

FINANCIAL SERVICES REGULATORY RELIEF ACT OF 2003

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JULY 14, 2003.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1375]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1375) to provide regulatory relief and improve productivity for insured depository institutions, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment adopted by this committee is identical to the text reported by the Committee on Financial Services shown in their report filed June 12, 2003 (Rept. 108–152, Part 1).

PURPOSE AND SUMMARY

As reported by the Committee on the Judiciary, H.R. 1375, the “Financial Services Regulatory Relief Act of 2003,” is intended to alter or eliminate statutory banking provisions in order to reduce the growing regulatory burden on insured depository institutions, improve their productivity, and to make needed technical corrections to current law. H.R. 1375 contains a broad range of constructive provisions that, taken as a whole, will allow banks and other depository institutions to devote more resources to the business of lending to consumers and less to the bureaucratic maze of compliance with outdated and unneeded regulations. Reducing the regulatory burden on financial institutions lowers the cost of credit and will help restore vibrancy to the national economy.

BACKGROUND AND NEED FOR THE LEGISLATION

On May 21, 2003, the Committee on Financial Services reported H.R. 1375, the “Financial Services Regulatory Relief Act of 2003.”¹ The bill was sequentially referred to the Committee on the Judiciary for a period ending not later than July 14, 2003. The sections within the jurisdiction of the Committee on the Judiciary pertain to the operation of the Federal courts, claims against the United States, and for regulation of the banking industry as it pertains to antitrust. This legislation is substantially identical to H.R. 3951, the “Financial Services Regulatory Relief Act of 2002,” which was reported from the Committee on the Judiciary last Congress.²

Congress has not passed structural reform of America’s banking industry since the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) was enacted in 1989. At that time, the national banking industry and the broader economy were recovering from a savings and loan crisis which undermined public confidence in America’s financial institutions. As a result, Congress enacted FIRREA to help restore the integrity and reliability of the banking industry. H.R. 1375 addresses many shortcomings in that law. For example, economic analysts have estimated that the annual cost of compliance with various State and Federal banking regulations is nearly \$26 billion. While effective regulation of the financial services industry is central to the preservation of public trust in financial institutions, excessive regulation undermines competition and consumer choice, results in higher service fees for consumers, and stifles innovation among competing institutions.

H.R. 1375 provides the following regulatory improvements for national banks: (1) removes the prohibition on national and State banks expanding across State lines by opening branches; (2) allows the use of subordinated debt instruments to meet eligibility requirements for national banks to benefit from subchapter S tax treatment; (3) eliminates duplicative and costly reporting requirements on banks regarding lending to bank officials; (4) changes the exemption from the prohibition on management interlocks for

¹See H.R. Rep. No. 108–152, Part I (2003).

²See H.R. Rep. No. 107–516, Part II, (2002).

banks in metropolitan statistical areas from \$20 million in assets to \$100 million; and (5) streamlines bank merger application regulatory requirements.

The legislation provides the following regulatory improvements for savings associations: (1) gives savings associations parity with banks with respect to broker-dealer and investment adviser Securities and Exchange Commission (SEC) registration requirements; (2) removes auto lending and small business lending limits and expands business lending limit for Federal thrifts; (3) allows Federal thrifts to merge with one or more of their non-thrift subsidiaries or affiliates, as national banks; (4) permits Federal thrifts to invest in service companies without regard to geographic restrictions; and (5) gives Federal thrifts the same authority as national and State banks to make investments primarily designed to promote community development.

H.R. 1375 provides the following regulatory improvements for credit unions: (1) allows privately insured credit unions to apply for membership to the Federal Home Loan Bank system; (2) expands the investment authority of Federal credit unions; (3) permits offering of check cashing and money transfer services to eligible members; (4) increases the limit on investment by Federal credit unions in credit union service organizations from 1 percent to 3 percent of shares and earnings; and (5) raises the general limit on the term of Federal credit union loans from 12 to 15 years, and (6) allows for expedited consideration of credit union mergers.

In addition, H.R. 1375 provides the following regulatory improvements for Federal financial regulatory agencies: (1) provides agencies the discretion to adjust the examination cycle for insured depository institutions to permit the most efficient use of agency resources; (2) allows the agencies to share confidential supervisory information concerning an examined institution; (3) modernizes agency record keeping requirements to allow use of optically imaged or computer scanned images; (4) clarifies agency authority to suspend or prohibit individuals charged with certain crimes from participation in the affairs of any depository institution and not only the institution with which the individual is associated; (5) allows bank examiners to receive credit cards from examined depository institutions if issued under the same terms and conditions as generally offered to the public; and (6) authorizes the Federal Deposit Insurance Corporation (FDIC) to take enforcement actions and impose civil monetary penalties of up to \$1 million per day on any individual, corporation, or other entity for misrepresentation of FDIC insurance coverage. These improvements will allow financial institutions to devote more resources to the business of lending to consumers and less to compliance with outdated and unneeded regulations. Reducing the regulatory burden will serve to lower credit costs for consumers and help invigorate the national economy.

HEARINGS

No hearings were held in the Committee on the Judiciary on H.R. 1375.

COMMITTEE CONSIDERATION

On Wednesday, July 9, 2002, the Committee met in open session and ordered favorably reported the bill, H.R. 1375, with an amendment, by voice vote, a quorum being present. The amendment consisted of the text of the bill as reported by the Committee on Financial Services on May 21, 2003.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that there no recorded votes on H.R. 1375 during the Committee on the Judiciary's consideration of the bill.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII 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.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to H.R. 1375, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 14, 2003.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1375, the Financial Services Regulatory Relief Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathy Gramp and Jenny Lin, who can be reached at 226-2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

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

SUMMARY

H.R. 1375 would affect the operations of financial institutions and the agencies that regulate them. Some provisions would address specific sectors: national banks could more easily operate as S corporations or adopt other alternative organizational structures; thrift institutions would be given some of the same investment, lending, and ownership options available to banks; credit unions would have new options for investments, lending, mergers, and leasing Federal property; and certain privately insured credit unions could become members of the Federal Home Loan Bank system. The bill would provide the Federal Deposit Insurance Corporation (FDIC) with new enforcement authorities and modify regulatory procedures governing certain types of transactions, such as the establishment of de novo branches and interstate mergers. It would also give agencies more flexibility in sharing data, retaining records, and scheduling examinations, and would limit the legal defenses that the United States could use against certain claims for monetary damages.

CBO estimates that enacting this bill would reduce Federal revenues by \$37 million over the next 5 years and by a total of \$117 million over the 2004–2013 period. In addition, we estimate that direct spending would increase by \$17 million over the next 5 years and by a total of \$22 million over the 2004–2013 period.

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

H.R. 1375 contains several private-sector mandates. Those mandates would affect certain depository institutions, nondepository institutions that control depository institutions, uninsured banks, bank holding companies and their subsidiaries, savings and loan association holding companies and their subsidiaries, and Federal Home Loan banks. At the same time, the bill would relax some restrictions on the operations of certain financial institutions. CBO estimates that the aggregate direct cost of complying with the private-sector mandates in the bill would not exceed the annual threshold established in UMRA (\$117 million in 2003, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1375 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

By Fiscal Year, in Millions of Dollars										
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
CHANGES IN REVENUES										
Estimated Revenues										
S Corporation Status	-2	-5	-8	-9	-11	-13	-14	-12	-12	-13
Business Organization Flexibility	*	*	*	*	-1	-2	-2	-3	-4	-5
Total ^a	-2	-5	-8	-10	-12	-15	-17	-14	-16	-18
CHANGES IN DIRECT SPENDING^b										
Estimated Budget Authority	1	1	1	7	7	1	1	1	1	1
Estimated Outlays	1	1	1	7	7	1	1	1	1	1

NOTE: * = Revenue loss of less than \$500,000.

- a. Negative revenues indicate a reduction in revenue collections.
- b. CBO estimates that implementing H.R. 1375 could affect spending subject to appropriation, but we estimate that any such effect would be insignificant.

BASIS OF ESTIMATE

Most of the budgetary impacts of this legislation would result from three provisions: section 101, which would make it easier for national banks to convert to S corporation status or alternative organization forms; section 214, which would limit the government's legal defenses against certain claims for monetary damages; and section 302, which would allow certain Federal credit unions to lease Federal land at no charge. For this estimate, CBO assumes that H.R. 1375 will be enacted in the fall of 2003.

H.R. 1375 also would affect the workload at agencies that regulate financial institutions. We estimate that the net change in agency spending would not be significant. Based on information from each of the agencies, CBO estimates that the change in administrative expenses—both costs and potential savings—would average less than \$500,000 a year over the next several years. Expenditures of the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), and the FDIC are classified as direct spending and would be covered by fees or insurance premiums paid by the institutions they regulate. Any change in spending by the Federal Reserve would affect net revenues, while adjustments in the budget of the Securities and Exchange Commission (SEC) and Federal Trade Commission (FTC) would be subject to appropriation.

Revenues

CBO estimates that enacting H.R. 1375 would reduce Federal tax revenues collected from national and State-chartered banks and would have an insignificant effect on civil and criminal penalties collected for violations of the bill's provisions.

S Corporation Status. Under this bill, some national banks would find it easier to convert from C corporation status to S cor-

poration status. Section 101 would allow directors of national banks to be issued subordinated debt to satisfy the requirement that directors of a bank own qualifying shares in the bank. This provision would effectively reduce the number of shareholders of a bank by removing directors from shareholder status, making it easier for banks to comply with the 75-shareholder limit that defines eligibility for subchapter S election.

Income earned by banks taxed as C corporations is subject to the corporate income tax, and post-tax income distributed to shareholders is taxed again at individual income tax rates. Income earned by banks operating as S corporations is taxed only at the personal income tax rates of the banks' shareholders and is not subject to the corporate income tax. The average effective tax rate on S corporation income is lower than the average effective tax rate on C corporation income. CBO estimates that enacting this provision would reduce revenues by a total of \$36 million over the next 5 years and by \$100 million over the 2004–2013 period.

Based on information from the Federal Reserve Board, the OCC, and private trade associations, CBO expects that most of the banks that would be affected are small, although banks and bank holding companies with assets over \$500 million would also be affected. In addition, States are likely to amend the rules for State-chartered banks to match those for national banks. CBO expects that most conversions to Subchapter S status would occur between 2004 and 2006 and that national banks would convert earlier than State-chartered banks.

Business Organization Flexibility. Under section 110 of this bill, the Comptroller of the Currency could allow national banks to organize in noncorporate form, for example as Limited Liability Corporations (LLCs) as defined by State law. LLCs generally choose to be taxed as partnerships. Only a few States currently allow banks to organize as LLCs, however, and the Internal Revenue Service (IRS) currently taxes State-chartered bank-LLCs as C corporations. LLCs have more organizational flexibility than S corporations while retaining the corporate characteristic of limited liability.

Income earned by banks taxed as C corporations is subject to the corporate income tax, and post-tax income distributed to shareholders is taxed again at individual income tax rates. Income earned by partnerships—like that earned by S corporations—is taxed only at the personal income tax rates of the partners and is not subject to the corporate income tax. The average effective tax rate on partnerships is lower than the average effective tax rate on C corporation income but is similar to the average effective tax rate on S corporation income.

Based on information from the OCC, the FDIC, and private trade associations, CBO believes that it is quite possible that the OCC would alter its regulations to allow national banks to organize in noncorporate form. We expect that, over the next decade, most States that do not currently allow banks to organize as LLCs will begin allowing them to do so in order to be competitive. Under H.R.1375, future IRS tax treatment of bank-LLCs is uncertain. CBO assumes that the IRS may allow bank-LLCs to be taxed as partnerships at some point in the next decade. The estimated revenue effects of section 110 reflect CBO's estimate of the likelihood

of such IRS actions. CBO anticipates that banks forming as LLCs would most likely be newly chartered institutions and that, over the next decade, only a very limited number of banks would convert from C corporation or S corporation status to LLCs taxed as partnerships.

CBO estimates that enacting this provision would reduce Federal revenues by a total of \$1 million over the next 5 years and by \$17 million over the 2004–2013 period.

Civil and Criminal Penalties. H.R. 1375 would make all depository institutions—not just insured institutions—subject to certain civil and criminal fines for violating rules regarding breach of trust, dishonesty, and certain other crimes. It also would authorize the FDIC to take enforcement action or impose civil penalties of up to \$1 million a day on any individual, corporation, or other entity that falsely implies that deposits or other funds are insured by the agency. Based on information from the FDIC, CBO expects that enforcement actions would likely deter most individuals or institutions from violating rules regarding breach of trust, dishonesty, or certain other crimes. As a result, we estimate that any additional penalty collections under those provisions would not be significant.

Direct Spending

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

Monetary Damages in Goodwill Cases. Section 214 would preclude the use of certain legal defenses in claims for damages against the United States arising out of the implementation of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). CBO estimates that enacting this provision would increase the cost of litigating and resolving such claims by a total of \$15 million over the next 5 years.

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

By eliminating some defenses currently available to the United States in such cases, section 214 would increase the likelihood that some claims would reach a hearing on the merits, thereby allowing cases to proceed further in the judicial process than may otherwise

be likely. According to the Department of Justice (DOJ) and the FDIC, this provision would affect only a few of the goodwill cases; claims in the affected cases could total about \$200 million. (This provision also could affect cases in which the FDIC is the plaintiff as the receiver of a failed thrift, but any monetary awards to the FDIC would be intragovernmental payments and would have no net effect on the Federal budget.)

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

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

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

Offsetting Receipts From Federal Leases. Section 302 would allow Federal agencies to lease land to Federal credit unions without charge under certain conditions. Under existing law, agencies may allocate space in Federal buildings without charge if at least 95 percent of the credit union's members are or were Federal employees. Some credit unions, primarily those serving military bases, have leased Federal land to build a facility. Prior to 1991, leases awarded by the Department of Defense (DoD) were free of charge and for terms of up to 25 years; a statutory change enacted that year limited the term of such leases to 5 years and required the lessee to pay a fair market value for the property. According to DoD, about 35 credit unions have leased land since 1991 and are paying a total of about \$525,000 a year to lease Federal property. Those proceeds are recorded as offsetting receipts, and any spending of those payments is subject to appropriation.

CBO expects that enacting this provision would result in a loss of offsetting receipts from all credit union leases. Those lessees currently paying a fee would stop making those payments after they renew their current leases, all of which should expire within the

next 5 years. In addition, credit unions that have long-term, no-cost leases would be able to renew them without becoming subject to the fees they otherwise would pay under current law. CBO estimates that enacting this provision would cost a total of about \$2 million over the next 5 years and an average of about \$700,000 annually after 2008.

Deposit Insurance. Several provisions in the bill could affect the cost of Federal deposit insurance. For example, the bill would streamline the approval process for mergers, branching, and affiliations, which could give eligible institutions the opportunity to diversify and compete more effectively with other financial businesses. In some cases, such efficiencies could reduce the risk of insolvency. It is also possible, however, that some of the new lending and investment options could increase the risk of losses to the deposit insurance funds.

CBO has no clear basis for predicting the direction or the amount of any change in spending for insurance that could result from the new investment, lending, and operational arrangements authorized by this bill. The net budgetary impact of such changes would be negligible over time, however, because any increase or decrease in costs would be offset by adjustments in the insurance premiums paid by banks, thrifts, or credit unions.

Spending Subject to Appropriation

Section 201 provides thrift institutions with exemptions from broker-dealer and investment-advisor registration requirements similar to those accorded banks. Section 313 provides similar exemptions for federally insured credit unions. Based on information from the SEC, CBO estimates that the budgetary effects of those exemptions would not be significant.

Section 312 would exempt federally insured credit unions from filing certain acquisition or merger notices with the FTC. Under current law, the FTC charges filing fees ranging from \$45,000 to \$280,000, depending on the value of the transaction. The collection of such fees is contingent on appropriation action. Based on information from the FTC, CBO estimates that this exemption would have no significant effect on the amounts collected from such fees.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

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

Section 209 would preempt certain State securities laws by prohibiting States from requiring agents representing a Federal savings association to register as brokers or dealers if they sell deposit products (CDs) issued by the savings association. Such a preemption would impose costs (in the form of lost revenues) on those States that currently require such registration. Based on information from representatives of the securities industry and securities regulators, CBO estimates that losses to States as a result of this prohibition would total less than \$1 million a year.

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

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

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

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

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

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

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 1375 contains several private-sector mandates as defined by UMRA. At the same time, the bill would relax some restrictions on the operations of certain financial institutions. CBO estimates that

the aggregate direct costs of mandates in the bill would not exceed the annual threshold established in UMRA (\$117 million in 2003, adjusted annually for inflation).

Mandates

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

Expansion of the FDIC's Authorities. The Gramm-Leach-Bliley Act allowed new forms of affiliations among depositories and other financial services firms. Consequently, insured depository institutions may now be controlled by a company other than a depository institution holding company (DIHC). H.R. 1375 would amend current law to give the FDIC certain authorities concerning troubled or failing depository institutions held by those new forms of holding companies.

Under current law, if the FDIC suffers a loss from liquidating or selling a failed depository institution, the FDIC has the authority to obtain reimbursement from any insured depository institution within the same DIHC. Section 407 would expand the scope of the FDIC's reimbursement power to include all insured depository institutions controlled by the same company, not just those controlled by the same DIHC.

The cost of this mandate would depend, among other things, on the probability of failure of the additional institutions subject to this authority and the probability that the FDIC would incur a loss as a result of those failures. The new authority would apply only to a handful of depository institutions. Based on information from the FDIC, CBO estimates that the cost of this mandate would not be substantial.

In addition, section 408 would allow the FDIC to prohibit or limit any company that controls an insured depository from making "golden parachute" payments or indemnification payments to institution-affiliated parties of troubled or failing insured depositories. (Institution-affiliated parties include directors, officers, employees, and controlling shareholders. Institution-affiliated parties also include independent contractors such as accountants or lawyers who participate in violations of the law or undertake unsound business practices that may cause a financial loss to, or adverse effect on, the insured depository institution.)

Based on information from the FDIC, CBO expects that only a few institutions would be covered by the new authority. In the event that the FDIC exercises this authority, CBO expects that the cost to institutions of withholding such payments would be administrative in nature and minimal, if any.

Prohibitions on Convicted Individuals. Current law prohibits a person convicted of a crime involving dishonesty, a breach

of trust, or money laundering from participating in the affairs of an insured depository institution without FDIC approval. The bill would extend that prohibition so that uninsured banks, bank holding companies and their subsidiaries, and savings and loan holding companies and their subsidiaries could not allow such persons to participate in their affairs without the prior written consent of their designated Federal banking regulator.

Assuming that those institutions already screen potential directors, officers, and employees for criminal offenses, the incremental cost of complying with this mandate would be small.

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

PREVIOUS CBO ESTIMATE

On June 11, 2003, CBO transmitted a cost estimate for H.R. 1375 as ordered reported by the House Committee on Financial Services on May 21, 2003. H.R. 1375 as approved by the House Committee on the Judiciary is identical to the version of the bill reported by the House Committee on Financial Services.

ESTIMATE PREPARED BY:

Federal Costs: Kathy Gramp and Jenny Lin (226–2860)
 Federal Revenues: Pam Greene (226–2680)
 Impact on State, Local, and Tribal Governments: Victoria Heid Hall (225–3220)
 Impact on the Private Sector: Judith Ruud (226–2940)

ESTIMATE APPROVED BY:

Robert A. Sunshine
 Assistant Director for Budget Analysis
 G. Thomas Woodward
 Assistant Director for Tax Analysis

PERFORMANCE GOALS AND OBJECTIVES

H.R. 1375 does not authorize funding. Therefore, clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives is inapplicable.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following section-by-section analysis describes the sections of H.R. 1375 as reported that fall within the rule X jurisdiction of the Committee on the Judiciary. For a description of the other sections

of the bill, please refer to the report of the Committee on Financial Services.³

TITLE I—NATIONAL BANKS

Section 106. Clarification of Waiver of Publication Requirements for Bank Merger Notices.

Section 106 amends the National Bank Consolidation and Merger Act (12 U.S.C. §§ 215(a) and 215(a)(2)) to provide the Comptroller with authority to waive the publication of notice requirement for bank mergers if the Comptroller determines that an emergency justifies such a waiver or if shareholders of the association or State bank agree by unanimous action to waive the publication requirement for their respective institutions.

TITLE II—SAVINGS ASSOCIATIONS PROVISIONS

Section 203. Mergers and Consolidations of Federal Savings Associations with Nondepository Institution Affiliates.

This section amends the Home Owners Loan Act (12 U.S.C. § 1464) to permit a Federal savings association to merge with any nondepository institution affiliate of the savings association.

Section 213. Citizenship of Federal Savings Associations for Determining Federal Court Diversity Jurisdiction.

This section amends the Home Owners' Loan Act (12 U.S.C. § 1464) to establish that a Federal savings association shall be considered—for purposes of establishing diversity jurisdiction—a citizen only of the State where the savings association locates its main office. Diversity jurisdiction requires complete diversity among all parties to a lawsuit, i.e. that all parties be citizens of different States, and for there to be a minimum sum of \$75,000 in controversy. Since they are chartered by the Federal Government and not incorporated in a State, it has been held that federally-chartered savings associations that conduct business in more than one State are not considered to be a citizen of any State. In contrast, federally-chartered savings associations that confine their business to a single State are considered to be a citizen of that State. This section will provide parity among federally-chartered savings associations. This section also ensures greater parity between federally-chartered savings associations and national banking associations by providing that each is considered to be a citizen of the State where it is located for purposes of diversity jurisdiction.

Section 214. Applicability of Certain Procedural Doctrines.

This section amends Section 11A(d) of the Federal Deposit Insurance Act (12 U.S.C. § 1821a(d)) by prohibiting courts from dismissing a claim for monetary damages against the United States, or any agency or official thereof, where any recovery would be paid from the Federal Savings & Loan Insurance Corporation (FSLIC) Resolution Fund or any supplements thereto, where liability is alleged to be based upon actions of the FSLIC or the Federal Home Loan Bank Board prior to their respective dissolutions, where the

³ See H.R. Rep. No.108–152 Part I (2003).

claim arose from the implementation of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), on the basis of *res judicata*, collateral estoppel, or similar issue preclusion defenses if the defense is based upon a decision, opinion, or order of judgment entered by a court prior to the U.S. Supreme Court's decision in *United States v. Winstar*.⁴ During the savings and loan crisis of the 1980's, Federal thrift regulators sought to avoid incurring additional deposit insurance liabilities by encouraging healthy thrifts and outside investors to acquire ailing thrifts through "supervisory mergers." In exchange, the Federal thrift regulators pledged to treat a failed thrift's negative net worth as supervisory goodwill and include it in calculating regulatory capital. In 1989, Congress enacted FIRREA, prohibiting thrifts from counting supervisory goodwill as regulatory capital. In the 1996 *Winstar* decision, the Supreme Court held that the government entered into contracts with the acquiring thrifts and breached those contracts by implementing FIRREA's prohibitions on including supervisory goodwill in calculating regulatory capital. Section 214 seeks to ensure that all institutions entitled to pursue claims against the government under *Winstar's* reasoning are afforded an opportunity to have their claims adjudicated on the merits.

TITLE III—CREDIT UNION PROVISIONS

Section 312. Exemption from Pre-merger Notification Requirement of the Clayton Act.

This section amends the Clayton Act to exempt credit unions from provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. § 18a) which require certain acquired and acquiring persons—including federally insured credit unions—to file a notification and report form with the Federal Trade Commission (FTC) to provide advance notification of mergers and acquisitions when the value of the transaction exceeds \$50 million.

TITLE IV—DEPOSITORY INSTITUTION PROVISIONS

Section 402. Statute of Limitations for Judicial Review of Appointment of a Receiver for Depository Institutions.

This section amends the National Bank Receivership Act (12 U.S.C. § 191), the Federal Deposit Insurance Act (12 U.S.C. § 1821(c)(7)), and the Federal Credit Union Act (12 U.S.C. § 1787(a)(1)), to establish a uniform 30-day statute of limitations for national banks, State chartered non-member banks, and credit unions to challenge decisions by the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and the National Credit Union Administration to appoint a receiver. Current law generally provides that challenges to a decision by the Federal Deposit Insurance Corporation or the Office of Thrift Supervision to appoint a receiver for an insured State bank or savings association must be raised within 30 days of the appointment. (*See* 12 U.S.C. §§ 1821(c)(7) & 1464(d)(2)(B)). However, there is no statutory limitation on national banks' ability to challenge a decision by the Office of the Comptroller of the Currency to appoint a receiver of an insured or uninsured national bank. As a result, the general 6-year

⁴ 518 U.S. 839 (1996).

statute of limitations currently applies to national banks in these instances. This protracted time period severely limits the Office of the Comptroller of the Currency's authority to manage insolvent national banks that are placed in receivership and the ability of the Federal Deposit Insurance Corporation to wind up the affairs of an insured national bank in a timely manner with legal certainty.⁵

TITLE VI—BANKING AGENCY PROVISIONS

Section 607. Streamlining Depository Institution Merger Application Requirements.

This section amends the Federal Deposit Insurance Act (12 U.S.C. § 1828) to require the Attorney General to provide within 30 days a report on the competitive factors associated with a depository institution merger to a requesting agency. This section reduces this period to 10 days if the requesting agency advises the Attorney General that an emergency exists requiring expeditious action.

Section 609. Shortening of Post-approval Antitrust Review Waiting Period for Bank Acquisitions and Mergers with the Agreement of the Attorney General.

Currently, banks and bank holding companies must delay consummating any bank acquisition or merger for at least 15 days after the transaction has been approved by a Federal banking agency. This waiting period is designed to allow the Attorney General to challenge the transaction, if the Attorney General believes the transaction would significantly harm competition. Section 609 would allow the banking agency to reduce the waiting period to 5 days, but only in cases where the Attorney General has agreed in advance that the acquisition or merger would not have serious anti-competitive effects. In such circumstances, a longer waiting period is not needed to allow the Attorney General to review the transaction and merely delays the ability of the banking organizations to achieve their business objectives. This section does not shorten the time period for private parties to challenge the banking agency's approval of the transaction under the Community Reinvestment Act or banking laws.

Section 613. Examiners of Financial Institutions.

This section amends 18 U.S.C. § 212 to establish a fine and a prison sentence not more than 1 year, or both, as well as a further sum equal to the amount of the credit extended, for an officer, director or employee of a financial institution who extends credit to any examiner which the examiner is prohibited from accepting. In addition, this section authorizes limited waivers from the prohibition on examiners accepting credit from a bank being examined, if the examiner fully discloses the nature and circumstances of the loan and receives a determination from the examiner's employer that the loan would not affect the integrity of the examination. Examiners are permitted to receive credit cards on terms and conditions no more favorable to the examiner than those generally applicable to other consumers.

⁵*James Madison, Ltd. v. Ludwig* 82 F.3d 1085 (1996).

*Section 615. Enforcement Against Misrepresentations Regarding
FDIC Deposit Insurance Coverage.*

This section amends 18 U.S.C. § 709 to authorize the FDIC to take enforcement actions and impose civil monetary penalties of up to \$1 million per day on any individual, corporation, or other entity for misrepresentation of FDIC insurance coverage. This section does not prohibit the imposition of otherwise applicable sanctions for its violation, and sets time periods within which the FDIC may assess and recover such civil penalties.

AGENCY VIEWS



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 8, 2003

The Honorable F. James Sensenbrenner, Jr.
 Chairman
 Committee on the Judiciary
 U.S. House of Representatives
 Washington, DC 20515

Dear Mr. Chairman:

This presents the views of the Department of Justice on H.R. 1375, the "Financial Services Regulatory Relief Act of 2003," as reported by the Committee on Financial Services. In general, we defer to the Secretary of the Treasury regarding the need for, or desirability of, the enactment of H.R. 1375. We do, however, have several serious concerns of our own about the bill, as explained below.

1. Constitutional Concerns

Section 301(b)(4) of the bill would require that an "appropriate supervisory agency of each State ... shall provide the National Credit Union Administration, upon request, with the results of [certain] examination[s] and reports ... which such agency may have in its possession." This provision is questionable under Tenth Amendment principles of federalism. In *Printz v. United States*, 521 U.S. 898, 935 (1997), the Court held that "[t]he Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." Admittedly, the Court distinguished *Printz* in *Reno v. Condon*, 528 U.S. 141 (2000), in which it upheld a statute that regulates the disclosure of personal information contained in the records of State Departments of Motor Vehicles. But one of the central points of distinction was that the statute at issue in *Condon* "does not require state officials to assist in the enforcement of federal statutes regulating private individuals." *See id.* at 151. The provision at issue here, by contrast, does appear to require state officials to assist in the enforcement of a federal regulatory regime by providing certain examinations and reports. Moreover, the Court in *Condon* did not reach the question whether such a

statute would be permissible if it regulated States *qua* States, or whether instead "general applicability is a constitutional requirement for federal regulation of the States." *Id.* In this case, the provision at issue applies to States and only States. In short, the Tenth Amendment question is a close and difficult one. To obviate the issue, we recommend changing the provision by removing the word "shall" and replacing it with the word "may."

Section 613 of the bill would create two crimes without explicit *mens rea* requirements. We note that a court might or might not infer such requirements from congressional silence. See, e.g., *Staples v. United States*, 511 U.S. 600, 605 (1994) ("[S]ilence on this point by itself does not necessarily suggest that Congress intended to dispense with a conventional *mens rea* element, which would require that the defendant know the facts that make his conduct illegal. On the contrary, we must construe the statute in light of the background rules of the common law, in which the requirement of some *mens rea* for a crime is firmly embedded.") (internal citations omitted); *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 72 (1994) ("the presumption in favor of a scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct"). Congress may wish to consider making an explicit decision about the level of scienter required, rather than leaving the courts to make an inference from silence on the question.

2. Relitigation of Contract Formation and Breach

Section 214 of the bill, entitled "Clarification of Applicability of Certain Procedural Doctrines," would require the United States to relitigate the issue of contract formation and breach in cases in which these issues were resolved favorably to the Government prior to the Supreme Court's decision in *United States v. Winstar, et al.*, 518 U.S. 839 (1996). Specifically, Section 214 would provide that any plaintiff may seek monetary relief from the Government based upon "actions" of the Federal Savings and Loan Insurance Corporation ("FSLIC") or the Federal Home Loan Bank Board ("FHLBB") and "arising from" the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") "or its implementation, and where any monetary recovery in such proceeding would be paid from the FSLIC Resolution Fund" ("FRF") "or any supplements thereto;" and that no court may "dismiss or affirm on appeal the dismissal of "such claims" on the basis of res judicata, collateral estoppel, or any similar doctrine, defense, or rule of law, based upon any decision, opinion, or order of judgment entered by any court prior to July 1, 1996." Section 214 further provides that, "[u]nless some other defense is applicable, in any such proceeding," the courts "shall review the merits of the claims of the party seeking such monetary relief and shall enter judgment accordingly."

a. Background

Section 214 is apparently intended to salvage a single "Winstar-related" case that is pending in the United States Court of Appeals for the Federal Circuit, Charter Fed. Sav. Bank v. United States, No. 03-5032.

Charter previously filed suit in a district court in February 1991 seeking to enforce its alleged contract with the Government. In that case, as in the pending case before the Federal Circuit, Charter alleged that the FHLBB contractually bound the United States to (i) permit the thrift to amortize goodwill (an intangible, nonearning, and nontransferable asset) resulting from the merger, over a longer period than allowed by Generally Accepted Accounting Principles ("GAAP"), and (ii) count this goodwill toward the thrift's regulatory capital requirements over the entire amortization period. The district court ruled in favor of Charter, but the United States Court of Appeals for the Fourth Circuit reversed, holding that the documents in this case did not include any express contract with the United States and that, in any event, the regulators never promised to exempt Charter from future regulatory change. Charter Fed. Sav. Bank v. Office of Thrift Supervision, 976 F.2d 203 (4th Cir. 1992). The Fourth Circuit's decision became final when the Supreme Court subsequently denied a petition for a writ of certiorari. 507 U.S. 1004 (1993).

In August 1995, shortly before the statute of limitations expired for breach of contract claims arising from FIRREA, Charter refiled its complaint in the Court of Federal Claims. At this time, the Winstar trilogy was headed for the Supreme Court, and all similar cases pending in the Court of Federal Claims, including Charter, were stayed.

In July 1996, the Supreme Court issued its decision in Winstar, rejecting two Government defenses to liability. The Court did not consider the issue whether contracts existed in the three cases before it, but deferred to the lower court's findings concerning that issue.

In 1997, the Court of Federal Claims partially lifted the stay imposed upon the remaining 120 "Winstar-related" cases to permit the parties to file dispositive motions concerning the issues of contract formation and breach. Charter filed a motion for summary judgment contending, notwithstanding the Fourth Circuit's final decision to the contrary, that the Government had entered into a contract with Charter promising special regulatory treatment for goodwill. We filed cross-motions based upon, among other arguments, issue preclusion. The Supreme Court's decision in Winstar could not revive the issues finally resolved in Charter. In any event, at most Winstar resolved the issue of the Government's defenses to liability for breach of the three contracts found to exist in

the three cases before the Supreme Court. The Court did not consider any facts or documents relevant to Charter's contract claims.

On October 9, 2002, ruling upon the Government's motions to dismiss and for summary judgment and the appellant's motion for summary judgment, the trial court held that the Fourth Circuit's decision precluded Charter's contract claims. Charter, 54 Fed. Cl. 120, 128 (2002). The court first found that in Charter's district court case, the thrift argued that "it made a contract with the FHLBB for the use of supervisory goodwill and the contract was abrogated by FIRREA." Id. The Court of Federal Claims then held that, on appeal, the Fourth Circuit determined that "the FHLBB did not promise to exempt Charter from future capital regulations." Id. Next, the Court of Federal Claims determined that the Fourth Circuit's decision barred Charter's current contract claims. The court wrote:

Charter cannot prove here the obligation or duty arising out of a contract with the Government to provide the regulatory goodwill treatment desired by Charter in the face of contrary future regulations because that very issue was decided against [Charter] by the Fourth Circuit.

Id. at 128. On October 10, 2002, the court dismissed Charter's complaint. Charter has appealed this decision. The appellate briefing was completed on April 4, 2003.

Although Section 214 appears intended to salvage only the Charter case, several other pending Winstar-related cases also could be affected. In two cases, for example, the Resolution Trust Corporation ("RTC"), as receiver for failed thrifts, voluntarily dismissed prior district court actions, with prejudice, during the early 1990s. In 1997, however, the Federal Deposit Insurance Corporation ("FDIC"), as manager of the FRF, which inherited the RTC's assets and liabilities, intervened in existing suits filed in the Court of Federal Claims by failed thrift shareholders to assert the same claims that the RTC had previously dismissed. If enacted, Section 214 would appear to remove this defense to the FDIC's claims, although, as in Charter, the Government would have other defenses to liability and damages.

b. Reasons Why We Oppose Section 214

As a preliminary matter, Section 214, if enacted, would expose the Treasury to claims of approximately \$1 billion in Charter and as many as six other cases in which district courts issued final judgments favorable to the Government prior to the Supreme Court's decision in Winstar. While the Government has other arguments why the courts

should reject these claims in the pending cases, the potential exists for the entry of sizable judgments against the Government if the bill is enacted.

Section 214 clearly would be unconstitutional if the defendant in these suits were not the United States, because it would interfere with final judgments entered by Article III courts. The Supreme Court has held, however, that it is not unconstitutional for Congress to remove a procedural bar to the assertion of a claim against the United States because Congress may determine the terms and conditions for any suit against the United States. The Supreme Court also has repeatedly stated that, when the United States enters into a contract, it is subject to the same rules as any private party in determining liability and damages for breach. Given that the United States is not entitled to any special treatment or privileges in defending itself against breach of contract claims, private parties should not be able to obtain special treatment or privileges in suing the United States for breach of contract. Thus, Charter and other plaintiffs who otherwise would be barred by *res judicata* and issue preclusion should not be provided with special legislative relief that would be unconstitutional in contract disputes between private parties.

Charter contends that it should receive a waiver of the normal rule of issue preclusion because it deserves to be treated like the other *Winstar* plaintiffs and should not be penalized because it brought its case before the Supreme Court ruled in *Winstar*. The Court of Federal Claims properly rejected this argument. The *Winstar* plurality decision did not overturn *Charter*, and there is no basis for Charter's claim that the Fourth Circuit would have ruled different had *Winstar* already been decided. The Supreme Court, the Federal Circuit, and the Court of Federal Claims have repeatedly emphasized in cases decided since *Winstar* that the issue of contract formation must be resolved based upon the facts and circumstances of each case. Charter's assumption that the Supreme Court would have reached a different conclusion in its case is unfounded, particularly as the Supreme Court denied Charter's petition for a writ of *certiorari* to review the Fourth Circuit's decision.

Nor do the equities favor a law providing special relief to Charter and the FDIC. Charter was represented by counsel and chose to file suit in the district court, even though the Court of Federal Claims possessed concurrent jurisdiction and many suits were filed in that court. Charter elected to pursue its claim on the merits fully and exhaustively in the district court, the Fourth Circuit, and the Supreme Court. Having made this election, Charter should be required to accept the consequences. There are many areas in which Congress has provided courts and administrative tribunals with concurrent jurisdiction. Plaintiffs must assess and choose the forum they believe will be most receptive to their claims. Having made that choice, Congress should not permit a "second bite" at the "judicial apple" in the alternate forum simply because, in hindsight,

plaintiffs now believe that they should have made a different choice.

There is no basis to provide Charter with this special treatment and, if granted, other potential plaintiffs are likely to seek comparable legislative exemptions from established jurisdictional and legal principles that currently bar their claims. Many potential "Winstar-related" plaintiffs neglected to file claims before the statute of limitations expired. Others filed timely complaints but lack standing to assert the breach of contract claim. Still others filed timely complaints but voluntarily dismissed because they realized that their claims would be barred by *res judicata*. There is no reason to single out Charter for the extraordinary relief proposed by Section 214. In fact, because Charter obtained an improper injunction from the district court, it actually was exempt from FIRREA during the year the injunction was in place. Other thrifts did not receive this benefit. After the Fourth Circuit dissolved the injunction, Charter raised capital and was able to satisfy FIRREA's new capital requirements. Thus, Charter benefitted from its prior district court action and was not harmed by FIRREA.

In the two FDIC cases that could be affected by Section 214, as noted above, the receiver voluntarily dismissed the prior district court complaints with prejudice. While this result might seem unfair to shareholders and creditors of the failed thrifts, particularly as the receiver was the RTC (now the FDIC), interested parties are not without a remedy. If they believe the receiver improperly conducted the thrift's affairs, they could sue the receiver in district court. Of course, the receiver could assert defenses, including laches, given the failure of these parties to object to the dismissal during the past decade.

Additionally, there is no reason to remove this impediment to the FDIC's current claims before the Court of Federal Claims, because those claims are nonjusticiable in any event. In virtually all of the cases in which the FDIC intervened to assert "Winstar" claims originally belonging to failed thrifts against the United States, the result, even if the FDIC were fully successful, would be that the United States would pay itself, as the largest creditor of the failed thrift receiverships. The Federal Circuit has ruled in two cases that the FDIC's *Winstar*-related claims fail to satisfy the case-or-controversy requirement of Article III and therefore must be dismissed.

In sum, Charter chose to litigate its case in a district court and in the Fourth Circuit. The defense of this suit imposed a large cost upon the taxpayers. No special reason has been advanced to distinguish Charter from other claimants in similar circumstances. There is no basis, therefore, to impose upon the taxpayer the cost of litigating Charter's claim a second time.

3. Exemption of Credit Union Mergers from Pre-merger Antitrust Notification

The Department also has very serious concerns about section 312 of the bill. Section 312 would exempt credit union mergers from the pre-merger notification and waiting period requirements of the Clayton Act, 15 U.S.C. § 18a, commonly referred to as the Hart-Scott-Rodino Act (HSR Act). The HSR Act requires that merging parties notify the antitrust enforcement agencies in advance, and observe a prescribed waiting period to permit an appropriate antitrust review, in order to ensure that their merger will not harm competition. These requirements apply only if the transaction and parties meet certain size thresholds – including a size-of-transaction threshold that was recently increased from \$15 million to \$50 million by Pub. L. No. 106-553, 114 Stat. 2762.

Bank and bank holding company mergers that require banking agency approval are exempted from these HSR Act pre-merger requirements under 15 U.S.C. § 18a(c)(7), but that is because the banking agency approval process already entails a full pre-merger competitive review, conducted in consultation with the Department's Antitrust Division. In other words, these mergers were exempted from HSR Act pre-merger requirements because they are "already subject to advance antitrust review." H.R. Rep. No. 1373, 94th Cong., 2d Sess. 6 (1976). In marked contrast, the approval process for credit union mergers under 12 U.S.C. § 1785(b)(3) does not entail any comparable competitive review.

Because of this fundamental difference, credit union mergers were appropriately omitted from the HSR Act exemptions in section § 18a(c)(7), so that they, like banks and bank holding companies, would be "subject to advance antitrust review." Thus, section 312 of the proposed legislation would not, as some have mistakenly believed, promote parity of treatment among various types of financial institutions, but rather would single out credit union mergers for an unwarranted exemption from advance antitrust review by anyone – either the antitrust enforcement authorities or a specialized banking agency.

Because the size-of-transaction threshold has been raised to \$50 million, and because certain types of credit union assets (e.g., cash, mortgages) are not included in calculating size of transaction, very few credit union mergers are likely to be subject to the HSR Act reporting requirements. Data provided by the Credit Union National Association indicate that of 1506 credit union mergers from 1995-2001, eight or fewer would have been reportable under the higher new threshold; and only two credit union mergers have been reported under HSR in the more than two years since the higher threshold took effect on February 1, 2001. It is very important, however, that these few large mergers remain subject to advance antitrust review under the HSR Act, in order to ensure that competition is protected.

4. Potential Unintended Contractual Liabilities

Section 405 of the bill, enacting new section 49 of the Federal Deposit Insurance Act (12 U.S.C. § 181 et seq.) ("Enforcement of Agreements"), would authorize banking agencies to enforce: (a) the terms of any condition imposed in writing by the agency upon a depository institution or an institution-affiliated party, including a bank holding company, in connection with any application, notice, or other request concerning a depository institution; and (b) "any written agreement entered into between the agency and an institution-affiliated party (including a bank holding company)." The proposal does not specify whether the "agreements" would be enforced as regulatory directives or as contracts.

We strongly recommend that Congress clarify, either in the statute itself or in the legislative history, that, as with agreements under other provisions of the Federal Deposit Insurance Act, these "agreements" are not "contracts" and are not enforceable as "contracts." In view of recent decisions, following Winstar, holding that otherwise regulatory action also may, in certain circumstances, bind the United States in contract, a statute authorizing the prospective "enforcement" of these "agreements," without limitation or clarification, could expose the Treasury to large monetary claims in the future.

To be sure, the courts have sometimes declined to enforce these agreements when the agencies have sought to enforce them, upon the grounds that they are not "contracts" but only nonbinding commitments by regulated entities and their owners. However, it may be possible for plaintiffs to argue, in our view erroneously, that these types of agreements are akin to the types of documents that have been found in the Winstar-related litigation to constitute contracts binding the United States to particular regulatory treatment over several decades or to pay damages for common law breach of contract for changes in regulation that conflict with the "agreement." Also, if an agreement or condition imposed in writing were treated as a contract, the depository institution or institution-affiliated party that is subject to the agreement or condition might assert common-law contract defenses in an action by the agency to enforce the agreement or condition.

5. Destruction of Old Records of Depository Institutions

Section 604, entitled "Amendment Permitting The Destruction Of Old Records Of A Depository Institution By The FDIC After the Appointment Of The FDIC As Receiver," would permit the FDIC to destroy original documents of an institution in receivership that are more than ten years old. Section 605, entitled "Modernization of

FDIC Recordkeeping Requirement," would permit the FDIC to destroy its own original documents immediately once they had been reproduced in some form.

We recognize that the FDIC, like other agencies, faces storage and retrieval problems as a result of Government record-keeping requirements. We are concerned, however, that sections 604 and 605 go too far in permitting the FDIC to destroy documents that might be needed for litigation. For example, in the *Winstar* litigation, regulatory and institutional documents generated over the past 20 years have been relevant to the resolution of the issues. We have objected to FDIC requests to destroy original documents that might be relevant to the litigation, because reproductions (e.g., microfilm and microfiche) frequently have been of insufficient quality to substitute for original documents.

Accordingly, we recommend that, at a minimum sections 604 and 605 expressly direct the FDIC to preserve any original documents that are relevant to pending or future litigation, or that might lead to the discovery of evidence relevant to pending or future litigation. Alternatively, we recommend that the FDIC be required to preserve original documents for at least six years, which is the general statute of limitations for any claims that are likely to relate to those documents.

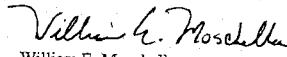
6. Protection of Confidential Information

Finally, we suggest a technical amendment to section 610, regarding the protection of confidential information received by Federal banking regulators from foreign banking supervisors. In particular, in order to ensure that the information at issue is exempt from disclosure under Exemption Three of the Freedom of Information Act, we suggest that section 610 be amended in two ways. First, in proposed 12 U.S.C. § 3109(c)(1), delete "may not be compelled to" and insert in lieu thereof "shall not." Second, in §3109(c)(1)(A) delete "the foreign regulatory or supervisory authority has, in good faith determined and represented to such Federal banking agency that public." This provision would then read: "(A) disclosure of the information would violate the laws applicable to that foreign regulatory or supervisory authority." The legislative history could then make it clear that Federal banking regulators may rely on the determinations of foreign regulatory or supervisory authorities in determining whether disclosure would violate their laws.

* * * * *

Thank you for the opportunity to comment on this matter. If we may be of additional assistance, we trust that you will not hesitate to call upon us. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,



William E. Moschella
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill was referred to this committee for consideration of such provisions of the bill and amendment as fall within the jurisdiction of this committee pursuant to clause 1(k) of Rule X of the Rules of the House of Representatives. The changes made to existing law by the amendment reported by the Committee on Financial Services are shown in the report filed by that committee (Rept. 108–152, Part 1).

MARKUP TRANSCRIPT

BUSINESS MEETING**WEDNESDAY, JULY 9, 2003**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr., [Chairman of the Committee] presiding.

* * * * *

Chairman SENSENBRENNER. Now pursuant to notice, I call up the bill H.R. 1375, the “Financial Services Regulatory Relief Act of 2003” for purposes of markup and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point. The text of the bill as reported by the Committee on Financial Services, which the Members have before them, will be considered as read, considered as the original text for purposes of amendment, and open for amendment at any point.

[The Committee Print for H.R. 1375 follows:]

[COMMITTEE PRINT]**July 7, 2003****[Showing H.R. 1375, As Reported by the Committee on
Financial Services]**108TH CONGRESS
1ST SESSION**H. R. 1375**

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2003

Mrs. CAPITO (for herself, Mr. OXLEY, Mr. BACHUS, and Mr. ROSS) introduced the following bill; which was referred to the Committee on Financial Services

JUNE , 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in roman]

[For text of introduced bill, see copy of bill as introduced on March 20, 2003]

A BILL

To provide regulatory relief and improve productivity for insured depository institutions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Financial Services Regulatory Relief Act of 2003”.

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

Sec. 1. Short title; table of contents.

TITLE I—NATIONAL BANK PROVISIONS

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

TITLE II—SAVINGS ASSOCIATION PROVISIONS

- Sec. 201. Parity for savings associations under the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940.
- Sec. 202. Investments by Federal savings associations authorized to promote the public welfare.
- Sec. 203. Mergers and consolidations of Federal savings associations with non-depository institution affiliates.
- Sec. 204. Repeal of statutory dividend notice requirement for savings association subsidiaries of savings and loan holding companies.
- Sec. 205. Modernizing statutory authority for trust ownership of savings associations.
- Sec. 206. Repeal of overlapping rules governing purchased mortgage servicing rights.
- Sec. 207. Restatement of authority for Federal savings associations to invest in small business investment companies.
- Sec. 208. Removal of limitation on investments in auto loans.
- Sec. 209. Selling and offering of deposit products.
- Sec. 210. Funeral- and cemetery-related fiduciary services.
- Sec. 211. Repeal of qualified thrift lender requirement with respect to out-of-state branches.
- Sec. 212. Small business and other commercial loans.
- Sec. 213. Clarifying citizenship of Federal savings associations for Federal court jurisdiction.
- Sec. 214. Clarification of applicability of certain procedural doctrines.

TITLE III—CREDIT UNION PROVISIONS

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

TITLE IV—DEPOSITORY INSTITUTION PROVISIONS

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

TITLE V—DEPOSITORY INSTITUTION AFFILIATES PROVISIONS

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

TITLE VI—BANKING AGENCY PROVISIONS

- Sec. 601. Waiver of examination schedule in order to allocate examiner resources.
- Sec. 602. Interagency data sharing.
- Sec. 603. Penalty for unauthorized participation by convicted individual.

- Sec. 604. Amendment permitting the destruction of old records of a depository institution by the FDIC after the appointment of the FDIC as receiver.
- Sec. 605. Modernization of recordkeeping requirement.
- Sec. 606. Clarification of extent of suspension, removal, and prohibition authority of Federal banking agencies in cases of certain crimes by institution-affiliated parties.
- Sec. 607. Streamlining depository institution merger application requirements.
- Sec. 608. Inclusion of Director of the Office of Thrift Supervision in list of banking agencies regarding insurance customer protection regulations.
- Sec. 609. Shortening of post-approval antitrust review period with the agreement of the Attorney General.
- Sec. 610. Protection of confidential information received by Federal banking regulators from foreign banking supervisors.
- Sec. 611. Prohibition on the participation in the affairs of bank holding company or Edge Act or agreement corporations by convicted individual.
- Sec. 612. Clarification that notice after separation from service may be made by an order.
- Sec. 613. Examiners of financial institutions.
- Sec. 614. Parity in standards for institution-affiliated parties.
- Sec. 615. Enforcement against misrepresentations regarding FDIC deposit insurance coverage.
- Sec. 616. Compensation of Federal home loan bank directors.
- Sec. 617. Extension of terms of Federal home loan bank directors.
- Sec. 618. Biennial reports on the status of agency employment of minorities and women.
- Sec. 619. Coordination of State examination authority.

TITLE VII—CLERICAL AND TECHNICAL AMENDMENTS

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

1 **TITLE I—NATIONAL BANK** 2 **PROVISIONS**

3 **SEC. 101. NATIONAL BANK DIRECTORS.**

4 Section 5146 of the Revised Statutes of the United
5 States (12 U.S.C. 72) is amended—

6 (1) by striking “SEC. 5146. Every director
7 must during” and inserting the following:

1 **“SEC. 5146. REQUIREMENTS FOR BANK DIRECTORS.**

2 “(a) RESIDENCY REQUIREMENTS.—Every director of
3 a national bank shall, during”;

4 (2) by striking “total number of directors.
5 Every director must own in his or her own right”
6 and inserting “total number of directors.

7 “(b) INVESTMENT REQUIREMENT.—

8 “(1) IN GENERAL.—Every director of a na-
9 tional bank shall own, in his or her own right,”; and

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

12 “(2) EXCEPTION FOR SUBORDINATED DEBT IN
13 CERTAIN CASES.—In lieu of the requirements of
14 paragraph (1) relating to the ownership of capital
15 stock in the national bank, the Comptroller of the
16 Currency may, by regulation or order, permit an in-
17 dividual to serve as a director of a national bank
18 that has elected, or notifies the Comptroller of the
19 bank’s intention to elect, to operate as a S corpora-
20 tion pursuant to section 1362(a) of the Internal
21 Revenue Code of 1986, if that individual holds debt
22 of at least \$1,000 issued by the national bank that
23 is subordinated to the interests of depositors and
24 other general creditors of the national bank.”.

1 **SEC. 102. VOTING IN SHAREHOLDER ELECTIONS.**

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

4 (1) by striking “or to cumulate” and inserting
5 “or, if so provided by the articles of association of
6 the national bank, to cumulate”;

7 (2) by striking the comma after “his shares
8 shall equal”; and

9 (3) by adding at the end the following new sen-
10 tence: “The Comptroller of the Currency may pre-
11 scribe such regulations to carry out the purposes of
12 this section as the Comptroller determines to be ap-
13 propriate.”.

14 **SEC. 103. SIMPLIFYING DIVIDEND CALCULATIONS FOR NA-**
15 **TIONAL BANKS.**

16 (a) IN GENERAL.—Section 5199 of the Revised Stat-
17 utes of the United States (12 U.S.C. 60) is amended to
18 read as follows:

19 **“SEC. 5199. NATIONAL BANK DIVIDENDS.**

20 “(a) IN GENERAL.—Subject to subsection (b), the di-
21 rectors of any national bank may declare a dividend of
22 so much of the undivided profits of the bank as the direc-
23 tors judge to be expedient.

24 “(b) APPROVAL REQUIRED UNDER CERTAIN CIR-
25 CUMSTANCES.—A national bank may not declare and pay
26 dividends in any year in excess of an amount equal to the

1 sum of the total of the net income of the bank for that
2 year and the retained net income of the bank in the pre-
3 ceding two years, minus any transfers required by the
4 Comptroller of the Currency (including any transfers re-
5 quired to be made to a fund for the retirement of any
6 preferred stock), unless the Comptroller of the Currency
7 approves the declaration and payment of dividends in ex-
8 cess of such amount.”.

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

“5199. National bank dividends.”.

13 **SEC. 104. REPEAL OF OBSOLETE LIMITATION ON REMOVAL**
14 **AUTHORITY OF THE COMPTROLLER OF THE**
15 **CURRENCY.**

16 Section 8(e)(4) of the Federal Deposit Insurance Act
17 (12 U.S.C. 1818(e)(4)) is amended by striking the 5th
18 sentence.

19 **SEC. 105. REPEAL OF INTRASTATE BRANCH CAPITAL RE-**
20 **QUIREMENTS.**

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

23 (1) in the 2nd sentence, by striking “, without
24 regard to the capital requirements of this section,”;
25 and

1 (2) by striking the last sentence.

2 **SEC. 106. CLARIFICATION OF WAIVER OF PUBLICATION RE-**
3 **QUIREMENTS FOR BANK MERGER NOTICES.**

4 The last sentence of sections 2(a) and 3(a)(2) of the
5 National Bank Consolidation and Merger Act (12 U.S.C.
6 215(a) and 215a(a)(2), respectively) are each amended by
7 striking “Publication of notice may be waived, in cases
8 where the Comptroller determines that an emergency ex-
9 ists justifying such waiver, by unanimous action of the
10 shareholders of the association or State bank” and insert-
11 ing “Publication of notice may be waived if the Comp-
12 troller determines that an emergency exists justifying such
13 waiver or if the shareholders of the association or State
14 bank agree by unanimous action to waive the publication
15 requirement for their respective institutions”.

16 **SEC. 107. CAPITAL EQUIVALENCY DEPOSITS FOR FEDERAL**
17 **BRANCHES AND AGENCIES OF FOREIGN**
18 **BANKS.**

19 Section 4(g) of the International Banking Act of
20 1978 (12 U.S.C. 3102(g)) is amended to read as follows:

21 “(g) CAPITAL EQUIVALENCY DEPOSIT.—

22 “(1) IN GENERAL.—Upon the opening of a
23 Federal branch or agency of a foreign bank in any
24 State and thereafter, the foreign bank, in addition to
25 any deposit requirements imposed under section 6,

1 shall keep on deposit, in accordance with such regu-
2 lations as the Comptroller of the Currency may pre-
3 scribe in accordance with paragraph (2), dollar de-
4 posits, investment securities, or other assets in such
5 amounts as the Comptroller of the Currency deter-
6 mines to be necessary for the protection of deposi-
7 tors and other investors and to be consistent with
8 the principles of safety and soundness.

9 “(2) LIMITATION.—Notwithstanding paragraph
10 (1), regulations prescribed under such paragraph
11 shall not permit a foreign bank to keep assets on de-
12 posit in an amount that is less than the amount re-
13 quired for a State licensed branch or agency of a
14 foreign bank under the laws and regulations of the
15 State in which the Federal agency or branch is lo-
16 cated.”.

17 **SEC. 108. EQUAL TREATMENT FOR FEDERAL AGENCIES OF**
18 **FOREIGN BANKS.**

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

1 **SEC. 109. MAINTENANCE OF A FEDERAL BRANCH AND A**
2 **FEDERAL AGENCY IN THE SAME STATE.**

3 Section 4(e) of the International Banking Act of
4 1978 (12 U.S.C. 3102(e)) is amended by inserting “if the
5 maintenance of both an agency and a branch in the State
6 is prohibited under the law of such State” before the pe-
7 riod at the end.

8 **SEC. 110. BUSINESS ORGANIZATION FLEXIBILITY FOR NA-**
9 **TIONAL BANKS.**

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

14 **“SEC. 5136C. ALTERNATIVE BUSINESS ORGANIZATION.**

15 “(a) IN GENERAL.—The Comptroller of the Currency
16 may prescribe regulations—

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

19 “(2) to provide requirements for the organiza-
20 tional characteristics of a national bank organized
21 and operating other than as a body corporate, con-
22 sistent with the safety and soundness of the national
23 bank.

24 “(b) EQUAL TREATMENT.—Except as provided in
25 regulations prescribed under subsection (a), a national
26 bank that is operating other than as a body corporate shall

1 have the same rights and privileges and shall be subject
2 to the same duties, restrictions, penalties, liabilities, condi-
3 tions, and limitations as a national bank that is organized
4 as a body corporate.”.

5 (b) TECHNICAL AND CONFORMING AMENDMENT.—
6 Section 5136 of the Revised Statutes of the United States
7 (12 U.S.C. 24) is amended, in the matter preceding the
8 paragraph designated as the “First”, by inserting “or
9 other form of business organization provided under regula-
10 tions prescribed by the Comptroller of the Currency under
11 section 5136C” after “a body corporate”.

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

“5136C. Alternative business organization.”.

17 **SEC. 111. CLARIFICATION OF THE MAIN PLACE OF BUSI-**
18 **NESS OF A NATIONAL BANK.**

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

21 (1) in the paragraph designated the “Second”
22 of section 5134 (12 U.S.C. 22), by striking “The
23 place where its operations of discount and deposit
24 are to be carried on” and inserting “The place

1 where the main office of the national bank is, or is
2 to be, located”; and

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

6 **TITLE II—SAVINGS ASSOCIATION**
7 **PROVISIONS**

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

11 (a) SECURITIES EXCHANGE ACT OF 1934.—

12 (1) DEFINITION OF BANK.—Section 3(a)(6) of
13 the Securities Exchange Act of 1934 (15 U.S.C.
14 78c(a)(6)) is amended—

15 (A) in subparagraph (A), by inserting “or
16 a Federal savings association, as defined in sec-
17 tion 2(5) of the Home Owners’ Loan Act” after
18 “a banking institution organized under the laws
19 of the United States”; and

20 (B) in subparagraph (C)—

21 (i) by inserting “or savings associa-
22 tion as defined in section 2(4) of the Home
23 Owners’ Loan Act,” after “banking insti-
24 tution,”; and

1 (ii) by inserting “or savings associa-
2 tions” after “having supervision over
3 banks”.

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

8 (A) in subparagraph (A)—

9 (i) in clause (ii), by striking “(i) or
10 (iii)” and inserting “(i), (iii), or (iv)”;

11 (ii) by striking “and” at the end of
12 clause (iii);

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

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

17 “(iv) the Director of the Office of
18 Thrift Supervision, in the case of a savings
19 association (as defined in section 3(b) of
20 the Federal Deposit Insurance Act (12
21 U.S.C. 1813(b))) the deposits of which are
22 insured by the Federal Deposit Insurance
23 Corporation, a subsidiary or a department
24 or division of any such savings association,

1 or a savings and loan holding company;
2 and”;

3 (B) in subparagraph (B)—

4 (i) in clause (ii), by striking “(i) or
5 (iii)” and inserting “(i), (iii), or (iv)”;

6 (ii) by striking “and” at the end of
7 clause (iii);

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

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

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

21 (C) in subparagraph (C)—

22 (i) in clause (ii), by striking “(i) or
23 (iii)” and inserting “(i), (iii), or (iv)”;

24 (ii) by striking “and” at the end of
25 clause (iii);

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

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

5 “(iv) the Director of the Office of
6 Thrift Supervision, in the case of a savings
7 association (as defined in section 3(b) of
8 the Federal Deposit Insurance Act (12
9 U.S.C. 1813(b))) the deposits of which are
10 insured by the Federal Deposit Insurance
11 Corporation, a savings and loan holding
12 company, or a subsidiary of a savings and
13 loan holding company when the appro-
14 priate regulatory agency for such clearing
15 agency is not the Commission; and”;

16 (D) in subparagraph (D)—

17 (i) by striking “and” at the end of
18 clause (ii);

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

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

23 “(iii) the Director of the Office of
24 Thrift Supervision, in the case of a savings
25 association (as defined in section 3(b) of

1 the Federal Deposit Insurance Act (12
2 U.S.C. 1813(b)) the deposits of which are
3 insured by the Federal Deposit Insurance
4 Corporation; and”;

5 (E) in subparagraph (F)—

6 (i) by redesignating clauses (ii), (iii),
7 and (iv) as clauses (iii), (iv), and (v), re-
8 spectively; and

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

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

18 (F) by moving subparagraph (H) and in-
19 serting such subparagraph after subparagraph
20 (G); and

21 (G) by adding at the end the following new
22 sentence: “As used in this paragraph, the term
23 ‘savings and loan holding company’ has the
24 meaning given it in section 10(a) of the Home
25 Owners’ Loan Act (12 U.S.C. 1467a(a)).”.

1 (b) INVESTMENT ADVISERS ACT OF 1940.—

2 (1) DEFINITION OF BANK.—Section 202(a)(2)
3 of the Investment Advisers Act of 1940 (15 U.S.C.
4 80b–2(a)(2)) is amended—

5 (A) in subparagraph (A) by inserting “or
6 a Federal savings association, as defined in sec-
7 tion 2(5) of the Home Owners’ Loan Act” after
8 “a banking institution organized under the laws
9 of the United States”; and

10 (B) in subparagraph (C)—

11 (i) by inserting “, savings association
12 as defined in section 2(4) of the Home
13 Owners’ Loan Act,” after “banking insti-
14 tution”; and

15 (ii) by inserting “or savings associa-
16 tions” after “having supervision over
17 banks”.

18 (2) CONFORMING AMENDMENTS.—Subsections
19 (a)(1)(A)(i), (a)(1)(B), (a)(2), and (b) of section
20 210A of such Act (15 U.S.C. 80b–10a), as added by
21 section 220 of the Gramm-Leach-Bliley Act, are
22 each amended by striking “bank holding company”
23 each place it occurs and inserting “bank holding
24 company or savings and loan holding company”.

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

9 **SEC. 202. INVESTMENTS BY FEDERAL SAVINGS ASSOCIA-**
10 **TIONS AUTHORIZED TO PROMOTE THE PUB-**
11 **LIC WELFARE.**

12 (a) IN GENERAL.—Section 5(e)(3) of the Home Own-
13 ers’ Loan Act (12 U.S.C. 1464(c)) is amended by adding
14 at the end the following new subparagraph:

15 “(D) DIRECT INVESTMENTS TO PROMOTE
16 THE PUBLIC WELFARE.—

17 “(i) IN GENERAL.—A Federal savings
18 association may make investments de-
19 signed primarily to promote the public wel-
20 fare, including the welfare of low- and
21 moderate-income communities or families
22 through the provision of housing, services,
23 and jobs.

24 “(ii) DIRECT INVESTMENTS OR ACQUI-
25 SITION OF INTEREST IN OTHER COMPA-

1 NIES.—Investments under clause (i) may
2 be made directly or by purchasing interests
3 in an entity primarily engaged in making
4 such investments.

5 “(iii) PROHIBITION ON UNLIMITED LI-
6 ABILITY.—No investment may be made
7 under this subparagraph which would sub-
8 ject a Federal savings association to unlim-
9 ited liability to any person.

10 “(iv) SINGLE INVESTMENT LIMITA-
11 TION TO BE ESTABLISHED BY DIREC-
12 TOR.—Subject to clauses (v) and (vi), the
13 Director shall establish, by order or regula-
14 tion, limits on—

15 “(I) the amount any savings as-
16 sociation may invest in any 1 project;
17 and

18 “(II) the aggregate amount of in-
19 vestment of any savings association
20 under this subparagraph.

21 “(v) FLEXIBLE AGGREGATE INVEST-
22 MENT LIMITATION.—The aggregate
23 amount of investments of any savings asso-
24 ciation under this subparagraph may not
25 exceed an amount equal to the sum of 5

1 percent of the savings association's capital
2 stock actually paid in and unimpaired and
3 5 percent of the savings association's
4 unimpaired surplus, unless—

5 “(I) the Director determines that
6 the savings association is adequately
7 capitalized; and

8 “(II) the Director determines, by
9 order, that the aggregate amount of
10 investments in a higher amount than
11 the limit under this clause will pose
12 no significant risk to the affected de-
13 posit insurance fund.

14 “(vi) MAXIMUM AGGREGATE INVEST-
15 MENT LIMITATION.—Notwithstanding
16 clause (v), the aggregate amount of invest-
17 ments of any savings association under
18 this subparagraph may not exceed an
19 amount equal to the sum of 10 percent of
20 the savings association's capital stock actu-
21 ally paid in and unimpaired and 10 per-
22 cent of the savings association's
23 unimpaired surplus.

24 “(vii) INVESTMENTS NOT SUBJECT TO
25 OTHER LIMITATION ON QUALITY OF IN-

1 VESTMENTS.—No obligation a Federal sav-
2 ings association acquires or retains under
3 this subparagraph shall be taken into ac-
4 count for purposes of the limitation con-
5 tained in section 28(d) of the Federal De-
6 posit Insurance Act on the acquisition and
7 retention of any corporate debt security
8 not of investment grade.”.

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

12 “(A) [Repealed.]”.

13 **SEC. 203. MERGERS AND CONSOLIDATIONS OF FEDERAL**
14 **SAVINGS ASSOCIATIONS WITH NONDEPOSI-**
15 **TORY INSTITUTION AFFILIATES.**

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

18 (1) by redesignating subparagraph (B) as sub-
19 paragraph (C); and

20 (2) by inserting after subparagraph (A) the fol-
21 lowing new subparagraph:

22 “(B) MERGERS AND CONSOLIDATIONS
23 WITH NONDEPOSITORY INSTITUTION AFFILI-
24 ATES.—

1 “(i) IN GENERAL.—Upon the approval
2 of the Director, a Federal savings associa-
3 tion may merge with any nondepository in-
4 stitution affiliate of the savings associa-
5 tion.

6 “(ii) RULE OF CONSTRUCTION.—No
7 provision of clause (i) shall be construed
8 as—

9 “(I) affecting the applicability of
10 section 18(c) of the Federal Deposit
11 Insurance Act; or

12 “(II) granting a Federal savings
13 association any power or any author-
14 ity to engage in any activity that is
15 not authorized for a Federal savings
16 association under any other provision
17 of this Act or any other provision of
18 law.”.

19 **SEC. 204. REPEAL OF STATUTORY DIVIDEND NOTICE RE-**
20 **QUIREMENT FOR SAVINGS ASSOCIATION SUB-**
21 **SIDIARIES OF SAVINGS AND LOAN HOLDING**
22 **COMPANIES.**

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

1 “(f) DECLARATION OF DIVIDEND.—The Director
2 may—

3 “(1) require a savings association that is a sub-
4 sidiary of a savings and loan holding company to
5 give prior notice to the Director of the intent of the
6 savings association to pay a dividend on its guar-
7 anty, permanent, or other nonwithdrawable stock;
8 and

9 “(2) establish conditions on the payment of
10 dividends by such a savings association.”.

11 **SEC. 205. MODERNIZING STATUTORY AUTHORITY FOR**
12 **TRUST OWNERSHIP OF SAVINGS ASSOCIA-**
13 **TIONS.**

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

17 (1) by striking “trust,” and inserting “business
18 trust,”; and

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

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

4 (1) by striking “does not include—” and all
5 that follows through “any company by virtue” where
6 such term appears in subparagraph (A) and insert-
7 ing “does not include any company by virtue”;

8 (2) by striking “; and” at the end of subpara-
9 graph (A) and inserting a period; and

10 (3) by striking subparagraph (B).

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

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

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

17 “(4) [Repealed.]”; and

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

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

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

7 “(D) SMALL BUSINESS INVESTMENT COM-
8 PANIES.—Any Federal savings association may
9 invest in 1 or more small business investment
10 companies, or in any entity established to invest
11 solely in small business investment companies
12 formed under the Small Business Investment
13 Act of 1958, except that the total amount of in-
14 vestments under this subparagraph may not at
15 any time exceed the amount equal to 5 percent
16 of capital and surplus of the savings associa-
17 tion.”.

18 **SEC. 208. REMOVAL OF LIMITATION ON INVESTMENTS IN**
19 **AUTO LOANS.**

20 (a) IN GENERAL.—Section 5(c)(1) of the Home Own-
21 ers' Loan Act (12 U.S.C. 1464(c)(1)) is amended by add-
22 ing at the end the following new subparagraph:

23 “(V) AUTO LOANS.—Loans and leases for
24 motor vehicles acquired for personal, family, or
25 household purposes.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENT RE-
2 LATING TO QUALIFIED THRIFT INVESTMENTS.—Section
3 10(m)(4)(C)(ii) of the Home Owners’ Loan Act (12
4 U.S.C. 1467a(m)(4)(C)(ii)) is amended by adding at the
5 end the following new subclause:

6 “(VIII) Loans and leases for
7 motor vehicles acquired for personal,
8 family, or household purposes.”.

9 **SEC. 209. SELLING AND OFFERING OF DEPOSIT PRODUCTS.**

10 Section 15(h) of the Securities Exchange Act of
11 1934 (15 U.S.C. 78o(h)) is amended by adding at
12 the end the following new paragraph:

13 “(4) SELLING AND OFFERING OF DEPOSIT
14 PRODUCTS.—No law, rule, regulation, or order, or
15 other administrative action of any State or political
16 subdivision thereof shall directly or indirectly require
17 any individual who is an agent of 1 Federal savings
18 association (as such term is defined in section 2(5)
19 of the Home Owners’ Loan Act (12 U.S.C. 1462(5))
20 in selling or offering deposit (as such term is defined
21 in section 3 of the Federal Deposit Insurance Act
22 (12 U.S.C. 1813(l)) products issued by such associa-
23 tion to qualify or register as a broker, dealer, associ-
24 ated person of a broker, or associated person of a

1 dealer, or to qualify or register in any other similar
2 status or capacity, if the individual does not—

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

5 “(B) offer or sell a deposit product as an
6 agent for another entity that is not subject to
7 supervision and examination by a Federal bank-
8 ing agency (as defined in section 3(z) of the
9 Federal Deposit Insurance Act (12 U.S.C.
10 1813(z)), the National Credit Union Adminis-
11 tration, or any officer, agency, or other entity
12 of any State which has primary regulatory au-
13 thority over State banks, State savings associa-
14 tions, or State credit unions;

15 “(C) offer or sell a deposit product that is
16 not an insured deposit (as defined in section
17 3(m) of the Federal Deposit Insurance Act (12
18 U.S.C. 1813(m)));

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

22 “(E) create a secondary market with re-
23 spect to a deposit product or otherwise add en-
24 hancements or features to such product inde-
25 pendent of those offered by the association.”.

1 **SEC. 210. FUNERAL- AND CEMETERY-RELATED FIDUCIARY**
2 **SERVICES.**

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

6 “(11) FUNERAL- AND CEMETERY-RELATED FI-
7 DUCIARY SERVICES.—

8 “(A) IN GENERAL.—A funeral director or
9 cemetery operator, when acting in such capac-
10 ity, (or any other person in connection with a
11 contract or other agreement with a funeral di-
12 rector or cemetery operator) may engage any
13 Federal savings association, regardless of where
14 the association is located, to act in any fidu-
15 ciary capacity in which the savings association
16 has the right to act in accordance with this sec-
17 tion, including holding funds deposited in trust
18 or escrow by the funeral director or cemetery
19 operator (or by such other party), and the sav-
20 ings association may act in such fiduciary ca-
21 pacity on behalf of the funeral director or ceme-
22 tery operator (or such other person).

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

25 “(i) CEMETERY.—The term ‘ceme-
26 tery’ means any land or structure used, or

1 intended to be used, for the interment of
2 human remains in any form.

3 “(ii) CEMETERY OPERATOR.—The
4 term ‘cemetery operator’ means any person
5 who contracts or accepts payment for mer-
6 chandise, endowment, or perpetual care
7 services in connection with a cemetery.

8 “(iii) FUNERAL DIRECTOR.—The term
9 ‘funeral director’ means any person who
10 contracts or accepts payment to provide or
11 arrange—

12 “(I) services for the final disposi-
13 tion of human remains; or

14 “(II) funeral services, property,
15 or merchandise (including cemetery
16 services, property, or merchandise).”.

17 **SEC. 211. REPEAL OF QUALIFIED THRIFT LENDER RE-**
18 **QUIREMENT WITH RESPECT TO OUT-OF-**
19 **STATE BRANCHES.**

20 Section 5(r)(1) of the Home Owners’ Loan Act (12
21 U.S.C. 1464(r)(1)) is amended by striking the last sen-
22 tence sentence.

1 **SEC. 212. SMALL BUSINESS AND OTHER COMMERCIAL**
2 **LOANS.**

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

8 “(W) **SMALL BUSINESS LOANS.**—Small
9 business loans, as defined in regulations which
10 the Director shall prescribe.”.

11 (b) **INCREASE IN LENDING LIMIT ON OTHER BUSI-**
12 **NESS LOANS.**—Section 5(c)(2)(A) of the Home Owners’
13 Loan Act (12 U.S.C. 1464(c)(2)(A)) is amended by strik-
14 ing “, and amounts in excess of 10 percent” and all that
15 follows through “by the Director”.

16 **SEC. 213. CLARIFYING CITIZENSHIP OF FEDERAL SAVINGS**
17 **ASSOCIATIONS FOR FEDERAL COURT JURIS-**
18 **DICTION.**

19 Section 5 of the Home Owners’ Loan Act (12 U.S.C.
20 1464) is amended by adding at the end the following new
21 subsection:

22 “(x) **HOME STATE CITIZENSHIP.**—In determining
23 whether a Federal court has diversity jurisdiction over a
24 case in which a Federal savings association is a party, the
25 Federal savings association shall be considered to be a cit-

1 ized only of the State in which such savings association
2 has its main office.”.

3 **SEC. 214. CLARIFICATION OF APPLICABILITY OF CERTAIN**
4 **PROCEDURAL DOCTRINES.**

5 Section 11A(d) of the Federal Deposit Insurance Act
6 (12 U.S.C. 1821a(d)) is amended—

7 (1) by striking “LEGAL PROCEEDINGS.—Any
8 judgment” and inserting “LEGAL PROCEEDINGS.—
9 “(1) IN GENERAL.—Any judgment”; and

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

12 “(2) CLARIFICATION OF APPLICABILITY OF
13 CERTAIN PROCEDURAL DOCTRINES.—In any pro-
14 ceeding seeking a monetary recovery against the
15 United States, or an agency or official thereof, based
16 upon actions of the Federal Savings and Loan In-
17 surance Corporation prior to its dissolution, or the
18 Federal Home Loan Bank Board prior to its dis-
19 solution, and arising from the Financial Institutions
20 Reform, Recovery, and Enforcement Act of 1989 or
21 its implementation, and where any monetary recov-
22 ery in such proceeding would be paid from the
23 FSLIC Resolution Fund or any supplements there-
24 to, neither the United States Court of Federal
25 Claims, the United States Court of Appeals for the

1 Federal Circuit, nor any other court of competent
2 jurisdiction shall dismiss, or affirm on appeal the
3 dismissal of, the claims of any party seeking such
4 monetary recovery, on the basis of res judicata, col-
5 lateral estoppel, or any similar doctrine, defense, or
6 rule of law, based upon any decision, opinion, or
7 order of judgment entered by any court prior to July
8 1, 1996. Unless some other defense is applicable, in
9 any such proceeding, the United States Court of
10 Federal Claims, the United States Court of Appeals
11 for the Federal Circuit, and any other court of com-
12 petent jurisdiction shall review the merits of the
13 claims of the party seeking such monetary relief and
14 shall enter judgment accordingly.”.

15 **TITLE III—CREDIT UNION**
16 **PROVISIONS**

17 **SEC. 301. PRIVATELY INSURED CREDIT UNIONS AUTHOR-**
18 **IZED TO BECOME MEMBERS OF A FEDERAL**
19 **HOME LOAN BANK.**

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

23 “(5) CERTAIN PRIVATELY INSURED CREDIT
24 UNIONS.—

1 “(A) IN GENERAL.—A credit union which
2 has been determined, in accordance with section
3 43(e)(1) of the Federal Deposit Insurance Act
4 and subject to the requirements of subpara-
5 graph (B), to meet all eligibility requirements
6 for Federal deposit insurance shall be treated
7 as an insured depository institution for pur-
8 poses of determining the eligibility of such cred-
9 it union for membership in a Federal home loan
10 bank under paragraphs (1), (2), and (3).

11 “(B) CERTIFICATION BY APPROPRIATE SU-
12 PERVISOR.—

13 “(i) IN GENERAL.—For purposes of
14 this paragraph and subject to clause (ii), a
15 credit union which lacks Federal deposit
16 insurance and which has applied for mem-
17 bership in a Federal home loan bank may
18 be treated as meeting all the eligibility re-
19 quirements for Federal deposit insurance
20 only if the appropriate supervisor of the
21 State in which the credit union is char-
22 tered has determined that the credit union
23 meets all the eligibility requirements for
24 Federal deposit insurance as of the date of
25 the application for membership.

1 “(ii) CERTIFICATION DEEMED
 2 VALID.—If, in the case of any credit union
 3 to which clause (i) applies, the appropriate
 4 supervisor of the State in which such cred-
 5 it union is chartered fails to make a deter-
 6 mination pursuant to such clause by the
 7 end of the 6-month period beginning on
 8 the date of the application, the credit
 9 union shall be deemed to have met the re-
 10 quirements of clause (i).

11 “(C) SECURITY INTERESTS OF FEDERAL
 12 HOME LOAN BANK NOT AVOIDABLE.—Notwith-
 13 standing any provision of State law authorizing
 14 a conservator or liquidating agent of a credit
 15 union to repudiate contracts, no such provision
 16 shall apply with respect to—

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

21 “(ii) any security interest in the as-
 22 sets of such credit union securing any such
 23 extension of credit.”.

24 (b) COPIES OF AUDITS OF PRIVATE INSURERS OF
 25 CERTAIN DEPOSITORY INSTITUTIONS REQUIRED TO BE

1 PROVIDED TO SUPERVISORY AGENCIES.—Section
2 43(a)(2) of the Federal Deposit Insurance Act (12 U.S.C.
3 1831t(a)(2)) is amended—

4 (1) by striking “and” at the end of subpara-
5 graph (A)(i);

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

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

10 “(iii) in the case of depository institu-
11 tions described in subsection (f)(2)(A) the
12 deposits of which are insured by the pri-
13 vate insurer, the National Credit Union
14 Administration, not later than 7 days after
15 that audit is completed; and

16 “(iv) in the case of depository institu-
17 tions described in subsection (f)(2)(A) the
18 deposits of which are insured by the pri-
19 vate insurer which are members of a Fed-
20 eral home loan bank, the Federal Housing
21 Finance Board, not later than 7 days after
22 that audit is completed.”; and

23 (4) by adding at the end the following new sub-
24 paragraph:

1 “(C) CONSULTATION.—The appropriate
2 supervisory agency of each State in which a pri-
3 vate deposit insurer insures deposits in an insti-
4 tution described in subsection (f)(2)(A) which—
5 “(i) lacks Federal deposit insurance;
6 and
7 “(ii) has become a member of a Fed-
8 eral home loan bank,
9 shall provide the National Credit Union Admin-
10 istration, upon request, with the results of any
11 examination and reports related thereto con-
12 cerning the private deposit insurer to which
13 such agency may have in its possession.”.

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

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

18 (1) by striking “Upon application by any credit
19 union” and inserting “Notwithstanding any other
20 provision of law, upon application by any credit
21 union”;

22 (2) by inserting “on lands reserved for the use
23 of, and under the exclusive or concurrent jurisdiction
24 of, the United States or” after “officer or agency of

1 the United States charged with the allotment of
2 space”;

3 (3) by inserting “lease land or” after “such of-
4 ficer or agency may in his or its discretion”; and

5 (4) by inserting “or the facility built on the
6 lease land” after “credit union to be served by the
7 allotment of space”.

8 (b) CLERICAL AMENDMENT.—The heading for sec-
9 tion 124 is amended by inserting “OR FEDERAL LAND”
10 after “BUILDINGS”.

11 **SEC. 303. INVESTMENTS IN SECURITIES BY FEDERAL CRED-
12 IT UNIONS.**

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

15 (1) in the matter preceding paragraph (1) by
16 striking “A Federal credit union” and inserting “(a)
17 IN GENERAL.—Any Federal credit union”; and

18 (2) by adding at the end the following new sub-
19 section:

20 “(b) INVESTMENT FOR THE CREDIT UNION’S OWN
21 ACCOUNT.—

22 “(1) IN GENERAL.—A Federal credit union may
23 purchase and hold for its own account such invest-
24 ment securities of investment grade as the Board
25 may authorize by regulation, subject to such limita-

1 tions and restrictions as the Board may prescribe in
2 the regulations.

3 “(2) PERCENTAGE LIMITATIONS.—

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

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

16 “(3) INVESTMENT SECURITY DEFINED.—

17 “(A) IN GENERAL.—For purposes of this
18 subsection, the term ‘investment security’
19 means marketable obligations evidencing the in-
20 debtedness of any person in the form of bonds,
21 notes, or debentures and other instruments
22 commonly referred to as investment securities.

23 “(B) FURTHER DEFINITION BY BOARD.—
24 The Board may further define the term ‘invest-
25 ment security’.

1 longer maturity as the Board may allow, in regula-
2 tions, except as otherwise provided in this Act”;

3 (2) in subparagraph (A)—

4 (A) by striking clause (ii);

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

7 (C) by inserting “and” after the semicolon
8 at the end of clause (viii) (as so redesignated).

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

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

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

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

1 **SEC. 307. CHECK CASHING AND MONEY TRANSFER SERV-**
2 **ICES OFFERED WITHIN THE FIELD OF MEM-**
3 **BERSHIP.**

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

7 “(12) in accordance with regulations prescribed
8 by the Board—

9 “(A) to sell, to persons in the field of
10 membership, negotiable checks (including trav-
11 elers checks), money orders, and other similar
12 money transfer instruments (including elec-
13 tronic fund transfers); and

14 “(B) to cash checks and money orders and
15 receive electronic fund transfers for persons in
16 the field of membership for a fee;”.

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

19 Section 109(d)(2) of the Federal Credit Union Act
20 (12 U.S.C. 1759(d)(2)) is amended—

21 (1) by striking “or” at the end of clause (ii) of
22 subparagraph (B);

23 (2) by striking the period at the end of sub-
24 paragraph (C) and inserting “; or”; and

25 (3) by adding at the end the following new sub-
26 paragraph:

1 “(D) a merger involving any such Federal
2 credit union approved by the Board on or after
3 August 7, 1998.”.

4 **SEC. 309. CONVERSIONS INVOLVING COMMON-BOND CRED-**
5 **IT UNIONS.**

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

9 “(3) CRITERIA FOR CONTINUED MEMBERSHIP
10 OF CERTAIN MEMBER GROUPS IN COMMUNITY CHAR-
11 TER CONVERSIONS.—In the case of a voluntary con-
12 version of a common-bond credit union described in
13 paragraph (1) or (2) of subsection (b) into a com-
14 munity credit union described in subsection (b)(3),
15 the Board shall prescribe, by regulation, the criteria
16 under which the Board may determine that a mem-
17 ber group or other portion of a credit union’s exist-
18 ing membership, that is located outside the well-de-
19 fined local community, neighborhood, or rural dis-
20 trict that shall constitute the community charter,
21 can be satisfactorily served by the credit union and
22 remain within the community credit union’s field of
23 membership.”.

1 **SEC. 310. CREDIT UNION GOVERNANCE.**

2 (a) EXPULSION OF MEMBERS FOR JUST CAUSE.—

3 Subsection (b) of section 118 of the Federal Credit Union
4 Act (12 U.S.C. 1764(b)) is amended to read as follows:

5 “(b) POLICY AND ACTIONS OF BOARDS OF DIREC-
6 TORS OF FEDERAL CREDIT UNIONS.—

7 “(1) EXPULSION OF MEMBERS FOR NON-
8 PARTICIPATION OR FOR JUST CAUSE.—The board of
9 directors of a Federal credit union may, by majority
10 vote of a quorum of directors, adopt and enforce a
11 policy with respect to expulsion from membership,
12 by a majority vote of such board of directors, based
13 on just cause, including disruption of credit union
14 operations, or on nonparticipation by a member in
15 the affairs of the credit union.

16 “(2) WRITTEN NOTICE OF POLICY TO MEM-
17 BERS.—If a policy described in paragraph (1) is
18 adopted, written notice of the policy as adopted and
19 the effective date of such policy shall be provided
20 to—

21 “(A) each existing member of the credit
22 union not less than 30 days prior to the effec-
23 tive date of such policy; and

24 “(B) each new member prior to or upon
25 applying for membership.”.

1 (b) TERM LIMITS AUTHORIZED FOR BOARD MEM-
2 BERS OF FEDERAL CREDIT UNIONS.—Section 111(a) of
3 the Federal Credit Union Act (12 U.S.C. 1761(a)) is
4 amended by adding at the end the following new sentence:
5 “The bylaws of a Federal credit union may limit the num-
6 ber of consecutive terms any person may serve on the
7 board of directors of such credit union.”.

8 (c) REIMBURSEMENT FOR LOST WAGES DUE TO
9 SERVICE ON CREDIT UNION BOARD NOT TREATED AS
10 COMPENSATION.—Section 111(c) of the Federal Credit
11 Union Act (12 U.S.C. 1761(c)) is amended by inserting
12 “, including lost wages,” after “the reimbursement of rea-
13 sonable expenses”.

14 **SEC. 311. PROVIDING THE NATIONAL CREDIT UNION AD-**
15 **MINISTRATION WITH GREATER FLEXIBILITY**
16 **IN RESPONDING TO MARKET CONDITIONS.**

17 Section 107(a)(5)(A)(vi)(I) of the Federal Credit
18 Union Act (12 U.S.C. 1757(5)(A)(vi)(I)) (as so designated
19 by section 303 of this title) is amended by striking “six-
20 month period and that prevailing interest rate levels” and
21 inserting “6-month period or that prevailing interest rate
22 levels”.

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

3 Section 7A(c)(7) of the Clayton Act (15 U.S.C.
4 18a(c)(7)) is amended by inserting “section 205(b)(3) of
5 the Federal Credit Union Act (12 U.S.C. 1785(b)(3)),”
6 before “or section 3”.

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

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

13 (1) by striking “this title, and (D) a receiver”
14 and inserting “this title, (D) an insured credit union
15 (as defined in section 101(7) of the Federal Credit
16 Union Act) but only for purposes of paragraphs (4)
17 and (5) of this subsection and only for activities oth-
18 erwise authorized by applicable laws to which such
19 credit unions are subject, and (E) a receiver”; and

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

23 (b) DEFINITION OF BANK UNDER THE INVESTMENT
24 ADVISERS ACT OF 1940.—Section 202(a)(2) of the In-
25 vestment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(2))

1 (as amended by section 201(b)(1) of this Act) is
2 amended—

3 (1) by striking “this title, and (D) a receiver”
4 and inserting “this title, (D) an insured credit union
5 (as defined in section 101(7) of the Federal Credit
6 Union Act) but only for activities otherwise author-
7 ized by applicable laws to which such credit unions
8 are subject, and (E) a receiver”; and

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

12 (c) DEFINITION OF APPROPRIATE FEDERAL BANK-
13 ING AGENCY.—Section 210A(c) of the Investment Advis-
14 ers Act of 1940 (15 U.S.C. 80b–10a(c)) is amended by
15 inserting “and includes the National Credit Union Admin-
16 istration Board, in the case of an insured credit union (as
17 defined in section 101(7) of the Federal Credit Union
18 Act)” before the period at the end.

19 **TITLE IV—DEPOSITORY**
20 **INSTITUTION PROVISIONS**

21 **SEC. 401. EASING RESTRICTIONS ON INTERSTATE BRANCH-**
22 **ING AND MERGERS.**

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

1 (1) IN GENERAL.—Section 5155(g)(1) of the
2 Revised Statutes of the United States (12 U.S.C.
3 36(g)(1)) is amended by striking “maintain a
4 branch if—” and all that follows through the end of
5 subparagraph (B) and inserting “maintain a
6 branch.”.

7 (2) CLERICAL AMENDMENT.—The heading for
8 subsection (g) of section 5155 of the Revised Stat-
9 utes of the United States is amended by striking
10 “STATE ‘OPT-IN’ ELECTION TO PERMIT”.

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

13 (1) IN GENERAL.—Section 18(d)(4)(A) of the
14 Federal Deposit Insurance Act (12 U.S.C.
15 1828(d)(4)(A)) is amended by striking “maintain a
16 branch if—” and all that follows through the end of
17 clause (ii) and inserting “maintain a branch.”.

18 (2) CLERICAL AMENDMENT.—The heading for
19 paragraph (4) of section 18(d) of the Federal De-
20 posit Insurance Act is amended by striking “STATE
21 ‘OPT-IN’ ELECTION TO PERMIT INTERSTATE” and in-
22 sserting “INTERSTATE”.

23 (c) DE NOVO INTERSTATE BRANCHES OF STATE
24 MEMBER BANKS.—The 3rd undesignated paragraph of
25 section 9 of the Federal Reserve Act (12 U.S.C. 321) is

1 amended by adding at the end the following new sen-
2 tences: “A State member bank may establish and operate
3 a de novo branch in a host State (as such terms are de-
4 fined in section 18(d) of the Federal Deposit Insurance
5 Act) on the same terms and conditions and subject to the
6 same limitations and restrictions as are applicable to the
7 establishment of a de novo branch of a national bank in
8 a host State under section 5155(g) of the Revised Statutes
9 of the United States. Such section 5155(g) shall be ap-
10 plied for purposes of the preceding sentence by sub-
11 stituting ‘Board of Governors of the Federal Reserve Sys-
12 tem’ for ‘Comptroller of the Currency’ and ‘State member
13 bank’ for ‘national bank’.”.

14 (d) INTERSTATE MERGER OF BANKS.—

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

19 (A) by striking “Beginning on June 1,
20 1997, the” and inserting “The”; and

21 (B) by striking “insured banks with dif-
22 ferent home States” and inserting “an insured
23 bank and another insured depository institution
24 or trust company with a different home State
25 than the resulting insured bank”.

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

6 “(b) MERGER OF NATIONAL BANK TRUST COMPANY
7 WITH ANOTHER TRUST COMPANY.—A national bank that
8 is a trust company may engage in a consolidation or merg-
9 er under this Act with any trust company with a different
10 home State, under the same terms and conditions that
11 would apply if the trust companies were located within the
12 same State.”.

13 (e) INTERSTATE FIDUCIARY ACTIVITY.—Section
14 18(d) of the Federal Deposit Insurance Act (12 U.S.C.
15 1828(d)) is amended by adding at the end the following
16 new paragraph:

17 “(5) INTERSTATE FIDUCIARY ACTIVITY.—
18 “(A) AUTHORITY OF STATE BANK SUPER-
19 VISOR.—The State bank supervisor of a State
20 bank may approve an application by the State
21 bank, when not in contravention of home State
22 or host State law, to act as trustee, executor,
23 administrator, registrar of stocks and bonds,
24 guardian of estates, assignee, receiver, com-
25 mittee of estates of lunatics, or in any other fi-

1 duciary capacity in a host State in which State
2 banks or other corporations which come into
3 competition with national banks are permitted
4 to act under the laws of such host State.

5 “(B) NONCONTRAVENTION OF HOST STATE
6 LAW.—Whenever the laws of a host State au-
7 thorize or permit the exercise of any or all of
8 the foregoing powers by State banks or other
9 corporations which compete with national
10 banks, the granting to and the exercise of such
11 powers by a State bank as provided in this
12 paragraph shall not be deemed to be in con-
13 travention of host State law within the meaning
14 of this paragraph.

15 “(C) STATE BANK INCLUDES TRUST COM-
16 PANIES.—For purposes of this paragraph, the
17 term ‘State bank’ includes any State-chartered
18 trust company (as defined in section 44(g)).

19 “(D) OTHER DEFINITIONS.—For purposes
20 of this paragraph, the term ‘home State’ and
21 ‘host State’ have the meanings given such
22 terms in section 44.”.

23 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

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

1 (A) in subsection (a)—

2 (i) by striking paragraph (4) and in-
3 sserting the following new paragraph:

4 “(4) TREATMENT OF BRANCHES IN CONNEC-
5 TION WITH CERTAIN INTERSTATE MERGER TRANS-
6 ACTIONS.—In the case of an interstate merger
7 transaction which involves the acquisition of a
8 branch of an insured depository institution or trust
9 company without the acquisition of the insured de-
10 pository institution or trust company, the branch
11 shall be treated, for purposes of this section, as an
12 insured depository institution or trust company the
13 home State of which is the State in which the
14 branch is located.”; and

15 (ii) by striking paragraphs (5) and
16 (6);

17 (B) in subsection (b)—

18 (i) by striking “bank” each place such
19 term appears in paragraph (2)(B)(i) and
20 inserting “insured depository institution”;

21 (ii) by striking “banks” where such
22 term appears in paragraph (2)(E) and in-
23 sserting “insured depository institutions or
24 trust companies”;

1 (iii) by striking “bank affiliate” each
2 place such term appears in that portion of
3 paragraph (3) that precedes subparagraph
4 (A) and inserting “insured depository insti-
5 tution affiliate”;

6 (iv) by striking “any bank” where
7 such term appears in paragraph (3)(B)
8 and inserting “any insured depository in-
9 stitution”;

10 (v) by striking “bank” where such
11 term appears in paragraph (4)(A) and in-
12 serting “insured depository institution and
13 trust company”; and

14 (vi) by striking “all banks” where
15 such term appears in paragraph (5) and
16 inserting “all insured depository institu-
17 tions and trust companies”;

18 (C) in subsection (d)(1), by striking “any
19 bank” and inserting “any insured depository in-
20 stitution or trust company”;

21 (D) in subsection (e)—

22 (i) by striking “1 or more banks” and
23 inserting “1 or more insured depository in-
24 stitutions”; and

1 (ii) by striking “paragraph (2), (4), or
2 (5)” and inserting “paragraph (2)”;

3 (E) by striking clauses (i) and (ii) of sub-
4 section (g)(4)(A) and inserting the following
5 new clauses:

6 “(i) with respect to a national bank or
7 Federal savings association, the State in
8 which the main office of the bank or sav-
9 ings association is located; and

10 “(ii) with respect to a State bank,
11 State savings association, or State-char-
12 tered trust company, the State by which
13 the bank, savings association, or trust
14 company is chartered; and”;

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

17 “(5) HOST STATE.—The term ‘host State’
18 means—

19 “(A) with respect to a bank, a State, other
20 than the home State of the bank, in which the
21 bank maintains, or seeks to establish and main-
22 tain, a branch; and

23 “(B) with respect to a trust company and
24 solely for purposes of section 18(d)(5), a State,
25 other than the home State of the trust com-

1 pany, in which the trust company acts, or seeks
2 to act, in 1 or more fiduciary capacities.”;

3 (G) in subsection (g)(10), by striking “sec-
4 tion 18(c)(2)” and inserting “paragraph (1) or
5 (2) of section 18(c), as appropriate,”; and

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

8 “(12) TRUST COMPANY.—The term ‘trust com-
9 pany’ means—

10 “(A) any national bank;

11 “(B) any savings association; and

12 “(C) any bank, banking association, trust
13 company, savings bank, or other banking insti-
14 tution which is incorporated under the laws of
15 any State,

16 that is authorized to act in 1 or more fiduciary ca-
17 pacities but is not engaged in the business of receiv-
18 ing deposits other than trust funds (as defined in
19 section 3(p)).”.

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

22 (A) in paragraph (1)—

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

1 (ii) by redesignating subparagraph
2 (D) as subparagraph (B); and
3 (B) in paragraph (5), by striking “sub-
4 paragraph (B) or (D)” and inserting “subpara-
5 graph (B)”.

6 (3) Subsection (c) of section 4 of the National
7 Bank Consolidation and Merger Act (12 U.S.C.
8 215a–1(c)) is amended to read as follows:

9 “(c) DEFINITIONS.—For purposes of this section, the
10 terms ‘home State’, ‘out-of-State bank’, and ‘trust com-
11 pany’ each have the same meaning as in section 44(g) of
12 the Federal Deposit Insurance Act.”.

13 (g) CLERICAL AMENDMENTS.—

14 (1) The heading for section 44(b)(2)(E) of the
15 Federal Deposit Insurance Act (12 U.S.C.
16 1831u(b)(2)(E)) is amended by striking “BANKS”
17 and inserting “INSURED DEPOSITORY INSTITUTIONS
18 AND TRUST COMPANIES”.

19 (2) The heading for section 44(e) of the Fed-
20 eral Deposit Insurance Act (12 U.S.C. 1831u(e)) is
21 amended by striking “BANKS” and inserting “IN-
22 SURED DEPOSITORY INSTITUTIONS”.

1 **SEC. 402. STATUTE OF LIMITATIONS FOR JUDICIAL REVIEW**
2 **OF APPOINTMENT OF A RECEIVER FOR DE-**
3 **POSITORY INSTITUTIONS.**

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

6 (1) by striking “SECTION 2. The Comptroller of
7 the Currency” and inserting the following:

8 **“SEC. 2. APPOINTMENT OF RECEIVER FOR A NATIONAL**
9 **BANK.**

10 “(a) IN GENERAL.—The Comptroller of the Cur-
11 rency”; and

12 (2) by adding at the end the following new sub-
13 section:

14 “(b) JUDICIAL REVIEW.—If the Comptroller of the
15 Currency appoints a receiver under subsection (a), the na-
16 tional bank may, within 30 days thereafter, bring an ac-
17 tion in the United States district court for the judicial dis-
18 trict in which the home office of such bank is located, or
19 in the United States District Court for the District of Co-
20 lumbia, for an order requiring the Comptroller of the Cur-
21 rency to remove the receiver, and the court shall, upon
22 the merits, dismiss such action or direct the Comptroller
23 of the Currency to remove the receiver.”.

24 (b) INSURED DEPOSITORY INSTITUTIONS.—Section
25 11(c)(7) of the Federal Deposit Insurance Act (12 U.S.C.
26 1821(c)(7)) is amended to read as follows:

1 “(7) JUDICIAL REVIEW.—If the Corporation is
2 appointed (including the appointment of the Cor-
3 poration as receiver by the Board of Directors) as
4 conservator or receiver of a depository institution
5 under paragraph (4), (9), or (10), the depository in-
6 stitution may, within 30 days thereafter, bring an
7 action in the United States district court for the ju-
8 dicial district in which the home office of such de-
9 pository institution is located, or in the United
10 States District Court for the District of Columbia,
11 for an order requiring the Corporation to be re-
12 moved as the conservator or receiver (regardless of
13 how such appointment was made), and the court
14 shall, upon the merits, dismiss such action or direct
15 the Corporation to be removed as the conservator or
16 receiver.”.

17 (c) EXPANSION OF PERIOD FOR CHALLENGING THE
18 APPOINTMENT OF A LIQUIDATING AGENT.—Subpara-
19 graph (B) of section 207(a)(1) of the Federal Credit
20 Union Act (12 U.S.C. 1787(a)(1)) is amended by striking
21 “10 days” and inserting “30 days”.

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

1 **SEC. 403. REPORTING REQUIREMENTS RELATING TO IN-**
2 **SIDER LENDING.**

3 (a) REPORTING REQUIREMENTS REGARDING LOANS
4 TO EXECUTIVE OFFICERS OF MEMBER BANKS.—Section
5 22(g) of the Federal Reserve Act (12 U.S.C. 375a) is
6 amended—

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

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

10 (b) REPORTING REQUIREMENTS REGARDING LOANS
11 FROM CORRESPONDENT BANKS TO EXECUTIVE OFFI-
12 CERS AND SHAREHOLDERS OF INSURED BANKS.—Section
13 106(b)(2) of the Bank Holding Company Act Amend-
14 ments of 1970 (12 U.S.C. 1972(2)) is amended—

15 (1) by striking subparagraph (G); and

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

18 **SEC. 404. AMENDMENT TO PROVIDE AN INFLATION AD-**
19 **JUSTMENT FOR THE SMALL DEPOSITORY IN-**
20 **STITUTION EXCEPTION UNDER THE DEPOSI-**
21 **TORY INSTITUTION MANAGEMENT INTER-**
22 **LOCKS ACT.**

23 Section 203(1) of the Depository Institution Manage-
24 ment Interlocks Act (12 U.S.C. 3202(1)) is amended by
25 striking “\$20,000,000” and inserting “\$100,000,000”.

1 **SEC. 405. ENHANCING THE SAFETY AND SOUNDNESS OF IN-**
2 **SURED DEPOSITORY INSTITUTIONS.**

3 (a) CLARIFICATION RELATING TO THE ENFORCE-
4 ABILITY OF AGREEMENTS AND CONDITIONS.—The Fed-
5 eral Deposit Insurance Act (12 U.S.C. 1811 et seq.) is
6 amended by adding at the end the following new section:

7 **“SEC. 49. ENFORCEMENT OF AGREEMENTS.**

8 “(a) IN GENERAL.—Notwithstanding clause (i) or
9 (ii) of section 8(b)(6)(A) or section 38(e)(2)(E), an appro-
10 priate Federal banking agency may enforce, under section
11 8, the terms of—

12 “(1) any condition imposed in writing by the
13 agency on a depository institution or an institution-
14 affiliated party (including a bank holding company)
15 in connection with any action on any application, no-
16 tice, or other request concerning a depository insti-
17 tution; or

18 “(2) any written agreement entered into be-
19 tween the agency and an institution-affiliated party
20 (including a bank holding company).

21 “(b) RECEIVERSHIPS AND CONSERVATORSHIPS.—
22 After the appointment of the Corporation as the receiver
23 or conservator for any insured depository institution, the
24 Corporation may enforce any condition or agreement de-
25 scribed in paragraph (1) or (2) of subsection (a) involving
26 such institution or any institution-affiliated party (includ-

1 ing a bank holding company), through an action brought
 2 in an appropriate United States district court.”.

3 (b) PROTECTION OF CAPITAL OF INSURED DEPOSI-
 4 TORY INSTITUTIONS.—Paragraph (1) of section 18(u) of
 5 the Federal Deposit Insurance Act (12 U.S.C. 1828(u))
 6 is amended by striking subparagraph (B) and by redesignig-
 7 nating subparagraph (C) as subparagraph (B).

8 **SEC. 406. INVESTMENTS BY INSURED SAVINGS ASSOCIA-**
 9 **TIONS IN BANK SERVICE COMPANIES AU-**
 10 **THORIZED.**

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

15 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

16 (1) Section 1(b)(4) of the Bank Service Com-
 17 pany Act (12 U.S.C. 1861(b)(4)) is amended—

18 (A) by inserting “, except when such term
 19 appears in connection with the term ‘insured
 20 depository institution’,” after “means”; and

21 (B) by striking “Federal Home Loan Bank
 22 Board” and inserting “Director of the Office of
 23 Thrift Supervision”.

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

1 (A) by striking paragraph (5) and insert-
2 ing the following new paragraph:

3 “(5) INSURED DEPOSITORY INSTITUTION.—The
4 term ‘insured depository institution’ has the mean-
5 ing given the term in section 3(c) of the Federal De-
6 posit Insurance Act;”;

7 (B) by striking “and” at the end of para-
8 graph (7);

9 (C) by striking the period at the end of
10 paragraph (8) and inserting “; and”; and

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

13 “(9) the terms ‘State depository institution’,
14 ‘Federal depository institution’, ‘State savings asso-
15 ciation’ and ‘Federal savings association’ have the
16 meanings given the terms in section 3 of the Federal
17 Deposit Insurance Act.”.

18 (3) The 1st sentence of section 5(e)(4)(B) of
19 the Home Owners’ Loan Act (12 U.S.C.
20 1464(c)(4)(B)) is amended by striking “by savings
21 associations of such State and by Federal associa-
22 tions” and inserting “by State and Federal depository
23 institutions”.

24 (4) Subparagraph (A)(ii) and subparagraph
25 (B)(ii) of section 1(b)(2) of the Bank Service Com-

1 pany Act (12 U.S.C. 1861(b)(2)) are each amended
2 by striking “insured banks” and inserting “insured
3 depository institutions”.

4 (5) Section 1(b)(8) of the Bank Service Com-
5 pany Act (12 U.S.C. 1861(b)(8)) is further
6 amended—

7 (A) by striking “insured bank” and insert-
8 ing “insured depository institution”

9 (B) by striking “insured banks” each place
10 such term appears and inserting “insured de-
11 pository institutions”; and

12 (C) by striking “the bank’s” and inserting
13 “the depository institution’s”.

14 (6) Section 2 of the Bank Service Company Act
15 (12 U.S.C. 1862) is amended by inserting “or sav-
16 ings associations, other than the limitation on the
17 amount of investment by a Federal savings associa-
18 tion contained in section 5(e)(4)(B) of the Home
19 Owners’ Loan Act” after “relating to banks”.

20 (7) Section 4(e) of the Bank Service Company
21 Act (12 U.S.C. 1864(e)) is amended by inserting “or
22 State savings association” after “State bank” each
23 place such term appears.

24 (8) Section 4(d) of the Bank Service Company
25 Act (12 U.S.C. 1864(d)) is amended by inserting

1 “or Federal savings association” after “national
2 bank” each place such term appears.

3 (9) Section 4(e) of the Bank Service Company
4 Act (12 U.S.C. 1864(e)) is amended to read as fol-
5 lows:

6 “(e) A bank service company may perform—

7 “(1) only those services that each depository in-
8 stitution shareholder or member is otherwise author-
9 ized to perform under any applicable Federal or
10 State law; and

11 “(2) such services only at locations in a State
12 in which each such shareholder or member is author-
13 ized to perform such services.”.

14 (10) Section 4(f) of the Bank Service Company
15 Act (12 U.S.C. 1864(f)) is amended by inserting “or
16 savings associations” after “location of banks”.

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

19 (A) in subsection (a)—

20 (i) by striking “insured bank” and in-
21 serting “insured depository institution”;
22 and

23 (ii) by striking “bank’s” and inserting
24 “institution’s”.

1 (B) in subsection (b), by striking “insured
2 bank” and inserting “insured depository insti-
3 tution”; and

4 (C) in subsection (c)—

5 (i) by striking “the bank or banks”
6 and inserting “any depository institution”;
7 and

8 (ii) by striking “capability of the
9 bank” and inserting “capability of the de-
10 pository institution”.

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

13 (A) in subsection (b), by striking “insured
14 bank” and inserting “insured depository insti-
15 tution”; and

16 (B) in subsection (c)—

17 (i) by striking “a bank” each place
18 such term appears and inserting “a depository
19 institution”; and

20 (ii) by striking “the bank” each place
21 such term appears and inserting “the de-
22 pository institution”.

1 **SEC. 407. CROSS GUARANTEE AUTHORITY.**

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

5 “(A) such institutions are controlled by the
6 same company; or”.

7 **SEC. 408. GOLDEN PARACHUTE AUTHORITY AND NONBANK**
8 **HOLDING COMPANIES.**

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

11 (1) in paragraph (2)(A), by striking “or deposi-
12 tory institution holding company” and inserting “or
13 covered company”;

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

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

19 “(i) the insolvency of the depository
20 institution or covered company;

21 “(ii) the appointment of a conservator
22 or receiver for the depository institution; or

23 “(iii) the depository institution’s trou-
24 bled condition (as defined in the regula-
25 tions prescribed pursuant to section
26 32(f)).”;

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

4 (4) in paragraph (3) in the matter preceding
5 subparagraph (A), by striking “depository institu-
6 tion holding company” and inserting “covered com-
7 pany”;

8 (5) in paragraph (3)(A), by striking “holding
9 company” and inserting “covered company”;

10 (6) in paragraph (4)(A)—

11 (A) by striking “depository institution
12 holding company” each place such term appears
13 and inserting “covered company”; and

14 (B) by striking “holding company” each
15 place such term appears (other than in connec-
16 tion with the term referred to in subparagraph
17 (A)) and inserting “covered company”;

18 (7) in paragraph (5)(A), by striking “depository
19 institution holding company” and inserting “covered
20 company”;

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

23 “(D) COVERED COMPANY.—The term ‘cov-
24 ered company’ means any depository institution
25 holding company (including any company re-

1 quired to file a report under section 4(f)(6) of
2 the Bank Holding Company Act of 1956), or
3 any other company that controls an insured de-
4 pository institution.”; and
5 (9) in paragraph (6)—

6 (A) by striking “depository institution
7 holding company” and inserting “covered com-
8 pany,”; and

9 (B) by striking “or holding company” and
10 inserting “or covered company”.

11 **SEC. 409. AMENDMENTS RELATING TO CHANGE IN BANK**
12 **CONTROL.**

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

15 (1) in paragraph (1)(D)—

16 (A) by striking “is needed to investigate”
17 and inserting “is needed—

18 “(i) to investigate”;

19 (B) by striking “United States Code.” and
20 inserting “United States Code; or”; and

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

23 “(ii) to analyze the safety and sound-
24 ness of any plans or proposals described in

1 paragraph (6)(E) or the future prospects
2 of the institution.”; and

3 (2) in paragraph (7)(C), by striking “the finan-
4 cial condition of any acquiring person” and inserting
5 “either the financial condition of any acquiring per-
6 son or the future prospects of the institution”.

7 **TITLE V—DEPOSITORY INSTITU-**
8 **TION AFFILIATES PROVI-**
9 **SIONS**

10 **SEC. 501. CLARIFICATION OF CROSS MARKETING PROVI-**
11 **SION.**

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

14 (1) in subparagraph (B), by striking “sub-
15 section (k)(4)(I)” and inserting “subparagraph (H)
16 or (I) of subsection (k)(4)”; and

17 (2) by adding at the end the following new sub-
18 paragraph:

19 “(C) THRESHOLD OF CONTROL.—Subpara-
20 graph (A) shall not apply with respect to a
21 company described or referred to in clause (i)
22 or (ii) of such subparagraph if the financial
23 holding company does not own or control 25
24 percent or more of the total equity or any class
25 of voting securities of such company.”.

1 **SEC. 502. AMENDMENT TO PROVIDE THE FEDERAL RE-**
2 **SERVE BOARD WITH DISCRETION CON-**
3 **CERNING THE IMPUTATION OF CONTROL OF**
4 **SHARES OF A COMPANY BY TRUSTEES.**

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

11 **SEC. 503. ELIMINATING GEOGRAPHIC LIMITS ON THRIFT**
12 **SERVICE COMPANIES.**

13 (a) IN GENERAL.—The 1st sentence of section
14 5(c)(4)(B) of the Home Owners’ Loan Act (12 U.S.C.
15 1464(c)(4)(B)) (as amended by section 406(b)(3) of this
16 Act) is amended—

17 (1) by striking “corporation organized” and all
18 that follows through “is available for purchase” and
19 inserting “company, if the entire capital of the com-
20 pany is available for purchase”; and

21 (2) by striking “having their home offices in
22 such State”.

23 (b) TECHNICAL CORRECTIONS.—

24 (1) The heading for subparagraph (B) of sec-
25 tion 5(c)(4) of the Home Owners’ Loan Act (12

1 U.S.C. 1464(e)(4)(B)) is amended by striking “COR-
2 PORATIONS” and inserting “COMPANIES”.

3 (2) The 2nd sentence of section 5(n)(1) of the
4 Home Owners’ Loan Act (12 U.S.C. 1464(n)(1)) is
5 amended by striking “service corporations” and in-
6 serting “service companies”.

7 (3) Section 5(q)(1) of the Home Owners’ Loan
8 Act (12 U.S.C. 1464(q)(1)) is amended by striking
9 “service corporation” each place such term appears
10 in subparagraphs (A), (B), and (C) and inserting
11 “service company”.

12 (4) Section 10(m)(4)(C)(iii)(II) of the Home
13 Owners’ Loan Act (12 U.S.C.
14 1467a(m)(4)(C)(iii)(II)) is amended by striking
15 “service corporation” each place such term appears
16 and inserting “service company”.

17 **SEC. 504. CLARIFICATION OF SCOPE OF APPLICABLE RATE**
18 **PROVISION.**

19 Section 44(f) of the Federal Deposit Insurance Act
20 (12 U.S.C. 1831u(f)) is amended by adding at the end
21 the following new paragraphs:

22 “(3) OTHER LENDERS.—In the case of any
23 other lender doing business in the State described in
24 paragraph (1), the maximum interest rate or
25 amount of interest, discount points, finance charges,

1 or other similar charges that may be charged, taken,
2 received, or reserved from time to time in any loan,
3 discount, or credit sale made, or upon any note, bill
4 of exchange, financing transaction, or other evidence
5 of debt issued to or acquired by any other lender
6 shall be equal to not more than the greater of the
7 rates described in subparagraph (A) or (B) of para-
8 graph (1).

9 “(4) OTHER LENDER DEFINED.—For purposes
10 of paragraph (3), the term ‘other lender’ means any
11 person engaged in the business of selling or financ-
12 ing the sale of personal property (and any services
13 incidental to the sale of personal property) in such
14 State, except that, with regard to any person or en-
15 tity described in such paragraph, such term does not
16 include—

17 “(A) an insured depository institution; or

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

21 “(i) a consumer’s personal check or
22 share draft, in the amount of the advance
23 plus a fee, where presentment or negotia-
24 tion of such check or share draft is de-

1 ferred by agreement of the parties until a
2 designated future date; or

3 “(ii) a consumer authorization to
4 debit the consumer’s transaction account,
5 in the amount of the advance plus a fee,
6 where such account will be debited on or
7 after a designated future date.”.

8 **TITLE VI—BANKING AGENCY** 9 **PROVISIONS**

10 **SEC. 601. WAIVER OF EXAMINATION SCHEDULE IN ORDER** 11 **TO ALLOCATE EXAMINER RESOURCES.**

12 Section 10(d) of the Federal Deposit Insurance Act
13 (12 U.S.C. 1820(d)) is amended—

14 (1) by redesignating paragraphs (5), (6), (7),
15 (8), (9), and (10) as paragraphs (6), (7), (8), (9),
16 (10), and (11), respectively;

17 (2) by inserting after paragraph (4), the fol-
18 lowing new paragraph:

19 “(5) WAIVER OF SCHEDULE WHEN NECESSARY
20 TO ACHIEVE SAFE AND SOUND ALLOCATION OF EX-
21 AMINER RESOURCES.—Notwithstanding paragraphs
22 (1), (2), (3), and (4), an appropriate Federal bank-
23 ing agency may make adjustments in the examina-
24 tion cycle for an insured depository institution if
25 necessary to allocate available resources of exam-

1 iners in a manner that provides for the safety and
2 soundness of, and the effective examination and su-
3 pervision of, insured depository institutions.”; and

4 (3) in paragraphs (8) and (9), as so redesign-
5 nated, by striking “paragraph (6)” and inserting
6 “paragraph (7)”.

7 **SEC. 602. INTERAGENCY DATA SHARING.**

8 (a) FEDERAL BANKING AGENCIES.—Section 7(a)(2)
9 of the Federal Deposit Insurance Act (12 U.S.C.
10 1817(a)(2)) is amended by adding at the end the following
11 new subparagraph:

12 “(C) DATA SHARING WITH OTHER AGEN-
13 CIES AND PERSONS.—In addition to reports of
14 examination, reports of condition, and other re-
15 ports required to be regularly provided to the
16 Corporation (with respect to all insured depository
17 institutions, including a depository institu-
18 tion for which the Corporation has been ap-
19 pointed conservator or receiver) or an appro-
20 priate State bank supervisor (with respect to a
21 State depository institution) under subpara-
22 graph (A) or (B), a Federal banking agency
23 may, in the agency’s discretion, furnish any re-
24 port of examination or other confidential super-
25 visory information concerning any depository

1 institution or other entity examined by such
2 agency under authority of any Federal law,
3 to—

4 “(i) any other Federal or State agen-
5 cy or authority with supervisory or regu-
6 latory authority over the depository institu-
7 tion or other entity;

8 “(ii) any officer, director, or receiver
9 of such depository institution or entity;
10 and

11 “(iii) any other person the Federal
12 banking agency determines to be appro-
13 priate.”.

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

18 “(8) DATA SHARING WITH OTHER AGENCIES
19 AND PERSONS.—In addition to reports of examina-
20 tion, reports of condition, and other reports required
21 to be regularly provided to the Board (with respect
22 to all insured credit unions, including a credit union
23 for which the Corporation has been appointed con-
24 servator or liquidating agent) or an appropriate
25 State commission, board, or authority having super-

1 vision of a State-chartered credit union, the Board
2 may, in the Board’s discretion, furnish any report
3 of examination or other confidential supervisory in-
4 formation concerning any credit union or other enti-
5 ty examined by the Board under authority of any
6 Federal law, to—

7 “(A) any other Federal or State agency or
8 authority with supervisory or regulatory author-
9 ity over the credit union or other entity;

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

12 “(C) any other institution-affiliated party
13 of such credit union or entity the Board deter-
14 mines to be appropriate.”.

15 **SEC. 603. PENALTY FOR UNAUTHORIZED PARTICIPATION**
16 **BY CONVICTED INDIVIDUAL.**

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

20 “(c) NONINSURED BANKS.—Subsections (a) and (b)
21 shall apply to a noninsured national bank and a non-
22 insured State member bank, and any agency or non-
23 insured branch (as such terms are defined in section 1(b)
24 of the International Banking Act of 1978) of a foreign
25 bank as if such bank, branch, or agency were an insured

1 depository institution, except such subsections shall be ap-
2 plied for purposes of this subsection by substituting the
3 agency determined under the following paragraphs for
4 ‘Corporation’ each place such term appears in such sub-
5 sections:

6 “(1) The Comptroller of the Currency, in the
7 case of a noninsured national bank or any Federal
8 agency or noninsured Federal branch of a foreign
9 bank.

10 “(2) The Board of Governors of the Federal
11 Reserve System, in the case of a noninsured State
12 member bank or any State agency or noninsured
13 State branch of a foreign bank.”.

14 **SEC. 604. AMENDMENT PERMITTING THE DESTRUCTION OF**
15 **OLD RECORDS OF A DEPOSITORY INSTITU-**
16 **TION BY THE FDIC AFTER THE APPOINTMENT**
17 **OF THE FDIC AS RECEIVER.**

18 Section 11(d)(15)(D) of the Federal Deposit Insur-
19 ance Act (12 U.S.C. 1821(d)(15)(D)) is amended—

20 (1) by striking “RECORDKEEPING REQUIRE-
21 MENT.—After the end of the 6-year period” and in-
22 serting “RECORDKEEPING REQUIREMENT.—

23 “(i) IN GENERAL.—Except as pro-
24 vided in clause (ii), after the end of the 6-
25 year period”; and

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

3 “(ii) OLD RECORDS.—In the case of
4 records of an insured depository institution
5 which are at least 10 years old as of the
6 date the Corporation is appointed as the
7 receiver of such depository institution, the
8 Corporation may destroy such records in
9 accordance with clause (i) any time after
10 such appointment is final without regard
11 to the 6-year period of limitation contained
12 in such clause.”.

13 **SEC. 605. MODERNIZATION OF RECORDKEEPING REQUIRE-**
14 **MENT.**

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

18 “(f) PRESERVATION OF AGENCY RECORDS.—
19 “(1) IN GENERAL.—A Federal banking agency
20 may cause any and all records, papers, or documents
21 kept by the agency or in the possession or custody
22 of the agency to be—
23 “(A) photographed or microphotographed
24 or otherwise reproduced upon film; or

1 “(B) preserved in any electronic medium
2 or format which is capable of—

3 “(i) being read or scanned by com-
4 puter; and

5 “(ii) being reproduced from such elec-
6 tronic medium or format by printing or
7 any other form of reproduction of elec-
8 tronically stored data.

9 “(2) TREATMENT AS ORIGINAL RECORDS.—Any
10 photographs, microphotographs, or photographic
11 film or copies thereof described in paragraph (1)(A)
12 or reproduction of electronically stored data de-
13 scribed in paragraph (1)(B) shall be deemed to be
14 an original record for all purposes, including intro-
15 duction in evidence in all State and Federal courts
16 or administrative agencies and shall be admissible to
17 prove any act, transaction, occurrence, or event
18 therein recorded.

19 “(3) AUTHORITY OF THE FEDERAL BANKING
20 AGENCIES.—Any photographs, microphotographs, or
21 photographic film or copies thereof described in
22 paragraph (1)(A) or reproduction of electronically
23 stored data described in paragraph (1)(B) shall be
24 preserved in such manner as the Federal banking
25 agency shall prescribe and the original records, pa-

1 pers, or documents may be destroyed or otherwise
2 disposed of as the Federal banking agency may di-
3 rect.”.

4 **SEC. 606. CLARIFICATION OF EXTENT OF SUSPENSION, RE-**
5 **MOVAL, AND PROHIBITION AUTHORITY OF**
6 **FEDERAL BANKING AGENCIES IN CASES OF**
7 **CERTAIN CRIMES BY INSTITUTION-AFFILI-**
8 **ATED PARTIES.**

9 (a) INSURED DEPOSITORY INSTITUTION.—

10 (1) IN GENERAL.—Section 8(g)(1) of the Fed-
11 eral Deposit Insurance Act (12 U.S.C. 1818(g)(1))
12 is amended—

13 (A) in subparagraph (A), by striking “the
14 depository” each place such term appears and
15 inserting “any depository”;

16 (B) in subparagraph (B)(i), by inserting
17 “of which the subject of the order is an institu-
18 tion-affiliated party” before the period at the
19 end;

20 (C) in subparagraph (C), by striking “the
21 depository” each place such term appears and
22 inserting “any depository”;

23 (D) in subparagraph (D)(i), by inserting
24 “of which the subject of the order is an institu-

1 tion-affiliated party” after “upon the depository
2 institution”; and

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

5 “(E) CONTINUATION OF AUTHORITY.—A
6 Federal banking agency may issue an order
7 under this paragraph with respect to an indi-
8 vidual who is an institution-affiliated party at a
9 depository institution at the time of an offense
10 described in subparagraph (A) without regard
11 to—

12 “(i) whether such individual is an in-
13 stitution-affiliated party at any depository
14 institution at the time the order is consid-
15 ered or issued by the agency; or

16 “(ii) whether the depository institu-
17 tion at which the individual was an institu-
18 tion-affiliated party at the time of the of-
19 fense remains in existence at the time the
20 order is considered or issued by the agen-
21 cy.”.

22 (2) CLERICAL AMENDMENT.—Section 8(g) of
23 the Federal Deposit Insurance Act (12 U.S.C.
24 1818(g)) is amended by striking “(g)” and inserting
25 the following new subsection heading:

1 “(g) SUSPENSION, REMOVAL, AND PROHIBITION
2 FROM PARTICIPATION ORDERS IN THE CASE OF CERTAIN
3 CRIMINAL OFFENSES.—”.

4 (b) INSURED CREDIT UNIONS.—

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

8 (A) in subparagraph (A), by striking “the
9 credit union” each place such term appears and
10 inserting “any credit union”;

11 (B) in subparagraph (B)(i), by inserting
12 “of which the subject of the order is, or most
13 recently was, an institution-affiliated party” be-
14 fore the period at the end;

15 (C) in subparagraph (C), by striking “the
16 credit union” each place such term appears and
17 inserting “any credit union”;

18 (D) in subparagraph (D)(i), by striking
19 “upon such credit union” and inserting “upon
20 the credit union of which the subject of the
21 order is, or most recently was, an institution-af-
22 filiated party”; and

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

1 “(E) CONTINUATION OF AUTHORITY.—The
2 Board may issue an order under this paragraph
3 with respect to an individual who is an institu-
4 tion-affiliated party at a credit union at the
5 time of an offense described in subparagraph
6 (A) without regard to—

7 “(i) whether such individual is an in-
8 stitution-affiliated party at any credit
9 union at the time the order is considered
10 or issued by the Board; or

11 “(ii) whether the credit union at
12 which the individual was an institution-af-
13 filiated party at the time of the offense re-
14 mains in existence at the time the order is
15 considered or issued by the Board.”.

16 (2) CLERICAL AMENDMENT.—Section 206(i) of
17 the Federal Credit Union Act (12 U.S.C. 1786(i)) is
18 amended by striking “(i)” at the beginning and in-
19 serting the following new subsection heading:

20 “(i) SUSPENSION, REMOVAL, AND PROHIBITION
21 FROM PARTICIPATION ORDERS IN THE CASE OF CERTAIN
22 CRIMINAL OFFENSES.—”.

1 **SEC. 607. STREAMLINING DEPOSITORY INSTITUTION MERG-**
2 **ER APPLICATION REQUIREMENTS.**

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

6 “(4) REPORTS ON COMPETITIVE FACTORS.—

7 “(A) REQUEST FOR REPORT.—In the in-
8 terests of uniform standards, before acting on
9 any application for approval of a merger trans-
10 action, the responsible agency, unless the agen-
11 cy finds that it must act immediately in order
12 to prevent the probable failure of a depository
13 institution involved, shall—

14 “(i) request a report on the competi-
15 tive factors involved from the Attorney
16 General; and

17 “(ii) provide a copy of the request to
18 the Corporation (when the Corporation is
19 not the responsible agency).

20 “(B) FURNISHING OF REPORT.—The re-
21 port requested under subparagraph (A) shall be
22 furnished by the Attorney General to the re-
23 sponsible agency—

24 “(i) not more than 30 calendar days
25 after the date on which the Attorney Gen-
26 eral received the request; or

1 “(ii) not more than 10 calendar days
2 after such date, if the requesting agency
3 advises the Attorney General that an emer-
4 gency exists requiring expeditious action.”.

5 (b) TECHNICAL AND CONFORMING AMENDMENT.—
6 The penultimate sentence of section 18(c)(6) of the Fed-
7 eral Deposit Insurance Act (12 U.S.C. 1828(e)(6)) is
8 amended to read as follows: “If the agency has advised
9 the Attorney General under paragraph (4)(B) of the exist-
10 ence of an emergency requiring expeditious action and has
11 requested a report on the competitive factors within 10
12 days, the transaction may not be consummated before the
13 fifth calendar day after the date of approval by the agen-
14 cy.”.

15 **SEC. 608. INCLUSION OF DIRECTOR OF THE OFFICE OF**
16 **THRIFT SUPERVISION IN LIST OF BANKING**
17 **AGENCIES REGARDING INSURANCE CUS-**
18 **TOMER PROTECTION REGULATIONS.**

19 Section 47(g)(2)(B)(i) of the Federal Deposit Insur-
20 ance Act (12 U.S.C. 1831x(g)(2)(B)(i)) is amended by in-
21 serting “the Director of the Office of Thrift Supervision,”
22 after “Comptroller of the Currency,”.

1 **SEC. 609. SHORTENING OF POST-APPROVAL ANTITRUST RE-**
 2 **VIEW PERIOD WITH THE AGREEMENT OF THE**
 3 **ATTORNEY GENERAL.**

4 (a) ANTITRUST REVIEWS UNDER THE BANK HOLD-
 5 ING COMPANY ACT OF 1956.—The 4th sentence of section
 6 11(b) of the Bank Holding Company Act of 1956 (12
 7 U.S.C. 1849(b) is amended by striking “15 calendar
 8 days” and inserting “5 calendar days”.

9 (b) ANTITRUST REVIEWS UNDER THE FEDERAL DE-
 10 POSIT INSURANCE ACT.—The last sentence of section
 11 18(c)(6) of the Federal Deposit Insurance Act (12 U.S.C.
 12 1828(c)(6)) is amended by striking “15 calendar days”
 13 and inserting “5 calendar days”.

14 **SEC. 610. PROTECTION OF CONFIDENTIAL INFORMATION**
 15 **RECEIVED BY FEDERAL BANKING REGU-**
 16 **LATORS FROM FOREIGN BANKING SUPER-**
 17 **VISORS.**

18 Section 15 of the International Banking Act of 1978
 19 (12 U.S.C. 3109) is amended by adding at the end the
 20 following new subsection:

21 “(c) CONFIDENTIAL INFORMATION RECEIVED FROM
 22 FOREIGN SUPERVISORS.—

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

1 “(A) the foreign regulatory or supervisory
2 authority has, in good faith, determined and
3 represented to such Federal banking agency
4 that public disclosure of the information would
5 violate the laws applicable to that foreign regu-
6 latory or supervisory authority; and

7 “(B) the relevant Federal banking agency
8 obtained such information pursuant to—

9 “(i) such procedures as the Federal
10 banking agency may establish for use in
11 connection with the administration and en-
12 forcement of Federal banking laws; or

13 “(ii) a memorandum of understanding
14 or other similar arrangement between the
15 Federal banking agency and the foreign
16 regulatory or supervisory authority.

17 “(2) TREATMENT UNDER TITLE 5, UNITED
18 STATES CODE.—For purposes of section 552 of title
19 5, United States Code, this subsection shall be treat-
20 ed as a statute described in subsection (b)(3)(B) of
21 such section.

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

24 “(A) authorizing any Federal banking
25 agency to withhold any information from any

1 duly authorized committee of the House of Rep-
2 resentatives or the Senate; or

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

7 “(4) FEDERAL BANKING AGENCY DEFINED.—
8 For purposes of this subsection, the term ‘Federal
9 banking agency’ means the Board, the Comptroller,
10 the Federal Deposit Insurance Corporation, and the
11 Director of the Office of Thrift Supervision.”.

12 **SEC. 611. PROHIBITION ON PARTICIPATION BY CONVICTED**
13 **INDIVIDUAL.**

14 Section 19 of the Federal Deposit Insurance Act (12
15 U.S.C. 1829) is amended by inserting after subsection (c)
16 (as added by section 603 of this title) the following new
17 subsections:

18 “(d) BANK HOLDING COMPANIES.—Subsections (a)
19 and (b) shall apply to any bank holding company, any sub-
20 sidiary (other than a bank) of a bank holding company,
21 and any organization organized and operated under sec-
22 tion 25A of the Federal Reserve Act or operating under
23 section 25 of the Federal Reserve Act as if such bank
24 holding company, subsidiary, or organization were an in-
25 sured depository institution, except such subsections shall

1 be applied for purposes of this subsection by substituting
2 ‘Board of Governors of the Federal Reserve System’ for
3 ‘Corporation’ each place such term appears in such sub-
4 sections.

5 “(e) SAVINGS AND LOAN HOLDING COMPANIES.—
6 Subsections (a) and (b) shall apply to any savings and
7 loan holding company and any subsidiary (other than a
8 savings association) of a savings and loan holding com-
9 pany as if such savings and loan holding company or sub-
10 sidiary were an insured depository institution, except such
11 subsections shall be applied for purposes of this subsection
12 by substituting ‘Director of the Office of Thrift Super-
13 vision’ for ‘Corporation’ each place such term appears in
14 such subsections.”.

15 **SEC. 612. CLARIFICATION THAT NOTICE AFTER SEPARA-**
16 **TION FROM SERVICE MAY BE MADE BY AN**
17 **ORDER.**

18 (a) IN GENERAL.—Section 8(i)(3) of the Federal De-
19 posit Insurance Act (12 U.S.C. 1818(i)(3)) is amended by
20 inserting “or order” after “notice” each place such term
21 appears.

22 (b) TECHNICAL AND CONFORMING AMENDMENT.—
23 The heading for section 8(i)(3) of the Federal Deposit In-
24 surance Act (12 U.S.C. 1818(i)(3)) is amended by insert-
25 ing “OR ORDER” after “NOTICE”.

1 **SEC. 613. EXAMINERS OF FINANCIAL INSTITUTIONS.**

2 (a) OFFER OF CREDIT TO BANK EXAMINER.—Sec-
3 tion 212 of title 18, United States Code, is amended to
4 read as follows:

5 **“§ 212. Offer of credit to bank examiner**

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

13 “(b) For purposes of this section, the following defini-
14 tions shall apply:

15 “(1) The term ‘financial institution’ does not
16 include a credit union, a Federal reserve bank, a
17 Federal home loan bank, or a depository institution
18 holding company.

19 “(2) The term ‘examiner’ means any person—

20 “(A) appointed by a Federal financial in-
21 stitution regulatory agency or pursuant to the
22 laws of any State to examine a financial institu-
23 tion; or

24 “(B) elected under the law of any State to
25 conduct examinations of any financial institu-
26 tion.

1 “(3) The term ‘Federal financial institution
2 regulatory agency’ means—

3 “(A) the Comptroller of the Currency;

4 “(B) the Board of Governors of the Fed-
5 eral Reserve System;

6 “(C) the Director of the Office of Thrift
7 Supervision;

8 “(D) the Federal Deposit Insurance Cor-
9 poration;

10 “(E) the Federal Housing Finance Board;

11 “(F) the Farm Credit Administration;

12 “(G) the Farm Credit System Insurance
13 Corporation; and

14 “(H) the Small Business Administration.”.

15 (b) ACCEPTANCE OF CREDIT BY A BANK EXAM-
16 INER.—Section 213 of title 18, United States Code, is
17 amended to read as follows:

18 **“§ 213. Acceptance of credit by bank examiner**

19 “(a) Whoever, being an examiner, accepts an exten-
20 sion of credit from any financial institution that the exam-
21 iner examines or has authority to examine, or from any
22 person connected with any such financial institution, shall
23 be fined under this title or imprisoned not more than one
24 year, or both; and may be fined a further sum equal to

1 the amount of the credit extended, and shall be disquali-
2 fied from holding office as such examiner.

3 “(b) Notwithstanding subsection (a) or section 212,
4 a Federal financial institution regulatory agency may, by
5 regulation or by order on a case-by-case basis, permit a
6 financial institution to extend credit to an examiner, and
7 permit an examiner to accept an extension of credit from
8 a financial institution, if the agency determines that the
9 extension of credit would not likely affect the integrity of
10 any examination of a financial institution. Before pre-
11 scribing regulations or issuing any order under this sub-
12 section, a Federal financial institution regulatory agency
13 shall consult with each other Federal financial institution
14 regulatory agency with regard to any such regulation or
15 order. Any regulation prescribed by a Federal financial in-
16 stitution regulatory agency under this subsection, may ex-
17 empt certain classes or categories of credit from the scope
18 of this section or section 212, and shall provide procedures
19 for examiners and financial institutions to request case-
20 by-case exemption orders under this subsection, subject to
21 subsection (c).

22 “(c) In considering any request by a financial institu-
23 tion or examiner for a case-by-case exemption order under
24 subsection (b), a Federal financial institution regulatory

1 agency shall consider such factors as the agency deter-
2 mines to be appropriate, including—

3 “(1) whether the terms and conditions of the
4 credit being offered the examiner are generally com-
5 parable to those offered by the financial institution
6 in connection with similar types of credit extended
7 to other customers in similar circumstances;

8 “(2) the nature and extent of any other rela-
9 tionship the examiner has with the financial institu-
10 tion or any officer, director, or employee of the fi-
11 nancial institution;

12 “(3) the proximity in time between any exam-
13 ination of the financial institution in which the ex-
14 aminer participated, or is scheduled to participate,
15 and the extension, or the offer of an extension, of
16 credit;

17 “(4) whether there are any other circumstances
18 involving the transaction, or the proposed trans-
19 action, that may be perceived as providing the exam-
20 iner with preferential treatment; and

21 “(5) any other fact or circumstance the agency
22 may consider to be appropriate under the cir-
23 cumstances.

24 “(d) Notwithstanding subsection (a) or section 212,
25 an examiner employed by a Federal financial institution

1 regulatory agency may apply for and receive a credit card,
2 or otherwise be approved as a cardholder, under any credit
3 card account under an open end consumer credit plan, to
4 the extent the terms and conditions applicable with respect
5 to such account, and any credit extended under such ac-
6 count, are no more favorable generally to the examiner
7 than the terms and conditions that are generally applica-
8 ble to credit card accounts offered by the same financial
9 institution to other cardholders under open end consumer
10 credit plans.

11 “(e) For purposes of this section, the following defini-
12 tions shall apply:

13 “(1) The terms ‘examiner’, ‘Federal financial
14 institution regulatory agency’, and ‘financial institu-
15 tion’ have the same meaning as in section 212.

16 “(2) The term ‘credit’ means the right granted
17 by a creditor to a debtor to defer payment of debt
18 or to incur debt and defer its payment.

19 “(3) The term ‘creditor’ refers only to a person
20 who both (A) regularly extends, whether in connec-
21 tion with loans, sales of property or services, or oth-
22 erwise, consumer credit which is payable by agree-
23 ment in more than four installments or for which
24 the payment of a finance charge is or may be re-
25 quired, and (B) is the person to whom the debt aris-

1 ing from the consumer credit transaction is initially
2 payable on the face of the evidence of indebtedness
3 or, if there is no such evidence of indebtedness, by
4 agreement. Notwithstanding the preceding sentence,
5 in the case of an open-end credit plan involving a
6 credit card, the card issuer and any person who hon-
7 ors the credit card and offers a discount which is a
8 finance charge are creditors.

9 “(4) The term ‘consumer’, when used with ref-
10 erence to an open end credit plan, means a credit
11 plan under which the party to whom credit is offered
12 or extended is a natural person, and the money,
13 property, or services which are the subject of any
14 transaction under the plan are primarily for per-
15 sonal, family, or household purposes.

16 “(5) The term ‘open end credit plan’ means a
17 plan under which the creditor reasonably con-
18 templates repeated transactions, which prescribes
19 the terms of such transactions, and which provides
20 for a finance charge which may be computed from
21 time to time on the outstanding unpaid balance. A
22 credit plan which is an open end credit plan within
23 the meaning of the preceding sentence is an open
24 end credit plan even if credit information is verified
25 from time to time.

1 **SEC. 615. ENFORCEMENT AGAINST MISREPRESENTATIONS**
2 **REGARDING FDIC DEPOSIT INSURANCE COV-**
3 **ERAGE.**

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

7 “(4) FALSE ADVERTISING, MISUSE OF FDIC
8 NAMES, AND MISREPRESENTATION TO INDICATE IN-
9 SURED STATUS.—

10 “(A) PROHIBITION ON FALSE ADVER-
11 TISING AND MISUSE OF FDIC NAMES.—No per-
12 son may—

13 “(i) use the terms ‘Federal Deposit’,
14 ‘Federal Deposit Insurance’, ‘Federal De-
15 posit Insurance Corporation’, any combina-
16 tion of such terms, or the abbreviation
17 ‘FDIC’ as part of the business name or
18 firm name of any person, including any
19 corporation, partnership, business trust,
20 association, or other business entity; or

21 “(ii) use such terms or any other sign
22 or symbol as part of an advertisement, so-
23 licitation, or other document,

24 to represent, suggest or imply that any deposit
25 liability, obligation, certificate or share is in-
26 sured or guaranteed by the Federal Deposit In-

1 surance Corporation, if such deposit liability,
2 obligation, certificate, or share is not insured or
3 guaranteed by the Corporation.

4 “(B) PROHIBITION ON MISREPRESENTA-
5 TIONS OF INSURED STATUS.—No person may
6 knowingly misrepresent—

7 “(i) that any deposit liability, obliga-
8 tion, certificate, or share is federally in-
9 sured, if such deposit liability, obligation,
10 certificate, or share is not insured by the
11 Corporation; or

12 “(ii) the extent to which or the man-
13 ner in which any deposit liability, obliga-
14 tion, certificate, or share is insured by the
15 Federal Deposit Insurance Corporation, if
16 such deposit liability, obligation, certificate,
17 or share is not insured by the Corporation
18 to the extent or in the manner represented.

19 “(C) AUTHORITY OF FDIC.—The Corpora-
20 tion shall have—

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

1 “(ii) for purposes of enforcing the re-
2 quirements of this paragraph with regard
3 to any person—

4 “(I) the authority of the Cor-
5 poration under section 10(c) to con-
6 duct investigations; and

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

10 as if such person were a state nonmember in-
11 sured bank.

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

18 (b) ENFORCEMENT ORDERS.—Section 8(c) of the
19 Federal Deposit Insurance Act (12 U.S.C. 1818(c)) is
20 amended by adding at the end the following new para-
21 graph:

22 “(4) FALSE ADVERTISING OR MISUSE OF
23 NAMES TO INDICATE INSURED STATUS.—

24 “(A) TEMPORARY ORDER.—

1 “(i) IN GENERAL.—If a notice of
2 charges served under subsection (b)(1) of
3 this section specifies on the basis of par-
4 ticular facts that any person is engaged in
5 conduct described in section 18(a)(4), the
6 Corporation may issue a temporary order
7 requiring—

8 “(I) the immediate cessation of
9 any activity or practice described,
10 which gave rise to the notice of
11 charges; and

12 “(II) affirmative action to pre-
13 vent any further, or to remedy any ex-
14 isting, violation.

15 “(ii) EFFECT OF ORDER.—Any tem-
16 porary order issued under this subpara-
17 graph shall take effect upon service.

18 “(B) EFFECTIVE PERIOD OF TEMPORARY
19 ORDER.—A temporary order issued under sub-
20 paragraph (A) shall remain effective and en-
21 forceable, pending the completion of an admin-
22 istrative proceeding pursuant to subsection
23 (b)(1) in connection with the notice of
24 charges—

1 “(i) until such time as the Corpora-
2 tion shall dismiss the charges specified in
3 such notice; or

4 “(ii) if a cease-and-desist order is
5 issued against such person, until the effec-
6 tive date of such order.

7 “(C) CIVIL MONEY PENALTIES.—Violations
8 of section 18(a)(4) shall be subject to civil
9 money penalties as set forth in subsection (i) in
10 an amount not to exceed \$1,000,000 for each
11 day during which the violation occurs or con-
12 tinues.”.

13 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

14 (1) Section 18(a)(3) of the Federal Deposit In-
15 surance Act (12 U.S.C. 1828(a)) is amended—

16 (A) in the 1st sentence by striking “of this
17 subsection” and inserting “of paragraphs (1)
18 and (2)”;

19 (B) by striking the 2nd sentence; and

20 (C) in the 3rd sentence, by striking “of
21 this subsection” and inserting “of paragraphs
22 (1) and (2)”.

23 (2) The heading for subsection (a) of section 18
24 of the Federal Deposit Insurance Act (12 U.S.C.
25 1828(a)) is amended by striking “INSURANCE

1 LOGO.—” and inserting “REPRESENTATIONS OF DE-
2 POSIT INSURANCE.—”.

3 **SEC. 616. COMPENSATION OF FEDERAL HOME LOAN BANK**
4 **DIRECTORS.**

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

7 “(i) DIRECTORS’ COMPENSATION.—

8 “(1) IN GENERAL.—Each Federal home loan
9 bank may pay the directors on the board of directors
10 of the bank reasonable compensation for the time re-
11 quired of such directors, and reasonable expenses in-
12 curred by the directors, in connection with service on
13 the board of directors, in accordance with resolutions
14 adopted by the board of directors and subject to the
15 approval of the board.

16 “(2) ANNUAL REPORT BY THE BOARD.—Infor-
17 mation regarding compensation and expenses paid
18 by the Federal home loan banks to the directors on
19 the boards of directors of the banks shall be included
20 in the annual report submitted to the Congress by
21 the Board pursuant to section 2B(d).”.

22 **SEC. 617. EXTENSION OF TERMS OF FEDERAL HOME LOAN**
23 **BANK DIRECTORS.**

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

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

3 (2) in the 2nd sentence—

4 (A) by striking “Federal Home Loan Bank
5 System Modernization Act of 1999” and insert-
6 ing “Financial Services Regulatory Relief Act
7 of 2003”; and

8 (B) by striking “1/3” and inserting “1/4”.

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

15 **SEC. 618. BIENNIAL REPORTS ON THE STATUS OF AGENCY**

16 **EMPLOYMENT OF MINORITIES AND WOMEN.**

17 (a) IN GENERAL.—Before December 31, 2003, and
18 the end of each 2-year period beginning after such date,
19 each Federal banking agency shall submit a report to the
20 Congress on the status of the employment by the agency
21 of minority individuals and women.

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

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

4 (2) The successes achieved and challenges faced
5 by the agency in operating minority and women out-
6 reach programs.

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

9 (4) Such other information, findings, and con-
10 clusions, and recommendations for legislative or
11 agency action, as the agency may determine to be
12 appropriate to include in the report.

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

15 (1) FEDERAL BANKING AGENCY.—The term
16 “Federal banking agency”—

17 (A) has the same meaning as in section
18 3(z) of the Federal Deposit Insurance Act; and

19 (B) includes the National Credit Union
20 Administration.

21 (2) MINORITY.—The term “minority” has the
22 same meaning as in section 1204(c)(3) of the Finan-
23 cial Institutions Reform, Recovery, and Enforcement
24 Act of 1989.

1 **SEC. 619. COORDINATION OF STATE EXAMINATION AU-**
2 **THORITY.**

3 Section 10(h) of the Federal Deposit Insurance Act
4 (12 U.S.C. 1820(h)) is amended to read as follows:

5 “(h) COORDINATION OF EXAMINATION AUTHOR-
6 ITY.—

7 “(1) IN GENERAL.—The appropriate State
8 bank supervisor of the home State of an insured
9 State bank has authority to examine and supervise
10 the bank. The State bank supervisor of the home
11 State of an insured State bank shall exercise its au-
12 thority to supervise and examine the branches of the
13 bank in a host State in accordance with the terms
14 of any applicable cooperative agreement between the
15 home State bank supervisor and the State bank su-
16 pervisor of the relevant host State. Except as ex-
17 pressly provided in a cooperative agreement between
18 the State bank supervisors of the home State and
19 host State(s) of an insured State bank, only the
20 State bank supervisor of the home State of an in-
21 sured State bank may levy or charge State super-
22 visory fees on the bank.

23 “(2) HOST STATE EXAMINATION.—With respect
24 to a branch operated in a host State by an out-of-
25 State insured State bank that resulted from an
26 interstate merger transaction approved under section

1 44 or that was established in such State pursuant
2 to section 5155(g) of the Revised Statutes, the third
3 undesignated paragraph of section 9 of the Federal
4 Reserve Act or section 18(d)(4) of this Act, the ap-
5 propriate State bank supervisor of such host State
6 may—

7 “(A) with written notice to the State bank
8 supervisor of the bank’s home State and subject
9 to the terms of any applicable cooperative
10 agreement with the State bank supervisor of
11 such home State, examine such branch for the
12 purpose of determining compliance with host
13 State laws that are applicable pursuant to sec-
14 tion 24(j) of this Act, including those that gov-
15 ern community reinvestment, fair lending, and
16 consumer protection; and

17 “(B) if expressly permitted under and sub-
18 ject to the terms of a cooperative agreement
19 with the State bank supervisor of the bank’s
20 home State or if such out-of-State insured
21 State bank has been determined to be in a trou-
22 bled condition by either the State bank super-
23 visor of the bank’s home State or the bank’s
24 appropriate Federal banking agency, participate
25 in the examination of the bank by the State

1 bank supervisor of the bank’s home State to as-
2 certain that the activities of the branch in such
3 host State are not conducted in an unsafe or
4 unsound manner. The State bank supervisor of
5 the home State of an insured State bank shall
6 notify the State bank supervisor of each host
7 State of the bank if there has been a final de-
8 termination that the bank is in a troubled con-
9 dition. The State bank supervisor of the bank’s
10 home State shall provide such notice as soon as
11 reasonably possible but in all cases within 15
12 business days after the State bank supervisor
13 has made such final determination or has re-
14 ceived written notification of such final deter-
15 mination.

16 “(3) HOST STATE ENFORCEMENT.—If the State
17 bank supervisor of a host State determines that a
18 branch of an out-of-State State insured State bank
19 is violating any law of the host State that is applica-
20 ble to such branch pursuant to section 24(j) of this
21 Act, including a law that governs community rein-
22 vestment, fair lending, or consumer protection, the
23 State bank supervisor of the host State or, to the ex-
24 tent authorized by the law of the host State, a host
25 State law enforcement officer may, with written no-

1 tice to the State bank supervisor of the bank’s home
2 State and subject to the terms of any applicable co-
3 operative agreement with the State bank supervisor
4 of the bank’s home State, undertake such enforce-
5 ment actions and proceedings as would be permitted
6 under the law of the host State as if the branch
7 were a bank chartered by that host State.

8 “(4) COOPERATIVE AGREEMENT.—The State
9 bank supervisors from 2 or more States may enter
10 into cooperative agreements to facilitate State regu-
11 latory supervision of State banks, including coopera-
12 tive agreements relating to the coordination of ex-
13 aminations and joint participation in examinations.
14 For purposes of this subsection (h), the term “coop-
15 erative agreement” means a written agreement that
16 is signed by the home State bank supervisor and
17 host State bank supervisor to facilitate State regu-
18 latory supervision of State banks and includes na-
19 tionwide or multi-state cooperative agreements and
20 cooperative agreements solely between the home
21 State and host State. Except for State bank super-
22 visors, no provision of this subsection (h) relating to
23 such cooperative agreements shall be construed as
24 limiting in any way the authority of home and host
25 State law enforcement officers, regulatory super-

1 visors, or other officials that have not signed such
2 cooperative agreements to enforce host State laws
3 that are applicable to a branch of an out-of-State in-
4 sured State bank located in the host State pursuant
5 to section 24(j) of this Act.

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

10 “(6) STATE TAXATION AUTHORITY NOT AF-
11 FECTED.—No provision of this subsection (h) shall
12 be construed as affecting the authority of any State
13 or political subdivision of any State to adopt, apply,
14 or administer any tax or method of taxation to any
15 bank, bank holding company, or foreign bank, or
16 any affiliate of any bank, bank holding company, or
17 foreign bank, to the extent such tax or tax method
18 is otherwise permissible by or under the Constitution
19 of the United States or other Federal law.

20 “(7) DEFINITIONS.—For purpose of this sec-
21 tion, the following definition shall apply:

22 “(A) The terms ‘host State’, ‘home State’,
23 and ‘out-of-State bank’ have the same meanings
24 as in section 44(g).

1 “(B) The term ‘State supervisory fees’
2 means assessments, examination fees, branch
3 fees, license fees, and all other fees that are lev-
4 ied or charged by a State bank supervisor di-
5 rectly upon an insured State bank or upon
6 branches of an insured State bank.

7 “(C) Solely for purposes of subparagraph
8 (2)(B) of this subsection (h), an insured State
9 bank has been determined to be in ‘troubled
10 condition’ if the bank—

11 “(i) has a composite rating, as deter-
12 mined in its most recent report of exam-
13 ination, of 4 or 5 under the Uniform Fi-
14 nancial Institutions Ratings System
15 (UFIRS); or

16 “(ii) is subject to a proceeding initi-
17 ated by the Corporation for termination or
18 suspension of deposit insurance; or

19 “(iii) is subject to a proceeding initi-
20 ated by the State bank supervisor of the
21 bank’s home State to vacate, revoke, or
22 terminate the charter of the bank, or to
23 liquidate the bank, or to appoint a receiver
24 for the bank.

1 “(D) For the purposes of paragraph
 2 (2)(B), the term ‘final determination’ means
 3 the transmittal of a Report of Examination to
 4 the bank or transmittal of official notice of pro-
 5 ceedings to the bank.”.

6 **TITLE VII—CLERICAL AND**
 7 **TECHNICAL AMENDMENTS**

8 **SEC. 701. CLERICAL AMENDMENTS TO THE HOME OWNERS’**
 9 **LOAN ACT.**

10 (a) AMENDMENT TO TABLE OF CONTENTS.—The
 11 table of contents in section 1 of the Home Owners’ Loan
 12 Act (12 U.S.C. 1461) is amended by striking the items
 13 relating to sections 5 and 6 and inserting the following
 14 new items:

 “Sec. 5. Savings associations.
 “Sec. 6. [Repealed.]”.

15 (b) CLERICAL AMENDMENTS TO HEADINGS.—

16 (1) The heading for section 4(a) of the Home
 17 Owners’ Loan Act (12 U.S.C. 1463(a)) is amended
 18 by striking “(a) FEDERAL SAVINGS ASSOCIA-
 19 TIONS.—” and inserting “(a) GENERAL RESPON-
 20 SIBILITIES OF THE DIRECTOR.—”.

21 (2) The section heading for section 5 of the
 22 Home Owners’ Loan Act (12 U.S.C. 1464) is
 23 amended to read as follows:

1 **“SEC. 5. SAVINGS ASSOCIATIONS.”.**

2 **SEC. 702. TECHNICAL CORRECTIONS TO THE FEDERAL**
3 **CREDIT UNION ACT.**

4 The Federal Credit Union Act (12 U.S.C. 1751 et
5 seq.) is amended as follows:

6 (1) In section 101(3), strike “and” after the
7 semicolon.

8 (2) In section 101(5), strike the terms “account
9 account” and “account accounts” each place any
10 such term appears and insert “account”.

11 (3) In section 107(a)(5)(E) (as so designated
12 by section 303 of this Act), strike the period at the
13 end and insert a semicolon.

14 (4) In paragraphs (6) and (7) of section 107(a)
15 (as so designated by section 303 of this Act), strike
16 the period at the end and insert a semicolon.

17 (5) In section 107(a)(7)(D) (as so designated
18 by section 303 of this Act), strike “the Federal Sav-
19 ings and Loan Insurance Corporation or”.

20 (6) In section 107(a)(7)(E) (as so designated
21 by section 303 of this Act), strike “the Federal
22 Home Loan Bank Board,” and insert “the Federal
23 Housing Finance Board,”.

24 (7) In section 107(a)(9) (as so designated by
25 section 303 of this Act), strike “subchapter III” and
26 insert “title III”.

1 (8) In section 107(a)(13) (as so designated by
2 section 303 of this Act), strike the “and” after the
3 semicolon at the end.

4 (9) In section 109(c)(2)(A)(i), strike “(12
5 U.S.C. 4703(16))”.

6 (10) In section 120(h), strike “under the Act
7 approved July 30, 1947 (6 U.S.C., secs. 6–13),” and
8 insert “chapter 93 of title 31, United States Code.”.

9 (11) In section 201(b)(5), strike “section 116
10 of”.

11 (12) In section 202(h)(3), strike “section
12 207(c)(1)” and insert “section 207(k)(1)”.

13 (13) In section 204(b), strike “such others pow-
14 ers” and insert “such other powers”.

15 (14) In section 206(e)(3)(D), strike “and” after
16 the semicolon at the end.

17 (15) In section 206(f)(1), strike “subsection
18 (e)(3)(B)” and insert “subsection (e)(3)”.

19 (16) In section 206(g)(7)(D), strike “and sub-
20 section (1)”.

21 (17) In section 206(t)(2)(B), insert “regula-
22 tions” after “as defined in”.

23 (18) In section 206(t)(2)(C), strike “material
24 affect” and insert “material effect”.

1 (19) In section 206(t)(4)(A)(ii)(II), strike “or”
2 after the semicolon at the end.

3 (20) In section 206A(a)(2)(A), strike “regulator
4 agency” and insert “regulatory agency”.

5 (21) In section 207(c)(5)(B)(i)(I), insert “and”
6 after the semicolon at the end.

7 (22) In section 207(c)(8)(D)(ii)(I), insert a
8 closing parenthesis after “Act of 1934”.

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

11 (24) In section 207(f)(3)(A), strike “category
12 or claimants” and insert “category of claimants”.

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

15 (26) In section 216(n), insert “any action” be-
16 fore “that is required”.

17 (27) In section 304(b)(3), strike “the affairs or
18 such credit union” and insert “the affairs of such
19 credit union”.

20 (28) In section 310, strike “section 102(e)” and
21 insert “section 102(d)”.

22 **SEC. 703. OTHER TECHNICAL CORRECTIONS.**

23 (a) Section 1306 of title 18, United States Code, is
24 amended by striking “5136A” and inserting “5136B”.

1 (b) Section 5239 of the Revised Statutes of the
2 United States (12 U.S.C. 93) is amended by redesignating
3 the second of the 2 subsections designated as subsection
4 (d) (as added by section 331(b)(3) of the Riegle Commu-
5 nity Development and Regulatory Improvement Act of
6 1994) as subsection (e).

7 **SEC. 704. REPEAL OF OBSOLETE PROVISIONS OF THE BANK**
8 **HOLDING COMPANY ACT OF 1956.**

9 (a) IN GENERAL.—Section 2 of the Bank Holding
10 Company Act of 1956 (12 U.S.C. 1841) is amended—

11 (1) in subsection (c)(2), by striking subpara-
12 graphs (I) and (J); and

13 (2) by striking subsection (m) and inserting the
14 following new subsection:

15 “(m) [Repealed]”.

16 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
17 Paragraphs (1) and (2) of section 4(h) of the Bank Hold-
18 ing Company Act of 1956 (12 U.S.C. 1843(h)) are each
19 amended by striking “(G), (H), (I), or (J) of section
20 2(c)(2)” and inserting “(G), or (H) of section 2(c)(2)”.

Chairman SENSENBRENNER. The Chair has a long-winded statement which he will put in the record, without objection.
[The statement of Mr. Sensenbrenner follows:]

PREPARED STATEMENT OF THE HONORABLE F. JAMES SENSENBRENNER, JR., A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

The "Financial Services Regulatory Relief Act of 2003" was reported by the Committee on Financial Services on May 21, 2003 and was sequentially referred to the Judiciary Committee for a period ending not later than July 14, 2003. This legislation is nearly identical to H.R. 3951, the "Financial Services Regulatory Relief Act of 2002," which was reported from this Committee last Congress.

H.R. 1375 makes several changes to existing law to provide a measure of relief to highly regulated financial institutions. The legislation contains regulatory improvements for savings associations, credit unions, and federal financial regulatory agencies.

The following sections contain matters within the Rule X jurisdiction of the Judiciary Committee: Section 106 of the legislation clarifies bank merger notice requirements, while Section 203 of the bill allows a Federal savings association to merge with any nondepository institution affiliate of the savings association.

Section 213 of the legislation ensures that all federal thrifts are considered to be a citizen of a State for purposes of establishing diversity jurisdiction. This provision extends to federal savings associations that operate across State lines the same possibility of establishing diversity jurisdiction currently enjoyed by national banks, State-chartered banks, and savings associations. Currently, federally-chartered savings associations that conduct businesses in more than one State may, under some circumstances, be considered to not be a citizen of any State in which they operate.

Section 214 of the legislation requires federal courts to ensure that all institutions having claims for relief under the Supreme Court's 1996 Winstar decision be permitted to have those claims considered on the merits. The provision is an equitable one.

It is intended to ensure that financial institutions which took over failed thrifts in the 1980's only after receiving specific material assurances from federal regulators—terms that the Supreme Court ruled were later breached by the federal government—have the ability to present their claims for breach of contract in federal court.

Section 312 of the legislation, would exempt credit unions from having to file Hart-Scott-Rodino pre-merger antitrust review.

Section 402 establishes a uniform 30-day statute of limitations on various financial institutions to appeal decisions by the Comptroller, FDIC, and National Credit Union Administration to appoint a receiver.

Section 607 streamlines merger applications for depository institutions while Section 609 would shorten the post-approval process during which banks can complete merging or acquiring another bank if the Attorney General agrees in advance that the acquisition or merger would not have serious anticompetitive effects. Finally, Section 615 would allow for the imposition of up to \$1 million a day fine on any individual or corporation for misrepresentation of FDIC insurance coverage.

H.R. 1375 represents meaningful reform of a financial services industry in need of structural regulatory modernization, and I urge your support.

I now turn to Mr. Conyers for his opening remarks.

Chairman SENSENBRENNER. Without objection, all Members may put statements in the record. And are there amendments? The gentlewoman from California, do you have an amendment to this bill?

[No response.]

Chairman SENSENBRENNER. Okay. Are there amendments?

If not, the Chair notes the presence of a reporting quorum. All those in favor of reporting the bill favorably will say aye? Opposed, no?

The ayes appear to have it. The ayes have it, and the bill is reported favorably.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all

Members will be given 2 days as provided by House rules in which to submit additional, dissenting, supplemental, or minority views.

And the Committee is recessed until 10:00 a.m. tomorrow.

[Whereupon, at 4:54 p.m., the Committee was recessed, to reconvene at 10:00 a.m., Thursday, July 10, 2003.]

ADDITIONAL VIEWS

We generally support the version of H.R. 1375 as reported out of the Committee on the Judiciary, but we have one reservation about a provision that was not addressed at the Committee markup. Section 609 of H.R. 1375 amends section 11(b) of the Bank Holding Company Act of 1956, 12 U.S.C. § 1849(b), and section 18(c)(6) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(c)(6), by reducing the minimum waiting period from 15 calendar days to five calendar days for banks and bank holding companies to merge with or acquire other banks or bank holding companies. Although no amendment was offered at the Committee, we feel that this provision should be struck from the bill.

Community organizations have raised concerns about this provision, which reduces to 5 days the pre-merger, mandatory 15-day waiting period with the Attorney General's approval. During the course of a bank merger process, both the Federal financial supervisory agency and the Department of Justice review the merger proposal for competitive concerns. After a Federal banking agency approves a merger, DOJ has 30 days to decide whether to challenge the merger approval on antitrust grounds. At a minimum, the merging banks must now wait 15 days before completing their merger. Currently, banking law allows third parties (other than Federal banking agencies or DOJ) to file suit during the post-approval waiting period. As proposed, section 609 would reduce the minimum 15-day waiting period to 5 days when DOJ indicates it will not file suit challenging the merger approval order.

We believe this provision is anti-Community Reinvestment Act ("CRA") and strips the organizations' right to seek judicial review of Federal bank merger approval orders. Without such review, community organizations will be deprived of impartial means and mechanisms for ensuring that CRA performance obligations are taken into account when considering merger approvals. Community-based organizations use such suits to obtain information about the merger and ensure that the merger will not result in disproportionate branch closures in low-income or minority communities. We believe they play an important role in the public interest and would like to reaffirm our desire that the mandatory 15-day waiting period remain and that section 609 be struck from the bill.

JOHN CONYERS, JR.
MAXINE WATERS.
WILLIAM D. DELAHUNT.
TAMMY BALDWIN.
LINDA T. SÁNCHEZ.

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