NOTICE OF CHANGE IN CONTROL OF MANAGEMENT OF INSURED BANKS

HEARING

BEFORE THE

COMMITTEE ON BANKING AND CURRENCY
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 12267

A BILL TO PROVIDE FOR NOTICE OF CHANGE IN CONTROL OF MANAGEMENT OF INSURED BANKS, AND FOR OTHER PURPOSES

AND

H.R. 12268

A BILL TO PROVIDE FOR NOTICE OF CHANGE IN CONTROL OF MANAGEMENT OF INSURED BANKS, AND FOR OTHER PURPOSES

AUGUST 12, 1964

Printed for the use of the
Committee on Banking and Currency

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CONTENTS

NOTICE OF CHANGE IN CONTROL OF MANAGEMENT OF INSURED BANKS

WEDNESDAY, AUGUST 12, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 1301, Longworth House Office Building, Hon. Wright Patman (chairman) presiding.

Present: Representatives Patman, Multer, Barrett, Mrs. Sullivan, Reuss, Ashley, Vanik, Moorhead, Stephens, St Germain, Gonzalez, Pepper, Minish, Weltner, Hanna, Grabowski, White, Kilburn, Widnall, Fino, Mrs. Dwyer, Halpern, Bolton, Taft, Talcott, and Clawson.

The CHAIRMAN. The committee will please come to order.

The hearing this morning involves H.R. 12267 and related bills which provides for notice of changes in control of the management of insured banks. There have been several instances in recent months where banks, usually small ones, have come to grief and upon investigation it has developed that a new group had recently taken over control and proceeded to get the bank into difficulties.

The FDIC is of the opinion that the law should be revised to require a report in the case of takeover of control so that immediately such institutions could be kept under observation and that this in turn would eliminate or gradually reduce the possibility of fraud.

Our witness this morning is the Honorable Joseph W. Barr, Chairman of the Board of Directors of the Federal Deposit Insurance Corporation.

We will insert in the record at this point a copy of H.R. 12267 and H.R. 12268.

(H.R. 12267 and H.R. 12268 follow:)

[H.R. 12267, 88th Cong., 2d sess.]

A BILL To provide for notice of change in control of management of insured banks, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Deposit Insurance Act (12 U.S.C. 1811–1831), as amended, be amended by adding the following new subsection (j) at the end of section 7 thereof:

"(j) (1) Whenever a change occurs in the outstanding voting stock of any insured bank which will result in control or in a change in the control of the bank, the president or other chief executive officer of such bank shall promptly report such facts to the appropriate Federal banking agency upon obtaining knowledge of such change. As used in this section, the term 'control' means the power to directly or indirectly direct or cause the direction of the management or policies of the bank. If there is any doubt as to whether a change in the outstanding voting stock is sufficient to result in control thereof or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the appropriate Federal banking agency.

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

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

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

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

"(6) As used in this section, the term 'appropriate Federal banking agency' shall mean (a) the Comptroller of the Currency in the case of a national banking association or a district bank, (b) the Board of Governors of the Federal Reserve System in the case of a State member insured bank (except a district bank), and (c) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank (except a district bank)."

[H.R. 12268, 88th Cong., 2d sess.]

A BILL To provide for notice of change in control of management of insured banks, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Deposit Insurance Act (12 U.S.C. 1811–1831), as amended, be amended by adding the following new subsection (j) at the end of section 7 thereof:

"(j)(1) Whenever a change occurs in the outstanding voting stock of any insured bank which will result in control or in a change in the control of the bank, the president or other chief executive officer of such bank shall promptly report such facts to the appropriate Federal banking agency upon obtaining knowledge of such change. As used in this section, the term 'control' means the power to directly or indirectly direct or cause the direction of the management or policies of the bank. If there is any doubt as to whether a change in the outstanding voting stock is sufficient to result in control thereof or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the appropriate Federal banking agency.

"(2) Whenever an insured bank makes a loan or loans, secured, or to be secured, by 25 per centum or more of the voting stock of an insured bank, the president or other chief executive officer of the lending bank shall promptly report such fact to the appropriate Federal banking agency of the bank whose stock secures the loan or loans upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner

of record of the stock for a period of one year or more, or the stock is that of a newly organized bank prior to its opening.

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

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The CHAIRMAN. Before hearing Chairman Barr on the merits of the bill I would like to make one or two observations.

The first is that I have long felt there ought to be a requirement in the law for annual reporting of the leading bank stockholders in the country. While this approach is a little different from the present bill, it is aimed at the same general objective, public knowledge of ownership changes.

The committee is now compiling a list of the 20 main stockholders of each of the member banks of the Federal Reserve System. It is our hope that this will be published early this fall along with an analytical study of bank ownership.

Secondly, by way of general observation, it appears to me that this bill deals with one specific element of the public interest; namely, the control of banks. But there are many other questions involving the public interest that might well be looked into.

The question of services to the public, for example, and the whole issue of trust funds which have increased to far in excess of $100 billion—$144 billion.

We have no time today to get into the matters of general bank regulation and disclosure requirements, but I want to say here and now, that I hope to have the committee spend more time on them in the near future.

One other point. The Federal Home Loan Bank Board has submitted a draft bill which parallels this FDIC bill. It would require recording of control changes in stock in savings and loan companies.

We will not have time to go into that today. The committee will get to it as soon as possible.

It is my understanding that Mr. Barr will testify. He is probably the only witness for the proponents and I wonder if Mr. Saxon or his representative is here? I see Mr. Camp is here. Yes, I see him. Do you have a statement that you would like to make?

Mr. CAMP. Yes.

The CHAIRMAN. You will be privileged to do so after we conclude with Mr. Barr.

Mr. Barr, you may proceed in your own way.

Mr. KILBURN. May I say this? For the benefit of the new members of the committee, Mr. Barr was a very distinguished member of this committee. I am sure the members of the committee welcome him. It is a pleasure to have you before this committee.

Mr. BARR. Thank you, Mr. Kilburn.

Mr. BARRETT. I would like to say that Joe Barr is more familiar to me than Mr. Barr. He was one of the hardest-working Congressmen that ever came from Indiana. It is a great pleasure to have you before us here this morning.

Mr. BARR. Thank you, Mr. Barrett.

Mrs. SULLIVAN. Mr. Chairman.

The CHAIRMAN. Mrs. Sullivan?

Mrs. SULLIVAN. Before we hear from Mr. Barr, I would like to express my wholehearted support for this legislation and I am going to ask to be excused in about 10 minutes because a bill of mine is coming up for hearing before another committee and I am going to have to leave.

The CHAIRMAN. If we were to vote—if we were to notify you about the time we would vote, could you return for that?

Mrs. SULLIVAN. Yes. I am very much in favor of it. In fact, in view of the experience we had recently in Missouri of the control of a bank being taken over without the FDIC being aware of the change in control and then having it fail within a few months, I think this legislation is necessary. Thank you.

The CHAIRMAN. Mr. Barr, you may proceed in your own way now.

STATEMENT OF HON. JOSEPH W. BARR, CHAIRMAN, BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

Mr. BARR. Mr. Chairman, before beginning on my statement, I would like to take this opportunity to present my colleague, Mr. K. A. Randall.

The CHAIRMAN. He can join you at the table if you like.

Mr. BARR. Mr. Randall came to the Corporation from Provo, Utah, and has proved to be a hard-working and diligent member of the Corporation and a real asset to our activities.

The CHAIRMAN. Glad to have him.

Mr. BARR. Mr. Chairman, today I am appearing in support of H.R. 12267 and H.R. 12268, identical bills, introduced by Chairman Patman and Congressman Widnall. These bills are designed to provide for notice of change in control or management of insured banks.

This proposed legislation would require the president or other chief executive officer of any insured bank to report to the appropriate Federal banking agency the facts surrounding changes which occur in the outstanding voting stock of the bank which will result in a change in the control of the institution. The term "control" would be defined to mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the bank. National banks would be required to report such a change in control to the Comptroller of the Currency, State banks which are members of the Federal Reserve System would report to the Board of Governors, and insured State banks which are not members of the Federal Reserve System would report to the Federal Deposit Insurance Corporation.

Under the proposed legislation a report would also be required in cases where a loan or loans are made by any insured bank which are secured by 25 percent or more of the shares of the voting stock of any insured bank. In the case of such a loan the report would be made to the appropriate Federal banking agency of the bank whose stock secures the loan. An exception would apply to loans in the case of stock of a newly organized bank prior to its opening or where the applicant or borrower has been the owner of record of the stock for more than 1 year.

Provision is also made that when there has been a change in control, each insured bank would be required to report promptly to the appropriate Federal banking agency any changes or replacements of the chief executive officer or directors that occur within 12 months after the change in control. The proposed bill sets forth the information which must be contained in the reports of changes in control, loans, and executive officers and directors.

When I assumed my responsibilities as Chairman of the Federal Deposit Insurance Corporation, in January of this year, I was impressed with the thorough and painstaking investigations that precede the granting of insurance to newly chartered banks. In these investigations, particular emphasis is placed on the character and ability of the management and board of directors. A very complete report is submitted on every director and every chief executive officer of each bank applying for insurance. However, I was surprised to discover that when the control of a bank shifted or when a bank obtained new management, we had no such comparable reports to review. As a matter of fact, I learned that between examinations we usually found out about changes of control or management only through rumor.

Since 1934 it has become apparent that the vast majority of bank failures could be attributed to the business cycle, to bad judgment, to embezzlement, or to a combination of these factors. Up until about 1955, shifts of control or management seemed to have relatively little to do with bank failures. Consequently, in January of this year, while I was surprised at this apparent gap, I was not unusually perturbed. I was not prepared to do anything about it.

But since March of this year, we have had five bank failures. The first occurred in Marlin, Tex., the second in Minden City, Mich., the third in Dell City, Tex., the fourth in Belleview, Mo., and the fifth in Covelo, Calif. All of these failures had this in common—they were preceded by a recent change in control or management, some-

times both, and a rather sudden deterioration in the character of their assets. After the fourth failure, in Belleview, Mo., my colleague, Director K. A. Randall, and I decided that we should try to plug up this hole in our authority. We announced our intention to ask for legislation much along the lines of the bills which you have before you today. Within a week after our announcement, the fifth failure occurred in Covelo, Calif., and it fell into precisely the same pattern as the four previous failures.

For those of you who are interested in reading the details of recent bank failures, you will find them spelled out in appendix A, which is attached to this statement. We have purposely not identified the banks in appendix A because some of these matters are currently in litigation before the courts.

My purpose here today is to explain what this proposed legislation will do and why we have requested it. It is not my purpose to explain to you what it will not do. However, I do want to make it abundantly clear that we are not asking in this legislation for the authority to control or veto changes of ownership or management.

Mr. Chairman, in conclusion, it is my opinion that the enactment of this legislation will give the Federal Deposit Insurance Corporation, and the other Federal banking agencies, a useful tool to meet their obligations and responsibilities to individual depositors as well as to the American commercial banking system.

The Corporation intends to transmit the information which it received, pertaining to State banks, to the State bank supervisors of the various States. I can say flatly that we intend to transmit this information immediately. Working in cooperation with the supervisors of the various States, and armed with this information, I believe that we can keep new managements or new owners under scrutiny until we are assured of their character and their ability.

The Bureau of the Budget has advised me that this proposed legislation is consistent with the administration's objectives.

(The appendix to Mr. Barr's statement follows:)

Appendix A

Case Histories: Recent Bank Failures

Between May 1963 and July 1964 seven insured banks have failed. In each instance, the cause of failure was a change of ownership of the particular bank followed by the assumption or making of bad loans which in some instances were fraudulent. The seven banks varied in amount of assets from about $1,224,000 to $19,132,000. In the aggregate their total assets amounted to approximately $36,302,000. The estimated loss to the Federal Deposit Insurance Corporation in these seven cases is approximately $2,500,000. What is not realized generally is that similar circumstances have been responsible for the closing of one-third of the last 18 insured banks to be placed in receivership prior to May 1963. It is important to discuss these earlier cases briefly before going into more detail regarding our last seven bank failures.

In 1955 a young man with only a high school education and no experience in banking put on a better demonstration of how to buy a bank with its own money and wreck it than more experienced people have done before or since. He located two banks only 40 miles apart in a rural area where the controlling stockholder in each instance desired to sell at substantially above book value and had therefore been unable to locate purchasers. He and his associates made an unsecured loan in the first bank to purchase stock control of the second bank and thereafter, after taking over the second bank, borrowed enough on an unsecured basis to go back and purchase the first bank. After installing himself and his friends as officers and directors in each of the banks, he then proceeded to make a series of unsecured loans to a number of out-of-State individuals with no credit worthiness, pocketing

a great portion of the proceeds of such loans himself. This resulted in the closing of both banks and secured for the new owner of the two banks involved a ticket to the penitentiary.

Two more cases occurred in 1958 where, after changes of ownership, risky loans made by the new owners resulted in the closing of the banks. In one of these cases the new owner had control of some 15 corporations that were for the most part mere shells. Promptly following his acquisition of the bank, each of the corporations borrowed the maximum amount the bank could lend unsecured. All of these loans proved to be loss items and rendered the bank insolvent. This new owner and two of his associates went to the penitentiary.

Another such case occurred in 1959 where the new owner, after purchasing control of the bank, put his inexperienced son in the bank as chief executive officer. The son promptly rendered the bank insolvent due to risky loans which appear to have been made largely because of his lack of experience.

One case occurred in 1960 where the owner of an insolvent insurance company and his associate purchased a bank with some $750,000 of its funds and proceeded in the same transaction to attempt to rehabilitate the life insurance company, resulting in a loss to the bank of approximately $1,500,000. The bank was forced to close and these two individuals have since been convicted.

We turn now to our seven most recent failures which have occurred between May of 1963 and the present. We will also refer to two instances where checking out rumors of a change in control helped prevent insolvency.

A $7 million bank that had been operated in an ultraconservative manner with enough of its funds in cash, due from banks and bonds to pay all of its deposits, was purchased by two individuals with no banking experience. In a period of 5 weeks they placed more than $1,200,000 in bad loans with a large percentage of this paper exceeding the limitations prescribed by applicable State law. Their actions resulted in the closing of the bank and indictments.

Our next case involves a bank considerably larger where several individuals, inexperienced in banking, by devious methods improperly used approximately $900,000 of the bank's own funds as part payment for stock control. They promptly selected a new executive officer of their own choosing and were principally responsible for the granting of a large volume of simulated loans with the proceeds of a large number of such loans eventually being used for their own benefit. The bank's loan volume increased $5 million within 120 days after the change of ownership of the bank. Further, some $1,600,000 in the bank's funds were placed in dormant, non-interest-bearing deposit accounts with three other banks, for the sole benefit of the new owners, as a partial consideration for a $750,000 loan. Their actions resulted in the bank being placed in receivership and most of the principals involved are now under indictment.

In another case, two individuals with criminal records and inexperienced in banking, through a newly created corporate entity and a frontman, or agent, acting for them as undisclosed principals, purchased the controlling stock interests in a $2.5 million bank. In a few weeks, because of the bank's lack of liquidity and by means of the payment of a bounty of 1 percent, they caused $1 million in cash to be placed in the bank. They in turn used this to purchase approximately $970,000 in mortgage notes (worth 50 cents on the dollar) which they bought at a 23 percent discount and placed in the bank at slightly less than their face value. During the few months the bank remained open after the change in stock control, they also are accused of having agreed to purchase approximately $900,000 more in mortgage notes worth from 30 to 40 cents on the dollar. However, this transaction was not consummated inasmuch as the first mortgage note transaction described above resulted in the bank's insolvency, and its liquidation is now in progress.

And recently, approximately 2 years after purchasing stock control in an insured bank, an individual inexperienced in banking commenced paying checks of certain favored customers, including checks drawn by his sole proprietorship and two of his corporate interests. This series of paid but uncharged checks in substantial amounts were eliminated by substituting eight expertly forged notes. He then solicited $100,000 in the form of $10,000 certificates of deposit through a money broker by paying a 1-percent bounty above the maximum 4-percent interest allowable. Upon obtaining these funds he only entered four of the $10,000 items on the bank's books as deposit liabilities. The remaining $60,000 was misapplied to eliminate from the bank's books additional loss items that had arisen as a result of loans to his corporate interests. This course of action rendered the bank insolvent and resulted in the Corporation being appointed receiver. His conduct also resulted in a 19-count grand jury indictment involving misapplication of funds and false entries.

Next, we have another bank that had encountered no unusual difficulties until mid-1963, when an individual from out of the State first became associated as a minority stockholder. This minority stockholder assumed dominating control of the bank in mid-1963, but did not actually consummate purchase of majority stock ownership until April 11, 1964. By the end of that month, April 1964, the bank's loans had more than doubled to a completely unrealistic 81 percent of total deposits. These loans included five bad notes in the aggregate of $45,000 signed by the new owner. Due to the bank's extreme lack of liquidity by mid-May 1964, the new owner had caused outstanding certificates of deposit to increase to an aggregate of $430,000, all of which represented out-of-territory money, except for approximately $27,750. On approximately $330,000 of these total outstanding certificates of deposit additional interest or bounties of from 1 to 2 percent were paid to cause the funds to be placed in the bank. The new controlling stockholder resigned as president in June and the bank was closed for liquidation by action of its own board in early July 1964.

In another case the new owners of a small country bank purchased control over 3 years ago. They proceeded to use the bank to assist their other enterprises. They augmented the funds of the bank by bringing in out-of-territory money through money brokers and issued certificates of deposit therefor. In order to generate income rapidly they substantially increased the number and dollar amount of out-of-territory, high-risk loans. Their operations endangered the bank and necessitated a change in ownership early this year. The new owners continued enlarging the bank and providing liquidity with the aid of the money brokers. They restored the capital funds of the bank by purchasing about $200,000 of criticized assets shortly after taking over. However, their operations were unsuccessful and the bank was closed for liquidation.

And again, stock control of a bank changed in June of 1963. The new owner placed large credits in the bank over the objection of other directors. In early 1964, he, in turn, sold stock control to an out-of-State farmer and cattle raiser who lost no time in placing large credits in the bank of his own and various out-of-territory interests. Preliminary reports concerning $316,000 in questionable loans caused the State banking authority to visit the bank in mid-July of 1964 to determine whether its solvency might be impaired. The bank was ordered to remove the loss loans on July 10, 1964, and when this was not accomplished the bank was closed by the State authority on July 20, 1964. The new controlling stockholder in this most recent case is the brother-in-law of a new controlling stockholder in one of our cases described previously and the next case described below wherein the bank involved was saved from insolvency.

In this case the bank, due to fortuitous circumstances, was saved from insolvency. A situation arose in mid-1963 where two individuals, one of whom is the brother-in-law of the new owner described in the case immediately above, attempted to buy controlling interest in the bank for $211,000 through fraudulent manipulations (issuance of cashier's checks and a bank draft totaling $178,000). Inasmuch as the checks had not cleared at the time our examiners arrived for a regular routine examination of the bank, the cashier's checks were not paid and the scheme was thwarted before consummation and the bank suffered no loss. The brother-in-law has been indicted for his actions in this case.

Our last case involves another bank that has thus far been saved from insolvency after having been recently purchased by two new owners. They are the same two individuals who were the new controlling owners in one of the cases described above where a bank was rendered insolvent in early 1964. In this instance, control was purchased early in 1963. Here again, they caused the bank to obtain funds in the form of 57 certificates of deposit issued to savings and loan associations throughout the country in the aggregate of $2,715,000. There is a strong indication that acquisition fees may have been involved. There is evidence of a $5,000 loan commission. New extensions of credit were granted, in the form of borrowings, by the new owners of the bank to concerns controlled by them in the aggregate of approximately $950,000, with approximately half of this aggregate classified "Loss." While under pressure to rehabilitate the bank, the new owners sold their stock interests under an arrangement whereby the purchase price is held in escrow for the purpose of taking care of losses on the bad paper placed in the bank by the sellers. This bank remains an operating insured bank due to early knowledge of the situation by the State banking authority and the Federal Deposit Insurance Corporation and the supervisory techniques employed.

Name	*Assets*
Frontier Bank, Covelo, Calif	$2, 666, 000
Chatham Bank of Chicago, Chicago, Ill	19, 132, 000
The First State Bank of Westmont, Westmont, Ill	7, 014, 000
The State Savings Bank of Minden City, Minden City, Mich	1, 314, 000
Belleview Valley Bank, Belleview, Mo	1, 286, 000
First State Bank, Dell City, Tex	1, 224, 000
The First National Bank of Marlin, Marlin, Tex	3, 666, 000
Total	36, 302, 000

Estimated total loss, about $2½ million.

The CHAIRMAN. I wish you would read the letter from the Bureau of the Budget and the Secretary of the Treasury.

Mr. BARR. This is a letter from the Bureau of the Budget:

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., August 10, 1964.

Hon. JOSEPH W. BARR,
Chairman, Federal Deposit Insurance Corporation,
Washington, D.C.
(Attention: William M. Moroney).

DEAR MR. CHAIRMAN: This will acknowledge your letter of July 31, 1964, transmitting a draft bill to provide for notice of change in control of management of insured banks, and for other purposes, which you desire to present to the Congress.

Confirming our previous informal advice, you are advised that there is no objection to the presentation of your proposed draft bill to the Congress and that its enactment would be consistent with the administration's objectives.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

Mr. BARR. I submit this for the record.

(The letter referred to follows:)

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., August 10, 1964.

Hon. JOSEPH W. BARR,
Chairman, Federal Deposit Insurance Corporation,
Washington, D.C.
(Attention: William M. Moroney).

DEAR MR. CHAIRMAN: This will acknowledge your letter of July 31, 1964, transmitting a draft bill to provide for notice of change in control of management of insured banks, and for other purposes, which you desire to present to the Congress.

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Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

Mr. BARR. I also have a statement from the Secretary of the Treasury. I will skip the first portion of the statement and move into the statement on the merits, if this is agreeable.

The CHAIRMAN. You may include the entire statement as a part of the record.

Mr. BARR. I will just read this portion:

This Department has been informed by the Chairman of the Federal Deposit Insurance Corporation that in the last 4 months five banks have failed shortly after changes in control or management. It appears that at least in some of the cases, the new owners or management may have been responsible for the sudden

deterioration of the bank's assets. This is a pattern which, if allowed to continue, could have serious consequences in the banking community.

It is possible that the various Federal banking agencies may be able by regulation to obtain reports containing some of the information which would be required by these bills. However, the question is not free from doubt. It is our view that the authority of the Federal banking agencies in this field should be by clear congressional mandate. We should not lose sight of the fact that these bills are designed to curb misuse of our banks. Those who would misuse our banks are likely to resolve any doubts which may exist against notification and in favor of a program of personal profit. They should not have this opportunity.

In order to make certain that our Federal banking agencies are in a position to prevent possible misuse of our banks, the Treasury Department supports the enactment of this proposed legislation.

I have been advised by the Bureau of the Budget that this proposed legislation is consistent with the administration's objectives.

I should also note that the Federal Home Loan Bank Board has also forwarded legislation to the Congress which would give it similar authority over savings and loan associations as these bills would provide over banking institutions. The same reasons which lead us to support enactment of these bills apply to such proposed legislation in the savings and loan field.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

The CHAIRMAN. The entire statement will be placed in the record, Mr. Barr.

(The letter referred to from the Secretary of the Treasury follows:)

THE SECRETARY OF THE TREASURY,
Washington, August 11, 1964.

Hon. WRIGHT PATMAN,
Chairman, Banking and Currency Committee,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request for the views of the Treasury Department concerning H.R. 12267 and H.R. 12268, identical bills to provide for notice of change in control of management of insured banks, and for other purposes.

These bills would require the president or other chief executive officer of any bank insured by the Federal Deposit Insurance Corporation to report promptly to the appropriate Federal banking agency facts concerning any changes which occur in the outstanding voting stock of the bank and which will result in a change in control of the bank. The term "control" is defined as "the power to directly or indirectly direct or cause the direction of the management or policies of the bank." Reports of changes in control would be made by national banks to the Comptroller of the Currency, by State banks which are members of the Federal Reserve System to the Federal Reserve Board, and by insured, nonmember State banks to the Federal Deposit Insurance Corporation.

The bills also require a prompt report in the event of a loan or loans by any insured bank which loan or loans are secured by 25 percent or more of the voting stock of the bank. These reports would be made by the lending bank to the appropriate Federal banking agency supervising the activities of the bank whose stock is pledged. No report is required where such a loan is secured by stock where the borrower has been the owner of record for 1 year or more or where the stock is that of a newly organized bank prior to its opening.

The bills require reports to the appropriate Federal banking agency of any changes in the chief executive officer or directors in the 12-month period following any change in control. The bills set forth the information to be included in all the required reports. Exchange of information among the Federal banking agencies is also required.

Present law does not require that Federal supervisory agencies be informed of changes in control of the banks which they supervise. It is therefore possible that a change of control could occur shortly after a bank had been examined, and in the period prior to the next examination of the bank, unprincipled or inexperienced new owners could drastically change the bank's assets and bring about its insolvency. Without notice of the change, no Federal agency would be on guard against such an eventuality, and the result could be grave damage to the community, the bank's depositors, its customers and minority stockholders.

This Department has been informed by the Chairman of the Federal Deposit Insurance Corporation that in the last 4 months five banks have failed shortly after changes in control or management. It appears that at least in some of the cases, the new owners or management may have been responsible for the sudden deterioration of the bank's sassets. This is a pattern which, if allowed to continue, could have serious consequences in the banking community.

It is possible that the various Federal banking agencies may be able by regulation to obtain reports containing some of the information which would be required by these bills. However, the question is not free from doubt. It is our view that the authority of the Federal banking agencies in this field should be by clear congressional mandate. We should not lose sight of the fact that these bills are designed to curb misuse of our banks. Those who would misuse our banks are likely to resolve any doubts which may exist against notification and in favor of a program of personal profit. They should not have this opportunity.

In order to make certain that our Federal banking agencies are in a position to prevent possible misuse of our banks, the Treasury Department supports the enactment of this proposed legislation.

I have been advised by the Bureau of the Budget that this proposed legislation is consistent with the administration's objectives.

I should also note that the Federal Home Loan Bank Board has also forwarded legislation to the Congress which would give it similar authority over savings and loan associations as these bills would provide over banking institutions. The same reasons which lead us to support enactment of these bills apply to such proposed legislation in the savings and loan field.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely yours,

DOUGLAS DILLON.

The CHAIRMAN. Since we have another witness, a representative of Mr. Saxon's office, I will ask him to come up and bring his statement now. After conferring with Mr. Kilburn, we believe this would be more orderly, and we can ask any questions of either Mr. Barr or him.

Mr. Camp, will you come forward please? Will you identify yourself to the reporter? Do you have a prepared statement?

Mr. CAMP. I do, sir.

STATEMENT OF HON. JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, PRESENTED BY WILLIAM B. CAMP, FIRST DEPUTY COMPTROLLER OF THE CURRENCY; ACCOMPANIED BY ROBERT BLOOM, AND A. V. ABRAMSON

Mr. CAMP. Mr. Chairman, members of the committee, my name is William B. Camp. I am First Deputy Comptroller of the Currency, and in Mr. Saxon's absence I am the Acting Comptroller of the Currency. It is in this capacity that I am presenting Mr. Saxon's statement on H.R. 12267 which is now under consideration by this committee.

We fully support the principle of required disclosure of changes in the ownership control of banks. Indeed, we have been following this practice since December 1962. No additional powers are required to enable this Office to meet the purposes of the bill so far as national banks are concerned.

The bill, in our view, has one serious administrative weakness, and raises a fundamental question concerning the proper function of the insuring agency in the pattern of bank regulation.

The administrative weakness of the bill is the requirement for duplicate reporting by national banks. This duplication is explicitly

set forth in the bill in a sentence which appears at the end of paragraph 3:

> The reports requirements in this subsection shall be in addition to any reports that may be required pursuant to other provisions of law.

Since this Office does require substantially similar reports, the effect of that section would clearly be to provide for duplicate reporting.

The fundamental question of public policy concerns the provision of the bill which requires the Comptroller of the Currency and the Federal Reserve Board to furnish to the FDIC copies of the reports called for under the bill. We do not see that any valid purpose could be served through such centralization of these reports. They are useful only for regulatory purposes, and the FDIC is not a regulatory agency. The appropriate place for such reports is the Comptroller of the Currency in the case of national banks, and the State authorities in the case of State-chartered banks. Any regulatory action which would be required in response to these reports would properly be taken by those agencies under our dual banking system.

The question we raise here is not merely a jurisdictional one. It reaches to the basic issue of the proper role of deposit insurance in the pattern of bank regulation. The essential point to be borne in mind is that deposit insurance plays a subordinate role in that pattern, and properly so.

Banks are regulated in order to sustain public confidence in the banking system. But since banking serves the industry and commerce of the Nation, there must be scope for private initiative in meeting the changing needs of the public. Because of this fact, banking cannot be a riskless enterprise, and it is not the purpose of bank regulation to eliminate risk. The function of deposit insurance is to provide an ancillary safeguard in those occasional circumstances in which bank supervision does not provide the necessary protection to depositors. That deposit insurance is subordinate to the broader public purposes of bank regulation is evident from the fact that bank supervisory powers rest with the chartering agencies, and that the insurance fund may be supplemented, where necessary, through access to public funds.

This policy is in clear contrast with what would be likely to occur if bank regulatory powers were assigned to the insuring agency. If that were done, there would be a natural tendency to fashion banking controls so as to protect the deposit insurance fund.

Every new entry of competition, and every banking transaction involving risk, would tend to be viewed with suspicion because of the possible hazard it posed for the insurance fund.

The effect would be to place the protection of the insurance fund above the performance of the banking system—thus reversing the proper roles of bank regulation and deposit insurance. These thoughts on the relation of deposit insurance to bank regulation were developed more fully in an address by Mr. Saxon before the Texas Bankers Association on February 22, 1963, and I should like to enter that address in the record.

The CHAIRMAN. It will be entered at the end of your statement without objection.

Mr. CAMP. There is no urgent need which would require immediate action by the Congress on this bill. The five receiverships which have occurred in recent months following changes in ownership have involved only very small institutions. In view of this lack of urgency, and the possible implications of the bill for the powers and functions of the FDIC, it would appear desirable for the committee to examine more fully certain of the past practices of the FDIC. There are several which appear to be of special importance.

We have conducted some preliminary studies of the costs of administration being charged against the assets of insolvent banks. From the information we now have, some of these administrative costs appear to be excessively high. We should like to enter into the record the preliminary data which we have collected.

The CHAIRMAN. Without objection, so ordered. It is entitled "Comparison of FDIC Recoveries on Receiverships to the Estimated Loss to Other General Creditors."

(The document referred to follows:)

Comparison of FDIC recoveries on receiverships to the estimated loss to other general creditors

Name	Dividends paid FDIC	Liquidation expenses paid	Estimated additional expenses	Total charges to receivership by FDIC	Estimated loss to other creditors
The State Savings Bank of Minden City, Minden City, Mich.	----------	$25,618	$35,000	$60,618	$5,672
The First National Bank of Marlin, Marlin, Tex.	----------	38,796	200,000	238,796	184,929
Chatham Bank of Chicago, Chicago, Ill.	$6,109,838	397,868	500,000	7,007,706	125,519
The First State Bank of Westmont, Westmont, Ill.	4,486,753	59,036	70,000	4,615,789	51,128
First State Bank, Premont, Tex.	864,638	97,768	12,000	974,406	18,730
The First National Bank of Maud, Maud, Okla.	1,147,437	74,920	30,000	1,252,357	1,527
Bank of Ochlochnee, Ochlochnee, Ga.	598,765	47,453	1,200	647,418	4,127
Bank of Earlsboro, Earlsboro, Okla.	420,202	25,679	4,600	449,881	38,717
The Sheldon National Bank, Sheldon, Iowa	1,299,085	89,283	3,000	1,391,368	389,650
The Capitol Hill State Bank, Oklahoma City, Okla.	4,764,812	127,501	10,000	4,902,313	----------
The Home National Bank of Ellenville, Ellenville, N.Y.	----------	210,450	30,000	240,450	----------
River Oaks State Bank, Fort Worth, Tex.	2,332,502	219,114	5,000	2,556,616	58,221
Total	22,024,032	1,413,486	900,200	24,337,718	878,220

Comparison of receivership expenses to estimated loss to other general creditors

Name	Liquidation expenses paid	Estimated additional expenses	Total actual and estimated additional expenses	Estimated loss to other creditors
The State Savings Bank of Minden City, Minden City, Mich	$25,618	$35,000	$60,618	$5,672
The First National Bank of Marlin, Marlin, Tex	38,796	200,000	238,796	184,929
Chatham Bank of Chicago, Chicago, Ill	397,868	500,000	897,868	125,519
The First State Bank of Westmont, Westmont, Ill	59,036	70,000	129,036	51,128
First State Bank, Premont, Tex	97,768	12,000	109,768	18,730
The First National Bank of Maud, Maud, Okla	74,920	30,000	104,920	1,527
Bank of Ochlochnee, Ochlochnee, Ga	47,453	1,200	48,653	4,127
Bank of Earlsboro, Earlsboro, Okla	25,679	4,000	29,679	38,717
The Sheldon National Bank, Sheldon, Iowa	89,283	3,000	92,283	389,650
The Capitol Hill State Bank, Oklahoma City, Okla	127,501	10,000	137,501	----------
The Home National Bank of Ellenville, Ellenville, N.Y	210,450	30,000	240,450	----------
River Oaks State Bank, Fort Worth, Tex	219,114	5,000	224,114	58,221
Total	1,413,486	900,200	2,313,686	878,220

Liquidation expenses, active receiverships June 30, 1964

Name	Liquidator's salary	Legal fees	Other salaries	Other expenses	Total liquidation expenses
The State Savings Bank of Minden City, Minden City, Mich	$3,643	$25	$18,817	$3,133	$25,618
The First National Bank of Marlin, Marlin, Tex	3,642	20	20,533	14,602	38,797
Chatham Bank of Chicago, Chicago, Ill	14,009	53,039	277,002	53,818	397,868
The First State Bank of Westmont, Westmont, Ill	12,425	3,897	33,116	[1] 13,587	63,025
First State Bank, Premont, Tex	29,246	3,500	47,273	17,750	97,769
The First National Bank of Maud, Maud, Okla	21,051	10,831	35,738	7,300	74,920
Bank of Ochlochnee, Ochlochnee, Ga	19,757	2,056	17,172	8,467	47,452
Bank of Earlsboro, Earlsboro, Okla	5,702	3,472	12,147	4,358	25,679
The Sheldon National Bank, Sheldon, Iowa	26,216	10,241	38,596	14,229	89,282
The Capitol Hill State Bank, Oklahoma City, Okla	20,270	17,807	67,257	22,167	127,501
The Home National Bank of Ellenville, Ellenville, N.Y	34,475	56,926	46,015	73,034	210,450
Rivers Oaks State Bank, Fort Worth, Tex	44,928	30,065	69,155	74,966	219,114
Total	235,364	191,879	682,821	307,411	1,417,475

[1] Includes $3,989 State examiner's expenses.

The State Savings Bank of Minden City, Minden City, Mich., as of June 30, 1964

	Number of accounts	Amount
Insured deposits:		
Paid by FDIC	1,076	$1,076,883
To be paid by FDIC	25	101,933
Deposits offset	42	19,013
Deposits to be offset	1	49
Secured deposits and preferred claims:		
Paid by receiver		
To be paid by receiver		
Deposits in excess of $10,000	[1](14)	34,889
Total	1,144	1,232,767
Receivership charges:		
Actual expenses to date		25,618
Estimated additional expenses		35,000
Payments to FDIC as subrogee of insured depositors		
Total		60,618
Unpaid proved common claims:		
FDIC		1,076,883
Others (includes depositors over $10,000)		101,833
Total		1,178,716
Estimated loss to common creditors:		
FDIC		59,977
Others (includes depositors over $10,000)		5,672
Total		65,649
FDIC nonrecoverable insurance expense		19,989
Dividends paid on proven claims:		
FDIC		
Others (includes depositors over $10,000)		
Total		
Estimated gross recovery by FDIC as insurer and receiver		1,077,524
Less estimated gross loss by FDIC:		
As insurer		19,989
Estimated loss as receiver		59,977
Total		79,966
Net recovery by FDIC		997,558
Estimated loss to other general creditors (includes depositors with balance in excess of $10,000)		5,672

[1] Included in number of insured deposit accounts paid by FDIC.

The First National Bank of Marlin, Marlin, Tex., as of June 30, 1964

	Number of accounts	Amount
Insured deposits:		
Paid by FDIC	1,980	$1,899,494
To be paid by FDIC	90	234,107
Deposits offset	111	70,003
Deposits to be offset	19	908
Secured deposits and preferred claims:		
Paid by receiver	7	313,619
To be paid by receiver		
Deposits in excess of $10,000	[1] (37)	940,486
Total	2,207	3,458,617
Receivership charges:		
Actual expenses to date		38,796
Estimated additional expenses		200,000
Payments to FDIC as subrogee of insured depositors		
Total		238,796
Unpaid proved common claims:		
FDIC		1,862,117
Others (includes depositors over $10,000)		1,042,880
Total		2,904,997
Estimated loss to common creditors:		
FDIC		330,194
Others (includes depositors over $10,000)		184,929
Total		515,123
FDIC nonrecoverable insurance expense		27,716
Dividends paid on proven claims:		
FDIC		
Others (includes depositors over $10,000)		
Total		
Estimated gross recovery by FDIC as insurer and receiver		1,770,719
Less estimated gross loss by FDIC:		
As insurer		27,716
Estimated loss as receiver		330,194
Total		357,910
Estimated net recovery by FDIC		1,412,809
Estimated loss to other general creditors (includes depositors with balances in excess of $10,000)		184,929

[1] Included in number of insured deposit accounts paid by FDIC.

Chatham Bank of Chicago, Chicago, Ill., as of June 30, 1964

	Number of accounts	Amount
Insured deposits:		
Paid by FDIC	23,710	$13,685,579
To be paid by FDIC	3,509	99,654
Deposits offset	637	839,790
Deposits to be offset	38	3,008
Secured deposits and preferred claims:		
Paid by receiver	4	1,158,204
To be paid by receiver		
Deposits in excess of $10,000	[1] (166)	820,760
Total	27,898	16,606,995
Receivership charges:		
Actual expenses to date		397,868
Estimated additional expenses		500,000
Payments to FDIC as subrogee of insured depositors		6,109,838
Total		7,007,706
Unpaid proved common claims:		
FDIC		7,487,579
Others (includes depositors over $10,000)		583,235
Total		8,070,814
Estimated loss to common creditors:		
FDIC		1,609,366
Others (includes depositors over $10,000)		125,519
Total		1,734,885
FDIC nonrecoverable insurance expense		178,739
Dividends paid on proven claims:		
FDIC		6,109,838
Others (includes depositors over $10,000)		477,192
Total		6,587,030
Estimated gross recovery by FDIC as insurer and receiver		12,885,919
Less estimated gross loss by FDIC:		
As insurer		178,739
Estimated loss as receiver		1,609,366
Total		1,788,105
Estimated net recovery by FDIC		11,097,814
Estimated loss to other general creditors (includes depositors with balances in excess of $10,000)		125,519

[1] Included in number of insured deposit accounts paid by FDIC.

The First State Bank of Westmont, Westmont, Ill., as of June 30, 1964

	Number of accounts	Amount
Insured deposits:		
Paid by FDIC	7,550	$5,430,792
To be paid by FDIC	527	32,439
Deposits offset	321	257,079
Deposits to be offset	11	25,196
Secured deposits and preferred claims:		
Paid by receiver	3	128,386
To be paid by receiver		
Deposits in excess of $10,000	[1](79)	784,838
Total	8,412	6,658,730
Receivership charges:		
Actual expenses to date		59,036
Estimated additional expenses		70,000
Payments to FDIC as subrogee of insured depositors		4,486,753
Total		4,615,789
Unpaid proved common claims:		
FDIC		918,974
Others (includes depositors over $10,000)		137,468
Total		1,056,442
Estimated loss to common creditors:		
FDIC		341,799
Others (includes depositors over $10,000)		51,128
Total		392,927
FDIC nonrecoverable insurance expense		44,569
Dividends paid on proven claims		
FDIC		4,486,753
Others (includes depositors over $10,000)		671,169
Total		5,157,922
Estimated gross recovery by FDIC as insurer and receiver		5,192,964
Less estimated gross loss by FDIC:		
As insurer		44,569
Estimated loss as receiver		341,799
Total		386,368
Estimated net recovery by FDIC		4,806,596
Estimated loss to other general creditors (includes depositors with balances in excess of $10,000)		51,128

[1] Included in number of insured deposit accounts paid by FDIC.

First State Bank, Premont, Tex., as of June 30, 1964

	Number of accounts	Amount
Insured deposits:		
Paid by FDIC	1,412	$1,027,879
To be paid by FDIC	121	1,762
Deposits offset	239	125,718
Secured deposits and preferred claims:		
Paid by receiver	11	484,272
To be paid by receiver		
Deposits in excess of $10,000	[1] (12)	76,922
Total	1,783	1,716,553
Receivership charges:		
Actual expenses to date		97,768
Estimated additional expenses		12,000
Payments to FDIC as subrogee of insured depositors		864,638
Total		974,406
Unpaid proved common claims:		
FDIC		140,755
Others (includes depositors over $10,000)		21,681
Total		162,436
Estimated loss to common creditors:		
FDIC		121,599
Others (includes depositors over $10,000)		18,730
Total		140,329
FDIC nonrecoverable insurance expense		41,019
Dividends paid on proven claims:		
FDIC		864,638
Others (includes depositors over $10,000)		133,182
Total		977,820
Estimated gross recovery by FDIC as insurer and receiver		993,562
Less estimated gross loss by FDIC:		
As insurer		41,019
Estimated loss as receiver		121,599
Total		162,618
Estimated net recovery by FDIC		830,944
Estimated loss to other general creditors (includes depositors with balances in excess of $10,000)		18,730

[1] Included in number of insured deposit accounts paid by FDIC.

The First National Bank of Maud, Maud, Okla., as of June 30, 1964

	Number of accounts	Amount
Insured deposits:		
Paid by FDIC	1,263	$1,297,042
To be paid by FDIC	391	12,683
Deposits offset	257	141,597
Secured deposits and preferred claims:		
Paid by receiver	8	69,056
To be paid by receiver		
Deposits in excess of $10,000	[1] (9)	24,773
Total	1,919	1,545,151
Receivership charges:		
Actual expenses to date		74,920
Estimated additional expenses		30,000
Payments to FDIC as subrogee of insured depositors		1,147,437
Total		1,252,357
Unpaid proved common claims:		
FDIC		127,493
Others (includes depositors over $10,000)		3,274
Total		130,767
Estimated loss to common creditors:		
FDIC		59,427
Others (includes depositors over $10,000)		1,527
Total		60,954
FDIC nonrecoverable insurance expense		34,344
Dividends paid on proven claims:		
FDIC		1,147,438
Others (includes depositors over $10,000)		29,465
Total		1,176,903
Estimated gross recovery by FDIC as insurer and receiver		1,320,423
Less estimated gross losses by FDIC:		
As insurer		34,344
Estimated losses as receiver		59,427
Total		93,771
Estimated net recovery by FDIC		1,226,652
Estimated loss to other common creditors including depositors with balances in excess of $10,000		1,527

[1] Included in number of insured deposit accounts paid by FDIC.

Bank of Ochlochnee, Ochlochnee, Ga., as of June 30, 1964

	Number of accounts	Amount
Insured deposits:		
Paid by FDIC	812	$705,390
To be paid by FDIC		
Deposits offset	175	85,330
Claims barred—Statute of limitations	25	871
Secured deposits and preferred claims:		
Paid by receiver	4	42,361
To be paid by receiver		
Deposits in excess of $10,000	[1] (10)	37,904
Total	1,016	871,856
Receivership charges:		
Actual expenses to date		47,453
Estimated additional expenses		1,200
Payments to FDIC as subrogee of insured depositors		598,765
Total		647,418
Unpaid proved common claims:		
FDIC		105,665
Others (includes depositors over $10,000)		7,607
Total		113,272
Estimated loss to common creditors:		
FDIC		70,784
Others (includes depositors over $10,000)		4,127
Total		74,911
FDIC nonrecoverable insurance expense		18,436
Dividends paid on proven claims:		
FDIC		598,765
Others (includes depositors over $10,000)		33,461
Total		632,226
Estimated gross recovery by FDIC as insurer and receiver		682,299
Less estimated gross loss by FDIC:		
As insurer		18,436
Estimated losses as receiver		70,785
Total		89,221
Estimated net recovery by FDIC		593,078
Estimated loss to other creditors (includes depositors with balances in excess of $10,000)		4,127

[1] Included in number of insured deposit accounts paid by FDIC.

Bank of Earlsboro, Earlsboro, Okla., as of June 30, 1964

	Number of accounts	Amount
Insured deposits:		
Paid by FDIC	700	$724,486
To be paid by FDIC	401	12,669
Deposits offset	81	54,392
Claims barred—Statute of limitations		
Secured deposits and preferred claims:		
Paid by receiver	4	25,491
To be paid by receiver		
Deposits in excess of $10,000	[1] (22)	101,172
Total	1,186	918,210
Receivership charges:		
Actual expenses to date		25,679
Estimated additional expenses		4,000
Payments to FDIC as subrogee of insured depositors		420,202
Total		449,881
Unpaid proved common claims:		
FDIC		304,284
Others (includes depositors over $10,000)		41,448
Total		345,732
Estimated loss to common creditors:		
FDIC		284,224
Others (includes depositors over $10,000)		38,717
Total		322,941
FDIC nonrecoverable insurance expense		17,417
Dividends paid on proven claims:		
FDIC		420,202
Others (includes depositors over $10,000)		57,238
Total		477,440
Estimated gross recovery by FDIC as insurer and receiver		469,941
Less estimated gross loss by FDIC:		
As insurer		17,417
Estimated loss as receiver		284,224
Total		301,641
Estimated net recovery by FDIC		168,300
Estimated loss to other general creditors (including depositors with balances in excess of $10,000)		38,717

[1] Included in number of insured deposit accounts paid by FDIC.

The Sheldon National Bank, Sheldon, Iowa, as of June 30, 1964

	Number of accounts	Amount
Insured deposits:		
Paid by FDIC	1,961	$2,419,279
To be paid by FDIC		
Deposits offset	208	444,075
Claims barred—Statute of limitations	219	4,528
Secured deposits and preferred claims:		
Paid by receiver	2	126,065
To be paid by receiver		
Deposits in excess of $10,000	[1] (52)	890,474
Total	2,390	3,884,421
Receivership charges:		
Actual expenses to date		89,283
Estimated additional expenses		3,000
Payments to FCIC as subrogee of insured depositors		1,391,368
Total		1,299,085
Unpaid proved common claims:		
FDIC		1,084,557
Others (includes depositors over $10,000)		407,032
Total		1,491,589
Estimated loss to common creditors:		
FDIC		1,038,215
Others (includes depositors over $10,000)		389,650
Total		1,427,865
FDIC nonrecoverable insurance expense		40,218
Dividends paid on proven claims:		
FDIC		1,299,085
Others (includes depositors over $10,000)		487,544
Total		1,786,629
Estimated gross recovery by FDIC as insurer and receiver		1,437,710
Less estimated gross loss by FDIC:		
As insurer		40,218
Estimated loss as receiver		1,038,215
Total		1,078,433
Estimated net recovery by FDIC		359,277
Estimated loss to other creditors (includes depositors with balances in excess of $10,000)		389,650

[1] Included in number of insured deposit accounts paid by FDIC.

The Capitol Hill State Bank, Oklahoma City, Okla., as of June 30, 1964

	Number of accounts	Amount
Insured deposits:		
Paid by FDIC	9,974	$4,764,812
To be paid by FDIC		
Deposits offset	727	457,915
Claims barred, statute of limitations	458	1,631
Secured deposits and preferred claims:		
Paid by receiver	12	1,066,111
To be paid by receiver		
Deposits in excess of $10,000	[1] (50)	639,730
Total	11,171	6,930,199
Receivership charges:		
Actual expenses to date		127,501
Estimated additional expenses		10,000
Payments to FDIC as subrogee of insured deposits		4,764,812
Total		4,902,313
Unpaid proved common claims:		
FDIC		
Others (includes depositors over $10,000)		
Total		
Estimated loss to common creditors:		
FDIC		
Others (includes depositors over $10,000)		
Total		
FDIC nonrecoverable insurance expense		67,206
Dividends paid on proven claims:		
FDIC		4,764,812
Others (includes depositors over $10,000)		685,698
Total		5,450,510
Estimated gross recovery by FDIC as insurer and receiver		4,902,313
Less estimated gross loss by FDIC:		
As insurer		67,206
Estimated loss as receiver		
Total		67,206
Estimated net recovery by FDIC		4,835,107
Estimated loss to other general creditors (including depositors with balances in excess of $10,000)		0

[1] Included in number of insured deposit accounts paid by FDIC.

The Home National Bank of Ellenville, Ellenville, N.Y.

The assets of the Home National Bank of Ellenville, Ellenville, N.Y., were purchased and its liabilities assumed by another bank, with the aid of a loan from the Federal Deposit Insurance Corporation. Since this receivership did not involve a payout to depositors, a breakdown of statistical data comparable to these other receiverships, with the exception of receivership expenses, was not available.

River Oaks State Bank, Fort Worth, Tex., as of June 30, 1964

	Number of accounts	Amount
Insured deposits:		
Paid by FDIC	4,673	$2,795,366
To be paid by FDIC	629	991,060
Deposits offset	145	695
Claims barred, statute of limitations		
Secured deposits and preferred claims:		
Paid by receiver	18	393,383
To be paid by receiver		
Deposits in excess of $10,000	[1] (38)	521,038
Total	5,465	4,701,542
Receivership charges:		
Actual expenses to date		219,114
Estimated additional expenses		5,000
Payments to FDIC as subrogee of insured depositors		2,332,502
Total		2,556,616
Unpaid proved common claims:		
FDIC		348,535
Others (includes depositors over $10,000)		77,971
Total		426,506
Estimated loss to common creditors:		
FDIC		260,258
Others (includes depositors over $10,000)		58,221
Total		318,479
FDIC nonrecoverable insurance expense		87,362
Dividends paid on proven claims:		
FDIC		2,332,502
Others (includes depositors over $10,000)		521,788
Total		2,854,290
Estimated gross recovery by FDIC as insurer and receiver		2,644,893
Less estimated gross loss by FDIC:		
As insurer		87,362
Estimated loss as receiver		260,258
Total		347,620
Estimated net recovery by FDIC		2,297,273
Estimated loss to other general creditors (includes depositors with balances in excess of $10,000)		58,221

[1] Included in number of insured deposit accounts paid by FDIC.

Mr. CAMP. There are also problems arising out of the practice of the FDIC to share in the distribution of assets, as a subrogee, with depositors having accounts over the insured limit. As a result of this practice, the Corporation is usually the largest claimant against the insolvent estate. It may be questioned whether depositors are receiving the protection originally envisaged by the Congress, where this practice is followed.

It would also seem open to serious question whether the FDIC as a major claimant should also act as a receiver. The practice of invariably appointing the FDIC as the receiver for insolvent national banks would seem to run contrary to the practice followed in other

insolvency proceedings. It is also inconsistent with the practices followed in State bank insolvencies.

In only two States is there a requirement that the FDIC be appointed a receiver of an insolvent State bank. In most of the remaining States, the FDIC may be so appointed at the discretion of the court or an administrator having authority.

Finally, we are greatly concerned about the public attention which has been drawn to FDIC operations in recent bank failure cases. Deposit insurance works best when it is applied quietly in times of need—not when it heightens public concern and distrust. It is the smaller banks of the country which are most likely to suffer from the adverse effects of such fears. These banks should be encouraged to serve their communities more fully—not subjected to pressures to withdraw further from competition.

In the light of all the considerations which we have described, we would recommend that action on the present bill be deferred to allow time for further study.

(The document entitled "The Role of Deposit Insurance in Bank Regulation" referred to follows:)

THE ROLE OF DEPOSIT INSURANCE IN BANK REGULATION

REMARKS OF JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, BEFORE THE SEVENTH DISTRICT TEXAS BANKERS ASSOCIATION, HOTEL TEXAS, FORT WORTH, TEX., FRIDAY, FEBRUARY 22, 1963

A variety of proposals are now being advanced for strengthening the role of deposit insurance in bank regulation. Virtually every significant aspect of banking control and banking operations would be affected by these proposed changes. It is essential that their implications should be fully understood.

Proposals for change

The proposals for change are in several different forms. It has been suggested that at the time of chartering new banks, when branches are authorized, and when mergers take place, eligibility for Federal deposit insurance should be determined by the insuring agency—in the case of national banks and other members of the Federal Reserve System as well as nonmembers. For all insured banks, it is proposed that the insuring authority should itself conduct periodic examinations to determine continued eligibility, and not rely entirely on the examinations of the supervisory agencies. It has further been proposed that the coverage of deposit insurance should be substantially increased, and that the insuring authority should have enlarged powers to assist failed or failing banks in order to maintain financial stability in the economy.

Implications of these proposals

If these proposed changes were adopted, the insuring agency would gain critical new powers over banking activities. The authority to grant or to withhold deposit insurance would place in the hands of the insuring agency an effective veto power over chartering, branching, and mergers—together with added power to set the capital requirements and to control the operating policies and practices of banks. Moreover, broader coverage of deposit insurance would alter fundamentally the incentives to prudent bank management, and enlarged emergency powers would assign to the insuring agency added responsibilities for maintaining financial stability in the economy.

A contrast with present policies

Public regulation of banking was undertaken, fundamentally, in order to provide effective instruments for attracting and channeling funds into productive uses, and to provide a satisfactory payments mechanism. For all these purposes, it was essential to maintain confidence in the banking system, and the measures of control were accordingly directed to sustaining the solvency and liquidity of banks, and assuring the provision of adequate banking facilities. Bank entry and bank expansion were subjected to public regulation, and the operating policies and practices of banks were brought under continuing intimate public supervision.

Despite these explicit forms of public control, and the actions or inactions of the monetary authorities, recurrent crises persisted and bank failures continued to occur. Eventually, provision was made for deposit insurance to meet occasional contingencies on a carefully defined, limited basis.

The critical aspect of the present role of deposit insurance in bank regulation is its subordinate place in the pattern of public control at the Federal level. The basic responsibility for maintaining the solvency and liquidity of banks and the adequacy of banking facilities is entrusted to the bank regulatory and supervisory agencies, and in some respects to the monetary authorities. The broad public purposes of bank regulation and supervision are expressed in the statutes governing the operation of those agencies. Deposit insurance is designed to provide an additional safeguard of limited application in those occasional circumstances in which the basic regulatory and supervisory mechanism fails to provide the needed protection for depositors, or where sufficient liquidity is not provided through monetary action. Although the availability of deposit insurance is regarded by some as exercising a pervasive influence on public confidence in the banking system, reliance is not placed upon the insurance function as such for assuring the fundamental soundness of the banking system.

This interpretation of the role of deposit insurance is borne out by certain basic conditions which were imposed for the issuance of such insurance, and for the operation of the insurance plan. Deposit insurance was introduced without altering significantly the responsibilities of the Comptroller of the Currency and of the Federal Reserve Board for bank regulation and supervision, and without modifying the basic public objectives of such control. This was accomplished by requiring that national banks and other members of the Federal Reserve System, which were under Federal supervision, should automatically be eligible for deposit insurance without further limitations. So that the insurance safeguard would not be narrowly administered according to commercial standards, which were likely to be in conflict with the broader public purposes of bank regulation and supervision, provision was made for access to public funds to underwrite the solvency of the insurance plan. The degree of protection afforded through deposit insurance was explicitly restricted, thus preserving the basic reliance upon direct public supervision and prudent bank management. This restricted coverage of deposit insurance conformed with the special concern displayed for the smaller, less-knowledgeable depositor who had difficulties in reaching independent judgments on the safety of particular banks.

A fundamental transformation

The proposed changes in the role of deposit insurance would be likely to produce a fundamental transformation in this present structure of public control of banking. The probable effects are revealed in the basic supporting argument for these changes which asserts that insurance agencies do not ordinarily accept or continue risks without independent appraisal of the hazards. If this philosphy were followed, deposit insurance would tend to be administered according to commercial standards of insurability, rather than the broader public purposes which now prevail.

Although it is generally agreed that the risks of deposit insurance are not actuarially determinable, and are thus not clearly susceptible to commercial application, it could be expected that commercial concepts of insurability would be introduced if eligibility for deposit insurance were generally to be determined by the insuring authority. Such independent discretion to grant insurance protection would naturally place upon the insuring authority a greater feeling of responsibility to safeguard the solvency of the insurance fund. If this occurred, the tendency would be to appraise applications for bank charters and bank expansion, and proposals to enlarge the latitude of banking operations, principally in terms of their effects upon the insurance risks. Since these risks could be minimized through more rigorous controls over new competition as well as existing competition, the almost inevitable consequence would be the imposition of more severe restrictions upon innovation and new initiative.

Quite apart from the precise standards which an insuring agency would be likely to follow if it were endowed with greater powers over bank expansion and banking operations, the proposed changes would almost certainly give rise to conflicts of policy. The standards now applied by the regulatory and supervisory agencies are conceived in broad public interest terms which would be most unlikely to coincide with commercial standards of insurability. Banks seeking to qualify for deposit insurance would be under a strong constraint to conform to the standards set by the insuring agency. As a consequence, the present roles of bank

supervision and deposit insurance in the structure of public control might be entirely reversed, with criteria of insurability becoming predominant over the broader public purposes of bank regulation and supervision.

Emergency situations

The proposals for enlarging the powers of the insuring authority to deal with failed and failing banks would entail added discretion to apply insurance coverage unequally among depositors. Moreover, it seems to be implied under these proposals that the insuring authority would be assigned broader responsibility for the maintenance of financial stability in the economy. Whatever the need may be for such additional emergency powers, they scarcely seem appropriate for an insuring agency. A wiser course would be to confine deposit insurance to precise limits, and to deal with emergency situations affecting the liquidity of the economy as a whole by other means. In this way, these two disparate functions could clearly be separated, and administered according to the individual standards that are appropriate for each.

The incidence of extended deposit insurance

There are three basic considerations which must be taken into account in appraising the desirability of extending the coverage of deposit insurance, apart from the broader issues of public policy which we have noted. These relate to: (1) the costs of broader coverage; (2) the manner in which these costs would be distributed; and (3) the effects on the competitive position of various classes of banks.

1. It has been asserted that the coverage of deposit insurance could be substantially broadened without a significant increase in cost. These calculations are generally based on the assumption that past experience is a sufficient guide to the future. It should be evident, however, that a broadening of deposit insurance coverage might materially alter the performance of bank management. This would be particularly true where the deposits of a bank were fully covered by such insurance. Should this occur, the record of past experience would not necessarily provide an accurate basis for calculating potential future risks.

2. The effects of broadened insurance coverage upon the competitive position of banks would be dependent upon the role that such insurance plays in attracting deposits. Those banks in which depositors are more heavily reliant upon insurance would be favored over those which have a more secure position in the minds of depositors independent of the insurance coverage. The cost of providing this competitive benefit, which in a sense impairs the advantages of good management, would be borne in significant degree by other banks because of the fact that the insurance assessments are based on total deposits.

3. The broadening of deposit insurance would be likely to have a pervasive effect upon the prudency of bank management. It seems apparent that as the coverage of risks is extended, the incentive to prudent management would likely be diminished. This outcome would be probable because maturing risks under deposit insurance are not borne solely by the affected banks. The effect would be most marked where broadened deposit insurance coverage reached all of the deposits of a bank.

The decision whether to extend deposit insurance coverage would ultimately have to rest on the public purposes sought to be achieved. Support for a substantial increase in such coverage is generally founded on the asserted need to avert disruptions in the economy resulting from the unavailability of balances to commercial and industrial firms. There are sound reasons for protecting the smaller, less knowledgeable depositors. Those who hold larger balances, however, particularly commercial and industrial firms, are better able to select the banks in which their holdings will be secure. Considering the broader implications of extended insurance coverage which we have discussed, it is doubtful that this limited consideration will justify a substantial increase in such coverage.

The choices we face

We stand now at a critical juncture in the development of public policy in the field of banking. The pace of our economic growth has persistently outrun the capacity of our banking system to serve emerging needs. We may meet this challenge through enlarged operating powers for banks, and measures designed to overcome harmful impediments to bank expansion. Or we may seek refuge, however uncertain, in new barricades to protect banks against rivalry.

The proposals for enlarging the role of deposit insurance are, I fear, measures of retrenchment. While taken separately, these individual proposals may appear to have some merit, in their entirety they reflect a search for safeguards against competition and the consequences of competition.

Our primary effort should be directed to the maintenance of an active and vibrant banking system, closely attuned to our national purpose of fostering the fullest development of our talents and resources. These critical requirements cannot be met, and indeed would be defeated or greatly impaired, by heightened concern for the risks of enterprise expressed in the pattern of public control of banking. The spirit we should endeavor to engender in our banking system should be one of vitality, and not one of fearful preoccupation with risks.

It may appear that added insurance coverage for depositors would induce greater vitality in the banking system by freeing management from the constraints imposed by the risks of enterprise. Enterprise which is founded upon freedom from risks, however, is not the form of banking activity which we should seek to encourage. Nor should we move to the other extreme of regulating bank expansion and banking operations according to standards which would safeguard an insurance fund. Our aim should be to provide greater latitude for banking operations, while preserving the incentive to prudent management; and to rely upon bank supervision directed to the fulfillment of public needs, rather than to impose standards which are oriented to the minimization of insurance risks.

Viewed in this perspective, deposit insurance should remain as a limited ultimate safeguard against occasional failures, administered according to standards which do not conflict with the broader public purposes which bank regulation and supervision are designed to serve. From the public point of view, deposit insurance works best when it operates, not as a crutch, or as a barrier to initiative, but as a measure which affords restricted and clearly defined protection terms which preserve the incentive and the opportunity for the proper conduct of banking operations.

The CHAIRMAN. Thank you, Mr. Camp.

Mr. Barr, would you like to comment on that? Make your comments as brief as you can, please, so we can then interrogate each of you gentlemen.

Mr. BARR. The only comment that I have, Mr. Chairman; is this, I think there is a basic disagreement between the Comptroller, on one side, the Secretary of the Treasury, the Bureau of the Budget, the Federal Reserve System, and the Federal Deposit Insurance Corporation on the other. All of us except the Comptroller think that the authority to require this information is not clear in the law.

We all agree that when the authority is not clear in the law, before moving into an area of this importance, we should come to the Congress and get a specific congressional mandate. This I think is the main issue.

The second issue involved is the question of submitting the reports of national banks to our office.

Mr. Chairman, our responsibility, as Mr. Camp correctly stated, is not primarily for regulation but for insurance. However, we insure all banks, State nonmember banks, State member banks and National banks.

We have incurred losses in all these categories. I think it is only reasonable to assume that if we are given the responsibility for picking up losses, that we should have the information that any normal insurance function would need to protect itself.

Lastly, in the case of the expenses of this Corporation, I would like to remind the committee that between 1934, when the Corporation was organized and the end of 1963, we have disbursed about $380 million for the protection of depositors in 447 banks. In these banks the deposits were approximately $635 million. In these banks, dating back to desperate cases in the 1930's, we have recovered $347 million of the amount disbursed and our net losses over our 30-year period totaled $32 million. At the end of 1963 only about $4 million or six-tenths of 1 percent of the deposits in these 447 banks were unpaid. It is estimated that an additional $1.5 million will be paid to depositors.

I would stack this record, I think, against any commercial firm of liquidators or receivers in the United States.

I might also add that not all expenses of liquidation, are charged against an insolvent bank. The Corporation provides free of charge the administration costs and expenses of the Washington staff and travel and subsistence expenses of field liquidation staff.

I would also like to add that Director Randall and I have an agreement, when a bank closes, one or the other of us is on the scene immediately. We are on the scene to see that the depositors are paid as quickly as possible.

In California, last week, we worked out an arrangement so that a bank was closed on Friday, Mr. Randall was there Friday night, and Monday morning the depositors had complete access to their money in a branch of another bank in California. There were no checks returned, they were not held up 1 day in getting their money.

This was the most successful experience we have had to date. Our function is not only to insure the deposits of these banks, but to make sure there is a way of paying bills in the United States. Our function is not only to pay off depositors, but to make sure that in any community, when a bank fails, funds are available as quickly as possible and to everyone who has money in the failed bank.

We have reduced it to 1 day. I don't know if we can do that frequently, but our average has been under 5 so far this year.

The CHAIRMAN. Mr. Camp, would you like to make a brief comment on Mr. Barr's statement?

Mr. CAMP. Yes, sir; I would like to speak to the question of whether legislation is needed as far as the national banks are concerned.

Now, I want to stress here that we have had this regulation, almost in its entirety, in operation since December of 1962. It is working very well for us. We have not been questioned on it and nobody has refused information where required. We feel that it has worked very well for us and we do not feel that it is necessary that the national banks be included in the bill.

As far as the State banks are concerned, if they so desire, it can possibly be done by regulation at that level.

The CHAIRMAN. Mr. Barr, you stated, I believe, 400-some-odd banks had resources of $635 million.

Mr. BARR. Right.

The CHAIRMAN. From what period of time, 1934 up to now?

Mr. BARR. Since the creation of the Corporation in 1934, Mr. Chairman. These were the closed banks during that period.

The CHAIRMAN. I am amazed that the amounts are so small. If, in liquidation the Corporation recovered $350 million out of $380 million, I just wonder whether or not they were actually broke. If they are a going concern they could certainly overcome $350 million out of $380 million.

Mr. BARR. That is a very good question. In these early days, I don t think many banks were actually broke; not many businesses were broke in the long run. They were broke at this juncture of history. We took the assets, held on to them as long as 10 and 15 years and over this span of time the assets recovered their value as we worked out of the business cycle. So, whether they were broke or not, it was a question of not being able to pay depositors at the time.

The CHAIRMAN. Mr. Kilburn?

Mr. KILBURN. I just wanted to comment on what you said. I think he is dead right. I know some country banks that were closed then and they paid out not only 100 percent, but they had money left over for their stockholders. At that particular time they were broke.

Mr. BARR. They couldn't meet the demands of the depositors for immediate funds.

The CHAIRMAN. That is one of the reasons that the number of banks, 31,000, 40 years ago, have been reduced to 14,000 now, I assume.

Mr. BARR. That is correct.

The CHAIRMAN. During the greatest prosperity of any country on earth in those 40 years, the number went from 31,000 to 14,000.

Mr. BARR. If you were relating it to the business cycle you would think so.

The CHAIRMAN. I do not know whether it is connected with this proposal or not, but if my information is correct, there are a lot of banks now, some pretty good sized banks that are selling their short-term securities and going into the more lucrative long-term market; is that correct?

Mr. BARR. Yes, sir.

The CHAIRMAN. Are any of the banks approaching distress or in danger?

Mr. BARR. In four out of the five cases this year this was the pattern that was followed. They seemed to be bringing in short-term money often at what seems to us to be high cost. They were paying in excess of the 4 percent interest rate that currently is permissible under regulation Q and regulation 329. They would pay bonuses to money brokers or other people for these funds. Sometimes the money was costing them as much as 6 percent and it was difficult for them to find an adequate, safe, and secure place to make good loans. Consequently, they took on many risky loans in an attempt to make a profit on this 6-percent money and in at least four out of five institutions, this was one of the major causes of the failure of the bank.

The CHAIRMAN. I want to ask you about one other thing. This committee will be concerned, commencing tomorrow, when we take up the housing bill on the floor of the House of Representatives, with an amendment to the Senate bill which permits the national banks to make 30-year mortgage loans.

Does that appeal to you as being a desirable proposal at this time or an undesirable proposal?

Mr. BARR. Mr. Chairman, we reported on this provision specifically. The Senate proposal is that national banks be permitted to make 30-year, 80-percent loans. We came up with an alternative proposal, stating that all insured banks, State nonmember, State member, and national banks should be permitted to make 25-year, 75-percent loans.

The CHAIRMAN. How much of an increase over the present law is that?

Mr. BARR. There is no present Federal law applicable to State banks in this area, Mr. Chairman.

The CHAIRMAN. I thought there was a 60-percent provision.

Mr. BARR. There is no general rule in the States.

The CHAIRMAN. Mr. Camp, would you like to comment on that?

Mr. CAMP. As Mr. Barr pointed out, that is our bill. We are in favor of that.

The CHAIRMAN. You are in favor of it?

Mr. CAMP. Yes, sir; 80 percent, 30 years.

The CHAIRMAN. The only reason I dislike it is that it gets the baks out of the business they were organized for and away from thehome market. I will not pursue the matter.

Mr. HANNA. Mr. Chairman.

The CHAIRMAN. Mr. Hanna?

Mr. HANNA. Mr. Chairman, may I ask for a point of clarification? You referred to five bank failures. Could we, for the record here have an indication that those five banks which—are State member banks and which are State nonmember?

Mr. BARR. The only national bank was the bank in Marlin, Tex. The other four were State nonmember banks.

Mr. HANNA. Thank you.

The CHAIRMAN. I have used my 5 minutes. Mr. Kilburn?

Mr. KILBURN. Thank you, Mr. Chairman.

Mr. Camp, I have listened to your statement and I have great admiration for Mr. Saxon. It seems to me that that sentence that you object to about the reports requirements doesn't amount to much. All these banks have to do is tell the FDIC there is a change of ownership. The American Bankers Association, I think, endorses this bill. I do not think they would if there were a lot of voluminous reports. Mr. Barr said there are different interpretations of the law. He has his responsibilities just the same as Mr. Saxon has and I think his request is reasonable. I think this is a good bill. I do not see any objection to it and I do not think that Mr. Saxon's objections that it is not needed is valid because they think they do. Why should they not have it? That is what I do not understand.

Mr. CAMP. Mr. Kilburn, our basic objection here is that FDIC is not a regulatory body, its function is that of insurance and we feel that this could be the first step in the centralization of possible future powers in the FDIC.

Mr. KILBURN. I do not get that argument, either. They are not trying to regulate banks. They are trying to protect themselves. I do not blame them.

Mr. ASHLEY. Will the gentleman yield?

Mr. KILBURN. Yes.

Mr. ASHLEY. When we go for an insurance policy we have to have a medical examination, do we not?

Mr. CAMP. May I speak to that question? We give them a medical examination, so to speak—a quite thorough one, I think. I think that in the case of Marlin, Tex., as Mr. Barr has mentioned as being the only national bank presently in the category we are discussing, I think Mr. Barr will agree that he was properly notified at all stages there, as to the statutes and he very kindly sent us a letter to that effect; is that not correct, Mr. Barr?

Mr. KILBURN. That is all I have.

The CHAIRMAN. Mr. Barrett?

Mr. BARRETT. One short question, Mr. Chairman.

Mr. Camp, on page 3, you state there is no urgent need for immediate action on this bill by the Congress. I was wondering if you

could tell us whether the depositors in these five receiverships sustained any loss?

Mr. CAMP. Sir, at this point, I could not answer that question. Mr. Barr would be more fully informed on it. I do not believe in any of those cases that the receiverships have been finally terminated.

Mr. BARRETT. There have been no losses whatsoever to date?

Mr. CAMP. I could not say that. I say the receiverships at this point in all cases have not been finally terminated. They are still in the process of liquidation. Is that correct?

Mr. BARR. Yes, I have some preliminary figures, Mr. Chairman.

We have had, in addition to these five failures, Mr. Barrett, two failures last year. I will read them to you. We have lumped all seven failures, the two failures last year and the five failures this year, together and have come up with a very tentative estimate involving all the banks—not any one particular bank. The total amount of assets involved in these seven banks is $36,302,000. Our preliminary estimate of loss, not on a bank-by-bank basis, but on an aggregate, is about $2½ million. This is the amount which we think the Corporation will suffer as a loss.

Mr. BARRETT. Thank you.

Mr. Camp, since you are so well acquainted with the currency of the United States, I want to ask this question off the record. We will be dealing with silver tomorrow and the day after. We have the question as to whether or not it is a violation to deface the currency of the United States. I have been in front of the cashiers' booth in banks and in the post office where the cashiers said, "We are not permitted to take mutilated money."

To your knowledge, is it a violation to deface the currency of the United States, whether it is hard or soft money, meaning paper, gold, or silver? What alternative does one have to get good money when he is paid in mutilated paper money, other than writing to the Treasury and requesting new currency?

Mr. CAMP. Mr. Barrett, if I may, I am not a lawyer and I would like, with your permission to refer this to Mr. Robert Bloom, our chief counsel. I will say from observation, having been a bank examiner for a number of years, I have seen a great deal of mutilated money in the banks and I don't think it is a general policy of banks not to accept mutilated money, per se. As a matter of fact, they generally set it aside for shipment separately, and I don't think, if I went to the bank with a corner torn off a dollar bill that they would refuse to take it.

Mr. BARRETT. I agree with you. I think this would be up to the discretion of the cashiers. But I would like to know whether the defacing of currency is a violation and if there is anything on the statute books indicating that it is. The lawyer probably could tell and if he can we would like to get a statement from him.

The CHAIRMAN. Mr. Barrett, would it be satisfactory for him to file a statement for the record?

Mr. BARRETT. I think we ought to get it.

Mr. CAMP. We will do that.

(The information referred to follows:)

COMPTROLLER OF THE CURRENCY,
U.S. TREASURY,
Washington, D.C., August 12, 1964.

Hon. WRIGHT PATMAN,
House of Representatives,
Chairman, Committee on Banking and Currency,
Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: At today's hearing on H.R. 12267, Congressman William A. Barrett requested this Office to furnish him with a copy of the applicable Federal statute relating to mutilation of coins and currency.

Attached hereto is a copy of the requested provisions of the United States Code.

Sincerely,

WILLIAM B. CAMP,
Acting Comptroller of the Currency.

CHAPTER 17—COINS AND CURRENCY

§ 331. Mutilation, diminution and falsification of coins

Whoever fraudulently alters, defaces, mutilates, impairs, diminishes, falsifies, scales, or lightens any of the coins coined at the mints of the United States, or any foreign coins which are by law made current or are in actual use or circulation as money within the United States; or

Whoever fraudulently possesses, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or brings into the United States, any such coin, knowing the same to be altered, defaced, mutilated, impaired, diminished, falsified, scaled, or lightened—

Shall be fined not more than $2,000 or imprisoned not more than five years, or both. As amended July 16, 1951, c. 226, § 1, 65 Stat. 121.

1951 Amendment. Act July 16, 1951, amended section to make it applicable to minor coins (5-cent and 1-cent pieces), and to fraudulent alteration of coins.

Index to Notes

½. Purpose

In enacting this section forbidding fraudulent alteration, defacement and other acts on foreign coins by law made current, the congressional intent was to protect foreign coins which at the time were legal tender in the United States. Tyson v. U.S., C.A.Okl.1960, 285 F. 2d 19.

2. "By law made current"

Where Mexican Cinco Centavo (5 cents) coins had not been made current in United States by United States law, the possession of fraudulently altered Centavo coins was not a violation of this section which in effect forbids fraudulent alteration, defacement and other acts on foreign coins by law of Congress made current in United States. Tyson v. U.S., C.A.Okl. 1960, 285 F. 2d 19.

In this section forbidding fraudulent alteration, defacement and other acts on foreign coins "by law made current", the quoted words mean by law of Congress made current in United States; the 1951 amendment did not change this meaning. Id.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Changes were also made in phraseology. 80th Congress House Report No. 304.

Canal Zone. Applicability of section to Canal Zone, see section 14 of this title.

Cross References

Forfeiture of counterfeit paraphernalia, see section 402 of this title.

Notes of Decisions

1. Punching and mutilating

Where a coin regularly coined at the mint was afterwards punched and mutilated, and an appreciable amount of silver removed from it, and the hole plugged up with base metal, or with any substance other than silver, it was an act of counterfeiting; but otherwise where the hole was punched with a sharp instrument, leaving all the silver in the coin, though crowding it into a different shape. U.S. v. Lissner, C.C. Mass. 1882, 12 F. 840.

§ 332. Debasement of coins: alteration of official scales, or embezzlement of metals

If any of the gold or silver coins struck or coined at any of the mints of the United States shall be debased, or made worse as to the proportion of fine gold or fine silver therein contained, or shall be of less weight or value than the same ought to be, pursuant to law, or if any of the scales or weights used at any of the mints or assay offices of the United States shall be defaced, altered, increased, or

diminished through the fault or connivance of any officer or person employed at the said mints or assay offices, with a fraudulent intent; or if any such officer or person shall embezzle any of the metals at any time committed to his charge for the purpose of being coined, or any of the coins struck or coined at the said mints, or any medals, coins, or other moneys of said mints or assay offices at any time committed to his charge, or of which he may have assumed the charge, every such officer or person who commits any of the said offenses shall be fined not more than $10,000 or imprisoned not more than ten years, or both. June 25, 1948, c. 645, 62 Stat. 700.

Historical and Revision Notes

Reviser's Note. Based on Title 18, U.S.C., 1940 ed., § 280 (Mar. 4, 1909, c. 321, § 166, 35 Stat. 1120 [Derived from R.S. § 5460]).

Mandatory punishment provision was rephrased in the alternative. (See reviser's note under section 201 of this title.) 80th Congress House Report No. 304.

Cross References

Forfeiture of counterfeit paraphernalia, see section 492 of this title.

Notes of Decisions

1. Indictment or information

Under former section 557 of this title, providing that, when there are several charges against a person for the same act, or for two or more acts connected together, or of the same class of crimes, which may be properly joined, the whole may be joined in one indictment in separate counts, an indictment might contain a count under R.S. § 5456, relating to the felonious taking away by any one of anything belonging to the United States, and a count under R.S. § 5460, referring to the felonious taking and embezzlement of metals at the United States mint, though one offense be classed as larceny and the other as embezzlement, and the punishments are different. U.S. v. Jones, D.C. Nev. 1895, 69 F. 973.

An indictment for larceny or embezzlement of metal from the United States mint sufficiently described the property as "gold metal of the value of $23,000." Id.

§ 333. Mutilation of national bank obligations

Whoever mutilates, cuts, defaces, disfigures, or perforates, or unites or cements together, or does any other thing to any bank bill, draft, note, or other evidence of debt issued by any national banking association, or Federal Reserve bank, or the Federal Reserve System, with intent to render such bank bill, draft, note, or other evidence of debt unfit to be reissued, shall be fined not more than $100 or imprisoned not more than six months, or both. June 25, 1948, c. 645, 62 Stat. 700.

Historical and Revision Notes

Reviser's Note. Based on Title 18, U.S.C., 1940 ed., § 291 (Mar. 4, 1909, c. 321, § 170, 35 Stat. 1122 [Derived from R.S. § 5189]).

Words "or Federal Reserve bank, or the Federal Reserve System" were inserted because the paper of such banks has almost supplanted national bank currency.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes in phraseology were made. 80th Congress House Report No. 304.

Cross References

Forfeiture of counterfeit paraphernalia, see section 492 of this title.

Notes of Decisions

1. Alteration of instrument

Where face of national bank note contained bank's promise to pay certain sum and recited that note was redeemable in lawful money at bank or United States Treasury, severance of face of note from reverse side, which contained no such promise or recital, changed effect of note and constituted material "alteration" within former section 262 of this title punishing alteration of any obligation of United States, as against contention that defendant should have been sentenced under former section 291 of this title punishing mutilation, etc., of national bank note. Keese v. Zerbst, C.C. A.Kan. 1937, 88 F. 2d 795, certiorari denied 57 S. Ct. 933, 301 U.S. 698, 81 L. Ed. 1353.

The CHAIRMAN. Mr. Fino?

Mr. FINO. Mr. Barr, this bill, the bill that requires that these banks serve notice on your agency, that there has been a change. Now, this is after the fact. This will be after the fact, after the change has been made?

Mr. BARR. Yes, sir.

Mr. FINO. What you are concerned about are the characteristics of the people—I should say the character or the characters that might take over a bank. Assuming that X bank goes through a change of management and control and the new owners or operators are persons of ill repute, what can you do about it?

Mr. BARR. What we can do about this, Mr. Fino, is in cooperation with the State bank supervisors, whom we work with very closely, keep the new management under scrutiny until we are satisfied as to its character. We do have an extraordinary provision in that we can withdraw the bank's insurance. This, in effect closes the bank. This would destroy the bank, but we do have that power. Actually, the way I think this would work is that in cooperation with the State supervisors, we can take corrective action, step by step. They have the intermediate powers. Our power is the cannon at the end of the line. If the management doesn't behave properly we can withdraw insurance and as a result cause the closing of the bank.

Mr. FINO. Let me ask you this for my own edification: What provision is there in the law regarding the giving of notice to any agency of Government of any change in management and control?

Mr. BARR. There is no such provision in the law, Mr. Fino.

Mr. FINO. What is the objection of the Comptroller of the Currency?

Mr. CAMP. Our objection is that it may be a first step in vesting regulatory powers, we feel, in the hands of the FDIC.

Mr. FINO. Where in the bill does it give any authority to the FDIC?

Mr. CAMP. It requires that the Comptroller of the Currency, who has the jurisdiction and responsibility for examination and regulation of national banks give these reports to the FDIC and the Federal Reserve.

Mr. FINO. Reports of what?

Mr. CAMP. Changes in ownership where it would have an effect.

Mr. FINO. You say this is now a requirement in the law?

Mr. CAMP. We have been doing it since 1962 as far as the national banks are concerned and we do not feel that it is necessary to include them in the bill.

Mr. FINO. Mr. Barr, have you received notice from the Comptroller about the five failures or changes in management of those five banks that failed?

Mr. BARR. In the case of Marlin, Mr. Fino, we were notified when the bank was going down. We were not notified and we get no notices from the Comptroller of the Currency in spite of the fact that the law specifies that we shall have access to his reports of examination. We do not have this access and we have not had it for nearly a year. He will not give us this information.

We feel, Mr. Fino, that like any insurance company we should have an idea of what we are insuring. All we can do is to take the word of the Comptroller of the Currency. We are not asking to regulate these banks.

Mr. ASHLEY. Will the gentleman yield?

Mr. FINO. Just a minute.

I would imagine if your department, your Comptroller, cooperated with the FDIC and kept the FDIC fully apprised of everything that was going on, I do not think Mr. Barr would have been here this morning. Apparently he is not satisfied with the notices he has been getting or has not been satisfied with the situation, with the result that he has come in here and asked us to give him the type of legislation that will make it mandatory on these banks to serve notice of change of management. I do not see anything objectionable. After all, he has the responsibility. He was insuring these banks and then he has

to pay off whenever there is a failure. I think the responsibility carries also the obligation of having notice of what is going on.

Mr. CAMP. Sir, I believe that Mr. Barr has said earlier that, of the bank failures of recent vintage and which we have under consideration here, there has only been one national bank involved. We do not have supervision over the State banks and I am sure that Mr. Barr would agree, that in the one instance involving a national bank he was kept fully informed and, as a matter of fact, as I pointed out earlier, he sent us a letter very kindly pointing out the fact that he was fully informed.

Mr. FINO. Mr. Camp, I cannot for the life of me see the objection where Mr. Barr comes in here and all he is asking us to do is to give him or require that notice of change in control and management be given to his agency and he says in his own statement he wants to make it abundantly clear that he is not asking for any legislation or for the authority to control or veto changes in ownership or management. He is not asking for anything. He just wants to be kept apprised. I do not see any objection, none whatsoever, and I am going to support this legislation. I am sorry but my time is up.

The CHAIRMAN. Mr. Reuss?

Mr. REUSS. Mr. Chairman, I am struck once again as I have been when I heard the Comptroller and the FDIC and the Fed going their different ways on bank regulation. How much this is like the Romans in the old Coliseum when they used to watch the lions and tigers tear each other apart. I think it would be a good idea if one of these years our committee turned its attention to the whole group—to the role of the Fed, the FDIC, and the Comptroller to see if we cannot produce a more rational and harmonious bank regulatory structure, but that is another story.

Mr. Barr, how did you fellows hear about the fiasco in Marlin, Tex. National Bank?

Mr. BARR. We were informed, if my memory serves me correctly, that this bank was in difficulty along about January. This is just when I came in and we watched it with the Comptroller of the Currency.

Mr. REUSS. If I may interrupt—how long prior to the January signs of trouble had the change of ownership occurred?

Mr. BARR. In May 1963.

Mr. REUSS. But you did not hear anything about that change of ownership?

Mr. BARR. No.

Mr. REUSS. You did not hear anything about it for 8 months, May to January?

Mr. BARR. That is correct, Mr. Reuss.

Mr. REUSS. Mr. Camp, is the requirement of the Comptroller, that changes in ownership in national banks, be normally communicated to the Comptroller—is that under the authority of statutes?

Mr. CAMP. That is by regulation, sir.

Mr. REUSS. Do you have a copy of your regulation?

Mr. CAMP. Yes; I will read it to you.

Mr. REUSS. Do you have a copy of the statute on which you base your regulation?

Mr. CAMP. I refer to Mr. Bloom.

Mr. REUSS. I would like to have both the regulation and the statute on which you based this offered in evidence.

The CHAIRMAN. It will be inserted in the record at this point. (The information referred to follows:)

COMPTROLLER OF THE CURRENCY, U.S. TREASURY,
Washington, D.C., August 12, 1964.

Hon. WRIGHT PATMAN,
Chairman, House Banking and Currency Committee,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: At today's hearing on H.R. 12267, we were asked to submit a copy of our existing regulation requiring reports of change of control of the management of national banks and a copy of the statute pursuant to which the regulations were issued.

The regulation appears in section 12.1 of title 12 of the Code of Federal Regulations, a copy of which is attached.

Section 12.1 was promulgated in December of 1962 as part of an overall regulation dealing with corporate practices and procedures of national banking associations. At that time, in addition to the change of control reports, we instituted for the first time disclosure requirements on national banks requiring annual financial reports to stockholders, use of proxy statements in connection with shareholders' meetings and other disclosure requirements. The entire regulation was issued pursuant ot the general supervisory authority of the Comptroller of the Currency which is conferred by the National Bank Act, 12 U.S.C. 1 et seq. In addition to the general supervisory authority which may be inferred from the act as a whole, in connection with section 12.1 specifically, ample authority exists for requiring the reports specified therein in 12 U.S.C. 161 which confers authority on the Comptroller to call for reports from any national bank "whenever in his judgment the same are necessary for his use in the performance of his supervisory duties."

Sincerely,

ROBERT BLOOM, *Chief Counsel.*

Part 12. *Ownership Reports of Capital Stock*

§ 12.1 On and after the date hereof, each national bank shall promptly notify the Comptroller of the Currency whenever a change occurs in the ownership of its outstanding voting stock of sufficient magnitude to effect a change in control of the bank. It shall be the duty of the president or other chief executive officer of the bank to submit such a report whenever he has reason to believe that such a change has taken place. If there is any doubt concerning whether a particular change in ownership is sufficient to effect a change in control, such doubt shall be resolved in favor of submitting a report to the Comptroller. The report shall be in letter form and shall contain the number of shares involved, the identity of the sellers and purchasers of record, the identity of the beneficial owners of the shares involved, if such information is known to the reporting officer, the purchase price if known to the reporting officer, the total number of shares owned by the sellers and purchasers of record both immediately prior to and after the transaction being reported and the total number of shares owned by the beneficial owners of the shares involved both immediately prior to and after the transaction being reported if such information is known to the reporting officer.

The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the bank.

BANK EXAMINATIONS; REPORTS

§ 161. Reports to Comptroller of the Currency—Reports of condition; form; contents; date of making; publication

(a) Every association shall make reports of condition to the Comptroller of the Currency in accordance with the Federal Deposit Insurance Act. The Comptroller of the Currency may call for additional reports of condition, in such form and containing such information as he may prescribe, on dates to be fixed by him, and may call for special reports from any particular association whenever in his judgment the same are necessary for his use in the performance of his supervisory duties. Each report of condition shall contain a declaration by the president, a vice president, the cashier, or by any other officer designated by the board of directors of the bank to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of the report of condition shall be attested by the signatures of at least three of the directors of the bank other than the officer making such declaration, with the declaration that the report

has been examined by them and to the best of their knowledge and belief is true and correct. Each report shall exhibit in detail and under appropriate heads the resources and liabilities of the association at the close of business on any past day specified by the Comptroller, and shall be transmitted to the Comptroller within ten days after the receipt of a request therefor from him; and the statement of resources and liabilities in the same form in which it is made to the Comptroller shall be published in a newspaper published in the place where such association is established, or if there is no newspaper in the place, then in the one published nearest thereto in the same county, at the expense of the association, and such proof of publication shall be furnished as may be required by the Comptroller. Special reports called for by the Comptroller need contain only such information as is specified by the Comptroller in his request therefor, and publication of such reports need be made only if directed by the Comptroller.

Payment of dividends

(b) Every association shall make to the Comptroller reports of the payment of dividends, including advance reports of dividends proposed to be declared or paid in such cases and under such conditions as the Comptroller deems necessary to carry out the purposes of the laws relating to national banking associations in such form and at such times as he may require.

Reports of affiliates; form; contents; date of making; publication; definition; penalties

(c) Each national banking association shall obtain from each of its affiliates other than member banks and furnish to the Comptroller of the Currency not less than four reports during each year, in such form as the Comptroller may prescribe, verified by the oath or affirmation of the president or such other officer as may be designated by the board of directors of such affiliate to verify such reports, disclosing the information hereinafter provided for as of dates identical with those for which the Comptroller shall, during such year, require the reports of the condition of the association. For the purpose of this section the term "affiliate" shall include holding company affiliates as well as other affiliates. Each such report of an affiliate shall be transmitted to the Comptroller at the same time as the corresponding report of the association, except that the Comptroller may, in his discretion, extend such time for good cause shown. Each such report shall contain such information as in the judgment of the Comptroller of the Currency shall be necessary to disclose fully the relations between such affiliate and such bank and to enable the Comptroller to inform himself as to the effect of such relations upon the affairs of such bank. The reports of such affiliates shall be published by the association under the same conditions as govern its own condition reports. The Comptroller shall also have power to call for additional reports with respect to any such affiliate whenever in his judgment the same are necessary in order to obtain a full and complete knowledge of the conditions of the association with which it is affiliated. Such additional reports shall be transmitted to the Comptroller of the Currency in such form as he may prescribe. Any such affiliated bank which fails to obtain and furnish any report required under this section shall be subject to a penalty of $100 for each day during which such failure continues. As amended Sept. 8, 1959, Pub.L. 86–230, §§ 11, 22(b), 73 Stat. 458, 466; July 14, 1960, Pub.L. 86–671, § 5, 74 Stat. 551.

Mr. REUSS. Does the Comptroller of the Currency concern himself with the competency and character of the people who run national banks?

Mr. CAMP. Yes, sir; that is one of his prime considerations.

Mr. REUSS. Well, what do you do about it? Suppose you find inexperienced people or people with criminal records, let us say, running a national bank. What do you do about it? Does something have to happen before you do something?

Mr. CAMP. Say a person with a criminal record, under the statute, and I have to refer this to Mr. Bloom, as to the particular statute, but anybody who has been convicted of a crime cannot serve as a director of a national bank.

Mr. REUSS. What about potential misconduct short of the possession of a criminal record?

Mr. CAMP. When you get into potential misconduct we are getting into a nebulous area. In our examination of the banks we are very careful to ascertain that the policies that are being laid down by the board of directors are sound and that they are being followed by the management of the bank as pointed up by the asset condition of the bank.

Now, you can't always predict absolute dishonesty. I would say here, in the case of Marlin, we took every step in my judgment that could possibly have been taken. But where you have a dishonest person it doesn't always come to light. Theoretically you can have a national bank examiner in the bank at 12 m. today and if you have rascals there with no previous record they could commit some act of thievery at 12:15.

Mr. REUSS. Thank you.

Mr. Barr, I have a question of you. Why do you not fix up your bill along the following lines—my view as of this moment, I am favorably disposed toward your bill because while I deeply regret all the duplication and overlapping in our regulatory agencies, here all you want is to be told something so you can do whatever the statute now lets you do and I do not think that is unreasonable. However, I do not want to be party to forcing duplicate reporting on our banks.

If the Comptroller of the Currency's regulation, which I have not seen, is as good as Mr. Camp says it is, would you settle for an amendment to the bill so that you do not require an additional report? Would any report good enough to satisfy the Comptroller of the Currency be good enough for you, if the Comptroller is required to pass on this information under the terms of your bill?

Mr. BARR. This is in fact what we are asking for, Mr. Reuss. The information that we are asking for under this bill is practically identical to the information that is required by the Comptroller's regulation.

Mr. REUSS. Your bill says, the reports requirements of this bill shall be in addition to any reports that may be required pursuant to other provisions of law. So, would not an amendment maybe of just a few words be in order to indicate that as far as you are concerned, the reports of the Comptroller now are adequate, and if they are, then all the Comptroller has to do is tell you as soon as he knows?

Mr. BARR. Yes. Mr. Reuss, I would like to check with counsel on this, but this seems like a very reasonable request. The only thing we are asking here is to get this information from the Comptroller. On your suggestion that we look into the situation of the lions and tigers eating each other in the coliseum, this is something long overdue.

Mr. REUSS. We cannot go to any conclusions at this hearing.

Mr. BARR. The thing that I need at the moment is some way to get information from the Comptroller, the information that I think he has. I would be willing to take the Comptroller's opinion on what he thinks is adequate.

Mr. REUSS. Will you at this point in the record submit in mandatory language so we do not require duplicate reporting from the national banks?

Mr. BARR. Yes, we will do that.

(The information was subsequently submitted and may be found on p. 58.)

Mr. REUSS. My time is up.

Mr. BARR. May I point out that there is a simple method of doing this? The Comptroller can rescind his regulation and there would be no problem.

Mr. REUSS. In the current state of mere coexistence between the Comptroller and the FDIC I think it would be better to fix up the law.

Mr. BARR. I would accept that.

Mr. REUSS. One additional question. I do not want to go over my time. Rather than answering it, please submit it for the record.

You state, Mr. Barr, that you have no purpose to control or veto changes of ownership and management as the result of this bill?

Mr. BARR. That is correct.

Mr. REUSS. However, I would like to have you state for the record exactly what controls under the law and under those circumstances in which you now exercise over management before there is any change in ownership, when, in effect, do you now refuse insurance to a bank on the grounds that you do not like the cut of the jib of the management. And then—that is point 1—point 2 is, if those controls are good for issuing insurance in the first instance, why are they not equally apropos under a change of ownership?

My time is up so I would appreciate your answering that.

Mr. BARR. Yes, sir.

(The information referred to follows:)

FEDERAL DEPOSIT INSURANCE CORPORATION,
OFFICE OF THE CHAIRMAN,
Washington, August 13, 1964.

Hon. HENRY S. REUSS,
House of Representatives, Washington, D.C.

MY DEAR CONGRESSMAN: During the course of the hearings yesterday on the bill which would provide for notice of change in control of management of insured banks you expressed interest in and requested information concerning what controls under the law and what practices are now exercised over bank management before there is a change in ownership. You asked if these controls are good for passing upon insurance applications in the first instance, why are they not equally applicable under a change of ownership.

Under the provisions of the Federal Deposit Insurance Act whenever a bank applies to this Corporation for deposit insurance the Board of Directors in acting upon the application must take into consideration certain factors prescribed in section 6 of the Federal Deposit Insurance Act. These factors are (1) the financial history and condition of the bank, (2) the adequacy of the bank's capital structure, (3) its future earnings prospects, (4) the general character of the bank's management, (5) the convenience and needs of the community to be served by the bank, and (6) whether the bank's corporate powers are consistent with the purposes of the Federal Deposit Insurance Act.

In the process of chartering national banks or admitting State banks to membership in the Federal Reserve System both the Comptroller and the Board of Governors of the Federal Reserve System must take into consideration the above-mentioned factors. The Corporation must also give consideration to these factors in passing upon applications from insured State banks which are not members of the Federal Reserve System to establish and operate new branches or to change the locations of their main office or branches.

Under these provisions of law the Corporation is afforded an adequate opportunity to make a thorough and complete study and analysis of the caliber of a new bank's management. It is also able to give consideration to the caliber of the existing management of a bank when a bank applies for consent to change its office or to establish or change the location of a branch. There is no other statutory means except periodic examinations whereby the Corporation is able to appraise the caliber of insured banks' management. It would be virtually impossible to continuously survey all insured banks in order to determine whether the people who are serving as officers and directors of the banks are competent and honest bankers. Accordingly, neither the above statutory provisions nor the Corporation's examining authority could be employed as a device for continually determin-

ing whether the management of an insured bank is the same or maintains the same standards of integrity and capability as those required by the Corporation when a bank is admitted to Federal deposit insurance.

The notice required by the bill now pending before the committee would, in our opinion, be an effective tool for the Corporation to learn of management changes between examinations to investigate the caliber of the new management of the bank and to determine what corrective action, if any, is necessary.

Sincerely yours,

JOSEPH W. BARR, *Chairman.*

The CHAIRMAN. Mrs. Dwyer?

Mrs. DWYER. No questions.

The CHAIRMAN. Mr. Ashley?

Mr. ASHLEY. What is the problem, Mr. Camp, with duplication? Why is duplication a bad thing? Are there not instances where duplication is actually efficient?

Mr. CAMP. I do not believe that the banks would agree to that. They have a great reporting burden on them now, sir.

Mr. ASHLEY. But this bill calls for copies, does it not? Copies of reports—not new reports, but copies of reports.

Mr. BLOOM. If I could address myself to that, Mr. Ashley. The duplication referred to in Mr. Camp's statement was a duplication between the report which the national bank would be required to file with the Comptroller and the report which would be required by the bill would not be the same report. The bill requires certain information which is different in form than the information required by our regulation. Without the amendments suggested by Mr. Reuss, you couldn't use the same piece of paper. This would be two reports.

Mr. ASHLEY. You require a report from national banks that are changing ownership and control?

Mr. CAMP. That is right.

Mr. ASHLEY. Could you not duplicate that and fire it off to Mr. Barr?

Mr. BLOOM. It wouldn't comply with this bill because you have that line in there that the report under the bill shall be in addition to other reports required by law. Now, of course, if that were satisfactory to the FDIC, this could be done as an administrative matter. But, Mr. Ashley, our objection to this bill is much more than the administrative difficulty. We have a basic objection to this bill.

Mr. ASHLEY. Your statement starts with a criticism of the bill's administrative weakness. Then, on page 2, you state that your objection is not concerned merely with the jurisdictional question.

Mr. BLOOM. We could not characterize it as that.

Mr. ASHLEY. If it is not administrative and not jurisdictional, what would it be?

Mr. BLOOM. There is a basic philosophical government policy question involved in this.

Mr. ASHLEY. Now we get to Mr. Reuss' arena, do we not?

Mr. BLOOM. I am afraid I do not quite understand.

Mr. ASHLEY. What philosophy?

Mr. BLOOM. I would like to have Mr. Abramson of our office address himself to that.

The CHAIRMAN. Please identify the witness.

Mr. CAMP. This is Dr. Victor Abramson who is the head of the Department of Economics in the Office of the Comptroller of the Currency.

Dr. ABRAMSON. The philosophical point that is referred to in the statement, Mr. Ashley, is the question of whether or not any regulatory powers should reside with the insuring agency. The view that is expressed here is that there wouldn't be any point in centralizing these reports in the hands of the FDIC unless they had some regulatory power, and without taking up the matter of what powers they have with respect to State-chartered banks, we don't believe they have any with respect to the national banks.

Mr. ASHLEY. The information that is sought happens to be useful for several purposes, is that not what we are getting at here?

Dr. ABRAMSON. I don't believe that Mr. Barr feels that he could take any action as the result of receiving these reports as far as national banks are concerned.

Mr. ASHLEY. Let's get back to the Marlin case for half a second.

Mr. BARR. May I comment on that?

Mr. ASHLEY. Why was it that your shop did not inform Mr. Barr's shop in May?

Mr. CAMP. I think we did inform Mr. Barr. Mr. Barr sent us a letter of commendation on the alertness that we displayed there. I do not have it with me.

Mr. ASHLEY. Do you have a "duplicate," if I may use the word, of that letter?

Mr. CAMP. I do, but I don't have it with me. I will be pleased to enter it in the record.

Mr. ASHLEY. That may be interesting. Could we have that? I would like to have that letter in which you informed Mr. Barr of the Marlin change of control.

Mr. CAMP. I am saying we have a letter from Mr. Barr complimenting the Comptroller's Office on the alertness which was shown by our examiners in the Marlin case and keeping the FDIC advised at all times. I believe that is the tone of the letter.

(The information referred to has been submitted and is as follows:)

COMPTROLLER OF THE CURRENCY,
U.S. TREASURY,
Washington, D.C., August 12, 1964.

Hon. WRIGHT PATMAN,
Chairman, House of Representatives, Committee on Banking and Currency, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: During the course of the hearing this morning on H.R. 12267, reference was made to the letter from Mr. Joseph W. Barr to Mr. Saxon in connection with the Marlin Tex., insolvency. During this exchange, we were requested to supply for the record a copy of this letter.

We are pleased to submit herewith a copy of this letter which is dated March 12, 1964, as it was released to the press by Mr. Barr. The letter indicates that the Federal Deposit Insurance Corporation was kept "fully informed of all the facts as they developed in the Marlin situation. Consequently, your action in closing this bank came as no surprise to this Corporation and we had all our plans made to move quickly into Marlin."

Sincerely,

WILLIAM B. CAMP,
Acting Comptroller of the Currency.

The Honorable Joseph W. Barr, Chairman of the Board of Directors of the Federal Deposit Insurance Corporation, today released the attached letter:

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, March 12, 1964.

Hon. JAMES J. SAXON,
Comptroller of the Currency,
Treasury Department, Washington, D.C.

DEAR JIMMY: In connection with the insolvent First National Bank of Marlin, Marlin, Tex., I want to advise you that the cooperation this Corporation and I received from your Regional Comptroller of the Currency Norman R. Dunn, and your national bank examiner Thomas L. Cook, was all that I could possibly ask. Mr. Lloyd Thomas, FDIC supervising examiner in Dallas, and I drove to Marlin on Tuesday night (March 10) and immediately began conferences with Mr. Dunn. Mr. Thomas, Mr. Dunn, Mr. Cook, and I went to the bank together at 8 o'clock on Wednesday morning (March 11). We talked to the press together. Mr. Dunn and Mr. Cook helped us begin our payout process. I was deeply impressed with the competence and intelligence of both your representatives. I want to repeat that they could not have been more cooperative.

Mr. Dunn kept Mr. Thomas fully informed of all the facts as they developed in the Marlin situation. Consequently, your action in closing this bank came as no surprise to this Corporation and we had all our plans made to move quickly into Marlin.

I should like to state that it is my opinion that had it not been for the vigilance of your men, this Corporation and the citizens of Marlin could have taken a very heavy loss.

Sincerely yours,

JOSEPH W. BARR, *Chairman.*

Mr. ASHLEY. You are testifying, are you, Mr. Camp, that Mr. Barr was notified in May by the Comptroller of the Currency by letter?

Mr. CAMP. I couldn't say, sir, just when Mr. Barr was notified.

Mr. ASHLEY. That is a matter of some importance.

Mr. CAMP. It would go to the point here, that I think Dr. Abramson and Mr. Bloom have raised. Since the FDIC has no regulatory power, what action would they have taken had we notified them at any point, shall we say?

Mr. ASHLEY. Mr. Barr, what is your comment to that?

Mr. BARR. It would depend on the nature of the information, Mr. Ashley. If we seriously thought of this, and had indication that things were serious enough, we have the power to go in and examine a national bank. We do have the power to go in an examine the bank and submit our findings to the Comptroller and see what action we can get from him.

Mr. ASHLEY. If you find that the situation is serious enough, can you withdraw your insurance?

Mr. BARR. Not from a national bank. It is only the Comptroller who can do this. However, we do have the power to move in with our examination first. It has never been done. Frankly, I have considered it recently. I have decided not to do it. The only reason I have considered doing it recently is that we have had no information from the Comptroller.

May I correct my statement? I made an error, Mr. Ashley. We do have the right to withdraw insurance from any bank, national as well as State. So we could move in if we felt the condition was serious enough. We could examine the bank and withdraw insurance. This Corporation has never done this to a national bank. But, prior to 1944, termination proceedings were commenced against national banks in a number of cases.

Mr. ASHLEY. If you had the information on which to base it.

Mr. BARR. We have never done so and I hope we never will. I hope we can leave this to the Comptroller.

The CHAIRMAN. Mr. Halpern?

Mr. HALPERN. I have no questions, but I believe strongly in the objective of this legislation. I am convinced, thoroughly convinced, that it is needed, and it has my full support.

The CHAIRMAN. Mr. Vanik?

Mr. VANIK. Mr. Chairman, Mr. Barr, how can you miss hearing about a change of ownership of bank stock? It would seem to me that the contested management would be pretty quick to cry all over the place, the FDIC, the Federal Reserve. You really know about bank changes pretty quickly—there is an awfully good way of getting the word out. Can you improve on this by that legislation?

Mr. BARR. You have a point. Where there is a contested change, I think this is true.

Mr. VANIK. They cry all over the place.

Mr. BARR. Many changes are not contested.

Mr. VANIK. When management is contested, the other guys are always incompetent. They do not know anything about the banking business. What safeguards do we have in this bill that the legislation will not be used to perpetuate the control by management? Sometimes the displacing group has higher purposes than the group that was in control. What assurance do we have that this is not a device to provide a control of those who are vested with it?

Mr. BARR. That is one reason, Mr. Vanik——

Mr. VANIK. This bill may be used to perpetuate the control rather than purify it.

Mr. BARR. That is probably the main reason we did not ask for a veto or control power.

Mr. VANIK. When you consider the case histories you talk about the young man who came into control. You know, that most of the Members of Congress who are here today or who have ever served have always displaced a more experienced man, have they not? Some of them have done a poorer job and some of them have done a better job. So you have that question about the unqualified person who is a fellow on the outside who is trying to get it. Sometimes the new management is far better than the management that was displaced. I am sympathetic to your effort to avoid losses to the FDIC, but I am also concerned about the control that this might perpetuate, because it would put everyone on notice that there is a change in management. Everyone is then liable to pry into the bank's affairs as a result people might be worried about the security of the bank and if you let this new crowd come into control, this bank will fail. It is always that threat that hangs over you.

I think one of the things that makes our system good is this idea of competition and I want to preserve it insofar as it is practicable in the bank structure.

Now, the thing that I am deeply concerned with is whether the medicine we prescribe here might deplete the highly competitive forces that are necessary to achieve real leadership in the financial industry?

I have another question. Many bank managements today exercise their dominion over bank activities by the exercise of voting power

which are held by the banks as trustee for other persons. There are a lot of situations like that. Many banks all over America are run and controlled through this kind of voting power. Is there any reason why the FDIC, the Comptroller or the Fed should not insist on knowing the extent of such voting power which controlling bank management exercises in its trust portfolios?

Mr. BARR. We get that, Mr. Vanik, and most banking agencies get it through the examination procedures.

Mr. VANIK. I understand you do not have it today. Do you know the voting power that bank managements exercise out of their trust portfolios?

Mr. BARR. I would like to submit this for the record, Mr. Vanik.

(The information referred to follows:)

FEDERAL DEPOSIT INSURANCE CORPORATION,
OFFICE OF THE CHAIRMAN,
Washington, August 14, 1964.

Hon. CHARLES A. VANIK,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN VANIK: During the hearings on legislation to provide for notice of change in control of management of insured banks you requested information concerning trust departments of insured banks that held in trusts shares of stock of the banks.

The Corporation regularly examines the 7,500 insured State banks which are not members of the Federal Reserve System. So far during 1964 the Trust Review Section of the Corporation has reviewed the trust department examination reports of 553 State nonmember banks. Since there are approximately 1,150 State nonmember banks which operate trust departments, these 553 reports cover 48 percent of the trust departments in State nonmember banks.

The reports of examination for 11 of these 553 trust departments showed that the fiduciary bank held in its trust department (including all types of accounts) 25 percent or more of the fiduciary bank's capital stock. If the committee so desires the Corporation would be pleased to furnish additional data on this subject as the 1964 review of trust department examination reports progresses.

Due to time considerations no attempt has been made to obtain comparable data for National banks and State banks which are members of the Federal Reserve System. We feel certain, however, that this information for such banks is readily available from the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System.

Sincerely yours,

JOSEPH W. BARR, *Chairman.*

Mr. VANIK. I would like to have that extended so that we would know. So that if we are apprised of the forces which buy bank stock and exercise dominion, why should we not at the same time know those silent, inert forces that are securely held in the bank trust portfolios who exercise it? I am including nominees. We should know about those, too, should we not?

Mr. BARR. In most States it is illegal for the bank to hold in one of its trust portfolios the stock of the bank. For instance, bank A has a trust department and it is illegal in the State of Indiana for bank A to hold in any trust portfolio the stock of bank A. In agency accounts and some of the other accounts this might very well be different.

Mr. BOLTON. Does not the present law in most States prescribe that a bank cannot buy in its trust department stock of the bank but that it may add such stock?

Mr. BARR. That is correct, Mr. Bolton. It can hold but cannot buy.

Mr. BOLTON. There are trust departments that do have large shares that were in the trust when the trust was created and made an original part of the corpus of the trust.

Mr. VANIK. But that stock is voted by the bank and it is not the bank's property. They preserve control of management just by exercising the voting rights that are represented by stocks that are held in those trust portfolios. Sometimes this has worked out satisfactorily and sometimes it has not. But the thing that I fear is the proposed competency test in that it might be theoretically developed into an abuse of people who might inhibit the free enterprise process which generates new management. I would like to be sure that this is not so used. I would like to have you figure out a way that you will assure me that this will not be used to perpetuate existing control.

Mr. BARR. In that regard I agree with you completely. This bill is as mild as we can make it. There are no criminal procedures in this bill. There is no attempt to define control. We don't think we can define control. The SEC has never been able to define control. We will be informed after the change of control.

All that we are after in this bill is some sort of information as to what sort of insurance risk we are taking. It is as mild as we can make it. Two States at least have gone much further. I think it is perfectly appropriate for Florida and Oregon to require a veto and control if they think they need it. We don't think we need it. We don't want to stifle new management changes.

Mr. VANIK. Do you think this bill will tell you about changes in control more rapidly than the grapevine?

Mr. BARR. Yes; I do. In the contested cases you are correct, Mr. Vanik, that this is widely noised about. There are many cases that are not contested. We have responsibility with the State supervisor, to examine over 7,000 banks and unless we expand our examination force very substantially, we are going to miss some changes. I will say this, we are going to miss a lot of these rumors.

Mr. VANIK. Would it be correct to assume that most of the information you get comes from sources other than the examination method?

Mr. BARR. On change of management, you are correct. It is usually rumors that we get, and hearsay.

Mr. VANIK. My time has expired.

The CHAIRMAN. Mr. Bolton?

Mr. BOLTON. Mr. Barr, I would like to follow Mr. Vanik's line of questioning, particularly on one question in which you said it is particularly hard to define what control is.

I wonder whether, although I happen to be in favor of what the bill is trying to do, whether by requiring the officers of the bank to report when there is a change in control, and you have just indicated that there is no definition of what a change in control can be, how can you actually say to the officer of the bank, you have had a change in control and therefore you should have reported it. Isn't it possible that 30 percent of the stock could have actually changed hands, but there would have been no change in control?

Mr. BARR. We pondered this question very deeply, Mr. Bolton, and we worked on it with a representative group of bankers. We came up with this solution.

Under the bill, the chief executive officer, when he thinks that there is a change of control, reports to the appropriate banking agency. Any doubt that he may have under this bill is resolved in favor of reporting. The change of control is a slippery thing. That is the reason we left it to the discretion of the chief executive officer.

Mr. BOLTON. The problem that raises for me is this: You have no penalties in the bill; there is no effort to give you regulatory authority.

Mr. BARR. Right.

Mr. BOLTON. And, therefore, the bill is aimed at those who are going to play hanky-panky—their desire is to "milk" the bank. They would be the first people who would say, "Well, there is no control and therefore I will not report it."

Mr. BARR. We considered that, too, Mr. Bolton. If we had criminal penalties devised as tightly as we could get them, this sort of person would still try to raid the bank. I am not saying that this bill is airtight. It is not. The only thing that I am contending is that this is as far as we want to go to provide us with the information that I think we need. It is not an airtight bill. You are correct. But it is as far as we can move in this direction without stifling desirable change.

The CHAIRMAN. Mr. Bolton, will you yield? It is moral suasion, a powerful weapon.

Mr. BARR. It is moral suasion, indeed. It is moral suasion and the mandate of the U.S. Congress that has served the country well in these areas, I think probably better than criminal penalties. But I want to agree with you that this legislation will not stop these people from taking over banks.

Mr. BOLTON. What I am disturbed about is the definition of control and I am wondering whether you considered, instead of the use of the word control, if you use the words change in officers or management, this would require an automatic report if the president of the bank changed or the chairman of the board changed, if there was a change in the membership of the board, executive committee, et cetera.

Mr. BARR. That is part of the bill, too, Mr. Bolton, not only change of control, but also of management or directors.

Mr. BOLTON. That is in this bill?

Mr. BARR. That is in there.

The CHAIRMAN. Mr. Moorhead?

Mr. MOORHEAD. First, I would like to associate myself with the remarks of the gentleman from Wisconsin on bringing a rational pattern to this jungle of bank regulation.

Mr. Barr, what is the attitude of the industry associations, American Bankers, Independent Bankers Association, and so forth, toward this bill?

Mr. BARR. The American Bankers Association has supported this legislation. It is my understanding that Mr. Schooley or President Stenehjem of the Independent Bankers Association was submitting a statement in support of it, also.

Mr. MOORHEAD. And this support, even though there is a degree of duplication, and even though the President of the United States has urged us to cut down on paperwork and avoid duplication, you are asking for another report. Why is that?

Mr. BARR. The President of the United States, as you say, has urged all regulatory agencies not to harass American business and to cut down on the number of reports.

This bill as you know was approved by the Bureau of the Budget. It was also approved by the President's personal staff. I have informed him personally every time a bank has failed—I informed him personally that I intended to press for this legislation and I was personally cleared in this area. So the issue here was, Should we have another report? This does have a certain amount of burden; is it important enough to the American financial community to have another report in this area?

The Bureau of the Budget and the White House staff have decided that it is; bank failures are too important to ignore.

Mr. MOORHEAD. Does the Federal Reserve require any notice of change of control along similar lines as the Comptroller, and if so, do they give you notice?

Mr. BARR. They do not, Mr. Moorhead, and they have indicated to me that they will not require such notification unless they have a specific congressional mandate. They feel as I do that the authority to require such reports in their legislation and our legislation is not clear and they are not prepared to move unless we have a congressional mandate.

Mr. MOORHEAD. Does the Federal Reserve support this legislation or oppose it?

Mr. BARR. It does support this legislation.

Mr. MOORHEAD. You believe you need this legislation now and you are asking for it, even though this is in the last few days, we hope, of this Congress?

Mr. BARR. Yes, Mr. Moorhead.

Mr. BOLTON. Will the gentleman yield?

Mr. MOORHEAD. Yes.

Mr. BOLTON. Mr. Barr, I thought you said that the requirement, if there is a change in the presidency or chairman of the board or member of the board, et cetera, that it should be reported and that that requirement was in this legislation. Could you point out to me where it is, sir? I do not seem to find it.

Mr. BARR. I should modify that statement. When there has been a change of control, then the bank for the next 12 months will report any change in the chief executive officer or directors. But first of all, the chief executive officer has to make a determination in his mind that there has been a change in control.

Mr. BOLTON. I do not mean to take the time of the gentleman, but I think the language of the bill is directed purely toward stock ownership and not to who is running the bank.

Mr. BARR. That is correct, after the determination has been made on whether or not there has been a change of control. Then for a period of 12 months they will report to the appropriate agencies any changes in the executive officer or management.

Mr. MOORHEAD. Mr. Camp, I would like to ask you a question. If we amended this bill so as to eliminate national banks, would you support this legislation?

Mr. CAMP. We know of no opposition to it on that basis.

Mr. MOORHEAD. Would not the philosophy that you are objecting to—would it not apply to the Federal Reserve regulatory power?

Mr. CAMP. I don't believe so, sir.

Mr. MOORHEAD. Thank you.

The CHAIRMAN. Mr. Taft?

Mr. TAFT. Mr. Barr, may I say at the outset that I think you set a commendable example by coming to the Congress for a request of this change. I wonder if you do not have the power, being responsible as you are for the soundness of the insurance corporation, to make such a requirement as this in the granting of the insurance. However, I do want to commend you. I think it is exemplary and might well be followed by other agencies with regard to changes in the regulation of banks. Particularly, I am worried, however, about the control situation and the reporting of the Comptroller.

It seems to me that the language in lines 3 through 7 appears to say that you are guilty until you are proven innocent. I do not know any language in any of the statutes which is similar to this. I have seen some regulations and I wonder if they are valid. I expect, at the appropriate time, to move to strike this language, because it seems to me it is wrong in principle to say that doubts are resolved one way or another in a legal determination.

Mr. BARR. Mr. Taft, we puzzled over this area. We puzzled over it with the bankers, with the Department of Justice and originally we had a criminal provision in this act. But because we could not define "control" we threw out the criminal provision and substituted this much milder approach which was satisfactory to the banks. We knew no other way to do it. I would be delighted to hear any suggestion you could have as to how we could approach this.

As I say, the SEC has tried for 30 years to define "control" and you cannot do it. It is a slippery concept. So the way we approached it was literally to put the responsibility on the chief executive officer to inform us when he thought there was a change of control and if he was not sure, he was to resolve that doubt in favor of reporting. But there are no criminal penalties involved and, no veto and no control. We threw that out and went to this much milder approach. I will be delighted if anybody could tell us how we can get this information.

Mr. TAFT. I agree that you have a difficult problem, but I do not believe this language is going to solve it. It seems to me that this is a very dubious procedure and I think it leaves the president of a bank in a very uncertain position for while we cannot define "control" we can define some areas that are not control.

I am working on an amendment to insert after "bank." in line 3 that would say that a change in ownership of capital stock which does not result in direct or indirect ownership by a stockholder or an affiliated group of stockholders of less than 25 percent of the outstanding capital stock shall not be considered a change of control.

Now, this goes in part to Mr. Vanik's situation because as I understand it, Mr. Vanik is concerned about the requirement of reporting small changes which might lead to an ultimate change in control but has not occurred as yet. It seems to me that eliminating from the reporting requirement a certain minimum amount would be desirable and that we should work toward that end. Do you have any comment?

Mr. BARR. We started out with that 25-percent figure ourselves. We withdrew it at the suggestion of the committee of bankers. They informed us that there are many cases when shifting of 3, 4, 5, 10 percent of the stock changes control.

Mr. TAFT. I do not think you followed the language. The language which I have in mind would relate to any kind of shift in bank stock which resulted in less than 25 percent of the total block—not the shift—but of the total block.

Mr. BARR. That sounds reasonable. I have my general counsel here. We see no objection to that, Mr. Taft.

I might add in this connection, that great minds have wrestled with this problem for many years since the enactment of the SEC legislation. We will take any contributions anybody has to offer.

Mr. TAFT. I think that is all the questions that I have.

The CHAIRMAN. May I inquire with the members of the committee just a moment? It is 11:30. Would the members like to continue asking questions or would you like to have an executive session? It is up to the members. I am not personally going to ask any member to forego the opportunity to ask questions. I feel it is a great privilege and opportunity and each member is entitled to it.

If you want to go ahead we will try to get permission to sit while the House is in general debate this afternoon. I am not sure we will get it. But the House will adjourn sometime this afternoon and we can meet after the House adjourns which will probably be late today or we can meet next Monday. Next Monday is the nearest time we have. Tomorrow we have another hearing.

So, if the members would like to act upon it today, we can have an executive session right away. It is entirely up to you.

Mr. GRABOWSKI. Let's get it done today. Let's have the executive session.

Mr. PEPPER. I would like to ask one question. It will not be very long.

Mr. ST GERMAIN. I have a question.

The CHAIRMAN. Make it short, gentlemen, if you can. I am not asking you to take less than 5 minutes. Mr. Stephens?

Mr. STEPHENS. Mr. Barr, the question that I would like to ask is this: From what I understand of your proposal, you are merely asking that the FDIC receive direct information on change of control?

Mr. BARR. That is correct.

Mr. STEPHENS. I want to say further that I agree with Mr. Taft, and I commend you for bringing even a change in regulations to the Congress.

As you know, I have two bills pending now that concern change in congressional policies by mere regulations of the Comptroller. I am glad to see you bend over backward not to do the same. I am very firm in my convictions that a change in policy that has been carried out for many years must not be changed by an agency regulation as I have said in my two bills on branch banking and on the approval of charters for national banks. Mr. Camp knows what I am talking about, too, and I feel very strongly that a change in policy should be made by Congress. I am happy to see you come before us on the regulation.

The CHAIRMAN. Mr. Talcott?

Mr. TALCOTT. Being on this end, we often get shortchanged on time. I disagree with some of the statements made before—but I do not have as much time as I would like to comment on them.

About the disagreement betweeu the lions and tigers, I think that is not the best analogy that we can draw here. Because sometimes deliberation and seeing differences in rather bold relief is helpful in

achieving the correct answers, whereas sometimes having only one view, we have only the bad view. So I am not entirely dissatisfied with the little disagreement that you people seem to have occasionally.

Among all of the changes of control, what is the percentage of failures, actually? Is not there a small percentage of failures after a change of control?

Mr. BARR. This has been true, Mr. Talcott, up until May of last year. I think if you look back over the 447 failures that occurred, only a comparative few of them could be attributed to a change in ownership control.

Mr. TALCOTT. But we have continual change in control.

Mr. BARR. That is true. The thing that compelled us to move was a pattern of seven failures in a row where they had one common denominator, a recent change in control, and a sudden deterioration of assets. It happened seven times. We felt that while it had not been a problem in the past, that perhaps it was a problem that should be called to the attention of the Congress at this moment.

Mr. TALCOTT. In another analysis might we not find that the change of control has recently improved the status of more banks. This is something which we would want.

Mr. BARR. That is correct.

Mr. TALCOTT. You indicated that this proposal would not touch the scheming embezzler, nor the person who is trying to legally bilk the bank, if that is possible. I wonder whom it will stop or what effect it might have.

Mr. BARR. I am going to have to refer to the chairman's statement, it is the power of moral suasion and the mandate of Congress. I think the mere fact that we have introduced this legislation has been salutary. It has drawn attention to the fact that there have been changes in control of banks recently where the attempt was not to provide better management, but to raid the bank.

Mr. TALCOTT. Would any of the people who achieved control in the last failures have reported if there was any way to avoid reporting?

Mr. BARR. In some of them I doubt it.

Mr. TALCOTT. Pursuing Mr. Taft's idea—if a change of less than 25 percent of the capital stock were deemed to be not a change of "control," would there not be a problem, if someone were trying to avoid this reporting technique that you have in mind, if he would transfer 17 percent control now, 17 percent a little later and then another 17 percent later?

Mr. BARR. That is correct, Mr. Talcott. This was the problem that we worked through as we were attempting to draft the legislation. That is the reason we did not put in a specific figure.

Mr. TALCOTT. You seemed to indicate to me that there is actually nothing you can do, no criminal penalties, only moral suasion, except to withdraw insurance, and this sort of frightens me, because if you withdraw insurance, what do you do?

Mr. BARR. In most instances it kills the bank.

Mr. TALCOTT. This would be just as detrimental to the depositors, who you are trying to help, as bankruptcy.

Mr. BARR. It is a long drawn out procedure. It takes as long as a year, sometimes. It is one we use very rarely.

The big issue here, Mr. Talcott, is whether we are going to have a tool that we can use in cooperation with the State supervisors to move into an area in an attempt to clean up what seems to me to be a messy situation without going so far as to stop the whole process of competition in this industry. This might not be far enough. I might be back to the Congress in a year's time saying that this legislation is not enough. The only thing that I can say at this time is that I see no reason to go any further.

Mr. TALCOTT. On the other hand, if this proposal were postponed, and there were no bank failures attributable to unnoticed change of control, it would show that this reporting requirement was not necessary.

Mr. BARR. That is correct.

The CHAIRMAN. Are you finished?

Mr. TALCOTT. Yes.

The CHAIRMAN. Mr. St Germain?

Mr. ST GERMAIN. You answered one of my questions in answer to one of Mr. Talcott's questions.

If you are informed there is a substantial change and that the change in the people operating the bank, this is fine. Maybe you have reason to believe that these people are not competent or their motives are not what they should be. But what are you going to do about it. If it takes you a year to remove the insurance, certainly it has to take a period of time because you are protecting the depositors and you got to keep the insurance.

Now, the examples that have been cited, these five examples indicate to me that when one, two, three and within less than a year's time these actions had been taken and that the banks failed, so that with all due respect to the legislation, and it is very laudable, and certainly moral suasion is laudable, also, but by the same token, are we actually going to accomplish anything at all?

If, if within a year the same pattern continues, and it comes to the point where you come in for stronger legislation—but at no point do you think we could put in legislation wherein you could say, as the FDIC, we object to this change? We do not want this new man coming in to control the bank or running its affairs? All you can do is remove the insurance.

Mr. BARR. That is correct.

Mr. ST GERMAIN. That still takes a year.

Mr. BARR. Yes. I tried to be as candid as I could by saying that even with strict criminal procedures, I don't think we are going to catch all the crooks.

Mr. ST GERMAIN. They are going to go to jail anyway.

Mr. BARR. When we get this information and most of it is going to be legitimate, some of it is going to be rumors, we might not get all the crooks. We might get some of them. By moving our examination people into the town, and into the bank, to look at it, and try to find out about the people who are running it we can keep them under constant scrutiny. If we obtain some information that they are not operating properly, we can institute proceedings to take away their insurance. We could immediately do this and usually stop most attempts to raid the bank.

Mr. ST GERMAIN. If a man has taken over control of a bank with the intent to raid the bank, I am afraid I disagree with you. The

fact that you go in with a State examiner and so forth and watch over it, something is going to happen anyway.

Mr. BARR. If we have the information that the control of the management of the bank is shifting we can keep it under almost constant observation. One would have great difficulty in raiding that bank without our knowing it.

Mr. ST GERMAIN. So you would know that the bank is being raided. What do you do then?

Mr. BARR. We would institute 8 (a) proceedings. We would pass a resolution that we intend to withdraw the insurance unless certain corrective actions are taken. Within 120 days they have the opportunity to straighten out the procedures we think are wrong. At the end of the 120 days there is a hearing and they have an opportunity to present their case. At that time we can decide whether or not to withdraw the insurance. But, Mr. St Germain, any time during this period the State supervisor can move in and close that bank.

Mr. ST GERMAIN. In the case of a State bank?

Mr. BARR. Yes.

Mr. ST GERMAIN. As I said before, you got that 120 days and then there has to be good—good reason enough on the part of the State or on the part of the Comptroller, they have to have enough evidence to say that they are going in and close the bank down.

Mr. BARR. We can withdraw insurance.

Mr. ST GERMAIN. Your insurance process once again takes a year. Because you are protecting the depositors, this again takes time. We can go back one step now. I take it that one of the reasons for this is that you do not have enough examiners to keep a pulse on each of the banks.

Mr. BARR. That is correct.

Mr. ST GERMAIN. In the State banks, do they not have enough State bank examiners watching over there?

Mr. BARR. I don't think they do. I think that to keep your finger on the pulse of all banks in the country would take all the time and require such a force of examiners——

Mr. ST GERMAIN. I am talking within the individual States. Maybe because I come from Rhode Island I feel that way.

Mr. BARR. It would just be impossible to have that supervision. Examiners would have to stay on top of every bank all the time. We examine all our banks twice a year. That is as far as we can go. One alternative would be to greatly extend the force of examiners. I do not like to move in that direction.

Mr. ST GERMAIN. In conclusion I would say this, that the purpose is laudable. I am wondering if we are going to accomplish it even if we do pass the bill.

The CHAIRMAN. Mr. Clawson?

Mr. CLAWSON. I have just one question and perhaps you have already answered it, Mr. Barr.

The language that seems to be objectionable to the Comptroller's Office is the language in connection with the additional reports.

Mr. BARR. Correct.

Mr. CLAWSON. Have you indicated that you would not only accept his criteria in the report, but that you would also accept the duplicate of the actual report that now comes to his office in order to satisfy your requirements?

Mr. BARR. I did state this to Mr. Reuss, that I would be prepared to accept the criteria that the Comptroller thinks is appropriate to stop any duplication. The only thing that I would like to have is the information. I feel if we have the risk we are entitled to the information. We are not getting the information at this time.

Mr. CLAWSON. So a duplication of the report that is provided to the Comptroller's Office would satisfy the requirements of this legislation?

Mr. BARR. That is right.

The CHAIRMAN. Mr. Gonzalez?

Mr. GONZALEZ. All I would like is clarification on page 2, lines 14 and 18 of the bill. In line 14 you say:

> Except that no report need to be made in those cases where the borrower has been the owner of record of the stock for a period of 1 year or more, or the stock is that of a newly organized bank prior to its opening.

Mr. BARR. Right. Those exceptions were written in, Mr. Gonzalez, because in the case of a new bank we do get the information. We get a dossier on every director and every chief exectuive officer. So we don't need the report in the case of a new bank. In the case of a man who has held his stock for a year, he obviously hasn't raided the bank. Many people who own bank stocks in Texas and other places use the stock as collateral to buy cattle, to buy fertilizer and other things. We don't want to interfere with that practice. That is the reason we put that in.

The CHAIRMAN. Mr. Pepper?

Mr. PEPPER. Mr. Barr, as I understand it, from what has been said by you today, and the representative of the Comptroller, the position of the Comptroller is not that he objects so much to the particular information being required and supplied, although he points out that there is a certain amount of duplication, perhaps that is unnecessary in the case of national banks, but he is concerned as to whether or not this is another step in the strengthening of the role of deposit insurance in bank regulation.

In fact, in the address of the Comptroller, Mr. Saxon on the role of deposit insurance in bank regulation which was put in the record, the first sentence is:

> A variety of proposals are now being advanced for strengthening the role of deposit insurance in bank regulation.

Now, you have indicated as I understand it, that you were not here, like the camel, trying to get your nose under the tent and increasing your regulatory power—but recommend legislation to require banks to furnish your agency facts which you think would be helpful to you in the performance of the responsibilities you presently discharge.

Would you have any objection to this committee, if it saw fit to do so, putting language in the report, if it reports favorably this bill, to the effect that this bill is not to be regarded as a legislative step for strengthening the role of deposit insurance in bank regulations?

Mr. BARR. I would be most sympathetic to such a statement.

Mr. PEPPER. Thank you.

The CHAIRMAN. Mr. Minish?

Mr. MINISH. I do not have any questions, Mr. Chairman. But I do support the bill and I hope the day comes soon that they can put all these factors under one head. I think it would be very helpful.

The CHAIRMAN. Mr. Hanna?

Mr. HANNA. No questions.

The CHAIRMAN. Mr. Grabowski?

Mr. GRABOWSKI. No questions.

The CHAIRMAN. Mr. White?

Mr. WHITE. Just that I would support the legislation.

The CHAIRMAN. At this point in the record and without objection I should like to insert the following statements and letters:

LETTER STATEMENT BY PRESIDENT L. M. STENEHJEM, INDEPENDENT BANKERS ASSOCIATION, SUBMITTED TO HOUSE BANKING AND CURRENCY COMMITTEE

The Independent Bankers Association today submitted the following statement to the House Banking and Currency Committee, for its hearing record, in support of H.R. 12267 and H.R. 12268. The text of the statement by IBA President Lee M. Stenehjem, executive vice president, First International Bank, Watford City, N. Dak.:

AUGUST 10, 1964.

Hon. WRIGHT PATMAN,
Chairman, Banking and Currency Committee,
House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The Independent Bankers Association supports the companion bills, H.R. 12267, which you have introduced, and H.R. 12268, introduced by Representative William B. Widnall of New Jersey, to provide for notice of change in the control of management of insured banks, and requests that this statement in support of the legislation be included in the record.

We believe that these measures, designed to require that notice of change in the control of bank management be made to the appropriate Federal supervisory agency or agencies, and the subsequent cooperative exchange of this information with the State banking agencies, will enhance the effectiveness of the supervisory agencies.

We are concerned by the isolated, but significant instances of looting that followed changes of control of banks this year. As you gentlemen know, this looting forced the closing of five banks in California, Michigan, Missouri, and Texas. These instances pointed up a weakness in the supervisory authority that will be corrected by the bills before you.

The IBA believes these companion measures, to require that the facts of control changes be made known at once to appropriate supervisory agencies, will give the banking agencies an additional effective tool with which to protect both the banks and the public.

Respectfully and sincerely,

LEE M. STENEHJEM.

THE AMERICAN BANKERS ASSOCIATION,
Washington, D.C., August 12, 1964.

Hon. WRIGHT PATMAN,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Several bank failures within recent months have raised questions as to the adequacy and timeliness of information available to Federal bank supervisory agencies when there is a change in control of a bank. The American Bankers Association has given serious attention to this matter and is happy to endorse H.R. 12267 which would provide for prompt notification of the Federal banking agencies of changes in the control of management of insured banks.

The association's decision to support this increase in regulatory powers is based on recognition of the fact that there have been a few instances in which changes in bank control have been followed by actions on the part of the new owners or management which led to the insolvency of the banks concerned. We have been informed that the Federal Deposit Insurance Corporation believes that early receipt of information on changes in control will help prevent such occurrences in the future.

It should be emphasized that the American Bankers Association does not believe that the relatively few cases of bank insolvency resulting from change in control constitute a dangerous trend. The American banking system is sound,

and in the overwhelming majority of cases changes in the control of banks stem from legitimate business reasons. Nevertheless, if the proposed legislation can prevent even an occasional, isolated bank failure, we believe that the legislation is in the public interest.

I would appreciate it if you would incorporate this letter in the record of the hearings on H.R. 12267 to be held by your committee.

Sincerely yours,

CHARLES R. MCNEILL.

NATIONAL ASSOCIATION OF SUPERVISORS OF STATE BANKS,
August 10, 1964.

Re H.R. 12267.

Hon. WRIGHT PATMAN,
Chairman, House Banking and Currency Committee,
U.S. House of Representatives,
New House Office Building,
Washington, D.C.

DEAR MR. PATMAN: I have been advised today that hearings are to be scheduled beginning day after tomorrow on the above-captioned bill providing for notice of change in control of management of insured banks.

It would be impossible, in this period of time, for us to secure from the supervisors of State banks of the 50 States the type of considered views which should be before this committee prior to the time it takes any final action on this very important piece of legislation. Accordingly, we respectfully request that your committee defer any action on this bill until the next session of Congress at which time we will be prepared to present to your committee the views of the supervisors along with a survey of existing, and proposed, State regulation of this subject matter.

There are a number of aspects of the proposed bill which deserve detailed consideration.

Thus, whereas it is possible to agree with the general proposition that the FDIC should, within the general framework of its responsibility as an insuring agency, be informed of management changes, that is not what the proposed bill says. It only requires that such information be submitted to the FDIC by that segment of the 14,000 banks in this country which are nonmember, insured, State banks. The rest of the insured State banks, for example, will report such information to the Federal Reserve Board, an agency which has been given general responsibilities by Congress in the field of money and credit, not as an insurance agency. Thus, we feel that if any bill is passed, it should require the submission of such information to the FDIC by all banks, because the FDIC, in its insurance capacity, is the only Federal agency which has a legitimate concern with such matters. If there is any other reason for the disclosure of such information, we would resist the bill vigorously as a further, unwarranted, extension of Government control over State banks.

There is an additional matter which should be explored. Our preliminary studies indicate that there are at least 22 States where State legislative or administrative action is pending, or contemplated, dealing with this very subject matter. This committee should have detailed information before it of State activity in this field before it recommends passage of a bill which accelerates the trend toward increased Federal control over State banks.

Finally, we do not believe that there is any existing crisis in banking which requires a "crash" program of legislation without due consideration of the matters set forth above. It is true that there has been a failure of some 4 or 5 of the 14,000 banks in this country in recent weeks. We are not very clear as to how possession of the information of a management change in any of these banks by one or more of the Federal agencies would have guaranteed a nonfailure, but, in any event, we think that it is questionable to use 4 or 5 failures as a springboard for legislation which (1) extends the regulatory control of Federal agencies over 14,000 banks, (2) which attempts to protect the insurance risk of the FDIC by granting increased regulatory control to agencies which are entirely independent of the FDIC, and (3) which does not take into consideration the recognition of States of this subject matter by pending, or proposed action.

For all of the foregoing reasons, we respectfully request deferral of any committee action on this bill until the next session of Congress. We also request that this letter be placed in the record of the hearings on this bill.

Respectfully submitted.

RANDOLPH HUGHES,
Chairman, Legislative Committee.

(The following information was supplied in response to request of Hon. Henry S. Reuss at p. 40:)

FEDERAL DEPOSIT INSURANCE CORPORATION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., August 17, 1964.

Hon. HENRY S. REUSS,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN REUSS: At the hearings on August 12, 1964, before the Committee on Banking and Currency of the House of Representatives on H.R. 12267, to provide for notice of change in control of management of insured banks, you asked me to "submit in mandatory language so we do not require duplicate reporting from national banks." I stated we would do so.

Following the hearings the committee met in executive session and reported favorably on the bill with certain amendments. One of the amendments was the deletion of the sentence on page 3, lines 11 to 13, which read as follows: "The reports required in this subsection shall be in addition to any reports that may be required pursuant to other provisions of law."

From discussions with the staff of the committee we learned that the purpose of this amendment was to remove the possibility of national banks being required to make reports under regulations of the Comptroller of the Currency providing for substantially the same report as national banks would be required to make under paragraph (1) of subsection (j) of the bill.

In view of the action of the committee in reporting the amended bill, I have assumed you no longer wish to have the requested language. I have, therefore, not submitted it for the record of the hearings.

Sincerely yours,

(Signed) JOSEPH W. BARR,
Chairman.

The CHAIRMAN. May we have an executive session? Without objection we will have an executive session.

(Whereupon, at 11:45 a.m., the committee then proceeded into executive session.)

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