before proceeding with any additional proposed and final rules under Sections 8 and 9 of the RESPA. Negotiated rulemaking will ensure that the concerns of all parties are expressed before HUD issues any rules regarding real estate settlement issues.

Enforcement of the settlement service sections of RESPA are retained under HUD authority with regard to non-banking entities and are transferred to the appropriate federal banking agencies for banking organizations. Additionally, in situations where numerous enforcement agencies are involved, agencies are required to coordinate their enforcement activities in order to assure that institutions are subject to the same rules of law and enforcement policies.

2. Recent Truth in Lending Act litigation ("Rodash")

This legislation also addresses the United States Court of Appeals for the Eleventh Circuit's decision in *Rodash* v. *AIB Mortgage Co.*, 16 F.3d 1142 (11th Cir. 1994), a case involving the TILA. The TILA requires lenders to disclose credit terms to borrowers in a manner that allows them to compare objectively various credit products. For example, the TILA requires lenders to characterize certain charges associated with a loan as "finance charges" and requires them to aggregate all such charges into one "finance charge" to be disclosed at real estate closings. The TILA allows borrowers to rescind transactions even for technical violations of the disclosure provisions of the statute.

On March 21, 1994, the court in *Rodash* v. *AIB*, ruled that certain taxes and fees (a $20 Federal Express delivery charge), including some fees that are assessed by third parties other than the lender, must be characterized as "finance charges" under the TILA. Because of this technical violation, the borrower was able to rescind the mortgage. When a mortgage is rescinded, the borrower is released from the mortgage lien leaving the lender with the unsecured loan moreover, the borrower is entitled to repayment of interest and all other non-principal payments made on the loan.

The Eleventh Circuit's ruling has sparked numerous class action lawsuits against lenders who have not characterized or disclosed such taxes and fees as "finance charges" in the past. It is argued that *Rodash* could have disastrous consequences for both organizers of mortgage loans and the secondary market. The potential cost of rescinding all refinanced mortgages made in the last three years (the time allowed under TILA to exercise the rescission right) has been estimated to be as high as $217 billion.

This issue was addressed by the House in the 103rd Congress by including the necessary corrective legislative language in a bill to amend the FCRA. That language, which was passed as part of H.R. 5178, would have expressly exempted from the definition of "finance charge" the types of taxes and fees that the Eleventh Circuit

found objectionable. Although H.R. 5178 was passed by the House on November 5, 1994 by voice vote, it was not considered by the Senate.

On April 4, 1995, with bipartisan support, the House under a suspension of the rules passed H.R. 1380, "The Truth in Lending Class Action Relief Act of 1995." The Senate passed H.R. 1380 by unanimous consent on April 24, 1995. H.R. 1380 imposes a moratorium until October 1, 1995 on certain TILA class action certifications, including Rodash-style class actions brought in connection with first liens on real property or dwellings that constitute a refinancing or consolidation of a debt.

Again, this legislation reflects a bipartisan compromise. This legislation exempts a number of charges from inclusion in the "finance charge" and provides a tiered "tolerance" approach on finance charge miscalculations. The legislation clarifies the applicability of the three year right of rescission for material nondisclosure, and precludes rescission for certain first-lien refinances. The legislation also contains limitations on the liability of assignees and services of home mortgages. It provides retroactive relief from liability for certain errors in disclosures with respect to certain individual cases and class actions.

SUBTITLE B—COMMUNITY REINVESTMENT ACT AMENDMENTS

This legislation reaffirms the Community Reinvestment Act's (CRA) original intent to encourage financial institutions to reinvest in their communities, while not imposing comprehensive credit allocation dictates or unnecessary burdens on banks and savings associations. Under the current law, the CRA requires federal regulatory agencies to encourage financial institutions to meet the credit needs of their local communities consistent with the safe and sound operation of such institutions.

Institutions are examined for CRA compliance and given one of four ratings: (i) "substantial noncompliance", (ii) "needs to improve", (iii) "satisfactory", or (iv) "outstanding." Agencies consider these ratings when institutions apply to charter a bank or savings association, to relocate or establish a deposit facility, or to merge, consolidate or acquire assets of another institution.

Enacted as part of the Housing and Community Development Act of 1977, the CRA was seen as a way to combat urban decay that was blamed in part on redlining (the practice of financial institutions intentionally not lending to certain neighborhoods or parts of a community). CRA was premised on the view that regulated institutions have a continuing obligation to meet the credit needs of their local communities in exchange for deposit insurance and a government charter.

This legislation is designed to respond to many of the concerns that have been raised about the CRA and that were not addressed in the new inter-agency regulations. First, the legislation reemphasizes the original intent of the CRA not to impose added regulatory burden by explicitly prohibiting additional recordkeeping or reporting requirements unless such requirements reduce regulatory burden.

Second, recognizing the inordinate regulatory impact of CRA compliance on small, community institutions and the fact that

these institutions must meet the credit needs of their community in order to survive, the legislation permits institutions with less than $250 million in assets to self-certify compliance with the CRA in lieu of receiving an agency CRA evaluation. In general, banks with assets of $250 million or less typically do not have the resources for a full time CRA officer and cannot achieve the economies of scale in compliance efforts that billion dollar banks can achieve in developing and implementing CRA programs. The reasonableness of an institution's self-certification would be assessed during that institution's safety and soundness examination and would be based on information contained in the institution's public notice. Interested parties would be able to comment on an institution's performance and all comments would be maintained in the institution's public file. In addition, the legislation exempts an institution if it and its holding company in the aggregate have assets of $100 million or less from the requirements of the CRA. In rural communities, in particular, small banks lend to their community out of necessity as their continued existence depends upon a strong thriving community. In essence, small banks are already doing what the CRA requires, that is lending to their entire community.

Third, for institutions with assets of $250 million or greater, the appropriate federal banking agency would still perform a full CRA evaluation of the institution. The inter-agency regulations adopted in April would still be applicable. The legislation, however, further reforms the CRA for large institutions by establishing a new mechanism for community input into an institution's CRA examination and further provides that CRA ratings for institutions receiving a "satisfactory" or "outstanding," would be conclusive until the next examination.

Under the present CRA system, all too often banks find that they do not hear from community advocates until the bank files a merger or acquisition application. Because of the delay and cost these protests add to the application process, many community groups have found it a highly effective method of "encouraging" institutions to enter into significant lending agreements in exchange for dropping the protest. Evidence suggests that CRA protests typically result in bank-sponsored targeted loan programs. The banks argue that they are being held "hostage" by community groups. The regulatory system is so flawed that even a bank with an "outstanding" CRA rating can find its CRA record challenged at the time it files an application.

This legislation, by providing a procedure for community groups to respond to the institution's record of meeting its community needs in connection with the institution's examination rather than at the application stage, ensures that examiners will focus on the community issues raised by interested parties and encourages continuous dialogue between the institutions and the communities in which they serve.

Fourth, in addition to the community comment period being moved from the application process to the CRA examination stage, the legislation also requires that an institution's CRA performance be assessed as part of, and at the same time as, the overall evaluation of the institutions. For those institutions that do not receive a satisfactory or outstanding rating, the regulators may take into

account the institution's CRA record when evaluation the institution's condition. In addition, the institution's CFA rating may be determinative of whether or not an institution can take advantage of other benefits provided in law such as the streamlined applications procedures. This approach is more systematic and less disruptive to the business of banking.

SUBTITLE C—CONSUMER BANKING REFORMS—THE TRUTH IN SAVINGS ACT

Enacted in 1991, the Truth in Savings Act (TISA) was intended to allow consumers to make a "meaningful comparison between competing claims of depository institutions with regard to deposit accounts." Currently, under the TISA, financial institutions are required to disclose fees, interest rates, an annual percentage yield (APY) and other account terms through schedules and periodic disclosures for all checking and interest-bearing accounts they offer. A bank is subject to civil liability provisions if it fails to follow the strict and complicated disclosure requirements.

Unfortunately, the disclosure requirements under TISA have caused depository institutions and bank regulators more compliance problems than they have provided useful information to savers. As was noted in testimony before the Subcommittee on Financial Institutions and Consumer Credit, it is ironic that a law aimed at providing consumers adequate information about interest rates in a simple understandable form, requires more than 200 pages of rules, covering 56 pages in the Federal Register.

Instead of providing savers a better opportunity to compare "apples with apples" when choosing among a wide array of savings accounts, the Act and its implementing regulations have limited the kinds of accounts banks can offer and created a situation where savers are comparing "apples with oranges." A January 1995 Federal Reserve study indicated that the TISA has not enhanced consumer awareness.

H.R. 1858 addresses these concerns by eliminating certain provisions of the TISA which have caused the most compliance problems, such as the requirement to disclose an APY. The legislation does maintain, however, the beneficial provisions of the Act which require disclosure of fees, penalties, charges and the simple interest rate when an account is opened and when there is a change in terms relating to the required disclosures.

SUBTITLE D—EQUAL CREDIT OPPORTUNITY ACT AMENDMENTS

The goal of fair lending laws is to ensure that credit is not denied based on an individual's race, national origin, sex or age. One way to ensure that illegal discrimination is eradicated is to enlist the help of financial institutions in identifying and correcting discriminatory behavior. This legislation establishes a privilege for lenders who self-test for compliance with the ECOA and the FHA from having such tests used against them in any proceeding or civil action brought under these Acts where the lender has identified discriminatory practices and has taken appropriate corrective actions. It further grants Federal banking regulators discretionary authority to refer fair lending problems to the Attorney General or the Secretary of HUD under certain circumstances.

SUBTITLE E—CONSUMER LEASING ACT AMENDMENTS

The purpose of this subtitle is to assure simple, meaningful disclosure of leasing terms to enable a consumer to comparison shop for leasing arrangements and to be protected from inaccurate and unfair leasing practices. The legislation instructs the Federal Reserve Board to address consumer leasing issues through regulation and requires the Board to publish model disclosure forms.

TITLE II—STREAMLINING GOVERNMENT REGULATIONS

SUBTITLE A—REGULATORY APPROVAL ISSUES

In general, this title builds on the regulatory relief effort begun in the Riegle Community Development and Regulatory Improvement Act of 1994, which was enacted into law in the 103rd Congress. H.R. 1858 eliminates a number of routine, but costly procedures and changes a number of overlapping and unnecessary requirements in current law, such as prior approval for the establishment of a domestic branch by institutions that operate safely and soundly. It also establishes expedited procedures for bank holding companies which are available only to companies that are well capitalized and well managed.

Additionally, the title also removes per-branch capital requirements without affecting the consolidated capital requirements otherwise applicable to banks and amends the Depository Management Interlocks Act to allow sharing of management officials between small institutions in situations in which there would be no competitive impact. Finally, the legislation eliminates branch applications for automated teller machines (ATMs) and other duplicative approval requirements pertaining to mergers and divestitures and investments in bank premises as long as the investment does not exceed 150% of capital.

SUBTITLE B—STREAMLINING OF GOVERNMENT REGULATIONS

1. Branch closures

The provisions included in this legislation substantially mirror the federal regulators' interagency policy statement on branch closings and would reduce regulatory burden by eliminating the need to give prior notice of decisions to close automated teller machines, to close or relocate branches that are within 2.5 miles of another branch of the same institution, and to close certain branches acquired through mergers.

2. Insider lending

This legislation makes minor changes to requirements governing insider lending. Specifically, the legislation amends the Federal Reserve Act to allow insiders of financial institutions to qualify for employee-wide benefit plans offered by their institutions. Additionally, the legislation allows executive officers to be eligible for home equity loans and loans secured by readily marketable assets but only within established limitations on amounts and on competitive terms. The legislation also removes unnecessary restrictions on loans to executive officers or directors of affiliates that represent less than ten percent of the assets of the holding company if the

officers or directors do not participate in a major policymaking role in the bank.

3. Insurance activities of national banks and bank holding companies

The legislation includes a restriction on the power of the Office of the Comptroller of the Currency (OCC) to grant new insurance powers without rolling back the status quo. It also attends the Bank Holding Company Act (BHCA) to allow affiliations between banks and insurance companies under a holding company structure in accordance with state insurance laws. Such affiliations would be delayed until March 30, 1997. Additionally, national banks would be permitted to sell insurance within empowerment zones, subject to state regulation.

TITLE III—LENDER LIABILITY

Title III provides clarity to the issue of liability of lenders, fiduciaries, and government agencies under Federal environmental laws. This clarification resolves the uncertainty of existing exemptions promulgated by the Environmental Protection Agency and, subsequently, overturned by judicial determination. The Court in *United States* v. *Fleet Factors Corporation,* 901 F.2d 1550 (11th Cir. 1990), *cert. denied,* 498 U.S. 1046 (1991) decided that a lender could be held liable for the costs of any corrective or response action when the lender has the mere capacity to influence the borrower's treatment of hazardous waste. In addition, in *United States* v. *Maryland Bank & Trusts Co.,* 632 F. Supp. 573 (D. Md. 1986), the Court held a lender liable for foreclosing on a contaminated property and later disposing of the property through sale. As a result of such judicial opinions, lenders are hesitant to make loans to certain borrowers and to foreclose on properties. Therefore, Title III addresses the issue of how and to what extent a lender can be held under environmental laws.

Besides providing clarity to the liability issue, Title III provides encouragement and incentives to lenders and fiduciaries to protect the properties through environmental inspections and clean ups.

HEARINGS

The Subcommittee on Financial Institutions and Consumer Credit held two days of hearings on the CRA.

Testifying before the Subcommittee on March 8, 1995 were: The Honorable Joseph P. Kennedy II, U.S. House of Representatives; The Honorable Ricki Helfer, Chairman, Federal Deposit Insurance Corporation; The Honorable Eugene A. Ludwig, Comptroller of the Currency; The Honorable Jonathan L. Fiechter, Acting Director, Office of Thrift Supervision; The Honorable Lawrence Lindsey, Governor, Federal Reserve System; Mr. William A. Niskanen, Chairman, the Cato Institute; Ms. Lucy H. Griffin, Compliance Management Services; Ms. Cathy Bessant, Senior Vice President, Nations Bank; Mr. Warren Traiger, CRA Practitioner; Mr. Ned Brown, Financial Modeling Concepts.

Testifying before the Subcommittee on March 9, 1995 were: Mr. James Culberson, Jr., Chairman, First National Bank and Trust

Company; Mr. Tony Abbate, Chairman, Marketing Committee, Independent Bankers Association; Mr. Mark Milligan, America's Community Bankers; Mr. Benson F. Roberts, Vice President for Policy, Local Initiatives Support Corporation; Ms. Michelle Meier, Counsel, Government Affairs, Consumers Union; Ms. Gale Cincotta, Chairperson, National People's Action; Mr. John E. Taylor, President and C.E.O., National Community Reinvestment Coalition; Mr. Allen Fishbein, General Counsel, Center for Community Change; Rev. Charles R. Stith, National President, Organization for a New Equality.

The Subcommittee on Financial Institutions and Consumer Credit held four days of hearings on legislation to reduce the regulatory burdens being imposed on financial institutions, including H.R. 1362, introduced by Representative Bereuter.

Testifying before the Subcommittee on May 18, 1995, were: The Honorable Richard Carnell, Assistant Secretary of Financial Institutions, Department of the Treasury; The Honorable Susan B. Phillips, Governor, Federal Reserve Board; The Honorable Ricki Helfer, Chairman, Federal Deposit Insurance Corporation; The Honorable Eugene A. Ludwig, Comptroller of the Currency; The Honorable Jonathan L. Fiechter, Acting Director, Office of Thrift Supervision; The Honorable Nicholas P. Retsinas, Assistant Secretary of Housing, Department of Housing and Urban Development; The Honorable Catherine Ghiglieri, Texas Banking Commissioner, representing the Conference of State Bank Supervisors.

Testifying before the Subcommittee on May 23, 1995 were: Mr. James Culberson, Jr., American Bankers Association; Mr. Richard L. Mount, President, Independent Bankers Association of America; Mr. David Carson, America's Community Bankers; Mr. Ron Snellings, National Association of Federal Credit Unions; Ms. Nancy Pierce, Credit Union National Association, Inc.; Mr. H. Jay Sarles, Consumer Bankers Association; Mr. Alfred Pollard, Bankers Roundtable; Mr. John Davey, Mortgage Bankers Association of America; Mr. Rick Adams, National Association of Realtors; Mr. Larry Swank, National Association of Home Builders; Mr. Hank Williams, Real Estate Services Providers Council; Mr. Parker Kennedy, American Land Title Association.

Testifying before the Subcommittee on May 24, 1995 were: The Honorable Maxine Waters, U.S. House of Representatives; Mr. Bart Harvey, The Enterprise Foundation; Dr. Francine Justa, Executive Director, Neighborhood Housing Services of New York City; Dr. Steven Roberts, Regulatory Advisory Practice, KPMG Peat Marwick LLP; Dr. Robert Edelstein, Walter A. Haas School of Business, University of California at Berkeley; Ms. Michelle Meier, Government Affairs Counsel, Consumers Union; Ms. Frances Smith, Director, Consumers Alert; Ms. Madeline Houston, Passaic County Legal Aid; Ms. Tess Canja, American Association of Retired Persons; Ms. Maude Hurd, ACORN.

Testifying before the Subcommittee on June 8, 1995 were: Mr. Robert Elliott, President and C.E.O., Household Finance Corporation on behalf of the American Financial Services Association; Mr. Harley Bergmeyer, President, Saline State Bank; Mr. Wayne Holsted, Chairman and Chief Counsel, Northwest Title and Escrow; Mr. Eric Carlsen, Senior Vice President, Frontier Savings

Bank; Mr. Richard Roberto, Vice President, European American Bank; Mr. Stanley Lowe, First Representative, Pittsburgh Community Reinvestment Group.

COMMITTEE CONSIDERATION AND VOTES

(Rule XI, Clause 2(l)(2)(B))

On June 21, 22, 27, and 28, 1995, the Committee met in open session to mark up regulatory burden relief legislation. The Committee considered as original text for purposes of amendment a Committee Print which incorporated the provisions of H.R. 1362 as reported by the Subcommittee on Financial Institutions and Consumer Credit and a provision placing a moratorium on the authority of the Comptroller of the Currency to allow new insurance powers for national banks.

During the markup, the Committee approved, by recorded vote, 18 amendments to the Committee Print. The Committee also defeated, by recorded vote, 14 amendments. The following amendments were adopted by recorded vote.

An amendment offered by Mrs. Roukema and Mr. Bereuter making a number of clarifications to Title I of the Committee Print. Pages 1–9 of the amendment which make a number of changes to the RESPA and the TILA, including the transfer of rulemaking authority for all disclosure aspects of the RESPA to the Federal Reserve Board, passed 27–11.

YEAS	NAYS
Mr. Leach	Mr. LaFalce
Mr. McCollum	Mr. Vento
Mrs. Roukema	Mrs. Maloney
Mr. Bereuter	Ms. Roybal-Allard
Mr. Roth	Mr. Barrett, (WI)
Mr. Baker, (LA)	Ms. Velázquez
Mr. Lazio	Mr. Wynn
Mr. Bachus	Mr. Fields, (LA)
Mr. Castle	Mr. Watt
Mr. King	Mr. Hinchey
Mr. Royce	Mr. Bentsen
Mr. Weller	
Mr. Hayworth	
Mr. Metcalf	
Mr. Bono	
Mr. Ney	
Mr. Ehrlich	
Mr. Barr	
Mr. Chrysler	
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. Stockman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. Orton	

Page 10 of the amendment which requires federal bank regulators to ensure that their examiners consult with each other and to consider appointing an examiner in charge for all agency exams passed 38–0.

YEAS	NAYS
Mr. Leach	
Mr. McCollum	
Mrs. Roukema	
Mr. Bereuter	
Mr. Roth	
Mr. Baker, (LA)	
Mr. Lazio	
Mr. Bachus	
Mr. Castle	
Mr. King	
Mr. Royce	
Mr. Weller	
Mr. Hayworth	
Mr. Metcalf	
Mr. Bono	
Mr. Ney	
Mr. Ehrlich	
Mr. Barr	
Mr. Chrysler	
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. Stockman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. LaFalce	
Mr. Vento	
Mr. Orton	
Mrs. Maloney	
Ms. Roybal-Allard	
Mr. Barrett, (WI)	
Ms. Velázquez	
Mr. Wynn	
Mr. Fields, (LA)	
Mr. Watt	
Mr. Hinchey	
Mr. Bentsen	

Pages 11–12 of the amendment which clarify the effective date of the amendments made to the TISA passed 39–0.

YEAS	NAYS
Mr. Leach	
Mr. McCollum	
Mrs. Roukema	
Mr. Bereuter	
Mr. Roth	
Mr. Baker, (LA)	
Mr. Lazio	
Mr. Bachus	
Mr. Castle	
Mr. King	
Mr. Royce	
Mr. Weller	
Mr. Hayworth	
Mr. Metcalf	
Mr. Bono	
Mr. Ney	
Mr. Ehrlich	
Mr. Barr	
Mr. Chrysler	
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. LaFalce	
Mr. Vento	
Mr. Orton	
Mr. Sanders	
Mrs. Maloney	
Mr. Gutierrez	
Ms. Roybal-Allard	
Mr. Barrett, (WI)	
Mr. Velázquez	
Mr. Wynn	
Mr. Fields, (LA)	
Mr. Watt	
Mr. Hinchey	
Mr. Bentsen	

Page 13 of the amendment which clarifies the burden of proof for unauthorized transfers remain on the creditors passed 30–10.

YEAS	NAYS
Mr. Leach	Mr. LaFalce
Mr. McCollum	Mr. Vento
Mrs. Roukema	Mr. Sanders
Mr. Bereuter	Mrs. Maloney
Mr. Roth	Mr. Gutierrez
Mr. Baker, (LA)	Ms. Velázquez
Mr. Lazio	Mr. Wynn
Mr. Bachus	Mr. Fields, (LA)
Mr. King	Mr. Watt
Mr. Royce	Mr. Hinchey
Mr. Lucas	
Mr. Weller	
Mr. Hayworth	
Mr. Metcalf	
Mr. Bono	
Mr. Ney	
Mr. Ehrlich	
Mr. Barr	
Mr. Chrysler	
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. Kanjorski	
Mr. Orton	
Ms. Roybal-Allard	
Mr. Barrett, (WI)	
Mr. Bentsen	

Page 14 of the amendment which makes a number of changes concerning consumer leases, including the placing of statutory penalties for creditors under the Consumer Credit Protection Act passed 41–0.

YEAS	NAYS
Mr. Leach	
Mr. McCollum	
Mrs. Roukema	
Mr. Bereuter	
Mr. Roth	
Mr. Baker, (LA)	
Mr. Lazio	
Mr. Bachus	
Mr. Castle	
Mr. King	
Mr. Royce	
Mr. Lucas	
Mr. Weller	
Mr. Hayworth	
Mr. Metcalf	
Mr. Bono	
Mr. Ney	
Mr. Ehrlich	
Mr. Barr	
Mr. Chrysler	
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. LaFalce	
Mr. Vento	
Mr. Kanjorski	
Mr. Orton	
Mr. Sanders	
Mrs. Maloney	
Mr. Gutierrez	
Ms. Roybal-Allard	
Mr. Barrett, (WI)	
Ms. Velázquez	
Mr. Wynn	
Mr. Fields, (LA)	
Mr. Watt	
Mr. Hinchey	
Mr. Bentsen	

An amendment offered by Mr. Roth which prevents the CRA regulations from requiring financial institutions from making loans or other agreements to an uncreditworthy person, business, organization, or any other entity that would jeopardize safety and soundness of the subject lending institutions was passed 25-13.

YEAS	NAYS
Mr. Leach	Mr. Ney
Mr. McCollum	Mr. Fox
Mrs. Roukema	Mr. Watts
Mr. Bereuter	Mr. LaFalce
Mr. Roth	Mr. Kennedy
Mr. Baker, (LA)	Mr. Mfume
Mr. Bachus	Ms. Waters
Mr. King	Mr. Sanders
Mr. Royce	Mr. Roybal-Allard
Mr. Weller	Ms. Velázquez
Mr. Hayworth	Mr. Wynn
Mr. Metcalf	Mr. Fields, (LA)
Mr. Bono	Mr. Hinchey
Mr. Ehrlich	
Mr. Barr	
Mr. Cremeans	
Mr. Stockman	
Mr. LoBiondo	
Mrs. Kelly	
Mr. Vento	
Mr. Kanjorski	
Mr. Barrett, (WI)	
Mr. Watt	
Mr. Ackerman	
Mr. Bentsen	

Present: Mr. Heineman.

An amendment offered by Mr. Weller which strikes the requirement that regulated financial institutions with $100 million or less in assets be outside of a metropolitan statistical area in order to be exempt from CRA examination requirements was passed 23–16.

YEAS	NAYS
Mr. Leach	Mr. Bereuter
Mr. McCollum	Mr. Vento
Mrs. Roukema	Mr. Schumer
Mr. Roth	Mr. Frank
Mr. Baker, (LA)	Mr. Kennedy
Mr. Bachus	Ms. Waters
Mr. Castle	Mr. Sanders
Mr. King	Mr. Gutierrez
Mr. Royce	Ms. Roybal-Allard
Mr. Weller	Mr. Barrett, (WI)
Mr. Hayworth	Ms. Velázquez
Mr. Metcalf	Mr. Wynn
Mr. Bono	Mr. Fields, (LA)
Mr. Ney	Mr. Watt
Mr. Ehrlich	Mr. Hinchey
Mr. Barr	Mr. Bentsen
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. Stockman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	

An amendment offered by Mr. McCollum which strikes assessment of an institution's CRA record during the applications process for a deposit facility and instead requires the CRA record to be included in the assessment of overall evaluation of the condition of the institution was passed 25–17.

YEAS	NAYS
Mr. Leach	Mr. Vento
Mr. McCollum	Mr. Frank
Mrs. Roukema	Mr. Kanjorski
Mr. Bereuter	Mr. Kennedy
Mr. Roth	Ms. Waters
Mr. Lazio	Mr. Orton
Mr. Bachus	Mr. Sanders
Mr. Castle	Mrs. Maloney
Mr. King	Mr. Gutierrez
Mr. Royce	Ms. Roybal-Allard
Mr. Lucas	Mr. Barrett, (WI)
Mr. Weller	Ms. Velázquez
Mr. Hayworth	Mr. Wynn
Mr. Metcalf	Mr. Fields, (LA)
Mr. Bono	Mr. Watt
Mr. Ney	Mr. Hinchey
Mr. Ehrlich	Mr. Bentsen
Mr. Barr	
Mr. Cremeans	
Mr Fox	
Mr. Heineman	
Mr. Stockman	
Mr. LoBiondo	
Mr. Watts	
Mr. Kelly	

An amendment offered by Mr. Schumer, Ms. Maloney and Mr. Vento which deletes the provision that modified liability provisions under the EFTA for the unauthorized use of electronic fund transfers was passed 24–18.

YEAS	NAYS
Mr. Leach	Mrs. Roukema
Mr. Royce	Mr. Bereuter
Mr. Heineman	Mr. Baker, (LA)
Mr. Stockman	Mr. Lazio
Mr. Watts	Mr. Bachus
Mrs. Kelly	Mr. Castle
Mr. LaFalce	Mr. King
Mr. Vento	Mr. Lucas
Mr. Schumer	Mr. Weller
Mr. Frank	Mr. Hayworth
Mr. Kennedy	Mr. Bono
Mr. Flake	Mr. Ney
Ms. Waters	Mr. Ehrlich
Mr. Sanders	Mr. Barr
Mrs. Maloney	Mr. Chrysler
Ms. Roybal-Allard	Mr. Cremeans
Mr. Barrett, (WI)	Mr. Fox
Ms. Velázquez	Mr. LoBiondo
Mr. Wynn	
Mr. Fields, (LA)	
Mr. Watt	
Mr. Hinchey	
Mr. Ackerman	
Mr. Bentsen	

An amendment offered by Mr. Schumer and Mr. Vento which eliminates the provisions that modified the liability provisions under the TILA for the unauthorized use of credit cards was passed 23–21.

YEAS	NAYS
Mr. Leach	Mr. McCollum
Mr. Royce	Mrs. Roukema
Mr. Heineman	Mr. Bereuter
Mr. Stockman	Mr. Baker, (LA)
Mr. Watts	Mr. Lazio
Mrs. Kelly	Mr. Bachus
Mr. LaFalce	Mr. Castle
Mr. Vento	Mr. King
Mr. Schumer	Mr. Lucas
Mr. Kennedy	Mr. Weller
Mr. Flake	Mr. Hayworth
Ms. Waters	Mr. Bono
Mr. Sanders	Mr. Ney
Mrs. Maloney	Mr. Ehrlich
Ms. Roybal-Allard	Mr. Barr
Mr. Barrett, (WI)	Mr. Chrysler
Ms. Velázquez	Mr. Cremeans
Mr. Wynn	Mr. Fox
Mr. Fields, (LA)	Mr. LoBiondo
Mr. Watt	Mr. Frank
Mr. Hinchey	Mr. Orton
Mr. Ackerman	
Mr. Bentsen	

An amendment to Mr. Leach's amendment which strikes a requirement that would have required agency concurrence in Department of Justice enforcement actions under the fair lending cases was passed 24–20.

YEAS

Mr. Bereuter
Mr. Ney
Mr. Fox
Mr. Watts
Mrs. Kelly
Mr. LaFalce
Mr. Vento
Mr. Frank
Mr. Kennedy
Mr. Flake
Mr. Mfume
Ms. Waters
Mr. Orton
Mr. Sanders
Mrs. Maloney
Mr. Gutierrez
Ms. Roybal-Allard
Mr. Barrett, (WI)
Ms. Velázquez
Mr. Wynn
Mr. Watt
Mr. Hinchey
Mr. Ackerman
Mr. Bentsen

NAYS

Mr. Leach
Mr. McCollum
Mrs. Roukema
Mr. Baker, (LA)
Mr. Lazio
Mr. Bachus
Mr. King
Mr. Royce
Mr. Lucas
Mr. Weller
Mr. Hayworth
Mr. Metcalf
Mr. Bono
Mr. Ehrlich
Mr. Barr
Mr. Chrysler
Mr. Cremeans
Mr. Heineman
Mr. Stockman
Mr. LoBiondo

An amendment offered by Mr. Hinchey which requires that in order to receive protection under the ECOA, credit scoring systems cannot have a disparate impact on a protected class unless the criterion used is justified by business necessity and a no less discriminatory alternative is available was passed 29–17.

YEAS

Mr. Leach
Mrs. Roukema
Mr. Bereuter
Mr. Castle
Mr. Weller
Mr. Fox
Mr. LoBiondo
Mr. Watts
Mrs. Kelly
Mr. LaFalce
Mr. Vento
Mr. Frank
Mr. Kanjorski
Mr. Kennedy
Mr. Flake
Mr. Mfume
Ms. Waters
Mr. Orton
Mrs. Maloney
Mr. Gutierrez
Ms. Roybal-Allard
Mr. Barrett, (WI)
Ms. Velázquez
Mr. Wynn
Mr. Fields, (LA)
Mr. Watt
Mr. Hinchey
Mr. Ackerman
Mr. Bentsen

NAYS

Mr. McCollum
Mr. Baker, (LA)
Mr. Lazio
Mr. Bachus
Mr. King
Mr. Royce
Mr. Lucas
Mr. Hayworth
Mr. Metcalf
Mr. Bono
Mr. Ney
Mr. Ehrlich
Mr. Barr
Mr. Chrysler
Mr. Cremeans
Mr. Heineman
Mr. Stockman

An amendment offered by Mr. Hinchey which strikes the prohibition in the legislation which would have restricted the use of disparate impact evidence in enforcing fair lending laws was passed 32–15.

YEAS

Mr. Leach
Mrs. Roukema
Mr. Bereuter
Mr. Lazio
Mr. Castle
Mr. Metcalf
Mr. Fox
Mr. Heineman
Mr. LoBiondo
Mr. Watts
Mrs. Kelly
Mr. LaFalce
Mr. Vento
Mr. Frank
Mr. Kanjorski
Mr. Kennedy
Mr. Flake
Mr. Mfume
Ms. Waters
Mr. Orton
Mr. Sanders
Mrs. Maloney
Mr. Gutierrez
Ms. Roybal-Allard
Mr. Barrett, (WI)
Ms. Velázquez
Mr. Wynn
Mr. Fields, (LA)
Mr. Watt
Mr. Hinchey
Mr. Ackerman
Mr. Bentsen

NAYS

Mr. McCollum
Mr. Baker, (LA)
Mr. Bachus
Mr. King
Mr. Royce
Mr. Lucas
Mr. Weller
Mr. Hayworth
Mr. Bono
Mr. Ney
Mr. Ehrlich
Mr. Barr
Mr. Chrysler
Mr. Cremeans
Mr. Stockman

An amendment offered by Mr. Castle which makes clarifications to the OCC insurance moratorium language contained in Mr. Leach's amendment was passed 40–2.

YEAS	NAYS
Mr. Leach	Mr. McCollum
Mrs. Roukema	Mr. Kanjorski
Mr. Bereuter	
Mr. Roth	
Mr. Baker, (LA)	
Mr. Lazio	
Mr. Bachus	
Mr. Castle	
Mr. King	
Mr. Royce	
Mr. Lucas	
Mr. Hayworth	
Mr. metcalf	
Mr. Bono	
Mr. Ehrlich	
Mr. Barr	
Mr. Chrysler	
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. Stockman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. Gonzalez	
Mr. LaFalce	
Mr. Vento	
Mr. Schumer	
Mr. Frank	
Mr. Kennedy	
Mr. Mfume	
Ms. Waters	
Mrs. Maloney	
Mr. Gutierrez	
Ms. Roybal-Allard	
Mr. Barrett, (WI)	
Ms. Velázquez	
Mr. Wynn	
Mr. Watt	
Mr. Bentsen	

An amendment offered by Mr. Baker, (LA), which amends section (4)(c)(8) of the BHCA to allow bank holding companies to own insurance companies in accordance with state insurance laws was passed 36–12.

YEAS

Mrs. Roukema
Mr. Roth
Mr. Baker, (LA)
Mr. Lazio
Mr. Bachus
Mr. Castle
Mr. King
Mr. Royce
Mr. Lucas
Mr. Bono
Mr. Barr
Mr. Chrysler
Mr. Cremeans
Mr. Fox
Mr. Heineman
Mr. Stockman
Mr. Watts
Mr. Gonzalez
Mr. LaFalce
Mr. Vento
Mr. Schumer
Mr. Frank
Mr. Kanjorski
Mr. Kennedy
Mr. Flake
Mr. Mfume
Mr. Orton
Mrs. Maloney
Mr. Gutierrez
Ms. Roybal-Allard
Mr. Barrett, (WI)
Ms. Velázquez
Mr. Wynn
Mr. Watt
Mr. Hinchey
Mr. Bentsen

NAYS

Mr. Leach
Mr. McCollum
Mr. Bereuter
Mr. Weller
Mr. Hayworth
Mr. Metcalf
Mr. Ney
Mr. Ehrlich
Mr. LoBiondo
Mrs. Kelly
Ms. Waters
Mr. Sanders

An amendment offered by Mr. McCollum which strikes the provision putting restrictions on the ability of outside counsel and accountants to serve on a financial institution's board of directors was passed 27–17.

YEAS	NAYS
Mr. Leach	Mr. Gonzalez
Mr. McCollum	Mr. LaFalce
Mrs. Roukema	Mr. Vento
Mr. Bereuter	Mr. Schumer
Mr. Baker, (LA)	Mr. Kanjorski
Mr. Lazio	Mr. Kennedy
Mr. Bachus	Mr. Flake
Mr. Castle	Mr. Mfume
Mr. King	Ms. Waters
Mr. Royce	Mr. Orton
Mr. Lucas	Mrs. Maloney
Mr. Weller	Mr. Gutierrez
Mr. Hayworth	Ms. Roybal-Allard
Mr. Metcalf	Mr. Barrett, (WI)
Mr. Bono	Ms. Velázquez
Mr. Ney	Mr. Hinchey
Mr. Ehrlich	Mr. Bentsen
Mr. Barr	
Mr. Chrysler	
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. Wynn	
Mr. Watt	

The following amendments were defeated by recorded vote.

An amendment offered by Mr. Barrett, (WI), to Mr. Roth's amendment which strikes reference to uncreditworthy persons was defeated 16–25.

YEAS	NAYS
Mr. LaFalce	Mr. Leach
Mr. Vento	Mr. McCollum
Mr. Kanjorski	Mrs. Roukema
Mr. Kennedy	Mr. Bereuter
Mr. Mfume	Mr. Roth
Ms. Waters	Mr. Baker, (LA)
Mr. Sanders	Mr. Lazio
Ms. Roybal-Allard	Mr. Bachus
Mr. Barrett, (WI)	Mr. Castle
Ms. Velázquez	Mr. Royce
Mr. Wynn	Mr. Lucas
Mr. Fields, (LA)	Mr. Weller
Mr. Watt	Mr. Hayworth
Mr. Hinchey	Mr. Metcalf
Mr. Ackerman	Mr. Bono
Mr. Bentsen	Mr. Ney
	Mr. Ehrlich
	Mr. Barr
	Mr. Cremeans
	Mr. Fox
	Mr. Heineman
	Mr. Stockman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly

An amendment offered by Mr. Kennedy which strikes the CRA subtitle was defeated 18–26.

YEAS	NAYS
Mr. Gonzalez	Mr. Leach
Mr. Vento	Mr. McCollum
Mr. Frank	Mrs. Roukema
Mr. Kanjorski	Mr. Bereuter
Mr. Kennedy	Mr. Roth
Mr. Flake	Mr. Lazio
Ms. Waters	Mr. Bachus
Mr. Sanders	Mr. Castle
Mrs. Maloney	Mr. King
Mr. Gutierrez	Mr. Royce
Ms. Roybal-Allard	Mr. Lucas
Mr. Barrett, (WI)	Mr. Weller
Ms. Velázquez	Mr. Hayworth
Mr. Wynn	Mr. Metcalf
Mr. Fields, (LA)	Mr. Bono
Mr. Watt	Mr. Ehrlich
Mr. Hinchey	Mr. Barr
Mr. Bentsen	Mr. Chrysler
	Mr. Cremeans
	Mr. Fox
	Mr. Heineman
	Mr. Stockman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly
	Mr. Orton

An amendment offered by Mr. McCollum which raises the level of CRA self-certification from $25,000,000 to $1,000,000,000 was defeated 11–32.

YEAS	NAYS
Mr. McCollum	Mr. Leach
Mr. Roth	Mrs. Roukema
Mr. Baker, (LA)	Mr. Bereuter
Mr. Bachus	Mr. Lazio
Mr. King	Mr. Castle
Mr. Royce	Mr. Hayworth
Mr. Weller	Mr. Metcalf
Mr. Bono	Mr. Ney
Mr. Ehrlich	Mr. Cremeans
Mr. Barr	Mr. Heineman
Mr. Fox	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly
	Mr. Vento
	Mr. Schumer
	Mr. Frank
	Mr. Kanjorski
	Mr. Kennedy
	Mr. Flake
	Mr. Mfume
	Ms. Waters
	Mr. Orton
	Mr. Sanders
	Mr. Gutierrez
	Ms. Roybal-Allard
	Mr. Barrett, (WI)
	Ms. Velázquez
	Mr. Wynn
	Mr. Fields, (LA)
	Mr. Watt
	Mr. Hinchey
	Mr. Bensten

An amendment offered by Mr. McCollum which amends the CRA to bring it back to its original purpose by making redlining enforceable under the ECOA and the FHA was defeated 11–26.

YEAS	NAYS
Mr. McCollum	Mr. Leach
Mr. Roth	Mrs. Roukema
Mr. Bachus	Mr. Bereuter
Mr. King	Mr. Lazio
Mr. Royce	Mr. Castle
Mr. Lucas	Mr. Metcalf
Mr. Hayworth	Mr. Ney
Mr. Bono	Mr. Cremeans
Mr. Ehrlich	Mr. Fox
Mr. Barr	Mr. Heineman
Mr. Chrysler	Mr. LoBiondo
	Mr. Watts
	Mr. Vento
	Mr. Frank
	Mr. Kanjorski
	Mr. Kennedy
	Mr. Waters
	Mr. Orton
	Ms. Roybal-Allard
	Mr. Barrett, (WI)
	Ms. Velázquez
	Mr. Wynn
	Mr. Fields, (LA)
	Mr. Watt
	Mr. Hinchey
	Mr. Bensten

An amendment offered by Mr. Fields, (LA), which provides for "point of transaction" fee disclosures for all automated teller machine transactions was passed by a Voice Vote. A motion to reconsider the amendment was approved 18–17.

YEAS	NAYS
Mr. Leach	Mr. Bachus
Mr. Bereuter	Mr. Chrysler
Mr. Roth	Mr. LaFalce
Mr. Lazio	Mr. Vento
Mr. Castle	Mr. Schumer
Mr. King	Mr. Frank
Mr. Royce	Ms. Waters
Mr. Lucas	Mr. Orton
Mr. Weller	Mrs. Maloney
Mr. Hayworth	Ms. Roybal-Allard
Mr. Metcalf	Mr. Barrett, (WI)
Mr. Bono	Ms. Velázquez
Mr. Ehrlich	Mr. Wynn
Mr. Cremeans	Mr. Fields, (LA)
Mr. Heineman	Mr. Watt
Mr. Stockman	Mr. Hinchey
Mr. LoBiondo	Mr. Ackerman
Mrs. Kelly	

Mr. Fields' amendment was then defeated by a roll call vote of 21–21.

YEAS	NAYS
Mr. Bachus	Mr. Leach
Mr. Stockman	Mrs. Roukema
Mr. LaFalce	Mr. Bereuter
Mr. Vento	Mr. Roth
Mr. Schumer	Mr. Lazio
Mr. Frank	Mr. Castle
Mr. Kanjorski	Mr. King
Mr. Kennedy	Mr. Royce
Ms. Waters	Mr. Lucas
Mr. Orton	Mr. Weller
Mr. Sanders	Mr. Hayworth
Mrs. Maloney	Mr. Metcalf
Ms. Roybal-Allard	Mr. Bono
Mr. Barrett, (WI)	Mr. Ney
Ms. Velázquez	Mr. Ehrlich
Mr. Wynn	Mr. Barr
Mr. Fields, (LA)	Mr. Chrysler
Mr. Watt	Mr. Cremeans
Mr. Hinchey	Mr. Heineman
Mr. Ackerman	Mr. LoBiondo
Mr. Bentsen	Mrs. Kelly

An amendment offered by Mr. Kennedy which strikes the affiliate information sharing provision of the legislation was defeated 19–23.

YEAS	NAYS
Mr. Gonzalez	Mr. Leach
Mr. LaFalce	Mr. McCollum
Mr. Vento	Mrs. Roukema
Mr. Schumer	Mr. Bereuter
Mr. Frank	Mr. Bachus
Mr. Kennedy	Mr. Castle
Mr. Flake	Mr. King
Ms. Waters	Mr. Royce
Mr. Sanders	Mr. Lucas
Mrs. Maloney	Mr. Weller
Mr. Gutierrez	Mr. Hayworth
Ms. Roybal-Allard	Mr. Bono
Mr. Barrett, (WI)	Mr. Ney
Ms. Velázquez	Mr. Ehrlich
Mr. Wynn	Mr. Barr
Mr. Watt	Mr. Chrysler
Mr. Hinchey	Mr. Cremeans
Mr. Ackerman	Mr. Fox
Mr. Bentsen	Mr. Heineman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly
	Mr. Orton

An amendment offered by Ms. Waters which imposes a two-year moratorium on bank fee increases for accounts with an average daily balance below $3,000 was defeated 4–30.

YEAS	NAYS
Ms. Waters	Mr. Leach
Mr. Sanders	Mr. McCollum
Mr. Gutierrez	Mrs. Roukema
Ms. Roybal-Allard	Mr. Bereuter
	Mr. Baker, (LA)
	Mr. Lazio
	Mr. Bachus
	Mr. Castle
	Mr. King
	Mr. Royce
	Mr. Weller
	Mr. Hayworth
	Mr. Metcalf
	Mr. Bono
	Mr. Ney
	Mr. Ehrlich
	Mr. Barr
	Mr. Fox
	Mr. Heineman
	Mr. Stockman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly
	Mr. Frank
	Mr. Orton
	Mr. Barrett, (WI)
	Mr. Wynn
	Mr. Watt
	Mr. Hinchey
	Mr. Ackerman

An amendment offered by Mr. Bentsen which changes the CRA rating system was defeated 15–22.

YEAS	NAYS
Mr. Vento	Mr. Leach
Mr. Frank	Mr. McCollum
Mr. Kanjorski	Mrs. Roukema
Mr. Kennedy	Mr. Bereuter
Ms. Waters	Mr. Lazio
Mr. Orton	Mr. Bachus
Mr. Sanders	Mr. Castle
Ms. Roybal-Allard	Mr. King
Mr. Barrett, (WI)	Mr. Royce
Ms. Velázquez	Mr. Lucas
Mr. Wynn	Mr. Hayworth
Mr. Fields, (LA)	Mr. Metcalf
Mr. Watt	Mr. Bono
Mr. Hinchey	Mr. Ehrlich
Mr. Bentsen	Mr. Barr
	Mr. Cremeans
	Mr. Fox
	Mr. Heineman
	Mr. Stockman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly

An amendment offered by Mr. Schumer and Mrs. Maloney which deletes provisions in the legislation modifying the current restrictions on insider lending was defeated 15–26.

YEAS	NAYS
Mr. LaFalce	Mr. Leach
Mr. Vento	Mr. McCollum
Mr. Schumer	Mrs. Roukema
Mr. Flake	Mr. Bereuter
Mr. Mfume	Mr. Baker, (LA)
Mr. Orton	Mr. Lazio
Mr. Sanders	Mr. Bachus
Mrs. Maloney	Mr. Castle
Ms. Roybal-Allard	Mr. King
Mr. Barrett, (WI)	Mr. Royce
Ms. Velázquez	Mr. Lucas
Mr. Wynn	Mr. Weller
Mr. Watt	Mr. Hayworth
Mr. Hinchey	Mr. Metcalf
Mr. Bentsen	Mr. Bono
	Mr. Ney
	Mr. Ehrlich
	Mr. Barr
	Mr. Chrysler
	Mr. Cremeans
	Mr. Fox
	Mr. Heineman
	Mr. Stockman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly

An amendment offered by Mr. Schumer and Mrs. Maloney which deletes the provision in the legislation modifying the current statutory requirement that all members of bank audit committees be independent directors was defeated 20–20.

YEAS	NAYS
Mr. Leach	Mr. McCollum
Mr. Lazio	Mrs. Roukema
Mr. Castle	Mr. Bereuter
Mr. Royce	Mr. Roth
Mr. Metcalf	Mr. Baker, (LA)
Mr. Heineman	Mr. Bachus
Mrs. Kelly	Mr. King
Mr. LaFalce	Mr. Lucas
Mr. Vento	Mr. Weller
Mr. Schumer	Mr. Hayworth
Mr. Mfume	Mr. Bono
Mr. Orton	Mr. Ney
Mrs. Maloney	Mr. Ehrlich
Mr. Gutierrez	Mr. Barr
Ms. Roybal-Allard	Mr. Chrysler
Mr. Barrett, (WI)	Mr. Cremeans
Ms. Velázquez	Mr. Fox
Mr. Wynn	Mr. Stockman
Mr. Watt	Mr. LoBiondo
Mr. Bentsen	Mr. Watts

An amendment offered by Mr. Vento which strikes section 234 of the legislation modifying the culpability standards for outside directors was defeated 17–24.

YEAS	NAYS
Mr. Leach	Mr. McCollum
Mrs. Roukema	Mr. Bereuter
Mr. Gonzalez	Mr. Roth
Mr. LaFalce	Mr. Baker, (LA)
Mr. Vento	Mr. Lazio
Mr. Frank	Mr. Bachus
Mr. Kanjorski	Mr. Castle
Mr. Kennedy	Mr. King
Mr. Flake	Mr. Royce
Mr. Orton	Mr. Lucas
Mrs. Maloney	Mr. Weller
Ms. Roybal-Allard	Mr. Hayworth
Mr. Barrett, (WI)	Mr. Bono
Ms. Velázquez	Mr. Ney
Mr. Watt	Mr. Ehrlich
Mr. Hinchey	Mr. Barr
Mr. Bentsen	Mr. Chrysler
	Mr. Cremeans
	Mr. Fox
	Mr. Heineman
	Mr. Stockman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly

An amendment offered by Mr. Kennedy which strikes section 238 concerning second mortgages was defeated by 21–23.

YEAS	NAYS
Mr. Leach	Mr. McCollum
Mr. Lazio	Mrs. Roukema
Mr. Metcalf	Mr. Bereuter
Mr. Heineman	Mr. Roth
Mr. LoBiondo	Mr. Baker, (LA)
Mr. Gonzalez	Mr. Bachus
Mr. LaFalce	Mr. Castle
Mr. Vento	Mr. King
Mr. Frank	Mr. Royce
Mr. Kennedy	Mr. Lucas
Mr. Flake	Mr. Weller
Ms. Waters	Mr. Hayworth
Mr. Sanders	Mr. Bono
Mr. Gutierrez	Mr. Ney
Ms. Roybal-Allard	Mr. Ehrlich
Mr. Barrett, (WI)	Mr. Barr
Ms. Velázquez	Mr. Chrysler
Mr. Wynn	Mr. Cremeans
Mr. Watt	Mr. Fox
Mr. Ackerman	Mr. Stockman
Mr. Bentsen	Mr. Watts
	Mrs. Kelly
	Mr. Orton

An amendment offered by Mr. Bachus which makes a number of reforms to the FDCPA was defeated 19–26.

YEAS	NAYS
Mr. Bereuter	Mr. McCollum
Mr. Roth	Mrs. Roukema
Mr. Baker, (LA)	Mr. Royce
Mr. Lazio	Mr. Fox
Mr. Bachus	Mr. LoBiondo
Mr. Castle	Mr. Watts
Mr. King	Mrs. Kelly
Mr. Lucas	Mr. Gonzalez
Mr. Weller	Mr. LaFalce
Mr. Hayworth	Mr. Vento
Mr. Metcalf	Mr. Schumer
Mr. Bono	Mr. Frank
Mr. Ney	Mr. Kennedy
Mr. Ehrlich	Mr. Mfume
Mr. Barr	Ms. Waters
Mr. Chrysler	Mr. Orton
Mr. Cremeans	Mr. Sanders
Mr. Heineman	Mrs. Maloney
Mr. Stockman	Mr. Gutierrez
	Ms. Roybal-Allard
	Mr. Barrett, (WI)
	Ms. Velázquez
	Mr. Wynn
	Mr. Watt
	Mr. Hinchey
	Mr. Bentsen

Present: Mr. Leach.

An amendment offered by Mr. Vento which was an amendment in the nature of a substitute was defeated 13–24.

YEAS	NAYS
Mr. LaFalce	Mr. Leach
Mr. Vento	Mr. McCollum
Mr. Frank	Mrs. Roukema
Mr. Kennedy	Mr. Bereuter
Mr. Flake	Mr. Roth
Mr. Mfume	Mr. Baker, (LA)
Ms. Waters	Mr. Bachus
Mr. Sanders	Mr. King
Mr. Gutierrez	Mr. Royce
Mr. Barrett, (WI)	Mr. Lucas
Mr. Watt	Mr. Weller
Mr. Ackerman	Mr. Hayworth
Mr. Bentsen	Mr. Metcalf
	Mr. Bono
	Mr. Ney
	Mr. Ehrlich
	Mr. Barr
	Mr. Chrysler
	Mr. Cremeans
	Mr. Fox
	Mr. Heineman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly

After adopting the Committee Print, as amended, H.R. 1858 was called up for committee consideration. A motion to strike everything after the enacting clause in H.R. 1858 and insert in lieu thereof the Committee Print, as amended, was approved by Voice Vote.

A motion to adopt H.R. 1858 and favorably report H.R. 1858, as amended, to the House was approved 27–23.

YEAS	NAYS
Mr. Leach	Mr. Gonzalez
Mr. McCollum	Mr. LaFalce
Mrs. Roukema	Mr. Vento
Mr. Bereuter	Mr. Schumer
Mr. Roth	Mr. Frank
Mr. Baker, (LA)	Mr. Kanjorski
Mr. Lazio	Mr. Kennedy
Mr. Bachus	Mr. Flake
Mr. Castle	Mr. Mfume
Mr. King	Ms. Waters
Mr. Royce	Mr. Orton
Mr. Lucas	Mr. Sanders
Mr. Weller	Mrs. Maloney
Mr. Hayworth	Mr. Gutierrez
Mr. Metcalf	Ms. Roybal-Allard
Mr. Bono	Mr. Barrett, (WI)
Mr. Ney	Ms. Velázquez
Mr. Ehrlich	Mr. Wynn
Mr. Barr	Mr. Fields, (LA)
Mr. Chrysler	Mr. Watt
Mr. Cremeans	Mr. Hinchey
Mr. Fox	Mr. Ackerman
Mr. Heineman	Mr. Bentsen
Mr. Stockman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	

A motion to give power to the Chair to request to go to conference was approved 28–20.

YEAS	NAYS
Mr. Leach	Mr. Gonzalez
Mr. McCollum	Mr. Vento
Mrs. Roukema	Mr. Kanjorski
Mr. Bereuter	Mr. Kennedy
Mr. Roth	Mr. Flake
Mr. Baker, (LA)	Mr. Mfume
Mr. Lazio	Ms. Waters
Mr. Bachus	Mr. Orton
Mr. Castle	Mr. Sanders
Mr. King	Mrs. Maloney
Mr. Royce	Mr. Gutierrez
Mr. Lucas	Ms. Roybal-Allard
Mr. Weller	Mr. Barrett, (WI)
Mr. Hayworth	Ms. Velázquez
Mr. Metcalf	Mr. Wynn
Mr. Bono	Mr. Fields, (LA)
Mr. Ney	Mr. Watt
Mr. Ehrlich	Mr. Hinchey
Mr. Barr	Mr. Ackerman
Mr. Chrysler	Mr. Bentsen
Mr. Cremeans	Mr. Fox
Mr. Heineman	
Mr. Stockman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. LaFalce	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings and recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI and clause 4(c)(2) of rule X of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The cost estimate pursuant to Clause 2(l)(3)(C) of rule XI, of the Rules of the House of Representatives and Section 403 of the Congressional Budget Act of 1974 has been requested, but had not been prepared as of the filing of Part I of this report. The estimate will be filed at a future date.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONGRESSIONAL ACCOUNTABILITY ACT

The reporting requirement under section 102(b)(3) of the Congressional Accountability Act (P.L. 104-1) is inapplicable because this legislation does not relate to terms and conditions of employment or access to public services or accommodations.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 1858 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

TITLE I—REDUCTION IN GOVERNMENT OVERREGULATION

SUBTITLE A—THE HOME MORTGAGE PROCESS

SECTION 101. REGULATORY AUTHORITY OVER DISCLOSURES AND ESCROW ACCOUNTS UNDER RESPA TRANSFERRED TO FEDERAL RESERVE BOARD

Section 101 transfers rulemaking authority for all disclosure provisions of the RESPA from HUD to the Federal Reserve Board but maintains at HUD rulemaking authority regarding certain real estate settlement services under the RESPA including those prohibiting kickbacks and unearned fees. This section also clarifies that the purpose of RESPA is to effect changes in the residential real estate settlement process that will result in the elimination of kickbacks or referral fees without directly regulating settlement service prices or wages paid to bona fide employees that are not designed as a subterfuge to facilitate kickbacks among affiliated companies. Section 101 also revises the rulemaking process under the RESPA to incorporate negotiated rulemaking procedures. The section distributes administrative enforcement of Section 8 and 9 of RESPA among HUD (for non-financial institutions) and the appropriate federal financial institution regulators (for financial entities); enforcement authority for disclosure requirements is shared among the Federal Reserve Board and the Federal depository institution regulators.

In addition, the section requires interagency cooperation in establishing uniform penalties and enforcement guidelines. The Federal Reserve Board is given the authority to determine the appro-

priate regulator in cases of more than one potential regulator. The Director of the Office of Thrift Supervision (OTS) is given this same authority for savings and loan holding companies. In cases of joint ventures between a non-banking entity and a banking entity, the section provides that the banking entity's regulator will be the regulator of the joint venture. The section provides that liability for criminal penalties under the RESPA exists only for wilful violations (current law allows criminal penalties for unintentional violations). The section redesignates "Controlled Business Arrangements" as "Affiliated Business Arrangements."

SECTION 102. SIMPLIFICATION AND UNIFICATION OF DISCLOSURES REQUIRED UNDER RESPA AND TILA FOR MORTGAGE TRANSACTIONS

Section 102 directs the Federal Reserve Board to eliminate duplicative disclosure requirements that require unnecessary, confusing and costly paperwork which obscures important consumer information. This section requires the Federal Reserve Board to take swift action in this area to (1) simplify disclosures provided under RESPA and TILA, including the timing of the disclosures, and (2) provide a single format for RESPA and TILA disclosures. In the event it is necessary to adopt regulations to implement the provisions of this section, the Board is required to publish such proposed regulations within three months of the date of enactment of this legislation.

SECTION 103. INCREASED REGULATORY FLEXIBILITY UNDER THE TRUTH IN LENDING ACT

Section 103 (a) and (b) grants the Board statutory authority to exempt various transactions from coverage under TILA. The Board is directed to exempt from the TILA any class of transaction for which coverage under the TILA does not provide a measurable benefit to consumers in the form of useful information or protection. The Board is encouraged to exercise its discretionary authority granted under Sections 102 and 103 of H.R. 1858 to reduce the regulatory burdens and costs associated with the credit-granting process.

SECTION 104. REDUCTIONS IN RESPA REGULATORY BURDENS; CLARIFYING AMENDMENTS

Section 104 amends the RESPA to require disclosure at the time of application for a loan whether servicing of the loan may be assigned, sold or transferred. It also eliminates subordinate mortgages from RESPA coverage and clarifies that business loans are exempt from the RESPA.

SECTION 105. DISCLOSURES FOR ADJUSTABLE RATE MORTGAGES

Section 105 provides financial institutions with options for disclosing information regarding the impact of changes in interest payments under adjustable rate mortgages.

Section 105 also adds a new paragraph to section 128(b) of the TILA concerning the honoring of lock-in promises.

SECTION 106. CERTAIN CHARGES

This section clarifies whether certain fees should be included or excluded in the calculation of the finance charge under the TILA.

(a) *Third Party Fees.*—This section provides that fees imposed by the closing agent should be excluded from the finance charge when the creditor does not expressly require their imposition or the services provided and the creditor does not retain the charges. Settlement agents frequently incur costs that they pass on to consumers without the creditor's knowledge or retention of the specific charge; one common example is courier fees. Creditors exercise little, if any, control over settlement agents' charges.

(b) *Mortgage Broker Fees.*—This section, which applies to transactions entered into after the date of enactment, clarifies that borrower-paid mortgage broker fees will be included in the finance charge. This bright line rule eliminates a review of such factors as whether a borrower may or may not obtain more favorable loan terms or more timely loan funding using a broker rather than applying directly to the creditor for a loan. Lender-paid broker fees are not included in the finance charge because they are not paid by the borrower; only those charges which the borrower actually pays are included in the finance charge.

(c) *Debt Cancellation.*—Section 106(c) currently pertains to the treatment of certain installment sale contracts or leases under the TILA. Under subsection 106(c) of this legislation, charges or premiums for such contracts must be included in the finance charge unless the creditor makes a clear and specific written statement to the borrower that sets forth the cost of the contract and states that the borrower may choose the person from whom he or she obtains coverage. This treatment applies to contracts involving insurance or any voluntary insurance product in connection with any consumer credit transaction that provides protections against loss of or damage to property or against part or all of the debtor's liability for amounts in excess of the value of the collateral securing the debtor's obligation, or against liability arising out of the ownership or use of the property.

(d) *Taxes on Security Instruments or evidences of Indebtedness.*—Section 106(d) of the TILA currently allows creditors to exclude from the finance charge fees imposed by law for perfecting security interests related to the credit transaction, such as filing fees for recording the security instrument. Some states impose taxes on the indebtedness or on the documents evidencing the indebtedness or granting the security interest, commonly referred to as intangible taxes. This legislation provides that intangible taxes may be excluded from the finance charge when the tax must be paid before the creditor can perfect its security interest.

(e) *Preparation of Loan Documents.*—Section 106(e) of the TILA currently excludes from the finance charge specific items that are regularly incurred when credit is secured by an interest in real property, such as appraisal fees, title examinations and document preparation. The Official Staff Commentary to Regulation Z explains that a lump sum charged for conducting or attending a closing "is excluded from the finance charge if the charge is primarily for services related to" the items excluded by section 106(e). This

legislation clarifies that a closing fee that may also cover the incidental services performed at the closing is not a finance charge.

(f) *Fees Relating to Pest Infestations, Inspections, and Hazards.*—Currently, section 106(e) of the TILA excludes appraisal fees incurred in connection with a real estate mortgage transaction from the finance charge. Appraisal-related fees, for such items as termite reports, building inspections or flood hazard assessments, are also incurred in evaluating potential risks to the value of the real property securing the transaction both before and after extending credit. The same reasoning that excludes appraisal fees from the finance charge when the credit is secured by real estate should apply to these fees. This legislation clarifies that fees for appraisal-type services should be excludable from the finance charge, both when the service is originally provided prior to settlement and for subsequent maintenance or verification services after settlement.

(g) *Ensuring Finance Charges Reflect Cost of Credit.*—Section 106(f) of this legislation directs the Federal Reserve Board to reexamine the costs that consumers incur in connection with an extension of credit and to determine how to calculate the finance charge to reflect more accurately these costs. The definition of finance charge does not currently have a unified approach to fees. The current list of excludable and excluded fees prevents the consumer from knowing the total cost of the credit while the discretion give to creditors on the treatment of some charges results in non-uniform disclosures.

The existing exemption from rescission for same creditor refinancings reportedly has enabled creditors to "flip loans," potentially charging consumers higher rates on refinancings while eliminating their rights of rescission. The Federal Reserve Board is directed to study this practice to determine how creditors abuse the system the scope of such abusive practices, and whether "flipping" can be prevented.

The Federal Reserve Board is specifically directed to work with representatives of affected industries and consumer groups (including working with those outside of the Consumer Advisory Council) with respect to both issues in preparing its report to Congress. The Federal Reserve Board is to report to Congress on regulatory or legislative recommendations for resolving both issues. To the extent regulatory changes need to be made, the Federal Reserve Board is authorized and directed to promulgate final regulations within one year of the date of enactment of this legislation.

SECTION 107. EXEMPTIONS FROM RESCISSION

Section 125(a) of TILA provides consumers with the right to rescind credit transactions secured by their homes within three days after consummation, receipt of the required disclosures, *and* the notice of the right to rescind. This provision gives consumers a "cooling off" period in which to reconsider offering their homes to secure the credit transaction. It was enacted in response to the abusive practices of certain home-improvement contractors who showed up at consumers' doorsteps and pressured them into purchasing home improvements on credit, secured by the house.

The right of rescission has never applied to transactions to finance the acquisition or construction of homes. 15 U.S.C.

§ 1635(e)(1). Similarly, section 125(e)(2) currently exempts from rescission the refinancing or consolidating of existing home-secured debt with the same creditor when there are no new advances.

The amendment extends the exemption from rescission for same creditor "no-cash-out" refinancings to all refinancings of debt initially incurred to finance the acquisition or construction of consumers' homes that are secured by a first lien on the consumers' principal dwelling to the extent there are no new advances and no consolidation of debt. The provision does not exempt "high cost" mortgages, as defined in section 103(aa); these mortgages remain subject to full rescission rights.

The requirement that the refinancing relate back to an initial residential mortgage transaction prevents unscrupulous home improvement contractors from making loans to consumers with no existing liens on their homes for the purchase of "improvements" and then refinancing that debt to avoid rescission rights. In addition, the exemption only applies to a refinancing to the extent that no consolidation of debt and no new advances are involved. However, if a consumer refinances a residential mortgage transaction, (with a consolidation of debt or new advances) regardless of the remaining principal amount and subsequently refinances (with no consolidation or no new advances), the entire new refinancing is exempt from rescission. Thus, a refinancing with new advances within a series of refinancings will not affect a future refinancing's exemption from rescission, provided that the future refinancing does not involve a consolidation of existing debt and new advances.

SECTION 108. TOLERANCES; BASIS OF DISCLOSURES

(a) *Tolerances for Accuracy.*—The two key disclosures required by TILA are the finance charge and the annual percentage rate (the "APR"). In 1980, Congress amended section 107(c) of TILA to explicitly provide a tolerance of one-eighth of one percent in calculating the APR; no statutory tolerance was specified for calculating the finance charge. The Board subsequently adopted, as a footnote to Regulation Z, a tolerance for finance charge calculations for closed-end credit of $5 for an amount financed up to $1000 and $10 for an amount financed greater than $1000. 12 C.F.R. § 226.18 n. 41. Since every transaction subject to TILA has APR and finance charge disclosures, the lower of the two tolerances ultimately determines whether a violation has occurred. Section 108(f) provides a finance charge tolerance of one-half the APR tolerance set forth in section 107(c) but includes a floor of $25 and a ceiling of $200. The provision is not intended to permit bad-faith intentional understatements of finance charges.

The amendment provides that a disclosed finance charge that is greater than the actual finance charge shall be considered accurate for purposes of TILA. This language reinforces section 103(z) which allows for overstatements without imposing liability.

The amendment also implements a different tolerance for determining if the finance charge is accurate for purposes of rescission. By providing a finance charge tolerance of one-half of one percent of the loan amount, the penalty of rescission will be limited to those circumstances in which there has been a substantial disclosure error.

(b) *Basis of Disclosure for Per Diem Interest.*—Interim interest, the interest due for the period from loan closing until the date of the first payment, is regularly paid at the closing. However, it can be difficult to accurately calculate this charge at the time documents are prepared for the closing since interim interest, unlike other charges, changes if the date of closing is advanced or delayed. The existing regulation is unclear with respect to a creditor's right to estimate interim interest or treat it as a minor irregularity. If the loan is consummated or funded on a date other than the date anticipated when disclosures were prepared (for example, because the consumer is unable to attend closing on the targeted date), the finance charge disclosure may become out of the range of tolerance. This provision allows creditors to have documents produced for the closing and sent to the closing agent based on the expected closing date and the information available to the creditor at the time the documents are being prepared.

SECTION 109. LIMITATION ON LIABILITY

Responding to the more that 50 nation-wide class actions that have been filed in the last year based on the Rodash decision, this amendment eliminates liability based on the treatment of specific types of charges. The limitation on liability extends to claims based on disclosure of a finance charge, or other numerical disclosure, that is within the tolerances established by this legislation. In addition, the limitation includes a provision protecting creditors from liability when they overstate an amount or percentage to be disclosed.

The amendment also eliminates creditor liability for use of the incorrect form for providing the consumer with notice of his or her rescission rights. Existing section 125(a) of TILA requires the creditor to give the consumer notice of the right to rescind in accordance with regulations of the Board. The Board has adopted two model forms, Form H–8 and Form H–9, for notice of the consumer's right to rescind in closed end transactions. The forms are labelled, respectively, "Rescission Model Form (General)" and "Rescission Model Form (Refinancing". This amendment eliminates creditor liability where a creditor has provided the consumer with notice of the right of rescission using a model form but selected the incorrect model form or a written notice based on the incorrect model form.

The liability limitations set forth in this section do not apply to class actions for which final orders certifying the class were entered prior to January 1, 1995, and to individual actions and actions brought by the named consumers in any class action filed before June 1, 1995.

SECTION 110. LIMITATION ON RESCISSION LIABILITY

This section responds to a court opinion that held that a lender's reliance on either form of rescission notice published and adopted by the Federal Reserve Board was misplaced. Section 110 provides that where a creditor selects the appropriate Federal Reserve Board form of notice and properly completes the form, the borrower cannot rescind on the basis of improper notice. The Federal Reserve Board is directed to reexamine forms that have been adopted to eliminate further confusion facing creditors and consumers.

SECTION 111. CALCULATION OF DAMAGES

Section 130(a) of TILA allows a consumer to recover both actual and statutory damages in connection with TILA violations. Congress provided for statutory damages because actual damages in most cases would be nonexistent or extremely difficult to prove. To recover actual damages, consumers must show that they suffered a loss because they relied on an inaccurate or incomplete disclosure.

Recognizing the difficulty of proving actual damages and the increase in costs involved in mortgage lending, this amendment increases the statutory damages available in closed end credit transactions secured by real property or a dwelling to a minimum of $250 and a maximum of $2,500.

SECTION 112. ASSIGNEE LIABILITY

(a) *Violations Apparent on the Face of Transaction.*—Section 131(a) of TILA currently provides that assignees are liable only if the violation is apparent on "the face of the disclosure statement." To lessen the burden on the secondary market while maintaining the deterrent the provision has on unscrupulous lenders, this amendment to section 131 provides that, for closed end loans secured by real property, the "face of the disclosure statement" refers only to the Truth In Lending disclosure document, any itemization of the amount financed and any other disclosure of disbursement, and not to "other documents assigned" generally. Following Federal Reserve Board review pursuant to section 106(g) and section 102 of this legislation, it is anticipated that the assignee will be able to determine compliance based on a review of a single format of disclosure.

(b) *Servicer not Treated as Assignee.*—A number of recent consumer lawsuits against mortgage loan servicers have claimed the servicer is an assignee of the creditor who made the loan and is therefore liable for errors under section 131. This provision clarifies that the loan servicer (the entity collecting payments from the consumer and otherwise administering the loan) is not an "assignee" under the TILA unless the servicer is the owner of the loan obligation. Moreover, a servicer shall not be deemed to be an owner of the loan on the basis of an assignment of the loan or the mortgage for administrative convenience in servicing the loan. A "servicer" is defined by reference to section 6(i)(2) of the RESPA. The TILA continues to apply to servicers who were the original creditors and then sold the loan but retained servicing rights. This amendment does not change the law; rather, it provides courts with further specific guidance on the interpretation of current law.

SECTION 113. RESCISSION RIGHTS IN FORECLOSURE

This amendment adds a new subsection to section 125 of TILA giving consumers the right to rescind a loan within the three-year time period established in section 125(f) of TILA as a defense if the creditor brings an action to foreclose on the consumer's principal dwelling in three specific instances: improper treatment of borrower-paid mortgage broker fees in calculating the finance charge, use of the incorrect form of notice of the right of rescission, and dis-

closure of a finance charge which understates the actual finance charge by more than $35. The consumer protection provisions of this section are intended to benefit consumers that are unable to meet their mortgage obligations and are not intended as a mechanism whereby consumers can avoid their obligations by defaulting and then raising the defense in foreclosure. Nothing in this section is intended to override the exceptions to the rights of rescission created in section 125(e).

Section 125(f) of TILA provides that the consumer's right of rescission expires on the earlier of three years after the date of consummation of the transaction or upon the sale of the property even if the consumer has not received the required disclosures or forms. Rescission rights expire in three years. The time period shall not be extended except as explicitly provided in section 125(f) relating to agency enforcement proceedings. However, section 125(f) does not affect any equitable remedies that may be available under State or common law.

SECTION 114. RECOVERY OF FEES

Section 114 makes a borrower who exercises a right of rescission liable under TILA for any appraisal reports or credit reports charges.

SECTION 115. HOMEOWNERSHIP DEBT COUNSELING NOTIFICATION

Section 115 repeals homeownership debt counseling notification under the Housing and Urban Development Act of 1968. Homeownership is widely available through the private sector. Therefore, a government program is both duplicative and wasteful.

SECTION 116. HOME MORTGAGE DISCLOSURE ACT

The HMDA requires a financial insitution with assets of $10 million or more that has a headquarters or a branch within a metropolitan statistical area to compile and report data related to home mortgage loans. Section 116(a) modifies the HMDA to exempt institutions with $50 million in assets or less from the reporting requirements. The Federal Reserve Board is also given the discretion to further exempt institutions with assets of $50 million or greater if the Board determines that the burden of compliance with the HMDA outweighs the usefulness of the information required to be reported. Finally, section 116(b) permits depository institutions to keep such data in their home office (instead of in each branch) and make it available upon written request.

SECTION 117. APPLICABILITY

The amendments made by section 106(a), (d), (e), and (f) and sections 108, 112 and 113 will apply to all consumer credit transactions in existence or consummated on or after the date of enactment. Subsections 106(a), (d), (e) and (f) (certain charges) and section 112 (assignee liability) apply retroactively. In contrast, section 106(b) regarding the treatment of borrower-paid mortgage broker fees applies prospectively. Sections 108 and 113 are applied retroactively. Section 109 (limitation on liability) applies to all existing transactions. The remaining sections, section 107 (exemption for

non-cashout refinancings), section 111 (statutory damages) and section 110 (limitation on rescission liability), apply prospectively. However, nothing in this section is intended to change the law retroactively with respect to individual actions or counterclaims filed before June 1, 1995, class actions for which a final order certifying the class was entered before January 1, 1995, actions by named individual plaintiffs in any class action filed before June 1, 1995, or any consumer credit transactions with respect to which a timely notice of rescission was sent to the creditor before June 1, 1995 as provided in section 109(a) (new section 139(b) of the TILA).

SUBTITLE B—COMMUNITY REINVESTMENT ACT AMENDMENTS

SECTION 121. EXPRESSION OF CONGRESSIONAL INTENT

Section 121 amends the Congressional purpose for the CRA by stating that in encouraging financial institutions to meet the credit needs of their communities, regulators are not supposed to impose additional regulatory burden or paperwork on financial institutions.

SECTION 122. COMMUNITY REINVESTMENT ACT EXEMPTION

Section 122 exempts from the examination requirements of the CRA any financial institution if the institution and the holding company which controls the institution have not more than $100 million in assets (which is to be adjusted for inflation).

SECTION 123. SELF-CERTIFICATION OF COMMUNITY REINVESTMENT ACT COMPLIANCE

Section 123 allows a financial institution with no more than $250 million in assets to self-certify compliance with the CRA, provided the institution has not been found to have engaged in a pattern or practice of illegal discrimination under the FHA or the ECOA within the past 5 years and has a current CRA rating of "satisfactory" or "outstanding." This section also requires the financial institution to maintain a public notice of self-certification and provides for regulatory review of self-certification reasonableness during each examination for safety and soundness. In addition, this section provides for the institution to be examined for CRA compliance if the institution's self-certification is found to be "not reasonable." If after the regular CRA exam an institution receives a less than "satisfactory" CRA rating, it shall not be allowed to self-certify again for a period of five years.

SECTION 124. COMMUNITY INPUT AND CONCLUSIVE RATING

Section 124 amends the CRA to establish a new mechanism for community input for an institution's CRA examination by providing the public advance notice in the Federal Register of an institution's CRA examination. After the Federal financial supervisory agency provides such notice and reviews all timely comments, the financial institution is provided a conclusive CRA rating until its next CRA examination. A reconsideration of an institution's rating may be requested within 30 days of the disclosure of the rating to the public.

Under section 124(c), an institution's CRA record is taken into account in the overall evaluation of the condition of an institution rather than at the time of an application for a deposit facility. Current law requires the regulator to take into consideration an institution's CRA record when it applies for a deposit facility.

SECTION 125. SPECIAL PURPOSE FINANCIAL INSTITUTIONS

Section 125(a) requires the appropriate Federal financial supervisory agency, in evaluating the CRA records of special purpose institutions, to take into account the nature of the business of such institutions and the amount of deposits received by such institution. Subsection (b) defines the term "special purpose institution" to mean a financial institution that does not generally accept deposits in amounts less than $100,000 dollars. Such institutions include, but are not limited to, wholesale, credit card and trust institutions.

SECTION 126. INCREASED INCENTIVES FOR LENDING TO LOW- AND MODERATE-INCOME COMMUNITIES

Section 126 revises the CRA to expand the category of capital investments, loan participations, and other ventures for which an institution can receive CRA credit. Under current law, in evaluating the record of a non-minority-owned and non-women-owned financial institution, an agency may consider as a factor capital investment, loan participants, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions, provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.

In order to encourage institutions to participate in transactions that have the effect of providing credit to low- and moderate-income neighborhoods, regardless of whether those neighborhoods are in an institution's community, section 126 requires the agencies to give institutions credit for investments in or loans to any minority or women's depository institution or low-income credit union. The agencies are also directed to give credit for participation in any joint venture or other entity or project which provides benefits to any distressed community, whether or not the distressed community is where the institution is chartered to do business. Institutions must also receive credit for investments in or loans to targeted low- and moderate-income communities, including real property loans to such communities.

Finally, the agencies are required to consider equally with other factors capital investment, loan participation and other ventures undertaken by the institution in cooperation with minority and women owned financial institutions and low income credit unions to the extent that these activities help meet the credit needs of the community in which these institutions are located. Capital investment, loan participations, and other ventures undertaken by institution in cooperation with a community development financial institution (so long as the loans and other financial services provided to low- and moderate-income persons and small business are meeting the credit needs of the local communities served by the major-

ity-owned institution) are also to be considered equally with all other factors.

SECTION 127. PROHIBITION ON ADDITIONAL REPORTING UNDER COMMUNITY REINVESTMENT ACT

This section prohibits the Federal financial institution regulators from requiring additional reporting or recordkeeping from financial institutions as a result of any regulations prescribed under the CRA.

SECTION 128. TECHNICAL AMENDMENT

The Riegle-Neal Interstate Banking and Branch Efficiency Act of 1994 modified the CRA to include a requirement to have a separate discussion of the findings and conclusions of a CRA report for each metropolitan area in which a regulated depository institution maintains one or more domestic branch offices. Under current law, this requirement applies to all regulated depository institutions including institutions that are located in only one state. The legislative intent of the provision was to have the requirement apply only to regulated institutions with interstate branches. Section 128 makes a technical revision to the CRA that provides that the requirement apply only to regulated banks with interstate branches.

SECTION 129. DUPLICATIVE REPORTING

Section 129 exempts institutions which are members of the Federal Home Loan Bank System from meeting the Federal Home Loan Bank Act's community investment and service requirements if the institution has received a CRA rating of "outstanding" or "satisfactory".

SECTION 130. COMMUNITY REINVESTMENT ACT CONGRESSIONAL OVERSIGHT

Section 130 requires each Federal banking agency to report to Congress by December 31, 1996 and by December 31, 1997, respectively, on the implementation of the CRA regulations prescribed after the date of enactment H.R. 1858. These reports are to include input from the regulated financial institutions and quantifiable measures of the cost savings of the new CRA regulations and their effectiveness in achieving CRA objectives.

SECTION 131. CONSULTATION AMONG EXAMINERS

Depository institutions frequently are subject to multiple exams by the same agency. For example, an institution may have an annual safety and soundness exam as well as a CRA exam and a trust department exam, all of which may be conducted at separate times. These separate and uncoordinated exams may result in inconsistent recommendations to an institution. Sec. 131 is intended to reduce the burden placed on banks as a result of multiple exams by requiring each agency to direct is examiners to consult on examination activities related to an institution and resolve any inconsistencies in the examiners' recommendations. In addition, section 131 directs that each agency appoint an "examiner-in-charge" who is responsible for consultation with all examiners of an institution.

SECTION 132. LIMITATION ON REGULATIONS

Section 132 provides that no CRA regulation may be promulgated which would require financial institutions to make loans to any uncreditworthy person that would jeopardize the safety and soundness of the institution. In addition, no regulation prescribed under the CRA shall require a financial institution to make a loan on the basis of any discriminatory criteria prohibited under any U.S. law. It also clarifies that no regulation shall prevent or hinder in any way a financial institution's full responsibility to provide credit to all segments of its community. Finally, it clarifies that these regulations shall encourage financial institutions to extend credit to all creditworthy persons, consistent with safety and soundness.

SUBTITLE C—CONSUMER BANKING REFORMS

SECTION 141. TRUTH IN SAVINGS

Section 141 revises the TISA to eliminate provisions that have resulted in unnecessary and overly complex regulations. The revisions to the TISA retain the basic components of that Act relating to disclosure of account fees, charges, penalties and simple interest rates. Financial institutions would continue to disclose minimum balance requirements at the time a consumer opens an account or upon request and would also continue to be required to disclose a change in the terms of an account at least 30 days before such change becomes effective. Section 141 also retains the prohibition against deceptive and misleading advertising of accounts.

The changes that section 141 makes to the TISA primarily concern the requirement that financial institutions disclose the "annual percentage yield" for accounts and the application of civil liability for violations of the TISA. The TISA currently requires the Federal Reserve Board to develop a formula for calculation of an annual percentage yield. Development of such formula has proved to be extremely difficult. Furthermore, it appears that disclosure of an annual percentage yield may not provide consumers with significantly more information concerning an account than disclosure of the simple interest rate. As such, the requirement for financial institutions to disclose an annual percentage yield is repealed.

Section 141 also removes the civil liability provisions for violations of the TISA. The imposition of civil liability for violation of the TISA has resulted in financial institutions seeking numerous clarifications and commentaries from the Federal Reserve Board increasing the regulatory burden for both the industry and the Board. Accordingly, the civil liability provisions are repealed. The federal banking agencies would still retain the authority to take administrative actions to enforce the TISA.

SECTION 142. INFORMATION SHARING

Section 142 pertains to the sharing of information among depository institutions and their affiliates and subsidiaries where such sharing or communication may be restricted or limited by law. This section does not authorize the sharing of information with persons or entities other than affiliates or subsidiaries of a depository insti-

tution. In addition, this section is not intended to restrict or otherwise affect the sharing or communication of information that is otherwise permissible. Before information regarding a consumer may be shared or communicated in reliance on this provision, the depository institution, subsidiary or affiliate must disclose to the consumer that such information may be communicated or shared and the customer must be given the opportunity to direct that the information not be communicated or shared. This section is not intended to supersede in any way any sales practice rules issued by the National Association of Securities Dealers. The Committee is of the opinion that such sales practice rules concerning information sharing should apply equally to all affiliates of a broker dealer.

SECTION 143. ELECTRONIC FUND TRANSFER ACT CLARIFICATION

Section 143 clarifies that provisions of the EFTA do not apply to stored value cards or value stored on such cards except for transactions where the card is actually used to access an account to effect a transaction. In addition, computers, computer-driven programs, or software that are functionally equivalent to stored value cards are also exempted from EFTA.

SECTION 144. LIMIT ON RESTITUTION FOR TRUTH IN LENDING VIOLATIONS IF SAFETY AND SOUNDNESS OF VIOLATOR WOULD BE AFFECTED

Under current law, Section 108(e) of TILA prescribes rules for reimbursement of inadequately disclosed finance charges, and requires the federal financial institution supervisory agencies to order restitution to consumers of amounts charged but not adequately disclosed. Section 144 allows supervisory agencies to take into account the safety and soundness of that institution when requiring restitution from an institution. Under the section, two alternatives to full, immediate restitution exist. First, an agency is able to order partial restitution, in an amount that would not have a significantly adverse impact on the lender's safety and soundness. Second, an agency is allowed to order restitution in the full amount, but to be paid over a period of time to avoid a significantly adverse impact. In the case of the federal financial institution supervisory agencies, an agency cannot order partial restitution or restitution in partial payments over an extended period unless the agency made a factual determination that full, immediate restitution would cause the creditor to become undercapitalized pursuant to such agency's regulations promulgated under section 38 of the Federal Deposit Insurance Act.

SUBTITLE D—EQUAL CREDIT OPPORTUNITY ACT AMENDMENTS

SECTION 152. FINDINGS AND PURPOSE

Section 152 states that the purpose of this legislation is to reconcile and coordinate the notice requirements under the ECOA amd FCRA.

SECTION 153. EQUAL CREDIT OPPORTUNITY ACT AMENDMENTS

Section 153 coordinates notices required under the ECOA resulting from adverse credit actions with notices required under the FCRA where requirements of the two Acts overlap. It also ensures that when credit is denied based on a consumer report, the adverse action notice must state that the credit denial was based on information contained in the credit report. In addition, the notice must contain: (1) the name, address, and telephone number of the consumer reporting agency making the report; and, (2) a statement of the consumer's right to obtain a free copy of the consumer repot and to dispute the accuracy or completeness of any information in the consumer report. In addition, the ECOA is amended by limiting liability for violations of the adverse notice requirements provided for in section 701(d) if it can be shown that the creditor maintained reasonable procedures to assure compliance.

SECTION 154. FAIR CREDIT REPORTING ACT AMENDMENTS

Section 154 coordinates the notices required under the FCRA resulting from adverse credit actions with notices required under the ECOA where requirements of the two Acts overlap.

SECTION 155. INCENTIVES FOR SELF-TESTING

Section 155 is designed to encourage lenders to conduct self-tests in order to determine their compliance with fair lending laws. First, the section establishes a privilege for lenders who self-test for compliance with the ECOA or the FHA from having such tests used against them in any proceeding or civil action brought under these acts where the lender has identified discriminatory practices and has taken appropriate corrective actions. Such tests, however, can be used if the lender conducted them at the request of an agency, they have been disclosed to a third party by the lender, if they are used as an affirmative defense by the lender, or in determining the remedy for FHA or ECOA violations. Second, the section grants the Federal banking regulators discretionary authority to refer evidence of discrimination contained in a self-testing report to the Attorney General or the Secretary of HUD under certain circumstances.

Ambiguities under current law in the self-testing area create disincentives for financial institutions to test their activities with the nation's fair lending laws. Under current law, the possibility exists that self-tests will be used as evidence against a lender in a later administrative proceeding or civil action. The privilege and discretionary referral provided for under section 155 are designed to eliminate these current disincentives.

Under this section, the appropriate federal department or agency is given the authority to determine which kinds of tests will qualify for the privilege. Although paired testing is a widely accepted form of testing for noncompliance, other testing methods may produce similar and reliable evidence of unlawful practices and may be less cost-prohibitive for smaller institutions. Therefore, these tests also warrant protection under this section.

SECTION 156. CREDIT SCORING SYSTEMS

Section 156 amends the ECOA to clarify that credit decisions based solely on an empirically derived, demonstrably and statistically sound, credit scoring system, as defined by the Federal Reserve Board in regulations prescribed under this title, shall be in compliance with the non-discrimination requirements under ECOA (subsection (a)) so long as the system does not use any category protected under subsection (a), does not use any functional equivalent of such a category, and does not use any criterion that has a discriminatory effect on any category unless the use of the criterion is justified by business necessity and there is no less discriminatory alternative available. The term business necessity as well as the duty of showing a less discriminatory alternative shall be construed consistent with U.S. Supreme Court precedent such as *Griggs* v. *Duke Power Company*, 401 U.S. 424 (1971) and *Albermarle Paper Company* v. *Moody*, 422 U.S. 405 (1975).

SECTION 157. CONSULTATION BY ATTORNEY GENERAL REQUIRED IN NONREFERRAL CASES

Section 157 requires the Attorney General to consult with the appropriate regulatory agency prior to bringing a civil action. The Attorney General and the regulatory agencies are to work in close cooperation to avoid unnecessary duplication of effort, and to avoid unnecessary burdens on regulated entities.

SUBTITLE E—CONSUMER LEASING ACT AMENDMENTS

SECTION 163. REGULATIONS

Section 163 amends the Consumer Credit Protection Act by directing the Federal Reserve Board to address consumer leasing issues through regulation and requiring the Board to publish model disclosure forms to facilitate compliance with the disclosure requirements and to aid consumers in understanding leasing transactions.

SECTION 164. CONSUMER LEASE ADVERTISING

Section 164 rewrites the disclosure requirements for consumer lease advertising. Under this section, when an advertisement states that an initial payment or that no initial payment is required, the advertisement must also state that the transaction is a lease; the number of payments; the applicability of a security deposit; the number, amount and timing of payments; and certain other pertinent information. In addition, the special rules governing radio advertisements are repealed under this section.

SECTION 165. STATUTORY PENALTIES

Section 165 amends section 185(a) of the Consumer Credit Protection Act to limit a creditor's liability for statutory penalties for failure to provide certain consumer lease disclosures.

Subtitle F—Federal Home Loan Bank Amendments

SECTION 171. APPLICATION FOR MEMBERSHIP IN THE FEDERAL HOME LOAN BANK SYSTEM

Section 171 establishes that an applicant for membership in the Federal Home Loan Bank (FHLB) System may submit the application in the district where the applicant's principal place of business is located rather than submit the application to the Federal Housing Finance Board in Washington. It also establishes that applicants may apply in an adjoining district if it is convenient and meets with the approval of the Federal Housing Finance Board.

SECTION 172. FEDERAL HOME LOAN BANK EXTERNAL AUDITORS

Section 172 provides that General Accounting Office audits of FHLBs shall not be limited to periods during which government capital has been invested in them. It also prohibits the Federal Housing Finance Board from participating in the hiring of an external auditor by the FHLBs, other than to establish requirements for audit contracts.

TITLE II—STREAMLINING GOVERNMENT REGULATIONS

Subtitle A—Regulatory Approval Issues

SECTION 201. STREAMLINED NONBANKING ACQUISITIONS BY WELL CAPITALIZED AND WELL MANAGED BANKING ORGANIZATIONS

Under current law, a bank holding company must submit a written notice to the Federal Reserve Board at least 60 days before engaging in a nonbanking activity. The Federal Reserve Board determines whether the activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

Section 201 permits well capitalized and well managed bank holding companies to engage, either directly or through an acquisition, in nonbanking activities previously approved by the Federal Reserve Board without prior notice or with an abbreviated notice. In order to be eligible for these expedited procedures (1) the bank holding company must be well capitalized and well managed; (2) the company's lead insured depository institution must be well capitalized and well managed; (3) insured depository institutions controlling 80 percent of the company's banking assets must be well capitalized; (4) insured depository institutions controlling 90 percent of the company's banking assets must be well managed; (5) no insured depository institution controlled by the company may be undercapitalized or poorly managed (with a limited exception for recently acquired depository institutions); and, (6) neither the bank holding company nor any subsidiary depository institution may be the subject of any enforcement action, order, or administrative enforcement proceeding within the prior twelve months. In addition, the book value of the assets to be acquired may not exceed 10 percent of the holding company's consolidated total risk-weighted assets, and the price paid may not exceed 15 percent of the consolidated Tier 1 capital of the company. All activities must be conducted in compliance with any applicable regulations, orders, and interpretations of the Federal Reserve Board.

Qualifying bank holding companies may engage de novo in any "laundry list" nonbanking activity approved by the Federal Reserve Board by regulation without prior notice, but must inform the Board within 10 days after commencing the activity. Qualifying bank holding companies wishing to engage in an activity approved by the Federal Reserve Board by order, or wishing to acquire any nonbanking company, must provide 12 days prior notice to the Board. Prior to expiration of the notice period, the Federal Reserve Board may require the bank holding company to comply with statutory notice and review provisions that generally apply to proposals under section 4(c)(8).

SECTION 202. STREAMLINED BANK ACQUISITIONS BY WELL CAPITALIZED AND WELL MANAGED BANKING ORGANIZATIONS

Section 202 amends the notice procedures of the BHCA to permit well capitalized and well managed bank holding companies that are rated "satisfactory" or "outstanding" for CRA performance to acquire another bank, without prior approval, when the acquisition is limited in size, meets competitive criteria established by the Federal Reserve Board (in consultation with the Attorney General), and meets applicable geographical and other established statutory requirements. In addition, the bank holding company may not have been the subject of any enforcement action, order, or administrative enforcement proceeding within the twelve months prior to the acquisition.

Section 202 requires bank holding companies to provide the Federal Reserve Board with brief advance notification of the proposal to allow the Board to require a full notice or application if warranted by the specific case. It also clarifies that the Department of Justice's anti-competitive review remains applicable to notices filed under the streamlined procedures. Under these streamlined procedures the Attorney General will receive notification of the proposed acquisition at the same time as the Federal Reserve Board. The Attorney General shall advise the Federal Reserve Board during the review period in writing if any competitive concerns exist with respect to the transition. If the Attorney General advises the Federal Reserve Board that no such concerns exist, the post-approval waiting period in section 11(b) shall not apply.

SECTION 203. ELIMINATE FILING AND APPROVAL REQUIREMENTS FOR INSURED DEPOSITORY INSTITUTIONS ALREADY CONTROLLED BY THE SAME HOLDING COMPANY

Section 203 amends the Federal Deposit Insurance Act (FDIA) and the National Bank Consolidation and Merger Act to allow merger of banks controlled by the same bank holding company without having to comply with certain filing and approval requirements. Section 203 requires that these transactions meet the recently enacted interstate branching requirements. The responsible agency for the resulting bank may require an application under these Acts, if the facts of the specific case warrant.

SECTION 204. ELIMINATE REDUNDANT APPROVAL REQUIREMENT FOR OAKAR TRANSACTIONS

Section 204 amends the FDIA to remove the duplicative approval requirements for the merger of a bank and a savings association under thee Oakar Amendment to the FDIA. Section 204 leaves requirements under the Bank Merger Act intact. Section 204 does not remove the other provisions for Oakar transactions, including the requirement that the resulting institution remain adequately capitalized and the requirement that assessments paid by the resulting institution go to the appropriate FDIC insurance fund.

SECTION 205. ELIMINATION OF DUPLICATIVE REQUIREMENTS IMPOSED UPON BANK HOLDING COMPANIES AND OTHER REGULATORY RELIEF UNDER THE HOME OWNERS' LOAN ACT

Section 205 amends the Home Owners' Loan Act (HOLA) to eliminate duplicative regulation of bank holding companies under the BHCA and the HOLA. Currently, a registered bank holding company that controls a savings association is supervised by the Federal Reserve Board and is also subject to the requirements of the HOLA. As such, it must obtain approval from the OTS for acquisitions and must register with the OTS as a savings and loan association holding company. The amendment eliminates duplicative supervision under the HOLA. However, the amendment does not free savings associations owned by bank holding companies from the Qualified Thrift Lender (QTL) test or from any other requirements applicable to savings associations under Federal law.

Section 205 also amends the BHCA to ensure that the Federal Reserve Board and the OTS will cooperate in the supervision of bank holding companies that control savings associations. The Federal Reserve Board must seek and consider the views of the Director of the OTS in considering any application or notice by a bank holding company to acquire a savings association. The Federal Reserve Board also must consult with the Director, as appropriate, in establishing the scope of inspections of bank holding companies that control savings associations. Such consultation should be more involved when savings associations make up a substantial portion of the assets of the holding companies. The Federal Reserve Board must also, upon request of the Director, provide the Director with any inspection report or any other supervisory material relating to a bank holding company that controls a savings association. Finally, the Federal Reserve Board and the Director are required to cooperate in any enforcement action against a bank holding company that involves a savings association controlled by the company.

Section 205(d) reduces the regulatory and paperwork burden faced by savings and loan associations by allowing them to satisfy the QTL test required under the HOLA by meeting the Qualified Thrift Asset (QTA) test under the Internal Revenue Code.

Under HOLA the QTL test requires thrifts to have at least 65% of their portfolios in mortgages and mortgage-related products. In addition, the law also allows a limited amount of consumer loans, commercial loans and educational loans to be considered qualified lending. Thrifts must meet the QTL test in order to receive certain benefits not afforded to banks.

Under the tax code, the QTA test requires thrifts to have at least 60% of their assets in certain loans and investments listed in the code. The list includes residential mortgage loans, but not commercial loans or many types of mortgage backed securities. The two tests are similar, but not identical. In addition, the QTL test is computed on the basis of portfolio assets and the tax test on total assets. By meeting the QTA test, thrifts receive certain tax benefits, for example, the choice of using the experience method or the percentage of taxable income method of computing their bad debt reserve. This subsection does not affect tax law in any way. It merely reduces the paperwork burden on thrifts by no longer requiring them to juggle their assets to ensure that they have the correct balance of assets to meet their two similar but different tests.

SECTION 206. ELIMINATE REQUIREMENT THAT APPROVAL BE OBTAINED FOR DIVESTITURES

Section 206 eliminates a statutory presumption that a bank holding company that divests shares of any company to a third party investor in a transaction funded by any subsidiary of the bank holding company is presumed to continue to control those shares unless the Federal Reserve Board determines that the divestiture is genuine. The presumption was intended to prevent sham divestitures, but the application burden imposed on the banking industry has proved to outweigh the benefits of this requirement. The Federal Reserve Board can detect sham transactions through the examination process.

SECTION 207. ELIMINATE UNNECESSARY BRANCH APPLICATIONS

Section 207 eliminates the notice and approval requirements concerning the operation of branches for well-capitalized, CAMEL 1 or 2 institutions with "outstanding" or "satisfactory" CRA ratings. This section does not change in any way the geographic restrictions that govern the establishment or operation of a branch office.

SECTION 208. ELIMINATE BRANCH APPLICATION REQUIREMENTS FOR ATMS AND SIMILAR FACILITIES

Section 208 amends the McFadden Act and the FDIA to provide that automated teller machines (ATMs) or remote service unit (RSUs) owned by a depository institution are not considered to be branches for purposes of filing an application to establish a branch so long as they are owned and operated at sites at which the bank could operate a branch. Existing law regarding when other categories of ATMs and RSUs are to be considered branches is not affected by this amendment.

SECTION 209. ELIMINATE REQUIREMENT FOR APPROVAL OF INVESTMENTS IN BANK PREMISES FOR WELL CAPITALIZED AND WELL MANAGED BANKS

Section 209 amends the Federal Reserve Act to allow well capitalized institutions which have received one of the two highest composite CAMEL ratings to invest up to 150% of the institution's capital in its premises without obtaining prior approval.

SECTION 210. ELIMINATE UNNECESSARY FILING FOR OFFICER AND DIRECTOR APPOINTMENTS

Section 32 of the FDIA requires insured depository institutions and depository institution holding companies to file a notice with their regulators at least 30 days before hiring new directors or senior executive officers where the institution is undercapitalized or otherwise in troubled condition, has been chartered less than two years, or the institution or holding company has undergone a change in control during the past two years. In these situations, the individuals would have to undergo background checks.

Section 210 adds a provision that lets the agencies waive the notice requirement on a case-by-case basis in appropriate circumstances.

SECTION 211. STREAMLINING PROCESS FOR DETERMINING NEW NONBANKING ACTIVITIES

Section 211 amends the BHCA to eliminate the hearing requirement contained in Section 4(c)(8) of that Act. Section 211 also amends section 4(c)(8) to create an exception to that section's general prohibition on bank holding company insurance activities to allow bank holding companies to own insurance affiliates in accordance with State insurance laws. The provision states that it shall be "closely related to banking" to provide insurance as a principal, agent, or broker in any State, in full compliance with the laws and regulations of such state that apply uniformly to each type of insurance license or authorization in that State, including anti-affiliation laws.

SECTION 212. DISPOSITION OF FORECLOSED ASSETS

Under current law, bank holding companies are accorded up to five years to dispose of stock acquired as a result of a loan foreclosure; under certain circumstances, real estate assets may be held for up to ten years. National banks may hold both foreclosed real estate and foreclosed stock for a maximum period of 10 years. Section 212 would equalize the treatment of national banks and bank holding companies by amending section 4(c)(2) of the BHCA to provide authority for the Federal Reserve Board to approve applications to hold foreclosed stock for an additional five years. An extension beyond the initial five year period would be dependent on a showing by the bank holding company that it has made a good faith attempt to dispose of the asset within five years, or that disposal within the initial five year period would be detrimental to the company. The section also eliminates the statutory requirement that a bank holding company must apply for an extension every year.

SECTION 213. INCREASE IN CERTAIN CREDIT UNION LOAN CEILINGS

Section 213 allows a federal credit union to make aggregate loans up to $50,000 to officials of the credit union without approval by the board of directors. Under present law, the aggregate loan ceiling is $10,000.

Subtitle B—Streamlining of Government Regulations; Miscellaneous Provisions

SECTION 221. ELIMINATE THE PER-BRANCH CAPITAL REQUIREMENT FOR NATIONAL BANKS AND STATE MEMBER BANKS

Section 221 eliminates section 5155(h) of the Revised Statues. Currently, section 5155(h) requires national bank associations to maintain capital for their branches as if each branch were a separately chartered bank. In deleting this subsection, national banks' capital will be held against their total assets and not the assets of each of their individual branches.

SECTION 222. BRANCH CLOSURES

Section 222 clarifies the scope of the branch closing notice requirement under section 42 of the FDIA. Under section 42, an insured depository institution that intends to close a branch is required to notify the customers of the branch and the institution's appropriate Federal banking agency 90 days prior to the closing.

An interagency policy statement has interpreted section 42 such that (1) the term "branch" is defined as a traditional brick and mortar branch and does not include an ATM or remote service facility; and (2) the relocation or consolidation of a branch does not constitute a branch closing provided that the relocation or consolidation of a branch does not constitute a branch closing provided that the relocation or consolidation is within the same immediate neighborhood and the same customers are served.

Section 222 confirms, and in one way, broadens these interpretations in the intergency policy statement. ATMs are explicitly excluded from the definition of branch. Furthermore, the merger or relocation of branch is excluded from the notice requirement when certain conditions are met. The merger or relocation of a branch is excluded if the branch affected in located within 2.5 miles of or in the same neighborhood as another branch of the same institution. In other instances, the other branch must serve substantially all of the customers currently served by the branch to be closed.

Section 222 also excludes from the notice requirements branch closings in connection with an emergency acquisition or other FDIC assistance under the FDIC. Section 222 grants the agencies authority to create further exceptions consistent with the purposes of the section.

SECTION 223. AMENDMENTS TO THE DEPOSITORY INSTITUTIONS MANAGEMENT INTERLOCKS ACT

This section makes several changes to the Depository Institutions Management Interlocks Act. First, it increases the dollar thresholds in the rule currently prohibiting banks or bank holding companies with more than $1 billion in assets from having a management interlock with another nonaffiliated bank or bank holding company, where ever located, with assets greater than $500 million. This threshold would rise to $2.5 billion and $1.5 billion, respectively, and be adjusted annually for inflation.

Second, this section permits grandfathered interlocks to continue indefinitely (until the death or resignation of the official in ques-

tion). Third, it restores the exemptive authority the regulators had prior to 1994. Fourth, it permits a management official of one institution or hold company to serve as a management official of another non-affiliated institution or holding company if the institutions or holding companies (and their affiliates) hold in the aggregate no more than 20 percent of the deposits in each relevant geographic area in which they are located.

SECTION 224. ACCELERATION OF APPRAISAL SUBCOMMITTEE REPAYMENT

This section requires the acceleration of repayment to the Treasury of a five million dollar loan held by the Financial Institutions Examination Council's Appraisal Subcommittee. Under this section, the loan is to be repaid by the end of Fiscal Year 1998.

SECTION 225. ELIMINATE UNNECESSARY AND DUPLICATIVE RECORDKEEPING AND REPORTING REQUIREMENTS RELATING TO LOANS TO EXECUTIVE OFFICERS AND PERMIT PARTICIPATION IN EMPLOYEE BENEFIT PLANS

Section 22(h) of the Federal Reserve Act governs extensions of credit to insiders (executive officers, directors, and principal shareholders) of member banks and their affiliates, including related interests of those insiders (such as companies they control). In general, section 22(h) requires that insider loans be within certain limits and not be on preferential terms. Section 22(g) of the Federal Reserve Act establishes special limits for extensions of credit to executive officers only.

Without changing any of the core restrictions on insider lending, section 225 eliminates extraneous and unnecessary reporting requirements and ends coverage of certain persons who are executive officers and directors of affiliates who cannot affect policymaking at a bank. Section 225 does not affect the effectiveness of the insider lending provisions of section 22 of the Federal Reserve Act of the Federal Reserve Board's Regulation O in any significant way.

Section 225(a)(1) allows executive officers, directors, or principal shareholders to receive extensions of credit that are made pursuant to a benefit or compensation plan that is widely available to, and used by, employees of the bank. Such loans will continue to count toward the limits of section 22(h) but will no longer be barred as preferential. This amendment will permit such persons to participate in programs that allow reduced closing costs or a slightly favorable rate in connection with an employment-related relocation.

Section 225(a)(2) allows the Federal Reserve Board to exempt from the restrictions of section 22(h) executive officers and directors of affiliates who are not involved in policymaking at the bank, provided that the affiliate by which they are employed does not represent more than 10 percent of the consolidated assets of the organization. Maintaining updated records of the identities of all these persons, and their related interests represent a substantial recordkeeping burden. For large banks, this means tracking literally thousands of directors and executive officers, sometimes overseas, as well as any company those persons control. Given that these people are not employed by the bank or a significant affiliate

and cannot therefore affect the bank's policies, the costs of the recordkeeping requirement clearly outweigh the benefits.

Section 225(b) eliminates unnecessary reporting and recordkeeping requirements. The crucial recordkeeping requirements necessary to monitor compliance with Regulation O are contained in the Federal Reserve Board's regulation. Each bank is required to track loans to its insiders and their related interests, and examiners make certain that loans are within statutory limits and that adequate records are being kept. Various other statutory provisions, however, impose unnecessary recordkeeping and reporting burdens on banks that are not worth the costs they impose. Section 225(b) eliminates these burdens.

Section 225(c) amends section 22(g) to allow member banks to extend two types of credit to their executive officers: home equity lines not to exceed $100,000 and loans secured by readily marketable assets up to an amount to be set by the Federal Reserve Board. These loans are secured by collateral such that they pose minimal risk to the bank.

SECTION 226. EXPANDED REGULATORY DISCRETION FOR SMALL BANK EXAMINATIONS

Current law requires annual examinations for banks with $250 million or more in assets and permits examinations every 18 months for CAMEL 1 banks with less than $250 million in assets and for CAMEL 2 banks with less than $100 million in assets. The regulators may increase the CAMEL 2 threshold to $175 million after September 1996. Section 226 amends current law to permit the regulators to raise the CAMEL 2 asset threshold to $250 million after September 1996. In addition, the Federal banking agencies are required to report on a semiannual basis on the progress being made on implementing a system for coordinating examinations. The report must be filed until a system is implemented.

SECTION 227. COST REIMBURSEMENT

This section adds corporate customers to the cost reimbursement provisions of Section 3415 of Title 12 of the U.S. Code.

SECTION 228. IDENTIFICATION OF FOREIGN NONBANK FINANCIAL INSTITUTION CUSTOMERS

Section 228 repeals the responsibility of a domestic depository institution's obligation to maintain a listing of all domestic financial institutions having an account there. All foreign nonbank financial institutions with accounts at a domestic financial institution, however, would still be required to be identified and listed.

SECTION 229. PAPERWORK REDUCTION REVIEW

Section 229 requires each Federal financial institution regulator and the National Credit Union Administration to review and repeal unnecessary internal written policies.

SECTION 230. DAILY CONFIRMATIONS FOR HOLD-IN-CUSTODY REPURCHASE TRANSACTIONS

Section 230 requires the Secretary of the Treasury to revise regulations relating to confirmations for hold-in-custody repurchase transactions to permit the waiver of the right to obtain daily written confirmations if disclosure has been received that adequately informed the counter party of the benefits of receiving daily written confirmations, including, but not limited to, the value of receiving confirmations in verifying transactions and in perfecting a security interest under the Uniform Commercial Code.

SECTION 231. REQUIRED REGULATORY REVIEW OF REGULATIONS

Section 231 requires a review of all banking regulations at least once every ten years in order to identify outdated or otherwise unnecessary regulatory requirements imposed upon insured depository institutions. Each regulation will be reviewed by the Financial Institution Examination Council (the Council) or one of the Federal banking agencies, depending on which agency or Council promulgated the regulation.

As part of the review process, the Council or such appropriate Federal banking agency shall designate each regulation by category. On a regular schedule within the 10-year period, the Council or such appropriate Federal banking agency shall notify and solicit comments on each category from the pubic for their recommendations.

Further, the Council or such appropriate Federal banking agency shall publish in the Federal Register a summary of the comments including highlighted issues and comments. When it is appropriate, the Council or such appropriate Federal banking agency shall eliminate those regulations that were found to be unnecessary. The Council shall report to the Congress within 30 days of the publication a summary including significant issues raised during the review period, the relative merits of those issues, and whether the problems need to be addressed by the appropriate Federal banking agency or by legislation.

SECTION 232. COUNTRY RISK REQUIREMENTS

Under Section 905 of the International Lending Supervision Act (ILSA), federal banking regulators are required to mandate that banks maintain special reserves when their overseas loans have become impaired due to a foreign borrower's inability to make payment. Such reserves cannot be counted as capital or surplus or allowances for possible loan losses and are charged against current income. Section 233 provides that the regulators may, but are not required to, impose such special reserves.

SECTION 233. AUDIT COSTS

This section repeals the requirement that independent auditors attest to bank compliance with safety and soundness regulations and internal controls. It also inserts a "privileged and confidential" element to the annual management report required under Federal Deposit Insurance Corporation Improvement Act (FDICIA) that would permit regulators to designate certain information included

in such reports as privileged and confidential and therefore not available to the public. The designation of information as privileged and confidential is not intended to alter or provide an exemption from any requirement to file audited financial statements and audit letters otherwise required under the federal securities laws or rules or regulations adopted thereunder. In addition, the section also creates a safe harbor for well-capitalized and well-managed banks from the requirements of section 36 of the FDIA except the requirement for an independent financial audit.

SECTION 234. STANDARDS FOR DIRECTOR AND OFFICER LIABILITY

Section 234 provides that outside directors are subject to the same culpability standards as independent contractors in enforcement actions by the regulatory agencies. Under the new standard, regulators are required to show that an outside director knowingly or recklessly committed the Act in question. Under the present law, outside directors are subject to the same standards as officers and inside directors of a financial institution.

SECTION 235. FOREIGN BANK APPLICATIONS

This section amends section 7(d) of the International Banking Act (IBA) to permit the Federal Reserve Board to approve an application by a foreign bank to establish a branch or agency in the United States if the home country supervisor is working to establish arrangements for the consolidated supervision of such foreign bank. This changes current law, which mandates denial of an application unless the foreign bank is already subject to consolidated supervision. The mandatory standard of consolidated supervision has prevented otherwise qualified banks from entering the U.S. market, even if the home country supervisors are working to put in place a framework for consolidated supervision of the bank.

This section also requires the Federal Reserve Board to act on an application within 180 days of its receipt, except that the Board may, after giving notice to the applicant and the licensing authority, extend the time for no more than an additional 180 day period. Such time frames are appropriate in light of the time that can elapse in transmitting and translating information to and from foreign countries. The amendment also permits the Board to deny an application if the applicant does not respond in a timely manner to requests for information necessary to process the application. Thus, the amendment establishes a definite time frame for final action while retaining an incentive for an applicant bank to provide information in a timely manner.

The section also amends section 7(e)(1) of the IBA. Currently, section 7(e)(1) allows the Board to terminate a State-licensed office of a foreign bank if the foreign bank has committed a violation of law or engaged in unsafe practices in the United States or if the foreign bank is not subject to consolidated supervision by its home country authorities. Section 235(b) provides that, with respect to the consolidated supervision standard, the Board can terminate a foreign bank's operations for lack of consolidated supervision if the home country authorities are not making progress in establishing arrangements for the bank's consolidated supervision. Section 235(c) provides the Board parallel authority to terminate federally

licensed offices of foreign banks in addition to its current authority to terminate State-licensed offices.

SECTION 236. DUPLICATE EXAMINATION OF FOREIGN BANKS

This section amends section 7(c) of the IBA relating to the Federal Reserve Board's examination authority over foreign banks. The amendment provides that (1) the Board must take all reasonable measures to coordinate examinations with the licensing authority of the foreign bank's branch or agency; and (2) a foreign bank's offices should be examined with the same frequency as a State or national bank (currently annually) and that this examination requirement may be met by an exam by State supervisor.

This section also provides that the Board shall assess foreign banks for the costs of examinations, but only to the extent that State member banks are charged by the Board for their examination costs. This provision ensures parallel treatment of U.S. and foreign banks.

SECTION 237. SECOND MORTGAGES

This section amends the Home Ownership and Equity Protection Act of 1994 to apply only to subordinate mortgages. It also mandates the dismissal of any administrative enforcement proceedings or other actions which are pending on the date of enacting of the Financial Institutions Regulatory Relief Act of 1995 and are based on regulations in effect under the TILA with respect to high-cost residential mortgage transactions.

SECTION 238. STREAMLINING FEDERAL DEPOSIT INSURANCE CORPORATION APPROVAL OF NEW STATE BANK POWERS

This section gives insured state banks and their subsidiaries the ability to engage in new activities by giving the FDIC 60 days notice as long as the institution remains in compliance with appropriate capital standards. The FDIC may extend this notice period up to 30 days for the purpose of issuing notices of disapproval. The FDIC may disapprove any new activity unless it determines that the activity would pose a significant risk to the appropriate insurance fund.

SECTION 239. REPEAL OF CALL REPORT ATTESTATION REQUIREMENT

This section repeals the three-director attestation requirement. This is in addition to the provision requiring an officer to make a declaration as to the correctness of the call report.

SECTION 240. AUTHORITY OF THE COMPTROLLER OF THE CURRENCY

Section 240 places a permanent moratorium on the authority of the OCC to expand bank insurance powers, without rolling back the status quo. The section also provides for the functional regulation of national bank insurance activities. In prescribing the terms of state supervision of insurance, the section provides that no provision of section 5136, or any other section of this Title of the revised statutes (including section 5136B as added by this legislation) or section 13 of the Federal Reserve Act may be construed as limiting or otherwise impairing the authority of any state to regulate.

During consideration of H.R. 1858 by the Committee, several modifications were made to section 240 to clarify its provisions. These modifications included:

A ban on any State prohibitions relating to the extent of insurance activities currently authorized for national banks.

State supervision of annuities limited to disclosure and licensing. No ability to limit lobby sales.

Grandfather from State regulation related to the extent of insurance activities for all banks in towns of 5000 currently engaged in insurance activities in all States, subject to the outcome of pending litigation.

Non-discrimination provisions to require that any State supervisory limitation is applied equally to state banks and S&Ls.

Non-discrimination language to protect against a State insurance regulator labeling traditional banking products as insurance.

Limitation on the definition of insurance requiring that the definition must be tied to a State regulator's authority under the relevant State insurance law.

Express protection of any rights to engage in insurance activities by bank holding companies under the BHCA.

In addition, the Committee adopted an amendment designed to make it clear that State insurance regulators could not overstep their authority to establish the regulatory framework within which national banks can act as agent or broker in the sale of insurance. That amendment also sought to assure that State insurance regulators would not be able to define traditional banking products as insurance. It did that by retaining for the Comptroller of the Currency the ability to define the "business of banking" and authorizing national banks or their subsidiaries to engage in such activities. The Committee wishes to make clear, however, that this language does not permit the Comptroller to engage in definitional "games" which was the genesis of Section 240 in the first place.

The effect of this provision is to clarify that a State may not determine that certain traditional banking products—those that are part of the business of banking—are actually insurance products. The authority to determine what is insurance and what is traditionally banking, subject to this clarification, must be exercised in a manner consistent with the overall objective of new section 5136A of the revised statutes, which is to protect a State's authority to regulate insurance. It is clearly not within the scope of a State's authority under this Section, or otherwise, to determine that other types of traditional banking products, like standby letters of credit, swaps and other risk management tools, put option bonds, asset-backed securities, loan participations, stock indexed CDs, or other similar products, are insurance products for purposes of the National Bank Act.

Insurance is a State regulated business and nothing in this legislation is intended to interfere with the functional regulation of insurance products. In keeping with that design, the Committee would not expect for the Comptroller to define any product as the "business of banking" which today is regulated as insurance by the States. While it may be true that some future products may have

some insurance features and some banking features, the Committee does not expect the Comptroller to seek to broaden banking powers without Congressional authorization and the Comptroller should not declare any current insurance products, regulated as such by the States, to be the "business of banking".

In addition, the Committee is aware that commodity futures and option contracts are used by national banks to hedge against or manage the risk of adverse price changes in various physical commodities and financial products and that some of these contracts are, in fact, traded by national banks to hedge against price movements in homeowners, catastrophe and other forms of insurance. In adopting a broad definition of "insurance" for purposes of national bank activities under the legislation, the Committee does not intend to suggest that state regulations may permissibly define insurance so as to purport to regulate the offer, sale or trading in commodity futures and option contracts by national banks which are exclusively regulated by the CFTC under the Commodity Exchange Act.

SECTION 241. NATIONAL BANK COMMUNITY DEVELOPMENT INSURANCE ACTIVITIES

Section 241 authorizes the Comptroller of the Currency to approve an application by a national bank located in an empowerment zone to act as an insurance agent or broker. However, the bank must provide sufficient evidence that competitively priced insurance products are not adequately available and that the insurance products are sold only in the empowerment zone.

This new section will provide greater access to insurance in disadvantaged communities where competitively priced insurance is inadequate. Moreover, this amendment will foster economic revitalization, such as new business and employment opportunities, in low income neighborhoods by permitting the sale of insurance in empowerment zones. Additionally, by requiring the sale of insurance to occur from a "full-service branch" in the empowerment zone, the amendment provides a significant incentive for banks to improve the quality and quantity of banking services in such communities.

Effective immediately, this amendment allows national banks having main offices or full-service branches in areas eligible for designation as empowerment zones or enterprise communities under section 1392 of the Internal Revenue Code of 1986, or in Indian reservations, to sell insurance from that location. The designation criteria for an empowerment zone or enterprise community assures that the community is one experiencing economic distress.

SECTION 242. AUTHORIZING BANK SERVICE COMPANIES TO ORGANIZE AS LIMITED LIABILITY PARTNERSHIPS

Section 242 of this legislation modifies the Bank Service Corporation Act by expanding the scope of companies that may be owned by banks under the Act to include limited liability companies. These companies often combine the elements of both corporations and partnerships to provide more flexibility in management and in the sharing of profits among its owners than do corporations. Fur-

thermore, these companies are taxed as partnerships under the Internal Revenue Code.

Under current law, the Bank Service Corporation Act only allows multiple banks to invest in stock-owned corporations. These corporations are permitted to perform activities that the banks could engage in directly. It enables banks to join together to share overhead expenses and to realize the kinds of efficiencies of scale that are available to larger banks. By permitting institutions to own limited liability companies, banks will be granted even greater regulatory relief because of the increased flexibility, profit incentive, and tax treatment noted above. Restrictions on activities that are imposed on corporations under current law and the authority of the federal banking agencies to examine and regulate these companies would be maintained. Finally, banks would continue to be required to obtain prior approval from their primary banking regulator in order to invest in these companies.

SECTION 243. BANK INVESTMENT IN EDGE ACT AND AGREEMENT CORPORATIONS

Section 25A of the Federal Reserve Act imposes a non-waivable limit on a member bank's ability to invest in subsidiaries organized under that section (i.e., Edge Act subsidiaries) and in subsidiaries held directly under Section 25 of the Federal Reserve Act (i.e., certain financial service corporations held by a member bank's non-U.S. branches). The current non-waivable limit of 10% of a member bank's capital and surplus was enacted as part of the original Edge Act in 1919, before U.S. banks or the Federal Reserve Board had significant international banking experience. The revision would extend the non-waivable limit to 25% of capital and surplus providing that the Federal Reserve Board does not find the additional amount would be unsafe and unsound. In making this determination, the Federal Reserve Board would consider, inter alia, the capital and management strength of the member bank. The amendment would not otherwise change current law.

SECTION 244. REPORT ON THE RECONCILIATION OF DIFFERENCES BETWEEN REGULATORY ACCOUNTING PRINCIPLES AND GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

When the FDICIA was enacted in 1991, the Congress noted that differences between Regulatory Accounting Principles (RAP) and Generally Accepted Accounting Principles (GAAP) created significant, unnecessary and costly regulatory reporting and control burdens. Accordingly, Section 121 of FDICIA called for uniform accounting principles consistent with GAAP (unless the appropriate regulator found that a RAP standard was necessary to protect safety and soundness, etc.). However, the regulators seem to have taken no significant actions toward this goal. Therefore, this section requires each appropriate regulator to report to both the House Committee on Banking and Financial Services and the Senate Committee on Banking, Housing and Urban Affairs, within 180 days of enactment, concerning the actions taken and to be taken to achieve the goal set by FDICIA. This report will set the stage for a meaningful Congressional review as an important step toward

making sure that there is steady but prudent amelioration of this regulatory burden.

SECTION 245. WAIVERS AUTHORIZED FOR RESIDENCY REQUIREMENT FOR NATIONAL BANK DIRECTORS

Section 5136 of the Revised Statutes of the United States (12 U.S.C. 72) imposes a residency requirement on directors of national banks. In general, current law requires all directors, during their whole term of service, to be citizens of the U.S. and requires that at least two-thirds of the directors must be residents of the State in which the bank is located, subject to certain exceptions. Section 245 provides that the Comptroller of the Currency may waive the residency requirement.

TITLE III—LENDER LIABILITY

SECTION 301. LENDER LIABILITY

Section 301 clarifies the liability under Federal environmental law for lenders, fiduciaries, and Federal banking and lending agencies by adding section 45 to the Federal Deposit Insurance Act. Although the Environmental Protection Agency promulgated rules which clarified exemptions for lenders and those who act in these capacities, the rule was overturned by a court case. Section 301, again, provides certainty as to when and to what extent these parties may be liable for violations under Federal environmental law for their lending, financial and fiduciary activities.

New section 45(a) provides that a lender is liable when a lender actually participates in management of another person's environmental activities, regardless of the lender's status as a lending institution. A lender is considered under this section to be "actually participating in management" if a lender makes decisions regarding the disposition of hazardous substances or exercises control at a management level. "Actually participating in management" does not include traditional lending activities, such as the extension of credit, holding a security interest, providing financial advice, or undertaking voluntary inspection of property, unless these activities rise to the level of participating in the operation and management of the property.

A lender who is held liable pursuant to new section 45(a) shall be liable for the cost of any response or corrective action to the extent and for the amount that the lender actively and directly contributed to the hazardous substance release. However, a lender shall not be liable for the cost of any response or corrective action for a release of a hazardous substance which commences prior to and continues after the lender obtains a security interest in the property, so long as the lender does not actually participate in the management after obtaining a security interest in the property.

Further, new section 45(b) provides that a fiduciary, while acting in a fiduciary capacity, is personally liable for non-compliance with Federal environmental law as if the fiduciary holds the property free of trust. The fiduciary's liability is limited to assets of the trust or estate which are sufficient to indemnify the fiduciary. If a fiduciary is liable for environmental harm, section 45(b) makes clear that such liability does not otherwise override indemnification

terms of the fiduciary contract of employee benefit plans made pursuant to section 3(3) of the Employee Retirement Income Security Act of 1974. However, the fiduciary's liability is not limited if (1) the fiduciary had preexisting liability, (2) the fiduciary fails to exercise due care or contributed to the release of a hazardous substance, or (3) the fiduciary established the trust for the purpose of avoiding or limiting liability under Federal environmental law.

Lastly, new section 45(e) provides three limitations on environmental liability of Federal banking and lending agencies and their subsequent purchasers. First, new section 45(e)(1)(A) exempts Federal banking and lending agencies, their subsidiaries and subsequent purchasers from strict liability for the release of a hazardous substance on properties which were acquired in connection with (1) receivership, conservatorship, or through liquidation, (2) the provision of loans, discounts, advances, or other financial assistance, or (3) civil or criminal proceeding or administrative enforcement action, either by order or settlement under state law. However, if the party directly caused or materially contributed to the release of a hazardous substance, the party will be held liable for any remedial measures to cure the damages. Second, section 45(e)(1)(B) limits the liability of these entities under State law to the value of the entity's interest in the property. Third, new section 45(e)(2) makes clear that government agencies and their subsequent purchasers are not subject to the environmental lien provisions at the time of transfer.

While new section 45(e) provides the liability limitations for Federal banking and lending agencies and their subsequent purchasers, it specifically states in new section 45(e)(1)(B) that it does not preempt State law. It also does not immunize subsequent purchasers from liability if the purchaser (1) had preexisting liability to the property or is related to a party with such liability, (2) fails to agree to take reasonable steps necessary to abate the release or to protect public health and safety consistent with Federal environmental laws, or (3) directly causes or significantly and materially contributes to any additional release or threatened release on the property pursuant to new section 45(e)(1)(D)(iv). Furthermore, if the subsequent purchaser failed to take reasonable steps necessary to abate the release or to protect public health and safety under applicable Federal environmental laws, then the subsequent purchaser remains liable to the appropriate government agency for the costs of such remedial action, not exceeding the fair market value of the property, according to new section 45(e)(1)(E).

Section 301(b) provides an effective date to occur upon the section's enactment and applies to any claim that has not reached final adjudication or settlement prior to enactment.

TITLE IV—ANNUAL STUDY AND REPORT ON IMPACT ON LENDING TO SMALL BUSINESS

SECTION 401. ANNUAL STUDY AND REPORT ON SMALL BUSINESS LENDING

This section requires an annual study and report by the federal banking regulators on the impact this legislation has on lending to small businesses.

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):

REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

* * * * * * *

FINDINGS AND PURPOSE

SEC. 2. (a) * * *

(b) It is the purpose of this Act to effect certain changes in the settlement process for residential real estate that will result—

(1) in more effective advance disclosure to home buyers and sellers of settlement costs;

(2) in the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services *without—*

(A) directly regulating settlement services prices; or

(B) directly regulating wages to bona fide employees that are not designed as a subterfuge to facilitate kickbacks among affiliated companies;

* * * * * * *

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) the term "federally related mortgage loan" includes any loan (other than temporary financing such as a construction loan) which—

(A) is secured by a first [or subordinate] lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

* * * * * * *

(7) the term "[controlled business arrangement] *affiliated business arrangement*" means an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmately influences the selection of that provider; [and]

(8) the term "associate" means one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent, or child of such person; (B) a corporation or business entity that controls, is con-

trolled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor, or franchisee of such person; or (D) anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business[.]*; and*

(9) the term "Board" means the Board of Governors of the Federal Reserve System.

UNIFORM SETTLEMENT STATEMENT

SEC. 4. (a) The [Secretary] *Board,* in consultation with the Administrator of Veterans' Affairs, the Federal Deposit Insurance Corporation, and the [Federal Home Loan Bank Board] *Director of the Office of Thrift Supervision,* shall develop and prescribe a standard form for the statement of settlement costs which shall be used (with such variations as may be necessary to reflect differences in legal and administrative requirements or practices in different areas of the country) as the standard real estate settlement form in all transactions in the United States which involve federally related mortgage loans. Such form shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement and shall indicate whether any title insurance premium included in such charges covers or insures the lender's interest in the property, the borrower's interest, or both. The [Secretary] *Board* may, by regulation, permit the deletion from the form prescribed under this section of items which are not, under local laws or customs, applicable in any locality, except that such regulation shall require that the numerical code prescribed by the [Secretary] *Board* be retained in forms to be used in all localities. Nothing in this section may be construed to require that that part of the standard form which relates to the borrower's transaction to be furnished to the seller, or to require that that part of the standard form which relates to the seller be furnished to the borrower.

(b) The form prescribed under this section shall be completed and made available for inspection by the borrower at or before settlement by the person conducting the settlement, except that (1) the [Secretary] *Board* may exempt from the requirements of this section settlements occurring in localities where the final settlement statement is not customarily provided at or before the date of settlement, or settlements where such requirements are impractical and (2) the borrower may, in accordance with regulations of the [Secretary] *Board,* waive his right to have the form made available at such time. Upon the request of the borrower to inspect the form prescribed under this section during the business day immediately preceding the day of settlement, the person who will conduct the settlement shall permit the borrower to inspect those items which are known to such person during such preceding day.

SPECIAL INFORMATION BOOKLETS

SEC. 5. (a) The [Secretary] *Board* shall prepare and distribute booklets to help persons borrowing money to finance the purchase

of residential real estate better to understand the nature and costs of real estate settlement services. The [Secretary] *Board* shall distribute such booklets to all lenders which make federally related mortgage loans.

(b) Each booklet shall be in such form and detail as the [Secretary] *Board* shall prescribe and, in addition to such other information as the [Secretary] *Board* may provide, shall include in clear and concise language—

(1) a description and explanation of the nature and purpose of each cost incident to a real estate settlement;

(2) an explanation and sample of the standard real estate settlement form developed and prescribed under section 4;

(3) a description and explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate;

(4) an explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incident to a real estate settlement; and

(5) an explanation of the unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

(c) Each lender shall include with the booklet a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the [Secretary] *Board*. Such booklets shall take into consideration differences in real estate settlement procedures which may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.

(d) Each lender referred to in subsection (a) shall provide the booklet described in such subsection to each person from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate. Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no booklet need be provided if the lender denies the application for credit before the end of the 3-day period.

(e) Booklets may be printed and distributed by lenders if their form and content are approved by the [Secretary] *Board* as meeting the requirements of subsection (b) of this section.

SERVICING OF MORTGAGE LOANS AND ADMINISTRATION OF ESCROW ACCOUNTS

SEC. 6. [(a) DISCLOSURE TO APPLICANT RELATING TO ASSIGNMENT, SALE, OR TRANSFER OF LOAN SERVICING.—

[(1) IN GENERAL.—Each person who makes a federally related mortgage loan shall disclose to each person who applies for any such loan, at the time of application for the loan—

[(A) whether the servicing of any such loan may be assigned, sold, or transferred to any other person at any time while such loan is outstanding;

[(B) at the choice of the person making a federally related mortgage loan—

[(i) for each of the most recent 3 calendar years completed (at the time of such application), the percentage (rounded to the nearest quartile) of loans made by such person for which the servicing has been assigned, sold, or transferred as of the end of the most recent calendar year completed, except that—

[(I) for any loan application during the 12-month period beginning on the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the information disclosed under this subparagraph may be for only the most recent calendar year completed, and for any loan application during the 12-month period beginning 1 year after the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the information disclosed under this subparagraph may be for the most recent 2 calendar years completed; and

[(II) this subparagraph may not be construed to require the inclusion, in the percentage disclosed, of any loans the servicing of which has been assigned, sold, or transferred by the person making the loan to a transferee servicer that is an affiliate or subsidiary of such person; or

[(ii) a statement that the person making the loan has previously assigned, sold, or transferred the servicing of federally related mortgage loans; and

[(C) if the person who makes the loan does not engage in the servicing of any federally related mortgage loans, that there is a present intent on the part of such person (at the time of such application) to assign, sell, or transfer the servicing of such loan to another person.

[(2) MODEL DISCLOSURE STATEMENTS.—Not later than 90 days after the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the Secretary shall develop a model disclosure statement for notification to applicants under paragraph (1) with respect to servicing procedures, transfer practices and requirements, and complaint resolution. The model statement shall provide for the person originating the loan to disclose their capacity to service loans and the best available estimate of the percentage of all loans made by such person for which the servicing will be assigned, sold, or transferred during the 12-month period beginning upon the origination. The estimate shall be expressed as one of the following range of possibilities—between 0 and 25 percent, between 26 and 50 percent, between 51 and 75 percent, or between 76 and 100 percent. This paragraph may not be construed to require the inclusion, in the estimate disclosed, of any loans the servicing of which will be assigned, sold, or transferred by the person originating the loan to a transferee servicer that is an affiliate or subsidiary of such person.

[(3) SIGNATURE OF APPLICANT.—Any disclosure of the information required under paragraph (1) shall not be effective for purposes of this section unless the disclosure is accompanied

by a written statement, in such form as the Secretary shall develop before the expiration of the 90-day period beginning on the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, that the applicant has read and understood the disclosure and that is evidenced by the signature of the applicant at the place where such statement appears in the application.]

(a) DISCLOSURE TO APPLICANT RELATING TO ASSIGNMENT, SALE, OR TRANSFER OF LOAN SERVICING.—

(1) IN GENERAL.—Each person who makes a federally related mortgage loan shall disclose to each person who applies for any such loan, at the time of application for the loan, whether the servicing of any such loan may be assigned, sold, or transferred to any other person at any time while such loan is outstanding.

(2) SIGNATURE OF APPLICANT.—Any disclosure of the information required under paragraph (1) shall not be effective for purposes of this section unless the disclosure is accompanied by a written statement, in such form as the Secretary shall develop before the expiration of the 180-day period beginning on the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995, that the applicant has read and understood the disclosure and that is evidenced by the signature of the applicant at the place where such statement appears in the application.

* * * * * * *

(j) TRANSITION.—

(1) * * *

* * * * * * *

(3) REGULATIONS AND EFFECTIVE DATE.—The [Secretary] *Board* shall, by regulations that shall take effect not later than April 20, 1991, establish any requirements necessary to carry out this section. Such regulations shall include the model disclosure statement required under subsection (a)(2).

SEC. 7. EXEMPTED TRANSACTIONS.

(a) IN GENERAL.—This Act does not apply to credit transactions involving extensions of credit—

(1) primarily for business, commercial, or agricultural purposes; or

(2) to government or governmental agencies or instrumentalities.

(b) INTERPRETATION.—In issuing regulations pursuant to section 19(a) of this Act, the Board shall ensure that, with regard to subsection (a), the exemption for business credit includes all business credit which is exempt from the Truth in Lending Act in accordance with section 226.3(a) of the regulations prescribed by the Board known as "regulation Z" (12 C.F.R. 226.3(a)), as in effect on the date of enactment of the Financial Institutions Regulatory Relief Act of 1995.

PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES

SEC. 8. (a) * * *

* * * * * * *

(c) Nothing in this section shall be construed as prohibiting (1) the payment of a fee (A) to attorneys at law for services actually rendered or (B) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or (C) by a lender to its duly appointed agent for services actually performed in the making of a loan, (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed, (3) payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers, (4) [controlled business arrangements] *affiliated business arrangements* so long as (A) at or prior to the time of the referral a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with the referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred, except that where a lender makes the referral, this requirement may be satisfied as part of and at the time that the estimates of settlement charges required under section 5(c) are provided, (B) such person is not required to use any particular provider of settlement services, and (C) the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship, or (5) such other payments or classes of payments or other transfers as are specified in regulations prescribed by the Secretary, after consultation with the Attorney General, the Secretary of Veterans Affairs, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Secretary of Agriculture. For purposes of the preceding sentence, the following shall not be considered a violation of clause (4)(B): (i) any arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or (ii) any arrangement where an attorney or law firm represents a client in a real estate transaction issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(d)(1) Any person or persons who *willfully* violate the provisions of this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

* * * * * * *

(3) No person or persons shall be liable for a violation of the provisions of section (8)(c)(4)(A) if such person or persons proves by a preponderance of the evidence that such violation [was not intentional and] resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adapted to avoid such error.

(4) The Secretary, *any other agency described in subsection (f)(1)*, the Attorney General of any State, or the insurance commissioner of any State may bring an action to enjoin violations of this section.

* * * * * *

(6) No provision of State law or regulation that imposes more stringent limitations on [controlled business arrangements] *affiliated business arrangements* shall be construed as being inconsistent with this section.

* * * * * * *

(e) NEGOTIATED REGULATIONS.—

(1) IN GENERAL.—The Secretary may not publish a proposed or final regulation under this section and section 9 after the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995 unless the Secretary has used the negotiated rulemaking procedure established under subchapter III of chapter 5 of title 5, United States Code, to attempt to negotiate and develop the rule.

(2) CONSISTENCY WITH PURPOSE.—Any regulation prescribed in accordance with paragraph (1) shall be consistent with the purposes of this title as set forth in section 2.

(f) ADMINISTRATIVE ENFORCEMENT.—

(1) IN GENERAL.—Compliance with the requirements of this section and sections 9 and 12 shall be enforced under this Act—

(A) in the case of an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), by the appropriate Federal banking agency (as defined in such section);

(B) in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act), by the National Credit Union Administration;

(C) in the case of a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956) and any affiliate of any such holding company (other than an insured depository institution), by the Board;

(D) in the case of a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act) and any affiliate of any such holding company (other than an insured depository institution), by the Director of the Office of Thrift Supervision; and

(E) in the case of any other person, by the Secretary.

(2) SPECIAL RULES RELATING TO DETERMINATION OF APPROPRIATE REGULATOR.—

(A) CASES OF MORE THAN 1 APPROPRIATE REGULATOR.—If, under paragraph (1), a company may be regulated by more than 1 agency, the Board shall determine which agency shall be the responsible agency, notwithstanding paragraph (1).

(B) CASES INVOLVING JOINT VENTURES, PARTNERSHIPS, AND OTHER AFFILIATED BUSINESS ARRANGEMENTS.—If any insured depository institution is involved in a joint venture, partnership, or other affiliated business arrangement with any person who is not an insured depository institution, the agency responsible for enforcing this section and sections 9

and 12 with respect to such insured depository institution shall be the agency with such responsibility with respect to such joint venture, partnership, or other affiliated business arrangement.

(3) INTERAGENCY COOPERATION AND ENFORCEMENT GUIDELINES.—All the agencies referred to in any subparagraph of paragraph (1) shall cooperate with each other to develop enforcement guidelines and other means for achieving effective compliance with this section and sections 9 and 12.

(4) PREFERENCE FOR CIVIL ENFORCEMENT OVER CRIMINAL ENFORCEMENT.—As part of the cooperative efforts required under paragraph (3), the agencies referred to in paragraph (1) shall consider means for achieving compliance with this section and section 9 through the exercise of administrative enforcement authority under this subsection without resorting to criminal enforcement actions under subsection (d) except in appropriate cases.

(5) EFFECTIVE DATE.—Paragraphs (1) and (2) shall not take effect until joint interagency cooperation and enforcement guidelines are adopted by all the agencies to which paragraphs (1) and (2) apply and the enforcement authority of the Secretary with respect to this section and sections 9 and 12 shall continue until such paragraphs take effect.

* * * * * * *

ESCROW ACCOUNTS

SEC. 10. (a) * * *

* * * * * * *

(c) ESCROW ACCOUNT STATEMENTS.—

(1) INITIAL STATEMENT.—

(A) * * *

* * * * * * *

(C) INITIAL STATEMENT AT CLOSING.—Any servicer may submit the statement required under subparagraph (A) to the borrower at closing and may incorporate such statement in the uniform settlement statement required under section 4. [Not later than the expiration of the 90-day period beginning on the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the] *The* Secretary shall issue regulations prescribing any changes necessary to the uniform settlement statement under section 4 that specify how the statement required under subparagraph (A) of this section shall be incorporated in the uniform settlement statement.

* * * * * * *

(d) PENALTIES.—

(1) IN GENERAL.—In the case of each failure to submit a statement to a borrower as required under subsection (c), the [Secretary] *Board* shall assess to the lender or escrow servicer failing to submit the statement a civil penalty of $50 for each such failure, but the total amount imposed on such lender or

escrow servicer for all such failures during any 12-month period referred to in subsection (b) may not exceed $100,000.

* * * * * * *

[ESTABLISHMENT ON DEMONSTRATION BASIS OF LAND PARCEL RECORDATION SYSTEM

[SEC. 13. The Secretary shall establish and place in operation on a demonstration basis, in representative political subdivisions (selected by him) in various areas of the United States, a model system or systems for the recordation of land title information in a manner and form calculated to facilitate and simplify land transfers and mortgage transactions and reduce the cost thereof, with a view to the possible development (utilizing the information and experience gained under this section) of a nationally uniform system of land parcel recordation.

[REPORT OF THE SECRETARY ON NECESSITY FOR FURTHER CONGRESSIONAL ACTION

[SEC. 14. (a) The Secretary, after consultation with the Administrator of Veterans' Affairs, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, and after such study, investigation, and hearings (at which representatives of consumers' groups shall be allowed to testify) as he deems appropriate, shall, not less than three years nor more than five years from the effective date of this Act, report to the Congress on whether, in view of the implementation of the provisions of this Act imposing certain requirements and prohibiting certain practices in connection with real estate settlements, there is any necessity for further legislation in this area.

[(b) If the Secretary concludes that there is necessity for futher legislation, he shall report to the Congress on the specific practices or problems that should be the subject of such legislation and the corrective measures that need to be taken. In addition, the Secretary shall include in his report—

[(1) recommendations on the desirability of requiring lenders of federally related mortgage loans to bear the costs of particular real estate settlement services that would otherwise be paid for by borrowers;

[(2) recommendations on whether Federal regulation of the charges for real estate settlement services in federally related mortgage transactions is necessary and desirable, and, if he concludes that such regulation is necessary and desirable, a description and analysis of the regulatory scheme he believes Congress should adopt; and

[(3) recommendations on the ways in which the Federal Government can assist and encourage local governments to modernize their methods for the recordation of land title information, including the feasibility of providing financial assistance or incentives to local governments that seek to adopt one of the model systems developed by the Secretary in accordance with the provisons of section 13 of this Act.

[DEMONSTRATION TO DETERMINE FEASIBILITY OF INCLUDING STATEMENTS OF SETTLEMENT COSTS IN SPECIAL INFORMATION BOOKLETS

[SEC. 15. The Secretary shall, on a demonstration basis in selected housing market areas, have prepared and included in the special information booklets required to be furnished under section 5 of this Act, statements of the range of costs for specific settlement services in such areas. Not later than June 30, 1976, the Secretary shall transmit to the Congress a full report on the demonstration conducted under this section. Such report shall contain the Secretary's assessment of the feasibility of preparing and including settlement cost range statements for all housing market areas in the special information booklets for such areas.]

JURISDICTION OF COURTS

SEC. 16. Any action pursuant to the provisions of section 8 or 9 may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within one year from the date of the occurrence of the violation, except that actions brought by the [Secretary,] *Board, an agency referred to in any subparagraph of section 8(f)(1),* the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation.

* * * * * * *

RELATION TO STATE LAWS

SEC. 18. This Act does not annul, alter, or affect, or exempt any person subject to the provisions of this Act from complying with, the laws of any State with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of this Act, and then only to the extent of the inconsistency. The [Secretary is authorized to] *Board and Secretary may jointly* determine whether such inconsistencies exist. The *Board and* Secretary may not determine that any State law is inconsistent with any provision of this Act if the *Board and* Secretary [determines] *determine* that such laws gives greater protection to the consumer. In making these determinations the *Board and* Secretary shall consult with the appropriate Federal agencies.

[AUTHORITY OF THE SECRETARY]

AUTHORITY OF THE SECRETARY AND THE FEDERAL RESERVE BOARD

SEC. 19. [(a) The Secretary is authorized to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of this Act.] *(a) REGULATIONS.—*

(1) IN GENERAL.—Subject to paragraph (2), the Secretary and the Board may prescribe such regulations, make such interpretations, and grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of this Act.

(2) APPLICATION.—

(A) BOARD.—The authority of the Board under paragraph (1) shall apply with respect to—

(i) sections 4, 5, 6, 10, and 12; and

(ii) sections 3, 7, 17, and 18 to the extent such sections are applicable with respect to the sections described in clause (i).

(B) SECRETARY.—The authority of the Secretary under paragraph (1) shall apply with respect to—

(i) sections 8 and 9; and

(ii) sections 3, 7, 17, and 18 to the extent such sections are applicable with respect to the sections described in clause (i).

(b) No provision of this Act or the laws of any State imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Secretary, *the Board,* or the Attorney General, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(c)(1) The [Secretary] *Board, with respect to any action to enforce section 4, 5, 6, or 10, and each agency referred to in any subparagraph of section 8(f)(1), with respect to any action to enforce section 8, 9, or 12,* may investigate any facts, conditions, practices, or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of this Act, in prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning real estate settlement practices. To aid in the investigations, the [Secretary] *Board or such other agency* is authorized to hold such hearings, administer such oaths, and require by subpena the attendance and testimony of such witnesses and production of such documents as the [Secretary] *Board or such other agency* deems advisable.

(2) Any district court of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena of the [Secretary] *Board or an agency referred to in any subparagraph of section 8(f)(1)* issued under this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

* * * * * * *

TRUTH IN LENDING ACT

TITLE I—CONSUMER CREDIT COST

* * * * * * *

CHAPTER 1—GENERAL PROVISIONS

* * * * * * *

§ 101. Short title

This title may be cited as the Truth in Lending Act.

* * * * * * *

§ 103. Definitions and rules of construction

(a) * * *

* * * * * * *

(aa)(1) A mortgage referred to in this subsection means a consumer credit transaction that is secured by *a subordinate mortgage on* the consumer's principal dwelling, other than [a residential mortgage transaction], a reverse mortgage transaction, or a transaction under an open end credit plan, if—

(A) * * *

* * * * * * *

§ 104. Exempted transactions

This title does not apply to the following:

(1) * * *

* * * * * * *

(7) Transactions for which the Board, by regulation, determines that coverage under the Act is not needed to carry out the purposes of the Act.

§ 105. Regulations

(a) * * *

(b) EXEMPTIVE AUTHORITY.—

(1) IN GENERAL.—The Board shall exempt from all or parts of this title any class of transactions for which, in the Board's judgment, coverage under all or part of this title does not provide a measurable benefit to consumers in the form of useful information or protection.

(2) FACTORS TO BE CONSIDERED.—In determining which classes of transactions to exempt in whole or in part, the Board shall consider, among other factors, the following:

(A) The amount of the loan or closing costs and whether the disclosures, right of rescission, and other provisions are necessary, particularly for small loans.

(B) Whether the requirements of this title complicate, hinder, or make more expensive the credit process for the class of transactions.

(C) The status of the borrower, including, the borrowers' related financial arrangements, the financial sophistication of the borrower relative to the type of transaction, and the importance of the credit and related supporting property to the borrower.

[(b)] *(c)* The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this title and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. In devising such forms, the Board shall consider the use by

creditors or lessors of data processing or similar automated equipment. Nothing in this title may be construed to require a creditor or lessor to use any such model form or clause prescribed by the Board under this section. A creditor or lessor shall be deemed to be in compliance with the disclosure provisions of this title with respect to other than numerical disclosures if the creditor or lessor (1) uses any appropriate model form or clause as published by the Board, or (2) uses any such model form or clause and changes it by (A) deleting any information which is not required by this title, or (B) rearranging the format, if in making such deletion or rearranging the format, the creditor or lessor does not affect the substance, clarity, or meaningful sequence of the disclosure.

[(c)] *(d)* Model disclosure forms and clauses shall be adopted by the Board after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

[(d)] *(e)* Any regulation of the Board, or any amendment or interpretation thereof, requiring any disclosure which differs from the disclosures previously required by this chapter, chapter 4, or chapter 5, or by any regulation of the Board promulgated thereunder shall have an effective date of that October 1 which follows by at least six months the date of promulgation, except that the Board may at its discretion take interim action by regulation, amendment, or interpretation to lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements or shorten the length of time for creditors or lessors to make such adjustments when it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices. Notwithstanding the previous sentence, any creditor or lessor may comply with any such newly promulgated disclosure requirements prior to the effective date of the requirements.

§ 106. Determination of finance charge

(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of a type payable in a comparable cash transaction. *The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not expressly require the imposition of the charges or the services provided and does not retain the charges.* Examples of charges which are included in the finance charge include any of the following types of charges which are applicable.

(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

(2) Service or carrying charge.

(3) Loan fee, finder's fee, or similar charge.

(4) Fee for an investigation or credit report.

(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

(6) Mortgage broker fees.

* * * * * * *

[(c) Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.]

(c) TREATMENT OF CERTAIN DEBT CANCELLATION AND DEFICIENCY WAIVER CONTRACTS.—Charges or premiums for any insurance or for any voluntary noninsurance product, written in connection with any consumer credit transaction, that provides protections against loss of or damage to property or against part or all of the debtor's liability for amounts in excess of the value of the collateral securing the debtor's obligation, or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance or product if obtained from or through the creditor, and stating that the person to whom credit is extended may choose the person through which the insurance or product is to be obtained.

(d) If any of the following items is itemized and disclosed in accordance with the regulations of the Board in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

(1) * * *

* * * * * * *

(3) Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a precondition for recording the instrument securing the evidence of indebtedness.

(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

(1) * * *

[(2) Fees for preparation of a deed, settlement statement, or other documents.]

(2) Fees for preparation of loan-related documents and for attending or conducting settlement.

(3) Escrows for future payments of taxes and insurance.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees, *including fees related to pest infestations, premises and structural inspections, and flood hazards.*

(6) Credit reports.

(f) TOLERANCES FOR ACCURACY.—In connection with credit transactions not under an open end credit plan that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge—

(1) except as provided in paragraph (2), shall be treated as being accurate for purposes of this title if the amount disclosed as the finance charge—

(A) does not vary from the actual finance charge by more than an amount equal to ½ of the numerical tolerance corresponding to, and generated by, the tolerance provided by section 107(c) with respect to the annual percentage rate, but in no case may the tolerance under this paragraph be less than $25 or greater than $200; or

(B) is greater than the amount required to be disclosed under this title; and

(2) shall be treated as being accurate for purposes of section 125 if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to 0.5 percent of the total amount of credit extended.

* * * * * * *

§ 108. Administrative enforcement

(a) * * *

* * * * * * *

(e)(1) * * *

* * * * * * *

(3) Notwithstanding paragraph (2), no adjustment shall be ordered (A) if it would have a significantly adverse impact upon the safety or soundness of the creditor, but [in any such case, the agency may require] *in any such case, the agency may (i) require* a partial adjustment in an amount which does not have such an impact[, except that with respect to any transaction consummated after the effective date of section 608 of the Truth in Lending Simplification and Reform Act, the agency shall]*; or (ii)* require the full adjustment, but permit the creditor to make the required adjustment in partial payments over an extended period of time which the agency considers to be [reasonable,] *reasonable if, in the case of an agency referred to in paragraph (1), (2), or (3) of subsection (a), the agency determines that a partial adjustment or the making of partial payments over an extended period is necessary to avoid causing the creditor to become undercapitalized (as determined in accordance with regulations prescribed by such agency under section 38 of the Federal Deposit Insurance Act);* (B) if the amount of the adjustment would be less than $1, except that if more than one year has elapsed since the date of the violation, the agency may require that such amount be paid into the Treasury of the United States, or (C) except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in the case of an open-end credit plan, more than two years after the violation, or in the case of any other extension of credit, as follows:

(i) * * *

*   *   *   *   *   *   *

CHAPTER 2—CREDIT TRANSACTIONS

Sec.
121. General requirement of disclosure.
122. Form of disclosure; additional information.

*   *   *   *   *   *   *

139. Certain limitations on liability.

§ 121. General requirement of disclosure

(a) * * *

*   *   *   *   *   *   *

(c) The Board may provide by regulation that any portion of the information required to be disclosed by this title may be given in the form of estimates where the provider of such information is not in a position to know exact information. *In the case of any consumer credit transaction a portion of the interest on which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of this title if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction.*

*   *   *   *   *   *   *

§ 125. Right of rescission as to certain transactions

(a) * * *

(b) When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, *except any charge for an appraisal report or credit report,* and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or [otherwise] *as otherwise required under this subsection,* and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

*   *   *   *   *   *   *

(e) This section does not apply to—

(1) a residential mortgage transaction as defined in section 103(w);

(2) a transaction which constitutes a refinancing or consolidation (with no new advances), *other than a transaction described in subsection (e)(5),* of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property;

(3) a transaction in which an agency of a State is the creditor; [or]

(4) advances under a preexisting open end credit plan if a security interest has already been retained or acquired and such advances are in accordance with a previously established credit limit for such plan[.]*; or*

(5) a transaction, other than a mortgage referred to in section 103(aa), which—

(A) is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction as defined in section 103(w), or is any subsequent refinancing of such a transaction; and

(B) does not provide any new consolidation or new advance.

* * * * * * *

(h) LIMITATION ON RESCISSION.—An obligor shall have no rescission rights arising from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section if the creditor provided the obligor the appropriate form of written notice published and adopted by the Board, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor.

(i) RESCISSION RIGHTS IN FORECLOSURE.—

(1) IN GENERAL.—Notwithstanding section 139, and subject to the time period provided in subsection (f), in addition to any other right of rescission available under this section for a transaction, upon an action of a creditor to execute foreclosure on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if—

(A) a mortgage brokers fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

(B) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the Board or a comparable written notice, or was not properly completed by the creditor.

(2) TOLERANCE FOR DISCLOSURES.—Notwithstanding section 106(f), and subject to the time period provided in subsection (f), for the purposes of exercising any rescission rights following an action by a creditor to foreclose on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not

vary from the actual finance charge by more than $35 or is greater than the amount required to be disclosed under this title.

* * * * * * *

SEC. 127A. DISCLOSURE REQUIREMENTS FOR OPEN END CONSUMER CREDIT PLANS SECURED BY THE CONSUMER'S PRINCIPAL DWELLING.

(a) APPLICATION DISCLOSURES.—In the case of any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, the creditor shall make the following disclosures in accordance with subsection (b):

(1) FIXED ANNUAL PERCENTAGE RATE.—Each annual percentage rate imposed in connection with extensions of credit under the plan and a statement that such rate does not include costs other than interest.

(2) VARIABLE PERCENTAGE RATE.—In the case of a plan which provides for variable rates of interest on credit extended under the plan—

(A) * * *

* * * * * * *

(G) subject to subsection (b)(3), a table, based on a $10,000 extension of credit, showing how the annual percentage rate and the minimum periodic payment amount under each repayment option of the plan would have been affected during the preceding 15-year period by changes in any index used to compute such rate, *or a statement that the monthly payment may increase or decrease significantly due to increases in the annual percentage rate*;

* * * * * * *

(b) TIME AND FORM OF DISCLOSURES.—

(1) * * *

* * * * * * *

(3) REQUIREMENT FOR HISTORICAL TABLE.—In preparing the table [required under] *referred to in* subsection (a)(2)(G), the creditor shall consistently select one rate of interest for each year and the manner of selecting the rate from year to year shall be consistent with the plan.

* * * * * * *

§ 128. Consumer credit not under open end credit plans

(a) For each consumer credit transaction other than under an open end credit plan, the creditor shall disclose each of the following items, to the extent applicable:

(1) * * *

* * * * * * *

(14) In any variable rate transaction secured by the consumer's principal dwelling with a term greater than 1 year, at the creditors' option, a statement that the monthly payment may increase or decrease substantially, or a historical example illus-

trating the effects of interest rate changes implemented according to the loan program.

(b)(1) * * *

* * * * * * *

(3) In the case of a residential mortgage transaction, the disclosures under subsection (a) shall include the following:

(A) The note rate and points, and a statement, if applicable, that these terms are subject to change.

(B) A statement that the creditor must include the disclosed note rate and points in the credit agreement unless, in relation to either or both of those terms—

(i) the disclosure clearly and conspicuously indicates that the term is subject to change, or

(ii) in the case of any term to which clause (i) does not apply—

(I) the creditor has clearly and conspicuously indicated that the term is conditioned on closing the transaction within a prescribed time;

(II) the creditor has promptly and clearly communicated to the consumer the information and documentation that the consumer is required to provide to the creditor; and

(III) the consumer has failed to provide such information and documentation within a reasonable time after receiving that communication.

* * * * * * *

§ 130. Civil liability

(a) Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this chapter, including any requirement under section 125, or chapter 4 or 5 of this title with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, [or] (ii) in the case of an individual action relating to a consumer lease under chapter 5 of this title, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000, *or (iii) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than $250 or greater than $2,500;* or

* * * * * * *

§ 131. Liability of assignees

(a) * * *

* * * * * * *

(e) LIABILITY OF ASSIGNEE FOR CONSUMER CREDIT TRANSACTIONS SECURED BY REAL PROPERTY.—

(1) IN GENERAL.—Except as otherwise specifically provided in this title, any civil action against a creditor for a violation of this title, and any proceeding under section 108 against a creditor, with respect to a consumer credit transaction secured by real property may be maintained against any assignee of such creditor only if—

(A) the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with such transaction pursuant to this title; and

(B) the assignment to the assignee was voluntary.

(2) VIOLATION APPARENT ON THE FACE OF THE DISCLOSURE DESCRIBED.—For the purpose of this section, a violation is apparent on the face of the disclosure statement if—

(A) the disclosure can be determined to be incomplete or inaccurate from the face of the disclosure statement, any itemization of the amount financed, or any other disclosure of disbursement; or

(B) the disclosure statement does not use the terms or format required to be used by this title.

(f) TREATMENT OF SERVICER.—

(1) IN GENERAL.—A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of such obligation for purposes of this section unless the servicer is the owner of the obligation.

(2) SERVICER NOT TREATED AS OWNER ON BASIS OF ASSIGNMENT FOR ADMINISTRATIVE CONVENIENCE.—A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of the owner of the obligation or the master servicer of the obligation.

(3) SERVICER DEFINED.—For purposes of this subsection, the term "servicer" has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974.

* * * * * * *

SEC. 139. CERTAIN LIMITATIONS ON LIABILITY.

(a) LIMITATIONS ON LIABILITY.—For any consumer credit transaction subject to this title that is consummated before the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995, a creditor or any assignee of a creditor shall have no civil, administrative, or criminal liability under this title for, and a consumer shall have no extended rescission rights under section 125(f) with respect to—

(1) the creditor's treatment, for disclosure purposes, of—

(A) taxes described in section 106(d)(3);

(B) fees and amounts described in section 106(e) (2) and (5);

(C) fees and amounts referred to in the 3rd sentence of section 106(a); or

(D) mortgage broker fees referred to in section 106(a)(6);

(2) the form of written notice used by the creditor to inform the obligor of the rights of the obligor under section 125 if the creditor provided the obligor with a properly dated form of written notice published and adopted by the Board or a comparable written notice; or

(3) any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed—

(A) may be treated as accurate pursuant to section 106(f), or

(B) is greater than the amount or percentage required to be disclosed under this title.

(b) EXCEPTIONS.—Subsection (a) shall not apply to—

(1) any individual action or counterclaim brought under this title which was filed before June 1, 1995;

(2) any class action brought under this title for which a final order certifying a class was entered before January 1, 1995;

(3) the named individual plaintiffs in any class action brought under this title which was filed before June 1, 1995; or

(4) any consumer credit transaction with respect to which a timely notice of rescission was sent to the creditor before June 1, 1995.

SECTION 106 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

TECHNICAL ASSISTANCE, COUNSELING TO TENANTS AND HOMEOWNERS, AND LOANS TO SPONSORS OF LOW- AND MODERATE-INCOME HOUSING

SEC. 106. (a) * * *

*　*　*　*　*　*　*

(c) GRANTS FOR HOMEOWNERSHIP COUNSELING ORGANIZATIONS.—

(1) * * *

*　*　*　*　*　*　*

[(5) NOTIFICATION OF AVAILABILITY OF HOMEOWNERSHIP COUNSELING.—

[(A) NOTIFICATION OF AVAILABILITY OF HOMEOWNERSHIP COUNSELING.—

[(i) REQUIREMENT.—Except as provided in subparagraph (C), the creditor of a loan (or proposed creditor) shall provide notice under clause (ii) to (I) any eligible homeowner who fails to pay any amount by the date the amount is due under a home loan, and (II) any applicant for a mortgage described in paragraph (4).

[(ii) CONTENT.—Notification under this subparagraph shall—

[(I) notify the homeowner or mortgage applicant of the availability of any homeownership counseling offered by the creditor (or proposed creditor);

[(II) if provided to an eligible mortgage applicant, state that completion of a counseling program is required for insurance pursuant to section 203 of the National Housing Act; and

[(III) notify the homeowner or mortgage applicant of the availability of homeownership counseling provided by nonprofit organizations approved by the Secretary and experienced in the provision of homeownership counseling, or provide the toll-free telephone number described in subparagraph (D)(i).

[(B) DEADLINE FOR NOTIFICATION.—The notification required in subparagraph (A) shall be made—

[(i) in a manner approved by the Secretary; and

[(ii) before the expiration of the 45-day period beginning on the date on which the failure referred to in such subparagraph occurs.

[(C) EXCEPTIONS.—Notification under subparagraph (A) shall not be required with respect to any loan—

[(i) insured or guaranteed under chapter 37 of title 38, United States Code; or

[(ii) for which the eligible homeowner pays the amount overdue before the expiration of the 45-day period under subparagraph (B)(ii).

[(D) ADMINISTRATION AND COMPLIANCE.—The Secretary shall, to the extent of amounts approved in appropriation Acts, enter into an agreement with an appropriate private entity under which the entity will—

[(i) operate a toll-free telephone number through which any eligible homeowner can obtain a list of nonprofit organizations, which shall be updated annually, that—

[(I) are approved by the Secretary and experienced in the provision of homeownership counseling; and

[(II) serve the area in which the residential property of the homeowner is located;

[(ii) monitor the compliance of creditors with the requirements of subparagraphs (A) and (B); and

[(iii) report to the Secretary not less than annually regarding the extent of compliance of creditors with the requirements of subparagraphs (A) and (B).

[(E) REPORT.—The Secretary shall submit a report to the Congress not less than annually regarding the extent of compliance of creditors with the requirements of subparagraphs (A) and (B) and the effectiveness of the entity monitoring such compliance. The Secretary shall also include in the report any recommendations for legislative action to increase the authority of the Secretary to penalize creditors who do not comply with such requirements.]

* * * * * * *

HOME MORTGAGE DISCLOSURE ACT OF 1975

TITLE III—HOME MORTGAGE DISCLOSURE

SHORT TITLE

SEC. 301. This title may be cited as the "Home Mortgage Disclosure Act of 1975".

* * * * * * *

MAINTENANCE OF RECORDS AND PUBLIC DISCLOSURE

SEC. 304. (a) * * *

* * * * * * *

(m) OPPORTUNITY TO REDUCE COMPLIANCE BURDEN.—

(1) A depository institution will have satisfied the public availability requirements of subsection (a) if such institution keeps the information required under that subsection at its home office and provides notice at the branch locations specified in such subsection that such information is available upon request from the home office of the institution. A home office of the depository institution receiving a request for such information pursuant to this subsection shall provide the information pertinent to the location of the branch in question within fifteen days of the receipt of the written request.

(2) In complying with paragraph (1), a depository institution may provide the individual requesting such information, at the institution's choice, with—

(A) a paper copy of the information requested; or

(B) if acceptable to the individual, the information through a form of electronic medium, such as computer disc.

* * * * * * *

EFFECTIVE DATE

SEC. 309. This title shall take effect on the one hundred and eightieth day beginning after the date of its enactment. Any institution specified in section 303(2)(A) which has total assets as of its last full fiscal year of [$10,000,000] *$50,000,000* or less is exempt from the provisions of this title. The Board, in consultation with the Secretary, may exempt institutions described in section 303(2)(B) that are comparable within their respective industries to institutions that are exempt under the preceding sentence. *The Board may also, by regulation, exempt from the provisions of this Act institutions specified in section 303(2)(A) which have total assets as of their last full fiscal year of $50,000,000 or greater where the burden of complying with this Act on such institutions outweighs the usefulness of the information required to be disclosed. The exemptions provided under this section shall not be applicable to an institution which the Board, by order, has found a reasonable basis to believe is not fulfilling its obligations to serve the housing needs of the communities and neighborhoods in which it located. An institution subject to such an order shall be required to comply with the requirements of this Act for loans made after the time that the order*

is issued at such time and for such period as the Board deems appropriate. The dollar amount in this section shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

* * * * * * *

COMMUNITY REINVESTMENT ACT OF 1977

TITLE VIII—COMMUNITY REINVESTMENT

SEC. 801. This title may be cited as the "Community Reinvestment Act of 1977".

SEC. 802. (a) * * *

[(b) It is the purpose of this title to require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.]

(b) It is the purpose of this title to require each appropriate Federal financial supervisory agency to use its authority, when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions. When examining financial institutions, a supervisory agency shall not impose additional burden, recordkeeping, or reporting upon such institutions.

SEC. 803. For the purposes of this title—

(1) the term "appropriate Federal financial supervisory agency" means—

(A) the Comptroller of the Currency with respect to national banks;

* * * * * * *

[(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and a savings and loan holding company;]

(D) the Director of the Office of Thrift Supervision with respect to any savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and any savings and loan holding company (other than a company which is a bank holding company);

* * * * * * *

(5) SPECIAL PURPOSE INSTITUTIONS.—The term "special purpose institution" means a financial institution that does not generally accept deposits from the public in amounts of less than $100,000, such as wholesale, credit card, and trust institutions.

(6) State bank supervisor.—The term "State bank supervisor" has the same meaning as in section 3(r) of the Federal Deposit Insurance Act.

Sec. 804. (a) In General.—In connection with its examination of a financial institution, *conducted in accordance with section 806A,* the appropriate Federal financial supervisory agency shall—

(1) assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution; and

[(2) take such record into account in its evaluation of an application for a deposit facility by such institution.]

(2) take such record into account in the overall evaluation of the condition of the institution by the appropriate Federal financial supervisory agency.

[(b) Majority-Owned Institutions.—In assessing and taking into account, under subsection (a), the record of a nonminority-owned and nonwomen-owned financial institution, the appropriate Federal financial supervisory agency may consider as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.]

(b) Positive Consideration of Certain Loans and Investments.—In assessing and taking into account the records of a regulated financial institution under subsection (a), the appropriate Federal financial supervisory agency shall

(1) consider as a positive factor, consistent with the safe and sound operation of the institution, the institution's investment in or loan to—

(A) any minority depository institution or women's depository institution (as such terms are defined in section 808(b)) or any low-income credit union;

(B) any joint venture or other entity or project which promotes the public welfare in any distressed community (as defined by such agency) whether or not the distressed community is located in the local community in which the regulated financial institution is chartered to do business; and

(C) targeted low- and moderate-income communities, including real property loans to such communities; and

(2) consider equally with other factors capital investment, loan participation, and other ventures undertaken by the institution in cooperation with—

(A) minority- and women-owned financial institutions and low-income credit unions to the extent that these activities help meet the credit needs of the local communities in which such institutions are chartered; and

(B) community development corporations in extending credit and other financial services principally to low- and moderate-income persons and small businesses to the extent that such community development corporations help meet the credit needs of the local communities served by the majority-owned institution.

(c) SELF-CERTIFICATION OF CRA COMPLIANCE.—

(1) CERTIFICATION.—In lieu of being evaluated under section 806A and receiving a written evaluation under section 807, a qualifying financial institution may elect to self-certify to the appropriate Federal financial supervisory agency that such institution is in compliance with the goals of this title.

(2) QUALIFYING INSTITUTION.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "qualifying institution" means a financial institution which—

(i) has not more than $250 million in assets;

(ii) has not been found to have engaged in a pattern or practice of illegal discrimination under the Fair Housing Act or the Equal Credit Opportunity Act for the preceding 5-year calendar period; and

(iii) received rating under section 807(b)(2) of "satisfactory" or "outstanding" in the most recent evaluation of such institution under this title.

(B) ANNUAL ADJUSTMENT.—The dollar amount in subparagraph (A) shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

(3) PUBLIC NOTICE.—

(A) IN GENERAL.—A qualifying institution shall maintain in every branch a public notice stating that—

(i) the institution has self-certified that the institution is satisfactorily helping to meet the credit needs of its community; and

(ii) the institution maintains—

(I) at the main office of such institution, a public file which contains a copy of the self-certification to the appropriate Federal financial supervisory agency; and

(II) a map delineating the community served by the institution;

(iii) a list of the types of credit and services that the institution provides to the community served by the institution;

(iv) such other information that the institution believes demonstrates the institution's record of helping to meet the credit needs of its community; and

(v) every public comment or letter to the institution (and any response by the institution) received within the previous 2-year period about the record of the institution of helping to meet the credit needs of its community.

(B) PUBLIC FILE.—A qualifying institution shall maintain a public file containing the contents described in this paragraph at the institution's main office

(4) RATING.—

(A) IN GENERAL.—A qualifying institution shall be deemed to have a rating of a "satisfactory record of meeting

community credit needs" for the purposes of this section and section 806A(c).

(B) PUBLICATION.—Each Federal financial supervisory agency shall publish in the Federal Register once each month a list of institutions that have self-certified during the previous month.

(C) PUBLICATION CONSTITUTES DISCLOSURE.—Publication of the name of the institution in the Federal Register as having self-certified shall constitute disclosure of the rating of the institution to the public for purposes of sections 806A and 807.

(5) REGULATORY REVIEW.—

(A) ASSESSMENT.—During each examination for safety and soundness, a qualifying institution's supervisory agency shall, as part of the agency's review of the institution's loans, assess whether the institution's basis for its self-certification is reasonable based on the public notice and the information contained in the public file pursuant to paragraph (3).

(B) EXAMINATION IF SELF-CERTIFICATION IS NOT REASONABLE.—If the agency determines that the institution's basis for the institution's self-certification is not reasonable, the agency shall schedule an examination of the institution for the purpose of assessing the institution's record of helping to meet the credit needs of its community.

(C) REVOCATION OF SELF-CERTIFICATION.—If an assessment pursuant to subparagraph (B) results in a less than "satisfactory" rating, the agency shall revoke the institution's self-certification and substitute a written evaluation as provided under section 807.

(D) PERIOD OF INELIGIBILITY FOR SELF-CERTIFICATION.—An institution whose self-certification has been revoked may not self-certify pursuant to this subsection during the 5 years succeeding the year in which the self-certification is revoked.

(E) SUBSEQUENT ELIGIBILITY.—After the end of the period of ineligibility described in subparagraph (D), an institution which meets the requirements for self-certification may elect to self-certify.

(6) PROHIBITION ON ADDITIONAL REQUIREMENTS.—No appropriate Federal financial supervisory agency may impose any additional requirements, whether by regulation or otherwise, relating to the self-certification procedure under this subsection.

(d) SPECIAL PURPOSE INSTITUTIONS.—

(1) IN GENERAL.—In conducting assessments pursuant to this section at any special purpose institution, the appropriate Federal financial supervisory agency shall—

(A) consider the nature of business such institution is involved in; and

(B) assess and take into account the record of the institution commensurate with the amount of deposits (as defined in section 3(1) of the Federal Deposit Insurance Act) received by such institution.

(2) STANDARDS.—Each appropriate Federal financial supervisory agency shall develop standards under which special purpose institutions may be deemed to have complied with the requirements of this title which are consistent with the specific nature of such businesses.

* * * * * * *

[SEC. 806. Regulations to carry out the purposes of this title shall be published by each appropriate Federal financial supervisory agency, and shall take effect no later than 390 days after the date of enactment of this title.]

SEC. 806. REGULATIONS.

(a) IN GENERAL.—

(1) PUBLICATION REQUIREMENT.—Regulations to carry out the purposes of this title shall be published by each appropriate Federal financial supervisory agency.

(2) PROHIBITION ON ADDITIONAL RECORDKEEPING.—Regulations prescribed and policy statements, commentary, examiner guidance, or other supervisory material issued under this title shall not impose any additional recordkeeping on a financial institution.

(3) PROHIBITION ON LOAN DATA COLLECTION.—No loan data may be required to be collected and reported by a financial institution and no such data may be made public by any Federal financial supervisory agency under this title.

(b) LIMITATION ON REGULATIONS.—No regulation may be prescribed under this title by any Federal agency which would—

(1) require any regulated financial institution to—

(A) make any loan or enter into any other agreement on the basis of any discriminatory criteria prohibited under any law of the United States; or

(B) make any loan to, or enter into any other agreement with, any uncreditworthy person that would jeopardize the safety and soundness of such institution; or

(2) prevent or hinder in any way a financial institution's full responsibility to provide credit to all segments of the community.

(c) ENCOURAGE LOANS TO CREDITWORTHY BORROWERS.—Regulations prescribed under this title shall encourage regulated financial institutions to make loans and extend credit to all creditworthy persons, consistent with safety and soundness.

* * * * * * *

SEC. 806A. COMMUNITY INPUT AND CONCLUSIVE RATING.

(a) PUBLICATION OF EXAM SCHEDULE AND OPPORTUNITY FOR COMMENT.—

(1) PUBLICATION OF NOTICE.—Each appropriate Federal financial supervisory agency shall

(A) publish in the Federal Register, 30 days before the beginning of a calendar quarter, a listing of institutions scheduled for evaluation for compliance with this title during such calendar quarter; and

(B) provide opportunity for written comments from the community on the performance, under this title, of each institution scheduled for evaluation.

(2) COMMENT PERIOD.—Written comments may not be submitted to an appropriate Federal financial supervisory agency pursuant to paragraph (1) after the end of the 30-day period beginning on the first day of the calendar quarter.

(3) COPY OF COMMENTS.—The agency shall provide a copy of such comments to the institution.

(b) EVALUATION.—The appropriate Federal financial supervisory agency shall—

(1) evaluate the institution in accordance with the standards contained in section 804; and

(2) prepare and publish a written evaluation of the institution as required under section 807.

(c) RECONSIDERATION OF RATING.—

(1) REQUEST FOR RECONSIDERATION.—A reconsideration of an institution's rating referred to in section 807(b)(1)(C), may be requested within 30 days of the rating's disclosure to the public.

(2) PROCEDURES FOR REQUEST.—Any such request shall be made in writing and filed with the appropriate Federal financial supervisory agency, and may be filed by the institution or a member of the community.

(3) BASIS FOR REQUEST.—Any request for reconsideration under this subsection shall be based on significant issues of a substantive nature which are relevant to the delineated community of the institution and, in the case of a request by a member of the community, shall be limited to issues previously raised in comments submitted pursuant to subsection (a).

(4) COMPLETION OF REVIEW.—The appropriate Federal financial supervisory agency shall complete any requested reconsideration within 30 days of the filing of the request.

(d) CONCLUSIVE RATING.—

(1) IN GENERAL.—An institution's rating shall become conclusive on the later of—

(A) 30 days after the rating is disclosed to the public; or

(B) the completion of any requested reconsideration by the Federal financial supervisory agency.

(2) RATING CONCLUSIVE OF MEETING COMMUNITY CREDIT NEEDS.—An institution's rating shall be the conclusive assessment of the institution's record of meeting the credit needs of its community for purposes of section 804 until the institution's next rating, developed pursuant to an examination, becomes conclusive.

(3) SAFE HARBOR.—Institutions which have received a "satisfactory" or "outstanding" rating shall be deemed to have met the purposes of section 804.

(4) RULE OF CONSTRUCTION.—Notwithstanding any other provision of law, no provision of this section shall be construed as granting a cause of action to any person.

SEC. 807. WRITTEN EVALUATIONS.

(a) * * *

(b) PUBLIC SECTION OF REPORT.—

(1) FINDINGS AND CONCLUSIONS.—

(A) * * *

(B) METROPOLITAN AREA DISTINCTIONS.—[The information] *In the case of a regulated financial institution that maintains domestic branches in 2 or more States, the information* required by clauses (i) and (ii) of subparagraph (A) shall be presented separately for each metropolitan area in which a regulated depository institution maintains one or more domestic branch offices.

* * * * * * *

SEC. 809. EXAMINATION EXEMPTION.

(a) IN GENERAL.—A regulated financial institution shall not be subject to the examination requirements of this title or any regulations issued under this section if the institution and any bank holding company which controls such institution have aggregate assets of not more than $100,000,000.

(b) ANNUAL ADJUSTMENT.—The dollar amount in subsection (a) shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

FEDERAL HOME LOAN BANK ACT

* * * * * * *

ELIGIBILITY OF MEMBERS AND NONMEMBER BORROWERS

SEC. 4. (a) * * *

[(b) An institution eligible to become a member under this section may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business, or of the bank of a district adjoining such district, if demanded by convenience and then only with the approval of the Board.]

(b) MEMBERSHIP BASED ON CONVENIENCY.—An institution eligible to become a member of a Federal home loan bank under this section may become a member by submitting the institution's application for membership to the bank in the district where the applicant's principal place of business is located. An application for membership shall be approved by the bank if, in the judgment of the bank, the applicant meets the criteria for eligibility contained in this section. An institution eligible to become a member under this section may apply for membership in an adjoining district, if appropriate for the convenience of the institution and then only with the approval of the Board.

* * * * * * *

ADVANCES TO MEMBERS

SEC. 10. (a) * * *

* * * * * * *

(g) COMMUNITY SUPPORT REQUIREMENTS.—

(1) * * *

* * * * * * *

(3) SPECIAL RULE.—This subsection shall not apply to members receiving a grade of "outstanding" or "satisfactory" under section 807 of the Community Reinvestment Act of 1977.

* * * * * * *

GENERAL POWERS AND DUTIES OF BANKS

SEC. 11. (a) * * *

* * * * * * *

[(j) Notwithstanding the provisions of the first sentence of section 202 of the Government Corporation Control Act, audits by the General Accounting Office of the financial transactions of a Federal Home Loan Bank shall not be limited to periods during which Government capital has been invested therein. The provisions of the first sentence of subsection (d) of section 303 of the Government Corporation Control Act shall not apply to any Federal Home Loan Bank.]

(j) AUDITS.—

(1) Notwithstanding any other provision of law, audits by the Comptroller General of the United States of the financial transactions of a Federal home loan bank shall not be limited to periods during which Government capital has been invested in the bank. The provisions of section 9107(c)(2) and 9108(d)(1) of title 31, of such Code, shall not apply to any Federal home loan bank.

(2) Notwithstanding any other provision of law, the Board shall not participate in the hiring of an external auditor by the banks; except, that the Board may establish requirements for external audit contracts and, that all 12 banks shall contract for an annual audit with a single provider.

* * * * * * *

FEDERAL DEPOSIT INSURANCE ACT

* * * * * * *

SEC. 3. As used in this Act—

(a) * * *

* * * * * * *

[(o) The term] *(o) DEFINITIONS RELATING TO BRANCHES.—*

(1) DOMESTIC BRANCH.—

(A) IN GENERAL.—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, the Trust Territory of the Pacific Islands, or the Virgin Islands at which deposits are received or checks paid or money [lent; and the term] *lent.*

(B) CERTAIN PROPRIETARY ATMS AND REMOTE SERVICING UNITS.—The term "domestic branch" does not include any

automated teller machine or remote service unit which is owned and operated by a depository institution—

(i) primarily for the benefit of the institution and the affiliates of the institution; and

(ii) which could operate a branch at the location of such machine or unit.

(2) FOREIGN BRANCH.—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.

* * * * * * *

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

(1) any director *(other than an outside director)*, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, an insured depository institution;

* * * * * * *

(3) any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person *(other than an outside director)* as determined by the appropriate Federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution; and

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

(A) * * *

* * * * * * *

SEC. 5. DEPOSIT INSURANCE.

(a) * * *

* * * * * * *

(d) INSURANCE FEES.—

(1) * * *

* * * * * * *

(3) OPTIONAL CONVERSIONS SUBJECT TO SPECIAL RULES ON DEPOSIT INSURANCE PAYMENTS.—

(A) CONVERSIONS ALLOWED.—Notwithstanding paragraph (2)(A), and subject to the requirements of this paragraph, any insured depository institution may participate in a transaction described in clause (ii), (iii), or (iv) of paragraph (2)(B) [with the prior written approval of the responsible agency under section 18(c)(2)].

* * * * * * *

(E) CONDITIONS [FOR APPROVAL, GENERALLY].—

[(i) FACTORS TO BE CONSIDERED; APPROVAL PROCESS.—In reviewing any application for a proposed transaction under subparagraph (A), the responsible agency shall follow the procedures and consider the factors set forth in section 18(c).

[(ii) INFORMATION REQUIRED.—An application to engage in any transaction under this paragraph shall contain such information relating to the factors to be considered for approval as the responsible agency may require, by regulation or by specific request, in connection with any particular application.

[(iii)] *(i)* NO TRANSFER OF DEPOSIT INSURANCE PERMITTED.—This paragraph shall not be construed as authorizing transactions which result in the transfer of any insured depository institution's Federal deposit insurance from 1 Federal deposit insurance fund to the other Federal deposit insurance fund.

[(iv) MINIMUM CAPITAL.—The responsible agency shall disapprove any application for any transaction under this paragraph unless such agency determines that the acquiring, assuming, or resulting depository institution will meet all applicable capital requirements upon consummation of the transaction.]

(ii) A transaction shall not be authorized under this paragraph unless the acquiring, assuming, or resulting depository institution will meet all applicable capital requirements upon consummation of the transaction.

* * * * * * *

[(G) EXPEDITED APPROVAL OF ACQUISITIONS.—

[(i) IN GENERAL.—Any application by a State nonmember insured bank to acquire another insured depository institution that is required to be filed with the Corporation by subparagraph (A) or any other applicable law or regulation shall be approved or disapproved in writing by the Corporation before the end of the 60-day period beginning on the date such application is filed with the Corporation.

[(ii) EXTENSIONS OF PERIOD.—The period for approval or disapproval referred to in clause (i) may be extended for an additional 30-day period if the Corporation determines that—

[(I) an applicant has not furnished all of the information required to be submitted; or

[(II) in the Corporation's judgment, any material information submitted is substantially inaccurate or incomplete.

[(H)] *(G)* ALLOCATION OF COSTS IN EVENT OF DEFAULT.—If any acquiring, assuming, or resulting depository institution is in default or danger of default at any time before this paragraph ceases to apply, any loss incurred by the Corporation shall be allocated between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the amount of insured deposits of such acquiring, assuming, or resulting depository institution assessed by the Bank Insurance Fund and the Savings Association Insurance Fund, respectively, under subparagraph (B).

[(I)] *(H)* SUBSEQUENT APPROVAL OF CONVERSION TRANSACTION.—This paragraph shall cease to apply if—

(i) after the end of the moratorium period established by paragraph (2)(A), the Corporation approves an application by any acquiring, assuming, or resulting depository institution to treat the transaction described in subparagraph (A) as a conversion transaction; and

(ii) the acquiring, assuming, or resulting depository institution pays the amount of any exit and entrance fee assessed by the Corporation under subparagraph (E) of paragraph (2) with respect to such transaction.

[(J)] *(I)* ACQUIRING, ASSUMING, OR RESULTING DEPOSITORY INSTITUTION DEFINED.—For purposes of this paragraph, the term "acquiring, assuming, or resulting depository institution" means any insured depository institution which—

(i) results from any transaction described in paragraph (2)(B)(ii) and approved under this paragraph;

* * * * * * *

SEC. 7. (a) * * *

* * * * * * *

[(k) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by a bank or any executive officer or prinicipal shareholder thereof concerning extensions of credit by the bank to any of its executive officers or principal shareholders, or the related interests of such persons.]

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SEC. 10. (a) * * *

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

(1) * * *

* * * * * * *

(8) REPORT.—At the time the system provided for in paragraph (6) is established, the Federal banking agencies shall submit a joint report describing the system to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives. Thereafter, the Federal banking agencies shall annually submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives regarding the progress of the agencies in implementing the system and indicating areas in which enhancements to the system, including legislature improvements, would be appropriate.

[(8)] *(9)* AGENCIES AUTHORIZED TO INCREASE MAXIMUM ASSET AMOUNT OF INSTITUTIONS FOR CERTAIN PURPOSES.—At any time after the end of the 2-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994, the appropriate Federal banking

agency, in the agency's discretion, may increase the maximum amount limitation contained in paragraph (4)(C)(ii), by regulation, from $100,000,000 to an amount not to exceed [$175,000,000] *$250,000,000* for purposes of such paragraph, if the agency determines that the greater amount would be consistent with the principles of safety and soundness for insured depository institutions.

[(9)] *(10)* STANDARDS FOR DETERMINING ADEQUACY OF STATE EXAMINATIONS.—The Federal Financial Institutions Examination Council shall issue guidelines establishing standards to be used at the discretion of the appropriate Federal banking agency for purposes of making a determination under paragraph (3).

(11) ANNUAL CPI ADJUSTMENT.—The dollar amount in this section shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

* * * * * * *

(j) CONSULTATION AMONG EXAMINERS.—

(1) IN GENERAL.—Each appropriate Federal banking agency shall take such action as may be necessary to ensure that examiners employed by the agency—

(A) consult on examination activities with respect to any depository institution; and

(B) achieve an agreement and resolve any inconsistencies on the recommendations to be given to such institution as a consequence of any examinations.

(2) EXAMINER-IN-CHARGE.—Each agency shall consider appointing an examiner-in-charge with respect to a depository institution to ensure consultation on examination activities among all of the agency's examiners involved in examinations of such institution.

* * * * * * *

SEC. 18. (a) * * *

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(c)(1) * * *

* * * * * * *

(12) The provisions of this subsection shall not apply to any merger, consolidation, acquisition of assets or assumption of liabilities involving only insured depository institutions that are subsidiaries of the same depository institution holding company if—

(A) the responsible agency would not be prohibited from approving the transaction under section 44, if applicable;

(B) the acquiring, assuming, or resulting institution complies with all applicable provisions of section 44, if any, as if the merger, consolidation, or acquisition were approved under this subsection;

(C) the acquiring, assuming, or resulting institution provides written notification of the transaction to the appro-

priate Federal banking agency for the institution at least 10 days prior to consummation of the transaction; and

(D) after receiving such notice, the agency does not require the institution to submit an application with respect to such transaction and so notifies the institution.

(d)(1) * * *

* * * * * * *

(5) APPLICATION EXEMPTION FOR CERTAIN BANKS.—Notwithstanding paragraph (1), the consent of the Corporation shall not be required for a State nonmember insured bank to establish and operate any domestic branch if—

(A) the bank is well-capitalized (as defined in section 38 and regulations prescribed by the Corporation under such section);

(B) the bank received a composite CAMEL rating of "1" or "2" under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of its most recent examination;

(C) the bank did not receive a "needs to improve" or "substantial noncompliance" composite rating as result of the bank's most recent examination under the Community Reinvestment Act of 1977; and

(D) the Corporation is otherwise authorized to give consent under this section to such bank to establish and operate a domestic branch at the proposed location.

(6) APPROVAL GRANTED.—A branch established by a State member bank under paragraph (5) shall be deemed to have been established and operated pursuant to an application approved under this section.

* * * * * * *

(s) CUSTOMER ACCESS TO PRODUCTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any depository institution, or any affiliate or subsidiary of any depository institution, may share or exchange information or otherwise transfer information between or among themselves without any restriction or limitation if it is clearly and conspicuously disclosed that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons.

(2) DEFINITION.—For purposes of this subsection, the term "information" means any and all data, records, or other information and material obtained or maintained by any depository institution or any affiliate or subsidiary thereof in the ordinary course of its business that relates in any way to a person (as such term is defined in section 603(b) of the Fair Credit Reporting Act) who applies for, maintains, or has maintained an account or credit relationship with or applied for, purchased or obtained other products or services from any depository institution or any affiliate or subsidiary of any depository institution, regardless of the source of manner in which the information is obtained or furnished.

(3) RULE OF CONSTRUCTION.—Any depository institution, or any affiliate or subsidiary of any depository institution, relying on this subsection shall not be deemed to be a consumer reporting agency, user, or third party, and the information itself shall not constitute a consumer report, within the meaning of the Fair Credit Reporting Act or other similar law.

* * * * * * *

SEC. 24. ACTIVITIES OF INSURED STATE BANKS.

[(a) IN GENERAL.—After the end of the 1-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, an insured State bank may not engage as principal in any type of activity that is not permissible for a national bank unless—

[(1) the Corporation has determined that the activity would pose no significant risk to the appropriate deposit insurance fund; and

[(2) the State bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.]

(a) ACTIVITIES GENERALLY.—

(1) IN GENERAL.—An insured State bank may not engage as principal in any type of activity that is not permissible for a national bank unless—

(A) the bank has given the Corporation written notice of the bank's intention to engage in such activity at least 60 days before commencing to engage in the activity and within such 60-day period (or within the extended period provided under paragraph (2)) the Corporation has not disapproved the activity; and

(B) the State bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

(2) EXTENSION OF PERIOD.—The Corporation may extend the 60-day period referred to in paragraph (1) for issuing a notice of disapproval with respect to any activity for an additional 30 days.

(3) CONTENTS OF NOTICE.—Any notice submitted by a State bank under paragraph (1)(A) shall contain such information as the Corporation may require.

(4) BASIS FOR DISAPPROVAL.—The Corporation may disapprove an activity for a State bank under this subsection unless the Corporation determines that the activity would pose no significant risk to the appropriate insurance fund.

* * * * * * *

(d) SUBSIDIARIES OF INSURED STATE BANKS.—

[(1) IN GENERAL.—After the end of the 1-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, a subsidiary of an insured State bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless—

[(A) the Corporation has determined that the activity poses no significant risk to the appropriate deposit insurance fund; and

[(B) the bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.]

(1) ACTIVITIES GENERALLY.—

(A) IN GENERAL.—A subsidiary of an insured State bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless—

(i) the subsidiary has given the Corporation written notice of the subsidiary's intention to engage in such activity at least 60 days before commencing to engage in the activity and within such 60-day period (or within the extended period provided under paragraph (2)) the Corporation has not disapproved the activity; and

(ii) the bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

(B) EXTENSION OF PERIOD.—The Corporation may extend the 60-day period referred to in subparagraph (A) for issuing a notice of disapproval with respect to any activity for an additional 30 days.

(C) CONTENTS OF NOTICE.—Any notice submitted by a subsidiary of an insured State bank under subparagraph (A)(i) shall contain such information as the Corporation may require.

(D) BASIS FOR DISAPPROVAL.—The Corporation may disapprove an activity for a subsidiary of an insured State bank under this paragraph unless the Corporation determines that the activity would pose no significant risk to the appropriate insurance fund.

* * * * * * *

SEC. 32. AGENCY DISAPPROVAL OF DIRECTORS AND SENIOR EXECUTIVE OFFICERS OF INSURED DEPOSITORY INSTITUTIONS OR DEPOSITORY INSTITUTION HOLDING COMPANIES.

(a) * * *

* * * * * * *

[(d) ADDITIONAL INFORMATION.—Any notice submitted to an appropriate Federal banking agency with respect to an individual by any insured depository institution or depository institution holding company pursuant to subsection (a) shall include—

[(1) the information described in section 7(j)(6)(A) about the individual; and

[(2) such other information as the agency may prescribe by regulation.]

(d) ADDITIONAL INFORMATION.—

(1) IN GENERAL.—Any notice submitted to an appropriate Federal banking agency with respect to an individual by any insured depository institution or depository institution holding company pursuant to subsection (a) shall include—

(A) the information described in section 7(j)(6)(A) about the individual; and

(B) such other information as the agency may prescribe by regulation.

(2) WAIVER.—An appropriate Federal banking agency may waive the requirement of this section by regulation or on a case-by-case basis consistent with safety and soundness.

* * * * * * *

SEC. 36. EARLY IDENTIFICATION OF NEEDED IMPROVEMENTS IN FINANCIAL MANAGEMENT.

(a) ANNUAL REPORT ON FINANCIAL CONDITION AND MANAGEMENT.—

(1) * * *

(2) CONTENTS OF REPORT.—Any annual report required under paragraph (1) shall contain—

(A) the information required to be provided by—

(i) the institution's management under subsection (b); and

(ii) an independent public accountant under [subsections (c) and (d)] *subsection (c)*; and

(3) PUBLIC AVAILABILITY.—Any annual report required under paragraph (1) shall be available for public inspection. *Notwithstanding the preceding sentence, the Corporation and the appropriate Federal banking agencies may designate certain information as privileged and confidential and not available to the public.*

* * * * * * *

[(c) INTERNAL CONTROL EVALUATION AND REPORTING REQUIREMENTS FOR INDEPENDENT PUBLIC ACCOUNTANTS.—

[(1) IN GENERAL.—With respect to any internal control report required by subsection (b)(2) of any institution, the institution's independent public accountant shall attest to, and report separately on, the assertions of the institution's management contained in such report.

[(2) ATTESTATION REQUIREMENTS.—Any attestation pursuant to paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

[(d)] *(c)* ANNUAL INDEPENDENT AUDITS OF FINANCIAL STATEMENTS.—

(1) AUDITS REQUIRED.—The Corporation, in consultation with the appropriate Federal banking agencies, shall prescribe regulations requiring that each insured depository institution shall have an annual independent audit made of the institution's financial statements by an independent public accountant in accordance with generally accepted auditing standards and section 37.

* * * * * * *

[(e) DETECTING AND REPORTING VIOLATIONS OF LAWS AND REGULATIONS.—

[(1) IN GENERAL.—An independent public accountant shall apply procedures agreed upon by the Corporation to objectively determine the extent of the compliance of any insured deposi-

tory institution or depository institution holding company with laws and regulations designated by the Corporation, in consultation with the appropriate Federal banking agencies.

[(2) ATTESTATION REQUIREMENTS.—Any attestation pursuant to paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

[(f)] *(d)* FORM AND CONTENT OF REPORTS AND AUDITING STANDARDS.—

(1) IN GENERAL.—The scope of each report by an independent public accountant pursuant to this section, and the procedures followed in preparing such report, shall meet or exceed the scope and procedures required by generally accepted auditing standards and other applicable standards recognized by the Corporation.

* * * * * * *

[(g)] *(e)* IMPROVED ACCOUNTABILITY.—

(1) INDEPENDENT AUDIT COMMITTEE.—

(A) ESTABLISHMENT.—Each insured depository institution (to which this section applies) shall have an independent audit committee entirely made up of outside directors who are independent of management of the institution, and who satisfy any specific requirements the Corporation may establish.

(B) DUTIES.—An independent audit committee's duties shall include reviewing with management and the independent public accountant the basis for the reports issued under subsections [(b)(2), (c), and (d)] *(b)(2) and (c)*.

* * * * * * *

[(h)] *(f)* EXCHANGE OF REPORTS AND INFORMATION.—

(1) REPORT TO THE INDEPENDENT AUDITOR.—

(A) IN GENERAL.—Each insured depository institution which has engaged the services of an independent auditor to audit such institution shall transmit to the auditor a copy of the most recent report of condition made by the institution (pursuant to this Act or any other provision of law) and a copy of the most recent report of examination received by the institution.

* * * * * * *

[(i)] *(g)* REQUIREMENTS FOR INSURED SUBSIDIARIES OF HOLDING COMPANIES.—

(1) IN GENERAL.—Except with respect to any audit requirements established under or pursuant to subsection [(d)] *(c)*, the requirements of this section may be satisfied for insured depository institutions that are subsidiaries of a holding company, if—

(A) * * *

* * * * * * *

[(j)] *(h)* EXEMPTION FOR SMALL DEPOSITORY INSTITUTIONS.—This section shall not apply with respect to any fiscal year of any insured depository institution the total assets of which, as of the beginning of such fiscal year, are less than the greater of—

(1) * * *

*   *   *   *   *   *   *

(i) EXEMPTION FOR WELL-CAPITALIZED AND WELL-MANAGED INSURED DEPOSITORY INSTITUTIONS.—No provision of this section other than subsection (c) shall apply with respect to any insured depository institution which is well-capitalized and well-managed.

*   *   *   *   *   *   *

SEC. 42. NOTICE OF BRANCH CLOSURE.

(a) * * *

*   *   *   *   *   *   *

(e) SCOPE OF APPLICATION.—

(1) IN GENERAL.—This section shall not apply with respect to—

(A) an automated teller machine;

(B) a branch which—

(i) has been acquired through merger, consolidation, purchase, assumption, or other method; and

(ii) is located—

(I) within 2.5 miles of another branch of the acquiring institution; or

(II) within a neighborhood currently being served by another branch of the acquiring institution,

if such other branch of the acquiring institution is expected to continue to provide banking services to substantially all of the customers currently served by the branch acquired;

(C) a branch which is closing and reopening at a location which is—

(i) within 2.5 miles of the location of the branch being closed; or

(ii) within the same neighborhood as the branch being closed,

if the branch at the new location is expected to continue to provide banking services to substantially all of the customers served by the branch at the former location;

(D) a branch that is closed in connection with—

(i) an emergency acquisition under—

(I) section 11(n); or

(II) subsections (f) or (k) of section 13; or

(ii) any assistance provided by the Corporation under section 13(c); and

(E) any other branch closure whose exemption from the notice requirements of this section would not produce a result inconsistent with the purposes of this section.

(2) REGULATIONS.—The appropriate Federal banking agency shall, by regulation, determine the circumstances under which any exemption under paragraph(1)(E) may be granted.

*   *   *   *   *   *   *

SEC. 45. LENDER, FIDUCIARY, AND GOVERNMENT AGENCY ENVIRONMENTAL LIABILITIES.

(a) LENDER ENVIRONMENTAL LIABILITY.—

(1) IN GENERAL.—Notwithstanding any other provision or rule of Federal law, no lender, acting as defined in this section, shall be liable pursuant to a Federal environmental law, except as provided in this section.

(2) ACTUAL PARTICIPATION REQUIRED.—A lender shall only be liable pursuant to a Federal environmental law when the lender actually participates in management of another person's activities which create liability under the same Federal environmental law.

(3) DEFINITIONS.—The following definitions shall apply for purposes of this section:

(A) PARTICIPATE IN MANAGEMENT.—The term "participate in management" means actually participating in the management or operational affairs of other persons' activities, and does not include merely having the capacity to influence, or the unexercised right to control such activities;

(B) PARTICIPATE IN MANAGEMENT.—A person shall be considered to "participate in management" while a borrower is still in possession of property, only if such person—

(i) exercises decisionmaking control over the environmental compliance of a borrower, such that the person has undertaken responsibility for the hazardous substance handling or disposal practices of the borrower; or

(ii) exercises control at a level comparable to that of a manager of the enterprise of the borrower, such that the person has assumed or manifested responsibility for the overall management of the enterprise encompassing day-to-day decisionmaking with respect to environmental compliance, or with respect to substantially all of the operational aspects (as distinguished from financial or administrative aspects) of the enterprise, other than environmental compliance.

(C) PARTICIPATE IN MANAGEMENT.—The term "participate in management" does not include engaging in an act or failing to act before the time that an extension of credit is made or a security interest is created in property.

(D) PARTICIPATE IN MANAGEMENT.—The term "participate in management" does not include, unless such actions rise to the level of participating in management (as defined in subparagraphs (A) and (B))—

(i) holding an extension of credit or a security interest or abandoning or releasing an extension of credit or a security interest;

(ii) including in the terms of an extension of credit, or in a contract or security agreement relating to such an extension, covenants, warranties, or other terms and conditions that relate to environmental compliance;

(iii) monitoring or enforcing the terms and conditions of an extension of credit or security interest;

(iv) monitoring or undertaking 1 or more inspections of property, except that monitoring or undertaking any such inspection, although not required by this sub-

section, shall provide probative evidence that a holder of a security interest is acting to preserve and protect the property during the time the holder may have possession or control of such property;

(v) requiring or conducting a response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with property prior to, during, or upon the expiration of the term of an extension of credit;

(vi) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the property;

(vii) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of an extension of credit or security interest, or exercising forbearance; or

(viii) exercising other remedies that may be available under applicable law for the breach of any term or condition of the extension of credit or security agreement.

(E) When a lender did not participate in management of property prior to foreclosure, then the lender shall not be liable even if such person forecloses on property, sells, releases, or liquidates property, maintains business activities, winds up operations, or undertakes any response action with respect to property, or takes other measures to preserve, protect, or prepare property prior to sale or disposition, if such person seeks to sell, release, or otherwise divest the property at the earliest practical, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

(4) LIMITATION ON LIABILITY.—The liability of any lender that is liable under any Federal environmental law shall be limited to only the cost of any response action or corrective action to the extent and in the amount that the lender actively and directly contributed to the hazardous substance release. A lender shall not be liable for the cost of any response action or corrective action relating to the release of a hazardous substance which commences before and continues after the lender obtains a security interest in the property so long as the lender does not actively and directly contribute to the hazardous substance release.

(b) FIDUCIARY ENVIRONMENTAL LIABILITY.—

(1) IN GENERAL.—Notwithstanding any other provision or rule of Federal law, no fiduciary, acting as defined in this section, shall be liable pursuant to any Federal environmental law, except as provided in this section.

(2) LIABILITY OF FIDUCIARY.—

(A) Subject to subparagraphs (B) and (C), a fiduciary holding title to property or otherwise affiliated with property solely in a fiduciary capacity shall be personally subject to the obligations and liabilities of any person under any Federal environmental law, to the same extent as if the property were held by the fiduciary free of trust.

(B) The personal obligations and liabilities of a fiduciary referred to in subparagraph (A) shall be limited to the ex-

tent to which the assets of the trust or estate are sufficient to indemnify the fiduciary, unless—

(i) the obligations and liabilities would have arisen even if the person had not served as a fiduciary;

(ii) the fiduciary's own failure to exercise due care with respect to property caused or contributed to the release of hazardous substances following establishment of the trust, estate, or fiduciary relationship; or

(iii) the fiduciary had a role in establishing the trust, estate, or fiduciary relationship, and such trust, estate, or fiduciary relationship has no objectively reasonable or substantial purpose apart from the avoidance or limitation of liability under an environmental law.

Nothing in the preceding sentence shall be construed as requiring indemnification by an employee benefit plan (within the meaning of paragraph (3) of section 3 of Employee Retirement Income Security Act of 1974), or by any trust forming a part thereof, of any fiduciary of such plan contrary to the terms of the plan or in an amount in excess of the amount permitted under the terms of such plan.

(C) A fiduciary shall not be personally liable for undertaking or directing another to undertake a response action.

(3) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as affecting the liability, if any, of any person who—

(A)(i) acts in a capacity other than a fiduciary capacity; and

(ii) directly or indirectly benefits from a trust or fiduciary relationship; or

(B)(i) is a beneficiary and a fiduciary with respect to the same fiduciary estate; and

(ii) as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable laws.

(c) DEFINITIONS.—For purposes of subsections (a) and (b), the following definitions shall apply:

(1) FEDERAL ENVIRONMENTAL LAW.—The term "Federal environmental law" means any Federal statute or rule of common law with the purpose of protection of the environment and any Federal regulation promulgated thereunder and any State statute or regulation created as a federally approved or delegated program implementing these laws, including the following:

(A) The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(B) The Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

(C) The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(D) The Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

(E) The Clean Air Act (42 U.S.C. 7401 et seq.).

(F) The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(G) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(H) The Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.).

(2) EXTENSION OF CREDIT.—The term "extension of credit" means the making or renewal of any loan, a granting of a line of credit or extending credit in any manner, such as an advance by means of an overdraft or the issuance of a standby letter of credit, and a lease finance transaction—

(A) in which the lessor does not initially select the leased property and does not, during the lease term, control the daily operation or maintenance of the property; or

(B) that conforms with regulations issued by the appropriate Federal banking agency or the appropriate State bank supervisory (as these terms are defined in section 3 of the Federal Deposit Insurance Act or with regulations issued by the National Credit Union Administration Board, as appropriate.

(3) FIDUCIARY.—The term "fiduciary" means a person who acts for the exclusive benefit of another person as a bona fide fiduciary within the meaning of section 3(21) of the Employee Retirement Income Security Act of 1974, trustee, executor, administrator, custodian, guardian, conservator, receiver, committee of estates of lunatics or other disabled persons, or personal representative; except, that the term "fiduciary" does not include any person—

(A) who owns, or controls, is affiliated with, or takes any action with respect to property on behalf of or for the benefit of a lender or takes any action to protect a lender's extension of credit or security interest (any such person shall be treated as a lender under subsection (a) of this section); or

(B) who is acting as a fiduciary with respect to a trust or other fiduciary estate that—

(i) was not created as part of, or to facilitate, one or more estate plans or pursuant to the incapacity of a natural person; and

(ii) was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit.

(4) FINANCIAL OR ADMINISTRATIVE ASPECT.—The term "financial or administrative aspect" means a function such as a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or any similar function.

(5) FORECLOSURE, FORECLOSE.—The terms "foreclosure" and "foreclose" means, respectively, acquiring, and to acquire, property through—

(A) purchase at sale under a judgment or decree, a power of sale, a nonjudicial foreclosure sale, or from a trustee, deed in lieu of foreclosure, or similar conveyance, or through repossession, if such property was security for an extension of credit previously contracted;

(B) conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

(C) any other formal or informal manner by which the person acquires, for subsequent disposition, possession of collateral in order to protect the security interest of the person.

(6) HAZARDOUS SUBSTANCE.—The term "hazardous substance" means any chemical, biological, organic, inorganic, or radioactive pollutants, contaminants, materials, waste, or other substances regulated under, defined, listed, or included in any Federal environmental law.

(7) LENDER.—The term "lender" means—

(A) a person that makes a bona fide extension of credit to or takes a security interest from another person and includes a successor or assign of the person which makes the extension of credit or takes the security interest;

(B) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or other entity that in a bona fide manner is engaged in the business of buying or selling loans on interests therein;

(C) any person engaged in the business of insuring or guaranteeing against a default in the repayment of an extension of credit, or acting as a surety with respect to an extension of credit, to other persons; or

(D) any person regularly engaged in the business of providing title insurance who acquires property as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

(8) OPERATIONAL ASPECT.—The term "operational aspect" means a function such as a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

(9) PERSON.—The term "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

(10) PROPERTY.—The term "property" means real, personal, and mixed property.

(11) RESPONSE ACTION.—The term "response action" shall have the same meaning as that term is defined in section 101 of the Comprehensive Environmental Response, Compensation and Liability Act.

(12) SECURITY INTEREST.—The term "security interest" means a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease, or any other right accruing to a person to secure the repayment of money, the performance of a duty, or some other obligation.

(d) SAVINGS CLAUSE.—Nothing in subsections (a) (b), or (c), shall—

(1) affect the rights or immunities or other defenses that are already available to lenders or fiduciaries under any Federal environmental law;

(2) be construed to create any liability for any lender or fiduciary; or

(3) create a private right of action against any lender or fiduciary.

(e) FEDERAL BANKING AND LENDING AGENCY ENVIRONMENTAL LIABILITY.—

(1) GOVERNMENTAL ENTITIES.—

(A) BANKING AND LENDING AGENCIES.—Except as provided in paragraph (C), a Federal banking or lending agency shall not be liable under any law imposing strict liability for the release or threatened release of petroleum or a hazardous substance at or from property (including any right or interest therein) acquired—

(i) in connection with the exercise of receivership or conservatorship authority, or the liquidation or winding up of the affairs of an insured depository institution, including any of its subsidiaries, and bridge bank;

(ii) in connection with the provision of loans, discounts, advances, guarantees, insurance, or other financial assistance; or

(iii) in connection with property received in any civil or criminal proceeding, or administrative enforcement action, whether by settlement or order.

(B) APPLICATION OF STATE LAW.—Nothing in paragraph (e) shall be construed as preempting, affecting, applying to, or modifying any State law, or any rights, actions, cause of action, or obligations under State law, except that liability under State law shall not exceed the value of the agency's interest in the asset giving rise to such liability. Nothing in this section shall be construed to prevent a Federal banking or lending agency from agreeing with a State to transfer property to such State in lieu of any liability that might otherwise be imposed under State law.

(C) LIMITATION.—Notwithstanding paragraph (A), and subject to section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, a Federal banking or lending agency that directly caused or materially contributed to the release of petroleum or a hazardous substance may be liable for removal, remedial, or other response action pertaining to that release.

(D) SUBSEQUENT PURCHASER.—The immunity provided by paragraphs (A) and (B) shall extend to the first subsequent purchaser of property described in such paragraph from a Federal banking or lending agency, unless such purchaser—

(i) would otherwise be liable or potentially liable for all or part of the costs of the removal, remedial, or other response action due to a prior relationship with the property;

(ii) is or was affiliated with or related to a party described in subparagraph (i);

(iii) fails to agree to take reasonable steps necessary to abate the release or threatened release or to protect

public health and safety in a manner consistent with the purposes of applicable Federal environmental laws; or

(iv) directly causes or significantly and materially contributes to any additional release or threatened release on the property.

(E) FEDERAL OR STATE ACTION.—Notwithstanding subparagraph (D), if a Federal agency or State environmental agency is required to take remedial action due to the failure of a subsequent purchaser to carry out, in good faith, the agreement described in subparagraph (D)(iii), such subsequent purchaser shall reimburse the Federal or State environmental agency for the costs of such remedial action. Any such reimbursement shall not exceed the increase in the fair market value of the property attributable to the remedial action.

(2) LIEN EXEMPTION.—Notwithstanding any other provision of law, any property held by a subsequent purchaser referred to in paragraph (1)(D) or held by a Federal banking or lending agency shall not be subject to any lien for costs or damages associated with the release or threatened release of petroleum or a hazardous substance existing at the time of the transfer.

(3) EXEMPTION FROM COVENANTS TO REMEDIATE.—A Federal banking or lending agency shall be exempt from any law requiring such agency to grant covenants warranting that a removal, remedial, or other response action has been, or will in the future be, taken with respect to property acquired in the manner described in paragraph (e)(1)(A).

(4) DEFINITIONS.—For purposes of subsection (e), the following definitions shall apply:

(A) FEDERAL BANKING OR LENDING AGENCY.—The term "Federal banking or lending agency" means the Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, a Federal Reserve Bank, a Federal Home Loan Bank, the Department of Housing and Urban Development, the National Credit Union Administration Board, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Farm Credit System Assistance Board, the Farmers Home Administration, the Rural Electrification Administration, the Small Business Administration, and any other Federal agency acting in a similar capacity, in any of their capacities, and their agents or appointees.

(B) HAZARDOUS SUBSTANCE.—The term "hazardous substance" has the same meaning as in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(C) RELEASE.—The term "release" has the same meaning as in section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and includes the use, storage, disposal, treatment, generation, or transportation of a hazardous substance.

(5) SAVINGS CLAUSE.—Nothing in subsection (e) shall—

(A) affect the rights or immunities or other defenses that are available under this Act or other applicable law to any party, subject to the provisions of this section;

(B) be construed to create any liability for any party; or

(C) create a private right of action against an insured depository institution or lender or against a Federal banking or lending agency.

TRUTH IN SAVINGS ACT

Subtitle F—Truth in Savings

SEC. 261. SHORT TITLE.

This subtitle may be cited as the "Truth in Savings Act".

[SEC. 262. FINDINGS AND PURPOSE.

[(a) FINDINGS.—The Congress hereby finds that economic stability would be enhanced, competition between depository institutions would be improved, and the ability of the consumer to make informed decisions regarding deposit accounts, and to verify accounts, would be strengthened if there was uniformity in the disclosure of terms and conditions on which interest is paid and fees are assessed in connection with such accounts.

[(b) PURPOSE.—It is the purpose of this subtitle to require the clear and uniform disclosure of—

[(1) the rates of interest which are payable on deposit accounts by depository institutions, and

[(2) the fees that are assessable against deposit accounts,

so that consumers can make a meaningful comparison between the competing claims of depository institutions with regard to deposit accounts.

[SEC. 263. DISCLOSURE OF INTEREST RATES AND TERMS OF ACCOUNTS.

[(a) IN GENERAL.—Except as provided in subsections (b) and (c), each advertisement, announcement, or solicitation initiated by any depository institution or deposit broker relating to any demand or interest-bearing account offered by an insured depository institution which includes any reference to a specific rate of interest payable on amounts deposited in such account, or to a specific yield or rate of earnings on amounts so deposited, shall state the following information, to the extent applicable, in a clear and conspicuous manner:

[(1) The annual percentage yield.

[(2) The period during which such annual percentage yield is in effect.

[(3) All minimum account balance and time requirements which must be met in order to earn the advertised yield (and, in the case of accounts for which more than 1 yield is stated, each annual percentage yield and the account minimum balance requirement associated with each such yield shall be in close proximity and have equal prominence).

[(4) The minimum amount of the initial deposit which is required to open the account in order to obtain the yield adver-

tised, if such minimum amount is greater than the minimum balance necessary to earn the advertised yield.

[(5) A statement that regular fees or other conditions could reduce the yield.

[(6) A statement that an interest penalty is required for early withdrawal.

[(b) BROADCAST AND ELECTRONIC MEDIA AND OUTDOOR ADVERTISING EXCEPTION.—The Board may, by regulation, exempt advertisements, announcements, or solicitations made by any broadcast or electronic medium or outdoor advertising display not on the premises of the depository institution from any disclosure requirements described in paragraph (4) or (5) of subsection (a) if the Board finds that any such disclosure would be unnecessarily burdensome.

[(c) DISCLOSURE REQUIRED FOR ON-PREMISES DISPLAYS.—

[(1) IN GENERAL.—The disclosure requirements contained in this section shall not apply to any sign (including a rate board) disclosing a rate or rates of interest which is displayed on the premises of the depository institution if such sign contains—

[(A) the accompanying annual percentage yield; and

[(B) a statement that the consumer should request further information from an employee of the depository institution concerning the fees and terms applicable to the advertised account.

[(2) DEFINITION.—For purposes of paragraph (1), a sign shall only be considered to be displayed on the premises of a depository institution if the sign is designed to be viewed only from the interior of the premises of the depository institution.

[(d) MISLEADING DESCRIPTIONS OF FREE OR NO-COST ACCOUNTS PROHIBITED.—No advertisement, announcement, or solicitation made by any depository institution or deposit broker may refer to or describe an account as a free or no-cost account (or words of similar meaning) if—

[(1) in order to avoid fees or service charges for any period—

[(A) a minimum balance must be maintained in the account during such period; or

[(B) the number of transactions during such period may not exceed a maximum number; or

[(2) any regular service or transaction fee is imposed.

[(e) MISLEADING OR INACCURATE ADVERTISEMENTS, ETC., PROHIBITED.—No depository institution or deposit broker shall make any advertisement, announcement, or solicitation relating to a deposit account that is inaccurate or misleading or that misrepresents its deposit contracts.

[SEC. 264. ACCOUNT SCHEDULE.

[(a) IN GENERAL.—Each depository institution shall maintain a schedule of fees, charges, interest rates, and terms and conditions applicable to each class of accounts offered by the depository institution, in accordance with the requirements of this section and regulations which the Board shall prescribe. The Board shall specify, in regulations, which fees, charges, penalties, terms, conditions, and account restrictions must be included in a schedule required under this subsection. A depository institution need not include in such schedule any information not specified in such regulation.

[(b) INFORMATION ON FEES AND CHARGES.—The schedule required under subsection (a) with respect to any account shall contain the following information:

[(1) A description of all fees, periodic service charges, and penalties which may be charged or assessed against the account (or against the account holder in connection with such account), the amount of any such fees, charge, or penalty (or the method by which such amount will be calculated), and the conditions under which any such amount will be assessed.

[(2) All minimum balance requirements that affect fees, charges, and penalties, including a clear description of how each such minimum balance is calculated.

[(3) Any minimum amount required with respect to the initial deposit in order to open the account.

[(c) INFORMATION ON INTEREST RATES.—The schedule required under subsection (a) with respect to any account shall include the following information:

[(1) Any annual percentage yield.

[(2) The period during which any such annual percentage yield will be in effect.

[(3) Any annual rate of simple interest.

[(4) The frequency with which interest will be compounded and credited.

[(5) A clear description of the method used to determine the balance on which interest is paid.

[(6) The information described in paragraphs (1) through (4) with respect to any period after the end of the period referred to in paragraph (2) (or the method for computing any information described in any such paragraph), if applicable.

[(7) Any minimum balance which must be maintained to earn the rates and obtain the yields disclosed pursuant to this subsection and a clear description of how any such minimum balance is calculated.

[(8) A clear description of any minimum time requirement which must be met in order to obtain the yields disclosed pursuant to this subsection and any information described in paragraph (1), (2), (3), or (4) that will apply if any time requirement is not met.

[(9) A statement, if applicable, that any interest which has accrued but has not been credited to an account at the time of a withdrawal from the account will not be paid by the depository institution or credited to the account by reason of such withdrawal.

[(10) Any provision or requirement relating to nonpayment of interest, including any charge or penalty for early withdrawal, and the conditions under which any such charge or penalty may be assessed.

[(d) OTHER INFORMATION.—The schedule required under subsection (a) shall include such other disclosures as the Board may determine to be necessary to allow consumers to understand and compare accounts, including frequency of interest rate adjustments, account restrictions, and renewal policies for time accounts.

[(e) STYLE AND FORMAT.—Schedules required under subsection (a) shall be written in clear and plain language and be presented

in a format designed to allow consumers to readily understand the terms of the accounts offered.

[SEC. 265. DISCLOSURE REQUIREMENTS FOR CERTAIN ACCOUNTS.

[The Board shall require, in regulations which the Board shall prescribe, such modification in the disclosure requirements under this Act relating to annual percentage yield as may be necessary to carry out the purposes of this Act in the case of—

[(1) accounts with respect to which determination of annual percentage yield is based on an annual rate of interest that is guaranteed for a period of less than 1 year;

[(2) variable rate accounts;

[(3) accounts which, pursuant to law, do not guarantee payment of a stated rate;

[(4) multiple rate accounts; and

[(5) accounts with respect to which determination of annual percentage yield is based on an annual rate of interest that is guaranteed for a stated term.

[SEC. 266. DISTRIBUTION OF SCHEDULES.

[(a) IN GENERAL.—A schedule required under section 264 for an appropriate account shall be—

[(1) made available to any person upon request;

[(2) provided to any potential customer before an account is opened or a service is rendered; and

[(3) provided to the depositor, in the case of any time deposit which is renewable at maturity without notice from the depositor, at least 30 days before the date of maturity.

[(b) DISTRIBUTION IN CASE OF CERTAIN INITIAL DEPOSITS.—If—

[(1) a depositor is not physically present at an office of a depository institution at the time an initial deposit is accepted with respect to an account established by or for such person; and

[(2) the schedule required under section 264(a) has not been furnished previously to such depositor,

the depository institution shall mail the schedule to the depositor at the address shown on the records of the depository institution for such account no later than 10 days after the date of the initial deposit.

[(c) DISTRIBUTION OF NOTICE OF CERTAIN CHANGES.—If—

[(1) any change is made in any term or condition which is required to be disclosed in the schedule required under section 264(a) with respect to any account; and

[(2) the change may reduce the yield or adversely affect any holder of the account,

all account holders who may be affected by such change shall be notified and provided with a description of the change by mail at least 30 days before the change takes effect.

[(d) DISTRIBUTION IN CASE OF ACCOUNTS ESTABLISHED BY MORE THAN 1 INDIVIDUAL OR BY A GROUP.—If an account is established by more than 1 individual or for a person other than an individual, any distribution described in this section with respect to such account meets the requirements of this section if the distribution is made to 1 of the individuals who established the account or 1 indi-

vidual representative of the person on whose behalf such account was established.

[(e) NOTICE TO ACCOUNT HOLDERS AS OF THE EFFECTIVE DATE OF REGULATIONS.—For any account for which the depository institution delivers an account statement on a quarterly or more frequent basis, the depository institution shall include on or with any regularly scheduled mailing posted or delivered within 180 days after publication of regulations issued by the Board in final form, a statement that the account holder has the right to request an account schedule containing the terms, charges, and interest rates of the account, and that the account holder may wish to request such an account schedule.]

SEC. 262. PURPOSE.

It is the purpose of this subtitle to ensure that consumers can make a meaningful comparison between the competing claims of depository institutions with regard to deposit accounts by requiring that institutions offering interest-bearing accounts pay interest on the full amount of principal each day in a consumer deposit account at the rate agreed to be paid by the institution.

SEC. 263. PROHIBITION ON MISLEADING OR INACCURATE ADVERTISEMENTS AND DISCLOSURES.

No depository institution or deposit broker shall make any advertisement, announcement, solicitation or disclosure relating to a deposit account that is inaccurate or misleading, including any inaccurate or misleading description of a free or no-cost account, or that misrepresents its deposit contracts.

SEC. 264. ACCOUNT INFORMATION.

(a) IN GENERAL.—Each depository institution shall disclose fees, charges, penalties, and interest rates applicable to each class of accounts offered by the institution in accordance with this section.

(b) INFORMATION ON FEES AND CHARGES.—Each depository institution shall disclose the following information with respect to any account to a consumer at the time the account is opened, or at such earlier time as a consumer may request (and no additional information may be required to be disclosed under this subtitle by regulation or otherwise with respect to such account):

(1) A description of all fees, periodic service charges, penalties, and interest rates which may be charged or assessed against the account (or against the account holder in connection with such account), the amount of any such fees, charges, or penalties (or the method by which such amount will be calculated), and the conditions under which any such amount will be assessed.

(2) All minimum balance requirements that affect fees, charges, and penalties, including a clear description of how each such minimum balance is calculated.

(3) Any minimum amount required with respect to the initial deposit in order to open the account.

(c) INFORMATION ON INTEREST RATES.—The disclosures required under subsections (a) and (b) with respect to any account shall include the following information:

(1) Any annual rate of simple interest.

(2) The frequency with which interest will be compounded and credited.

(d) NO REGULATIONS AUTHORIZED.—No regulations may be prescribed with respect to this section by the Board or any agency referred to in this title, including any regulation to define any terms used in this section.

SEC. 265. DISCLOSURE OF CHANGE IN TERMS.

If any change is made in any item required to be disclosed under section 264, all account holders who may be affected by such change shall be notified by mail and provided with a description of such change at least 30 days before the effective date of the change.

SEC. [267.] *266.* PAYMENT OF INTEREST.

(a) CALCULATED ON FULL AMOUNT OF PRINCIPAL.—Interest on an interest-bearing account at any depository institution shall be calculated by such institution on the full amount of principal in the account for each day of the stated calculation period at the rate or rates of interest disclosed pursuant to this Act.

(b) NO PARTICULAR METHOD OF COMPOUNDING INTEREST REQUIRED.—Subsection (a) shall not be construed as prohibiting or requiring the use of any particular method of compounding or crediting of interest.

(c) DATE BY WHICH INTEREST MUST ACCRUE.—Interest on accounts that are subject to this Act shall begin to accrue not later than the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act, subject to subsections (b) and (c) of such section.

[SEC. 268. PERIODIC STATEMENTS.

[Each depository institution shall include on or with each periodic statement provided to each account holder at such institution a clear and conspicuous disclosure of the following information with respect to such account:

[(1) The annual percentage yield earned.

[(2) The amount of interest earned.

[(3) The amount of any fees or charges imposed.

[(4) The number of days in the reporting period.

[SEC. 269. REGULATIONS.

[(a) IN GENERAL.—

[(1) REGULATIONS REQUIRED.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Board, after consultation with each agency referred to in section 270(a) and public notice and opportunity for comment, shall prescribe regulations to carry out the purpose and provisions of this Act.

[(2) EFFECTIVE DATE OF REGULATIONS.—The regulations prescribed under paragraph (1) shall take effect not later than 9 months after publication in final form.

[(3) CONTENTS OF REGULATIONS.—The regulations prescribed under paragraph (1) may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of accounts as, in the judgment of the Board, are necessary or proper to carry out the purposes of this Act, to prevent circumvention or evasion of the

requirements of this Act, or to facilitate compliance with the requirements of this Act.

[(4) DATE OF APPLICABILITY.—The provisions of this Act shall not apply with respect to any depository institution before the effective date of regulations prescribed by the Board under this subsection (or by the National Credit Union Administration Board under section 12(b), in the case of any depository institution described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act).

[(b) MODEL FORMS AND CLAUSES.—

[(1) IN GENERAL.—The Board shall publish model forms and clauses for common disclosures to facilitate compliance with this Act. In devising such forms, the Board shall consider the use by depository institutions of data processing or similar automated machines.

[(2) USE OF FORMS AND CLAUSES DEEMED IN COMPLIANCE.—Nothing in this Act may be construed to require a depository institution to use any such model form or clause prescribed by the Board under this subsection. A depository institution shall be deemed to be in compliance with the disclosure provisions of this Act if the depository institution—

[(A) uses any appropriate model form or clause as published by the Board; or

[(B) uses any such model form or clause and changes it by—

[(i) deleting any information which is not required by this Act; or

[(ii) rearranging the format,

if in making such deletion or rearranging the format, the depository institution does not affect the substance, clarity, or meaningful sequence of the disclosure.

[(3) PUBLIC NOTICE AND OPPORTUNITY FOR COMMENT.—Model disclosure forms and clauses shall be adopted by the Board after duly given notice in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.]

SEC. 267. REGULATIONS.

(a) IN GENERAL.—The Board, after consultation with each agency referred to in section 265(a) and public notice and opportunity for comment, shall prescribe regulations to carry out the purpose and provisions of this subtitle.

(b) EFFECTIVE DATE OF REGULATIONS.—The provisions of this subtitle shall not apply with respect to any depository institution before the effective date of regulations prescribed by the Board under this subsection.

SEC. [270.] *268.* ADMINISTRATIVE ENFORCEMENT.

(a) IN GENERAL.—Compliance with the requirements imposed under this Act shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act—

(A) by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) in the case of insured depository institutions (as defined in section 3(c)(2) of such Act);

(B) by the Federal Deposit Insurance Corporation in the case of depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

(C) by the Director of the Office of Thrift Supervision in the case of depository institutions described in clause (v) and or (vi) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

(2) the Federal Credit Union Act, by the National Credit Union Administration Board in the case of depository institutions described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act.

(b) ADDITIONAL ENFORCEMENT POWERS.—

(1) VIOLATION OF THIS ACT TREATED AS VIOLATION OF OTHER ACTS.—For purposes of the exercise by any agency referred to in subsection (a) of such agency's powers under any Act referred to in such subsection, a violation of a requirement imposed under this Act shall be deemed to be a violation of a requirement imposed under that Act.

(2) ENFORCEMENT AUTHORITY UNDER OTHER ACTS.—In addition to the powers of any agency referred to in subsection (a) under any provision of law specifically referred to in such subsection, each such agency may exercise, for purposes of enforcing compliance with any requirement imposed under this Act, any other authority conferred on such agency by law.

(c) REGULATIONS BY AGENCIES OTHER THAN THE BOARD.—The authority of the Board to issue regulations under this Act does not impair the authority of any other agency referred to in subsection (a) to make rules regarding its own procedures in enforcing compliance with the requirements imposed under this Act.

[SEC. 271. CIVIL LIABILITY.

[(a) CIVIL LIABILITY.—Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under this Act or any regulation prescribed under this Act with respect to any person who is an account holder is liable to such person in an amount equal to the sum of—

[(1) any actual damage sustained by such person as a result of the failure;

[(2)(A) in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

[(B) in the case of a class action, such amount as the court may allow, except that—

[(i) as to each member of the class, no minimum recovery shall be applicable; and

[(ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of $500,000 or 1 percent of the net worth of the depository institution involved; and

[(3) in the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with a reasonable attorney's fee as determined by the court.

[(b) CLASS ACTION AWARDS.—In determining the amount of any award in any class action, the court shall consider, among other relevant factors—

[(1) the amount of any actual damages awarded;

[(2) the frequency and persistence of failures of compliance;

[(3) the resources of the depository institution;

[(4) the number of persons adversely affected; and

[(5) the extent to which the failure of compliance was intentional.

[(c) BONA FIDE ERRORS.—

[(1) GENERAL RULE.—A depository institution may not be held liable in any action brought under this section for a violation of this Act if the depository institution demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

[(2) EXAMPLES.—Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a depository institution's obligation under this Act is not a bona fide error.

[(d) NO LIABILITY FOR OVERPAYMENT.—A depository institution may not be held liable in any action under this section for a violation of this Act if the violation has resulted in—

[(1) an interest payment to the account holder in an amount greater than the amount determined under any disclosed rate of interest applicable with respect to such payment; or

[(2) a charge to the consumer in an amount less than the amount determined under the disclosed charge or fee schedule applicable with respect to such charge.

[(e) JURISDICTION.—Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within 1 year after the date of the occurrence of the violation involved.

[(f) RELIANCE ON BOARD RULINGS.—No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any regulation or order, or any interpretation of any regulation or order, of the Board, or in conformity with any interpretation or approval by an official or employee of the Board duly authorized by the Board to issue such interpretation or approval under procedures prescribed by the Board, notwithstanding, the fact that after such act or omission has occurred, such regulation, order, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

[(g) NOTIFICATION OF AND ADJUSTMENT FOR ERRORS.—A depository institution shall not be liable under this section or section 270 for any failure to comply with any requirement imposed under this Act with respect to any account if—

[(1) before—

[(A) the end of the 60-day period beginning on the date on which the depository institution discovered the failure to comply;

[(B) any action is instituted against the depository institution by the account holder under this section with respect to such failure to comply; and

[(C) any written notice of such failure to comply is received by the depository institution from the account holder,

the depository institution notifies the account holder of the failure of such institution to comply with such requirement; and

[(2) the depository institution makes such adjustments as may be necessary with respect to such account to ensure that—

[(A) the account holder will not be liable for any amount in excess of the amount actually disclosed with respect to any fee or charge;

[(B) the account holder will not be liable for any fee or charge imposed under any condition not actually disclosed; and

[(C) interest on amounts in such account will accrue at the annual percentage yield, and under the conditions, actually disclosed (and credit will be provided for interest already accrued at a different annual percentage yield and under different conditions than the yield or conditions disclosed).

[(h) MULTIPLE INTERESTS IN 1 ACCOUNT.—If more than 1 person holds an interest in any account—

[(1) the minimum and maximum amounts of liability under subsection (a)(2)(A) for any failure to comply with the requirements of this Act shall apply with respect to such account; and

[(2) the court shall determine the manner in which the amount of any such liability with respect to such account shall be distributed among such persons.

[(i) CONTINUING FAILURE TO DISCLOSE.—

[(1) CERTAIN CONTINUING FAILURES TREATED AS 1 VIOLATION.—Except as provided in paragraph (2), the continuing failure of any depository institution to disclose any particular term required to be disclosed under this Act with respect to a particular account shall be treated as a single violation for purposes of determining the amount of any liability of such institution under subsection (a) for such failure to disclose.

[(2) SUBSEQUENT FAILURE TO DISCLOSE.—The continuing failure of any depository institution to disclose any particular term required to be disclosed under this Act with respect to a particular account after judgment has been rendered in favor of the account holder in connection with a prior failure to disclose such term with respect to such account shall be treated as a subsequent violation for purposes of determining liability under subsection (a).

[(3) COORDINATION WITH SECTION 270.—This subsection shall not limit or otherwise affect the enforcement power under section 270 of any agency referred to in subsection (a) of such section.]

SEC. [272.] *269.* CREDIT UNIONS.

(a) IN GENERAL.—No regulation prescribed by the Board under this Act shall apply directly with respect to any depository institution described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act.

(b) REGULATIONS PRESCRIBED BY THE NCUA.—Within 90 days of the effective date of any regulation prescribed by the Board under this Act, the National Credit Union Administration Board shall prescribe a regulation substantially similar to the regulation prescribed by the Board taking into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts.

[SEC. 273. EFFECT ON STATE LAW.

[The provisions of this Act do not supersede any provisions of the law of any State relating to the disclosure of yields payable or terms for accounts to the extent such State law requires the disclosure of such yields or terms for accounts, except to the extent that those laws are inconsistent with the provisions of this Act, and then only to the extent of the inconsistency. The Board may determine whether such inconsistencies exist.

[SEC. 274. DEFINITIONS.

[For the purposes of this Act—

[(1) ACCOUNT.—The term "account" means any account intended for use by and generally used by consumers primarily for personal, family, or household purposes that is offered by a depository institution into which a consumer deposits funds, including demand accounts, time accounts, negotiable order of withdrawal accounts, and share draft accounts.

[(2) ANNUAL PERCENTAGE YIELD.—The term "annual percentage yield" means the total amount of interest that would be received on a $100 deposit, based on the annual rate of simple interest and the frequency of compounding for a 365-day period, expressed as a percentage calculated by a method which shall be prescribed by the Board in regulations.

[(3) ANNUAL RATE OF SIMPLE INTEREST.—The term "annual rate of simple interest"—

[(A) means the annualized rate of interest paid with respect to each compounding period, expressed as a percentage; and

[(B) may be referred to as the "annual percentage rate".

[(4) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

[(5) DEPOSIT BROKER.—The term "deposit broker"—

[(A) has the meaning given to such term in section 29(f)(1) of the Federal Deposit Insurance Act; and

[(B) includes any person who solicits any amount from any other person for deposit in an insured depository institution.

[(6) DEPOSITORY INSTITUTION.—The term "depository institution" has the meaning given such term in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act.

[(7) INTEREST.—The term "interest" includes dividends paid with respect to share draft accounts which are accounts within the meaning of paragraph (3).

[(8) MULTIPLE RATE ACCOUNT.—The term "multiple rate account" means any account that has 2 or more annual rates of simple interest which take effect at the same time or in succeeding periods and which are known at the time of disclosure.]

SEC. 270. DEFINITIONS.

For the purposes of this subtitle, the following definitions shall apply:

(1) ACCOUNTS.—The term "account" means any account intended for use by and generally used by a consumer primarily for personal, family, or household purposes that is offered by a depository institution.

(2) DEPOSIT BROKER.—The term "deposit broker"—

(A) has the meaning given to such term in section 29(f)(1) of the Federal Deposit Insurance Act; and

(B) includes any person who solicits any amount from any other person for deposit in an insured depository institution.

(3) DEPOSITORY INSTITUTION.—The term "depository institution"—

(A) means an institution described in clause (i), (ii), (iii), (iv), (v), or (vi) of section 19(b)(1)(A) of the Federal Reserve Act; and

(B) does not include nonautomated credit unions which were not required to comply with the requirements of this title as of the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995 pursuant to the determination of the National Credit Union Administration Board.

(4) INTEREST.—The term "interest" includes dividends paid with respect to share accounts which are accounts within the meaning of paragraph (1).

(5) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

SECTION 903 OF THE ELECTRONIC FUND TRANSFER ACT

§903. [15 U.S.C. 1693a] Definitions

As used in this title—

(1) the term "accepted card or other means of access" means a card, code, or other means of access to a consumer's account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services, *but such term does not include a card, device, or computer that a person may use to pay for transactions through use of value stored on, or assigned*

to, the card, device, or computer itself, except for those transactions where such card, device, or computer is actually used to access an account to effect such transaction;

(2) the term "account" means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 103(i) of this Act), as described in regulations of the Board, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement *and does not include any value which is stored on, or assigned to, a card, device, or computer itself that enables a person to pay for transactions through use of that stored value;*

* * * * * * *

EQUAL CREDIT OPPORTUNITY ACT

TITLE VII—EQUAL CREDIT OPPORTUNITY

Sec.
701. Prohibited discrimination.

* * * * * * *

704A. Incentives for self-testing and self-correction.

* * * * * * *

§701. Prohibited discrimination; reasons for adverse action

(a) * * *

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(d)(1) Within thirty days (or such longer reasonable time as specified in regulations of the Board for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

(2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by—

(A) providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or

[(B) giving written notification of adverse action which discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification, and (ii) the identity of the person or office from which such statement may be obtained. Such statement may be given orally, if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.]

(B) giving written notification of adverse action which discloses—

(i) the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days after such notification;

(ii) if credit is denied or the charge for such credit is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency—

(I) that fact and the name, address, and telephone number of the consumer reporting agency making the report;

(II) the consumer's right to obtain, under section 612, a free copy of a consumer report on the consumer, from the consumer reporting agency referred to in subclause (I) within the 30-day period provided under such section; and

(III) the consumer's right to dispute, under section 611, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

(iii) if credit is denied or the charge for credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living, that fact and the right to receive disclosure of the nature of the information so received, within a reasonable period of time, upon the consumer's written request for information within 60 days after learning of such adverse action; and

(iv) the identity of the person or office from which such notification may be obtained.

Such statement of reasons may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

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(3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken**[**.**]** *and, to the extent applicable, the name and address, and telephone number of the consumer reporting agency identified in accordance with the requirements of subsection (d)(3)(ii) and a statement of the right to obtain disclosure of the nature of the information upon which adverse action was taken as required by such subsection.*

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SEC. 704A. INCENTIVES FOR SELF-TESTING AND SELF-CORRECTION.

(a) IN GENERAL.—If a creditor—

(1) conducts, or authorizes an independent third party to conduct, a self-test of the creditor's lending or any part of the creditor's lending operations in order to determine the level or effectiveness of compliance with this title by the creditor; and

(2) has identified discriminatory practices and has taken or is taking appropriate corrective actions to address the discrimination,

any report or results of such a self-test may not be obtained or used by any applicant, department, or agency in any proceeding or civil action brought under this title.

(b) RESULTS OF SELF-TESTING.—No provision of this section shall be construed as preventing an applicant, department, or agency from obtaining and using the results of any self-testing in any proceeding or civil action brought under this title if—

(1) the creditor or any other entity conducted such activity at the request of a department or agency;

(2) the creditor or any other entity, or any person acting on behalf of the creditor or other entity—

(A) voluntarily releases or discloses all, or any part of, such results; or

(B) refers to or describes such results as a defense to charges of unlawful discrimination against such creditor, person, or entity; or

(3) the results are sought by the applicant, department, or agency by means of a discovery request for the purposes of determining an appropriate penalty or remedy for a violation of this title.

(c) REGULATIONS.—The appropriate Federal department or agency shall prescribe regulations, after notice and opportunity for comment, which determine what types of "self-tests" are sufficiently extensive so as to constitute a determination of the level or effectiveness of a creditor's compliance with this title.

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§ 706. Civil liability

(a) * * *

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[(g) The agencies] *(g) REFERRALS TO THE ATTORNEY GENERAL.—*

(1) IN GENERAL.—The agencies having responsibility for administrative enforcement under section 704, if unable to obtain compliance with section 701, are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted. Each agency referred to in paragraphs (1), (2), and (3) of section 704(a) shall refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 701(a). Each such agency may refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has violated section 701(a).

(2) LIMITATION ON REFERRALS OF SELF-TESTING RESULTS.—

(A) IN GENERAL.—No agency shall be required to refer any report or results of a self-test relating to any creditor to the Attorney General if the creditor—

(i) has already identified discriminatory practices as the result of self-testing instituted by the creditor to determine compliance with this title; and

(ii) has taken or is taking appropriate corrective actions to address the discrimination.

(3) ENFORCEMENT UNDER OTHER LAWS.—No provision of this section shall be construed as limiting the authority of the agency to enforce the provisions of this Act under any other provision of law.

* * * * * * *

(k) NOTICE TO HUD OF VIOLATIONS.—Whenever an agency referred to in paragraph (1), (2), or (3) of section 704(a)—

(1) has reason to believe, as a result of receiving a consumer complaint, conducting a consumer compliance examination, or otherwise, that a violation of this title has occurred;

(2) has reason to believe that the alleged violation would be a violation of the Fair Housing Act; and

(3) does not refer the matter to the Attorney General pursuant to subsection (g),

the agency shall notify the Secretary of Housing and Urban Development of the violation, and shall notify the applicant that the Secretary of Housing and Urban Development has been notified of the alleged violation and that remedies for the violation may be available under the Fair Housing Act. *No such agency shall be required to notify the Secretary of Housing and Urban Development or the applicant that the agency has reason to believe that a violation of this title or the Fair Housing Act occurred if the reason is based on a result of self-testing instituted by the creditor to determine compliance with this title, and the creditor has already identified the possible violation and has taken or is taking appropriate corrective actions to address the possible violation. No provisions of this section shall be construed as limiting the authority of the agency to enforce the provisions of this title under any other provision of law.*

(l) REASONABLE PROCEDURES TO ASSURE COMPLIANCE.—No person shall be held liable for any violation of subsection 701(d) if such person shows by a preponderance of the evidence that at the time of the alleged violation the person maintained reasonable procedures to assure compliance with the provisions of the subsection.

* * * * * * *

§ 709. Short title

This title may be cited as the "Equal Credit Opportunity Act".

SECTION 615 OF THE FAIR CREDIT REPORTING ACT

§ 615. Requirements on users of consumer reports

(a) Whenever [credit or] insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such [credit or] insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

[(b) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained

from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.]

[(c)] *(b)* No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of [subsections (a) and (b)] *subsection (a).*

FAIR HOUSING ACT

TITLE VIII—FAIR HOUSING

SHORT TITLE

SEC. 800. This title may be cited as the "Fair Housing Act".

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ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 814. (a) PATTERN OR PRACTICE CASES.—Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court. *Before bringing a civil action under the preceding sentence against any person or group of persons described in paragraph (1), (2), or (3) of section 704(a) of the Equal Credit Opportunity Act with respect to a violation of 805(a) of this title, the Attorney General shall consult with the appropriate agency under such paragraph.*

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SEC. 814A. SELF-TESTING ENHANCEMENT.

(a) IN GENERAL.—If any person—

(1) conducts, or authorizes an independent third party to conduct, a self-test of that person's residential real estate related lending activities, or any part of such activities, in order to determine the level or effectiveness of compliance with this title by the person; and

(2) has identified discriminatory practices and has taken or is taking appropriate corrective actions to address the discrimination,

any report or results of such a self-test may not be obtained or used by any aggrieved person, complainant, department, or agency in any proceeding or civil action brought under this title.

(b) RESULTS OF SELF-TESTING.—No provision of this section shall be construed as preventing an aggrieved person, complainant, department, or agency from obtaining and using the results of any self-testing as described in subsection (a) in any proceeding or civil action brought under this title if—

(1) the creditor or any other entity conducted such activity at the request of a department or agency;

(2) the creditor or any other entity, or any person acting on behalf of the creditor or other entity—

(A) voluntarily releases or discloses all, or any part of, such results; or

(B) refers to or describes such results as a defense to charges of unlawful discrimination against such creditor, person, or entity; or

(3) the results are sought by the aggrieved person, complainant, department, or agency by means of a discovery request for the purposes of determining an appropriate penalty or remedy for a violation of this title.

(c) REGULATIONS.—The appropriate Federal department or agency shall prescribe regulations, after notice and opportunity for comment, which determine what types of "self-tests" are sufficiently extensive so as to constitute a determination of the level or effectiveness of a creditor's compliance with this title.

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EQUAL CREDIT OPPORTUNITY ACT

TITLE VII—EQUAL CREDIT OPPORTUNITY

* * * * * * *

§ 701. Prohibited discrimination; reasons for adverse action

(a) * * *

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(f) CREDIT SCORING SYSTEM.—

(1) IN GENERAL.—A creditor shall be deemed to be in compliance with subsection (a) with respect to any credit decision made by the creditor which is based solely on the use of an empirically derived, demonstrably and statistically sound, credit scoring system (as defined by the Board in regulations prescribed under this title) if such system—

(A) does not utilize any category protected under subsection (a);

(B) does not use as a factor in such system any criterion which is so directly associated with such a category as to be the functional equivalent of such a category; and

(C) does not use as a factor in such system any criterion that has a disparate impact on a category protected under subsection (a) unless use of the criterion is justified by busi-

ness necessity and there is no less discriminatory alternative available.

(2) AGE AS A FACTOR.—No provision of this subsection shall be construed as precluding a creditor from using age as a factor in a credit scoring system under paragraph (1) to the extent otherwise permitted under this title.

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§ 706. Civil liability

(a) * * *

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(h) When a matter is referred to the Attorney General pursuant to subsection (g), or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this title, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including actual and punitive damages and injunctive relief. *Before bringing a civil action against any creditor described in paragraph (1), (2), or (3) of section 704(a), the Attorney General shall consult with the appropriate agency under such paragraph.*

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CONSUMER CREDIT PROTECTION ACT

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TITLE I—CONSUMER CREDIT COST DISCLOSURE

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CHAPTER 5—CONSUMER LEASES

Sec.
181. Definitions.

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187. Regulations.

* * * * * * *

[§ 184. Consumer lease advertising

[(a) No advertisement to aid, promote, or assist directly or indirectly any consumer lease shall state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at inception of the lease unless the advertisement also states clearly and conspicuously and in accordance with regulations issued by the Board each of the following items of information which is applicable:

[(1) That the transaction advertised is a lease.

[(2) The amount of any payment required at the inception of the lease or that no such payment is required if that is the case.

⟦(3) The number, amounts, due dates or periods of scheduled payments, and the total of payments under the lease.

⟦(4) That the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability.

⟦(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time.

⟦(b) RADIO ADVERTISEMENTS.—

⟦(1) IN GENERAL.—An advertisement by radio broadcast to aid, promote, or assist, directly or indirectly, any consumer lease shall be deemed to be in compliance with the requirements of subsection (a) if such advertisement clearly and conspicuously—

⟦(A) states the information required by paragraphs (1) and (2) of subsection (a);

⟦(B) states the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;

⟦(C) includes—

⟦(i) a referral to—

⟦(I) a toll-free telephone number established in accordance with paragraph (2) that may be used by consumers to obtain the information required under subsection (a); or

⟦(II) a written advertisement that—

⟦(aa) appears in a publication in general circulation in the community served by the radio station on which such advertisement is broadcast during the period beginning 3 days before any such broadcast and ending 10 days after such broadcast; and

⟦(bb) includes the information required to be disclosed under subsection (a); and

⟦(ii) the name and dates of any publication referred to in clause (i)(II); and

⟦(D) includes any other information which the Board determines necessary to carry out this chapter.

⟦(2) ESTABLISHMENT OF TOLL-FREE NUMBER.—

⟦(A) IN GENERAL.—In the case of a radio broadcast advertisement described in paragraph (1) that includes a referral to a toll-free telephone number, the lessor who offers the consumer lease shall—

⟦(i) establish such a toll-free telephone number not later than the date on which the advertisement including the referral is broadcast;

⟦(ii) maintain such telephone number for a period of not less than 10 days, beginning on the date of any such broadcast; and

[(iii) provide the information required under subsection (a) with respect to the lease to any person who calls such number.

[(B) FORM OF INFORMATION.—The information required to be provided under subparagraph (A)(iii) shall be provided verbally or, if requested by the consumer, in written form.

[(3) NO EFFECT ON OTHER LAW.—Nothing in this subsection shall affect the requirements of Federal law as such requirements apply to advertisement by any medium other than radio broadcast.

[(c) There is no liability under this section on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.]

SEC. 184. CONSUMER LEASE ADVERTISING.

(a) IN GENERAL.—If an advertisement for a consumer lease states the amount of any payment or states that any or no initial payment is required, the advertisement must also clearly and conspicuously state the following terms, as applicable:

(1) That the transaction advertised is a lease.

(2) The total of initial payments required at or before consummation of the lease or delivery of the property, whichever is later.

(3) That a security deposit is required.

(4) The number, amounts, and timing of scheduled payments.

(5) For a lease in which the consumer's liability at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.

(b) ADVERTISING MEDIUM NOT LIABLE.—Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

§ 185. Civil liability

(a) Any lessor who fails to comply with any requirement imposed under section 182 or 183 of this chapter with respect to any person is liable to such person as provided in section 130. *Notwithstanding the preceding sentence, a creditor shall only have liability determined under section 130(a)(2) for failing to comply with the requirements of paragraph (2), (8), (9), or (10) of section 182 or for failing to comply with disclosure requirements under State law for any term which the Board has determined to be substantially the same in meaning under section 186 as any of the terms referred to in section 182.*

* * * * * * *

SEC. 187. REGULATIONS.

(a) REGULATIONS AUTHORIZED.—

(1) IN GENERAL.—The Board shall write regulations or staff commentary, if appropriate, to update and clarify the requirements and definitions for lease disclosures, contracts, and any other specific issues related to consumer leasing which would carry out the purposes of this chapter, to prevent any cir-

cumvention of the chapter, and to facilitate compliance with the requirements of the chapter.

(2) CLASSIFICATIONS, ADJUSTMENTS.—The regulations prescribed under paragraph (1) may contain classifications and differentiations and may provide for adjustments and exceptions for any class of transaction.

(b) MODEL DISCLOSURES.—The Board shall publish model disclosure forms and clauses to facilitate compliance with the disclosure requirements and to aid the consumer in understanding the transaction. In designing forms, the Board shall consider the use by lessors of data processing or similar automated equipment. Use of the models shall be optional. A lessor who properly uses the material aspects of the models shall be deemed to be in compliance with the disclosure requirements.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Any regulation of the Board, or any amendment or interpretation thereof, that requires a disclosure different from the disclosures previously required shall have an effective date of the October 1 that follows the date of promulgation by at least 6 months.

(2) LONGER PERIOD.—The Board may, in the Board's discretion, lengthen the period of time referred to in paragraph (1) to permit lessors to adjust their forms to accommodate new requirements.

(3) SHORTER PERIOD.—The Board may also shorten the period of time referred to in paragraph (1) if the Board makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive practices.

(4) COMPLIANCE BEFORE EFFECTIVE DATE.—Lessors may comply with any newly promulgated disclosure requirement before the effective date of such requirement.

BANK HOLDING COMPANY ACT OF 1956

DEFINITIONS

SEC. 2. (a) * * *

* * * * * * *

(g) For the purposes of this Act—

(1) shares owned or controlled by any subsidiary of a bank holding company shall be deemed to be indirectly owned or controlled by such bank holding company; *and*

(2) shares held or controlled directly or indirectly by trustees for the benefit of (A) a company, (B) the shareholders or members of a company, or (C) the employees (whether exclusively or not) of a company, shall be deemed to be controlled by such company[; and].

[(3) shares transferred after January 1, 1966, by any bank holding company (or by any company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor

unless the Board, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.]

* * * * * * *

(o) OTHER DEFINITIONS.—For purposes of this Act, the following definitions shall apply:

[(1) ADEQUATELY CAPITALIZED.—The term "adequately capitalized" means a level of capitalization which meets or exceeds all applicable Federal regulatory capital standards.]

(1) CAPITAL TERMS.—

(A) INSURED DEPOSITORY INSTITUTIONS.—With respect to insured depository institutions, the terms "well-capitalized", "adequately capitalized", and "uncapitalized" have the meaning given those terms in section 38(b) of the Federal Deposit Insurance Act.

(B) BANK HOLDING COMPANY.—

(i) ADEQUATELY CAPITALIZED.—The term "adequately capitalized" means a level of capitalization which meets or exceeds all applicable Federal regulatory capital standards.

(ii) WELL CAPITALIZED.—A bank holding company is "well capitalized" if it meets the required capital levels for well capitalized bank holding companies established by the Board.

(C) OTHER CAPITAL TERMS.—The terms "Tier 1" and "risk-weighted assets" have the meaning given those terms in the capital guidelines or regulations established by the Board for bank holding companies.

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(8) LEAD INSURED DEPOSITORY INSTITUTIONS.—

(A) IN GENERAL.—The term "lead insured depository institution" means the largest insured depository institution controlled by the bank holding company at any time, based on a comparison of the average total risk-weighted assets controlled by each insured depository institution during the previous 12-month period.

(B) BRANCH OR AGENCY.—For purposes of this paragraph and section 4(j)(4), the term 'insured depository institution' shall also include any branch or agency operated in the United States by a foreign bank.

(9) WELL MANAGED.—The term "well managed" means—

(A) in the case of any company or depository institution which receives examinations, the achievement of—

(i) a CAMEL composite rating of 1 or 2 (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of such company or institution; and

(ii) at least a satisfactory rating for management, if such rating is given; or

(B) in the case of a company or depository institution that has not received an examination rating, the existence

and use of managerial resources which the Board determines are satisfactory.

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ACQUISITION OF BANK SHARES OR ASSETS

SEC. 3. (a) * * *

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(h) NO APPROVAL REQUIRED FOR CERTAIN TRANSACTIONS.—

(1) IN GENERAL.—Notwithstanding paragraph (3) or (5) of subsection (a) and subject to paragraphs (5) and (6), an acquisition of shares by a registered bank holding company, or a merger or consolidation between registered bank holding companies, shall be deemed approved at the conclusion of the period specified in subparagraph (G) if all of the following conditions have been met:

(A) FINANCIAL AND MANAGERIAL CRITERIA.—

(i) WELL CAPITALIZED BANK HOLDING COMPANY.—Both at the time of and immediately after the proposed transaction, the acquiring bank holding company is well capitalized.

(ii) WELL CAPITALIZED LEAD INSURED DEPOSITORY INSTITUTION.—Both at the time of and immediately after the proposed transaction, the lead insured depository institution of the acquiring bank holding company is well capitalized.

(iii) CAPITAL OF OTHER INSURED DEPOSITORY INSTITUTIONS.—At the time of the transaction, well capitalized insured depository institutions control at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by the acquiring bank holding company.

(iv) NO UNDERCAPITALIZED INSURED DEPOSITORY INSTITUTIONS.—At the time of the transaction, no insured depository institution controlled by the acquiring bank holding company is undercapitalized.

(v) WELL MANAGED.—

(I) IN GENERAL.—At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 90 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company are well managed.

(II) NO POORLY MANAGED INSTITUTIONS.—Except with respect to insured depository institutions described in paragraph (2), no insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 lowest composite ratings at the later of the institution's most recent examination or subsequent review.

(B) NO UNSATISFACTORY CRA RATINGS.—Except with respect to insured depository institutions described in paragraph (3), no insured depository institution controlled by

the acquiring bank holding company has received a "needs to improve" or "substantial noncompliance" composite rating as a result of the institution's most recent examination under the Community Reinvestment Act of 1977.

(C) COMPETITIVE CRITERIA.—Consummation of the proposal complies with guidelines established by the Board by regulation, after consultation with the Attorney General, that identify proposals that are not likely to have a significantly adverse effect on competition in any relevant market.

(D) SIZE OF ACQUISITION.—

(i) ASSET SIZE.—The book value of the total assets to be acquired does not exceed 10 percent of the consolidated total risk weighted assets of the acquiring bank holding company.

(ii) CONSIDERATION.—The gross consideration to be paid for the securities or assets does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company.

(E) INTERSTATE ACQUISITIONS.—Board approval of the transaction is not prohibited under subsection (d).

(F) COMPLIANCE CRITERION.—During the 12-month period ending on the date of the transaction, no administrative enforcement action has been commenced, and no cease and desist order has been issued pursuant to section 8 of the Federal Deposit Insurance Act, against any bank holding company involved in the transaction or any depository institution subsidiary of any such holding company and no such enforcement action, order, or other administrative enforcement proceeding is pending as of such date.

(G) OTHER CONSIDERATIONS.—Board approval of the transaction is not prohibited under subsection (c)(3).

(H) NOTIFICATION.—The acquiring bank holding company provides written notice of the transaction, including a description of the terms of the transaction, to the Board and the Attorney General, simultaneously, at least 15 business days (or such shorter period as permitted by the Board) before the transaction is consummated.

(I) NO BOARD DISAPPROVAL.—Before the end of the 15-day period (or the shorter period) referred to in subparagraph (H), the Board has not required an application under subsection (a).

(2) SPECIAL RULE RELATING TO THE REQUIREMENT FOR WELL MANAGED INSTITUTIONS.—Insured depository institutions which have been acquired by a bank holding company during the 12-month period preceding the date of the transaction may be excluded for purposes of paragraph (1)(A)(v)(II) if—

(A) the bank holding company has developed a plan for the institution to restore the capital and management of the institution which is acceptable to the appropriate Federal banking agency; and

(B) all such insured depository institutions represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the holding company.

(3) SPECIAL RULE RELATING TO THE REQUIREMENT FOR COMMUNITY INVESTMENT.—Insured depository institutions acquired during the 12-month period preceding the date of the transaction may be excluded for purposes of paragraph (1)(B) if the bank holding company has developed a plan to restore the performance of the institution to at least a "satisfactory" rating under the Community Reinvestment Act of 1977 which is acceptable to the appropriate Federal banking agency.

(4) ADJUSTMENT OF PERCENTAGES.—The Board may by regulation adjust the percentages and the manner in which the percentages of insured depository institutions are calculated under subparagraph (A)(v)(I) or (D) of paragraph (1) or paragraph (2)(B) if the Board determines that such adjustment is consistent with safety and soundness and the purposes of this Act.

(5) ADVICE OF ATTORNEY GENERAL.—The Attorney General shall advise the Board during the period referred to in paragraph (1)(H) in writing if any competitive concerns exist with respect to the transaction.

(6) WAIVER OF POSTAPPROVAL WAITING PERIOD.—If the Attorney General advises the Board that no competitive concerns exist with respect to the transaction, the provisions of section 11(b) relating to a postapproval waiting shall not apply with respect to such transaction.

INTERESTS IN NONBANKING ORGANIZATIONS

SEC. 4. (a) * * *

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(c) The prohibitions in this section shall not apply to (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] *and, in the case of a bank holding company which has not disposed of such shares within 5 years of the date such shares were acquired, the Board may, upon the application of such company, grant additional exemptions if, in the Board's judgment, such extension would not be detrimental to the public interest and either the bank holding company has made a good faith attempt to dispose of such shares during such 5-year period or the disposal of such shares during such 5-year period would have been detrimental to the company, but the aggregate duration of such extensions shall not extend 10 years* after the date on which such shares were acquired;

* * * * * * *

(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 subsection 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 except (A) where the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death, disability, or involuntary unemployment of the debtor; (B) in the case of a finance company which is a subsidiary of a bank holding company, where the insurance is also limited to assuring repayment of the outstanding balance on an extension of credit in the event of loss or damage to any property used as collateral on such extention of credit and, during the period beginning on the date of the enactment of this subparagraph and ending on December 31, 1982, such extension of credit is not more than $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) and for any given year after 1982, such extension of credit is not more than an amount equal to $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) increased by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year in which such extension of credit is made; (C) any insurance agency activity in a place that (i) has a population not exceeding five thousand (as shown by the last preceding decennial census), or (ii) the

bank holding company, after notice and opportunity for a hearing, demonstrates has inadequate insurance agency facilities; (D) any insurance agency activity which was engaged in by the bank holding company or any of its subsidiaries on May 1, 1982, or which the Board approved for such company or any of its subsidiaries on or before May 1, 1982, including (i) sales of insurance at new locations of the same bank holding company or the same subsidiary or subsidiaries with respect to which insurance was sold on May 1, 1982, or approved to be sold on or before May 1, 1982, if such new locations are confined to the State in which the principal place of business of the bank holding company is located, any State or States immediately adjacent to such State, and any State or States in which insurance activities were conducted by the bank holding company or any of its subsidiaries on May 1, 1982, or were approved to be conducted by the bank holding company or any of its subsidiaries on or before May 1, 1982, and (ii) sales of insurance coverages which may become available after May 1, 1982, so long as those coverages insure against the same types of risks as, or are otherwise functionally equivalent to, coverages sold on May 1, 1982, or approved to be sold on or before May 1, 1982 (for purposes of this subparagraph, activities engaged in or approved by the Board on May 1, 1982, shall include activities carried on subsequent to that date as the result of an application to engage in such activities pending on May 1, 1982, and approved subsequent to that date or of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition); (E) any insurance activity where the activity is limited solely to supervising on behalf of insurance underwriters the activities of retail insurance agents who sell (i) fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or any of its subsidiaries, and (ii) group insurance that protects the employees of the bank holding company or any of its subsidiaries; (F) any insurance agency activity engaged in by a bank holding company, or any of its subsidiaries, which bank holding company has total assets of $50,000,000 or less: *Provided, however,* That such a bank holding company and its subsidiaries may not engage in the sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C); or (G) where the activity is performed, or shares of the company involved are owned, directly or indirectly, by a bank holding company which is registered with the Board of Governors of the Federal Reserve System and which, prior to January 1, 1971, was engaged, directly or indirectly, in insurance agency activities as a [consequence of approval by the Board prior to January 1, 1971.] *consequence of approval by the Board prior to January 1, 1971, except that, after March 30, 1997, it shall be closely related to banking or managing or controlling banks and a proper incident thereto to provide insurance as a principal, agent, or broker in any State, in full compliance with the laws and regulations of such State that apply uniformly to each type of*

insurance license or authorization in that State, including laws that restrict a bank in that State from having an affiliate, agent, or employee in that State licensed to provide insurance as principal, agent, or broker. The Board shall prescribe regulations concerning insurance affiliations that provide equivalent treatment for all stock and mutual fund insurance companies that control or are affiliated with a bank, and fully accommodate and are consistent with State law. 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 regulation 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. Notwithstanding any other provision of this Act, if the Board finds that an emergency exists which requires the Board to act immediately on any application under this subsection involving a thrift institution, and the primary Federal regulator of such institution concurs in such finding, the Board may dispense with the notice and hearing requirement of this subsection and the Board may approve or deny any such application without notice or hearing. If an application is filed under this paragraph in connection with an application to make an acquisition pursuant to section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing. If an application described in the preceding sentence is approved, the Board shall publish in the Federal Register, not later than 7 days after such approval is granted, the order approving the application and a description of the nonbanking activities involved in the acquisition;

*   *   *   *   *   *   *

(i) ACQUISITION OF SAVINGS ASSOCIATIONS.—

(1) * * *

*   *   *   *   *   *   *

(4) SOLICITATION OF VIEWS.—

(A) NOTICE TO DIRECTOR.—Upon receiving any application or notice by a bank holding company to acquire directly or indirectly a savings association under subsection (c)(8), the Board shall solicit the Director's comments and recommendations with respect to such acquisition.

(B) COMMENT PERIOD.—The comments and views of the Director under subparagraph (A) with respect to any acquisition subject to such subparagraph shall be transmitted to the Board within 30 days of the receipt by the Director of the notice relating to such acquisition (or such shorter period as the Board may specify if the Board advises the Di-

rector that an emergency exists which requires expeditious action).

(5) EXAMINATION.—

(A) SCOPE.—The Board shall consult with the Director, as appropriate, in establishing the scope of an examination by the Board of a bank holding company that controls directly or indirectly a savings association.

(B) ACCESS TO INSPECTION REPORTS.—Upon the request of the Director, the Board shall furnish the Director with a copy of any inspection report, additional examination materials, or supervisory information relating to any bank holding company which directly or indirectly controls a savings association.

(6) COORDINATION OF ENFORCEMENT EFFORTS.—The Board and the Director shall cooperate in any enforcement action against any bank holding company which controls a savings association, if the relevant conduct involves such association.

(7) DIRECTOR DEFINED.—For purposes of this section, the term "Director" means the Director of the Office of Thrift Supervision.

(j) NOTICE PROCEDURES FOR NONBANKING ACTIVITIES.—

(1) GENERAL NOTICE PROCEDURE.—

(A) NOTICE REQUIREMENT.—[No] *Except as provided in paragraph (3), no* bank holding company may engage in any nonbanking activity or acquire or retain ownership or control of the shares of a company engaged in activities based on subsection (c)(8) or (a)(2) without providing the Board with written notice of the proposed transaction or activity at least 60 days before the transaction or activity is proposed to occur or commence.

* * * * * * *

(3) NO NOTICE REQUIRED FOR CERTAIN TRANSACTIONS.—No notice under paragraph (1) or subsections (c)(8) or (a)(2)(B) is required for a proposal by a bank holding company to engage in any activity or acquire the shares or assets of any company if the proposal qualifies under paragraph (4).

(4) CRITERIA FOR STATUTORY APPROVAL.—A proposal qualifies under this paragraph if all of the following criteria are met:

(A) FINANCIAL CRITERIA.—Both before and immediately after the proposed transaction—

(i) the acquiring bank holding company is well capitalized;

(ii) the lead insured depository institution of such holding company is well capitalized;

(iii) well capitalized insured depository institutions control at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company; and

(iv) no insured depository institution controlled by such holding company is undercapitalized.

(B) MANAGERIAL CRITERIA.—

(i) WELL MANAGED.—At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institu-

tions that control at least 90 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company are well managed.

(ii) LIMITATION ON POORLY MANAGED INSTITUTIONS.—*Except with respect to insured depository institutions described in paragraph (6), no insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 lowest composite ratings at the later of the institution's most recent examination or subsequent review.*

(C) ACTIVITIES PERMISSIBLE.—*Following consummation of the proposal, the bank holding company engages directly or through a subsidiary solely in—*

(i) activities that are permissible under subsection (c)(8), as determined by the Board by regulation or order thereunder, subject to all of the restrictions, terms and conditions of such subsection and such regulation or order; and

(ii) such other activities as are otherwise permissible under this section, subject to the restrictions, terms and conditions, including any prior notice or approval requirements, provided in this section.

(D) SIZE OF ACQUISITION.—

(i) ASSET SIZE.—*The book value of the total assets to be acquired does not exceed 10 percent of the consolidated total risk-weighted assets of the acquiring bank holding company; and*

(ii) CONSIDERATION.—*The gross consideration to be paid for the securities or assets does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company.*

(E) NOTICE NOT OTHERWISE WARRANTED.—*For proposals described in paragraph (5)(B), the Board has not, before the conclusion of the period provided in paragraph (5)(B), advised the bank holding company that a notice under paragraph (1) is required.*

(F) COMPLIANCE CRITERION.—*During the 12-month period ending on the date on which the bank holding company proposes to commence an activity or acquisition, no administrative enforcement action has been commenced, and no cease and desist order has been issued pursuant to section 8 of the Federal Deposit Insurance Act, against the bank holding company or any depository institution subsidiary of the holding company and no such enforcement action, order, or other administrative enforcement proceeding is pending as of such date.*

(5) NOTIFICATION.—

(A) COMMENCEMENT OF ACTIVITIES APPROVED BY RULE.—*A bank holding company that qualifies under paragraph (4) and that proposes to engage de novo, directly or through a subsidiary, in any activity that is permissible under subsection (c)(8), as determined by the Board by regulation, may commence that activity without prior notice to the*

Board and must provide written notification to the Board no later than ten business days after commencing the activity.

(B) ACTIVITIES PERMITTED BY ORDER AND ACQUISITIONS.—

(i) IN GENERAL.—At least 12 business days before commencing any activity pursuant to paragraph (3) (other than an activity described in subparagraph (A)) or acquiring shares or assets of any company pursuant to paragraph (3), the bank holding company shall provide the written notification of the proposal to the Board, unless the Board determines that no notice or a shorter notice period is appropriate.

(ii) DESCRIPTION OF ACTIVITIES AND TERMS.—A notification under this subparagraph shall include a description of the proposed activities and the terms of any proposed acquisition.

(6) RECENTLY ACQUIRED INSTITUTIONS.—Insured depository institutions which have been acquired by a bank holding company during the 12-month period preceding the date on which the company proposes to commence an activity or acquisition pursuant to paragraph (3) may be excluded for purposes of paragraph (4)(B)(ii) if—

(A) the bank holding company has developed a plan for the institution to restore the capital and management of the institution which is acceptable to the appropriate Federal banking agency; and

(B) all such insured depository institutions represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the bank holding company.

(7) ADJUSTMENT OF PERCENTAGES.—The Board may, by regulation, adjust the percentages and the manner in which the percentages of insured depository institutions are calculated under paragraph (4)(B)(i), (4)(D), or paragraph (6)(B) if the Board determines that any such adjustment is consistent with safety and soundness and the purposes of this Act.

* * * * * * *

NATIONAL BANK CONSOLIDATION AND MERGER ACT

* * * * * * *

SEC. 2. CONSOLIDATION OF BANKS WITHIN THE SAME STATE.

(a) IN GENERAL.—Any national bank or any bank incorporated under the laws of any State may, with the approval of the Comptroller, be consolidated with one or more national banking associations located in the same State under the charter of a national banking association on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each association or bank proposing to consolidate, and be ratified and confirmed by the affirmative vote of the shareholders of each such association or bank owning at least two-thirds of its capital stock outstanding, or by a greater proportion of such capital stock in the

case of such State bank if the laws of the State where it is organized so require, at a meeting to be held on the call of the directors after publishing notice of the time, place, and object of the meeting for four consecutive weeks in a newspaper of general circulation published in the place where the association or bank is located, or, if there is no such newspaper, then in the paper of general circulation published nearest thereto, and after sending such notice to each shareholder of record by certified or registered mail at least ten days prior to the meeting, except to those shareholders who specifically waive notice, but any additional notice shall be given to the shareholders of such State bank which may be required by the laws of the State where it is organized. Publication of notice may be waived, in cases where the Comptroller determines that an emergency exists justifying such waiver, by unanimous action of the shareholders of the association or State bank. *No approval by the Comptroller of the Currency is required under this subsection for a transaction which involves the consolidation of banks that, at the time of the consolidation, are all subsidiaries (as defined in section 3 of the Federal Deposit Insurance Act) of the same company.*

(b) The consolidated association shall be liable for all liabilities of the respective consolidating banks or associations. The capital stock of such consolidated association shall not be less than that required under existing law for the organization of a national bank in the place in which it is located: *Provided*, That if such consolidation shall be voted for at such meetings by the necessary majorities of the shareholders of each association and State bank proposing to consolidate[, and thereafter the consolidation shall be approved by the Comptroller], any shareholder of any of the associations or State banks so consolidated who has voted against such consolidation at the meeting of the association or bank of which he is a stockholder, or who has given notice in writing at or prior to such meeting to the presiding officer that he dissents from the plan of consolidation, shall be entitled to receive the value of the shares so held by him [when such consolidation is approved by the Comptroller] upon written request made to the consolidated association at any time before thirty days after the date of consummation of the consolidation, accompanied by the surrender of his stock certificates.

* * * * * * *

SEC. 3. (a) One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this Act, may merge into a national banking association located within the same State, under the charter of the receiving association. The merger agreement shall—

(1) * * *

* * * * * * *

No approval by the Comptroller of the Currency is required under this subsection for a transaction which involves the merger of banks that, at the time of the merger, are all subsidiaries (as defined in section 3 of the Federal Deposit Insurance Act) of the same company.

(b) If a merger shall be voted for at the called meetings by the necessary majorities of the shareholders of each association or

State bank participating in the plan of merger[, and thereafter the merger shall be approved by the Comptroller], any shareholder of any association or State bank to be merged into the receiving association who has voted against such merger at the meeting of the association or bank of which he is a stockholder, or has given notice in writing at or prior to such meeting to the presiding officer that he dissents from the plan of merger shall be entitled to receive the value of the shares so held by him [when such merger shall be approved by the Comptroller] upon written request made to the receiving association at any time before thirty days after the date of consummation of the merger, accompanied by the surrender of his stock certificates.

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REVISED STATUTES

*   *   *   *   *   *   *

TITLE LXII

NATIONAL BANKS

*   *   *   *   *   *   *

CHAPTER ONE

ORGANIZATION AND POWERS

Sec.
5133. Formation of national banking associations.
5134. Requisites of organization certificate.
5135. How certificate shall be acknowledged and filed.
5136. Corporate powers of associations.
5136A. State supervision of insurance.
5136B. Insurance sales in empowerment zones.
[5136A.] *5136C.* Participation in lotteries prohibited.
5137. Power to hold real property.

*   *   *   *   *   *   *

SEC. 5136. [Upon duly making and filing articles of association] *(a) IN GENERAL.—Upon duly making and filing articles of association* and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

Second. To have succession from the date of the approval of this Act, or from the date of its organization if organized after such date of approval until such time as it be dissolved by the act of its shareholders owning two-thirds of its stock, or until its franchise becomes forfeited by reason of violation of law, or until terminated by either a general or a special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him.

*   *   *   *   *   *   *

Seventh. To exercise by its board of directors or duly authorized officers or agents, [subject to law,] *subject to subsection (b), section 5136A, and any other provision of 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 title. 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 the date of enactment of the Banking Act of 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 Transportation 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 or 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 207 of the National Housing Act, 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 305 or sec-

tion 306 of the Federal Home Loan Mortgage Corporation Act 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 110 (h) of the Housing Act of 1949) 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 on 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 subsection (b) of section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said subsection 22(b) 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 or both annual contributions under an annual contributions contract containing the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of 1937, 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 European Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank the African Development Bank, the Inter-American Investment Corporation, or the International Finance Corporation, 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 title IX of the Housing and Urban Development Act of 1968, and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act. 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 purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation or a holding company which owns or controls such an insured bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions or depository institution holding companies (as defined in section 3 of the Federal Deposit Insurance Act) and such bank or company and all subsidiaries thereof are engaged exclu-

sively in providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and in providing correspondent banking services at the request of other depository institutions or their holding companies (also referred to as a "banker's bank"), but in no event shall the total amount of such stock held by the association in any bank or holding company exceed at any time 10 per centum of the associations capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company. The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); (B) are small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934); or (C) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)). The exception provided for the securities described in subparagraphs (A), (B), and (C) shall be subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both. A national banking association may deal in, underwrite, and purchase for such association's own account qualified Canadian government obligations to the same extent that such association may deal in, underwrite, and purchase for such association's own account obligations of the United States or general obligations of any State or of any political subdivision thereof. For purposes of this paragraph—

(1) the term "qualified Canadian government obligations" means any debt obligation which is backed by Canada, any Province of Canada, or any political subdivision of any such Province to a degree which is comparable to the liability of the United States, any State, or any political subdivision thereof for any obligation which is backed by the full faith and credit of the United States, such State, or such political subdivision, and such term includes any debt obligation of any agent of Canada or any such Province or any political subdivision of such Province if—

(A) the obligation of the agent is assumed in such agent's capacity as agent for Canada or such Province or such political subdivision; and

(B) Canada, such Province, or such political subdivision on whose behalf such agent is acting with respect to such obligation is ultimately and unconditionally liable for such obligation; and

(2) the term "Province of Canada" means a Province of Canada and includes the Yukon Territory and the Northwest Territories and their successors.

(b) INTERPRETIVE AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.—

(1) In general.—Subject to paragraph (2), it shall not be incidental to banking for a national bank to provide insurance as a principal, agent, or broker.

(2) Scope of application.—Notwithstanding paragraph (1), it shall be incidental to banking for a national bank to engage in the following activities:

(A) Providing, as an agent or broker, any annuity contract the income on which is tax deferred under section 72 of the Internal Revenue Code of 1986.

(B) Providing, as a principal, agent, or broker, any type of insurance, other than an annuity or title insurance, which the Comptroller of the Currency specifically determined, before May 1, 1995, to be incidental to banking with respect to national banks.

SEC. 5136A. STATE SUPERVISION OF INSURANCE.

(a) State Licensing of Insurance Activities.—

(1) In general.—Subject to paragraph (2), no provision of section 5136, any other section of this title, or section 13 of the Federal Reserve Act may be construed as limiting or otherwise impairing the authority of any State to regulate—

(A) the extent to which, and the manner in which, a national bank may engage within the State in insurance activities pursuant to section 5136B of this chapter or section 13 of the Federal Reserve Act;

(B) the manner in which a national bank may engage within the State in insurance activities pursuant to section 5136(b)(2)(B) of the Revised Statutes of the United States; or

(C) the manner in which a national bank may engage within the State in insurance activities pursuant to section 5136(b)(2)(A) of the Revised Statutes of the United States through, and limited to, consumer disclosure requirements or licensing requirements, procedures, and qualifications as described in paragraph (2)(C).

(2) Prohibition on State discrimination against national banks.—Notwithstanding paragraph (1)—

(A) Providing insurance as agent or broker.—No State may impose any insurance regulatory requirement relating to providing insurance as an agent or broker that treats a national bank differently than all other persons who are authorized to provide insurance as agents or brokers in such State, unless there is a legitimate and reasonable State regulatory purpose for the requirement for which there is no less restrictive alternative.

(B) Providing insurance as principal, agent, or broker.—

(i) No State may impose on a national bank any insurance regulatory requirement relating to providing insurance as principal, agent, or broker that treats the national bank more restrictively than any other depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(1)) operating in the State.

(ii) Nothing in this subparagraph shall affect the validity of a State law that—

(I) prevents a national bank from engaging in insurance activities within the State to as great an extent as a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(1)) may engage in such activities within the State; and

(II) was in effect on June 1, 1995.

(C) LICENSING QUALIFICATIONS AND PROCEDURES.—No State may discriminate against a national bank with respect to the following requirements, procedures, and qualifications as such requirements, procedures, and qualifications relate to the authority of the national bank to provide insurance in such State as an agent or broker:

(i) License application and processing procedures.

(ii) Character, experience, and educational qualifications for licenses.

(iii) Testing and examination requirements for licenses.

(iv) Fee requirements for licenses.

(v) Continuing education requirements.

(vi) Types of licenses required.

(vii) Standards and requirements for renewal of licenses.

(b) AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.—A national bank may not provide insurance as a principal, agent, or broker except as specifically provided in this section, the paragraph designated as the "Seventh" of section 5136(a) of this chapter, section 5136(b) or 5136B of this chapter, or section 13 of the Federal Reserve Act.

(c) PRESERVATION OF FEDERALLY AUTHORIZED BANK ACTIVITIES IN PERMISSIVE STATES.—No provision of this section may be construed as affecting the authority, pursuant to section 5136B of this chapter or section 13 of the Federal Reserve Act, of a national bank to act as insurance agent or broker consistent with State law.

(d) PRESERVATION OF NATIONAL BANK AUTHORITY CONSISTENT WITH STATE BANK AUTHORITY.—Except as provided in subsection (a)(2)(B), no provision of this section or section 5136(b)(1) shall have the effect of enabling a State to deny a national bank authority that the bank otherwise possesses to provide a product in a State, including as agent, broker, or principal, where the bank is not providing the product in the State other than to an extent and in a manner that a State bank (as defined in section 3(a)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(a)(2)) is permitted by the law of the State to provide such product, except that nothing in this subsection shall be construed as granting any new authority to a national bank to provide any product because the law of the State has authorized State banks to provide such product.

(e) DEFINITIONS.—For purposes of this section, sections 5136 and 5136B, and section 13 of the Federal Reserve Act, the following definitions shall apply:

(1) INSURANCE.—The term "insurance" means any product defined or regulated as insurance, consistent with the relevant

State insurance law, by the insurance regulatory authority of the State in which such product is sold, solicited, or underwritten, including any annuity contract the income on which is tax deferred under section 72 of the Internal Revenue Code of 1986.

(2) STATE.—The term "State" has the same meaning as in section 3(a)(3) of the Federal Deposit Insurance Act.

(f) GRANDFATHER PROVISION.—

(1) IN GENERAL.—Any national bank which, before January 1, 1995, was providing insurance as agent or broker under section 13 of the Federal Reserve Act may provide insurance as an agent or broker under such section, to no less extent and in a no more restrictive manner as such bank was providing insurance as agent or broker under such section on January 1, 1995, notwithstanding contrary State law, subject to final, controlling judgment in a pending action.

(2) TERMINATION.—This subsection shall cease to apply with respect to any national bank described in paragraph (1) if—

(A) the bank is subject to an acquisition, merger, consolidation, or change in control, other than a transaction to which section 18(c)(12) of the Federal Deposit Insurance Act applies; or

(B) any bank holding company which directly or indirectly controls such bank is subject to an acquisition, merger, consolidation, or change in control, other than a transaction in which the beneficial ownership of such bank holding company or of a bank holding company which controls such company does not change as a result of the transaction.

(g) PRESERVATION OF BANKING PRODUCTS.—Nothing in this section shall be construed as affecting the ability of a national bank, or a subsidiary of a national bank, to engage in any activity, including any activity authorized pursuant to the paragraph designated the "Seventh" of section 5136(a), that is part of, and not merely incidental to, the business of banking.

SEC. 5136B. INSURANCE SALES IN EMPOWERMENT ZONES.

(a) AUTHORITY TO SELL INSURANCE AS AGENT FROM EMPOWERMENT ZONES.—The Comptroller of the Currency may approve an application by a national bank maintaining a main office or full-service branch in an empowerment zone to act as an agent or broker from such office or branch for any fire, life, or other insurance company authorized to do business in the State in which the customer is located if—

(1) the bank provides sufficient evidence that the availability of competitively priced insurance products in the empowerment zone is inadequate; and

(2) the insurance products are sold only in the empowerment zone.

(b) APPLICATION OF STATE LAW.—State laws which regulate conducting the business of insurance shall apply to national banks and their employees that sell insurance as agent or broker under this section to the same extent as such laws apply to other entities and persons not affiliated with depository institutions except—

(1) in any case in which the Comptroller of the Currency determines, after notice to and comment by the appropriate State insurance officials, that the application of a State law would have an unreasonably discriminatory effect upon the sale of insurance by national banks or their employees in comparison with the effect the application of the State law would have with respect to sale of insurance by other entities; or

(2) when State law by its own terms does not apply to national banks or employees of such banks.

(c) AUTHORITY OF COMPTROLLER OF THE CURRENCY.—

(1) IN GENERAL.—The Comptroller of the Currency may prescribe regulations governing sales of insurance by national banks pursuant to this section.

(2) ENFORCEMENT OF STATE LAW.—The provisions of any State law to which an national bank is subject under this section shall be enforced with respect to such bank by the Comptroller of the Currency.

(d) DEFINITIONS.—

(1) EMPOWERMENT ZONE.—The term "empowerment zone" means an area that meets the standards for designation as an empowerment zone or enterprise community under section 1392 of the Internal Revenue Code of 1986 or an Indian reservation.

(2) FULL-SERVICE BRANCH.—The term "full-service branch" means a staffed facility which has been approved as a branch and offers loan and deposit services.

(3) INDIAN RESERVATION.—The term "Indian reservation" has the meaning given such term by section 168(j)(6) of the Internal Revenue Code of 1986.

SEC. [5136A.] *5136C.* (a) A national bank may not—

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

* * * * * * *

SEC. 5146. Every director must during his whole term of service, be a citizen of the United States, and at least a majority of the directors must have resided in the State, Territory, or District in which the association is located, or within one hundred miles of the location of the office of the association, for at least one year immediately preceding their election, and must be residents of such State or within a one-hundred-mile territory of the location of the association during their continuance in office, except that *(1) the Comptroller of the Currency may, in the Comptroller's discretion, waive the residency requirement in the case of any director of a national bank to whom the requirement would otherwise apply, and (2)* in the case of an association which is a subsidiary or affiliate of a foreign bank, the Comptroller of the Currency may in his discretion waive the requirement of citizenship in the case of not more than a minority of the total number of directors. Every director must own in his or her own right either shares of the capital stock of the association of which he or she is a director the aggregate par value of which is not less than $1,000, or an equivalent interest, as determined by the Comptroller of the Currency, in any company which has control over such association within the meaning of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

If the capital of the bank does not exceed $25,000, every director must own in his or her own right either shares of such capital stock the aggregate par value of which is not less than $500, or an equivalent interest, as determined by the Comptroller of the Currency, in any company which has control over such association within the meaning of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). Any director who ceases to be the owner of the required number of shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place.

* * * * * * *

SEC. 5155. The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

(a) * * *

* * * * * * *

[(h) The aggregate capital of every national banking association and its branches shall at no time be less than the aggregate minimum capital required by law for the establishment of an equal number of national banking associations situated in the various places where such association and its branches are situated.

[(i) No branch**]** *(h) RELOCATION.—*

(1) APPROVAL REQUIRED.—Except as provided in paragraph (2), no branch of any national banking association shall be established or moved from one location to another without first obtaining the consent and approval of the Comptroller of the Currency.

(2) NO APPROVAL REQUIRED FOR CERTAIN BRANCHES.—Notwithstanding this subsection or subsection (b) or (c), the consent and approval of the Comptroller of the Currency shall not be required for a national bank to establish and operate, or to retain and operate, a branch or seasonal agency if—

(A) the bank is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act and regulations prescribed by the Comptroller of the Currency under such section);

(B) the bank received a composite CAMEL rating of "1" or "2" under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of its most recent examination;

(C) the bank did not receive a "needs to improve" or "substantial noncompliance" composite rating at its most recent examination under the Community Reinvestment Act of 1977; and

(D) the Comptroller of the Currency is otherwise authorized to grant approval under this section to such bank to establish and operate, or to retain and operate, a branch or seasonal agency at the proposed location.

(3) CERTAIN BRANCHES DEEMED TO HAVE APPROVED APPLICATIONS.—A branch or seasonal agency established by a national bank under paragraph (2) shall be deemed to have been established and operated pursuant to an application approved under this section.

[(j) The term**]** *(i) BRANCH.—*

(1) IN GENERAL.—The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

(2) CERTAIN PROPRIETARY ATMS AND REMOTE SERVICING UNITS.—The term "branch" does not include any automated teller machine or remote service unit which is owned and operated by a depository institution—

(A) primarily for the benefit of the institution and the affiliates of the institution; and

(B) which could operate a branch at the location of such machine or unit.

[(k)] *(j)* This section shall not be construed to amend or repeal section 25 of the Federal Reserve Act, as amended, authorizing the establishment by national banking associations of branches in foreign countries, or dependencies, or insular possessions of the United States.

[(l)] *(k)* The words "State bank," "State banks," "bank," or "banks," as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws.

SEC. 5156A. MERGERS, CONSOLIDATIONS, AND OTHER ACQUISITIONS AUTHORIZED.

(a) * * *

(b) EXPEDITED APPROVAL OF ACQUISITIONS.—

(1) IN GENERAL.—Any application by a national bank to acquire or be acquired by another insured depository institution which is required to be filed with the Comptroller of the Currency by [section 5(d)(3) of the Federal Deposit Insurance Act or] any other applicable law or regulation shall be approved or disapproved in writing by the agency before the end of the 60-day period beginning on the date such application is filed with the agency.

* * * * * * *

CHAPTER THREE

REGULATION OF THE BANKING BUSINESS

* * * * * * *

SEC. 5211. (a) Every association shall make reports of condition to the Comptroller of the Currency in accordance with the Federal Deposit Insurance Act. The Comptroller of the Currency may call for additional reports of condition, in such form and containing such information as he may prescribe, on dates to be fixed by him, and may call for special reports from any particular association whenever in his judgment the same are necessary for his use in the performance of his supervisory duties. Each report of condition shall contain a declaration by the president, a vice president, the cashier, or by any other officer designated by the board of directors of the bank to make such declaration, that the report is true and

correct to the best of his knowledge and belief. [The correctness of the report of condition shall be attested by the signatures of least three of the directors of the bank other than the officer making such declaration, with the declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct.] Each report shall exhibit in detail and under appropriate heads the resources and liabilities of the association at the close of business on any past day specified by the Comptroller, and shall be transmitted to the Comptroller within the period of time specified by the Comptroller. Special reports called for by the Comptroller need contain only such information as is specified by the Comptroller in his request therefore, and publication of such reports need to be made only if directed by the Comptroller.

* * * * * * *

SECTION 10 OF THE HOME OWNERS' LOAN ACT

SEC. 10. REGULATION OF HOLDING COMPANIES.

(a) DEFINITIONS.—

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

(A) * * *

* * * * * * *

[(D) SAVINGS AND LOAN HOLDING COMPANY.—The term savings and loan holding company" means any company which directly or indirectly controls a savings association or controls any other company which is a savings and loan holding company.]

(D) SAVINGS AND LOAN HOLDING COMPANY.—

(i) IN GENERAL.—Except as provided in clause (ii), the term "savings and loan holding company" means any company which directly or indirectly controls a savings association or controls any other company which is a savings and loan holding company.

(ii) EXCEPTION FOR BANK HOLDING COMPANY.—The term "savings and loan holding company" does not include any company which is registered under, and subject to, the provisions of the Bank Holding Company Act of 1956, or any company directly or indirectly controlled by such company.

* * * * * * *

(m) QUALIFIED THRIFT LENDER TEST.—

(1) IN GENERAL.—Except as provided in paragraphs [(2) and (7)] *(2), (7), and (8)*, any savings association is a qualified thrift lender if—

(A) the savings association's qualified thrift investments equal or exceed 65 percent of the savings association's portfolio assets; and

(B) the savings association's qualified thrift investments continue to equal or exceed 65 percent of the savings asso-

ciation's portfolio assets on a monthly average basis in 9 out of every 12 months.

* * * * * * *

(8) ALTERNATIVE TEST.—Any savings association which meets the requirements set forth in section 7701(a)(19)(C) of the Internal Revenue Code of 1986 shall be deemed to be a qualified thrift lender and any qualified thrift lender shall be deemed to meet the requirements of such section.

* * * * * * *

(t) EXEMPTION FOR BANK HOLDING COMPANIES.—This section shall not apply to a bank holding company that is subject to the Bank Holding Company Act of 1956 or any company controlled by such bank holding company (other than a savings association).

FEDERAL RESERVE ACT

STATE BANKS AS MEMBERS

SEC. 9. Any bank incorporated by special law of any State, or organized under the general laws of any State or of the United States, including Morris Plan banks and other incorporated banking institutions engaged in similar business, desiring to become a member of the Federal Reserve System, may make application to the Board of Governors of the Federal Reserve System, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. For the purposes of membership of any such bank the terms "capital" and "capital stock" shall include the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation. The Board of Governors of the Federal Reserve System, subject to the provisions of this Act and to such conditions as it may prescribe pursuant thereto may permit the applying bank to become a stockholder of such Federal reserve bank.

* * * * * * *

Any such State bank which, at the date of the approval of this Act, has established and is operating a branch or branches in conformity with the State law, may retain and operate the same while remaining or upon becoming a stockholder of such Federal reserve bank; but no such State bank may retain or acquire stock in a Federal reserve bank except upon relinquishment of any branch or branches established after the date of the approval of this Act beyond the limits of the city, town, or village in which the parent bank is situated. *Provided, however,* That nothing herein contained shall prevent any State member bank from establishing and operating branches in the United States or any dependency or insular possession thereof or in any foreign country, on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by national

banks except that the approval of the Board of Governors of the Federal Reserve System, instead of the Comptroller of the Currency, shall be obtained before any State member bank may hereafter establish any branch and before any State bank hereafter admitted to membership may retain any branch established after February 25, 1927, beyond the limits of the city, town, or village in which the parent bank is situated. The approval of the Board shall likewise be obtained before any State member bank may establish any new branch within the limits of any such city, town, or village (except within the District of Columbia.) *Notwithstanding the preceding 2 sentences, the approval of the Board shall not be required for a State member bank to establish and operate a branch or seasonal agency if—*

(A) the State member bank is well-capitalized (as defined in section 38 of the Federal Deposit Insurance Act and regulations prescribed by the Board under such section);

(B) the State member bank received a composite CAMEL rating of "1" or "2" under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system);

(C) the State member bank did not receive a "needs to improve" or "substantial noncompliance" composite rating at its most recent examination under the Community reinvestment Act; and

(D) the Board is otherwise authorized to grant approval under this section to such State member bank to establish and operate a branch or seasonal agency at the proposed location.

A branch or seasonal agency established by a State member bank under the previous sentence shall be deemed to have been established and operated pursuant to an application approved under this section.

*　*　*　*　*　*　*

POWERS OF FEDERAL RESERVE BANKS

SEC. 13. Any Federal reserve bank may receive from any of its member banks or other depository institutions, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks, and drafts, payable upon presentation or other items, and also, for collection, maturing notes and bills; or, solely for purposes of exchange or of collection, may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal reserve banks, and checks and drafts, payable upon presentation within its district or other items, and maturing notes and bills payable within its district; or, solely for the purposes of exchange or of collection, may receive from any nonmember bank or trust company or other depository institution deposits of current funds in lawful money, national-bank notes, Federal reserve notes, checks and drafts payable upon presentation or other items, or maturing notes and bills: *Provided,* Such nonmember bank or trust company or other depository institution maintains with the Federal reserve bank of its district a balance in such amount as the Board determines taking into account items in transit, services provided by the

Federal Reserve bank, and other factors as the Board may deem appropriate: *Provided further,* That nothing in this or any other section of this Act shall be construed as prohibiting a member or nonmember bank or other depository institution from making reasonable charges, to be determined and regulated by the Board of Governors of the Federal Reserve System, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal reserve banks.

* * * * * * *

That in addition to the powers not vested by law in national banking associations organized under the laws of the United States, *and subject to section 5136A of the Revised Statutes of the United States,* any such association located and doing business in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, may, under such rules and regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said association and the insurance company for which it may act as agent: *Provided, however,* That no such bank shall in any case assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal: *And provided further,* That the bank shall not guarantee the truth of any statement made by an assured in filing his application for insurance.

* * * * * * *

SEC. 22. * * *
(d) * * *

* * * * * * *

(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)] *of any category referred to in paragraph (2), (3), (4), (5), or (6)* 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.

* * * * * * *

(4) HOME EQUITY LINES OF CREDIT.—A member bank may make a revolving open-end extension of credit to any executive officer of the bank if the credit—

(A) does not exceed $100,000; and

(B) is secured by a dwelling that is owned by such officer and used by the officer as a residence.

(5) LOANS SECURED BY MARKETABLE ASSETS.—A member bank may extend credit to any executive officer of the bank if the credit is secured by readily marketable assets of a value not exceeding such amount as the Board may establish by regulation.

[(4)] *(6)* A member bank may make extensions of credit not otherwise specifically authorized under this subsection to any executive officer of the bank in an amount prescribed in a regulation of the member bank's appropriate Federal banking agency.

[(5)] *(7)* Except to the extent permitted under paragraph [(4)] *(6)*, 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)] *(6)*, 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)] *(8)* This subsection does not prohibit any executive officer of a member bank from endorsing or guaranteeing for the protection of the bank any loan or other asset previously acquired by the bank in good faith or from incurring any indebtedness to the bank for the purpose of protecting the bank against loss or giving financial assistance to it.

[(8)] *(9)* 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. (12 U.S.C. 375a).

(h) EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS.—

(1) * * *

[(2) PREFERENTIAL TERMS PROHIBITED.—A member bank] *(2) PREFERENTIAL TERMS PROHIBITED.—*

(A) IN GENERAL.—A member bank may extend credit to its executive officers, directors, or principal shareholders, or to any related interest of such a person, only if the extension of credit—

[(A)] *(i)* is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank;

[(B)] *(ii)* does not involve more than the normal risk of repayment or present other unfavorable features; and

[(C)] *(iii)* the bank follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank.

(B) EXCEPTION.—No provision of this paragraph shall be construed as prohibiting extensions of credit that constitute a benefit or compensation program that is widely available to and used by employees of the member bank, including employees who are not executive officers of the bank.

* * * * * * *

(8) EXECUTIVE OFFICER, DIRECTOR, OR PRINCIPAL SHAREHOLDER OF CERTAIN AFFILIATES TREATED AS EXECUTIVE OFFICER, DIRECTOR, OR PRINCIPAL SHAREHOLDER OF MEMBER BANK.—

(A) * * *

[(B) EXCEPTION.—The Board may, by regulation, make exceptions to subparagraph (A), except as that subparagraph makes applicable paragraph (2), for an executive officer or director of a subsidiary of a company that controls the member bank, if that executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank.]

(B) EXCEPTION.—The Board may, by regulation, make exceptions to subparagraph (A) for an executive officer or director of a subsidiary of a company that controls the member bank if—

(i) the executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank; and

(ii) the assets of such subsidiary do not exceed 10 percent of the consolidated assets of a company that

controls the member bank and such subsidiary (and is not controlled by any other company).

*   *   *   *   *   *   *

(10) BOARD'S RULEMAKING AUTHORITY.—The Board of Governors of the Federal Reserve System may prescribe such regulations, including definitions of terms, as it determines to be necessary to effectuate the purposes and prevent evasions of this subsection. *The Board shall specify by regulation the recordkeeping required of member banks to ensure compliance with this section.*

*   *   *   *   *   *   *

SEC. 24A. Hereafter no national bank, without the approval of the Comptroller of the Currency, and no State member bank, without the approval of the Board of Governors of the Federal Reserve System, shall (1) invest in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank or (2) make loans to or upon the security of the stock of any such corporation, if the aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation which is an affiliate of the bank, as defined in section 2 of the Banking Act of 1933, as amended, will exceed the amount of the capital stock of such bank *or, in the case of a bank which received a composite CAMEL rating of "1" or "2" under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of its most recent examination and both before and immediately following the investment or loan, is well capitalized (as defined under section 38 of the Federal Deposit Insurance Act), the amount which is equal to 150 percent of the capital stock and surplus of such bank.*

*   *   *   *   *   *   *

BANKING CORPORATIONS AUTHORIZED TO DO FOREIGN BANKING BUSINESS

SEC. 25A. Corporations to be organized for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possession of the United States, either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions as provided by this section, and to act when required by the Secretary of the Treasury as fiscal agents of the United States, may be formed by any number of natural persons, not less in any case than five: *Provided*, That nothing in this section shall be construed to deny the right of the Secretary of the Treasury to use any corporation organized under this section as depositaries in Panama and the Panama Canal Zone, or in the Philippine Islands and other insular possessions and dependencies of the United States.

*   *   *   *   *   *   *

No corporation shall be organized under the provisions of this section with a capital stock of less than $2,000,000, one-quarter of

which must be paid in before the corporation may be authorized to begin business, and the remainder of the capital stock of such corporation shall be paid in installments of at least 10 per centum on the whole amount to which the corporation shall be limited as frequently as one installment at the end of each succeeding two months from the time of the commencement of its business operations until the whole of the capital stock shall be paid in: *Provided, however,* That whenever $2,000,000 of the capital stock of any corporation is paid in the remainder of the corporation's capital stock or any unpaid part of such remainder may, with the consent of the Board of Governors of the Federal Reserve System and subject to such regulations and conditions as it may prescribe, be paid in upon call from the board of directors; such unpaid subscriptions, however, to be included in the maximum of 10 per centum of the national bank's capital and surplus which a national bank is permitted under the provisions of this Act to hold in stock of corporations engaged in business of the kind described in this section and in section 25 of the Federal Reserve Act as amended. The capital stock of any such corporation may be increased at any time, with the approval of the Board of Governors of the Federal Reserve System, by a vote of two-thirds of its shareholders or by unanimous consent in writing of the shareholders without a meeting and without a formal vote, but any such increase of capital shall be fully paid in within ninety days after such approval; and may be reduced in like manner, provided that in no event shall it be less than $2,000,000. No corporation, except as herein provided, shall during the time it shall continue its operations, withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. [Any national banking association may invest in the stock of any corporation organized under the provisions of this section, but the aggregate amount of stock held in all corporations engaged in business of the kind described in this section and in section 25 of the Federal Reserve Act as amended shall not exceed 10 per centum of the subscribing bank's capital and surplus.] *Any national bank may invest in the stock of any corporation organized under this section. The aggregate amount of stock held by any national bank in all corporations engaged in business of the kind described in this section or section 25 shall not exceed an amount equal to 10 percent of the capital and surplus of such bank unless the Board determines that the investment of an additional amount by the bank would not be unsafe or unsound and, in any case, shall not exceed an amount equal to 25 percent of the capital and surplus of such bank.*

* * * * * * *

SECTION 107 OF THE FEDERAL CREDIT UNION ACT

POWERS

SEC. 107. A Federal credit union shall have succession in its corporate name during its existence and shall have power—

(1) * * *

* * * * * * *

(5) to make loans, the maturities of which shall not exceed twelve years except as otherwise provided herein, 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) * * *

* * * * * * *

(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 [$10,000] *$50,000* 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 [$10,000] *$50,000*;

* * * * * * *

DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT

SEC. 203. *(a) PROHIBITIONS.*—A management official of a depository institution or a depository holding company may not serve as a management official of any other depository institution or depository holding company not affiliated therewith if an office of one of the institutions or any depository institution that is an affiliate of such institutions is located within either—

(1) the same primary metropolitan statistical area, the same metropolitan statistical area, or the same consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas as defined by the Office of Management and Budget, except in the case of depository institutions with less than $20,000,000 in assets in which case the provision of paragraph (2) shall apply, as that in which an office of the other institution or any depository institution that is an affiliate of such institution is located, or

(2) the same city, town, or village as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or in any city, town, or village contiguous or adjacent thereto.

(b) SMALL MARKET SHARE EXEMPTION.—

(1) IN GENERAL.—This section shall not be construed as prohibiting a management official of a depository institution or depository holding company from serving as a management official of another depository institution or depository holding company not affiliated with such institution or holding company if

the depository institutions or depository holding companies with which the management official serves hold, together with all the affiliates of such institutions or holding companies, in the aggregate no more that 20 percent of the deposits in each relevant geographic banking market where offices of the depository institutions or depository holding companies or their affiliates are located.

(2) RELEVANT GEOGRAPHIC BANKING MARKET DEFINED.—For purposes of paragraph (1), the term "relevant geographic banking market" means—

(A) the area defined by the boundaries identified by the Board of Governors of the Federal Reserve System;

(B) if the Board has not defined such boundaries, the area defined by the boundaries of the Ranally Metropolitan Area in which the office of the depository institution or the depository institution holding company is located; and

(C) if the office of such institution or company is not located within a Ranally Metropolitan Area, the area defined by the county (or an equivalent area of general local government) in which such office is located.

[SEC. 204. If a depository institution or a depository holding company has total assets exceeding $1,000,000,000, a management official of such institution or any affiliate thereof may not serve as a management official of any other nonaffiliated depository institution or depository holding company having total assets exceeding $500,000,000 or as a management official of any affiliate of such other institution.]

SEC. 204. DUAL SERVICE AMONG LARGER ORGANIZATIONS.

(a) IN GENERAL.—If a depository institution, depository institution holding company, or depository institution affiliate of any such institution or company has total assets exceeding $2,500,000,000, a management official of such institution, company, or affiliate may not serve as a management official of any other depository institution, depository institution holding company, or depository institution affiliate of any such institution or company which—

(1) is not an affiliate of the institution, company, or affiliate of which such person is a management official; and

(2) has total assets exceeding $1,500,000,000.

(b) CPI ADJUSTMENTS.—The dollar amounts in this section shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

* * * * * * *

SEC. 206. (a) A person whose service in a position as a management official began prior to the date of enactment of this title and who was not immediately prior to the date of enactment of this title in violation of section 8 of the Clayton Act is not prohibited by section 203 or section 204 of this title from continuing to serve in that position [for a period of, subject to the requirements of subsection (c), 20 years after the date of enactment of this title]. The appropriate Federal depository institutions regulatory agency may provide a reasonable period of time for compliance with this title,

not exceeding fifteen months, after any change in circumstances which makes service described in the preceding sentence prohibited by this title, except that a merger, acquisition, increase in total assets, establishment of one or more offices, or change in management responsibilities shall not constitute changes in circumstances which would make such service prohibited by section 203 or section 204 of this title.

(b) Effective on the date of enactment of this title, a person who serves as a management official of a company which is not a depository institution or a depository holding company and as a management official of that depository institution or depository holding company as a result of that company which is not a depository institution or depository holding company becoming a diversified savings and loan holding company as that term is defined in section 408(a) of the National Housing Act. [This subsection shall expire, subject to the requirements of subsection (c), 20 years after the date of enactment of this title.

[(c) REVIEW OF EXISTING MANAGEMENT INTERLOCKS.—Upon the timely filing of a submission by a person petitioning to serve as a management official in more than 1 position pursuant to subsection (a) or (b), each appropriate Federal depository institutions regulatory agency shall, not later than 6 months after the date of enactment of this Act—

[(1) review, on a case-by-case basis, the circumstances under which such person has served as a management official under the provisions of subsection (a) or (b); and

[(2) permit the management official to continue to serve in such position only if

[(A) such person has provided a resolution from the boards of directors of each affected depository institution, depository holding company, or company described in subsection (b), certifying to the appropriate Federal depository institutions regulatory agency for each of the institutions involved that there is no other qualified candidate from the community described in paragraph (1) or (2) of section 203 who—

[(i) possesses the level of expertise necessary for such service with respect to the affected depository institution, depository holding company, or company described in subsection (b); and

[(ii) is willing to serve as a management official at the affected depository institution, depository holding company, or company described in subsection (b); and

[(B) the appropriate Federal depository institutions regulatory agency determines that continuation of service by the management official does not produce an anticompetitive effect with respect to each affected depository institution, depository holding company, or company described in subsection (b).]

* * * * * * *

SEC. 209. [(a) IN GENERAL.—] Rules and regulations to carry out this title, *including rules or regulations which permit service by a management official which would otherwise be prohibited by section 203 or section 204,* may be prescribed by—

(1) * * *

* * * * * * *

[(b) REGULATORY STANDARDS.—An appropriate Federal depository institution regulatory agency may permit, on a case-by-case basis, service by a management official which would otherwise be prohibited by section 203 or 204 only if—

[(1) the board of directors of the affected depository institution, depository institution holding company, or company described in section 206(b), provides a resolution to the appropriate Federal depository institutions regulatory agency certifying that there is no other candidate from the community described in paragraph (1) or (2) of section 203 who—

[(A) possesses the level of expertise necessary for such service with respect to the affected depository institution, depository institution holding company, or company described in section 206(b) and is not prohibited from service under section 203 or 204; and

[(B) is willing to serve as a management official at the affected depository institution, depository institution holding company, or company described in section 206(b); and

[(2) the appropriate Federal depository institutions regulatory agency determines that—

[(A) the management official is critical to the safe and sound operations of the affected depository institution, depository institution holding company, or company described in section 206(b);

[(B) continuation of service by the management official does not produce an anticompetitive effect with respect to the affected depository institution, depository institution holding company, or company described in section 206(b); and

[(C) the management official meets such additional requirements as the agency may impose.

[(c) LIMITED EXCEPTION FOR MANAGEMENT OFFICIAL CONSIGNMENT PROGRAM.—

[(1) IN GENERAL.—Notwithstanding the requirements of subsection (b), an appropriate Federal depository institutions regulatory agency may establish a program to permit, on a case-by-case basis, service by a management official which would otherwise be prohibited by section 203 or 204, for a period of not more than 2 years, if the agency determines that such service would—

[(A) improve the provision of credit to low- and moderate-income areas;

[(B) increase the competitive position of minority- and woman-owned institutions; or

[(C) strengthen the management of newly chartered institutions that are in an unsafe or unsound condition.

[(2) EXTENSION OF SERVICE PERIOD.—The appropriate Federal depository institutions regulatory agency may extend the 2-year period referred to in paragraph (1) for one additional period of not more than 2 years, subject to making a new deter-

mination described in subparagraphs (A) through (C) of paragraph (1).]

*　　*　　*　　*　　*　　*　　*

SECTION 106 OF THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970

SEC. 106. (a) * * *
(b)(1) * * *
(2)(A) * * *

*　　*　　*　　*　　*　　*　　*

[(G)(i) Each executive officer and each stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of an insured bank shall make a written report to the board of directors of such bank for any year during which such executive officer or shareholder has outstanding an extension of credit from a bank which maintains a corresponding account in the name of such bank. Such report shall include the following information:

[(1) the maximum amount of indebtedness to the bank maintaining the correspondent account during such year of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder, or which is controlled by such executive officer or stockholder;

[(2) the amount of indebtedness to the bank maintaining the correspondent account outstanding as of a date not more than ten days prior to the date of filing of such report of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder;

[(3) the range of interest rates charged on such indebtedness of such executive officer or stockholder of record; and

[(4) the terms and conditions of such indebtedness of such executive officer or stockholder of record.

[(ii) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by any bank or executive officer or principal shareholder thereof concerning any extension of credit by a correspondent bank to the reporting bank's executive officers or principal shareholders, or the related interests of such persons.]

[(H) *(C)* For the purpose of this paragraph—

[(i) the term "bank" includes a mutual savings bank, a savings bank, and a savings association (as those terms are defined in section 3 of the Federal Deposit Insurance Act);

(ii) the term "related interests of such persons" includes any company controlled by such executive officer, director, or person, or nay 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; and

(iii) the terms "control of a company" and "company" have the same meaning as under section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).

[(I)] *(H)* NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such a bank (including a separation caused by the closing of such a bank) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such bank (whether such date occurs before, on, or after the date of the enactment of this subparagraph).

* * * * * * *

SECTION 1115 OF THE RIGHT TO FINANCIAL PRIVACY ACT

COST REIMBURSEMENT

SEC. 1115. (a) Except for records obtained pursuant to section 1103(d) or 1113 (a) through (h), or as otherwise provided by law, a Government authority shall pay to the financial institution assembling or providing financial records pertaining to a customer *(including corporate customers)* and in accordance with procedures established by this title a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced. The Board of Governors of the Federal Reserve System shall, by regulation, establish the rates and conditions under which such payment may be made.

(b) This section shall take effect on October 1, 1979.

CHAPTER 53 OF TITLE 31, UNITED STATES CODE

CHAPTER 53—MONETARY TRANSACTIONS

* * * * * * *

SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

5311. Declaration of purpose.

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[5327. Identification of financial institutions.]
5327. Identification of foreign nonbank financial institutions.

* * * * * * *

§ 5327. Identification of *foreign nonbank* financial institutions

(a) REGULATIONS REQUIRED.—The Secretary of the Treasury shall prescribe regulations requiring each depository institution to identify any customer (of the depository institution) which—

[(1) is a financial institution described in—

[(A) any subparagraph of section 5312(a)(2) other than subparagraphs (A) through (G); or

[(B) any regulation under any such subparagraph; and]

(1) is a financial institution (other than a foreign bank (as defined in section 101(b) of the International Banking Act of 1978)) which is a foreign person; and

* * * * * * *

SECTION 905 OF THE INTERNATIONAL LENDING SUPERVISION ACT OF 1983

RESERVES

SEC. 905. (a)(1) Each appropriate Federal banking agency [shall] *may* require a banking institution to establish and maintain a special reserve whenever, in the judgment of such appropriate Federal banking agency—

(A) the quality of such banking institution's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as—

(i) a failure by such public or private borrowers to make full interest payments on external indebtedness;

(ii) a failure to comply with the terms of any restructured indebtedness; or

(iii) a failure by the foreign country to comply with any International Monetary Fund or other suitable adjustment program; or

(B) no definite prospects exist for the orderly restoration of debt service.

* * * * * * *

(b) The appropriate Federal banking agencies [shall] *may* analyze the results of foreign loan rescheduling negotiations, assess the loan loss risk reflected in rescheduling agreements, and, using the powers set forth in section 908 (regarding capital adequacy), ensure that the capital and reserve positions of United States banks are adequate to accommodate potential losses on their foreign loans.

* * * * * * *

SECTION 7 OF THE INTERNATIONAL BANKING ACT OF 1978

AUTHORITY OF FEDERAL RESERVE SYSTEM

SEC. 7. (a) * * *

* * * * * * *

(c)

(1) EXAMINATION OF BRANCHES, AGENCIES, AND AFFILIATES.—

(A) IN GENERAL.—The Board may examine each branch or agency of a foreign bank, each commercial lending company or bank controlled by 1 or more foreign banks or 1 or more foreign companies that control a foreign bank, and other office or affiliate of a foreign bank conducting business in any State.

(B) COORDINATION OF EXAMINATIONS.—

(i) IN GENERAL.—The Board shall coordinate examinations under this paragraph with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and appropriate State bank supervisors to the extent such coordination is possible.

(ii) SIMULTANEOUS EXAMINATIONS.—The Board may request simultaneous examinations of each office of a foreign bank and each affiliate of such bank operating in the United States.

(iii) AVOIDANCE OF DUPLICATION.—In exercising its authority under this paragraph, the Board shall take all reasonable measures to reduce burden and avoid unnecessary duplication of examinations.

[(C) ANNUAL ON-SITE EXAMINATION.—Each branch or agency of a foreign bank shall be examined at least once during each 12-month period (beginning on the date the most recent examination of such branch or agency ended) in an on-site examination.

[(D) COST OF EXAMINATIONS.—The cost of any examination under subparagraph (A) shall be assessed against and collected from the foreign bank or the foreign company that controls the foreign bank, as the case may be.]

(C) ON-SITE EXAMINATION.—Each Federal branch or agency, and each State branch or agency, of a foreign bank shall be subject to on-site examination by a Federal banking agency or State bank supervisor as frequently as would a national bank or State bank, respectively, by its appropriate Federal banking agency.

(D) COST OF EXAMINATIONS.—The cost of any examination undertaken pursuant to subparagraph (A) shall be assessed against and collected from the foreign bank or the foreign company that controls the foreign bank, as the case may be, but only to the same extent that fees are collected by the Board for examination of any State member insured bank.

(d) ESTABLISHMENT OF FOREIGN BANK OFFICES IN THE UNITED STATES.—

(1) PRIOR APPROVAL REQUIRED.—No foreign bank may establish a branch or an agency, or acquire ownership or control of a commercial lending company, without the prior approval of the Board.

(2) REQUIRED STANDARDS FOR APPROVAL.—[The] *Except as provided in paragraph (6), the* Board may not approve an application under paragraph (1) unless it determines that—

(A) the foreign bank engages directly in the business of banking outside of the United States and is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country; and

(B) the foreign bank has furnished to the Board the information it needs to adequately assess the application.

* * * * * * *

(5) ESTABLISHMENT OF CONDITIONS.—[Consistent with the standards for approval in paragraph (2), the] *The* Board may impose such conditions on its approval under this subsection as it deems necessary.

(6) EXCEPTION.—

(A) IN GENERAL.—If the Board is unable to find under paragraph (2) that a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve an application under paragraph (1) by such foreign bank if—

(i) the appropriate authorities in the home country of such foreign bank are working to establish arrangements for the consolidated supervision of such bank; and

(ii) all other factors are consistent with approval.

(B) ADDITIONAL CONDITIONS.—The Board, after requesting and considering the views of the appropriate State bank supervisor or the Comptroller of the Currency, as the case may be, may impose such conditions or restrictions relating to activities or business operations of the proposed branch, agency, or commercial lending company subsidiary, including restrictions on sources of funding, as are considered appropriate in the public interest.

(C) MODIFICATION OF CONDITIONS.—Any condition or restriction imposed by the Board under this subsection in connection with the approval of an application may be varied or withdrawn where such modification is consistent with the public interest.

(7) TIME PERIOD FOR BOARD ACTION.—

(A) FINAL ACTION.—The Board shall take final action on any application under paragraph (1) within 180 days of receipt of the application, except that the Board may extend for 180 days the period within which to take final action on such application, after providing notice of, and the reasons for, the extension to the applicant foreign bank and any appropriate State bank supervisor or the Comptroller of the Currency, as the case may be.

(B) FAILURE TO SUBMIT INFORMATION.—The Board may deny any application if it has not received information requested from the applicant foreign bank or appropriate authorities in the home country in sufficient time to permit the Board to evaluate such information adequately within the time periods for final action set forth in subparagraph (A).

(C) WAIVER.—A foreign bank may waive the applicability of subparagraph (A) with respect to any such application.

(e) TERMINATION OF FOREIGN BANK OFFICES IN THE UNITED STATES.—

(1) STANDARDS FOR TERMINATION.—The Board, after notice and opportunity for hearing and notice to any appropriate State bank supervisor *or the Comptroller of the Currency*, may order a foreign bank that operates a State branch or agency or commercial lending company subsidiary *or a Federal branch or agency* in the United States to terminate the activities of such branch, agency, or subsidiary if the Board finds that—

(A)*(i)* the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country; [or] *and*

(ii) the appropriate authorities in the home country are not making progress in establishing arrangements for the comprehensive supervision or regulation of such foreign bank on a consolidated basis; or

(B)(i) there is reasonable cause to believe that such foreign bank, or any affiliate of such foreign bank, has committed a violation of law or engaged in an unsafe or unsound banking practice in the United States; and

(ii) as a result of such violation or practice, the continued operation of the foreign bank's branch, agency or commercial lending company subsidiary in the United States would not be consistent with the public interest or with the purposes of this Act, the Bank Holding Company Act of 1956, or the Federal Deposit Insurance Act.

However, in making findings under this paragraph, the Board shall not make size the sole determinant factor, and may take into account the needs of the community as well as the length of operation of the foreign bank and its relative size in its home country. Nothing in this paragraph shall affect the ability of the Board to order a State branch, agency, or commercial lending company subsidiary *or a Federal branch or agency* to terminate its activities in the United States pursuant to any standard set forth in this Act.

* * * * * * *

[(5) RECOMMENDATION TO AGENCY FOR TERMINATION OF A FEDERAL BRANCH OR AGENCY.—The Board may transmit to the Comptroller of the Currency a recommendation that the license of any Federal branch or Federal agency of a foreign bank be terminated in accordance with section 4(i) if the Board has reasonable cause to believe that such foreign bank or any affiliate of such foreign bank has engaged in conduct for which the activities of any State branch or agency may be terminated under paragraph (1).]

[(6)] *(5)* ENFORCEMENT OF ORDERS.—

(A) IN GENERAL.—In the case of contumacy of any office or subsidiary of the foreign bank against which—

(i) the Board has issued an order under paragraph (1); or

(ii) the Comptroller of the Currency has issued an order under section 4(i),

or a refusal by such office or subsidiary to comply with such order, the Board or the Comptroller of the Currency may invoke the aid of the district court of the United States within the jurisdiction of which the office or subsidiary is located.

(B) COURT ORDER.—Any court referred to in subparagraph (A) may issue an order requiring compliance with an order referred to in subparagraph (A).

[(7)] *(6)* CRITERIA RELATING TO FOREIGN SUPERVISION.—Not later than 1 year after the date of enactment of this subsection, the Board, in consultation with the Secretary of the Treasury, shall develop and publish criteria to be used in evaluating the operation of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis. In developing such criteria, the Board shall allow reasonable opportunity for public review and comment.

* * * * * * *

SECTION 1306 OF TITLE 18, UNITED STATES CODE

§ 1306. Participation by financial institutions

Whoever knowingly violates section [5136A] *5136C* of the Revised Statutes of the United States, section 9A of the Federal Reserve Act, or section 20 of the Federal Deposit Insurance Act shall be fined under this title or imprisoned not more than one year, or both.

BANK SERVICE CORPORATION ACT

SHORT TITLE AND DEFINITIONS

SECTION 1. [(a) This Act may be cited as the "Bank Service Corporation Act".]

(a) SHORT TITLE.—This Act may be cited as the "Bank Service Company Act".

(b) For the purpose of this Act—

(1) the term "appropriate Federal banking agency" shall have the meaning provided in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q));

[(2) the term "bank service corporation" means a corporation organized to perform services authorized by this Act, all of the capital stock of which is owned by one or more insured banks;]

(2) the term "bank service company" means—

(A) any corporation—

(i) which is organized to perform services authorized by this Act; and

(ii) all of the capital stock of which is owned by 1 or more insured banks; and

(B) any limited liability company—

(i) which is organized to perform services authorized by this Act; and

(ii) all of the members of which are 1 or more insured banks.

* * * * * * *

(6) the term "invest" includes any advance of funds to a bank service [corporation] *company*, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment; [and]

(7) the term "limited liability company" means any company organized under the law of a State (as defined in section 3 of the Federal Deposit Insurance Act) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company; and

[(7)] *(8)* the term "principal investor" means the insured bank that has the largest dollar amount invested in the [capital stock] *equity* of a bank service [corporation] *company*. In any case where two or more insured banks have equal dollar amounts invested in a bank service [corporation] *company*, the [corporation] *company* shall, prior to commencing operations, select one of the insured banks as its principal investor and shall notify the bank's appropriate Federal banking agency of that choice within 5 business days of its selection.

AMOUNT OF INVESTMENT IN BANK SERVICE [CORPORATION] *COMPANY*

SEC. 2. Notwithstanding any limitation or prohibition otherwise imposed by any provision of law exclusively relating to banks, an insured bank may invest not more than 10 per centum of paid-in and unimpaired capital and unimpaired surplus in a bank service [corporation] *company*. No insured bank shall invest more than 5 per centum of its total assets in bank service [corporation] *companies*.

PERMISSIBLE BANK SERVICE [CORPORATION] *COMPANY* ACTIVITIES FOR DEPOSITORY INSTITUTIONS

SEC. 3. Without regard to the provisions of sections 4 and 5 of this Act, an insured bank may invest in a bank service [corporation] *company* that performs, and a bank service [corporation] *company* may perform, the following services only for depository institutions: check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a depository institution.

PERMISSIBLE BANK SERVICE [CORPORATION] *COMPANY* ACTIVITIES FOR OTHER PERSONS

SEC. 4. (a) A bank service [corporation] *company* may provide to any person any service authorized by this section, except that a bank service [corporation] *company* shall not take deposits.

(b) Except with the prior approval of the Board under section 5(b) of this Act in accordance with subsection (f) of this section—

(1) a bank service [corporation] *company* shall not perform the services authorized by this section in any State other than that State in which its shareholders *or members* are located; and

(2) all insured bank shareholders *or members* of a bank service [corporation] *company* shall be located in the same State.

(c) A bank service [corporation] *company* in which a State bank is a shareholder *or member* shall perform only those services that such State bank shareholder *or member* is authorized to perform under the law of the State in which such State bank operates and shall perform such services only at locations in the State in which such State bank shareholder *or member* could be authorized to perform such services.

(d) A bank service [corporation] *company* in which a national bank is a shareholder *or member* shall perform only those services that such national bank shareholder *or member* is authorized to perform under the law of the United States and shall perform such services only at locations in the State at which such national bank shareholder *or member* could be authorized to perform such services.

(e) A bank service [corporation] *company* that has both national bank and State bank shareholders *or members* shall perform only those services that may lawfully be performed by both [its national bank shareholder or shareholders] *any shareholder or member of the company which is a national bank* under the law of the United States and [its State bank shareholder or shareholders] *any shareholder or member of the company which is a State bank* under the law of the State in which [such State bank or banks] *any such State bank* operate and shall perform such services only at location in the State at which both its State bank and national bank shareholders *or members* could be authorized to perform such services.

(f) Notwithstanding the other provisions of this section or any other provision of law, other than the provisions of Federal and State branching law regulating the geographic location of banks to the extent that those laws are applicable to an activity authorized by this subsection, a bank service [corporation] *company* may perform at any geographic location any service, other than deposit taking *company*, that the Board has determined, by regulation, to be permissible for a bank holding company under section 4(c)(8) of the Bank Holding Company Act.

PRIOR APPROVAL FOR INVESTMENTS IN BANK SERVICE [CORPORATIONS] *COMPANIES*

SEC. 5. (a) No insured bank shall invest in the capital stock of a bank service [corporation] *company* that performs any service under authority of subsection (c), (d), or (e) of section 4 of this Act

without prior notice, as determined by the bank's appropriate Federal banking agency.

(b) No insured bank shall invest in the capital stock of a bank service [corporation] *company* that performs any service under authority of section 4(f) of this Act and no bank service [corporation] *company* shall perform any activity under section 4(f) of this Act without the prior approval of the Board.

(c) In determining whether to approve or deny any application for prior approval or whether to approve or disapprove any notice under this section, the Board or the appropriate Federal banking agency, as the case may be, is authorized to consider the financial and managerial resources and future prospects of the bank or banks and bank service [corporation] *company* involved, including the financial capability of the bank to make a proposed investment under this Act, and possible adverse effects such as undue concentration of resources, unfair or decreased competition, conflicts of interest, or unsafe or unsound banking practices.

(d) In the event the Board or the appropriate Federal banking agency, as the case may be, fails to act on any application under this section within ninety days of the submission of a complete application to the agency, the application shall be deemed approved.

SERVICES TO NONSTOCKHOLDERS *OR NONMEMBERS*

SEC. 6. No bank service [corporation] *company* shall unreasonably discriminate in the provision of any services authorized under this Act to any depository institution that does not own stock in *or is not a member of* the service [corporation] *company* on the basis of the fact that [the nonstockholding institution] *such depository institution* is in competition with an institution that owns stock in *or is a member of* the bank service [corporation] *company*, except that—

(1) it shall not be considered unreasonable discrimination for a bank service [corporation] *company* to provide services to a nonstockholding *or nonmember* institution only at a price that fully reflects all of the costs of offering those services, including the cost of capital and a reasonable return thereon; and

(2) a bank service [corporation] *company* may refuse to provide services to a nonstockholding *or nonmember* institution if comparable services are available from another source at competitive overall costs, or if the providing of services would be beyond the practical capacity of the service [corporation] *company*.

REGULATION AND EXAMINATION OF BANK SERVICE [CORPORATION] *COMPANIES*

SEC. 7. (a) A bank service [corporation] *company* shall be subject to examination and regulation by the appropriate Federal banking agency of its principal investor to the same extent as its principal investor. The appropriate Federal banking agency of the principal shareholder *or principal member* of such a bank service [corporation] *company* may authorize any other Federal banking agency that supervises any other shareholder *or member* of the bank service [corporation] *company* to make such an examination.

(b) A bank service [corporation] *company* shall be subject to the provisions of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) as if the bank service [corporation] *company* were an insured bank. For this purpose, the appropriate Federal banking agency shall be the appropriate Federal banking agency of the principal investor of the bank service [corporation] *company*.

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MINORITY VIEWS TO H.R. 1858

The Democratic and Independent Members of the Committee on Banking and Financial Services voted unanimously to oppose the Financial Institutions Regulatory Relief Act of 1995. We oppose this ill-conceived bill because it poses a danger to the safety and soundness of the nation's banking industry, eviscerates well proven community development law, and seriously compromises many consumer safeguards.

H.R. 1362 (the precursor of H.R. 1858) as introduced, was a grab bag and was overreaching in responding to special interests and lobbyists. This bill follows a new trend of legislating by anecdote, not fact, as the Committee received no documentation of costs supposedly borne by banks because of their community or consumer obligations imposed by law. In fact, many of the provisions in the bill were rejected in the last Congress because they were unjustified, they gutted consumer protection laws and they compromised the safe and sound operation of our banks. Nonetheless, the bill, H.R. 1362, actually was made even worse during the Subcommittee markup by Republican amendments. As a result of these amendments, important civil rights laws were hobbled; community development laws were further eroded; and directors and officers who in the past pillaged their institutions would be sheltered in the future from liability.

Because these amendments were so damaging, to the point of embarrassing our colleagues, a number were either pared back or dropped altogether in the full Committee deliberations. Far from "accommodating" the concerns of the minority, as suggested by the Chairman, these amendments and other provisions in the bill were voted down because they are simply bad policy. Although the full Committee markup improved the bill in several areas, the community reinvestment provisions were made dramatically worse—so much so that there remains no enforcement mechanism for the gutted CRA law.

As a result, the bill has justly earned the distinction of becoming a veto target. In fact, following the Committee's action, Secretary of the Treasury Robert Rubin wrote to inform Chairman Leach that he would recommend that the President veto the bill in its current form.

We, Democratic and Independent Members, fully, support reasonable efforts to streamline government regulations, but cannot support this extreme and radical legislation. As the Vento substitute illustrates, it is possible to achieve more efficient regulation without putting communities, consumers and the deposit insurance funds at risk.

I. EROSION OF BANKS' AND THRIFTS' COMMITMENT TO SERVING THEIR COMMUNITIES

A. Gutting of CRA

We are extremely disappointed and alarmed by the Committee's action in systematically dismantling the Community Reinvestment Act ("CRA"). Because of a series of Republican amendments, CRA, a law that has been responsible for the flow of more than $30 billion (and by some estimates over $60 billion) to urban and rural communities across the country has been crippled. CRA, a law that simply requires banks and thrifts to make credit available to the communities they are chartered to serve, has been unjustly demonized by the Republicans on the Committee. One of our Republican colleagues went so far as to refer to CRA as "a bunch of crap." This attitude and the actions of the Republicans demonstrate a complete insensitivity to or lack of understanding of the inability of low and moderate income Americans to obtain credit in our society.

CRA has been a law that has made credit accessible for hundreds of thousands of low- and moderate-income Americans. CRA is not a civil rights law nor an affirmative action measure, but rather, a law that requires institutions chartered and insured by the federal government to lend within all the communities they are chartered to serve. And, CRA expressly states that serving the credit needs of local communities is to be consistent with the safe and sound operations of institutions.

In fact, CRA has not been found to jeopardize the safety and soundness of institutions, nor the underlying backstop of federal deposit insurance. Federal Reserve Board Governor Lawrence Lindsey, in a response to Representative Frank, referred to a few of the studies analyzing CRA loan performance. Regarding one such study by the Woodstock institute in 1993, Governor Lindsey wrote: "the combined delinquency and foreclosure rates for multifamily housing loans in low- and moderate-income areas were slightly superior to those gleaned from national samples reflecting loans in all income area." Governor Lindsey also asserted that anecdotal information has shown that "loans to low- and moderate-income people perform with respect to repayment as well as, and in some cases better than, loans to others. Furthermore, I have heard of no cases in which a bank's portfolio contained such a large number of such loans that even if a significant number of the borrowers defaulted, it would put the bank in a seriously adverse safety and soundness position."

President Clinton and the banking regulators are to be lauded for their two year efforts to reform CRA regulations. They have produced regulations which emphasize performance over paperwork. Banks and thrifts will be judged by the loans, investments, and services they provide to their communities—not by the quality of their documentation. Small banks would receive streamlined examinations and will have no reporting requirements under CRA. Yet, despite being hailed by both the banking industry and community groups, these regulations will not even have the opportunity to go into effect if this bill ever becomes law.

Because of the Republican actions in Committee, institutions with $100 million or less in assets will be exempt from CRA cov-

erage altogether. Institutions with $250 million or less in assets will be able to "self certify" their compliance with the law. These two provisions would effectively exempt close to 90% percent of banks and thrifts from CRA coverage. Furthermore, institutions with CRA ratings of satisfactory or above—95% of the industry—will be deemed to have satisfied their CRA obligations until their next examination. And, the most egregious vote by the Republicans was to eliminate the sole enforcement mechanism in CRA—the obligation of the regulators to take into account an institution's record of meeting its community credit needs when considering an institution's application to branch, acquire, or merge with another bank or thrift.

The Republicans have effectively reduced CRA to a hollow hope; a shadow of its former self. They have hobbled a law that has successfully channeled billions of dollars to urban and rural communities. At a time when public funds for such communities are getting scarcer, private dollars are essential to the economic vitality of these neighborhoods.

The Republican attack on the Community Reinvestment Act is one of the major reasons cited by Secretary Rubin in a letter to Chairman Leach advising that he would recommend to the President that this regulatory bill be vetoed in its current form.

B. Exemption of over 3,000 institutions from HMDA

By increasing the statutory exemption from the Home Mortgage Disclosure Act ("HMDA") for institutions with $10 million in assets or less, to those with $50 million in assets or less, section 116 will exempt more than 3,000 additional lenders from the law's coverage. Although purported to adjust the exemption for inflation, this provision more than doubles the actual CPI adjusted dollar figure from 1975. Furthermore, it is unclear how many more institutions (with *over* $50 million in assets) will be exempt from HMDA under the new grant of discretion to the Federal Reserve Board. The bill permits the Board to exempt any other lender from complying with HMDA because the law is too burdensome. There is simply no justification for granting this exemptive authority to the Board which will create a gaping loophole in the law.

HMDA imposes no more obligation on financial institutions than to report their loan data. But this data has proven to be critical in revealing discrepancies between lending to minorities and non-minority applicants. HMDA has put both lenders and the public on notice about the fairness of individual institutions' lending practices.

Disclosures under HMDA are important for purposes of monitoring an institution's service to its community and its compliance with the fair lending laws. While HMDA data alone is not determinative of a fair lending violation, it is an essential investigative tool. Because of the utility of HMDA, both Secretary Cisneros and Acting Assistant Attorney General Kent Markus have written letters to Committee members strongly condemning this roll back of HMDA by the Committee.

C. Restoration of fair lending laws

We were successful in striking provisions adopted by the Subcommittee that seriously undermined our civil rights laws. The Subcommittee passed an amendment that would have stripped the Attorney General of the authority to initiate cases charging a "pattern or practice" of discrimination under the Fair Housing Act and the Equal Credit Opportunity Act. In a letter to Chairman Leach, Attorney General Reno wrote that to prohibit the Department of Justice from challenging pattern or practice cases would be "unthinkable." Furthermore, the amendment would have disallowed the use of disparate impact theory in fair lending cases.

Yet, one of our Republican colleagues exhorted the Committee to "rein in the whole idea of the blackmail opportunities that are here today when these suits are being brought on disparate impact, and courts of appeals are divided on this issue, and let's not go along with this kind of funny business anymore . . .". We are offended that lawsuits to vindicate the rights of individuals who have been mistreated by financial institutions are equated with "blackmail" and "funny business."

Moreover, amendments to the Fair Housing Act are well outside of the Committee's jurisdiction and expertise. The far reaching amendment would have impeded lawsuits beyond the lending context and extended to such areas as realtor and rental practices, and housing discrimination against families with children. All this, without even one hearing on the topic.

Fortunately, the Committee recognized the potential and far-reaching damage that would have been done by these provisions and struck them from the bill.

II. A RETREAT FROM SAFETY AND SOUNDNESS

We also oppose this bill because it weakens measures designed to ensure the safe and sound operation of federally insured institutions. Without critical safeguards, the taxpayers stand to lose a lot. The recent savings and loan crisis should serve as a grave reminder of the dangers of irresponsible deregulation of an industry. We cannot support a bill that poses increased risk of loss to the deposit insurance funds and the taxpayers who guarantee that fund.

A. BCCI redux

The Republican majority on the Committee struck a positive amendment to section 223 by Congressman Kanjorski adopted at the Subcommittee. The Kanjorski amendment provided important safeguards necessary to help prevent another BCCI scandal. The provisions would have (1) required that boards of directors be comprised of a majority of outside directors; (2) prohibited lawyers and accountants who provide professional advice to the board of financial institutions over $250 million in size from serving on those boards of directors; and (3) required certain ownership disclosures to boards of directors. Those provisions are crucial to ensuring that a board of directors serve as an independent overseer of the financial institution. The independence of a board is best insured when a majority of the directors are outside directors. Furthermore, prohibiting such outside counsel and accountants from serving on the

board would prevent a clear conflict of interest from arising, as in the case of BCCI.

B. The wrong signal on insider lending

The amendments to current law contained in section 225 would effectively encourage the risky and unsafe practice of self-serving insider lending. A major cause of the failure of banks and thrifts over the past decade was their penchant for making exorbitant and risky loans to their own officers and directors. This unsafe practice was properly restricted in recent years. The Republican majority now seeks to seriously weaken those restrictions and the ability of the banking regulators to monitor and detect that conduct. This section contains major exceptions to the prohibition on insider lending and eliminates bank reports on such loans.

C. The chilling of Government investigations

Section 227, requiring the government to reimburse a financial institution for providing financial records on corporate customers pursuant to a government request, would have a chilling effect on major investigations and cost the taxpayers approximately thirty million dollars in the first year alone. In opposing this provision, the Justice Department has stated that: "Financial information about corporations is a critical component of some of the Government's most important investigations. For example, such information is often indispensable in defense procurement fraud and money laundering cases. . . . investigators and prosecutors with whom we spoke indicated that requiring reimbursement for corporate record requests could have chilling impact on investigations, particularly in a time of declining government resources."

D. Audit committees compromised

Section 233 of the bill repeals important bank audit requirements legislated in response to the egregious abuses of the thrift crisis. These requirements sought to ensure that insured depository institutions be subject to independent, objective and public financial audit procedures in a manner consistent with their fiduciary responsibilities and the safety and soundness of the banking system.

The bill would eviscerate nearly all of these requirements for well over 90% of the nation's banking institutions. For example, it repeals the requirement that the banks' boards of directors establish audit committees composed entirely of independent, outside directors. Thus, all but fewer than 10% of U.S. banks would be able to either abolish their audit committee altogether or appoint all insiders to the audit committee. Service of insiders on the audit committee presents a clear conflict of interest since those who manage the institution can hardly be expected to objectively audit or criticize its operations. Such an exception from the audit committee requirement, for instutitions which enjoy the benefits of federal deposit insurance, is a standard far below that for nearly all privately-owned, publicly-traded American corporations. And to make matters worse, this exception is absolute—banking regulators are given no discretion to require that even one member of the audit committee be an independent, outside director.

The bill also eliminates statutory requirements that a bank's independent accountants attest to the bank's compliance with safety and soundness laws. It also repeals the requirement that accountants report on, and attest to, the effectiveness of a bank's internal control polices and procedures, which are key to the institution's risk management and financial soundness. These attestation requirements are critical in maintaining the accountants' objectivity and providing essential information about the bank's condition. The bill would also permit banking regulators to designate certain aspects of the bank's audited financial reports as confidential and unavailable to the public. This patently undermines the fundamental principle of public accountability for federally insured banks and opens the door to concealment of basic financial information that all investors, depositors and taxpayers have the right to know.

E. Outside directors—Hear no evil, see no evil

Section 234 would exclude outside directors from the definition of "institution affiliated party" for purposes of various enforcement actions. They should thus be subject to an enforcement action only if an agency could prove that the outside director "knowingly" or "recklessly" participated in a violation of law or regulation. Currently, outside directors are subject to the same negligence standard as applies to other directors.

This amendment would harm corporate governance and create perverse incentives for outside directors to avoid learning about, or following up on, facts that could give raise to liability. As the Federal Deposit Insurance Corporation has stated in correspondence on the provision: "All directors of insured depository institutions, regardless of whether they are inside or outside directors, have a duty to set policies for their institutions and see that those policies are implemented and adhered to while meeting its community's needs on a safe and sound basis. Losses an insured depository institution can sustain as a result of negligent oversight are not determined by whether the negligent director is an insider or an outsider. The experience of the FDIC has shown that both inside and outside directors can engage in negligent conduct as well as abusive self-dealing transactions. We believe good corporate governance and effective regulatory oversight require that all directors know that they will be held responsible for fulfilling their duties to properly manage their institution. Put differently, telling outside directors that they can be negligent with impunity is definitely the wrong message."

These are only the most egregious examples of how this legislation would in many ways place our nation's insured depository institutions on unsafe and unsound footing, and thereby increase the risk that the taxpayers will once again be asked to pay for the excesses of an unregulated financial institutions industries. Fortunately, a very dangerous and costly section of the bill added by the Republicans at the Subcommittee was deleted at the full Committee by other Republicans who painfully recognized the harm it would cause. The provision would have established new rules governing the legal liability and standard of conduct for directors and officers of insured depository institutions. Those directors and officers of insured depository institutions. Those rules were roundly

opposed by the banking regulators as irresponsibly absolving directors and officers of any real duty to safely and soundly oversee an insured depository institution.

III. THE CONSUMER IS THE BIG LOSER

A. The Home Ownership and Equity Protection Act is substantially weakened

The bill effectively eliminates the important consumer protection of the Home Ownership and Equity Protection Act passed just last year, by limiting the Act's coverage to second mortgages. The Home Ownership and Equity Protection Act, which has not even been implemented, requires additional disclosures in the case of mortgages with interest rates more than 10 points above comparable Treasury securities or mortgages with fees that are more than the greater of 8 points or $400. The Act also prohibits certain particularly abusive terms in connection with these high cost mortgages, such as negative amortization, prepayment penalties and balloon payments within 5 years.

The law was enacted with bipartisan support and addresses unscrupulous lending practices. Congressional hearings documented abusive tactics employed by certain lenders whereby these lenders would target poor people with equity in their homes, oftentimes with credit problems, for home equity loans. The loans would be made for purposes of debt consolidation or home improvements, improvements which the homeowners were often convinced to undertake by the lender. Testimony from numerous sources, including the National Housing Law Project and AARP, indicated that, in the vast majority of cases lenders target homeowners who either own their homes outright or have very small payments remaining on their mortgages. Where mortgages do remain, the new lender pays off any existing balance in order to obtain the first lien. This is done both to ensure that the new lender gets the priority lien and because federal law prohibits interest rate regulation on first mortgages thus allowing the high rates to be charged.

Multiple fees are usually folded into the loan amounts, often without the knowledge of the borrower. In many cases, because of these fees, the proceeds to the homeowner amount to as little as one third of the loan amount. As a result, homeowners with fixed incomes are saddled with monthly payments they cannot afford, and inevitably their homes are subject to foreclosure.

The Home Ownership and Equity Protection Act does not affect a single legitimate lender, as indicated by industry testimony during the last Congress in support of the legislation. This year, in testimony before the Subcommittee, Federal Reserve Board Governor Susan Phillips stated, "It is not immediately apparent why this revision is being proposed, however, given the clear anecdotal and other evidence presented to Congress at the time the law was enacted—which showed that the abuses and problems associated with high-cost loans occurred primarily in connection with first-lien refinancings."

We join the Federal Reserve Board in questioning the reason for gutting this Act. It appears to us to be no more than pandering to special interests at the expense of unsuspecting consumers.

B. Truth in Savings Act protections are diminished

The bill repeals important provisions of the Truth in Savings Act ("TISA"), which protect bank customers from misleading, deceptive or incomplete disclosures and advertising relating to their federally insured deposits. As introduced, H.R. 1362 would have repealed nearly the entire Act, which became effective only in 1993, but improvements were made during the Subcommittee and full Committee markups. Because of a Democrat-initiated amendment, significant consumer protections concerning mandatory disclosure of the rates, fees and terms of deposit accounts and any change in those items, was restored. Under the bill, however, TISA's requirement that banks use a uniform method of calculating and disclosing account yields—the annual percentage yield—would be repealed. Without such uniform disclosures, consumers cannot make informed comparisons about banks and bank products.

Additionally, the bull strips TISA of its civil liability provisions. Therefore, if a consumer is misled about the terms of an account, or even if the bank fails to give the consumer the proper interest rate, the consumer is left without recourse against the bank under the Act. Only administrative remedies remain. Administrative remedies alone are insufficient to enforce the Act's provisions and vindicate an individual customer's rights.

C. Consumer privacy breached by information sharing among affiliates

We strongly disagree with the manner in which the bill permits affiliates and subsidiaries of depository institutions to share confidential and sensitive financial information on their customers. Section 142 completely overrides the statutory protections of the Fair Credit Reporting Act ("FCRA") without putting in place any mechanism whereby consumers can ensure the accuracy of the information that is being shared among affiliated companies.

Should H.R. 1062, the Financial Services Modernization Act, be enacted, the scope of this provision will be far reaching. Depository institutions will be permitted to freely share sensitive customer information with their affiliated securities firms, and in some instances, commercial entities and insurance companies. Under section 142, depository institutions could establish affiliated credit bureaus with files on millions of customers to service these companies free of any regulation.

While permitting affiliated companies to share credit information on their customers may be a desired goal, it should be accomplished in the context of reforming the FCRA. This was the approach taken by the Committee in the last Congress. Last year, the Committee, and the full House voted to allow such sharing of information among affiliated companies, without limiting it to depository institutions and their affiliates. In so doing, the Committee also passed important consumer safeguards and strengthened the FCRA. It is time for the Committee to once again demonstrate its resolve to aid consumers by considering and passing much needed reforms to the FCRA.

D. The bill cedes too much authority to the Federal Reserve Board to reduce TILA's coverage

Section 103 of the bill provides the Federal Reserve Board with broad authority to run literally roughshod over the Truth in Lending Act ("TILA"). This section automatically excludes from the law's coverage any transaction that the Board determines by regulation is not needed to carry out the purposes of the Act. The bill further directs the Board to exclude from TILA's coverage any class of transaction that the Board determines does not provide a "measurable benefit to consumers". Far from providing the Board with appropriate regulatory flexibility to interpret the Act, this section amounts to an extraordinary grant of legislative authority to a regulator which could serve to undermine the purposes of the Act.

E. RESPA is balkanized

Amendments made at the Subcommittee and full Committee have mangled the enforcement of the Real Estate Settlement Procedures Act (RESPA). These proposed changes could render this law, which was designed to protect consumers during settlement procedures for a home purchase, useless as a result of the regulatory confusion. The Republican bill will transfer responsibility for all of RESPA from the Department of Housing and Urban Development (HUD) to the Federal Reserve except for Sections 8, 9 and 12. The enforcement aspects of these sections will be balkanized because enforcement will be divided among the financial institutions' regulators and HUD.

The amendments to RESPA would also mandate HUD to use negotiated rulemaking—even on the somewhat contentious rules that are soon to be completed by the Department after over two years of work by this Administration's HUD alone. Requiring HUD to conduct negotiated rulemaking, particularly where affected industries will never agree, will prolong the rulemaking process indefinitely and will only further delay the resolution of issues such as Computerized Loan Originations (CLOs) and Controlled Business Arrangements (CBAs).

Finally, despite being labeled as mere changes to the "purposes" section of RESPA, the amendments will make substantive revisions to RESPA by directing HUD how to specifically regulate settlement services prices or compensation agreements. Numerous Congressional hearings have highlighted egregious practices utilized by some in the mortgage settlement industries. Significant changes were made in this bill to RESPA, without consideration of the ramifications for consumers.

IV. BANK INSURANCE POWERS—WHY ARE WE ROLLING BACK INSURANCE POWERS IN A DEREGULATION BILL?

A number of us are troubled by the inclusion of a provision in a regulatory relief bill that addresses bank insurance powers. We recognize that the approach adopted by the Republicans was an attempt to balance the competing demands of the banking and insurance industries and was done so at the direction of the Republican leadership. However, this is an issue most appropriately addressed in legislation amending the Glass Steagall Act. We must admonish

our Republican colleagues that any attempts to join this regulatory relief bill with the Financial Services Modernization Act of 1995, H.R. 1062, will severely erode any possible bipartisan support that H.R. 1062 might enjoy and will diminish prospects for its v passage.

V. WE STAND FOR RESPONSIBLE REGULATORY AND STATUTORY REFORM

Responding to the need for real regulatory relief, the Committee Democrats crafted a comprehensive substitute bill with provisions that would reduce regulatory burden without sacrificing communities, consumers, or the taxpayer.

The Vento substitute would modernize and streamline numerous banking laws and regulations. This regulatory burden relief proposal will provide for a simplified and improved Real Estate Settlement Practices Act ("RESPA") and Truth in Lending Act ("TILA"). It also simplifies the TILA disclosures for Adjustable Rate Mortgages ("ARMs"). Other provisions clarify confusing disclosures to applicants relating to assignment, sale, or transfer of loan services under RESPA.

The Democratic proposal streamlines the Truth in Savings Act ("TISA") without compromising its effectiveness. The Vento substitute modifies the civil liability provision to exclude its application to advertisements, and would further require the Federal Reserve Board (FRB) to determine and report to Congress within six months which accounts (if any) are not appropriately served by the calculation of interest under the Annual Percentage Yield (APY) formula.

The Vento substitute allows for a realistic adjustment of the Home Mortgage Disclosure Act (HMDA) exception from reporting for institutions with assets of $10 million or less every five years based on CPI for inflation starting from the beginning of calendar year 1990. It also encourages self-testing by creditors by protecting the results of such self-testing unless it was conducted at an agency's request, the creditor used the results to defend themselves, or the agency received evidence of discrimination independently of the self-testing.

The substitute includes the comprehensive bipartisan provisions providing relief from the "*Rodash*" case that destabilize the mortgage banking system, including the secondary market for mortgages. Major provisions of the proposal include the exclusion of certain third party fees imposed by closing agents and intangible taxes from the finance charge; the elimination of the right of rescission for mortgages that are refinanced with a certain lenders only where those loans contain no new cash advances and consolidation of other existing debt; the provision for a higher tolerance for errors in the calculation of the finance charge equal to 1/16 of 1% of the APR, but in no event less than $25 or more than $200; the raising of statutory damages for loans secured by homes from $100 to $1,000, to $250 to $2,500; and, the provision of retroactive relief for lenders against individual claims filed after June 1, 1995 and for class actions certified after January 1, 1995 that relate to misdisclosure of third party fees, errors exceeding the tolerance in section 108, or the use of improper rescission forms.

The substitute streamlines the Bank Holding Company Act by permitting well-capitalized and well-managed BHCs whose banks all have received "satisfactory" CRA ratings to acquire certain other banks without prior approval of the Federal Reserve Board, but rather, through a public notice of 30 days. It further would permit these BHCs to engage in any nonbanking activity (closely related to banking) simply by noticing the Board. The bill further streamlines the bank application process for branches of banks that are well-capitalized, rated a CAMEL 1 and 2, have at least a "satisfactory" CRA rating, and seek to operate in an area that satisfies all applicable geographic limitations with appropriate public notice and comment.

Other streamlining measures would direct the Office of Thrift Supervision (OTS) and the Federal Reserve Board to coordinate and establish a unified examination procedure for dual holding companies and streamline regulatory oversight of such companies by requiring the agencies to coordinate and unify regulatory requirements imposed on dual holding companies consistent.

Importantly, the Vento substitute expands regulatory discretion for examinations from institutions with up to $175 million to institutions with up to $250 million. It also eliminates branch application requirements for automated teller machines (ATMs) and remote service units while it removes the out-dated per-branch capital standard in 12 U.S.C. Section 36(h).

Also included are reductions in overlap in foreign bank applications and requirements that the Federal Reserve Board should rely on examinations of other Federal and State regulators for the examination of foreign banks to the maximum extent practicable. The substitute would amend provisions of the Depository Institutions Management Interlocks Act (DIMIA) to prohibit an outside attorney or accountant of a depository institution from serving as a director of the institution with limited exceptions, while also requiring that a majority of each board be made up of outside directors.

As part of comprehensive, on-going regulatory review the substitute requires the Federal Financial Institutions Examination Council (FFIEC) and each respective federal banking agency represented on the FFIEC, and the National Credit Union Administration (NCUA) Board to identify outdated or otherwise unnecessary regulatory requirements on financial institutions, and eliminate them as appropriate within every 10 year period.

The Vento substitute also includes the bipartisan provisions limiting lender liability for environmental clean-up by clarifying the liability under Federal environmental law for lenders, fiduciaries, and Federal banking and lending agencies and providing certainty as to when and to what extent these parties may have liability for violations under Federal environmental law for their lending, financial and fiduciary activities.

These provisions show that Democratic and Independent Members of the Banking Committee have been listening and do what to respond to the call for true regulatory relief in an bipartisan manner whenever possible. However, this relief should not and does not have to come at the expense of the American consumers, its communities or the taxpayers. Proponents of many of the provisions of the Committee reported regulatory repeal bill have not yet

demonstrated that laws such as the Truth in Savings Act or the Community Reinvestment Act, significantly add to the costs of or are detrimental to financial institutions—especially in light of record bank profits.

For the reasons generally outlined in these views, we will continue to oppose the provisions of H.R. 1858. We will actively seek, however, to further improve this bill or ultimately work for its timely demise.

HENRY GONZALES.
FLOYD H. FLAKE.
JOHN J. LAFALCE.
CLEO FIELDS.
TOM BARRETT.
KWEISI MFUME.
JOE KENNEDY.
MAURICE HINCHEY.
NYDIA VELÁZQUEZ.
LUCILLE ROYBAL-ALLARD.
ALBERT R. WYNN.
BRUCE F. VENTO.
GARY L. ACKERMAN.
CAROLYN B. MALONEY.
LUIS V. GUTIERREZ.
MAXINE WATERS.
PAUL E. KANJORSKI.
CHARLES SCHUMER.
MELVIN L. WATT.
BERNIE SANDERS

ADDITIONAL VIEWS OF MR. FLAKE

As author of this amendment, I am offering my separate views to be included in the final report in order to clarify any interpretations of my empowerment zone amendment. It is my intention for it to operate independently of section 5136A, and the provisions of section 5136A shall not apply to the powers of National Banks as so conferred under section 5136B.

This new section will provide greater access to insurance in disadvantaged communities where competively priced insurance is inadequate. Moreover, this amendment will foster economic revitalization, such a new business and employment opportunities, in low income neighborhoods by permitting the sale of insurance in empowerment zones. Additionally, by requiring the sale of insurance to occur from a "full-service branch" in the empowerment zone, the amendment provides a significant incentive for banks to improve the quality and quantity of banking services in such communities.

Effective immediately, this amendment allows national banks having main offices or full-service branches in areas eligible for designation as empowerment zones or enterprise communities under section 1392 of the Internal Revenue Code of 1986, or in Indian reservations, to sell insurance from that location. The designation criteria for an empowerment zone or enterprise community assures that the community is one experiencing economic distress.

State laws that regulate conducting the business of insurance, including those that provide operational restrictions protecting consumers, would apply to national banks sale of insurance under this section. However, State laws would not apply if the appropriate Federal banking agency determined, after notice to and comment by the appropriate State officials, that application of a specific State law would have an unreasonably discriminatory effect upon the sale of insurance by banks or their employees in comparison with the effect the application of such state law would have on the sale of insurance by other entities. This provision will ensure that banks selling insurance in a State are subject to the same operational and customer protection standards that apply to other entities selling insurance in the State.

FLOYD H. FLAKE.

ADDITIONAL VIEWS OF MS. WATERS

This legislation contains many objectionable provisions. However, during consideration of the bill in committee, perhaps the most objectionable discussion of the deliberations centered around the bill's proposed changes to the legal standards applied to the Fair Housing Act and Equal Credit Opportunity Act.

Combined with the severe weakening of the Community Reinvestment Act, including changes in its enforceability, and the rollback of several consumer laws, I felt personally offended by the changes which were proposed in the committee print.

The attempt to eliminate disparate impact as a standard for review of discrimination claims brought under the Fair Housing Act and the Equal Credit Opportunity Act—changes which were contained in the committee print of the bill—represented a frontal attack on civil rights law—civil rights laws that people have fought and died for.

Disparate impact is one of three long-standing legal standards (intentional discrimination and disparate treatment are the others) used to challenge discrimination. Disparate impact is used to challenge practices that are neutral in design but when applied has a disproportionate and substantially discriminatory effect on people because of their race, color, religion, sex, familial status, national origin, or handicap. Under this analysis, practices and policies which have a discriminatory effect must be eliminated or changed where they have no business necessity.

This attack on our civil rights laws did not belong in this bill. It did not belong in the Banking Committee. I do not know who was behind it. I do not know whether it was an organized effort on the part of a special interest. I do not know if it was one person's bias. But whatever the source, I, and others on the Banking Committee, were seriously disrespected by the kinds of representations of civil rights laws that were made during the committee deliberations.

Fortunately, the committee had the good sense to strike the most egregious part of the underlying bill which would have exempted an entire class of fair lending and fair housing violations from enforcement. Those disparate impact provisions would have created a loophole for a single industry from the standards Congress and the Federal Courts have determined are necessary to prohibit discrimination.

Despite the removal of these provisions from the bill, I remain troubled that the committee was forced to spend many hours debating an attempt to deny me my rights, my children their rights, and which would have dramatically affected the future of me and my people. I truly hope that as this bill moves forward, we will not see

any recurrence of this effort to undermine longstanding civil rights laws and practices.

MAXINE WATERS.

ADDITIONAL VIEWS OF CONGRESSMAN MAURICE HINCHEY

INCENTIVES FOR SELF-TESTING FOR DISCRIMINATION

As the author of the section 155 provisions providing incentives for institutions to test themselves for lending or housing discrimination, I would like to explain the intent of this section. My substitute language for the original self-testing provisions of the bill was adopted on a voice vote by the Committee, and it reflects a fair and balanced approach to this issue. It is supported by both the Justice Department and Department of Housing and Urban Development, two of the primary enforcement agencies for our fair lending and housing laws.

In order to provide incentives for institutions to self-test for and correct violations of the Fair Housing Act or Equal Credit Opportunity Act, Section 155 prevents evidence of discrimination gathered through a self-test from being used against an institution if the institution is taking appropriate corrective actions for any discrimination that is found.

Testing, as defined by the Supreme Court, refers to the method of using "individuals who, without the intent to rent or purchase . . . pose as renters or purchasers for the purpose of collecting evidence of unlawful . . . practices." *Havens Realty Corp* v. *Coleman*, 455 U.S. 363, 373 (1982) (defining testers in the context of fair housing investigations). In the fair housing and employment context, testing has traditionally been "paired testing"—a process that examines disparate treatment of two individuals that are matched in every respect except for the protected category (e.g. race, gender disability, etc.). Paired testing is a valuable method of obtaining evidence of disparate treatment and I strongly encourage its use by lending institutions to find and correct discriminatory practices.

Although paired testing is the most widely accepted form of testing, I recognize that other testing methods may produce similar and reliable new evidence of unlawful practices and therefore warrant protection under the law. I intended for Federal regulations to address the scope of what additional practices should be accommodated within the definition of the term "self-test."

The principal attribute of self-testing is that it produces new evidence of discrimination against fictitious applicants. Self-testing should be distinguished from compliance reviews, file analysis, the use of second review committees, or other methods that examine existing evidence of discrimination against real applicants. I did not intend for Section 155 to provide protection to apply to such activities.

It is my intent to limit evidentiary protection to those institutions that correct discrimination found through self-testing. Section 155 is not intended to create an evidentiary shield for institutions

that find violations of fair lending or housing laws and fail to take appropriate steps to correct such discrimination.

An institution that discovers discrimination should make all reasonable efforts to determine the extent of the discrimination and its cause including, for example, whether the discrimination is grounded in the institution's policies, the implementation of its policies, employee misconduct, or some other factor. Appropriate action to rectify the cause and effect of discrimination should be taken commensurate with the scope of discrimination. On April 15, 1994, the Interagency Fair Lending Task Force addressed several specific components of "appropriate corrective actions to address the discrimination" found through self-testing. "Policy Statement on Discrimination in Lending." 59 Fed. Reg. 18266, 18270–71 ("Joint Statement").[1] I agree with this analysis and intend that "appropriate corrective actions" under Section 155 be construed in line with the Joint Statement's guidelines.

CREDIT SCORING SYSTEMS

Section 156 amends the Equal Credit Opportunity Act to clarify that credit decisions based solely on an empirically derived, demonstrably and statistically sound credit scoring system, as defined by the Federal Reserve Board in regulations prescribed under this title (12 C.F.R. Pt. 202,"Regulation B"), shall be in compliance with the non-discrimination requirement under ECOA (subsection (a)) as long as the system does not use any category protected under subsection (a), does not use the functional equivalent of such a category, and does not use any criterion that has a discriminatory effect on any such a category unless the use of the criterion is justified by business necessity and there in no less discriminatory alternative available. This provision is consistent with the Federal Reserve Board's current interpretation concerning the use of credit scoring systems for credit decisions.

Credit scoring systems treat all applicants objectively and therefore generally avoid the risk of disparage treatment. There may be instances, however, when individual discretion may be used in conjunction with the use of a credit scoring system and therefore lend opportunity for the disparate treatment of applicants. I firmly believe that it was not the intent of the Committee to shield such treatment from analysis under ECOA. Only those decision made *solely* based on a credit scoring system should be deemed to be in compliance with ECOA under this section.

The Committee accepted, by a vote of 29 to 17, my amendment that clarifies that credit scoring systems are not immune to a discriminatory effect analysis. As the Federal Reserve Board has recognized, the ECOA may prohibit a practice that, although neutral on its face and not intended to discriminate, has a disproportionately negative effect on a prohibited basis if the practice is not justified by business necessity with no less discriminatory alternative

[1] The Task Force is composed of the top officials from each of the ten agencies with responsibilities for fair lending enforcement—the Department of Housing and Urban Development, Office of Federal Enterprise Oversight, Department of Justice, Office of the Comptroller of the Currency, Office of Thrift Supervision, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Housing Finance Board, Federal Trade Commission, and the National Credit Union Administration.

available. *See* Appendix D to Part 202, Section 202.6, 12 C.F.R. Sec 202, Supp. 1 (1995).

DISPARATE IMPACT

By a vote of 32 to 15, the Committee approved my amendment to strike provisions added at Subcommittee that would have limited the use of disparate impact theory in fair housing and lending cases. In doing so, the Committee, on an overwhelming and bipartisan basis, has spoken strongly about preserving a fundamental civil rights protection against policies that have discriminatory effects on applicants, whether or not intent can be proven.

MAURICE HINCHEY.

ADDITIONAL VIEWS OF CONGRESSMAN KENNETH E. BENTSEN, JR.

House Resolution 1858 is a flawed bill. While it could have been a good piece of legislation providing needed regulatory relief, protecting consumer interests, and continuing our commitment to community reinvestment, the final bill failed to do so, For that reason, I could not support the legislation.

I believe the Committee failed to find the appropriate balance between regulatory relief and consumer needs with respect to disclosure and reinvestment. While I support addressing "Rodash," RESPA, lender liability under Superfund, as well as streamlining the financial regulatory process, this bill strayed from its original purpose by going too far in removing consumer safeguards and curtailing the Community Reinvestment Act of 1977 ("CRA").

I agree with the concept of "self-compliance" and "safe harbor" for CRA. Banks that make a good faith effort to invest in the communities from which they receive deposits and reach out to traditionally underserved areas deserve to be rewarded. However, the Committee's approach does not necessarily reward such behavior, but rather it rewards all behavior.

I attempted to amend Sections 123 and 125 which would have raised the rating threshold for self-compliance and safe harbor from "satisfactory" to "high satisfactory." The Committee provision for the lower threshold of a "satisfactory" rating exempted far too many institutions and would reward them for less than satisfactory behavior in some categories. This concept of "high satisfactory" was originally suggested by members of the Board of Governors of the Federal Reserve and discussed in the May 5, 1995 publication of the new rules relating to CRA. A new category would have ensured that banks that truly excel at meeting CRA—and there are many, including many in my hometown of Houston—would be rewarded based upon good performance in all categories of at least "satisfactory." Unfortunately, the Committee chose to reward ninety-five percent of all banks even if they receive a low satisfactory rating on lending and even lower ratings on service and investment. I could not support that, and I believe the Administration will also find it hard to support.

The Committee also chose to change the Truth in Lending Act by limiting disclosure relating to adjustable rate mortgage loans. Under the Committee's bill, a lender would only have to tell a borrower that adjustable rates fluctuate, rather than provide historical data on adjustable rate mortgages. During the last ten years, such rates have fluctuated within a band of 600 basis points and within the last three years a band of 300 basis point. That is considerable volatility to be described only in rhetorical terms.

Every day, sophisticated investors and institutions purchase adjustable rate mortgage instruments in the primary and secondary

markets relying in part on substantial historical data. Yet the Committee believes that individual homebuyers who may not trade in the mortgage market do not need even the simplest and most readily available historical data in order to understand the interest rate risk associated with such floating rate instruments. I completely disagree with that proposition, and I believe this Committee revisit this issue upon learning of the number of consumers who end up with products they did not understand due to a lack of proper disclosure. If its is good for institutional investors, it should be good for individual borrowers.

This bill had the opportunity to be good legislation, but it failed. We made strides toward addressing the banking and insurance question, albeit in a symbiotic way. The Committee came close to engaging in a full-fledged discussion of the proper role for banks in the insurance market. Yet, on the one hand, while we gave banks in certain states more insurance powers, with the other hand we took most of those powers away. After studying this issue over the last six months, I have become convinced that we should consider affiliation. We should try to determine whether affiliation will increase benefits to purchasers of insurance while protecting the professional criteria of insurance brokerage. Consumer protection and professionalism should not be viewed as mutually exclusive in this instance. insurance agents and brokers bring knowledge of both product and rules to the market which benefit the consumer. Finally, as presented to the Committee, the moratorium on the Comptroller of the Currency is unevenly drafted, since it curtails institutions, not powers, thus exacerbating not only the insurance power question, but also creating an uneven playing field among banks.

I support finding ways to eliminate unnecessary and redundant regulations for banks. I have supported legislative efforts to rewrite Glass-Steagall which will make banks more competitive and ensure that consumers can buy new products to meet their financial needs. I believe we must maintain a balance between protecting the consumer and giving banks needed flexibility to adapt to the marketplace. Regulations need to be reasonable and fair-minded. Congress should regularly exercise its prerogative to review regulations and make appropriate change to reflect the changing marketplace.

In fact, I would argue that the financial marketplace is changing faster every day. Through court decisions and state actions, federal regulations are falling behind the marketplace. The financial market is producing new financial products that benefit both consumers and the banks that supply them.

We addressed issues which needed relief, but the Committee went beyond reasonableness and reported a bill which rolls back too much. For that reason, I could not support the bill in its current form.

KENNETH E. BENTSEN, Jr.

APPENDIX

COMMITTEE ON COMMERCE,
Washington, DC, July 17, 1995.

Hon. JAMES A. LEACH,
Chairman, Committee on Banking and Financial Services, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN LEACH: On June 29, 1995, the Committee on Banking and Financial Services ordered reported H.R. 1858, the Financial Institutions Regulatory Relief Act of 1995.

A number of provisions of H.R. 1858 as approved by the Banking Committee fall within the jurisdiction of the Commerce Committee. These include, but are not limited to, provisions amending the Government Securities Act, provisions pertaining to a lender's liability for environmental hazards, provisions affecting the regulation and sale of insurance and affiliation among different service providers, and provisions that may apply to registrants' obligations to provide certain information pursuant to the Securities and Exchange Act of 1934.

I have appreciated your willingness to address my concerns with many of the provisions of H.R. 1858 that fall within the jurisdiction of the Commerce Committee. In view of your desire to move this legislation to the Floor in an expeditious fashion, I do not intend to seek a sequential referral of H.R. 1858. I would appreciate, however, your commitment that the agreements worked out between our staffs will be effected without the need for separate amendments by the Commerce Committee on the House Floor.

Please be advised that my agreement not to seek a sequential referral is based on an understanding that this waiver will be without prejudice to the Commerce Committee's jurisdictional claims over H.R. 1858 and similar bills that may be offered in the future and that the Commerce Committee's jurisdiction will be protected through the appointment of conferees should H.R. 1858 go to conference.

I appreciate your cooperation in these matters and would further appreciate the inclusion of this letter in the Banking Committee's report on H.R. 1858.

Sincerely,

THOMAS J. BLILEY, Jr., *Chairman.*

COMMITTEE ON BANKING AND FINANCIAL SERVICES,
Washington, DC, July 17, 1995.

Hon. THOMAS J. BLILEY, Jr.,
Chairman, House Commerce Committee,
Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of July 17, 1995, regarding a bill reported by the Committee on Banking and Financial Services, H.R. 1858, Financial Institutions Regulatory Relief Act of 1995.

I appreciate the interest that the Committee on Commerce has in this important legislation. As your letter indicates, the Committee could be successful in asserting a right to a sequential referral of H.R. 1858. Therefore, I am most appreciative of your decision not to request such a referral in the interest of accommodating consideration of the bill.

You have my assurance that the agreements worked out by our respective staffs concerning changes to Title III will be included in a manager's amendment as we take the bill to the House floor. You also have my commitment to work together to achieve a mutually satisfactory resolution of the insurance and securities issues within the jurisdiction of the Commerce Committee. In addition, I will also support your Committee's request to seek conferees on these matters within the jurisdiction of the Commerce Committee.

Thank you for your cooperation in this matter and for your support of this legislation.

Sincerely,

JAMES A. LEACH, *Chairman.*

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, July 12, 1995.

Hon. JAMES A. LEACH,
Chairman, Committee on Banking and Financial Services, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for the information that on June 29, 1995, the Committee on Banking and Financial Services ordered reported, H.R. 1858, the Financial Institutions Regulatory Relief Act of 1995. I believe that the Committee on Transportation and Infrastructure clearly has a right to sequential referral of Title III of this bill, relating to liability of lenders and others under various Federal environmental laws.

Title III includes detailed criteria and requirements for liability of lenders, fiduciaries, and Federal agencies under Federal environmental law. The bill expansively defines Federal environmental law to include specific statutes, Federal implementing regulations, and state-delegated laws and regulations. H.R. 1858 also explicitly addresses liability under the Comprehensive Environmental Response, Compensation and Liability Act ("Superfund"), the Oil Pollution Act, and the Clean Water Act.

As you know, the Transportation and Infrastructure Committee has jurisdiction over Superfund, the Oil Production Act and the Clean Water Act. Lender liability under Superfund is of particular interest and concern to the Committee. We are currently working

on a comprehensive bill to reauthorize and reform Superfund—the law that has generated much of the debate over lender liability. This year, we held six hearings on Superfund; much of the testimony focused on lender liability and specifically on the provisions in H.R. 3800, Superfund legislation reported by this Committee last year.

In the interest of accommodating the schedule for consideration of H.R. 1858, I do not intend to request a sequential referral of the bill to the Committee. However, I would appreciate receiving assurances that the agreements worked out between our respective staffs will be effected to our satisfaction without the need for a Floor amendment by this Committee. Meanwhile, my action here is not intended to waive the Committee's jurisdiction over this matter, and should this legislation go to a House-Senate Conference, the Committee on Transportation and Infrastructure will request to be included as conferees on any provisions within this Committee's jurisdiction.

With kind personal regards, I remain

Sincerely,

BUD SHUSTER, *Chairman.*

COMMITTEE ON BANKING AND FINANCIAL SERVICES,
Washington, DC, July 17, 1995.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure,
Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of July 12, 1995, regarding a bill reported by the Committee on Banking and Financial Services, H.R. 1858, the Financial Institutions Regulatory Relief Act of 1995.

I appreciate the interest that the Committee on Transportation and Infrastructure has in this important legislation. I agree that your Committee has a right to sequential referral of Title III of H.R. 1858. Therefore, I am most appreciative of your decision not to request such a referral in the interest of accommodating the schedule for consideration of the bill.

You have my assurance that agreements worked out by our respective staffs will be included in a manager's amendment as we take the bill to the House floor and that I will support your request to be conferees on Title III of the bill.

Thank you for your cooperation in this matter.

Sincerely,

JAMES A. LEACH, *Chairman.*

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EXHIBIT D

Bill Summary & Status
104th Congress (1995 - 1996)
S.650
CRS Summary

S.650
Latest Title: Economic Growth and Regulatory Paperwork Reduction Act of 1995
Sponsor: Sen Shelby, Richard C. [AL] (introduced 3/30/1995) Cosponsors (28)
Latest Major Action: 12/14/1995 Placed on Senate Legislative Calendar under General Orders. Calendar No. 272.
Senate Reports: 104-185

SUMMARY AS OF:
3/30/1995--Introduced. (There is 1 other summary)

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Economic Growth and Regulatory Paperwork Reduction Act of 1995 - **Title I: Reductions in Government Overregulation - Subtitle A: The Home Mortgage Process - Part I: Regulatory Simplification and Uniformity** - Amends the Truth in Lending Act (TLA) and the Real Estate Settlement Procedures Act (RESPA) to require the Board of Governors of the Federal Reserve System (the Board) to: (1) eliminate, modify, or simplify disclosure requirements if such action results in uniformity with other statutory disclosure requirements relating to credit transactions; and (2) proscribe imposition of any disclosure requirement unless its effect is to eliminate, modify, or simplify any disclosure required under this Act.

(Sec. 103) Exempts from TLA disclosure requirements transactions that the Board determines: (1) are not necessary to effectuate its purposes; or (2) do not provide a measurable benefit in the form of useful information or consumer protection.

(Sec. 104) Amends RESPA to repeal requirements that: (1) a federally related mortgage lender disclose to a mortgage loan applicant the servicing of any such mortgages the lender has assigned, sold or transferred during the most recent three calendar years; and (2) a lender that does not service federally related loans similarly disclose any intention to assign, sell or transfer such servicing. Repeals the mandate for model disclosure statements.

Excises from the definition of "federally related mortgage loan" any loan secured by a subordinate lien on residential real property (thereby removing second mortgages from RESPA requirements).

Directs the Board to ensure that regulations pertaining to the business credit exemption from RESPA jurisdiction include all business credit exempted from the TLA.

Part II: Clarifications to Reduce Costs and Regulatory Burdens - Amends the TLA to exempt from its disclosure requirements any credit transactions involving consumers with an annual earned income of more than $200,000 or having net assets in excess of $1,000,000 at the time of the transaction.

(Sec. 112) Revises disclosure requirements for adjustable rate home mortgages to permit as an alternative to the currently required table illustration, a statement that a monthly payment may increase or decrease significantly due to annual percentage rate increases.

Grants creditors the option of disclosing, in any variable interest rate residential mortgage transaction that is not an open end credit plan, either a statement that the monthly payment may change substantially, or an historical example illustrating the effects of interest rate changes implemented according to the loan program.

(Sec. 113) Excludes from the determination of the finance charge for any consumer credit transaction fees imposed by third party closing agents (including settlement agents, attorneys, escrow and title companies) that are neither expressly required nor retained by the creditor (thereby exempting such amounts from TLA disclosure requirements).

Exempts from the computation of a finance charge, if they are otherwise itemized and disclosed, certain: (1) taxes on security instruments or evidences of indebtedness; and (2) fees for preparation of loan-related documents and attending or conducting settlement.

(Sec. 114) Exempts from the right of rescission certain refinancings or consolidations of debt that are secured by a lien on a consumer's principal dwelling.

(Sec. 115) Permits finance charge disclosures for certain consumer credit transactions secured by real property or a dwelling to vary within an accuracy tolerance range of $100.

Sets guidelines for per diem interest rate disclosures consumer credit transactions.

(Sec. 116) Shields a creditor or assignee from liability in connection with disclosures of: (1) certain fees and charges; and (2) finance charges that fall within certain statutory tolerance limits.

(Sec. 117) Modifies the guidelines delimiting an obligor's period of rescission to preclude a consumer from asserting rescission in any action after the earlier of: (1) expiration of the three-year period beginning on the transaction consummation date; or (2) the date of the sale of the property securing an extension of credit.

(Sec. 118) Modifies assignee liability guidelines to provide that a violation is apparent on the face of the disclosure statement if the disclosure does not use the format required by law.

Prescribes guidelines under which the servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as the assignee of such obligation.

(Sec. 119) Repeals the bona fide personal financial emergency condition placed upon exercise of the Board's authority to modify or waive rescission rights arising from a consumer credit transaction.

Subtitle B: Amendments to the Community Reinvestment Act of 1977 - Amends the Community Reinvestment Act of 1977 (CRA) to prohibit the appropriate Federal regulatory agency, in the course of examining a financial institution, from imposing recordkeeping or reporting requirements that do not have the effect of eliminating, streamlining, or reducing regulatory burdens upon such institution.

(Sec. 132) Exempts small-sized banks with total assets under $250 million from CRA jurisdiction.

(Sec. 133) Prescribes guidelines under which each appropriate Federal regulatory agency shall: (1) publish its examination schedule; and (2) provide opportunity for community comment. Authorizes the agency to reconsider, upon request, the rating of an institution.

(Sec. 134) Defines a "special purpose bank" as one that does not generally accept deposits from the public in amounts less than $100,000, such as a credit card bank or a trust bank.

Mandates that, in assessing the record of special purpose banks in meeting community credit needs, the appropriate Federal regulatory agency: (1) take into consideration the nature of the businesses of such banks; and (2) develop standards under which they may be deemed to comply with CRA requirements consistent with the specific nature of such businesses. Requires the agency, in assessing any financial institution, to give positive consideration to investments and loans made by such institutions that provide benefits to distressed communities, regardless of whether or not the communities are located within the service area of the financial institution.

Subtitle C: Payment of Interest Act - Amends the Federal Deposit Insurance Corporation Improvement Act of 1991 to retitle the Truth in Savings Act as the "Payment of Interest Act".

Repeals: (1) the finding of the Congress that uniform disclosure of interest and fees charged on consumer deposit accounts strengthens consumer ability to make informed decisions and verify deposit accounts; and (2) the stated purpose of the Truth in Savings Act requiring clear, uniform disclosure of interest rates payable on deposit accounts and the fees assessable against them.

Declares instead that: (1) the Truth in Savings Act created unnecessary paperwork, compliance, and liability burdens for depository institutions without enhancing consumer ability to make informed decisions; and (2) the purpose of the Payment of Interest Act is to repeal unnecessary disclosure requirements while retaining the requirement that interest be paid on the full amount of principal in the account for each day of the stated calculation period at the interest rate disclosed by the depository institution.

Repeals: (1) the uniform disclosure requirements for interest rates and fees, including annual percentage yields, minimum account and time requirements, and interest penalties; and (2) the proscription against misleading descriptions of free or no-cost accounts, and misleading or inaccurate advertisements.

Repeals current law that a depository institution: (1) maintain and distribute a schedule of fees, interest rates, and account restrictions written in readily understood format for each class of accounts being offered; (2) notify account holders of any changes in the schedule; and (3) clearly and conspicuously disclose with each periodic statement to account holders the annual percentage yield earned, the amount of interest earned, the amount of fees or charges imposed, and the number of days in the reporting period.

Repeals civil liability guidelines governing class actions. Modifies depository institution liability regarding: (1) notification and adjustment for errors; and (2) continuing and subsequent depository institution failure to pay interest.

Title II: Streamlining Government Regulation - Subtitle A: Eliminating Unnecessary Regulatory Requirements and Procedures - Amends the Bank Holding Company Act of 1956 (BHCA) to set forth financial and managerial criteria under which an acquisition of shares by a bank holding company, or a merger or consolidation between registered bank holding companies, shall be deemed to be approved. (Current law requires prior Board approval).

(Sec. 202) Amends the Federal Deposit Insurance Act (FDIA) to set forth conditions under which prior approval is not required for any merger, consolidation, asset acquisition, or liabilities assumption, involving only insured depository institutions subsidiaries of the same depository institution holding company.

(Sec. 203) Permits any insured depository institution to participate in optional conversion transactions

between members of the Bank Insurance Fund and the Savings Association Insurance Fund without the prior written approval of the responsible agency. Repeals: (1) agency guidelines for approval; and (2) the prohibition against transactions which result in the transfer from one Federal deposit insurance fund to the other. Makes the sole criterion for authorization of a conversion transaction without approval that the acquiring, assuming, or resulting depository institution will meet all applicable capital requirements upon consummation of the transaction.

(Sec. 204) Amends the Revised Statutes, the Federal Reserve Act (FRA), and the FDIA to delineate conditions under which prior approval is not required for banks under their purview to establish and operate a branch or seasonal agency.

(Sec. 205) Amends the Home Owners' Loan Act to remove from its regulatory purview a bank holding company subject to the BHCA.

Revises the definition of "savings and loan holding company" to exclude a bank holding company under BHCA jurisdiction.

Provides that acquisition of a savings association by a bank holding company under BHCA jurisdiction obviates approval by the Director of the Office of Thrift Supervision.

(Sec. 206) Amends the Revised Statutes to repeal the aggregate minimum capital requirements imposed upon a national banking association and its branches.

(Sec. 207) Amends the Revised Statutes and the FDIA to exclude from the definition of "branch" an automated teller machine or remote service unit (thus exempting those entities from the approval requirements of such Acts).

(Sec. 208) Amends the FRA to prescribe regulatory approval guidelines for investments in bank premises by well capitalized and well managed banks.

(Sec. 209) Amends the BHCA to repeal the provision that shares transferred by a bank holding company to a transferee under its control are deemed to be under the holding company's control (thus subject to specified approval requirements).

(Sec. 210) Amends the FDIA to repeal the requirement that the appropriate Federal banking agency be notified prior to the appointment or addition of a new director or senior executive officer if the affected insured depository institution or depository institution holding company: (1) has been chartered less than two years; or (2) has undergone a change in control within the preceding two years. Retains such prior notice requirement for troubled insured depository institutions or depository institution holding companies only if the agency determines that prior notice is appropriate. Extends from 30 days up to 90 days the period during which, following notice, the agency may disapprove board of directors or senior executive officer appointments by such institutions or companies.

(Sec. 211) Amends the Depository Institutions Management Interlocks Act to revise the prohibition on dual service of management officials to raise the asset-size thresholds of the depository institutions or depository holding companies to which the prohibition applies. Authorizes Federal banking regulatory agencies to adjust such thresholds for inflation. Repeals the 20-year exemption from the dual service prohibition for certain grandfathered directors and management officials (thus permitting them to continue their dual service permanently).

Repeals the requirement that each appropriate Federal depository institutions regulatory agency: (1) review according to prescribed criteria the petition of a management official to serve in more than one position (interlocking directorate); and (2) determine whether continuation of such dual service produces an anti-competitive effect.

Repeals the criteria governing regulatory approval of management interlocks.

(Sec. 212) Amends the FRA to exempt from its proscription against preferential terms in credit extensions to executive officers, directors, or principal shareholders (insider lending) any credit extensions made pursuant to a benefit or compensation program widely available to employees of the member bank.

Includes such credit extensions in the Board's authority to waive the proscription against such preferential terms for certain executive officers and directors of controlling nonbank affiliates.

Repeals the reporting requirement that: (1) an executive officer of a member bank indebted to another bank submit a written report of such debt to the member bank's board of directors; and (2) a member bank include in its statutory condition of report all loans made since its previous report.

Amends the FDIA to repeal Federal banking agency authority to require banks to disclose credit extensions made to their executive officers or principal shareholders.

Amends the Bank Holding Company Act Amendments of 1970 to repeal the requirement that bank executive officers and stockholders who own more than a ten percent controlling interest report to the bank's board of directors regarding any credit extensions made to them by a bank maintaining a correspondent account.

(Sec. 213) Amends the Federal Financial Institutions Examination Council Act of 1978 to abolish the Appraisal Subcommittee.

Amends the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to transfer the functions of the Appraisal Subcommittee to the Federal Financial Institutions Examination Council.

(Sec. 214) Amends the FDIA to exclude automated teller machines and specified bank branches from the definition of "banking branch" (thus exempting them from Federal bank closure notification requirements). Makes such exemption retroactive to the effective date of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(Sec. 215) Amends the International Banking Act of 1978 to replace the Board's authority to order a foreign bank to terminate its branch activities in the United States with authority to recommend to the appropriate Federal or State bank official that such branch's license be terminated.

Revises the examination guidelines for foreign banks to: (1) direct the Board to rely upon reports of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation (FDIC), and State bank supervisors (currently the Board coordinates such examinations); and (2) subject a foreign bank to the same on-site examination schedules and cost-of-examination assessments as are imposed upon U.S. banks. Modifies procedural guidelines for Board review of foreign bank applications to establish a U.S. presence.

Subtitle B: Eliminating Unnecessary Costs and Paperwork Burdens - Amends the FDIA to: (1) expand from 18 months to 24 months the discretionary timeframe for mandatory on-site examinations of certain small-sized depository institutions; and (2) increase from $175 million to $250 million the asset-size ceiling on the meaning of "small depository institution" which Federal banking agencies may in their discretion determine for examination purposes.

(Sec. 222) Amends the Right to Financial Privacy Act to require a Government authority to reimburse a financial institution for assembling or providing financial records pertaining to corporate customers.

(Sec. 223) Directs the Federal Financial Institutions Examinations Council, and each Federal banking agency represented on it, to review and report to the Congress on Federal banking regulations at least every ten years to identify unnecessary regulatory requirements imposed upon insured depository institutions.Requires the Council or the pertinent banking agency to eliminate unnecessary regulations to the extent appropriate.

Subtitle C: Eliminating Unnecessary Reporting Requirements - Amends the Community Reinvestment Act of 1977 (CRA) to prohibit the imposition upon financial institutions of: (1) recordkeeping requirements that do not result in eliminating, streamlining or reducing regulatory burdens upon the institutions; or (2) loan data collection and reporting requirements. Prohibits public disclosure of loan data by any Federal financial supervisory agency.

(Sec. 232) Amends the Federal Home Loan Bank Act (FHLBA) to exempt financial institutions meeting specified criteria from its community support requirements.

(Sec. 233) Amends Federal monetary law to: (1) reduce mandatory identification procedures for monetary transactions; and (2) repeal identification reporting requirements regarding certain financial institution customers of depository institutions.

(Sec. 235) Amends the Federal Deposit Insurance Corporation Improvement Act of 1991 to repeal the mandate that: (1) insured depository institutions include information on small businesses and small farm lending in their annual reports of condition; and (2) the Board publish annually information on credit availability to small businesses.

(Sec. 236) Amends the Home Mortgage Disclosure Act of 1975 to increase from $10 million to $50 million the maximum asset-size of institutions exempt from its purview. Authorizes the Board to exempt from the Act's disclosure requirements institutions whose asset-size is at least $50,000000 if the burden of compliance outweighs the usefulness of the requisite information.

Declares that a depository institution shall be deemed to have satisfied the public availability requirements with respect to its mortgage loan transactions if its branch offices provide notice of the availability upon request of such information from the home office.

(Sec. 237) Amends FDIA guidelines governing a change in control of insured depository institutions to repeal mandatory reporting by financial institutions (or affiliates) of any loans secured by 25 percent or more of any class of shares of an insured depository institution (stock loans).

Subtitle D: Regulatory Micromanagement - Amends the Revised Statutes regarding national banking association director qualifications to extend to all such associations the Comptroller of the Currency's authority to waive citizenship requirements for a minority of the association's directors. Allows the Comptroller to waive State residency requirements.

(Sec. 242) Sets a deadline by which each Federal banking agency and the National Credit Union Administration Board must eliminate regulations which require insured depository institutions and credit unions to produce unnecessary internal written policies.

(Sec. 243) Amends the FDIA to increase the number of members of the FDIC Board of Directors from five to six. Mandates that one director be appointed from among individuals serving as State bank commissioners or supervisors. Limits such appointment to a single two-year term served without compensation. Limits eligibility to serve as Chairperson or Vice Chairperson of the FDIC Board to residentially appointed directors.

Title III: Regulatory Impact on Cost of Credit and Credit Availability - Subtitle A: Lowering Compliance Costs to Promote Credit Availability - Amends FDIA guidelines for improved accountability in financial management to: (1) eliminate the use of an independent public accountant to detect and report violations of law by an insured depository institution or depository institution holding company; (2) alter independent audit committee composition from one composed entirely of outside directors independent of institution management, to one composed of a majority of such independent directors; and (3) require each appropriate Federal banking agency to exempt from the independent audit committee requirement any insured depository institution that has encountered hardships in retaining competent directors on such committee.

(Sec. 302) Amends the Equal Credit Opportunity Act and the Fair Housing Act to prohibit an enforcing agency from acquiring or using reports generated by any creditor-conducted review of lending operations to determine compliance with such Acts (thereby encouraging creditors to self-test for compliance with the Acts).

(Sec. 303) Amends the Home Owners' Loan Act to revise the exemption from certain non-qualified thrift lender restrictions of specialized savings associations serving transient military personnel to repeal a specified requirement with respect to the association's savings and loan holding company.

(Sec. 304) Repeals Federal savings association (association) authority to issue credit cards or engage in credit card operations.

Permits an association to deal in credit card loans or education loans without being subject to a percentage-of-assets limitation.

Raises from ten percent to 20 percent the percentage-of-assets-limitations ceiling placed upon commercial and agricultural loans offered by an association. Restricts loan amounts exceeding ten percent of an association's total assets to loans made to small businesses.

Repeals the five-percent-of-assets loan restriction upon education loans offered by an association.

Expands the scope of "qualified thrift lender" to include a domestic building and loan association.

Redefines "qualified thrift investment" to cover, as assets includible without limit, educational loans, small business loans, and loans made through credit cards or credit card accounts.

Removes the ten-percent-of-assets loan restriction placed upon certain personal, family, household or education loans.

(Sec. 305) Amends the FRA, with respect to regulations governing payment system risk or intraday credit, to: (1) require them to include net debit caps appropriate to the credit quality of each Federal Home Loan (FHL) Bank (together with normal fees for daylight overdrafts); or (2) exempt FHL Banks from such regulations.

(Sec. 306) Amends the FHLBA to: (1) revise the location requirements for FHL Banks to provide for membership-based-on-convenience; (2) mandate that the FHL Banks contract annually for an annual audit with a single auditor; and (3) preclude the Board from participation in any audit or audit contracting process (other than to establish contract and accounting requirements).

(Sec. 308) Amends the BHCA to lift the growth cap restrictions placed upon banks controlled by certain bank holding companies not statutorily treated as bank holding companies.

Subtitle B: Disincentives to Risk-Taking - Amends the FDIA and the Federal Credit Union Act to: (1) reinstate the requirement of a showing of irreparable and immediate harm as a prerequisite to attachment of assets and other injunctive relief when the FDIC or the National Credit Union Administration Board acts as conservator or receiver; and (2) confer oversight authority to prohibit removal of assets in cease and desist proceedings if it results in immediate and irreparable harm.

Subtitle C: Miscellaneous Nonsupervisory Reforms - Amends the TLA to hold a cardholder liable for unauthorized use of a credit card if the liability exceeds $50 and the cardholder fails to timely notify the card issuer of any unauthorized transaction that appears on the account statement.

Amends the Electronic Fund Transfer Act to raise from $50 to $500 a cardholder's liability for unauthorized electronic fund transfers if the cardholder substantially contributed to the unauthorized transfer, including writing on or keeping with the card or other means of access a personal identification or other security code.

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104TH CONGRESS, 1st Session | SENATE | REPORT 104–185

ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT OF 1995

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 650

TOGETHER WITH

ADDITIONAL VIEWS

DECEMBER 14, 1995.—Ordered to be printed

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104TH CONGRESS, 1st Session | SENATE | REPORT 104–185

ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT OF 1995

DECEMBER 14, 1995.—Ordered to be printed

Mr. D'AMATO, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 650]

INTRODUCTION

On September 27, 1995 the Senate Committee on Banking, Housing, and Urban Affairs ordered reported a bill, the "Economic Growth and Regulatory Paperwork Reduction Act of 1995," to enhance access to capital for both consumers and business, and thereby increase economic growth by reducing the regulatory burden imposed upon financial institutions and financial service providers consistent with safety and soundness, consumer protection and other public policy goals. The Committee voted to report the bill to the Senate by voice vote.

PURPOSE AND SUMMARY OF NEED FOR LEGISLATION

The purpose of the legislation is to strengthen our nation's financial institutions and to increase their competitiveness. This legislation is intended to allow financial institutions to devote additional resources to productive activities, such as making loans, rather than to compliance with unnecessary regulations.

While no one regulation can be singled out as being the most burdensome, and most have meritorious goals, the aggregate burden of banking regulation ultimately affects a bank's operations, its profitability and the cost of credit to customers.

29–010

Senators Shelby and Mack recognized this mounting problem and have been trying to roll back unnecessary regulations since the 102nd Congress, when they introduced S. 1129, the Regulatory Efficiency for Depository Institutions Act. While this bill was not enacted into law, some of its provisions were included in other legislation. In the 103rd Congress, Senators Shelby and Mack introduced S. 265, the Economic Growth and Regulatory Paperwork Reduction Act of 1993. Portions of S. 265 were included in Title III of the Riegle Community Development and Regulatory Improvement Act of 1994. S. 650 is a continuation of this effort to streamline and rationalize current laws and regulations that effect our nation's financial institutions.

HISTORY OF THE LEGISLATION

On March 30, 1995, Senators Shelby and Mack introduced S. 650, the "Economic Growth and Regulatory Paperwork Reduction Act of 1995." The bill was cosponsored by Senator D'Amato, the Chairman of the Committee on Banking, Housing, and Urban Affairs, Senators Bryan, Bennett, Faircloth, Bond, Gramm and Senate Majority Leader Dole.

As introduced, the bill amended a variety of different banking laws in a number of ways, including streamlining disclosure requirements, eliminating duplicative regulation, unnecessary filing and recordkeeping requirements, and removing outdated barriers on the provision of financial services.

The Subcommittee on Financial Institutions and Regulatory Relief (the "Subcommittee") held hearings on S. 650 on May 2 and May 3, 1995. Testifying before the Subcommittee on May 2 were: Federal Reserve Governor Susan Phillips, Federal Deposit Insurance Corporation Chairman Ricki Tigert Helfer, Treasury Assistant Secretary for Financial Institutions Richard S. Carnell, Comptroller of the Currency Eugene A. Ludwig, and Office of Thrift Supervision Acting Director Jonathon Fiechter.

On May 3rd, the Subcommittee heard testimony from three panels representing the views of the Department of Housing and Urban Development; the financial services industry; and community and consumer groups. Testifying before the Subcommittee on the first panel was the Secretary of the Department of Housing and Urban Development Henry G. Cisneros.

The Secretary was followed by a second panel consisting of: James M. Culberson, Jr., Chairman of the Board of First National Bank and Trust, Asheboro, North Carolina on behalf of the American Bankers Association; Richard Mount, President and CEO of Saratoga National Bank, Saratoga, California on behalf of the Independent Bankers Association of America; Billy Don Anderson, President and CEO of Valley Federal Savings Bank, Sheffield, Alabama on behalf of America's Community Bankers; Ralph Rohner, Dean of Catholic University School of Law, Washington, D.C. on behalf of the Consumer Banker's Association; Warren R. Lyons, President of AVCO Financial Services, Irvine, California on behalf of the American Financial Services Association; and John Davey, Senior Vice President of Draper & Kramer, Inc, Chicago, Illinois on behalf of the Mortgage Bankers Association.

Testifying before the Subcommittee on the third panel were the following representatives of consumer and community groups: Michelle Meier, Counsel for the Consumer's Union on behalf of the Consumers Union and Consumers Federation of America, Washington, D.C.; Frances Smith, Director of Consumer Alert, Washington, D.C.; Tess Canja, Member of the Board of Directors of the American Association of Retired Persons, Port Charlotte, Florida; George Butts, Executive Board Member of ACORN, Philadelphia, Pennsylvania; Gale Cincotta, Chairman of National People's Action, Chicago, Illinois; Irvin Henderson, Chairman of the National Community Reinvestment Coalition, Washington, D.C.; Allen Fishbein, Chairman of the Center for Community Change, Washington, D.C. Also testifying on the third panel were Catherine Bessant, Senior Vice President of NationsBank, Washington, D.C. and Benson F. Roberts, Vice President for Policy of Local Initiatives Support Coalition, Washington, D.C.

On September 27, 1995 the Senate Committee on Banking, Housing and Urban Affairs (the "Committee") considered and ordered reported S. 650. The Committee accepted, by voice vote, a Committee Print in the form of a substitute offered by Chairman D'Amato. During the Committee's consideration of this bill, an amendment offered by Senator Shelby was adopted by voice vote. Most of these new provisions can be found in Titles IV, V and VI of the bill.

The Committee also adopted amendments, by voice vote, that: substantially amend the Fair Credit Reporting Act ("FCRA"); increase the systemwide cap on Federal Home Loan Bank advances to members that are not "Qualified Thrift Lenders" from 30 to 40 per cent of total advances; permit credit card banks to take deposits of less than $100,000 for the purpose of securing a depositor's credit card; exempt certain stored value devices from the Electronic Fund Transfer Act; provide the Federal Home Loan Bank System with greater flexibility to accept certain federally-guaranteed secondary mortgages as collateral for Federal Home Loan Bank advances; provide for a study of credit union regulation; and clarify existing FDIC and RTC policy regarding payment of damages for breach of contracts.

PURPOSE AND SCOPE OF THE LEGISLATION

The bill as ordered reported by the Committee contains six Titles that substantially amend a number of statutes. While the bill is amendatory in nature, it does have a unifying goal and basic purpose: to minimize unnecessary regulatory impediments for lenders, in a manner consistent with safety and soundness, consumer protection, and other public policy goals, so as to produce greater operational efficiency. The Committee hopes that the removal of unnecessary regulatory compliance requirements will permit financial institutions to focus more of their resources on their core business—lending—and thereby enhance access to capital for both consumers and businesses (particularly smaller businesses that are more dependent on credit for growth and operating funds). Following is a title-by-title summary of the certain salient issues in S. 650 as ordered reported by the Committee.

Title I: Streamlining the home mortgage lending process

Title I substantially amends the two Federal laws that directly implicate the home mortgage lending process: The Truth in Lending Act ("TILA") and the Real Estate Settlement Procedures Act ("RESPA"). These laws require disclosures related to the terms of the loan agreement. Some of those disclosures need to be modernized to reflect the current marketplace and to eliminate unnecessary burdens, particularly on small lenders.

Lenders do not bear the compliance cost of implementing TILA and RESPA alone; these costs are passed on in the form of higher credit costs, so indirectly borrowers ultimately pay these costs. The Subcommittee heard testimony regarding the effect of compliance costs on consumers,[1] the potential for "information overload" that results from the enormous amount of detail required to be disclosed under the law,[2] and the significant amount of time required to complete the paperwork.[3] In addition, the Subcommittee heard testimony about the need to ensure that consumers continue to receive necessary and adequate disclosure.[4]

While the Committee believes that both these laws were passed for commendable purposes and do provide certain necessary consumer protections, the disclosure requirements of TILA and RESPA could be improved by streamlining and integration. Rather than attempting a wholesale revision and integration of these two laws, the Committee decided to provide greater flexibility at the regulatory level to accomplish the same goals.

The bill as ordered reported from Committee centralizes much of the rulewriting authority for TILA and RESPA disclosures in the Federal Reserve Board. Currently, the Federal Reserve Board writes the implementing regulations for TILA and the Department of Housing and Urban Development is responsible for rulemaking under RESPA. The bill as reported consolidates much of the rulemaking authority for both laws in the Federal Reserve Board, and

[1] "The consumer resents me taking the time to explain all these forms. Also, because of the additional costs in terms of time and paper imposed by these regulations, we have had to implement a processing fee for our real estate loans of $100 which we did not previously charge." Testimony of James M. Culberson, Jr. on behalf of the American Bankers Association, Hearing on S.650 before the Financial Institutions and Regulatory Relief Subcommittee ("S.650 Hearing"), May 3, 1995. (hereinafter, "ABA testimony".)

[2] "The lengthy and complex disclosures required under both the Real Estate Settlement Procedures Act and the Truth in Lending Act mean that the average consumer is at a loss. He or she will find it almost impossible to discriminate among essential information, useful information, and useless information. When every possible term and contingency and relationship have to be disclosed, and disclosed at different times using different forms, consumers suffer "information overload." Without a clear idea of what's critical and what's peripheral, they may "blank out" and fail to assimilate the essential. * * *" Testimony of Francis B. Smith, representing Consumer Alert, S.650 Hearing, May 3, 1995 (hereinafter, "Consumer Alert Testimony".)

[3] "More time is spent filling out RESPA disclosures for real estate application than is spent addressing the customer's real needs. By the time all the paperwork is completed, applicants are so overwhelmed that they sign the documents without reading them." ABA Testimony, supra note 2.

[4] "I found two pieces of paper that were related to the consumer protection laws that S. 650 will seriously eviscerate—the Truth in Lending statement and the HUD-1 settlement statement that was used to walk the parties through the mortgage transaction, two documents in a mound of over 107 pieces of paper that have been criticized today. The other documents protect the private parties, including the lender and the settlement attorneys by requiring the borrower to sign documents immunizing them from future liability. I think that this problem, the mountains of paperwork, is a problem that this Committee should look at, not by eviscerating the modest consumer protection laws that just begin to address the problem but by moving forward on true reform legislation * * *" Testimony of Michelle Meier, on behalf of Consumer's Union and Consumer Federation of America, S. 650 Hearings, May 3, 1995. (Hereinafter, "Consumer's Union Testimony".)

provides the Fed with the authority to eliminate, simplify, modify and improve the disclosure requirements of TILA and RESPA where greater uniformity in disclosures can be obtained, in furtherance of the purposes of these two laws. This integration of rule-making to obtain uniformity in the disclosure requirements was supported by a number of witnesses that testified before the Subcommittee. Chairman Helfer of the Federal Deposit Insurance Corporation said in her testimony that:

> (w)e believe that granting the Federal Reserve Board the authority to conform TILA with RESPA, where possible, will reduce regulatory burden for financial institutions and avoid confusion and complexity for consumers.[5]

The OCC generally supported "the overall goal of simplifying and coordinating Truth-in-Lending and Real Estate Settlement Procedures Act disclosures,"[6] but did not support the approach taken in the legislation. The Department of Treasury also did not support the approach that S. 650 adopted, but supported the goal, stating that:

> Action to harmonize the workings of the Truth in Lending Act and RESPA is clearly appropriate. Eliminating duplicative and needlessly burdensome disclosures and unworkable requirements in the home mortgage lending process would reduce the cost of loan originations and relieve consumers from information overload * * * Indeed, we believe that simplifying, consolidating, and coordinating all the disclosures required in the home purchase and finance process and eliminating needless requirements would best serve the interests of consumers and the industry.[7]

Another witness voiced strong support for:

> Coordinating the disclosures and reducing the complexity of disclosures required under the Real Estate Settlement Procedures Act and TILA. It is important that Congress give the bank regulatory agencies statutory guidance to limit the extent of disclosures required under TILA and RESPA and to coordinate them with one another. As the immense TILA compliance commentary demonstrates, absent clear language from Congress to limit the scope of compliance documentation, the rule and related examiner guidance can easily become an overwhelmingly technical document.[8]

The bill as ordered reported by the Committee provides the Federal Reserve Board with the discretion to exempt certain classes of loans from the requirements of TILA. The Committee believes that there may be instances where the protections afforded under TILA do not provide a meaningful benefit to consumers.

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[5] Testimony of Ricki Helfer, Chairman, FDIC Board, S. 650 Hearings, May 2, 1995. (Hereinafter "Helfer Testimony".)

[6] Testimony of Eugene A. Ludwig, Comptroller of the Currency, S. 650 Hearings, May 2, 1995.

[7] Testimony of Richard S. Carnell, Assistant Secretary of the Treasury, S. 650 Hearings, May 2, 1995.

[8] Testimony of Billy Don Anderson, on behalf of America's Community Bankers, S. 650 Hearings, May 3, 1995.

Another concern with respect to RESPA is the effect that Section 8 of that law has had on mortgage delivery services. Section 8 was intended to prohibit the payment of kickbacks for referrals of settlement service business. This practice, which occurred in certain limited circumstances, ultimately inflated the settlement costs of borrowers. The "purposes" section of RESPA indicates that it was Congress' intent to protect consumers from "unnecessarily high settlement charges caused by abusive practices that have developed in some areas of the country(,)" and to eliminate "kickback or referral fees that tend to increase unnecessarily the costs of certain settlement services."

Clearly, under-the-table payments for referrals from ostensibly unrelated parties are not acceptable. RESPA, however, provides limited guidance for determining what constitutes a prohibited payment, and has been broadly construed by HUD. As a result, some believe that Section 8 has impeded the modernization of mortgage marketing in a number of ways. It has been suggested that Section 8 has discouraged vertical integration of the mortgage market, and impeded co-branding and affinity group marketing arrangements. The Committee is aware that consumers often are members or customers of groups based on shared affinity, interest or hobby, or due to educational, vocational, professional, mercantile, or other common interests. Examples of common interests can include university alumni, professionals, buyers' clubs, and the like. Such affinity groups can use their endorsements and the right to feature, or co-brand, their name or other trademarks to negotiate lower costs or other benefits for financial and other products for their members.

The Committee heard testimony from witnesses who raised concerns about the impact that RESPA has had on attempts to modernize delivery systems for financial products.[9]

One specific concern that has been raised is the effect that Section 8 has had on equity loan marketing. Section 8 was enacted before the growth of the home equity and mortgage refinancing markets. Home equity loans and refinancings are typically marketed differently from home purchase loans—for instance, equity lending does not rely on real estate agents as an integral part of the marketing process. As one witness at the Subcommittee's hearings noted:

> The lack of a real estate agent's involvement in the home equity and refinancing situations has led to the development of other distribution and promotional channels by lenders in these businesses. The application of RESPA to these loans has severely hampered the development of these alternative loan distribution channels—much to the detriment of both the industry and consumers.[10]

In light of these concerns, the bill as reported by the Committee incorporates provisions designed to permit co-branding and affinity group marketing, and exclude subordinate lien mortgages from Section 8 of RESPA. These provisions were included in order to allow

[9] "(t)here are serious questions to be considered, including, for example, the suggestion by some parties to real estate transactions that RESPA may be stifling innovation and technological advancement from which the public might benefit." Testimony of Federal Reserve Board Governor Susan Phillips, S. 650 Hearings, May 2, 1995. (Hereinafter, "Phillips Testimony".)

[10] Statement of the American Financial Services Association, S. 650 Hearing, May 3, 1995.

greater flexibility in marketing mortgage-related products, while preserving the meaningful consumer disclosures that RESPA provides. It is worth noting that a driving concern that lead to the expansion of RESPA to subordinate lien financings was the concern over certain abusive high-cost mortgage lending practices.[11] This consumer protection issue was again recognized as a concern and addressed in the "high cost mortgage" provisions that were enacted as part of the Riegle Community Development and Regulatory Improvement Act of 1994.

Section 115 amends Section 108 of TILA. Section 108 prescribes the rules for account adjustments in situations where there is inadequate disclosure of finance charges or the annual percentage rate. TILA currently requires the federal financial supervisory agencies to order restitution to consumers of amounts charged but not adequately disclosed. For loans consummated before April 1, 1980, if the full reimbursement of underdisclosed finance charges would have a significantly adverse impact on the safety and soundness of the creditor, an agency could order partial reimbursement not having such an impact. For loans consummated on or after April 1, 1980, the agency is required to order full reimbursement, but may permit payments over time in order to minimize the impact on the institution.

In some cases where finance charges are inadequately disclosed by a small lending institution, the supervisory agency could be required to order restitution in an amount far in excess of the institution's capital. The Committee believes the relevant regulatory agency should not be required to impose automatically a restitution that would result in the failure of the institution.

Section 115 provides greater flexibility needed to reconcile consumer protection and safety and soundness concerns. This section will allow an agency to order partial restitution if the agency made a factual determination that full restitution would cause the creditor to become undercapitalized.

The Committee recognizes, however, that GAAP rules as they are applied to regulatory reporting (i.e., call reporting) may also play a role in the regulator's determination of whether to order full or partial restitution. The total amount of restitution, whether full or partial and whether paid immediately or over time, must be booked by the institution in accordance with GAAP. Therefore, while payment over time may benefit liquidity, an institution would, however, still be required to follow GAAP. This change to TILA does not affect the GAAP rules.

Title II: Streamlining government regulation

This Title contains provisions intended to eliminate or revise various application, notice and recordkeeping requirements that are currently required of insured depository institutions or holding companies that control such institutions. In developing these provisions the Committee consulted extensively with the relevant regulatory agencies. The provisions contained in this Title will provide significant regulatory relief, consistent with safety and soundness

[11] H. Rep 102–760, 102d Cong., 2 Sess., p. 159 (1992).

oversight. This Title will eliminate costly and time consuming paperwork requirements.

Subtitle A: Eliminating unnecessary regulatory requirements and procedures

This subtitle addresses regulatory filing requirements that may hamper the business operations of the affected institutions. These requirements may slow the implementation of such ordinary business decisions as executive hirings, product line expansion, business expansion, office premises purchase, or branch moves within a given neighborhood.

Some current regulatory notice and application requirements govern activities that do not have any significant public policy implications. As a result, regulators tend to approve these applications in the ordinary course. Nevertheless, there are delays and costs associated with preparation of the necessary paperwork and mandated review or notice periods. For instance, the bill as reported will eliminate, for ATMs and in certain other cases, the notice requirements for branch closure. The bill also eliminates the branch application requirement for ATM's. Federal Reserve Governor Phillips described this latter requirement as "an anachronism," [12] and FDIC Chair Helfer testified that "(w)e do not see a compelling reason for an agency to approve these facilities in advance or even to have prior notice of their establishment." [13]

Consistent with this approach, the Committee also incorporated several provisions that would eliminate certain application and approval requirements that the Federal Reserve Board believes are unnecessary and impose undue burdens on both federal banking agencies and financial institutions. For example, the bill includes a provision that eliminates the approval requirement for routine entry into nonbanking activities that the Fed has already determined to be permissible under the Bank Holding Company Act. Governor Phillips testified that this provision would eliminate the filing of notices to engage in nonbanking activities by sixty percent or more.[14]

The bill also would allow bank holding companies that have already met the requirements of the Bank Holding Company Act to merge or consolidate their subsidiaries without seeking approval under the Bank Merger Act (BMA). The Committee agrees with the Board that eliminating this requirement will reduce unnecessary duplicative burden on institutions that have already received regulatory approval to become affiliates. Because these depository institutions are already affiliates, the competitive effects of a merger of these institutions are de minimis. The appropriate Federal banking agencies already have adequate authority to take appropriate supervisory action to address supervisory, financial and other concerns. Moreover, the amendment made by this section permits the appropriate Federal banking agency to require an application under the BMA in any case in which the agency believes, (based, for example, on concerns about financial condition, managerial, or CRA performance of the institutions involved in the proposal), that

[12] Phillips Testimony, supra, note 9.
[13] Helfer Testimony, supra, note 5.
[14] Phillips Testimony, supra, note 9.

an application under the BMA is appropriate. Finally, the application requirement is only eliminated for a merger that is permissible under the interstate banking and branching provisions enacted by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.

Many regulatory mandates are redundant and the product of statutory accumulation. For instance, Section 202 clarifies that Oakar transactions do not require a duplicative application—the application required under the Bank Merger Act provides the same information that the appropriate regulatory agency needs to analyze the transaction. Section 203 eliminates duplicative oversight of holding companies that control both banks and savings associations (and is a provision that both relevant agencies—the Federal Reserve Board and the Office of Thrift Supervision—endorsed).

The bill amends Section 32 of the Federal Deposit Insurance Act to limit the circumstances in which regulators must receive 30 days advance notice of appointments of new directors or senior executive officers. The advance notice is retained for institutions that are undercapitalized or otherwise in troubled condition. The notice requirement is eliminated for newly-chartered institutions and recent change-in-control situations. Thus, this advance notice is focused on circumstances that may raise capitalization concerns, while at the same time, the provision reduces the burden of a requirement that the FDIC described as "an unnecessary impediment to the routine management of depository institutions."[15]

Section 211 eliminates certain recordkeeping requirements under Section 22 of the Federal Reserve Act that apply to extensions of credit to executive officers and directors of depository institutions or their affiliates. As currently implemented in the Federal Reserve Board's Regulation O, the law generally requires an annual survey of loans to top personnel. Nevertheless, many institutions have felt compelled to conduct these surveys with greater frequency to avoid an inadvertent violation due to new hirings or promotions. Some institutions' compliance programs include monthly Regulation O surveys. Section 211 of the bill as reported contains two provisions that should yield significant relief. The Federal Reserve Board, which is responsible for promulgating and implementing Regulation O, supported both of these provisions in its testimony before the Subcommittee.

This section removes the restriction on officers, directors and principal shareholders of member banks participating in non-preferential benefit or compensation plans. This provision allows officers, directors and principal shareholders to receive extensions of credit pursuant to a benefit or compensation program so long as the benefit or compensation program is widely available to employees of the member bank and does not give preference to any officer, director, or principal shareholder of the member bank, or to any related interest of such person, over other employees of the member bank. Restricted access plans would continue to violate Section 22(h) of the Federal Reserve Act. Participation in such plans does not raise the safety-and-soundness concerns that underlie many of

[15] Helfer Testimony, supra, note 5.

the restrictions and reporting requirements that apply to bank officers and directors.

Section 211 also amends Section 22(h) of the Federal Reserve Act to provide the Federal Reserve Board with regulatory discretion to exempt certain directors and officers of subsidiaries of companies that control member banks from the loan-tracking requirements of Regulation O. The Committee believes that maintaining updated records of the identities of all these persons, and their related interests, represents a substantial recordkeeping burden. For large banks, this would mean tracking hundreds of directors and executive officers on a national and international basis. In those situations where the executive officer or director of a subsidiary of a company that controls a member bank does not have authority to participate, and does not participate, in major policymaking functions of the member bank and the assets of such subsidiary do not exceed 10 percent of the consolidated assets of a company that controls the member bank and such subsidiary (and is not controlled by any other company), the Committee believes that the costs of complying with these recordkeeping requirements outweigh the benefits of Regulation O's application.

The bill as ordered reported by the Committee strikes a balance between these legitimate regulatory burden problems and the safety and soundness concerns that arise in connection with any proposed modification of Section 22 of the Federal Reserve Act or Regulation O. The Federal Reserve Board's exemptive discretion is therefore limited by two conditions: the officer and director in question must not have a policymaking role in the member bank; and the assets of the affiliate must not exceed 10% of the consolidated assets of the holding company. In providing this discretion, the Committee's intent is to provide significant recordkeeping and loan-tracking relief, in a manner consistent with safety-and-soundness protections.

The bill makes certain improvements to the International Banking Act of 1978 as amended by the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA). FBSEA was enacted in response to certain criminal scandals involving foreign banks in the 1980's, most notably the BCCI scandal. FBSEA strengthened federal regulation of foreign banks' operations in the United States by, for the first time, requiring the Federal Reserve Board to review all foreign bank applications for branches and agencies. FBSEA set forth standards to guide the Board's review, the most significant of which was to determine whether the foreign bank applicant is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country. If a foreign bank is not subject to such supervision, the Fed could not approve its application to operate branches and agencies in the United States.

While the FBSEA's intent (to improve supervision of foreign banks operating in this country) clearly remains a public policy priority, the implementation of the law has made it impossible for foreign banks from many countries to enter the United States through branches and agencies. Concern over this and the prolonged approval process prompted some Members of the Banking Committee in September 1994 to request a report by the FRB on its implemen-

tation of the FBSEA. The FRB responded to this request on January 20, 1995 with a report on foreign bank applications under FBSEA including information regarding the processing of applications by the FRB and steps it had taken to streamline the process and make it more transparent.

In its report the FRB noted that the provisions of FBSEA require the FRB to make a positive determination that a particular foreign bank currently is subject to comprehensive consolidated supervision before the FRB can approve an application for branches or agencies in the United States. The U.S. standard, it noted, was stricter than the minimum standards for the supervision of international banks proposed by the Basle Committee on Banking Supervision. The FRB noted it might be appropriate to amend FBSEA so as to provide itself with some flexibility on the comprehensive consolidated supervision or regulation standard as embodied in the Basle standards if the foreign bank's home country was actively working toward meeting those standards. This legislation was drafted with the help and approval of the Board's staff to give the Board discretion on this standard without sacrificing the safety of the U.S. banking system. Other amendments to the International Banking Act in this bill are intended to streamline and improve the coordination of exams consistent with diligent and efficient oversight of foreign bank activities, and to ensure that foreign banks continue to receive parity of treatment with domestic banks with regard to the cost and frequency of examinations.

Subtitle B: Eliminating unnecessary regulatory burdens

This subtitle is intended to provide relief from many of the data collection and data production requirements that impose significant burdens on depository institutions, particularly smaller institutions. Again, the Committee's paramount concern in considering the provisions of this subtitle was regulatory relief, consistent with safety and soundness. The bill as reported reflects the safety-and-soundness concerns that the Treasury, OCC, the Federal Reserve Board and the OTS voiced regarding the expansion of the examination cycle for small banks to 24 months.

Section 223 of the bill as ordered reported eliminates a 1992 law (31 U.S.C. 5327) mandating that the Treasury Department issue regulations requiring each depository institution to identify all non-bank financial institution customers (such as broker-dealers, investment bankers and currency exchangers).

While the Treasury grappled with implementing the 1992 law, Congress enacted the Money Laundering Suppression Act of 1994. The 1994 law requires the registration of non-banks that are money transmitters with the Treasury Department. The Conference Report accompanying the 1994 law expresses the Conferees' opinion that "money transmitters" (which provide, among other activities, check cashing, currency exchanges, money transmitting or remittance services, or issue or redeem money orders) are "particularly vulnerable to money laundering schemes because their level of compliance with the Bank Secrecy Act is generally lower" than

depository institutions'.[16] Treasury is currently developing the money transmitter registration form and the identification, by depository institutions, of non-bank financial institution customers is no longer necessary.

If Treasury, acting through FinCEN, attempts to implement the 1992 law requiring depository institutions to report non-bank customers to the government, the Treasury rapidly will be overloaded by unnecessary new reports. Also, since the existing definition "Financial Institutions" is extremely broad, the government will again be faced with many reports on legitimate entities that are not useful to law enforcement. The elimination of the requirement that depository institutions provide another layer of routine reports has broad support. In fact, the Director of FinCEN has indicated that his Agency is proceeding toward completion of the money transmitter registration requirement and believes that the 1992 law is no longer necessary. Therefore, the Committee has approved elimination of this potentially burdensome mandate and remains opposed to any modification of the "identification" law short of complete repeal for the reasons expressed above.

S. 650 as introduced eliminated the $3000 monetary instrument identification requirement of Section 5325 of the Bank Secrecy Act. In 1988, Congress passed a law requiring banks to retain information on individuals that purchase certain monetary instruments with over $3000 in cash. In 1990, the Treasury Department finalized a regulation requiring banks to record information on these purchases and retain them in a centralized log for five years. All of the information was to be made available to law enforcement upon request. In the four years of the regulations' existence, there is little evidence that banks were ever asked to provide these logs to law enforcement. Therefore, in 1994 Treasury's FinCEN eliminated the log requirement. FinCEN undertook this action because it believed that "almost all of the information required . . . is kept in the normal course of business." It also pointed out that the elimination of the log requirement reflected "a judgment that records already kept by the industry effectively meet law enforcement needs (to monitor and check for possible money laundering)."

The Committee fully supports the efforts made by FinCEN in 1994, to substantially reduce the bank requirement that all cash purchases of travelers checks, bank checks and cashiers checks over $3000 be recorded in a centralized log for five years. However, concern over the law's mandate that a purchaser's identification be verified forced many institutions to continue to use these logs. Section 234 of S. 650 as introduced eliminated the statutory mandate that gave rise to the monetary log requirement. This provision was included due to concerns that the elimination of the monetary log regulation (while a major regulatory reduction) might not obviate the need to maintain the information that the statute mandated in some form.

Since S. 650's introduction, FinCEN has expressed its belief that this confusion can be addressed by clarifying ambiguities as to whether verification information can be recorded directly on the purchased instrument. If an institution can verify and record the

[16] H. Rep. 103-652, 103rd Cong., 2d Sess. (1994).

identification offered by the purchaser without recording that information on a separate database or document, ambiguity would be resolved. The Committee concurs with that regulator's assessment and has therefore eliminated the provision that would have repealed Section 5325. The Committee urges FinCEN to fully address the uncertainties that remained after the repeal of the monetary instrument log.

The bill as reported provides significant relief for small depository institutions from the data collection and reporting requirements of the Home Mortgage Disclosure Act ("HMDA"). During the Subcommittee hearings on S. 650, a number of industry witnesses and regulators testified to the burden that HMDA compliance imposes on small institutions. The disproportionate burden that HMDA places on small institutions was acknowledged by the Congress that enacted this law when it included a small bank exemption. The $10 million asset-size threshold has not been increased since the law's enactment over twenty years ago, despite the effect of inflation and a general upward trend in asset size within the industry over that time.

The $50 million threshold contained in this bill will only slightly diminish the volume of loan data reported. As FDIC Chair Helfer testified, raising the threshold would exempt 33% of FDIC-regulated institutions, but only 6% of the loan data; she testified that "the resulting cost savings to smaller institutions, however, would be material."[17] The increase of the HMDA threshold to $50 million was supported by both the FDIC and the Federal Reserve Board, the two primary federal regulators of small banks, but was opposed by Treasury and HUD. The change in the threshold applies to depository institutions only and is in no way meant to change the current threshold that is used for non-depository lending institutions.

Both the FDIC and the Federal Reserve Board also supported the repeal of Section 477 of FDICIA which requires an annual report on small business and small farm loans. The Committee believes the costs of producing this report are unnecessary in light of other existing requirements that mandate the reporting of similar data. Eliminating section 477, therefore, does not affect the public availability of this kind of lending data. Section 477 replicates, in large part, the requirements of Section 122 of FDICIA which mandates the collection of call report data on credit availability for small businesses and small farms.

Subtitle C: Regulatory micromanagement

Title II of the bill also includes a provision that requires at least one of the two appointed members of the FDIC Board have State bank supervisory experience. This provision originally required that one of the appointed members be a state bank supervisor. This requirement could be problematic in that the laws of many states preclude state office holders from serving in federal office. In addition, the original provision raised succession questions with respect to supervisors who lost or left their state position, and concerns were voiced that the significant responsibilities of state supervisor

[17] Helfer Testimony, supra, note 5.

would limit the state supervisor's ability to focus on their FDIC responsibilities. The Committee wanted to address these concerns while still ensuring that the FDIC Board include a member with state bank regulatory expertise and sensitivity to the issues confronting the dual banking system. The Committee believes that the current Section 243 strikes a proper balance between these concerns.

Title III: Regulatory impact on cost of credit and credit availability

This Title contains a series of amendments to various laws and regulations that impose limitations on the manner in which depository institutions, and other financial intermediaries, conduct their business. Certain regulations are necessary for safety-and-soundness, anti-discrimination, or other public policy purposes. This Title seeks to preserve these vital safeguards. In considering the provisions of this Title, the Committee sought the advice and comments of the regulatory and enforcement agencies in order to assure that the amendments would not weaken their ability to pursue necessary public policy goals.

Section 301 amends certain provisions governing the scope and mechanics of the independent audit function for insured depository institutions. This provision eliminates the independent auditor attestation requirement for safety and soundness compliance, and allows the agencies the discretion to waive the requirement that all members (but not less than a majority) of the independent audit committee be outside directors in the case of hardship.

The accountant's attestation for compliance with safety and soundness requirements imposes significant costs on banks. The attestation review process duplicates the regulatory examination procedures. The Treasury Department, the Federal Reserve Board, the OCC and the FDIC support this provision. The provision leaves intact the independent auditor attestation requirement for internal controls, as that second review is seen as ensuring the integrity of the safety and soundness exams conducted by regulators.

Many smaller institutions in less populated areas have difficulty recruiting and retaining competent outside directors to sit on their independent audit committees. This provision allows the appropriate Federal banking agency to waive the requirement that the committee be comprised entirely of "outside directors" (but no fewer than a majority of outside directors) if the agency determines that the institution has encountered hardships in retaining and recruiting a sufficient number of competent outside directors to serve on the internal audit committee of the institution. In determining hardship, the agency must consider such factors as the size of the institution, and whether the institution has made a good faith effort to elect or name additional competent outside directors to the board of directors of the institution who may serve on the internal audit committee. The Treasury Department, the Federal Reserve Board, OCC, OTS and FDIC all support the general intent of this provision.

This section also authorizes regulators to designate certain information included in the annual management report privileged and confidential. The granting of such a designation does not alter or provide an exemption from any requirement under the federal se-

curities laws, or any rules and regulations promulgated thereunder, to file audited financial statements and the complete reports of independent auditors.

Section 302 creates a civil and administrative enforcement privilege for "self-tests" conducted by a financial institution to determine fair lending compliance under the Fair Housing Act and the Equal Credit Opportunity Act. The purpose of this provision is to encourage institutions to undertake candid and complete self-tests for possible fair lending violations and to act decisively to correct any discovered problems. The privilege ensures that such self-test efforts will not be used against an institution if that institution has undertaken remedial action. This provision does not change the mandatory referral requirement for "pattern or practice" violations of ECOA or FHA. This privilege augments, and does not supplant, other evidentiary privileges that may attach to the results of a self-test, such as the attorney-client privilege. Waiver of the self-testing privilege does not constitute a waiver of any other privilege that may be available. A report or result of a self-test is considered privileged if a creditor conducts or authorizes an independent third party to conduct a self-test of any aspect of a credit transaction by a creditor, in order to determine the level or effectiveness of compliance; and has identified any possible violations of this title and has taken, or is taking, appropriate corrective action to address the possible violations.

The privilege can be lost or waived where a person with lawful access to the results voluntarily releases them. This refers to officers, employees or contractors of financial institution who are authorized to review and handle the self-test results, the privilege is not waived by inadvertent or unauthorized release of the results, such as by someone breaking into the lender's paper or electronic files. The privilege can also be waived if a person with lawful access cites or uses the results to counter charges that the lender is not in compliance with the law. Moreover, self-test results may be obtained in the narrow context of assessing an appropriate sanction for violations already (or concurrently) adjudicated or admitted; this should not be construed as authorizing expansive "fishing expedition" discovery demands at the outset of litigation or administrative enforcement actions.

A department, agency or civil litigant may challenge a privilege asserted under this section in a judicial or administrative law forum of competent jurisdiction (including procedures to handle the privilege challenge confidentially).

Substantially similar regulations from the Board and HUD are essential for this privilege to operate consistently under both statutes, but broad consultation among affected departments and agencies is to be part of the regulation writing process. Creditors and other lenders may invoke this privilege for self-tests that were undertaken prior to this section's enactment, but not if a formal complaint has been filed involving matters covered by the self tests, or the privilege has been waived under the rules of this section.

Section 304 contains amendments to various statutory provisions that unduly restrict the portfolio holdings of thrifts, including the "Qualified Thrift Lender" test. The mortgage market has changed dramatically in recent years, and there is a diminished need for in-

stitutions focused almost entirely on home lending; currently, thrifts only originate about 25% of home mortgages. These new provisions are intended to give thrifts the ability to diversify their portfolios, in a manner consistent with their established lines of business. Greater portfolio diversity will promote healthier and more profitable portfolios. Chairman Greenspan and OTS Director Fiechter support providing thrifts with greater flexibility to invest in other products. The Treasury Department is also supportive of greater flexibility for certain thrifts.

Title III contains a number of provisions intended to streamline and improve the business operations of the Federal Home Loan Banks and the FHLB system. Section 305 would require that the FHLBs receive the same treatment for daylight overdrafts incurred through their use of the Fedwire as all other users of the Fedwire. The Federal Reserve established daylight overdraft rules in order to diminish concerns about the potential for a systematic crisis due to the default on an overdraft position. Because short-term intraday overdrafts are inevitable, the Federal Reserve Board has established "net debit caps," which allow Fedwire users a certain level of overdraft activity prior to the imposition of overdraft fees. These caps are based on the capital and credit quality of the user. The current daylight overdraft rules require the FHLB system to pay fees for daylight overdrafts without the benefit of net debit caps. Thus, the FHLBs are treated as if they pose more risk than other Fedwire users, and ignores the AAA-rated credit quality that the FHLB system and the individual banks enjoy.

Section 306 explicates the FHLBs' authority to approve applications for membership. Prior to approving applications of CAMEL 3, 4, or 5-rated institutions, however, the FHLB must notify the Federal Housing Finance Board (FHFB). This provision was included in recognition of the significant role that the individual banks currently play in the membership screening process (currently the FHFB authorizes the FHLBs to carry out this responsibility for most CAMEL 1 and 2-rated institutions). Each FHLB has extensive credit policies and procedures in place to protect itself and the FHLB system from risk. The provision does not alter existing membership requirements regarding financial condition.

Section 307 will allow the FHLBs to jointly select external auditors rather than the FHFB. The provision does not alter the FHFB's ability to examine the banks or establish independent audit contract requirements to ensure consistency in financial reporting.

Section 309 will provide the Federal Home Loan Banks with greater flexibility in accepting appropriate collateral for advances. With respect to collateral requirements for advances the primary concern has been, and continues to be, assuring that System advances are secured with collateral that will provide sufficient protection against a possible default. The Committee believes that subordinate mortgages on improved residential property that have a secure form of credit enhancement do provide a sufficiently secure collateral source. Section 310 increases the Systemwide cap on advances to members that are not Qualified Thrift Lenders from 30% to 40%. This amendment was adopted in recognition of the changing nature of the System's membership (the System may

reach this 30% limit sometime during the 1996 calendar year), and to allow the system to continue to fulfill its role as a source of liquidity for home financing while proposals for modernizing the System are considered. Currently, 16 percent of the total advances of the Federal Home Loan Bank system go to non-qualified thrift lenders (i.e., banks). However, the Federal Home Loan Bank system currently has more members that are banks than savings associations. Once the 30 percent limit is exceeded, non-qualified thrift lenders who are members of the Federal Home Loan Bank system will not be able to get advances from the system to permit them to originate mortgages. The Committee believes that the System continues to play an important policy role in providing community-based lenders with economical wholesale credit and related assistance.

Section 308 eliminates the 7 percent cap on the annual asset growth of limited purpose banks, and allows limited purpose banks to take deposits under $100,000 for the purpose of securing a credit card. The growth cap, enacted in the Competitive Equality Banking Act of 1987, was intended as a temporary measure. At the time it was enacted, it was expected that Congress would shortly legislate in the area of bank powers. While banks have received additional powers and authorities through both legislative and regulatory action, the restriction on financial service providers' growth remains in place. Section 308 also clarifies that limited purpose credit card banks may accept collateral in connection with the issuance of secured credit cards. A secured credit card is a credit card for which the borrower has posted collateral, such as a savings or time deposit, to secure credit advances. Such programs provide needed credit to consumers who might otherwise be unable to qualify, including persons attempting to establish a credit history and individuals who previously have had credit problems. The amendment would also protect the safety and soundness of limited purpose credit card banks by clarifying that there is no restriction on such institutions accepting collateral for their extensions of credit.

Title III includes two amendments to the Fair Debt Collections Practices Act. Both changes provide needed clarification of the statute. The first amendment clarifies the requirements of Section 807(11). This subsection requires debt collectors to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is trying to collect a debt and is contacting the consumer for that purpose. The FTC staff has interpreted this subsection to require this disclosure only in the first communication with the debtor. Nevertheless, some Courts have interpreted this language as requiring the inclusion of this disclosure in every communication. This construction of the statute has resulted in numerous technical violations. The FTC has recommended narrowing this requirement to the initial communication, oral or written, in its last several reports to Congress on the FDCPA.

The second provision amends Section 809(b) of the FDCPA. This provision of the FDCPA provides that a consumer has 30 days to request a verification of a debt, and if such verification is requested the collector must cease collection activities. The FTC has rec-

ommended that Congress clarify that collection activity may take place without a verification request.

Title IV: Fair credit reporting

Title IV of the bill as ordered reported contains a series of amendments to the FCRA. The provisions of this Title are derived from S. 709, a bill introduced by Senators Bond and Bryan earlier this Congress, and is substantially similar to S. 783, a bill amending the FCRA, that the Committee reported and the Senate passed during the 103rd Congress.[18] A number of problems in the FCRA's implementation and interpretation have arisen in the years since the law's enactment. Many of these problems are a result of ambiguities in the statute; other problems have arisen as the credit reporting industry has grown in the wake of information technology advances that have occurred over the last twenty years.

To generalize, the chief concerns that are implicated by the FCRA are: 1. the accuracy of consumer reports and problems associated with resolving disputed information; 2. the privacy concerns raised by unfettered access to consumers reports; 3. operational concerns implicated by differing statutory schemes regulating the credit reporting industry at the state level; and 4. ambiguities as to what constitutes a "consumer report" for the purposes of the FCRA that have hampered the business operations of both credit reporting bureaus and credit report users.

Currently, the FCRA requires that credit reporting agencies reinvestigate disputed information in a "reasonable period of time." Many consumers have complained in the past about time delays in resolving disputes. These delays can often lead to an unwarranted denial of credit. The industry has made a serious effort to address these concerns, and has used available technology to expedite the resolution of disputes. Title IV would establish a specific reinvestigation time schedule for disputed information.

The FCRA prohibits credit bureaus from providing consumer reports to users that do not have a "permissible purpose" for obtaining the report; however, there is no correlative permissible purpose obligation imposed on credit report users. Title IV specifies that users of credit reports establish, on general or specific basis, a permissible purpose for obtaining a credit report.

While Title IV would clarify the circumstances under which a credit report may be obtained, it would also clarify that credit bureaus may provide certain products, such as "prescreened" lists,[19] direct marketing mailing lists and credit reports provided for commercial purposes, consistent with the FCRA. By so doing, Title IV clarifies ambiguities that currently exist as to when and how credit bureaus may provide such products. Similarly, Title IV will clarify that affiliates within a Holding Company structure can share any application information (last year's bill was limited to credit applications) and consumer reports, consistent with the FCRA. Under

[18] See, S. Rep. 103-209, 103rd Cong., 1st Sess. (Star print). Congressional Record, May 2-4, 1994 (S 4965-4984; S 5026-5046; S 5129-5146).

[19] "Prescreened" lists are mailing lists used to market financial products, particularly credit cards. These lists are compiled by screening credit bureau records for individuals who meet certain specifications established by the requesting party. This Title would allow consumers to "opt-out" of inclusion in this process and provides safeguards against the disclosure of consumer-specific credit history information.

current law, such information can be deemed a "consumer report" and the information sharing entity can be deemed a "consumer reporting agency," thereby implicating all the restrictions of the FCRA. The affiliate sharing provisions of this Title will allow affiliates to share such information without being deemed a consumer reporting agency.

Title IV also clarifies the circumstances in which a furnisher of information to a credit bureau can be liable for providing inaccurate information. S. 783 adopted a "known or should have known" standard; Title IV attempts to provide greater certainty for information furnishers, and liability attaches only when the furnisher is actually notified of an inaccuracy. This provision exempts information furnishers from civil liability for providing inaccurate information in circumstances where the mandated notice has not been provided by the consumer.

Title V: Asset conservation, lender liability and deposit insurance protection

Title V contains provisions that would amend Federal banking and environmental law to clarify the liability of lenders for environmental clean-up of property that secures financing. This title will also clarify the liability of federal agencies that assume the ownership of foreclosed contaminated property through conservatorships or receiverships. The problem of massive potential liability, particularly for clean-ups undertaken pursuant to the CERCLA, or as it is more commonly known, the "Superfund" law, is largely the result of case law that has limited the "secured creditor exemption" contained in CERCLA.[20]

Another line of case law has stripped lenders of the secured creditor protection contained in Superfund when lenders have foreclosed on collateralized property—thereby stripping the exemption of its value by denying creditors their right to remedy default by exercising their security interest.[21] As a result, lenders risk being targeted as convenient "deep pockets," and subject to substantial liability for remedial costs, not because they caused environmental contamination or did not take proper precautions, but simply because they exercise a security interest.

Costs for environmental clean up by banks can easily be $10 million to $100 million. They average $30 million.[22] Many lenders have altered their lending practices to avoid potential draconian joint and several liability for Superfund clean-ups. Many small businesses and potential homeowners do not receive financing because lenders fear potential liability. 88% of banks changed their lending procedures in an effort to avoid environmental liability; 62.5% have rejected loan applications on the possibility of environmental liability; 45% discontinued financing of certain types of

[20] The Eleventh Circuit Court of Appeals deemed a secured creditor liable merely because it had the capacity to influence a borrower's environmental disposal decision. *U.S.* v. *Fleet Factors Corp.*, 901 F.2d 1550 (11th Cir. 1990). (cert. denied, 498 U.S. 104 (1991)).

[21] See, *U.S.* v. *Maryland Bank & Trust Co.*, 632 F.Supp. 573 (D.Md. 1986); *Guidice* v. *BFG Electroplating and Manufacturing Co.*, 732 F.Supp. 556 (W.D. Pa. 1989).

[22] Anderson, Eugene and Jordan Stanzler. "Insurers May Cover Toxic—Waste Cleanups." American Banker; May 9, 1990.

loans (service stations, chemical business). One-third of the members of the Petroleum Marketers Association had loans denied.[23]

The Senate passed similar legislation in 1991 as part of S. 543, the Federal Deposit Insurance Corporation Improvement Act. The Senate approved a lender liability amendment to the Federal Housing Enterprises Regulatory Reform Act of 1992. Last year, the Banking and Environment Committees worked together and crafted language for inclusion in the Superfund Reauthorization bill. It is the hope of the Committee that the staffs of these two Committees will be able to continue to cooperate on this issue.

The provisions contained in Title V are closely modeled on the final language agreed to in that Superfund bill, with several adjustments. Most significantly, this bill would clarify lender liability rules not only with respect to Superfund, but also with respect to the underground tank provisions of the Solid Waste Disposal Act. In this regard, this bill is similar to the lender liability provisions (Title II) of S. 1124 that Senators D'Amato, Shelby, Bond, Bennett and Domenici offered last year. The need for remedial legislation has become more pressing in light of the Supreme Court's denial of certiorari in *Kelly* v. *Environmental Protection Agency*.[24] This case effectively precluded the EPA's handling of the lender liability problem through rulemaking.

Title VI: Miscellaneous clarifications, studies and reports

Title VI includes a number of regulatory clarifications, studies, and statutory improvements that are intended to provide more cost-effective delivery of financial services. These provisions were among those that the Committee adopted during its September 27th mark-up. Section 601 clarifies that stored value devices, such as certain "smart cards", are not subject to requirements of the Electronic Fund Transfer Act ("EFTA") to the extent that such devices are used as a cash equivalent such as when they are used as media for the storage of monetary value and to deliver funds for the payment for goods or services. Transactions in which value is "downloaded" onto a stored value card from an asset account would be subject to the EFTA to the extent that any such transfer from an account is currently subject to this law. The Committee intends this clarification to allow the development and utilization of this nascent cash-equivalent technology, and not to diminish any protections that may attach to credit and debit cards as currently used to access consumer credit and asset accounts, respectively. The Committee believes that as the private sector continues to develop stored value card technology, it should also attempt to educate customers on the prudent use of this technology. For multipurpose cards that involve stored value features as well as debit card or credit card features, the clarification set forth in Section 601 applies only to the stored value feature and does not affect the application of existing law to the debit card or credit card features of the card.

Section 602 of the bill clarifies Section 11 of the Federal Deposit Insurance Act to make explicit what is already implicit by virtue

[23] Letter dated July 24, 1991 to John Fogarty, EPA from Edward Yingling on behalf of the American Bankers Association, commenting on CERCLA ruling.
[24] 15 F.3d. 1100 (4th Cir. 1994).

of the text and structure of the statute and the underlying regulations (particularly the provisions concerning administrative claims and the priority of administrative expenses). It is the intent of this provision to give meaning and legally-binding effect to current FDIC and RTC policies which provide that any breaches of contracts entered into by the FDIC or RTC as receiver after appointment will be paid as administrative expenses of the receivership. This provision is also consistent with existing interpretations and policies of the federal banking agencies. Since this provision makes no change in current law as interpreted and applied, the substance of this provision should apply in pending litigation, appeals and administrative actions.

Section 603 closes a loophole in counterfeit law. Fictitious financial instruments are not reproductions of actual negotiable instruments; rather the instruments themselves are fictitious.[25] Federal prosecutors have determined that the manufacture, possession, or utterance of these instruments does not violate the counterfeit or bank fraud provisions contained in chapters 25 and 65 of the United States Code.

Fictitious financial instruments have caused hundreds of millions of dollars in losses to financial institutions, mutual funds and private individuals. The National Council of Churches and the Salvation Army are amongst the organizations that have lost significant sums of money in such schemes. In recent years, tax rebellion and militia groups, such as the Posse Comitatus and its splinter groups such as We the People and the Juris Christian Assembly fund their activities with fictitious financial instruments. Organized crime syndicates in West Africa have used fictitious financial instruments to finance drug smuggling operations.

This legislation also corrects a drafting error made when Congress passed the Counterfeit Deterrence Act of 1992. While attempting to raise criminal penalties imposed for counterfeiting, Congress actually lowered these penalties. This provision will restore counterfeiting sentences in accordance with Congressional intent in 1992.

Section 604 of the bill as ordered reported amends the Truth-in-Savings Act, while retaining most of the disclosure requirements that benefit consumers. The overwhelming majority of depository institutions did provide most of the disclosures required under Truth in Savings prior to the law's enactment, and continue to pursue good-faith compliance efforts. In fact, the industry spent nearly $500 million modifying compliance programs and disclosure materials to ensure that TISA's technical mandates were met. In light of the fact that TISA compliance has been integrated into the industry's compliance programs, the Committee decided to retain the APY and other TISA disclosures. Nevertheless, the Committee is mindful that the requirements of TISA compliance present a variety of potential technical pitfalls, and attendant liability. In light of these continuing concerns, the Committee decided to amend the law so that it would have an administrative remedial enforcement scheme.

[25] Fictitious financial instruments have been called many names, including "Prime Bank Notes", "Prime Bank Derivatives", "Prime Bank Guarantees", "Japanese Yen Bonds", "Indonesian Promissory Notes", "U.S. Treasury Warrants", and Philippine Victory Bonds".

SECTION-BY-SECTION ANALYSIS

Section 101. Coordination of TILA/RESPA

Section 101 provides the Federal Reserve Board (the Board) with the authority to modify the disclosure requirements of the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA) in order to achieve uniformity between the two laws. The purpose is to streamline, integrate and improve regulations, thereby reducing costs to lenders (including timing and content requirements) and improving the quality of disclosures.

Section 102. Elimination of redundant regulators

Section 102 of the bill would transfer RESPA rulewriting authority to the Board with the exception of Sections 8 and 9 of RESPA, which prohibit referrals, kickbacks and unearned fees and directed purchases of title insurance, respectively. This section clarifies that the appropriate federal banking regulators maintain enforcement authority over financial institutions' compliance with RESPA and that the Department of Housing and Urban Development (HUD) retains both rulewriting authority over Sections 8 and 9 of RESPA and general enforcement authority over non-financial institutions.

Section 103. General exemptive authority for loans

Section 103 provides the Board with the discretion to exempt from some of the requirements of TILA certain classes of loans that do not provide a "meaningful benefit" to consumers in the form of useful information or protection. Factors for consideration by the Board include: the size of the loan, the sophistication of the borrowers, whether the loan is secured by a principal residence, and whether the goal of consumer protection would be undermined.

Section 104. Reductions in Real Estate Settlement Procedures Act

Section 104 amends RESPA to clarify that the notice regarding sale of loan servicing does not have to include an estimate of the percentage of loan servicings the lender expects to sell annually. The provision also exempts subordinate lien mortgages from Section 8 of RESPA and clarifies that the definition of the term "business credit" under RESPA shall be the same as under TILA.

Section 105. Co-branding and affinity group endorsements

Section 105 clarifies that Section 8 of RESPA does not prohibit endorsements by persons or affinity groups not otherwise involved in providing settlement services in connection with a settlement transaction. Section 8 would still prohibit the payment of referral fees to settlement service providers.

Section 106. Exemption for certain borrowers

Section 106 gives the Board the authority to allow sophisticated borrowers to waive the disclosures required under TILA. Sophisticated borrowers are defined as individuals with net assets in excess of $1,000,000 or annual earned income of more than $200,000. The Board has the authority to increase both thresholds for inflation. The provision also requires that the waiver be handwritten, dated and signed.

Section 107. Alternative disclosures for adjustable rate mortgages

This provision would allow lenders (in consumer credit transaction not under an open-end plan) to choose between providing consumers with a 15 year historical table charting fluctuations in interest rates based on a $10,000 loan; or disclosing to the consumer the fact that annual percentage rates may increase or decrease substantially as well as what the maximum interest rate and payment would be based on a $10,000 loan.

Section 115. Restitution for violations of Truth in Lending Act

Section 115 provides regulators with the discretion to determine the appropriate restitution remedy to be imposed on an institution for TILA violations, consistent with safety and soundness. The provision gives regulators more discretion in imposing full restitution when such restitution plan would force an institution to become undercapitalized. The provision would allow regulators a choice between ordering partial restitution and ordering full restitution to be paid out over time to avoid adverse impact.

Section 201. Elimination of certain filing and approval requirements for certain insured depository institutions

Section 201 would allow bank holding companies that seek to merge or consolidate existing subsidiaries to do so without seeking approval under the Bank Merger Act (BMA) unless required to do so by the responsible agency within 10 days after receipt of notice of the proposed transaction. Under current law, banks owned by the same bank holding companies must seek approval from the appropriate federal banking agency for the surviving institution under the BMA before merging subsidiary banks. Approval under the BMA is based on standards identical to those already applied under the BHCA when the bank holding company acquired (either at the time of the merger or previously) the subsidiary banks.

Section 202. Elimination of redundant approval requirement for OAKAR transactions

Under current law, the merger of a bank and a savings association requires approval under two separate statutory provisions that apply the identical statutory review factors—the Bank Merger Act and the Oakar Amendment. This provision would remove the duplicative approval requirements under the Oakar amendment for the merger of a bank and a savings association if approval was already sought under the BMA. The provision does not alter other provisions of the Oakar Amendment relating to paying of assessments into the appropriate insurance fund or requirements that institutions meet capital requirements.

Section 203. Elimination of duplicative requirements imposed upon bank holding companies under the Home Owners' Loan Act

Currently, bank holding companies that own savings associations are subject to duplicative review, examination and reporting requirements under the Bank Holding Company Act (BHCA) and the Savings and Loan Holding Company Act (SLHCA). This provision would eliminate the application of the SLHCA to bank holding companies that are subject to the BHCA. It does not alter any re-

quirements applicable to savings associations that are controlled by bank holding companies. The provision also ensures that OTS has a consultive examination role and a cooperative enforcement role with the Federal Reserve Board over bank holding companies that control savings associations.

Section 204. Elimination of per branch capital requirement for national banks and State member banks

Section 204 strikes the requirement that national and state member banks have aggregate capital in an amount no less than the aggregate minimum capital that would be required if each branch were a separately chartered national bank. Modern bank-wide capital requirements have made these branch-related capital rules obsolete.

Section 205. Elimination of branch application requirements for automatic teller machines

Section 205 clarifies that an "ATM" or "remote service unit" is not considered a "branch" for purposes of federal bank branching laws and is therefore not subject to prior approval requirements or geographic restrictions.

Section 206. Elimination of requirement for approval of investments in bank premises for well capitalized and well managed banks

Section 206 would allow well-capitalized and well-managed banks to invest an amount less than or equal to 150% of the bank's capital and surplus in bank premises without prior federal approval. The bank would be required to provide notice to the appropriate federal regulator within 30 days of the investment. Current law allows banks to invest up to 100% of capital in bank premises without prior federal approval.

Section 207. Elimination of approval requirement for divestitures

Section 207 eliminates the presumption that a bank holding company controls those shares that it divests of any company to a third party that is financed by a subsidiary of the BHC, or where there is an officer or director common to the company and the investor. Although the presumption was intended to prevent sham divestitures, the Board believes it can detect sham transactions through the examination process without the application burden the presumption imposes on the banking industry.

Section 208. Streamlined nonbanking acquisitions by well-capitalized and well-managed banking organizations

Section 208 permits well-capitalized and well-managed bank holding companies, without prior approval, to commence permissible nonbanking activities and to make acquisitions of companies engaged in permissible nonbanking activities that are limited in size. The Board would still receive advance notice so that it may require an application if it chooses and both the Federal Trade Commission (FTC) and the Department of Justice (DOJ) would continue to receive notice for purposes of conducting competitive analysis of any proposal.

Section 209. Elimination of unnecessary filing for officer and director appointments

Section 209 narrows the requirement that any newly chartered or troubled institutions, or institution that has undergone a change in control in the last two years, file a notice 30 days before appointing a new officer or director. The provision would only require prior notice and approval for troubled institutions.

Section 210. Amendments to the Depository Institutions Management Interlocks Act

Section 210 restores the authority of federal banking agencies to grant additional exemptions from the prohibitions on officer and director interlocks between unaffiliated banking organizations, as long as the exemption wouldn't result in a monopoly or substantial lessening of competition. Also, the asset thresholds that provide an exemption for banks and bank holding companies from the prohibitions on management interlocks are also increased from $1 billion to $2.5 billion and $500 million to $1.5 billion, respectively. This section would further give the federal banking agencies the authority to adjust these thresholds annually to account for inflation or market changes. This section also eliminates the termination date on grandfathered interlocks.

Section 211. Elimination of recordkeeping and reporting requirements for officers

Section 211 makes several changes to the preferential lending restrictions of 22(h) of the Federal Reserve Act. Without changing any of the core restrictions on insider lending, section 211 would allow executive officers, directors, or principal shareholders to receive extensions of credit pursuant to a benefit or compensation program that is widely available to employees of the member bank and does not give preference to such executive officers, directors or principal shareholders over other employees of the member bank. Section 211 would also allow the Board to exempt from the restrictions of section 22(h) executive officers and directors of subsidiaries that control member banks, if such executive officers and directors do not have authority to participate, and do not participate in major policymaking functions of the member bank; and the assets of such affiliate do not exceed 10 percent of the consolidated assets of a company that controls the member bank and such subsidiary (and is not controlled by any other company).

Section 212. Consolidation of Appraisal Subcommittee; transfer of functions

Section 212 would consolidate the administrative functions of the Appraisal Subcommittee into the Federal Financial Institutions Exam Council (FFIEC). The Appraisal Subcommittee of the FFIEC was created in 1989 to develop and monitor state licensing and regulation of real estate appraisers. While the Subcommittee is established within the FFIEC and the subcommittee's members are appointed from staff of the bank regulatory agencies and HUD, the subcommittee's administrative functions have been managed independently of the FFIEC due to the appropriated nature of the $5 million dollar start-up loan provided to the subcommittee from the

Treasury. This section would also require that the subcommittee repay the outstanding amount on the Treasury loan by the year 1998 and phases out the grant authority to the Appraisal Foundation in that same year.

Section 213. Branch closures

Section 213 would clarify the branch closure notice requirements of Section 42 of the FDIA. This section largely codifies exceptions already adopted in an interagency policy statement on branch closures promulgated by the federal banking agencies. Under this section, excluded from the notice requirements are: ATM's; and relocations of branches or consolidations of one or more branches into another branch so long as the relocation or consolidation occurs within the immediate neighborhood and does not substantially affect the nature of the business or customers served. Branches closed in connection with emergency acquisitions or branches receiving other assistance from the FDIC are also excepted from the notice requirements.

Section 214. Foreign banks

Section 214 gives the FRB greater discretion in considering foreign bank applications. The FRB would no longer be compelled to deny an application solely because a bank is not subject to consolidated comprehensive supervision or regulation, a standard which exceeds the current international standard. The FRB is given the discretion to approve an application, with such conditions as it deems appropriate, as long as the home country is actively working toward and making progress in establishing arrangements for the comprehensive consolidated supervision or regulation of the applicant foreign bank. In addition, if the appropriate authorities in the home country are not making demonstrable progress in establishing arrangements for comprehensive consolidated supervision or regulation of such foreign bank, the FRB can terminate the foreign bank's state agencies or branches and recommend termination of its federal branches and agencies located in the United States.

In approving an application under this provision, the FRB is required to consider whether the foreign bank has adopted and is implementing procedures to combat money laundering. The FRB may also take into account whether the home country of the foreign bank is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.

These amendments have two overarching goals. The first is to strike an appropriate balance between preserving prudently firm statutory standards and correcting unwarranted barriers to entry in the current approval process. The second is to encourage further progress toward comprehensive consolidated supervision by countries that do not currently accord such supervision.

This section also makes changes in current law to ensure the United States continues to provide parity of treatment for foreign branches and agencies of foreign banks with respect to exam fees. After the expiration of a three year moratorium, the International Banking Act requires the FRB to charge foreign banks with respect to the exams it conducts of their branches and agencies. Under this section, the FRB may only assess and collect foreign bank exam

fees to the same extent it would charge state chartered member banks. Since the FRB does not presently charge state chartered member banks for their exams, it has expressed concern that current law will lead to disparate treatment between state chartered member banks and foreign banks. The foreign banks would be charged twice and state member banks only once for their examinations. This section also changes current law that requires annual on site examinations of foreign banks by providing they should be examined on site as frequently as would a national or state chartered bank by its appropriate regulator. These amendments do not preclude regulators from conducting on-site examinations more frequently if they deem it necessary. Finally, a strict time table is set up for final action by the FRB on foreign bank applications. The FRB is required to act within 180 days of receipt of the application. The FRB may extend this period for 180 days after providing notice of and the reasons for the extension.

Section 215. Disposition of foreclosed assets

Section 215 provides bank holding companies with the same flexibility as national banks by providing the Board with the authority to approve applications to hold foreclosed stock an additional five years. Under current law, bank holding companies are accorded up to five years to dispose of foreclosed assets. National banks, however, can hold foreclosed stock or real estate up to 10 years. The five-year extension would be dependent on the bank holding company showing the Board a good faith attempt to dispose of the foreclosed assets or a demonstration that disposing of the foreclosed shares during the initial five year period would have been detrimental to the bank holding company.

Section 221. Small bank examination cycle

Section 221 provides the federal banking agencies with the authority to examine Camel 2 institutions of up to $250 million in assets every 18 months. Current law allows federal banking regulators the discretion to examine Camel 1 institutions of up to $250 million and Camel 2 institutions up to $100 million (or up to $175 million after September 1996) on an 18-month exam cycle.

Section 222. Required regulatory review of regulations

Section 222 requires the FFIEC and the appropriate federal banking agencies to review all banking regulations every ten years to identify outdated or unnecessary regulatory requirements. After formal notice and comment, the FFIEC or the appropriate federal banking agency is then directed to publish the comments, eliminate any unnecessary regulations and report to Congress a summary of the comments and any need for legislative change.

Section 223. Identification of nonbank financial institution customers

Section 223 eliminates a 1992 law that authorized Treasury to issue a regulation requiring each insured depository institution to identify any customer that is a non-bank financial institution (broker-dealers, investment bankers, currency exchangers, etc). The Money Laundering Suppression Act of 1994 requires specified non-

bank financial institutions to register with Treasury, thus making, in large part, the 1992 law unnecessary and duplicative.

Section 224. Repeal of commercial loan reporting requirements

Section 224 repeals Section 477 of FDICIA that requires the Board to annually report data on small business and small farm loans.

Section 225. Increase in Home Mortgage Disclosure Act; disclosure exemption

Section 225 would increase the current exemption for small depository institutions (banks, thrifts, and credit unions) from $10 million to $50 million. Additionally, the provision would allow depository institutions to keep HMDA information at its home office, give notice in its branches of the information's availability and provide the information within 15 days of request by a consumer.

Section 226. Elimination of stock loan reporting requirement

Section 226 eliminates the requirement that domestic financial institutions and their affiliates file consolidated reports on extensions of credit that are secured, in the aggregate, directly or indirectly by 25% or more of any class of shares an insured depository institution. This provision would still apply to foreign banks (branches and agencies thereof) and their affiliates.

Section 227. Credit availability assessment

Section 227 requires the Board to conduct a study on small business lending every five years in consultation with the federal banking regulators, the Administrator of the Small Business Administration and the Secretary of Commerce and report to Congress on its findings.

Section 241. National bank directors

Section 241 provides Comptroller with the authority to waive the residency requirement on national bank directors. As a general matter, current law requires that a majority of a national bank's directors must be residents of the state in which the bank is located.

Section 242. Paperwork reduction review

This section amends Section 303(a) of the Community Development and Regulatory Improvement Act to further provide that the federal banking regulators conduct a review of the extent to which existing regulations require insured depository institutions and credit unions to maintain unnecessary internal written policies and eliminate those requirements where appropriate.

Section 243. State bank representation on Board of Directors of FDIC

Section 243 provides that one of the appointed board members of the FDIC must have state bank supervisory experience.

Section 244. Consultation among examiners

This provision requires consultation between safety and soundness and compliance examiners within an agency. The federal banking agencies are encouraged to appoint a "chief examiner" when examining an institution for compliance to ensure consultation among examiners and to resolve inconsistencies in recommendations.

Section 301. Audit costs

This provision would eliminate the independent auditor attestation requirement for safety and soundness compliance, and allow the agencies the discretion to waive the requirement that all members of the independent audit committee be outside directors (but not less than a majority) in the case of hardship.

Factors to be considered include the size of the institution, and whether the institution has made a good faith effort to elect or name additional competent outside directors. Section 301 also provides federal banking regulators with the discretion to designate certain information in annual management reports as privileged and confidential.

Section 302. Incentives for self-testing

Section 302 creates a privilege for self-tests conducted by a financial institution to determine fair lending compliance under the Fair Housing Act (FHA) and the Equal Credit Opportunity Act (ECOA). A report or result of a self-test (as that term is defined by regulations of the Board and HUD for purposes of ECOA and FHA, respectively) is considered privileged if a creditor conducts, or authorizes an independent third party to conduct, a self-test of any aspect of a credit transaction by a creditor, in order to determine the level or effectiveness of compliance with FHA or ECOA; and has identified any possible violations of this title and has taken, or is taking, appropriate corrective action to address the possible violations.

The provision would protect the results of a self-test from discovery pursuant to a civil suit or from being used by regulators or federal enforcement agencies in enforcing FHA or ECOA. The privilege may be waived by the creditor if the self-test results are offered in defense or if the self-test results are voluntarily released or referred to in that specific proceeding. In addition, the report or results of a self-test are not privileged from disclosure when the report or results of the self-test are sought in conjunction with an adjudication or admission of a violation for the sole purpose of determining an appropriate penalty or remedy. The purpose of the privilege is to encourage lenders subject to ECOA and FHA to undertake candid and thorough self-evaluations in order to identify and correct possible violations early and thus to eliminate fair lending problems at their roots.

Section 303. Exemption for savings institutions serving military personnel

Section 303 expands the exception from the Qualified Thrift Lender test for savings institutions that primarily serve military personnel (including widows, divorced spouses, and current or former dependents). The provision would amend the existing ex-

emption to eliminate the current date restriction on when the holding company must have acquired control of the savings institution.

Section 304. Qualified thrift investment amendments

Section 304 would amend the Home Owner's Loan Act to provide thrifts more investment flexibility in becoming Qualified Thrift Lenders. Under current law, a savings association must meet both the QTL test and the IRS thrift tax test. Both tests have the same goal of encouraging residential mortgage lending, although their requirements differ.

In order to meet the QTL test, savings associations must hold at least 65% of their portfolio assets in specified assets or "qualified thrift investments." Qualified thrift investments under HOLA include mortgages, home equity loans, mortgage-backed securities, Federal Home Loan Bank stock and within specified limits, consumer loans. Savings Associations that fail to meet the QTL test are subject to severe activities restrictions, branching limits, dividend limits and restrictions on FHLBS advances.

In order to qualify under the IRS thrift test, a savings association must maintain 60% of its total assets in specified assets such as mortgages, and government securities. Failure to meet the IRS thrift test results in adverse tax consequences such as limitations on the availability of the bad debt reserve deduction and recapture of existing bad debt reserves.

Because of the differences between the two tests, savings associations must track their investments to ensure compliance under the different requirements of both tests. Given the fact that both tests are intended to achieve the same goal, the Committee believes that meeting one of the tests should be sufficient to qualify for the benefits that attach to the QTL test.

Section 304 provides more flexibility to thrifts in meeting these requirements by allowing savings association to qualify as QTL lenders by meeting either the QTL test or the IRS thrift test. In addition, the section expands the type and amount of investments that can be counted toward the qualified thrift lender test by: (1) eliminating the current limitations on credit card and educational loans under section 5(c) of HOLA; (2) increasing the amount of small business loans thrifts can make from 10% to 20% of total assets; and (3) allowing consumer credit card loans, education loans and small business loans to be counted as qualified thrift investments for purposes of the 65% portfolio asset requirement.

Section 305. Daylight overdrafts by Federal Home Loan Banks

Section 305 requires the Board to establish net debit caps for daylight overdrafts incurred by FHLBs consistent with the credit quality of each FHLB and calculated in the same manner as fees for other users. Alternatively, the Board may exempt the FHLBs from fees and penalties for daylight overdrafts.

Section 306. Application for membership in the FHLB System

Section 306 grants the FHLBs the authority to approve all applications for membership. Prior to approving an application of a CAMEL-rated 3, 4 or 5 institution, the FHLB must notify the Federal Housing Finance Board (FHFB). Individual banks currently

provide the FHFB with the relevant information used in the analysis of approving prospective members. This section does not affect section 6(h) of the Federal Home Loan Bank Act.

Section 307. FHLB external auditors

This provision allows the FHLBs to jointly select external auditors rather than the FHFB.

Section 308. Limited purpose bank

Section 308 eliminates the 7 percent growth cap on the annual asset growth of limited purpose banks. The section also allows limited purpose banks to take deposits under $100,000 for the purpose of securing a credit card. The Bank Holding Company Act currently provides an exemption from the definition of "bank" for limited purpose credit card banks that, among other things, engage only in credit card operations, have only one office that accepts deposits and do not accept deposits under $100,000.

Section 309. Collateralization of advances to members

Section 309 will allow FHLBs to accept second mortgages that are insured by the federal government as primary collateral for advances. Under current law, FHLBs can accept secondary mortgages as collateral, but only in amounts equal to 30% of the capital of the member bank.

Section 310. Increasing limit on total advances by the FHLB system to non-QTL institutions

Section 310 increases, from 30% to 40%, the limit on the aggregate amount of advances by the Federal Home Loan Bank system to members that are not qualified thrift lenders.

Section 311. Fair debt collection practices

This provision clarifies that the Fair Debt Collection Practices Act requires a debt collector to disclose clearly in the first written communication with the debtor that the debt collector is trying to collect a debt and is contacting the consumer for that purpose. The provision also clarifies that unless a verification request is made, collection activity may take place during the 30 day period in which a consumer may make a request for a verification of the debt.

Section 401. Short title

Sections 401 through 426 comprise "the Consumer Reporting and Reform Act."

Section 402. Definitions

Adverse action

A prior interpretation issued by the FTC [55 Fed. Reg. 18,826 (May 4, 1990)] holds that actions taken in connection with credit, employment, or insurance may constitute adverse actions, but other actions taken pursuant to a permissible purpose, such as a refusal to cash a check, rent an apartment, or open a new account,

do not. The language adopted by the Committee eliminates this distinction.

Section 402(a) of the Committee bill adds to section 603 of the Fair Credit Reporting Act new subsection (k) which sets forth the definition of the term "adverse action." Section 603(k) provides that for purposes of the FCRA, when used in connection with action involving credit based in whole or in part on a consumer report, the term "adverse action" has the same meaning as the definition of "adverse action" set forth in the Equal Credit Opportunity Act. Under Section 603(k), "adverse action" also includes a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or any amount of, any insurance, in connection with the underwriting of insurance. This portion of the definition applies to adverse determinations with respect to existing insurance or applications for new insurance.

The definition also covers a denial of employment or any other employment decision that adversely affects any current or prospective employee. In addition, the definition covers a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 604(a)(3)(D).

Finally, the definition includes an action taken in connection with an application made by, or transaction initiated by a consumer if that action is adverse to the interest of the consumer. The term also includes an adverse change made to the terms of an account as the result of a review performed under section 604(a)(3)(E)(ii). However, the definition does not cover situations such as those where a creditor obtains consumer reports on its customers in connection with a review of its credit or other portfolio and, in connection with the review, a consumer's account is not changed, or is changed in a way that is not less favorable to the interest of that consumer, even if the accounts of other consumers are changed in a more favorable manner. Likewise, failure to include a consumer in a prescreening solicitation does not constitute adverse action.

Firm offer

Credit or insurance providers who obtain prescreened lists must provide a "firm offer" of credit or insurance to all consumers on the list.

Section 402(b) of the bill adds to section 603 of the FCRA new subsection (l) which defines the term "firm offer of credit or insurance." This definition is necessary because sections 404(a) and 411(b) of the bill set forth new requirements for prescreening which, among other things, provide that prescreening must involve a "firm offer of credit or insurance." Under section 603(l), an offer of credit will be deemed to be a "firm offer of credit" if the creditor making the offer will honor the offer if the consumer meets the criteria the creditor has established for the credit being offered. Under the definition, a creditor may withdraw the offer of credit if the consumer does not qualify for the credit. For example, the creditor may withdraw the offer of credit if the consumer does not meet the criteria used to select the consumer for the offer of credit

(i.e., those criteria used by the consumer reporting agency or agencies that performed the prescreening to select those consumers who would receive the offer). In addition, the creditor may withdraw the offer of credit if the consumer does not satisfy any other criteria established by the creditor before the consumer was selected for the offer. When a consumer responds to the offer, the creditor may review a consumer report on the consumer, information provided in the consumer's application or response, and any other information bearing on the creditworthiness of the consumer to determine whether the consumer meets the criteria for the credit product being offered.

A creditor that utilizes prescreening in connection with credit products secured by collateral may condition the offer of credit on the consumer furnishing the collateral that secures the credit. For example, a creditor that uses prescreening to offer consumers credit card accounts secured by deposits may condition the offer of credit on the consumer establishing the deposit account that secures the credit and executing a security agreement. If the consumer responds to the offer of credit but fails to satisfy the security requirements for the credit account, the creditor may withdraw the offer of credit. However, the creditor must indicate to the consumer in the offer the type of security required for the secured credit product being offered.

The definition created by new subsection (l) also provides the same flexibility for prescreening involving insurance. Under the definition, a firm offer of insurance may be withdrawn if it is determined that a consumer responding to the offer does not meet the criteria established for the insurance being offered.

Credit or insurance transaction that is not initiated by the consumer

This term is used throughout the Committee bill to describe prescreening transactions.

Section 402(c) of the bill adds to section 603 of the FCRA new subsection (m) which clarifies the scope of the phrase "credit or insurance transaction that is not initiated by the consumer" for purposes of the prescreening provisions set forth in the bill. Section 603(m) makes it clear that the prescreening provisions of the FCRA do not apply where a consumer report is obtained by a creditor in connection with reviewing or collecting an existing account of the consumer for safety and soundness purposes, even if the creditor subsequently decides to change the credit available to the consumer. Thus, for example, a credit card issuer may obtain a consumer report on a consumer in connection with its regular annual or other review of the consumer's credit card account, and may decide to offer to the consumer a higher credit amount or an additional or improved product, such as a gold card.

Consumer report

Section 402(e) facilitates the sharing of information among entities related by common ownership or affiliated by corporate control by excluding certain information from the definition of "consumer report."

The definition of "consumer report" set forth in section 603(d) of the FCRA is amended by expressly excluding from that definition the sharing of certain types of information among related entities. Under section 603(d)(A), the definition of "consumer report" does not include any communication of information among entities related by common ownership or affiliated by corporate control if the information consists of the transactions or experiences between one of the entities and the consumer to whom the information relates. Thus, section 603(d)(A) makes it clear that the so-called "experience information exception" to the definition of "consumer report" exempts from the scope of the FCRA any communication of such information among related entities regardless of whether the information is communicated directly from one related entity to another or is furnished through another related entity, so long as each of the entities is related by common ownership or affiliated by corporate control.

In addition, section 603(d)(A) makes it clear that the term "consumer report" does not cover the sharing among related entities of any other types of information provided that it is clearly and conspicuously disclosed to the consumer that information may be shared among such entities and the consumer is given the opportunity to direct that the information not be shared among such entities. This provision clarifies that the communication of consumer report information, application information and any other information among affiliated entities is not a consumer report provided that the sharing is disclosed to the consumer and the consumer is afforded the opportunity to opt out of the sharing.

Employment agency communications

Section 402(f) of the Committee bill adds to section 603 of the FCRA new subsection (o) which excludes from the definition of consumer report certain communications by employment agencies.

Nationwide consumer reporting agency

Section 402(g) of the Committee bill adds to section 603 of the FCRA new subsection (p) which sets forth the definition of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. This term is used in various provisions throughout the Committee bill.

Section 403. Furnishing consumer reports; use for employment purposes

USE OF REPORTS FOR BUSINESS PURPOSES

Section 403 amends section 604 of the FCRA concerning the permissible purposes required to access a consumer report. Under current law, consumer reporting agencies may furnish reports, provided that the user has a legitimate business need in connection with a transaction involving the consumer. This section provides that consumer reports may be furnished in connection with business transactions initiated by the consumer.

Current law also allows users to obtain a consumer report "in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the exten-

sion of credit to, or review or collection of an account of, the consumer." This section also allows consumer reports to be furnished in connection with the review of accounts that are not credit accounts. For example, the Committee intends this section to provide a depository institution with the ability to procure a consumer report in connection with a non-credit account, such as a deposit account. Like creditors, banks and others may need to consult a consumer's report in order to determine whether the consumer's current account terms should be modified. For example, the institution may provide more favorable pricing terms after consulting the report. The permissible purpose created by this provision, however, is limited to an account review for the purpose of deciding whether to retain or modify current account terms. It does not permit access to consumer report information for the purpose of offering unrelated products or services.

This section also amends the "legitimate business purpose" provision to allow consumer reporting agencies to furnish information in connection with direct marketing transactions, provided that the consumer has not opted out through the system established under section 404.

Use of reports for employment purposes

Section 604 of the FCRA permits employers to obtain consumer reports pertaining to current and prospective employees. The Committee is concerned, however, that this provision may create an improper invasion of privacy. Section 403 of this bill requires that employers provide prior written disclosure to current and prospective employees that their consumer reports may be procured in connection with their employment. Further, employers must obtain a specific or general written authorization prior to procuring such a report.

Section 403 prohibits a consumer reporting agency from providing a report for employment purposes unless the person obtaining the report certifies to the agency that the required disclosures have been provided to the employee and that the information from the report will not be utilized in violation of Federal or state equal employment opportunity laws. Further, the agency must include with the report a summary of the consumer's rights under the FCRA.

The Committee is also concerned that the ability of employers to obtain consumer reports on current and prospective employees may unreasonably harm employees if there are errors in their reports. Therefore, the Committee bill requires that employers, before taking an adverse action based on a consumer report, provide the current or prospective employee with a copy of the report, a description of the individual's rights under the FCRA, and a reasonable opportunity to respond to any information that is disputed by the consumer. The Committee does not intend to require that employers await the results of a formal, 30-day reinvestigation by the consumer reporting agency before taking action based on a consumer report. Rather, the Committee bill specifies that a reasonable opportunity need not exceed five business days from the date of the receipt of the report by the consumer. However, the Committee does expect that employers will consider information provided by the consumer within the five-business day period.

This section provides an exception from the employer's obligation to provide a reasonable opportunity to respond if the employer has a reasonable belief that the consumer has engaged in fraudulent or criminal activity. The Committee intends this exception to apply only to situations where the employer believes that the fraudulent or criminal activity is ongoing and directly related to the employment involved. In contrast, the section is not intended to eliminate the opportunity to respond in instances where a consumer is denied employment or a promotion because that consumer's report indicates a past history of fraudulent or criminal activity.

Section 404. Use of consumer reports for prescreening and direct marketing; prohibition on unauthorized or uncertified use of information

Section 404(a) permits the use of consumer report information for prescreeningand direct marketing purposes. Both direct marketing and prescreening are activities in which consumer reporting agencies use their credit files to create and sell lists of consumers who meet specifications provided by third parties seeking to offer goods or services. Because these lists are created based on the consumer report files maintained by the agency, the lists themselves are currently considered a series of consumer reports under the FCRA. Therefore, the recipient must have a permissible purpose under the FCRA. To date, the FTC has taken a narrow view of the extent to which the use of consumer report information for prescreening or direct marketing purposes is permissible.

This section expands the ability of consumer reporting agencies to use consumer report information for prescreening and direct marketing. At the same time, however, the bill mandates that consumer reporting agencies create and maintain a system to allow consumers to "opt out" of the prescreening and direct marketing processes. By opting out, consumers can prohibit consumer reporting agencies from releasing their names or other information about their reports for prescreening and direct marketing.

Prescreening

The Committee seeks to balance any privacy concerns created by prescreening with the benefit of a firm offer of credit or insurance for all consumers who meet the criteria for the credit or insurance being offered. While the direct marketing portion of section 404 limits consumer reporting agencies to providing lists that are not based on credit limit, credit payment history, credit balance, or negative information, the Committee understands that such factors must be considered in order to market credit or insurance. For this reason, the prescreening section of the Committee bill allows credit and insurance providers to obtain credit bureau data for credit and insurance transactions not initiated by the consumer based on this more sensitive information. In exchange for allowing credit and insurance providers to obtain credit bureau data based on more sensitive information, however, the section requires that the credit or insurance provider make a "firm offer," as defined in the bill, of credit or insurance to all consumers who meet the criteria for the credit or insurance being offered.

Section 404(a) of the bill adds to section 604 of the FCRA new subsection (c) which sets forth the conditions under which a consumer reporting agency may furnish a consumer report on a consumer to the person requesting the report in connection with a credit transaction that is not initiated by the consumer. Under section 604(c)(1)(A), a consumer reporting agency may furnish a consumer report in connection with such a credit transaction if the consumer authorizes the agency to provide the report to the person obtaining the report. For purposes of this provision, a consumer can authorize the furnishing of the report by notifying the consumer reporting agency directly, by notifying some other entity designated by the consumer reporting agency for that purpose, or by providing authorization to the user of the report. If a consumer provides such an authorization, the agency may furnish a full consumer report on the consumer.

Section 604(c)(1)(B) permits the furnishing of a consumer report in connection with a credit transaction that is not initiated by the consumer where the transaction consists of a "firm offer of credit or insurance," and, in accordance with the new prescreening opt-out requirements set forth in this Act, the consumer reporting agency has established a notification system which permits the consumer to be excluded from consideration for such transactions, and the consumer has not elected to be so excluded.

Section 604(c)(2) specifies the information that a consumer reporting agency may furnish to a creditor in connection with prescreening. First, under section 604(c)(2)(A), the creditor may receive the name and address of each consumer in connection with the prescreening.

Second, 604(c)(2)(B) permits a creditor to receive an identifier for each consumer, such as a number or code, provided that the identifier is not unique to that particular consumer and is used for the purpose of verifying the identity of the consumer. For example, a consumer reporting agency may furnish in connection with prescreening part of the social security number for each consumer. Thus, the creditor may use that number to verify that consumers responding to a prescreened offer were included in the prescreening. This could be accomplished by matching the partial social security number provided by the consumer reporting agency to the corresponding portion of the social security number furnished by the consumer on the response to the offer.

Third, 604(c)(2)(C) provides that a creditor may receive any "other information pertaining to a consumer that does not identify the relationship or experience of the consumer with a particular creditor or other entity." Under (c)(2)(C), a consumer reporting agency could not provide a creditor with a full credit report on prescreened consumers until a consumer actually responds to the creditor's offer. However, (c)(2)(C) does permit a creditor to receive other information to enable the creditor to determine how much credit to offer each consumer while protecting consumer privacy by ensuring that the prescreened report does not identify the consumer's specific credit relationship or experience with particular creditors or other entities.

Direct marketing

Section 404 allows consumer reporting agencies to sell lists for direct marketing transactions not initiated by the consumer. The agency may use a limited amount of information in a consumer's file to create a list, provided that the consumer has not notified the consumer reporting agency in writing or by telephone through the opt-out procedure that the consumer does not consent to such use. The information that may be provided to the user of the list, however, is limited to the names and addresses of specific consumers.

Further, the names and addresses may not be furnished if doing so would disclose "credit payment history, credit limit, credit balance, or any negative information pertaining to the consumer." This second provision effectively limits the criteria which may be used by the consumer reporting agency to select consumers for direct marketing lists to criteria that do not disclose those items.

The Committee intends this provision to safeguard the most sensitive credit information in the consumer's file. The direct marketing provisions of the bill do not apply to "credit or insurance transactions that are not initiated by the consumer."

Opt out

The Committee is aware that some consumers may find that direct marketing and prescreening entail an undesirable invasion of their privacy. Therefore, while this section facilitates prescreening and direct marketing, it creates an "opt-out" procedure through which a consumer may elect to have his or her name excluded from any list provided by the consumer reporting agency under section 604(c)(1)(B) and section 604(d)(1)(B) of the FCRA.

Section 404 provides that a consumer may prevent his or her name from appearing on prescreening or direct marketing lists furnished under section 604(c)(1)(B) or section 604(d)(1)(B) by notifying a consumer reporting agency in writing or by telephone that the consumer does not consent to the furnishing of his or her consumer report in connection with such transactions. Consumer reporting agencies providing prescreening or direct marketing lists must maintain toll-free telephone numbers for consumers to use to notify the agency of their desire to opt-out. In addition, those consumer reporting agencies that compile and maintain files on a nationwide basis, as defined in the bill, must establish a joint notification system to enable consumers to opt-out of lists created by all such agencies operating nationwide with one telephone call. The Committee intends that, to make this system effective, such agencies must publicize the existence and purpose of this joint system in newspapers with nationwide circulation. The consumer's election to opt out will be effective for 2 years following the consumer's notification of the consumer reporting agency, or permanently, if the consumer specified in writing.

Use of information obtained from reports

Section 404(b) prohibits any entity from obtaining consumer report information without a permissible purpose. Further, the Committee bill requires users to certify that purpose. These requirements are intended to fill a gap in existing law. While current law prohibits consumer reporting agencies from providing a consumer

report to a user who lacks a permissible purpose, it is not a violation of current law to obtain the report without a permissible purpose unless the user knowingly employs false pretenses in doing so. This situation has frustrated consumers, enforcement authorities and the consumer reporting agencies by making it difficult to prevent the improper obtaining of consumer reports. By providing an affirmative obligation for users to have a permissible purpose, the Committee intends to provide the FTC, the state law enforcement authorities, and private citizens with recourse against those who unlawfully access consumer reports, regardless of whether or not the user acted under false pretenses.

Specifically, the bill provides that a person may use or obtain information from a consumer report only if the consumer report was obtained for one of the permissible purposes set forth in section 604 of the FCRA and is within the scope of the certification between the person and the provider of the report. The bill, however, does not require separate certifications for each request, but only that the request be within the scope of the applicable certification agreement. Thus, a person who obtains a consumer report will be in compliance with new section 604(f) if the person obtains the report for one of the permissible purposes set forth in section 604, and the report is covered under the person's certification agreement with the provider of the consumer report.

Section 405. Consumer consent required to furnish consumer report containing medical information; furnishing consumer reports for commercial transactions

Section 405 of the bill amends section 604, the permissible purposes section of the FCRA, to require a consumer reporting agency to obtain consumer consent before it furnishes a consumer report containing medical information for employment purposes or in connection with a credit or insurance transaction or a direct marketing transaction. This section works in tandem with section 603(i) of the FCRA which defines the term "medical information" as medical information or records obtained "with the consent of the individual to whom it relates." Together, these two sections protect critical consumer privacy rights in the area of medical information by requiring consumer consent for the collection and the furnishing by a consumer reporting agency of medical information about a consumer. It is not the intent of this section, however, to prohibit consumer reporting agencies from furnishing information in a consumer report about the medical payment history of consumers.

Section 406. Obsolete information and information contained in consumer reports

The Committee intends that consumer reports contain timely as well as accurate information. Section 406 limits the length of time that information may be included in a consumer report and clarifies the type of information that may be reported.

Seven year reporting period

Current law generally prohibits consumer reporting agencies from including in a consumer report accounts placed for collection or charged to profit and loss which antedate the report by more

than seven years. The Committee is concerned that this seven year limitation is ineffective. In some cases, the collection action occurs months or even years after the commencement of the preceding delinquency. Under these circumstances, the consumer reporting agency may maintain the information for seven years beginning on the date that the collection action is first reported. Consequently, the consumer report may contain such information even if the delinquency commenced more than seven years before the date on which the report is provided to a user.

The Committee bill specifies that the seven-year period with respect to information concerning a delinquent account charged to profit and loss, placed for collection, or subjected to a similar action, may begin no more than 180 days after the commencement of the delinquency immediately preceding the collection, charge to profit or loss, or similar action. A creditor is under no obligation to place a delinquent account for collection within a specified period, or initially to report the delinquency. If a collection or similar action is reported, however, the seven year reporting period will commence not later than 180 days after the beginning of the delinquency rather than on the date of any subsequent action. The Committee intends this requirement to apply only to information furnished to a consumer reporting agency more than 455 days after enactment of the Consumer Reporting Reform Act. Information reported to the consumer reporting agency prior to that date will be unaffected.

Additional information on bankruptcy

Section 406 requires consumer reporting agencies to include in any report containing information regarding an individual who has filed bankruptcy, an identification of the chapter of Title 11 of the United States Code under which the consumer filed if that information is provided to the agency by the source of the information. The Committee is aware that many creditors look more favorably upon Chapter 13 filings than filings under other Chapters of Title 11, and this provision ensures that such information is available to such a creditor. In cases where the bankruptcy was withdrawn by the consumer prior to a final judgment this section also requires the agency to indicate in the report, upon receipt of documentation certifying such withdrawal, that the filing was withdrawn.

Indication of closure of account

The Committee is also concerned that consumer reports may not reflect the current status of accounts that have been voluntarily closed by consumers, or may improperly suggest that an account was closed because the consumer did not meet the account's terms. The Committee bill requires creditors to inform consumer reporting agencies when a consumer voluntarily closes a credit account and specifies that the consumer reporting agencies must indicate such information in any subsequent consumer reports containing information about such account. This provision applies only to credit accounts which are closed solely as a result of a voluntary request by the consumer. This provision does not cover, for example, an account which is closed by a creditor as a result of a consumer's de-

linquencies or other abuse of the account, even if the consumer also asks to have the account closed.

Indication of dispute by consumer

The Committee bill also provides that, if a consumer reporting agency is notified pursuant to section 623(a)(3) that information regarding a consumer that was furnished to the agency is disputed by the consumer, the agency must indicate that fact in each consumer report that includes the disputed information.

Section 407. Compliance procedures

Section 407 imposes significant new duties on consumer reporting agencies with respect to certain providers and users of consumer report information. Section 407 requires consumer reporting agencies to provide a notice to providers and users of consumer report information outlining the requirements of the FCRA.

Section 407 also imposes duties upon those persons or businesses who procure consumer reports for the purpose of reselling the information. Such "resellers" are, by definition, consumer reporting agencies, and the Committee intends that they be subject to all the applicable requirements of the FCRA. In addition, the section provides that a person or business may not procure a consumer report for the purpose of reselling the information unless the person discloses to the consumer reporting agency providing the report the identity of the ultimate user and the permissible purpose under which the report will be resold to the ultimate user. The person procuring the report for resale must establish and maintain reasonable procedures to identify the ultimate user of the information, to certify the user's purpose for obtaining the information, to certify that the information will be used for no other purpose, and to verify such information once it has been provided to the consumer reporting agency.

Section 408. Consumer disclosures

All information in the consumer's file required to be disclosed

Under current law, consumer reporting agencies must provide a consumer, upon request and proper identification, with the nature and substance of all information (except medical information) in its files on the consumer. This provision has been interpreted to allow consumer reporting agencies to comply by furnishing consumers with summaries of their reports. The Committee is concerned that such summaries do not provide consumers sufficient access to their reports. Therefore, section 408 explicitly requires consumer reporting agencies to provide, upon request, all information in the consumer's file. The Committee intends this language to ensure that a consumer will receive a copy of that consumer's report, rather than a summary of the information contained therein. This provision also clarifies that the FCRA does not require a consumer reporting agency to make any disclosures to a consumer regarding credit scores, risk scores, or any other scores or predictors relating to the consumer.

More information concerning recipients of reports required

Section 408 also requires that consumer reporting agencies provide to consumers an identification of those persons or businesses (including each end-user identified under section 607(e)(1)) that procured such consumer's report (1) for employment purposes within the previous two years and (2) for other purposes within the previous year. The latter provision expands current law, which requires an identification of all persons who have procured the consumer's report for non-employment purposes during the preceding six months. Section 408 also requires the consumer reporting agency to provide the name (including the trade name, if applicable) and address of each recipient of the report, as well as the recipient's telephone number, if requested by the consumer.

Information regarding prescreening inquiries

The section requires consumer reporting agencies to provide consumers with a record of all recipients of prescreened lists that identified that consumer provided by the agency during the previous year.

Summary of rights

Section 408 requires that consumer reporting agencies include with each disclosure provided to a consumer under section 609 of the FCRA a written summary of the consumer's rights under the FCRA and, if the consumer reporting agency operates nationwide, a toll-free telephone number at which personnel are accessible to consumers during normal business hours. The summary of rights must include a description of the FCRA and the rights of the consumer, an explanation of how the consumer may exercise his or her rights, a list of all Federal agencies responsible for enforcement of the FCRA, including the address and telephone number of each agency, and a statement that the consumer reporting agency is not required to remove accurate derogatory information from a consumer report. The summary of rights also must include a statement that the consumer may have additional rights under state law and that the consumer may wish to contact a state or local consumer protection agency or state attorney general to learn of those rights. The FTC will prescribe the specific form and content of the disclosure.

Form of disclosures to consumer

Section 408 requires consumer reporting agencies to make all required disclosures to consumers in writing. If the agency elects to provide disclosures in an alternative form, it may also do so as long as the consumer authorizes the disclosure, furnishes proper identification, and specifies the form of disclosure. The provision further specifies that such non-written disclosures may be made to the consumer in person, by telephone, by electronic means, or by any reasonable means available from the agency.

Simplified disclosure

To ensure that consumers understand their reports once they receive them, this section provides that the consumer reporting agencies must, within 90 days of enactment, develop a form which shall

maximize the comprehensibility and standardization of such disclosures. The Committee does not intend the maximization standard to be interpreted as a perfection standard. However, the Committee expects that report information will be provided in a form that can be understood by the average consumer.

Section 409. Procedures in case of the disputed accuracy of any information in a consumer's file

The Committee is aware that the consumer reporting system handles almost two billion pieces of data per month and will never be perfectly accurate. Mistakes will occur, and not all of them can be prevented. Section 409 is the heart of the Committee's efforts to ensure the ultimate accuracy of consumer reports by placing important requirements upon consumer reporting agencies after inaccuracies have been detected. Therefore, section 409 is designed to ensure that consumers are able to address problems and correct errors in a timely fashion.

Nothing in section 409 or any other section is intended to require consumer reporting agencies to arbitrate disputes between consumers and credit grantors as to completeness or accuracy of information in the consumer's file.

Reinvestigation procedures

Section 409 requires consumer reporting agencies to reinvestigate disputed information and to record the current status of that information within the later of 30 days after receipt of the initial notice of the dispute from the consumer or 15 days after receipt of additional relevant information from the consumer concerning the dispute. The latter provision will ensure that an agency has a minimum of 15 days to consider any additional information provided in the course of the reinvestigation period. The Committee does not intend this provision to suggest that a consumer has any obligation to submit additional information, however, or that the failure to submit such additional information should be construed against the consumer.

Prompt notice of dispute to furnisher of information

Once a consumer informs a consumer reporting agency of a dispute, the consumer reporting agency must notify the furnisher of the information within five business days. This five business day notification requirement is intended to provide the furnisher with sufficient time within the 30 day reinvestigation period to investigate and verify the information.

Determination that dispute is frivolous or irrelevant

The section allows a consumer reporting agency to terminate a reinvestigation if the agency reasonably determines that the dispute by the consumer is frivolous or irrelevant. The Committee does not intend to permit consumer reporting agencies to use this determination as a shield from the reinvestigation requirement.

Not later than five business days after making a determination that a dispute is frivolous or irrelevant, the agency must mail a written notice to the consumer indicating such determination, containing the reasons for the agency's determination. The notice also

must identify information required to investigate the disputed information. The identification of such information may consist of a standardized form describing the general nature of such information. The Committee expects that a consumer will be afforded an opportunity to respond to those concerns that led the consumer reporting agency to make its determination.

The Committee recognizes that a consumer may submit information after a reinvestigation that is substantially similar to information that the consumer has submitted during the reinvestigation process. The Committee expects that the consumer reporting agency may not consider a subsequent submission in such circumstances.

Consideration of consumer information

In conducting the reinvestigation, the agency must consider any relevant information furnished by the consumer during the 30 day period. If the consumer submits additional information more than 30 days after the initial dispute is filed, the Committee expects that such information will be treated as a new dispute.

Deletion of inaccurate or unverifiable information

If the reinvestigation reveals that the information being disputed is inaccurate or cannot be verified within the 30 to 45 day time period mandated by this section, the agency must delete the information. The information deleted shall consist solely of the information that was disputed by the consumer and shall not include any portion of the same item that was not disputed. This section further requires consumer reporting agencies to maintain reasonable procedures to ensure that such information does not reappear in the consumer's file or on subsequent reports furnished to users.

Reinsertion of previously deleted material

The Committee is aware that consumers experience considerable frustration when previously deleted information reappears. In addition to requiring consumer reporting agencies to establish procedures to prevent the deleted information from reappearing, section 409 prohibits a consumer reporting agency from reinserting information in the consumer's file following a deletion unless the furnisher of information certifies that the information is completed and accurate.

Within five business days of the reinsertion, the agency must notify the consumer of the reinsertion in writing or by other means if authorized by the consumer and acceptable to the agency. As part of, or in addition to, the notification, the agency must provide to the consumer, in writing, a statement that the information has been reinserted, that the consumer has the right to add a statement to the file disputing the accuracy or completeness of the information in the file, and the name, business address, and telephone number of the furnisher of the information.

Notice of results of reinvestigation

Regardless of the outcome of the reinvestigation, the consumer reporting agency must provide to the consumer a written notification of the results within five business days of completing the

reinvestigation. The notification must include the following: (1) a statement that the reinvestigation is completed; (2) a consumer report that is based on the consumer's file as that file is revised following the reinvestigation; (3) a description or indication of any changes made to the report as a result of the reinvestigation; (4) a notification that the consumer has the right to add a statement to the file disputing the information; and (5) a notification of the consumer's right to request that the agency furnish either notification of the modification or a summary of the statement submitted by the consumer to any person designated by the consumer who has received a copy of the consumer's report for employment purposes in the previous two years or for other purposes within the previous six months.

In addition, if the reinvestigation results in finding that the disputed information is accurate and complete, the notification must include an indication that the consumer may request a description of the procedure used to make the finding and the name, business address, and telephone number of the furnisher of the information. The Committee assumes that the consumer may be dissatisfied because the information has not been changed and believes that such a situation will be best resolved by enabling the consumer to contact directly the furnisher of that information. At the same time, if the information is found to be inaccurate and then corrected, the consumer is unlikely to be interested in the procedure used to make the finding or the name and address of the furnisher. In the event that the consumer desires such information, the consumer may receive it upon request, and the consumer reporting agency must provide the information within 15 days of receiving such request.

Expedited dispute resolution

The consumer reporting agency need not comply with paragraphs (2), (6) and (7) of section 611(a) if the agency deletes the disputed information from the consumer's file within three business days of being notified of the dispute, promptly notifies the consumer by telephone, provides written confirmation of the deletion and a copy of a consumer report on the consumer that is based on the consumer's file after the deletion within five business days after making the deletion, and including in the telephone notice, or in a written notice accompanying the confirmation and the consumer report, a statement of the consumer's right to request under subsection (d) that the agency furnish notifications under that subsection. In this situation the agency's telephone contact with the consumer and provision of a consumer report on the consumer eliminates the necessity to provide written notification of the outcome of the reinvestigation. The Committee believes that this provision will ease any compliance burden on reporting agencies who may choose to simply delete certain information rather than go through the reinvestigation process. The Committee assumes that such a deletion will benefit the overwhelming majority of consumers because a consumer is unlikely to dispute positive information.

Section 410. Charges for certain disclosures

Reasonable charges

Section 410 allows a consumer reporting agency to impose a reasonable charge for making a disclosure pursuant to section 609 (which shall not exceed $8), and certain provisions of section 611 (which shall not exceed the charge imposed on each designated recipient for a consumer report). The section prohibits charges for any other notification or disclosure required by this title.

Free consumer reports

The Committee believes that consumers must have access to their report information in order to identify problems. Section 410 expands the circumstances under which a consumer is entitled to a free report.

The section enhances a consumer's right to a free report when an adverse action is taken based on a consumer report. For 60 days following the consumer's receipt of notice of an adverse action, that consumer is entitled to a free copy of his or her report upon written request. This provision amends current law, which prohibits a charge for a consumer report only for 30 days following an adverse action. The section also provides that a consumer reporting agency must provide a free consumer report to a consumer who has received notification from a debt collection agency affiliated with the consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected.

Finally, the section allows a consumer to obtain a free copy of that consumer's report once during any 12-month period if the consumer certifies in writing that the consumer is unemployed and intends to apply for employment within 60 days, is a recipient of public welfare, or has reason to believe that the file contains inaccurate information due to fraud.

Section 411. Duties of users of consumer reports

Adverse actions

The Committee is concerned that consumers are often unaware of their rights in the event of an adverse action. The FCRA currently requires that a user who takes an adverse action in connection with a consumer report must notify the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency that provided the report. The Committee believes that such information is incomplete, however, in that it fails to inform the consumer of his or her rights, including the right to a free report for 60 days after an adverse action has been taken.

Section 411 requires a user of a consumer report who takes an adverse action based in whole or in part upon that report to provide several disclosures to the consumer. The user must provide the following in written or electronic form: a notice of the adverse action; the name, address, and telephone number (including a toll-free number if the agency operates nationwide) of the agency that furnished the report; a statement that the consumer reporting agency did not make the decision to take the adverse action; a no-

tice of the consumer's right to a free copy of the report for 60 days, upon written request, from the agency that furnished the report; and a notice of the consumer's right to dispute with the agency the accuracy or completeness of any information in the report furnished by the agency.

Disclosures for prescreening and direct marketing

The Committee is aware the bill expands the ability of consumer reporting agencies to provide consumer reports for the purpose of prescreening and direct marketing. At the same time, the Committee bill offers consumers the opportunity to opt-out and prohibit consumer reporting agencies from furnishing information to users for prescreening or direct marketing. To further protect consumers, this section requires that a notice of the consumer's right to opt-out be included with any prescreening or direct marketing solicitation. The Committee understands that consumers will not receive notification of their right to opt out until they receive a solicitation.

Prescreening disclosure

Section 411 adds to section 615 of the FCRA new subsection (d) which imposes certain requirements on creditors that, in connection with a credit transaction that is not initiated by the consumer, engage in prescreening by using a consumer report obtained for that purpose. Section 615(d) applies only when a prescreened list is obtained from a consumer reporting agency under section 604(c)(1)(B).

Section 615(d)(1) provides that a creditor who uses a consumer report in connection with a credit transaction which is not initiated by the consumer and which consists of a firm offer of credit must, when providing a written solicitation to the consumer in connection with the transaction, clearly and conspicuously include on or with the solicitation a statement that information contained in the consumer's consumer report was used in selecting the consumer for the solicitation. The statement also must disclose that the consumer received the offer because the consumer satisfied the criteria for creditworthiness under which the consumer was selected for the offer. This disclosure provision does not require the creditor to disclose any of the criteria established by the creditor, but simply reflects the fact that, based on the information available to the creditor (typically through consumer reporting agencies or demographic firms) at the time the prescreening was conducted, the consumer appeared to meet such criteria.

The statement included on or with the solicitation also must indicate, to the extent applicable, that the credit may not be extended if the consumer responds to the offer and does not meet the criteria used to select the consumer for the offer, or does not satisfy other applicable criteria, or does not furnish any collateral required by the creditor. This disclosure will be required for creditors who, as is permitted under this bill, obtain a new consumer report on each consumer responding to the offer and review that report as well as information provided by the consumer (e.g., the consumer's employment status and income) and other information bearing on creditworthiness to determine whether the consumer actually meets the

criteria established by the creditor for the offer. This disclosure is intended to avoid misleading consumers.

Finally, the statement on or with the solicitation must disclose that the consumer has the right to prohibit information contained in the consumer's file with any consumer reporting agency from being furnished for prescreening purposes and either that the consumer may exercise that right by notifying the joint notification system established by the nationwide consumer reporting agencies under section 604(e)(6), or, in the case of prescreening performed by a consumer reporting agency not covered by the joint notification system, by contacting that agency's notification system. The statement must include the address and toll-free telephone number of the appropriate notification system.

Section 615(d)(3) requires that a creditor who is subject to section 615(d)(1) must maintain a record of the criteria used by the creditor to determine whether to extend credit in connection with solicitations covered by section 615(d)(1), until the end of the 3-year period beginning on the date the particular solicitations are transmitted to consumers.

The bill also establishes similar requirements for a person who uses a consumer report that is provided to the person under section 604(c)(1)(B) in connection with an insurance transaction that is not initiated by the consumer.

Direct marketing disclosure

This section imposes similar disclosure requirements upon entities obtaining consumer report information under section 604(d)(1)(B) for direct marketing. Such a direct marketing solicitation must include a clear and conspicuous written statement indicating that the information concerning the consumer was provided by a consumer reporting agency and that the consumer has the right to opt-out by contacting the consumer reporting agency in writing or by telephone, thereby prohibiting a consumer reporting agency from using the consumer's information in the future for direct marketing transactions. Further, the disclosure must provide the name, address and toll-free number of the consumer reporting agency.

Section 412. Civil liability

Section 412 amends the sections of the FCRA pertaining to civil liability for willful and negligent non-compliance with the Act. In a situation where a person negligently violates the FCRA, a consumer is entitled to recovery in an amount equal to actual damages sustained by the consumer as a result of the failure to comply with the FCRA. In cases of willful non-compliance, the consumer is entitled to recover either: (i) the actual damages sustained by the consumer as a result of the failure to comply with the FCRA; or (ii) damages in an amount ranging from $100 to $1,000.

Section 412 also provides that a natural person who obtains a consumer report under false pretenses or knowingly without a permissible purpose may be held liable for actual damages sustained by the consumer, or $1,000, whichever is greater. In addition, section 412 provides that a consumer reporting agency is entitled to recover from any person who obtains a consumer report from the

agency under false pretenses or knowingly without a permissible purpose an amount equal to actual damages it sustained as a result of the improper obtaining of the report or $1,000, whichever is greater.

The Committee is aware of concerns expressed by furnishers of information and the consumer reporting agencies that these provisions will result in unwarranted litigation. At the same time, the Committee does not want to disadvantage consumers who have been wronged. To balance the rights of consumers with those of consumer reporting agencies and furnishers, section 412 provides that the prevailing party may recover reasonable attorney's fees on a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with a civil liability action under FCRA was filed in bad faith or for purposes of harassment. The Committee intends this provision to apply to both plaintiffs and defendants.

Section 413. Responsibilities of persons who furnish information to consumer reporting agencies

Currently, the FCRA contains no requirements applying to those entities which furnish information to consumer reporting agencies. Section 413 imposes certain obligations upon those furnishers of information to consumer reporting agencies. The Committee believes that bringing furnishers of information under the provisions of the FCRA is an essential step in ensuring the accuracy of consumer report information.

General

This section provides that an entity shall not furnish any information to a consumer reporting agency if the person knows that the information is incomplete or inaccurate.

Section 413 adds to the Fair Credit Reporting Act new section 623 which sets forth the responsibilities of those entities that regularly furnish information to consumer reporting agencies. Section 623(a)(1) provides that a person may not furnish any information to a consumer reporting agency if the person "knows" that the information is incomplete or inaccurate. Section 623(a)(1) is intended to provide protection to a consumer in the circumstance where such a person actually knows that information furnished by that person to a consumer reporting agency is inaccurate. Section 623(a)(1) is intended to provide protection without having a chilling effect on the free flow of credit information. For example, if a person determines through an internal audit that information in its records on a consumer is wrong, that information may not be furnished to a consumer reporting agency. Similarly, if a consumer uses procedures reasonably established by a creditor to notify the creditor that information furnished to a consumer reporting agency by the creditor is inaccurate, and the information in fact is inaccurate, the creditor may not subsequently furnish the information to a consumer reporting agency. On the other hand, section 623(a)(1) does not apply where a consumer attempts to notify the creditor of an error without using procedures established by the creditor for such notifications. For example, section 623(a)(1) would not apply to a creditor if a consumer makes a notation on a payment stub

claiming a consumer reporting error or indicates to one of a retail credit grantor's sales clerks that information furnished by the creditor to a consumer reporting agency is erroneous. Under such circumstances, the creditors would not "know" that the information is incomplete or inaccurate.

Duty to correct and update

This section requires any furnisher of information to correct and update information previously furnished to a consumer reporting agency that the furnisher determines is inaccurate. This provision creates an affirmative obligation for furnishers of information to correct such information where the furnisher determines that the information is wrong.

Duty to provide notice of continuing dispute

If any information provided by a furnisher continues to be disputed by a consumer, the furnisher of that information must include with that information a notice of the dispute. This provision applies to information that is disputed under section 611 of the FCRA (amended by section 409 of the Committee bill).

Duty to provide notice of closed accounts

Section 413 requires a person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency concerning a consumer who has a credit account with that person to notify the agency when the account is voluntarily closed by the consumer. This provision is intended to complement the new requirement of section 605 of the FCRA (as amended by section 406 of the Committee bill) that a consumer reporting agency indicate in a consumer report if an account has been voluntarily closed by the consumer. Under this provision, the information must be furnished with the information regularly furnished by the person to the consumer reporting agency for the period in which the account is closed. This provision applies only to credit accounts which are closed solely as a result of a voluntary request by the consumer. This provision does not cover, for example, an account which is closed by a creditor as a result of the consumer's delinquencies or other abuse of the account, even if the consumer also asks to have the account closed.

Duty to provide notice of delinquency of accounts

This provision requires a creditor, when furnishing information concerning a delinquent account being placed for collection, charged to profit or loss, or subjected to a similar action, to within 90 days after furnishing the information, notify the agency of the month and year of the commencement of the delinquency that immediately preceded the action. The creditor is under no obligation to place the delinquent account for collection within a specified period, or initially even to report the delinquency. If the creditor later commences a collection action, however, and provides such information to a consumer reporting agency, the creditor must provide the month and year of the delinquency immediately preceding the action. This information will provide the consumer reporting agency with a reference date which it must use to determine obsolescence

under section 605 of the FCRA (as amended by section 406 of the Committee bill).

Likewise, if an account is placed for collection with several different collection agencies, the reporting period will begin upon the same reference period.This requirement applies only to information furnished more than 455 days after enactment these provisions. Information which is reported prior to that time will be unaffected by this provision.

Duties of furnishers upon notice of dispute

In addition to the duties of furnishers of information concerning the initial provision of information, under section 623(b), a person who has furnished information on a consumer to a consumer reporting agency which subsequently is disputed by the consumer under section 611 of the FCRA must complete an investigation with respect to the disputed information and report to the consumer reporting agency the results of that investigation before the end of the 30-day period set forth in 611(a)(1)(A), or the additional 15-day period set forth in section 611(a)(1)(B), whichever is applicable. In addition, the person must review relevant information submitted to the consumer reporting agency by the consumer and provided to the person in accordance with section 611(a)(2).

Limitations

Section 623(c) limits the remedies available for, and enforcement powers with respect to, violations of section 623(a). Section 623(c) provides that only the agencies listed in section 621 are authorized to bring any action for a violation of section 623(a). Actions brought by such agencies for violations of section 623(a) may be brought only under section 621. No private right of action may be brought for any violation of section 623(a).

Section 414. Investigative consumer reports

Section 414 of the bill establishes new requirements for investigative consumer reports. Under the FCRA, "investigative consumer report" is a defined term. Generally, it is a consumer report that contains information on a consumer's character, general reputation, personal characteristics, or mode of living obtained through interviews with neighbors, friends, or associates of the consumer or with others who may have knowledge concerning the items of information contained in the report. Because an "investigative consumer report" is a consumer report, all requirements in the FCRA apply to these reports. Section 414 of the bill affords consumers new protections with respect to these reports because of the subjective nature of the information they may contain.

The bill amends section 606 of the FCRA, which generally provides that a person may not procure or cause to be prepared an investigative consumer report unless the consumer is provided certain written disclosures. Under the bill, consumer reporting agencies may not prepare or furnish an investigative consumer report unless they have received a certification from the person who requested the report that the required disclosures have been or will be made.

The bill further amends section 606 to prohibit consumer reporting agencies from making an inquiry for the purpose of preparing an investigative consumer report on a consumer where the inquiry, if made by an employer or prospective employer, would violate any applicable federal or state equal employment opportunity law or regulation. Consumer reporting agencies are also prohibited from furnishing an investigative consumer report that includes public record information—such as records of arrests, convictions or tax liens—unless the agency has verified the accuracy of the information within the 30-day period ending on the date the report is furnished. This general rule for investigative consumer reports that contain public record information is not intended to affect the applicability of section 613 of the FCRA which creates a special rule for all consumer reports that contain public record information, where such reports are furnished for employment purposes.

Section 414 of the bill further amends section 606 to prohibit a consumer reporting agency from preparing or furnishing an investigative consumer report containing information adverse to the consumer obtained through personal interviews with neighbors, friends, or others who have knowledge of such item of information unless (1) the agency has followed reasonable procedures to obtain confirmation of the information from an additional source that has independent and direct knowledge of the information or (2) the person interviewed is the best possible source of the information. This provision is intended to help guard against unsubstantiated information in investigative consumer reports. For example, if a consumer reporting agency preparing an investigative report is informed by a consumer's neighbor that the consumer fails to pay rent on time, the agency would have to make reasonable efforts to obtain confirmation of that information from a person with independent and direct knowledge—in this case the consumer's landlord.

Section 415. Increased criminal penalties for obtaining information under false pretenses

Section 415 of the bill increases the criminal penalties that may be imposed under sections 619 and 620. Section 619 imposes penalties on persons who obtain information from a consumer reporting agency under false pretenses. Section 620 provides for penalties against any officer or employee of a consumer reporting agency who knowingly or willfully provides information from the agency's files to a person not authorized to receive such information.

Section 416. Administrative enforcement

Section 416 amends the administrative enforcement section of the FCRA (section 621) to enhance the FTC's enforcement authority with respect to entities within its jurisdiction. By providing the FTC with the power to enforce provisions of this title in the same manner as if the violation had been a violation of any FTC trade regulation rule, the Committee gives the FTC the authority to seek civil money penalties for violations of the Act, unless other exceptions apply. This authority is consistent with the FTC's authority to seek civil penalties under the Equal Credit Opportunity Act and the Fair Debt Collection Practices Act.

However, section 416 limits the authority of the FTC to seek, and the courts to impose, any civil penalty on a person for a violation of section 623(a)(l). Specifically, no civil penalty may be imposed on a person for a violation of section 623(a)(l) unless: (i) the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action brought by or on behalf of the FTC; and (ii) the person has violated the injunction or order. Moreover, no civil penalty may be imposed for any violation occurring before the date of the violation of the injunction or order.

This section also clarifies that enforcement of the FCRA in connection with entities that are subject to enforcement under section 8 of the Federal Deposit Insurance Act will be conducted by the regulatory authorities specified in the Federal Deposit Insurance Act.

Section 417. State enforcement of Fair Credit Reporting Act

Section 417 amends section 621 of the FCRA by adding a new subsection (c) that permits state officials to enforce the FCRA. This subsection is intended to enhance the states" ability to address consumer reporting issues within each state. State attorneys general are frequently the first governmental agency to which consumers turn when they experience consumer reporting problems.

Section 621(c)(1)(A), as added by the bill, permits the chief law enforcement officer of a state, or an official or agency designated by a state, to bring an action to enjoin violations off the FCRA. Under section 621(c)(1)(B), any such state official may also bring an action on behalf of its residents to recover damages for which a defendant is liable to such residents under the civil liability provisions of the FCRA as a result of a negligent or willful violation of the FCRA or damages of not more than $1,000 for each such violation. The Committee intends that no action brought by a state official under section 621(c)(1)(B) will be deemed a class action by virtue of the state seeking to recover damages on behalf of its residents.

Although section 623(c), as added by the bill, bars private citizens from bringing suit against furnishers of information for violations of certain duties imposed on them, this bar does not apply to an appropriate state official who brings an action, under section 621(c)(1)(B), on behalf of state residents for violations of section 623(a)(2), (3),(4) or (5). In such actions, the state could recover damages, which would be awarded to its injured citizens, for which the furnisher would have been liable to those citizens under the FCRA but for section 623(c).

Actions brought under 621(c)(1)(A) and 621(c)(1)(B) may be brought in any appropriate United States district court or in any other court of competent jurisdiction. Any action that may be brought under section 621(c) is in addition to whatever actions and remedies may be available under state law.

Under section 621(c)(2), as amended by the bill, a state is required to serve written notice to the FTC or the appropriate federal regulator prior to filing an action under 621(c)(1)(A) or 621(c)(1)(B). If prior notice is not feasible, the state must serve such notice immediately upon instituting the action. The FTC or appropriate reg-

ulator may appear as an intervenor in any state's action and my file appeals.

Section 621(c)(3) provides that, for purposes of bringing an action under section 621(c), nothing in the section shall prevent the chief law enforcement officer of a state or an official or agency designated by a state from exercising the powers conferred on these officials by state law to conduct investigations, administer oaths or affirmations, or to compel the attendance of witnesses or the production of evidence. Under section 621(c)(4), whenever the FTC or other appropriate federal regulator has instituted a civil action for violation of the FCRA, no state may, during the pendency of the action, bring an action under section 621(c) against any defendant named in the FTC's or regulator's complaint for any violation of the FCRA alleged in the complaint.

Section 621(c)(5) provides that a state may not bring an action under section 621(c) against a person for a violation of section 623(a)(1) unless the person has been enjoined from committing the violation, in a action previously brought by the state under section 621(c)(1)(A), and the person has violated the injunction. In any action brought by a state for the violation of such an injunction, the state may not recover any amounts for any violation incurred before the date of the violation of the injunction on which the action is based.

Section 418. Federal Reserve Board authority

Section 418 of the bill adds to section 621 a new subsection (e) which gives authority to the Federal Reserve Board to issue interpretations of the FCRA with respect to financial institutions or to the holding companies and affiliates of such institutions, in consultation with other specified federal banking regulatory agencies.

Section 419. Preemption of State law

Section 419 amends section 623 of the existing FCRA, redesignated as section 624 by this Act. Section 624 provides that certain provisions of the FCRA preempt any corresponding provisions of state law. More specifically, under section 624, no state or local authority may impose any requirement, prohibition or other provision with respect to any subject matter regulated under Section 604(c) or (e) relating to prescreening. Section 604 (c) and (e), among other things, provide that a consumer reporting agency may furnish prescreened lists in connection with a firm offer of credit or insurance, provided that the consumer reporting agency has established the opt-out notification system required under section 604 and the consumer has not opted out. Section 604 also specifies the information that a consumer reporting agency may furnish on a prescreened list. Section 624 also preempts any state or local provision relating to the definition of "firm offer of credit or insurance" set forth in the Act. In short, under section 624, any state or local authority is precluded from employing or establishing any provisions relating to any aspect of prescreening.

Section 624 also preempts any state or local law relating to the subject matter of section 611, regarding the time periods for reinvestigation of consumer disputes and the notices established for

such reinvestigation, except that such preemption does not apply to any state law in effect on the date of enactment of this Act.

In addition, section 624 completely preempts any state or local provision relating to the subject matter of section 615(a) and (b), regarding the duties of a person who takes any adverse action with respect to a consumer. Similarly, section 624 preempts any state or local provision relating to section 615(d), regarding the duties of a person who uses a consumer report in connection with any credit or insurance transaction that is not initiated by the consumer and that consists of a firm offer of credit or insurance. Further, section 624 preempts any state or local provision relating to the subject matter of section 615(e), regarding the duties of a person who uses a consumer report in connection with any direct marketing transaction that is not initiated by the consumer.

Moreover, section 624 preempts any state or local provision relating to the subject matter of section 605 relating to information contained in consumer reports, except that such preemption does not apply to any state law in effect on the date of enactment of this Act.

In addition, section 624 preempts any state or local law with respect to the exchange of information among affiliated persons and preempts any state or local law with respect to the form and content of any disclosures required to be made under section 609(c). Finally, section 624 preempts any state or local law relating to section 623(b)(2), except that such preemption does not apply to any state law in effect on the date of enactment of this Act.

By preempting state and local provisions relating to the subject matter regulated by these provisions of the FCRA, section 624 establishes the FCRA as the national uniform standard in these areas. This section recognizes the fact that credit reporting and credit granting are, in many aspects, national in scope, and that a single set of Federal rules promotes operational efficiency for industry, and competitive prices for consumers. However, section 624 does not supersede any settlement, agreement, or consent judgment between any state attorney general and any consumer reporting agency in effect on the date of enactment of this Act, and does not supersede any provision of state law which is enacted after January 1, 2004, states explicitly that the provision is intended to supplement this Act, and gives greater protection to consumers than is provided under this Act.

Section 420. Action by FTC and Federal Reserve Board

While the Committee has included preemption provisions in order to provide for national uniformity in many of the disclosures and procedures required by the provisions in this bill, the Committee is concerned that consumers must be protected adequately and that the protections should continue to evolve as technology and the economy change. Therefore, section 420 provides that the FTC may, after opportunity for comment and consultation with state and Federal agencies, impose on entities subject to FTC jurisdiction more stringent requirements than those created by several of the sections of this bill that are preempted by section 419. In particular, the FTC may impose more stringent requirements in the areas

of reinvestigation time periods, adverse action disclosures, prescreening disclosures, and the notices of consumers" rights.

The Committee has provided the FTC with the authority to modify these provisions to ensure that the disclosures and procedures required by the bill remain effective to the greatest extent practicable. The Federal Trade Commission has suggested, for instance, that the 30 day reinvestigation period may be unnecessarily long in the future as technology allows reinvestigations to be accomplished more quickly. The Committee has included this provision to enable the Commission to shorten the 30-day period if it becomes necessary. Any modifications adopted by the FTC apply only to entities within the jurisdiction of the FTC. The bill also authorizes the FRB to impose more stringent requirements on persons described in paragraphs (1), (2), of (3) of section 621(b) of the FCRA or on the holding companies and affiliates of such persons.

Additionally, the Committee understands that states have the power to protect their own citizens, including protection from abuses in the credit reporting industry. Therefore, the FCRA, as amended by the Committee bill will not infringe upon the rights of states to legislate more stringent requirements that fall outside the scope of those areas specifically preempted to the extent such requirements are not inconsistent with any provisions of the FCRA.

Section 421. Amendment to Fair Debt Collection Practices Act

This provision amends Section 807(11) of the Fair Debt Collection Practices Act. It is intended to harmonize inconsistent judicial interpretations regarding Section 807(11). A similar provision was included in S. 783, as reported by the Committee during last Congress, and the current language was the product of negotiations between House and Senate Banking Committee staff. Many of the provisions agreed by the staffs during these negotiations were included in S. 709 as introduced this Congress. Most of these provisions were likewise incorporated in Title IV of this bill; the provision incorporated in Section 421 was amongst these provisions.

Section 422. Furnishing consumer reports for certain purposes

Section 422 sets forth a provision that allows agencies authorized by law to enforce child support orders to obtain consumer reports for the purpose of establishing child support obligations and determining the appropriate level of payments. The Committee believes that this provision will result in a more efficient and cost-effective process for obtaining reports against parents who fail to provide court-ordered child support payments.

This provision further provides that the person who is the subject of the consumer report must be provided 10 days prior written notice that the report will be requested, and also provides that consumer reports obtained in furtherance of establishing child support payment obligations cannot be used or shared by the state or local agency for any other proceedings. In addition, the provision requires that the state or local agency take steps to maintain the confidentiality of consumer reports.

Section 423. Disclosure of information and consumer reports to FBI for counter-intelligence purposes

This section creates a new section 625 which grants the Federal Bureau of Investigation the authority to obtain certain information about a consumer when investigating foreign counterintelligence activities.

Since the late 1980's, the FBI has been seeking each year to include in the House and Senate intelligence authorization bills a "national security letter" exemption from the FCRA to require consumer reporting agencies to provide the FBI with consumer reports of suspected terrorists upon a certification by the Director of the FBI or the Director's designee. The House and Senate committees have repeatedly refused to grant the FBI this extraordinary authority. Because of the recent and notorious terrorist activities in the United States, the Committee believed that giving the FBI additional, but limited, authority to obtain consumer information and reports on certain suspects would be appropriate on a temporary and experimental basis.

This section is intended to afford the FBI more ready access to consumer information, but only upon a certification or, if seeking a consumer report, a showing in court that: (1) the consumer information is necessary for the conduct of an authorized foreign counterintelligence investigation and, if seeking more than identifying information (which requires a different showing), (2) there are specific and articulable facts giving reason to believe that the consumer about whom information is sought is a foreign power or an agent of a foreign power and is engaging or has engaged in international terrorism or clandestine intelligence activities that involve or may involve a violation of criminal statutes. With new section 625, the Committee did not extend to the FBI unchecked authority to seek consumer information on suspected individuals, as would be the case under the national security letter exemption, but rather gave the agency a streamlined process for obtaining such information where warranted.

Furthermore, in response to the FBI's stated concerns about leaks in the course of counterintelligence investigations, the Committee provides that court actions to obtain consumer reports under section 625 be conducted in camera.

Section 625 instructs the FBI to report to the House and Senate intelligence committees and banking committees on a semiannual basis about the use of this section. The FBI's authority to obtain consumer information and reports under section 625 expires 5 years after the date of enactment of these amendments to the FCRA.

Section 424. Effective dates

Section 424 sets forth the effective dates for amendments made by this title. In addition, section 424(c) provides that any person or other entity that is subject to the requirements of the Act may, at its option, comply with any provision of this Act prior to the effective date of the relevant provision, provided that such person complies with each of the corresponding provisions of the Act which relate to that particular provision. For example, this section would allow creditors to voluntarily comply with the prescreening provi-

sions of the Act prior to the effective date of the Act, provided that the credit bureau which furnishes the prescreening list complies with all applicable prescreening requirements of the Act and the creditor furnishes the prescreening notice required under section 615(d).

Section 425. Relationship to other law

Section 425 provides that none of the provisions of this title shall supersede or otherwise affect section 2721 of title 18, United States Code.

Section 501. Short title

Section 502. Federal Deposit Insurance Act amendment

Section 502 amends the Federal Deposit Insurance Act to clarify that federal banking agencies are not subject to strict liability for the release of hazardous substances on property acquired through receivership, conservatorship, liquidation, winding up the affairs of an insured depository institution or its subsidiary, or through criminal, civil or administrative enforcement proceedings. An agency may be held liable if it caused or contributed to the release of the hazardous substance. Federal banking agency liability under state law is limited to the value of the agency's interest in the property. Further, the agency may negotiate with the State for a settlement of property.

This section also provides that the immunity of the federal banking agency extends to first subsequent purchaser of the property; unless the purchaser would otherwise be liable due to a prior or affiliated relationship with the property; a failure to take reasonable steps to stop the release or threatened release to protect the public health and safety; or the fact that subsequent purchasers caused or contributed to the release of the hazardous substance on the property. If, however, a federal or state environmental agency orders the federal banking agency to remediate or take corrective action due to the subsequent purchaser's failure to take reasonable steps to do so, the subsequent purchaser must reimburse the federal banking agency for the cost of the clean-up (to the extent that the clean-up increased the fair market value of the property).

In addition, neither the federal banking agency or the subsequent purchaser may be subject to a lien for damages existing at the time of the transfer of the property. The federal banking agency is exempted from any law requiring the agency to grant any covenants to remediate pursuant to their acquisition of a property.

Section 503. CERCLA amendments

Lender liability

Section 503 clarifies the liability of lenders under CERCLA or Subtitle I of the Solid Waste Disposal Act for the release or threatened release of a hazardous substance on property: held or controlled by the lender through foreclosure; subject to a security interest; or held, subject to control, pursuant to terms of a lease or extension of credit. Lenders are only liable for the actual benefit conferred upon the lender by the removal of the hazardous sub-

stance. This limitation does not apply, however, if the lender caused or contributed the release of the hazardous substance.

This section also directs the Administrator of the Environmental Protection Agency, after consultation with the FDIC, to publish guidelines 180 days from enactment of this section to assist lenders in developing adequate procedures to evaluate environmental risk and damage of property before extending credit.

Fiduciary liability

CERCLA is also amended to provide that fiduciaries may not be held liable for damages in excess of the assets held in the fiduciary capacity that are available to indemnify the fiduciary. This limitation does not apply where a person is liable under CERCLA independent of any action or ownership as a fiduciary. A fiduciary may also be personally liable when its failure to exercise due care caused or contributed to the release of the hazardous substance. A fiduciary may not, however, be held personally liable for: undertaking action directed by an on-scene coordinator or undertaking corrective action; addressing the problems of the hazardous substance by lawful means; ending the fiduciary relationship; including a term or condition relating to compliance with environmental law in the fiduciary agreement; monitoring or undertaking inspection of the property; providing financial or other advice to involved parties; or altering the terms and conditions of the financial relationship. Fiduciaries are also not liable for declining to take any of these actions.

Definition of owner or operator

The section defines the term "owner or operator" under CERCLA as excluding the United States, its departments, agencies, instrumentalities, or any conservator or receiver appointed by them. Exempt entities must acquire the property by receivership, conservatorship, liquidation, in connection with the exercise of any seizure or forfeiture, or pursuant to law, and must not participate in management that results in the release of hazardous substances.

Individuals not participating in management are excluded from the definition of "owner or operator" even if they hold an indicia of ownership in the property primarily for the purpose of protecting their security interest. "Owner or operator" also does not include persons who did not participate in management of a vessel or facility prior to the foreclosure even if subsequent to foreclosure measures are taken to preserve, protect or prepare the vessel or facility for resale as long as the divestment takes place in a commercially reasonable time and under commercially reasonable terms.

Definition of participation in management

The section clarifies that "participation in management" requires action in management or organizational affairs, not just having influence or the unexercised right to control. It includes a person who exercises decision-making control over environmental compliance, is responsible for hazardous substance handling, or exercises day-to-day decision-making control with respect to environmental compliance or other operational aspects. "Participation in management" does not include: action taken prior to the creation of the security

interest; holding or releasing such interest; including a condition for environmental compliance in a contract; monitoring or undertaking terms and conditions on a credit agreement; monitoring inspections of the facility; requiring or conducting action to correct the release of a hazardous material; agreeing to alter the terms of the credit or security interest; or exercising other remedies for breach, so long as these activities do not rise to the level of "participating in management".

Section 504. Solid Waste Disposal Act amendments

Section 504 amends the Solid Waste Disposal Act to incorporate by reference the changes made by section 503 to CERCLA regarding lender and fiduciary liability and the definition of "owner or operator".

Section 505. Effective date

The amendments made by these sections are applicable to any claim not finally adjudicated as of the date of enactment.

Section 601. Electronic Fund Transfer Act clarification

Clarifies that the Electronic Fund Transfer Act (EFTA) does not apply to stored value cards or value stored on such cards to the extent that such devices are used as a cash equivalent. Transactions where the card is actually used to access an "account" (as defined in the EFTA) to load value onto the card would continue to be subject to the EFTA. For multipurpose cards that offer both stored value and debit card features, this section applies only to the stored value feature and does not affect the application of existing law to the debit card or credit card features of the card.

Section 602. Treatment of claims arising from breach of post-appointment agreements

Section 602 clarifies that any final judgment for monetary damages for breach of contract entered against a federal banking agency shall be considered to be an administrative expense of the conservator or receiver if the agreement was made after the appointment of the agency as administrator.

Section 603. Fictitious financial instruments

This provision criminalizes the production and sale of phony financial instruments and designates counterfeiting as a Class B felony.

Section 604. Amendments to the Truth in Savings Act

Section 604 repeals sections 268 and 271 of the Truth in Savings Act (TISA). Section 268 of TISA required institutions to make periodic statements of account information to consumers including APY, interest earned, fees imposed, and the number of days in the reporting period. Section 271 of TISA provided for civil liability (individual and class actions) for violations of TISA. TISA compliance remains subject to administrative enforcement, with violations subject to administrative action. This section also exempts non-automated credit unions from the requirements of TISA. Section 604 further eliminates the requirement that institutions provide subse-

quent account disclosures for automatically renewable time deposits with a term of 30 days or less. The Committee is aware of the Board's implementations of Section 266(a)(3) in Regulation DD, dealing with the timing and content of disclosures for renewable time deposits. By adopting this amendment, Congress does not intend to alter or raise questions about the appropriateness of the Board's rules in Regulation DD for time accounts with a term exceeding 30 days.

Section 605. Consumer Leasing Act amendments

Section 605 provides the Federal Reserve Board with the authority to adopt appropriate regulations, commentary, and model forms to provide useful information to the consumer on leasing. The section also revises the advertising provisions of the Consumer Leasing Act to require clear and conspicuous disclosure of lease terms when a lease is promoted through an advertisement. If the lease advertisement states the amount of any payment or states that no initial payment is required, the advertisement must also state the fact that the transaction is a lease, the total initial payments required, whether a security deposit is required, the number, amounts and timing of scheduled payments and any charges that may be imposed at the end of a lease term. Owners or personnel of the medium in which the advertisement appeared are not liable for violations of these advertising requirements.

Section 606. Credit union study

Section 606 requires the Secretary of the Treasury in coordination with the Federal Reserve Board, the FDIC, the OCC and the National Credit Union Administration to conduct a study and review of the oversight and supervisory practices of the NCUA regarding the National Credit Union Share Insurance Fund.

Section 607. Report on the reconciliation of differences between regulatory accounting principles and generally accepted accounting principles

Section 607 requires each appropriate banking agency to submit a report within 180 days to the Banking Committees of the House and Senate detailing those actions they are taking to conform the requirements of GAAP and RAP as they apply to reports and statements filed with the agency.

Section 608. State-by-state and metropolitan area-by-metropolitan area study of bank fees

Section 608 amends Section 1002 of FIRREA to require the Board to study bank fees at the state and metropolitan statistical area level to identify any discernible national trend in the cost and availability of retail banking services and fees.

Section 609. Prospective application of gold clauses in contracts

Section 609 concerns gold clauses in real estate contracts. Gold clauses are sometimes used in real estate contracts to specify that payment is to be tendered in gold or in a dollar amount equivalent to gold. In 1933, gold clauses were made unenforceable. In 1977, the Congress permitted gold clauses to be used again in real estate

contracts. This provision would clarify that the ban on gold clauses continues for those contracts prior to 1977 and cannot be revived, through assignments or novations, unless the parties specifically agree to it.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement regarding the regulatory impact of the bill.

S. 650 significantly reduces the regulatory paperwork and reporting burdens on financial institutions by eliminating, modifying, streamlining and improving various regulatory and statutory requirements. Many of the bill's provisions would also lower the cost of regulation by decreasing the number of applications that must be processed and reviewed by federal banking regulators.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of paragraph 12 of the rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

COST OF THE LEGISLATION

The Committee has requested from the Congressional Budget Office an estimate of the costs which would be incurred in carrying out S. 650. Due to unforseen delays at the Congressional Budget Office, however, it is the Committee's view that it is impracticable to obtain a cost estimate in accordance with the requirements of subparagraphs (1) and (2) of rule XXVI(11)(a) at this time.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 14, 1995.

Hon. ALFONSE M. D'AMATO,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As requested, CBO is preparing a cost estimate for S. 650, the Economic Growth and Regulatory Paperwork Reduction Act of 1995, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on September 27, 1995. We have not completed our analysis of the bill yet, but we will complete and transmit the cost estimate as soon as possible. We expect to provide the estimate no later than December 22, 1995, but will make every effort to complete it earlier in the week.

If you have any further questions, we will be pleased to answer them. The staff contacts are Mary Maginniss and Mark Booth.

Sincerely,

JUNE E. O'NEILL, *Director.*

ADDITIONAL VIEWS OF SENATOR ROD GRAMS

As a strong supporter of regulatory paperwork reduction, I was pleased to support S. 650. This legislation is entitled the "Economic Growth and Regulatory Paperwork Reduction Act of 1995," and with good reason.

The provisions in this bill will go a long way in reducing the regulatory burden which is currently preventing entrepreneurs from having access to the credit they need to create jobs. By passing this legislation, we have made a major step forward in removing these obstacles to economic growth.

There are, however, some outstanding problems left unaddressed by the Banking Committee, problems which I hope we will take up in the near future.

For example, one of the biggest obstacles to credit availability is the Community Reinvestment Act (CRA). The CRA was originally designed to help financial institutions meet the credit needs of their local communities. But as well intended as that goal may have been in 1977, the CRA has resulted in just the opposite.

The additional paperwork burden, reporting requirements, and increased examinations that come from the CRA have made it even more difficult for banks and thrifts to do the job they're supposed to do.

Nowhere is that trend more evident than in the case of small community banks. These banks, the neighborhood institutions which are the foundation of our financial system, have found it increasingly difficult to meet the requirement of the CRA and remain in business.

Ironically, it's these very same institutions which have done the best job in lending to their communities in the first place. If a small community bank does not do business in its local community, it goes out of business. In other words, for small banks, community lending is not a convenience; it means survival.

During the Committee markup of S. 650, I offered an amendment which would have exempted small banks—those with assets under $250 million—from CRA requirements. Given the consensus of the Banking Committee not to include CRA provisions in the bill, I withdrew that amendment.

I do, however, continue to urge the Banking Committee to address CRA reform during the 104th Congress. If we are serious about expanding community lending and preserving small community banks, something must be done to curb the excesses of the CRA.

Along the same lines, I also offered an amendment during the Committee markup which would have added a five-year sunset provision to five separate laws: the CRA, the Truth in Lending Act, the Truth in Savings Act, the Home Mortgage Disclosure Act, and the Real Estate Settlements Procedures Act.

I offered this amendment because I do not believe laws passed by Congress should be left on the books for eternity without further review and examination. If a law serves a purpose and does so effectively, it should and will be reauthorized by Congress. If not, the law and the regulations promulgated under that law should expire.

Unfortunately, Congress has repeatedly failed to meet its responsibility to taxpayers and consumers in reviewing the laws it passes. The U.S. Code is filled with outdated statutes which serve little or no purpose, and some even have a negative impact on consumers and taxpayers. I believe it is the job of all authorizing committees to regularly review the laws already on the books before they pass new ones.

Sunsetting laws does not mean repealing them. Laws would only expire if Congress failed to meet its responsibility to reexamine and renew these statutes within a specified period of time. If Congress is willing to do its job, sunset doesn't have to mean lights out.

What it would guarantee is that every law passed by Congress will be reviewed again, that mistakes will be corrected, that bad laws will be forced to expire and good laws allowed to continue.

Nothing sums up the arguments for sunsetting laws better than the response by Federal Reserve Chairman Alan Greenspan to a question I posed: "If a law is sound, it will be repassable after a period of time. It should not just go on unnoticed."

Truer words were never spoke. In the name of good government, I will continue my efforts to ensure that laws under the jurisdiction of the Banking Committee and all other authorizing committees will not go forward without a sunset.

ROD GRAMS.

ADDITIONAL VIEWS BY SENATORS MACK, FAIRCLOTH, BENNETT, AND GRAMS, ON THE CONSUMER REPORTING REFORM ACT

The intention of this bill is to roll back some of the unnecessary regulatory burdens faced by our nation's financial institutions in order to make them more competitive. This legislation is a good effort to free up our financial institutions from regulations unrelated to safety and soundness that cause these institutions to focus on compliance with federal regulations rather than serving their customers.

The Consumer Reporting Reform Act (CRRA) which amends the Fair Credit Reporting Act was added to S. 650 in the Senate Banking Committee by voice vote. Although a few of the provisions of the CRRA provide some regulatory relief from the Fair Credit Reporting Act, on balance the CRRA adds new burdens and increases liability for credit grantors that voluntarily provide information to credit bureaus. This legislation does not belong on a bill intended to eliminate unnecessary burdens imposed on financial institutions.

While the Consumer Reporting Reform Act passed the Senate in the 103rd Congress, no hearings have been held in the 104th Congress. Unless the burdens imposed by the CRRA are significantly reduced, these provisions should not be included in any regulatory relief bill that is ultimately sent to the President for his signature.

CONNIE MACK.
LAUCH FAIRCLOTH.
ROBERT F. BENNETT.
ROD GRAMS.

○

EXHIBIT F

104TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT 104–863

MAKING APPROPRIATIONS FOR THE DEPARTMENT OF DEFENSE FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1997, AND FOR OTHER PURPOSES

SEPTEMBER 28, 1996.—Ordered to be printed

Mr. LIVINGSTON, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 3610]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3610) "making appropriations for the Department of Defense for the fiscal year ending September 30, 1997, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

DIVISION A

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the several departments, agencies, corporations and other organizational units of the Government for the fiscal year 1997, and for other purposes, namely:

TITLE I—OMNIBUS APPROPRIATIONS

Sec. 101(a) For programs, projects or activities in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1997, provided as follows, to be effective as if it had been enacted into law as the regular appropriations Act:

27–409

AN ACT Making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1997, and for other purposes

TITLE I—DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For expenses necessary for the administration of the Department of Justice, $75,773,000 of which not to exceed $3,317,000 is for the Facilities Program 2000, to remain available until expended: Provided, That not to exceed 43 permanent positions and 44 full-time equivalent workyears and $7,477,000 shall be expended for the Department Leadership Program exclusive of augmentation that occurred in these offices in fiscal year 1996: Provided further, That not to exceed 41 permanent positions and 48 full-time equivalent workyears and $4,660,000 shall be expended for the Offices of Legislative Affairs and Public Affairs: Provided further, That the latter two aforementioned offices shall not be augmented by personnel details, temporary transfers of personnel on either a reimbursable or non-reimbursable basis or any other type of formal or informal transfer or reimbursement of personnel or funds on either a temporary or long-term basis.

For an additional amount, for enhancements for the Office of Intelligence Policy and Review and security measures, $3,600,000; of which $2,170,000 is for security enhancements: Provided, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

COUNTER-TERRORISM FUND

For necessary expenses, as determined by the Attorney General, $9,450,000, to remain available until expended, to reimburse any Department of Justice organization for (1) the costs incurred in reestablishing the operational capability of an office or facility which has been damaged or destroyed as a result of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City or any domestic or international terrorist incident, (2) the costs of providing support to counter, investigate or prosecute domestic or international terrorism, including payment of rewards in connection with these activities, and (3) the costs of conducting a terrorism threat assessment of Federal agencies and their facilities: Provided, That funds provided under this heading shall be available only after the Attorney General notifies the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of this Act.

For an additional amount for necessary expenses, as determined by the Attorney General, $20,000,000, to remain available until expended, to reimburse any Department of Justice organization for (1) the costs incurred in reestablishing the operational capability of an office or facility which has been damaged or destroyed as a result of any domestic or international terrorist incident, or (2) the costs of providing support to counter, investigate or prosecute domestic or international terrorism, including payment of rewards

(A) collecting, processing, maintaining, transmitting, or reporting data about financial events;

(B) supporting financial planning or budgeting activities;

(C) accumulating and reporting costs information; or

(D) supporting the preparation of financial statements.

(6) MIXED SYSTEM.—The term "mixed system" means an information system that supports both financial and nonfinancial functions of the Federal Government or components thereof.

SEC. 807. EFFECTIVE DATE.

This title shall take effect for the fiscal year ending September 30, 1997.

SEC. 808. REVISION OF SHORT TITLES.

(a) Section 4001 of Public Law 104–106 (110 Stat. 642; 41 U.S.C. 251 note) is amended to read as follows:

"SEC. 4001. SHORT TITLE.

"This division and division E may be cited as the 'Clinger-Cohen Act of 1996'.".

(b) Section 5001 of Public Law 104–106 (110 Stat. 679; 40 U.S.C. 1401 note) is amended to read as follows:

"SEC. 5001. SHORT TITLE.

"This division and division D may be cited as the 'Clinger-Cohen Act of 1996'."

(c) Any reference in any law, regulation, document, record, or other paper of the United States to the Federal Acquisition Reform Act of 1996 or to the Information Technology Management Reform Act of 1996 shall be considered to be a reference to the Clinger-Cohen Act of 1996.

This Act may be cited as the "Treasury, Postal Service, and General Government Appropriations Act, 1997".

TITLE II—ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION

SEC. 2001. SHORT TITLE; TABLE OF CONTENTS; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the "Economic Growth and Regulatory Paperwork Reduction Act of 1996".

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

TITLE II—ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION

Sec. 2001. Short title; table of contents; definitions

Subtitle A—Streamlining the Home Mortgage Lending Process

Sec. 2101. Simplification and unification of disclosures required under RESPA and TILA for mortgage transactions.
Sec. 2102. General exemption authority for loans.
Sec. 2103. Reductions in Real Estate Settlement Procedures Act of 1974 regulatory burdens.
Sec. 2104. Waiver for certain borrowers.
Sec. 2105. Alternative disclosures for adjustable rate mortgages.

ment of the final rule made after the date of enactment of this subparagraph.".

SEC. 2504. LENDER LIABILITY RULE.

(a) IN GENERAL.—Effective on the date of enactment of this Act, the portion of the final rule issued by the Administrator of the Environmental Protection Agency on April 29, 1992 (57 Fed. Reg. 18,344), prescribing section 300.1105 of title 40, Code of Federal Regulations, shall be deemed to have been validly issued under authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and to have been effective according to the terms of the final rule. No additional judicial proceedings shall be necessary or may be held with respect to such portion of the final rule. Any reference in that portion of the final rule to section 300.1100 of title 40, Code of Federal Regulations, shall be deemed to be a reference to the amendments made by this subtitle.

(b) JUDICIAL REVIEW.—Notwithstanding section 113(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(a)), no court shall have jurisdiction to review the portion of the final rule issued by the Administrator of the Environmental Protection Agency on April 29, 1992 (57 Fed. Reg. 18,344) that prescribed section 300.1105 of title 40, Code of Federal Regulations.

(c) AMENDMENT.—No provision of this section shall be construed as limiting the authority of the President or a delegee of the President to amend the portion of the final rule issued by the Administrator of the Environmental Protection Agency on April 29, 1992 (57 Fed. Reg. 18,344), prescribing section 300.1105 of title 40, Code of Federal Regulations, consistent with the amendments made by this subtitle and other applicable law.

(d) JUDICIAL REVIEW.—No provision of this section shall be construed as precluding judicial review of any amendment of section 300.1105 of title 40, Code of Federal Regulations, made after the date of enactment of this Act.

SEC. 2505. EFFECTIVE DATE.

The amendments made by this subtitle shall be applicable with respect to any claim that has not been finally adjudicated as of the date of enactment of this Act.

Subtitle F—Miscellaneous

SEC. 2601. FEDERAL RESERVE BOARD STUDY.

(a) STUDY OF ELECTRONIC STORED VALUE PRODUCTS.—

(1) STUDY.—The Board shall conduct a study of electronic stored value products which evaluates whether provisions of the Electronic Fund Transfer Act could be applied to such products without adversely impacting the cost, development, and operation of such products.

(2) CONSIDERATIONS.—In conducting its study under paragraph (1), the Board shall consider whether alternatives to regulation under the Electronic Fund Transfer Act, such as allowing competitive market forces to shape the development and op-

tion, to transmit, transport, ship, move, transfer, or attempts or causes the same, to, from, or through the United States,

any false or fictitious instrument, document, or other item appearing, representing, purporting, or contriving through scheme or artifice, to be an actual security or other financial instrument issued under the authority of the United States, a foreign government, a State or other political subdivision of the United States, or an organization, shall be guilty of a class B felony.

"(b) For purposes of this section, any term used in this section that is defined in section 513(c) has the same meaning given such term in section 513(c).

"(c) The United States Secret Service, in addition to any other agency having such authority, shall have authority to investigate offenses under this section.".

(2) TECHNICAL AMENDMENT.—The analysis for chapter 25 of title 18, United States Code, is amended by inserting after the item relating to section 513 the following:

"514. Fictitious obligations.".

SEC. 2604. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.

(a) REPEAL.—Effective as of the end of the 5-year period beginning on the date of the enactment of this Act, section 271 of the Truth in Savings Act (12 U.S.C. 4310) is repealed.

(b) ON-PREMISES DISPLAYS.—Section 263(c) of the Truth in Savings Act (12 U.S.C. 4302(c)) is amended—

(1) by striking paragraph (2);

(2) by striking "(1) IN GENERAL.—"; and

(3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively, and indenting appropriately.

(c) DEPOSITORY INSTITUTION DEFINITION.—Section 274(6) of the Truth in Savings Act (12 U.S.C. 4313(6)) is amended by inserting before the period ", but does not include any nonautomated credit union that was not required to comply with the requirements of this title as of the date of enactment of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, pursuant to the determination of the National Credit Union Administration Board".

(d) TIME DEPOSITS.—Section 266(a)(3) of the Truth in Savings Act (12 U.S.C. 4305(a)(3)) is amended by inserting "has a maturity of more than 30 days" after "deposit which".

SEC. 2605. CONSUMER LEASING ACT AMENDMENTS.

(a) CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES.—

(1) FINDINGS.—The Congress finds that—

(A) competition among the various financial institutions and other firms engaged in the business of consumer leasing is greatest when there is informed use of leasing;

(B) the informed use of leasing results from an awareness of the cost of leasing by consumers; and

(C) there has been a continued trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that leasing product advances have occurred such that lessors have been unable to provide consistent industry-wide disclosures to fully account for the competitive progress that has occurred.

(2) PURPOSES.—*The purposes of this section are—*

(A) to assure a simple, meaningful disclosure of leasing terms so that the consumer will be able to compare more readily the various leasing terms available to the consumer and avoid the uninformed use of leasing, and to protect the consumer against inaccurate and unfair leasing practices;

(B) to provide for adequate cost disclosures that reflect the marketplace without impairing competition and the development of new leasing products; and

(C) to provide the Board with the regulatory authority to assure a simplified, meaningful definition and disclosure of the terms of certain leases of personal property for personal, family, or household purposes so as to—

(i) enable the lessee to compare more readily the various lease terms available to the lessee;

(ii) enable comparison of lease terms with credit terms, as appropriate; and

(iii) assure meaningful and accurate disclosures of lease terms in advertisements.

(b) REGULATIONS.—

(1) IN GENERAL.—*Chapter 5 of the Truth in Lending Act (15 U.S.C. 1667 et seq.) is amended by adding at the end the following new section:*

"SEC. 187. REGULATIONS.

"(a) REGULATIONS AUTHORIZED.—

"(1) IN GENERAL.—*The Board shall prescribe regulations to update and clarify the requirements and definitions applicable to lease disclosures and contracts, and any other issues specifically related to consumer leasing, to the extent that the Board determines such action to be necessary—*

"(A) to carry out this chapter;

"(B) to prevent any circumvention of this chapter; or

"(C) to facilitate compliance with the requirements of the chapter.

"(2) CLASSIFICATIONS, ADJUSTMENTS.—*Any regulations prescribed under paragraph (1) may contain classifications and differentiations, and may provide for adjustments and exceptions for any class of transactions, as the Board considers appropriate.*

"(b) MODEL DISCLOSURE.—

"(1) PUBLICATION.—*The Board shall establish and publish model disclosure forms to facilitate compliance with the disclosure requirements of this chapter and to aid the consumer in understanding the transaction to which the subject disclosure form relates.*

"(2) USE OF AUTOMATED EQUIPMENT.—*In establishing model forms under this subsection, the Board shall consider the use by lessors of data processing or similar automated equipment.*

"(3) USE OPTIONAL.—*A lessor may utilize a model disclosure form established by the Board under this subsection for purposes of compliance with this chapter, at the discretion of the lessor.*

SECTION 101(a)

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1997

The conferees on H.R. 3610 agree with the matter inserted in this subsection of this conference agreement and the following description of this matter. This matter was developed through negotiations on the differences in the House and Senate versions of H.R. 3814, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1997, by members of the appropriations subcommittee of both the House and Senate with jurisdiction over H.R. 3814. The legislative intent in the House and Senate versions of H.R. 3814 is set forth in the accompanying House report (H. Rept. 104–676) and the accompanying Senate report (S. Rept. 104–353).

TITLE I—DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

The conference agreement includes $79,373,000 for General Administration, instead of $78,493,000 as proposed in the House bill and $70,653,000 as proposed in the Senate-reported bill. Of the amount provided $3,600,000 is designated by the Congress and the President as emergency requirements pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. The conference agreement assumes that funding is provided in accordance with the House and Senate reports with the following exceptions:

Counterterrorism initiative.—The conference agreement provides $3,600,000, the full amount requested by the Administration in its recent budget amendment, to address the increasing threat of domestic and international terrorism. Included in the amount provided is $1,430,000 for the Office of Intelligence Policy and Review and $2,170,000 for security enhancements of the Main Justice building and field offices.

The conference agreement also provides $4,700,000 for Federal drug testing initiatives to be administered by the Attorney General in conjunction with the Federal Judiciary, and $2,000,000 for additional staffing for the Office of Professional Responsibility for investigations of allegations of attorney misconduct.

The conference agreement includes a provision, as proposed in the Senate-reported bill, that limits the number of positions and amounts for the Department Leadership program, but does not include a provision, as proposed in the House bill, that eliminates funding for the Office of the Associate Attorney General. The conference agreement also includes a provision as proposed in the Senate-reported bill, that freezes legislative and public affairs activities at fiscal year 1995 levels and prohibits these activities from being supplemented by reimbursable and non-reimbursable details. Similar provisions are included under other Department of Justice programs as well, in order to ensure that scarce resources are targeted to crime-fighting activities. These limitations are not in-

TITLE X—FEDERAL FINANCIAL MANAGEMENT IMPROVEMENT

The conference agreement does not include any language establishing uniform accounting systems, standards, and reporting systems in the Federal government.

TITLE II—ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION

Title II of the conference report makes a number of changes to Federal banking laws in order to remove unnecessary and redundant regulations imposed on the nation's financial institutions without affecting safety and soundness or consumer protections. The title also provides clarity as to when and to what extent lenders and fiduciaries are liable under Federal environmental laws. In addition, Title II makes a number of reforms to the Fair Credit Reporting Act and provides new consumer protections with regard to the credit repair industry. Finally, the title calls for the capitalization of the Savings Association Insurance Fund (SAIF) through a one-time assessment on deposits insured by the SAIF.

SUBTITLE A—STREAMLINING THE HOME MORTGAGE LENDING PROCESS

Subtitle A substantially amends the two Federal laws that directly affect the home mortgage lending process: The Truth in Lending Act and the Real Estate Settlement Procedures Act. These laws require disclosures related to the terms of a mortgage agreement. The sections in this subtitle modernize these home lending acts to reflect the technological developments in the current marketplace and to eliminate unnecessary burdens.

SUBTITLE B—STREAMLINING GOVERNMENT REGULATION

Subtitle B contains provisions intended to eliminate or revise various application, notice and recordkeeping requirements that are currently required of insured depository institutions or holding companies that control such institutions. These provisions provide significant regulatory relief by eliminating costly and time consuming paperwork for banks and savings associations, without sacrificing safety and soundness.

SUBTITLE C—REGULATORY IMPACT ON COST OF CREDIT AND CREDIT AVAILABILITY

Subtitle C amends various laws and regulations that impose limitations on the manner in which depository institutions, and other financial intermediaries, conduct their business.

SUBTITLE D—CONSUMER CREDIT

Subtitle D includes "The Consumer Credit Reporting Reform Act" and the "Credit Repair Organizations Act." The Consumer Credit Reporting Reform Act amends the Fair Credit Reporting Act to address a number of problems that have arisen since its enactment. Many of these problems are a result of ambiguities in the

statute; other problems have arisen as the credit reporting industry has grown in the wake of information technology advances that have occurred over the last twenty years. The Credit Repair Organizations Act provides new consumer protections with regard to the credit repair industry.

SUBTITLE E—ASSET CONSERVATION, LENDER LIABILITY, AND DEPOSIT INSURANCE PROTECTION

This subtitle incorporates the "Asset Conservation, Lender Liability, and Deposit Insurance Protection Act." It amends Federal environmental laws to clarify the liability of lenders and fiduciaries for environmental clean-up of property that secures financing.

SUBTITLE F—MISCELLANEOUS

Subtitle F includes a number of regulatory clarifications, studies and statutory improvements that are intended to provide more cost-effective delivery of financial services.

SUBTITLE G—DEPOSIT INSURANCE FUNDS

Subtitle G incorporates the "Deposit Insurance Funds Act of 1996", which provides for the capitalization of the savings association insurance fund (SAIF) to its designated reserve ratio. The SAIF insures the deposits of savings associations and is administered by the Federal Deposit Insurance Corporation. Under this subtitle the FDIC is given the authority to assess a one-time special assessment on all SAIF-insured deposits, including those held by SAIF members and those banks which have purchased SAIF deposits.

In addition, effective January 1, 1997, the assessment base for payments on the interest on obligations issued by the Financing Corporation (FICO) is to be expanded to include all FDIC-insured institutions, i.e., banks and thrifts. Beginning January 1, 1997 and ending December 31, 1999, banks will pay a FICO-assessment rate one-fifth of that paid by thrifts. After December 31, 1999, banks and thrifts will pay the $780–$800 million FICO interest obligation on a pro rata basis.

Subtitle G raises $3.1 billion in Fiscal Year 1997.

TITLE III—COMPETITIVE BIDDING FOR SPECTRUM

Title III requires the Federal Communications Commission (the Commission) to assign by means of competitive bidding, consistent with international agreements, licenses for wireless subscription services for portions of the electromagnetic spectrum located at 2305–2320 megahertz and 2345–2360 megahertz. The Commission, in adopting procedures for the assignment of licenses in this band, must: (1) seek to promote the most efficient use of the spectrum; and (2) take into account the needs of public safety radio services. The Commission must also commence the competitive bidding for the assignment of the licenses for these frequencies by April 15, 1997. In order to meet the deadlines imposed by this section, the FCC is permitted to waive certain statutory notice and comment timetables. All revenue generated from the assignment of

CONFERENCE TOTAL—WITH COMPARISONS

The total new budget (obligational) authority for the fiscal year 1997 recommended by the Committee of Conference, with comparisons to the fiscal year 1996 amount, the 1997 budget estimates, and the House and Senate bills for 1997 follow:

New budget (obligational) authority, fiscal year 1996	$579,522,607,669
Budget estimates of new (obligational) authority, fiscal year 1997	608,191,881,110
House bill, fiscal year 1997	604,917,517,710
Senate bill, fiscal year 1997	601,684,170,710
Conference agreement, fiscal year 1997	610,961,282,710
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1996	+31,438,675,041
Budget estimates of new (obligational) authority, fiscal year 1997	+2,769,401,600
House bill, fiscal year 1997	+6,043,765,000
Senate bill, fiscal year 1997	+9,277,112,000

BILL YOUNG,
JOSEPH M. MCDADE,
BOB LIVINGSTON,
JERRY LEWIS (except for chapter 6 of title V of division A),
JOE SKEEN,
DAVE HOBSON,
HENRY BONILLA,
GEORGE R. NETHERCUTT, Jr.,
ERNEST ISTOOK,
JOHN P. MURTHA,
NORM DICKS,
CHARLES WILSON,
W.G. "BILL" HEFNER,
MARTIN OLAV SABO,
DAVID OBEY,
Managers on the Part of the House.

TED STEVENS,
THAD COCHRAN,
PETE V. DOMENICI,
CHRISTOPHER S. BOND (except for chapter 6 of title V of division A),
MITCH MCCONNELL,
CONNIE MACK,
RICHARD C. SHELBY,
MARK O. HATFIELD,
DANIEL K. INOUYE (with reservation),
FRITZ HOLLINGS,
J. BENNETT JOHNSTON,
ROBERT BYRD,
PATRICK J. LEAHY,
FRANK R. LAUTENBERG,
Managers on the Part of the Senate.

○

EXHIBIT G

This legislation will maintain the authority of State securities regulators to police wrongdoing. In addition, the legislation ensures that the SEC mandate to protect American investors and the public interest as well as the long-term stability of our major markets remains intact. This is a most important point. While there is room to fine tune the regulatory functions of the SEC, reforms must never be structured in such a way that they undermine consumer confidence.

This bill, H.R. 3005, does not seek to greatly limit inspections of brokerage firms who have violated SEC rules or relieve firms of liability for recommending unsuitably risky investments to institutional clients. The bill also modifies previous language that would have eliminated the requirement in current law that investors be sent a prospectus and informed of the risks they face before they buy newly offered securities by requiring the SEC to move forward with its study of this issue.

Mr. Speaker, there is undoubtedly a need to monitor mutual fund regulation to fully account for the constantly evolving size, complexity, and investment opportunities of our Nation's financial markets. While mutual funds have grown by more than 20 percent annually throughout the 1980's and into the 1990's, Congress has not addressed the issue of fund regulation since 1970. This bill updates our securities laws and will support and improve the industry. I urge my colleagues to approve the conference report on H.R. 3005. I yield back the balance of my time.

Mr. FIELDS of Texas. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. DREIER). The question is on the motion offered by the gentleman from Texas [Mr. FIELDS] that the House suspend the rules and agree to the conference report on the bill, H.R. 3005.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FIELDS of Texas. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the conference report to accompany H.R. 3005.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

CONFERENCE REPORT ON H.R. 3610, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1997

Mr. LIVINGSTON. Mr. Speaker, pursuant to the previous order of the House, I call up the conference report on the bill (H.R. 3610) making appropriations for the Department of Defense for the fiscal year ending September 30, 1997, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the order of the House of today, the conference report is considered as having been read.

(For conference report and statement, see prior proceedings of the House of today.)

The SPEAKER pro tempore. The gentleman from Louisiana [Mr. LIVINGSTON] and the gentleman from Wisconsin [Mr. OBEY] each will control 30 minutes.

The Chair recognizes the gentleman from Louisiana [Mr. LIVINGSTON].

GENERAL LEAVE

Mr. LIVINGSTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the conference report to accompany H.R. 3610 and that I may include tabular and extraneous material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. LIVINGSTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today I am pleased to bring before the House the Omnibus Consolidated Appropriations Act of 1997 that will fund the remaining appropriations bills for the full fiscal year and allow us to go home.

I want to say up front that the procedure that we were forced to follow was less than desirable. That procedure was initially caused by the other body's inability to complete consideration of five appropriation bills. We also had to address the demands of the Clinton administration to increase domestic spending.

But the House was able to get its work done. We passed all of our bills promptly this summer, all 13 appropriations bills. That would not have been the case without the dedicated, steadfast, and conscientious effort of all of the Members of the House, but most especially my friend the gentleman from Wisconsin, DAVID OBEY, the ranking minority member of the committee, as well as all of the subcommittee chairmen; all of the ranking members of subcommittees; all of the members of the Committee on Appropriations; and especially, the dedicated staff, majority and minority; the gentleman who sits next to me, the chief clerk of the Committee on Appropriations, Jim Dyer; the gentleman that sits next to him, Dennis Kedzior; Fred Mohrman, who is not here tonight but who helped get us started in the 104th Congress; Scott Lilly, the ranking minority clerk over there sitting next to the gentleman from Wisconsin [Mr. OBEY]; and all of the other dedicated staff, many of whom have not even slept a single minute over the last 3 or 4 days to prepare this bill.

They have done just an incredible job against overwhelming odds, bearing a tremendous work load, and I can tell them all that I am deeply appreciative of their efforts. Because of them we were able to get our work done.

Now the procedure we used to develop this conference report is brought about because some of the bills got stymied on the other side. But in order to come to closure on these matters as well as to address the needs for increased funding for antiterrorism programs, the drug initiative, disaster assistance for Hurricane Fran, wildfires in the West, and to consider the demands of the administration for funding certain programs, we had to combine all of these remaining bills into one legislative agenda, one legislative package, which sits before you so the trade-offs could be made and the package could be viewed as a balanced one.

As many of the Members know, the administration asked for additional domestic spending that would be offset by cuts in the defense appropriations bill. That was unacceptable to me, and it was unacceptable to the gentleman from Florida, BILL YOUNG, the chairman of the Subcommittee on National Security.

We both insisted that no further cuts be made to the level of funding in the defense bill and that other offsets must be found to pay for their wish list of domestic spending. We refused to cut defense further.

Mr. YOUNG put together a good defense appropriations bill that provides for a strong national defense and meets the needs of American servicemen, and women whether they be in Bosnia or flying over Iraq or Saudi Arabia or Kuwait or elsewhere all around the globe.

In a minute I will be happy to yield to the gentleman from Florida [Mr. YOUNG], so he can explain the portion of the bill that relates to the national defense. But in the meantime, I want to say that this appropriation measure carries full-time funding for 6 complete bills, virtually half of the budget of the United States Government. It includes the Subcommittee on Commerce, Justice, State and Judiciary; the Department of Defense, the Subcommittee on Foreign Operations, Export Financing and Related Programs; the Subcommittee on the Interior; the Subcommittee on Labor, Health and Human Services and Education; and the Subcommittee on Treasury, Postal Service, and General Government.

In addition to augmenting various programs in these annual spending bills, we are providing funding for the antiterrorism program of some $981 million, we are giving $8.8 billion for a drug initiative to combat drug abuse and to interdict the inflow of drugs into this country, and we are providing nearly $400 million for relief from disasters such as Hurricane Fran.

The sizable offsets included in the bill, for example, from the BIF/SAIF program that we will hear about the gentleman from Iowa [Mr. LEACH] and the gentlewoman from New Jersey [Mrs. ROUKEMA] and the spectrum sale both fully fund the deficit impact in any spending in this bill.

I want to reiterate, this bill does not add to the deficit. In fact, this bill completes our final step in the 104th Congress toward securing some $53 billion in cumulative savings under the

rule for the type of disclosure that must be included in radio advertising of consumer leases. This special rule recognizes that all of the required disclosure cannot be provided in a short spoken advertisement. Instead it requires that radio advertisements for consumer leases refer the listener to either an 800 number or a written advertisement in order to obtain additional information.

Title II also includes a House provision to require bank regulators to take appropriate actions to prevent depository institutions and depository institution holding companies from facilitating or encouraging the shifting of deposits from SAIF deposits to BIF deposits. It is the intent of Congress that this provision be interpreted and implemented by the FDIC with great care to ensure that Constitutionally-protected free speech in the commercial marketplace is not abridged.

Furthermore Section 2702 requires that the FDIC impose a special assessment on SAIF-assessable deposits. This payment is due on the first business day of the first month beginning after the date of the enactment of this act and is to be paid to the FDIC on the latter of the first business day of the first month beginning after the date of enactment or such other date as the FDIC chooses, but not later than 60 days after the enactment date. Given the liquidity and regulatory difficulties that accrue to institutions with the presentation of a sudden large liability, it is the intent of Congress that the FDIC provide institutions the maximum latitude possible within the 60-day context to pay their special assessment.

Section 2301 amends certain provisions governing the scope and mechanics of the audit functions for insured depository institutions. This provision eliminates the independent auditor attestation requirement for safety and soundness compliance, and allows the agencies the discretion to waive the requirement that all members—but not less than a majority—of the independent audit committee be outside directors in the case of hardship. Factors weighing in favor of a decision to grant a waiver include, but are not limited to, the following: that the institution is small, that qualified outside independent directors are unavailable, that the institution is closely held, and-or that the institution is well-managed.

Further, Section 2615 prohibits Government-Sponsored Enterprises [GSEs] from certain kinds of associations with banks, credit unions and thrifts. However, it is the congressional intent that Subsection 2615(a) would not preclude a GSE from sponsoring or providing financial support to an insured credit union established by a GSE with a field of membership comprised of the GSE's present and former full-time employees. The fact that a few such employees may also be customers of the GSE should not preclude such sponsorship or financial support.

I'd also like to comment on the provision of the bill which clarifies the liability of financial institutions with regard to a 1992 Environmental Protection Agency rule. Under this provision, lenders would be financially liable for environmental clean up costs only if they actually participated in the management of the firm which allegedly caused the pollution. The mere holding of a financial interest or having ownership of the property as a result of a foreclosure does not make the lender liable.

Finally, I worked for inclusion in this bill of bank modernization language and within such context—preferably full-blown Glass-Steagall reform, but at a minimum greater holding company and Section 20 latitude—a provision supported by the independent insurance agents which would require all parties, including banks, which sell general insurance products to be State licensed. Regrettably these proposals have proven to be so controversial that agreement on them could not be reached in time for them to be included in this bill.

These issues are not going away and will be addressed in the next session of the Congress.

I realize partisanship hallmarks many end-of-the-session issues, but based on the content and context of this legislative package, I would hope support would come from both sides for final passage of the Title II provisions.

In this regard, I am somewhat bewildered by the complaints from some quarters about process. Most of the provisions before the House today have been reported out of the House Banking and Financial Services Committee following extensive hearings. This Title, for instance, includes numerous sections or amendments offered by the minority side. Further changes were made within the past 24 hours in negotiations with the executive branch.

Indeed, the BIF-SAIF section, arguably the most important in the bill, is basically picked up from legislation passed by the House a year ago and then reworked by the committee this past summer. The principal change from the provisions approved by the committee in July is the deletion of a Democratic-sponsored amendment to shift part of the FICO cost sharing to the taxpayer. That provision has been struck from the bill. Members of this Congress can go back to their constituents and report that they have addressed the last remaining aspect of the savings and loan debacle without any further taxpayer accountability.

The other major portion of the Title incorporates regulatory relief measures approved by the committee last year. It is my view that the House Banking Committee went further than was judicious in early approaches to regulatory relief and that a number of provisions in earlier bills were properly pared back with my support because of administration and minority member concerns. Let me stress in this regard that in putting this legislation together, there has been far more minority input than on any piece of legislation considered in any of my years in the minority.

This is solid non-partisan legislation. Less extensive than I would have liked, but nonetheless of historic dimensions. The provisions will have lasting affects, but most importantly, failure to act would have led to serious disintermediation in the financial community, failure of the SAIF, and new taxpayer liability for S&L losses. This banking title, on the other hand, provides a basis for long-term banking modernization based on the existence of the strongest financial industry insurance fund in the Nation's history. Indeed, absent a calamity, with passage of this legislation America's insured financial institutions will reach an historical first—a prefunded insurance fund capable of regenerating itself ad infinitum, with interest returns likely to cover all normal losses in the system as well as normal asset growth. America's bank customers, as well as our competitive international financial position, are well served.

Mr. OBEY. Mr. Speaker, I yield 1 minute to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Speaker, I rise in support of this conference. I think it is nothing short of a great victory for us to come to a compromise after the struggle last year, and I want to commend my friend and colleague from Wisconsin [Mr. OBEY] for the great work he did in helping us with the provisions dealing with BIF-SAIF.

I follow in line with the remarks of our chairman, the gentleman from Iowa, Congressman JIM LEACH, in terms of recognizing the problem today. All of us are together in terms of trying to solve this problem in terms of BIF-SAIF and providing some streamlining and regulatory measures.

These are reasonable, they are reasoned, and I think they are a positive step in the right direction. Hopefully, next year we will be able to do this on our own without relying on the strength of the appropriation bill and working this out in the House.

This has been a tough measure to compromise on and to come to agreement on. I appreciate the patience of all who have worked on it. I want to commend the Clinton administration for standing up for consumers and making certain that the price of and the cost of this was not borne by reduction in terms of 30 years of consumer law, which happened to be undone and upset by a lot of misunderstandings and action that were proposed in earlier iterations of this bill.

So I rise in support of this conference and ask my colleagues to support it.

Mr. Speaker, I rise to express my support for title II of this bill, the Banking Committee's product in this bill.

Mr. Speaker, although I would have liked to proceed this Congress on broader approaches addressing financial services modernization, the future of the deposit insurance funds, the merging of regulators; the issues of charter reform; and other power's issues, in the end, this product before the House today is an important step forward and one which is the result of a tremendous amount of work and seemingly nonstop negotiations over its innumerable iterations.

This bill importantly recognizes that Congress must act today to resolve the differential between bank and S&L deposit insurance premiums. The so-called BIF-SAIF solution, including charter reform modernization is basically a product of bipartisan work of the Financial Institutions Subcommittee in 1995 that ended up in the failed Republican budget bill. Many other pieces of this bill's title II began in separate initiatives of the respective Banking Committees of the House and Senate. These key policy provisions that we will hopefully pass tonight envisions that the 105th Congress will act on charters, but this measure merges the funds and provides a pro rata FICO bond payment sharing and puts it in place regardless of the merger issue because all insured depositories, both bank insurance and savings association insurance fund will become a part of the one FDIC deposit base.

Mr. Speaker, this Congress needs to move BIF-SAIF this year. SAIF institutions have

been moving forward with plans to work themselves out from under a 23-basis point differential. Many SAIF-insured institutions have been seeking, in fact, to form national banks. Congress needs to act now while we can before it is too late and the SAIF deposit base erodes and the taxpayers of this country are once again liable. The banking and thrift industries have worked in good faith over the course of this Congress to achieve the product and policy in this measure, and hopefully this initiative will finally bring to conclusion the repair to the deposit insurance funds.

Nevertheless, no group is entitled to a prize or reward of relaxed consumer protections or safety and soundness regulation for addressing and accepting the responsibility to assure a solvent deposit insurance fund. By recognizing some limits and a need to have bipartisan agreement on provisions, we were finally able to finally move forward. To that end the Clinton administration advocacy for streamlining and regulatory reform has averted the loss of many key consumer protection laws and policies.

In addition to BIF–SAIF, title II of this legislation provides the lender environmental liability relief provisions, that is relief provisions for financial institutions which foreclose on properties involving hazardous or toxic materials. It also provides for many tempered regulatory burden relief provisions the result of compromises. Title II includes provisions clarifying the tax or deposit insurance covered status of retirement certificates of deposit. It includes Fair Credit Reporting Act, a measure that has passed both the House and Senate in the past, that will provide improved privacy protections for consumers and remedies for the risk and experience electronic muggings, the crime of today and tomorrow that we must do much more to arrest.

This final agreement represents a victory of sorts for those of us who wanted to pass regulatory burden relief for financial institutions but did not unravel consumer protection laws of the past 25 years nor the potential safety and soundness of financial institutions. This bill provides regulatory streamlining, burden relief and sensible improvements in policy without harming key consumer laws nor jeopardizing the safety and soundness of financial institutions backed by the Federal deposit insurance fund.

With improvements being made until the very end, the banking package before us was excised of many provisions that gave me great pause and to which I was opposed. Provisions which would have weakened the Community Reinvestment Act, Consumer Leasing, Truth in Savings, Truth in Lending, Rent to Own, the Home Mortgage Disclosure Act, high-cost mortgages protections, and a number of highly controversial Real Estate Settlement Procedure Act changes have finally been set aside as we receive the final package tonight. In previous forms, this legislation would have relaxed restrictions on permissible insider lending, weakened the legal responsibilities for outside directors of financial institutions, limited the ability of regulators to recover funds from the officers of failed institutions, and even weakened the role of independent audit committees, fortunately these policies were also removed.

I want to recognize the important role of the Clinton administration in reaching many of these final compromises which eluded us for so long this session, I would have hoped that committee members could have accomplished more but I want to thank the Members and staff of the Banking Committee who I have worked with throughout this process and am pleased we have a product. We have here a adequate product, a compromise, a lesson learned. While I think this title is imperfect, on the whole, the package deserves our support. I remain hopeful that the committee will in the future regain a better comity and bipartisanship as we reconvene for the 105th Congress.

Mr. LIVINGSTON. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois [Mr. PORTER], the distinguished chairman of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations who has done an outstanding job in that field.

Mr. PORTER. Mr. Speaker, I begin my remarks by commending my chairman and his outstanding staff led by Jim Dyer. No one has worked harder to perfect this bill. They have done an outstanding job for the Congress and for the American people.

I want to thank my wonderful staff, headed by Tony McCann. I thank the gentleman from Wisconsin, DAVID OBEY, and his fine staff for their cooperation in bringing this bill to fruition.

Mr. Speaker, our section of the omnibus bill continues Congress' initiative to terminate duplicative and ineffective programs. There are 13 new terminations in addition to the 100 that we achieved last year. We have frozen or reduced many administrative accounts.

At the same time, we have increased funding for programs that work for people and that are a high priority for our country. For example, with respect to biomedical research through the National Institutes of Health, we have increased spending by $820 million, a 6.5-percent increase, and $371 million above the President's request.

We have in that section of the bill preserved the principle that science, not politics, should decide how the money is best spent, there is no earmarking in the bill by disease and no line item for AIDS. However, we appropriate directly to the Office of AIDS Research to support that important research.

The bill preserves NIH and gives it a substantial increase, because basic research can only be organized and supported through government. Research that is conducted by our universities and academic medical centers across the United States pays for itself thousands of times over in terms of health care cost savings. Biomedical research is an area where we lead the world both in the basic research and the applied research through the biotech and pharmaceutical industries of our country.

Student aid in the bill is increased by $1.3 billion more than requested in the President's 1997 budget; and we increase Pell grants under the Republican Congress by 15 percent, whereas in the previous Congress they went down by 3 percent. The maximum Pell grant is increased from $2,470 to $2,700 in this bill, the highest maximum ever; the largest single increase ever in one year.

Work-study is increased by over $200 million to $830 million, $151 million more than the President's request. Perkins loans are increased by $65 million over the President's request. TRIO programs are increased by $37 million, to a total of $500 million.

Head Start is increased by over $400 million to almost $4 billion. Special education, championed by the chairman of the authorizing committee, the gentleman from Pennsylvania, BILL GOODLING, increased by almost $800 million to $3.8 billion.

Mr. Speaker, there is a summary of highlights of the bill available. I commend the work of my subcommittee members of both sides of the aisle and my chairman. We have fashioned a bill that meets the needs of the American people and does so in a fiscally responsible manner.

Mr. OBEY. Mr. Speaker, I yield 1 minute to the gentlewoman from Texas [Ms. JACKSON-LEE].

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I want to add my appreciation to the gentleman from Wisconsin [Mr. OBEY] and the gentleman from Louisiana [Mr. LIVINGSTON] for their cooperative effort and to briefly acknowledge that today we can stand here and say that we are not going to shut the Government down. A great difference and a strike for balance over divisiveness. The American people are the benefactors of this process.

Let me make several points regarding this legislation that represent a positive change. I would like to note, and that now the youth in Houston and around the Nation will have summer jobs, and we will have turned the corner from classifying the summer youth program as baby-sitting jobs and have over $800 million in that program through this appropriation bill.

Rather than continue to build jail cells, we will now have increased moneys in the Pell Grant Program, some $577 million.

And, yes, through the Ryan White funding, we will be able to take home $450 million for emergency assistance, $470 million for comprehensive care, and $70 million for early intervention.

I am concerned, however, that we do not have enough dollars for the census effort that will be very important to some of our urban centers, and would hope we will have an opportunity to remedy that.

And, lastly, I would say that we need to consider the spectrum sale so that we would do it in a reasonable manner that would appropriately utilize this valuable resource for the benefit of America.

I rise to express my views on this important omnibus appropriations bill that funds the Departments of Commerce, Defense, Education, Health and

EXHIBIT H

The American Presidency Project

John T. Woolley & Gerhard Peters • University of California at Santa Barbara

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• William J. Clinton

Statement on Signing the Omnibus Consolidated Appropriations Act, 1997

September 30, 1996

I have signed into law H.R. 3610, the fiscal year 1997 omnibus appropriations and immigration reform bill.

This bill is good for America, and I am pleased that my Administration could fashion it with the Congress on a bipartisan basis. It moves us further down the road toward our goal of a balanced budget while protecting, not violating, the values we share as Americans—opportunity, responsibility, and community.

Specifically, the legislation restores needed funds for education and training, the environment, science and technology, and law enforcement; fully funds my anti-drug and counter-terrorism initiatives; extends the Brady Bill so that those who commit domestic violence cannot buy handguns; provides needed resources to respond to fires in the western part of the Nation and to the devastation brought by Hurricanes Fran and Hortense; and includes landmark immigration reform legislation that cracks down on illegal immigration without punishing legal immigrants.

The bill restores substantial sums for education and training, furthering my agenda of life-long education to help Americans acquire the skills they need to get good jobs in the new global economy.

It provides the funds through which Head Start can serve an additional 50,000 disadvantaged young children; fulfills my request for the Goals 2000 education reform program, enabling States to more quickly raise their academic standards and implement innovative reform; increases funding for the Safe and Drug-Free Schools program, helping States reduce violence and drug abuse in schools; provides most of my request for the Technology Literacy Challenge Fund to help States leverage technology funds; fulfills my request for Title 1, education for the disadvantaged; and provides the funds to enable well over a half-million young people to participate in the Summer Jobs program.

For college students, I am pleased that the bill fulfills my request for the largest Pell Grant college scholarship awards in history and expands the number of middle- and low-income students who receive aid by 126,000—to 3.8 million. I am also pleased that the bill fully funds my Direct Lending program, enabling more students to take advantage of cheaper and more efficient loans.

For the environment, the bill provides funds to support the Environmental Protection Agency's early implementation of two major new environmental laws that I signed this summer—the Safe Drinking Water Act, and the Pesticide and Food Safety Law. In addition, the bill provides additional funds for energy conservation and to help finish the cleanup of Boston Harbor and help prevent beach closures.

At the same time, the bill does not contain any of the riders that would have affected management of the Tongass National Forest in Alaska, national Native American tribal rights, the Interior Department's management of subsistence fishing in Alaska, long-term management of the Elwha Dam in

Washington State, and the issuance of emergency-efficiency standards for appliances. I am, however, disappointed the Congress did not adopt my proposal to repeal the 1995 salvage timber rider and restore the application of environmental laws to salvage logging on Federal lands.

For research and technology, the bill promotes economic growth by continuing needed Federal support for advanced technology. It restores funding for the Commerce Department's Advanced Technology Program, providing resources for new grants to support innovative technology companies across the Nation.

It also provides a sizeable increase for the National Institutes of Health, which will enable NIH to expand its critical research into new ways to treat breast cancer, AIDS, and other diseases. I am also pleased that the bill provides nearly $1 billion for Ryan White AIDS treatment grants, including funds to help States purchase a new class of AIDS drugs called "protease inhibitors" and other life-extending medications. And the Congress also fully funded my request for the Department of Housing and Urban Development's program that provides housing assistance for people with AIDS.

For law enforcement, the bill provides $1.4 billion to ensure that my program to put 100,000 more police on the streets of America's communities by the year 2000 proceeds on schedule; with this bill, we will have provided funding for 64,000 of the

100,000 that I called for at the start of my Administration. The bill also increases funds for Justice Department law enforcement programs, for the FBI's crime-fighting efforts, and for new Federal prisons. As I had urged, the bill also extends the Brady Bill to ensure that those who commit domestic violence cannot purchase guns. Finally, I am pleased that the Congress provided a modest increase for the Legal Services Corporation, which ensures that those who lack the means still have access to our legal system.

I am also pleased that the bill provides a $1.4 billion increase in funding for anti-drug programs. It doubles funding for Drug Courts, increases funds for drug interdiction efforts by the Defense, Transportation, and Treasury Departments, and provides the resources to expand the Drug Enforcement Administration's domestic efforts along the Southwest border and elsewhere. The bill also includes strong language about drug testing that my Administration had proposed, requiring that localities have drug-testing programs in place for their prisoners and parolees in order to qualify for State and local prison grants. And it includes funding for the drug testing of Federal, State, and local arrestees.

For counterterrorism, the bill funds my request for over $1.1 billion to fight terrorism and to improve aviation security and safety. It enables the Justice and Treasury Departments to better investigate and prosecute terrorist acts, and it provides funds to implement the recommendations of Vice President Gore's Commission on Aviation Safety and Security and the Federal Aviation Administration's recent 90-day safety review. These funds will enable us to hire 300 more aviation security personnel, deploy new explosive detection teams, and buy high-technology bomb detection equipment to screen luggage. The bill also gives my Administration the authority to study the use of taggants in black and smokeless powder; taggant technology holds the promise of allowing the detection and identification of explosives material.

I hereby designate as an emergency requirement, as the Congress has already done, the $122.6 million in fiscal 1996 funds and the $230.68 million in fiscal 1997 funds for the Defense Department for antiterrorism, counterterrorism, and security enhancement programs in this Act, pursuant to section 251(b)(2)(D)(I) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

This bill also funds the Nation's defense program for another year; it fully funds my defense antiterrorism and counter-narcotics efforts as well as the Cooperative Threat Reduction program, and at my insistence it provides a substantial amount of the funding for my dual-use technology program. But it also provides about $9 billion more than I proposed for defense, including a substantial amount for weapons that are not even in the Defense Department's future plans and were not requested by the service chiefs. This bill is part of a plan by the majority in the Congress that adds funds for investments now and reduces them in the future. I continue to believe that my long-range plan is more rational. It provides sufficient funds now while increasing them at the turn of the century when new technologies will become available.

I am pleased that the Congress has provided the minimum acceptable levels for certain key international affairs programs, such as the U.S. contribution to the International Development Association and the Korean Peninsula Energy Development Organization and for international peacekeeping operations and arrears. I also commend the Congress for providing at least a modest increase in funding international family planning programs and for dropping misguided Mexico City restrictions, and for funding bilateral economic assistance without rescinding prior-year appropriations. In addition, the Congress has facilitated the Middle East peace process by authorizing U.S. participation in the Middle East Development Bank. Nevertheless, I must note that the overall funding level for international affairs programs is well below what we need to assure that we can achieve our foreign policy objectives.

This bill, however, does more than fund major portions of the Government for the next fiscal year. It also includes landmark immigration reform legislation that builds on our progress of the last 3 years. It strengthens the rule of law by cracking down on illegal immigration at the border, in the workplace, and in the criminal justice system—without punishing those living in the United States legally.

Specifically, the bill requires the sponsors of legal immigrants to take added responsibility for their well-being. And it does not include the so-called Gallegly amendment, which I strongly opposed and which would have allowed States to refuse to educate the children of illegal immigrants. At my insistence the bill does not include the proposed onerous provisions against legal immigrants, which would have gone beyond the welfare reform law.

I am pleased that the Congress provided 7 additional months of food assistance for needy immigrants, including benefits for many elderly and children. This step will provide some help to individuals and States in preparing for the dramatic restriction of access to benefits that legal immigrants will face under the welfare reform bill.

I am, however, extremely concerned about a provision in this bill that could lead to the Federal Government waiving the Endangered Species Act and the National Environmental Policy Act in order to expeditiously construct physical barriers and roads on the U.S. border. I know the Attorney General shares my

commitment to those important environmental laws and will make every effort, in consultation with environmental agencies, to implement the immigration law in compliance with those environmental laws. I am also concerned about a provision that imposes a new "intent requirement" in unfair immigration-related employment cases that could place hardships on some U.S. citizens and permanent residents. I have asked the Attorney General to take steps to alleviate any potential discrimination that this provision causes against U.S. citizens and authorized workers—particularly Hispanics and Asian-Americans who, by their appearance or accent, may appear to be foreign. Finally, I will seek to correct provisions in this bill that are inconsistent with international principles of refugee protection, including the imposition of rigid deadlines for asylum applications.

The bill also makes important changes in the Nation's banking laws. It assures the continued soundness of the bank and thrift deposit insurance system, and it includes significant regulatory relief for financial institutions. At my insistence, the bill does not erode the protection of consumers and communities.

I commend Senators Baucus and Bingaman for raising the awareness of the issue of the proper accounting of highway trust fund receipts. In next year's reauthorization of the Intermodal Surface Transportation and Efficiency Act, my Administration will rely on a baseline that treats all States fairly and equitably.

The bill includes a Government-wide program to enable agencies to offer buyouts, through December 31, 1997, of up to $25,000 to employees eligible for early or regular retirement. Many of these workers stay on for years after they can retire, so buyouts will serve as an incentive for them to leave. Buyouts are an important tool to help Federal managers downsize their agencies as we continue to move toward a balanced budget—without relying solely on reductions-in-force (RIFs).

I am disappointed that one of my priorities—a ban on physician "gag rules"—was not included. Several States have passed similar legislation to ensure that doctors have the freedom to inform their patients of the full range of medical treatment options, and I am disappointed that the Congress was not able to reach agreement on this measure.

Nevertheless, this bill is good for America. As I have said, it moves us down the path toward a balanced budget while protecting our values. It provides the needed resources to fight domestic and international terrorism. And it cracks down on illegal immigration while protecting legal immigrants.

I am pleased to sign it.

William J. Clinton
The White House,
September 30, 1996.

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I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 355 South Grand Avenue, Suite 2900, Los Angeles, CA 90071-1514. On July 16, 2012, I served the following document(s) by the method indicated below:

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EXHIBITS IN SUPPORT OF MOTION FOR JUDICIAL NOTICE
(FILED CONCURRENTLY WITH ANSWER BRIEF ON THE MERITS)

☐ by transmitting via facsimile on this date from fax number 213.457.8080 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 PM and was reported complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting fax machine. Service by fax was made by agreement of the parties, confirmed in writing. The transmitting fax machine complies with Cal.R.Ct 2003(3).

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 16, 2012, at Los Angeles, California.

Rebecca R. Rich

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Harold Rose v. Bank of America, et al., S199074
Court of Appeal Case No. B230859
(Los Angeles Superior Court Case No. BC433460)

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Office of the District Attorney Appellate Division 320 W. Temple St. #540 Los Angeles, CA 90012 Telephone: 213.974.5911	Served Pursuant to Bus. & Prof. Code 17209 and Rule 8.29