SAVINGS AND LOAN RECEIVERSHIPS

HEARING

BEFORE THE

COMMITTEE ON BANKING AND CURRENCY

UNITED STATES SENATE

NINETIETH CONGRESS

SECOND SESSION

ON

S. 3436

TO PROVIDE FOR THE APPOINTMENT OF THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION AS RECEIVER, AND FOR OTHER PURPOSES

MAY 20, 1968

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SAVINGS AND LOAN RECEIVERSHIPS

MONDAY, MAY 20, 1968

U.S. SENATE,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C.

The committee met at 10:06 a.m., in room 5302, New Senate Office Building, Senator John Sparkman, chairman of the committee, presiding.

Present: Senators Sparkman and Proxmire.

The CHAIRMAN. Now, the committee will take up the bill before us, S. 3436. It is a bill to permit the Federal Home Loan Bank Board to appoint the Federal Savings and Loan Insurance Corporation as receiver for the insured State-chartered savings and loan associations undergoing liquidation. Existing law already provides this authority with respect to federally chartered savings and loan associations.

It has been suggested that the same authority should be extended to the State associations.

Accordingly, on May 3, along with Senator Proxmire and Senator Bartlett, I introduced a bill to achieve this objective.

Under the proposed legislation the Board could appoint an insurance corporation for the State chartered association if the Board determines that such an appointment is in the public interest and that either a conservator, receiver, or other legal custodian has been appointed for the institution or it has been closed by or under State law.

We have with us today to testify on the bill Mr. John E. Horne, Chairman of the Federal Home Loan Bank Board; Justin Hulman, savings and loan commissioner, State of Illinois; Mr. Raleigh W. Greene, representing the National League of Insured Savings and Loan Associations; and Mr. Stephen Slipher, representing the U.S. Savings and Loan League.

(The bill is as follows.)

90TH CONGRESS
2D SESSION

S. 3436

IN THE SENATE OF THE UNITED STATES

MAY 3, 1968

Mr. SPARKMAN (for himself, Mr. BENNETT, and Mr. PROXMIRE) (by request) introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

A BILL

To provide for the appointment of the Federal Savings and Loan Insurance Corporation as receiver, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of section 406 of the National Housing Act is amended (1) by inserting "(1)" immediately after "(c)", and (2) by adding thereto at the end thereof the following new paragraphs:

"(2) (A) In the event the Federal Home Loan Bank Board determines that—

"(i) A conservator, receiver, or other legal cus-

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todian, whether or not the Corporation, has been or is hereafter appointed (otherwise than by the Federal Home Loan Bank Board) for an insured institution other than a Federal savings and loan association, whether or not for the purpose set forth in subdivision (d) of section 401, or, by or under State law, an insured institution other than a Federal savings and loan association has been or is hereafter closed, and

"(ii) An appointment under this paragraph (2) is advisable in the public interest,

said Board shall have under this paragraph (2) the same authority to appoint the Corporation as receiver for such institution that it would have under subparagraph (A) of paragraph (6) of subsection (d) of section 5 of the Home Owners' Loan Act of 1933 if the insured institution were a Federal savings and loan association and grounds existed for the appointment of a receiver therefor under said subparagraph (A).

"(B) When the Corporation is appointed as receiver pursuant to the foregoing provisions of this paragraph (2)—

"(i) the provisions of said subsection (d) (including but not limited to subparagraph (C) of paragraph (6) and paragraph (11) thereof), as from time to time in effect, shall be applicable in the same manner and to the same extent that they would be applicable, and the

Corporation and said Board shall respectively have the same status, functions, and authority that they respectively would have under said subsection (d), if the insured institution were a Federal savings and loan association and the appointment of the Corporation by said Board as receiver therefor had been made pursuant to the provision of said subsection (d) referred to in subparagraph (A) of this paragraph (2). The provisions of paragraph (14) of said subsection (d) shall be applicable in the same manner and to the same extent that they would be applicable if the insured institution were an institution referred to in the first sentence of said paragraph.

"(ii) the Corporation shall have authority to liquidate the institution in an orderly manner or to make such other disposition of the matter as it may deem to be in the best interests of the institution, its savers, and the Corporation, and for the purposes of this paragraph (2) the language "the court or other public authority having jurisdiction over the matter" in subsection (d) of this section shall mean said Board.

"(C) Whenever a receiver appointed by the Corporation under this paragraph (2) demands possession of the property, business, and assets of any institution, or of any part

thereof, the refusal by any person to comply with the demand shall be punishable by a fine of not more than $5,000 or imprisonment for not more than one year, or both."

The CHAIRMAN. We first hear from Mr. Horne, the Chairman of Federal Home Loan Bank Board. Mr. Horne, I see you are already there. If you will present for the record the names of the gentlemen with you it will be appreciated.

STATEMENT OF JOHN E. HORNE, CHAIRMAN, FEDERAL HOME LOAN BANK BOARD

Mr. HORNE. Thank you very much, Mr. Chairman. To my immediate right is Alan Jay Moscov, general counsel. To his right is Max Wilfand, who is deputy general counsel. To my immediate left is Francis M. Dorer, who is with the Office of Examinations and Supervision and has direct supervision of the region in which the State of Illinois is located. To his immediate left is George A. Betzold, Jr., who is Chief of the Liquidation Division of the Federal Savings and Loan Insurance Corporation.

I'd like to point out, too, Mr. Chairman, if I may, that Robert L. Rand, one of the Board members of the three man Board is also in the room. The other Board member is away on Board business.

It is a privilege for me to appear before you today to testify on behalf of the Federal Home Loan Bank Board in support of S. 3436. That bill would authorize the Federal Home Loan Bank Board to appoint the Federal Savings and Loan Insurance Corporation as receiver for State-chartered institutions insured by the FSLIC if the Board determined that such an appointment was in the public interest and that either a legal custodian had been appointed for the institution or it had been closed by or under State law. In this respect, such authority would closely parallel the authority which the Federal Home Loan Bank Board now has to appoint the FSLIC as receiver for Federal savings and loan associations under section 5(d)(6)(A) of the Home Owners' Loan Act of 1933.

Under existing Federal law governing insured institutions, a default must occur before the Federal Savings and Loan Insurance Corporation can pay holders of insured accounts. A default only occurs when a receiver or other legal custodian is appointed for the purpose of liquidation. In the event of a default by a Federal savings and loan association, the FSLIC is required to be appointed receiver. The appointment of such a receiver for a State-chartered institution is governed by the laws of the particular State. The Federal Savings and Loan Insurance Corporation is authorized under existing Federal law to act as receiver for any State-chartered insured institution and the National Housing Act tenders the services of the FSLIC to the court or other public authority having the power of appointment. Under the laws of most States, the FSLIC may be appointed re-

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ceiver. However, few State laws now require that the FSLIC be appointed receiver for State-chartered institutions insured by it.

I believe there are about four or five States, Mr. Chairman, that do require the appointment of the FSLIC as receiver. That would leave about 40 States that do not require it but in some of those States, authority exists to appoint the FSLIC as receiver if they want to do so.

The pending legislation would not be applicable to Federal savings and loan associations and there is no need for it to be made applicable to them. Under section 5(d) of the Home Owners' Loan Act of 1933, the Board now has exclusive authority to appoint a receiver to liquidate a Federal savings and loan association.

Unless the Federal Home Loan Bank Board makes the necessary determinations, existing State and Federal law would in no way be affected by the proposed legislation and appropriate State authorities could continue to administer and regulate under State law receiverships and other legal custodianships for State-chartered insured institutions.

While the authority of the Board to appoint a receiver for a Federal savings and loan association under the Home Owners' Loan Act and its authority to appoint a receiver for a State-chartered insured institution under the pending legislation would be identical, the grounds would be different. The grounds for the appointment of a receiver for a Federal savings and loan association are set forth in section 5(d) of the Home Owners' Loan Act and include insolvency, as described therein, and an unsafe or unsound condition to transact business. The grounds for the appointment by the Board of the FSLIC as receiver for a State-chartered insured institution under the pending legislation would be the determination by the Board that such an appointment was in the public interest and that either a conservator, receiver or other legal custodian had been appointed for the institution or it had been closed by or under State law.

Not only, as I stated above, would the Board have the authority under the pending legislation to appoint the FSLIC a receiver where the State takes custody of a State-chartered insured institution but it also would have similar authority where a default has already occurred in such an institution, without regard to whether insurance has been paid, and the institution is being liquidated under State jurisdiction.

The Board's appointment of the FSLIC as receiver would be subject to prompt judicial review, and I ask that you take special note of that fact. Section 5(d)(6)(A) of the Home Owners' Loan Act, which is made applicable to proceedings under the proposed subsection (c)(2) of section 406 of the National Housing Act, would authorize the insured institution to bring an action to remove the FSLIC as receiver within 30 days after its appointment. Such an action could only be brought in the U.S. district court for the judicial district in which the home office of the institution is located or in the U.S. District Court for the District of Columbia. The court could either dismiss the action on the merits or direct the Board to remove the receiver. The statute requires that such proceedings be given precedence over other cases pending in such courts and that they be in every way expedited.

The appointment of the FSLIC as receiver by the Board would not

otherwise be subject to judicial attack. Subparagraph (C) of section 5(d)(6) of the Home Owners' Loan Act, which is made applicable to the pending legislation, expressly provides that no court may take any other action toward the removal of a receiver, or, except at the instance of the Board, restrain or affect the exercise of powers or functions of a receiver.

Section 401(d) of the National Housing Act defines the term "default." Section 405(b) of that act requires the FSLIC to pay insurance as soon as possible in the event of a default by an insured institution. The appointment of the FSLIC as receiver by the Board under the pending legislation would constitute a default under section 401(d) (if in fact such default had not already occurred as a result of State action) and require the Corporation to pay insurance as provided in existing section 405(b).

When the FSLIC is appointed receiver under the proposed section 406(c)(2), subparagraph (B) of that section incorporates by reference the applicable provisions of subsection (d) of section 5 of the Home Owners' Loan Act. Among the applicable provisions of section 5(d) are those which authorize the Board to adopt regulations for associations in receivership, for the conduct of receiverships and for the exercise of functions by members, directors or officers of an association during a receivership, and to enforce that section and rules and regulations authorized to be made under it. In addition, that subsection permits the Board to act in its own name and through its own attorneys. It also empowers the FSLIC as receiver to buy at its own sale subject to the approval of the Board.

The proposed legislation would, by section 406(c)(B)(ii), authorize the FSLIC to liquidate the institution in an orderly manner or make such other disposition of the matter as the FSLIC might deem to be in the best interests of the institution, its savers and the FSLIC. The authority of the FSLIC in this regard would be subject only to the regulation of the Federal Home Loan Bank Board and not to that of any State authority, administrative or judicial, which may previously have had regulatory authority with respect to the institution as provided for in subsection (d) of section 406 of the National Housing Act.

Mr. Chairman, to sum up all of what I have said, the bill would provide authority to avoid a long delay in paying out to savers and thus preserve the image and the necessary support of the public. And it would enable the Corporation to become the receiver if the Board so chose.

Having explained what the bill does, I turn now to the reasons why its enactment is urgently required by the public, the industry and the Bank Board. The need for remedial legislation, of the type just described, is evidenced by our experience in Illinois.

Let me emphasize, Mr. Chairman, as manager of the Insurance Corporation, the Board understandably is concerned with its protection and it is with this in mind, and not any person or any one example, that I will relate some details to you. There is also the fact that the Board has a responsibility, we think, to tell Congress when something is wrong, when the Corporation can be helped if corrective measures are taken. It is for these reasons only that I now relate some of the details.

Let us first examine the problem of delay in paying insurance to savers once the State has closed the doors of an insured institution. On December 31, 1964, the State of Illinois appointed a custodian for Marshall Savings & Loan Association, a State-chartered stock institution insured by the Federal Savings and Loan Insurance Corporation and located in a Chicago suburb. The association ceased doing business and savers were not permitted to withdraw their funds. Since there was then no default within the meaning of the National Housing Act, the Insurance Corporation could not make insurance payments. This situation continued until April 9, 1965, when Illinois did appoint a receiver for the purpose of liquidation, triggering an insurance payment under the National Housing Act. At this juncture, it should be mentioned that the delay was largely occasioned by the need to resolve important and difficult legal questions. Indeed, a delay of this type probably could occur in other States. However, the undeniable fact is that for over 3 months approximately 27,000 persons having savings of about $85 million were unable to withdraw their funds. Further, during this period their investments lay idle and earned no dividends.

If the bill before you today had been law on December 31, 1964, the more than 3 months delay, with the resulting prejudice to Marshall's savers, could have been avoided. The Board could have appointed the Insurance Corporation as receiver, thus creating a default and obligating the Corporation to commence payment of insurance as soon as possible. We see no reason why savers in any case must be made to suffer long delays in recovering their insured savings. The enactment of this bill would prevent such a situation from recurring.

Justification for the appointment of the FSLIC as receiver, is also demonstrated by our experience in Illinois. Three years ago FSLIC paid out approximately $85 million to the savers of Marshall. Today FSLIC, although subrogated to the rights of savers to the extent of its insurance payments, has not received one nickel. This is due in part to the existence of litigation, instituted on behalf of the permanent reserve shareholders, which prevents the receiver from making any distribution to claimants. Despite repeated requests to the State authorities, FSLIC has been denied access to meaningful information pertaining to Marshall's affairs, except during the very early stages of the receivership. The Corporation has no idea whether Marshall's assets are being adequately conserved or, as feared, allowed to deteriorate. In this connection and in contrast to the Marshall situation, I should point out that under Federal law (§ 406(e) of the National Housing Act) the FSLIC as receiver must open its books and records with respect to its adminstration of receivership assets to any officer of the institutions and to any other interested party.

Further, despite a court order, now over 6 months old, authorizing the State-appointed receiver to sell Marshall properties, there have been no sales of which we have knowledge. Prior thereto, there may have been some sporadic sales of assets.

FSLIC's plight is, regrettably, shared by those savers whose savings were only partially insured. Called uninsured depositors, this group has approximately 1,349 accounts with a total claims of nearly $3 million against the assets of Marshall. They too mush wait.

One might ask why this situation exists. One reason that might be offered is that the challenge to the custodial taking by the permanent

reserve stockholders has proliferated into complex and massive litigation which has tied the State's hands. At best, this is only a partial answer.

The pendency of the litigation did not and does not prevent the State from taking four important steps:

1. Liquidate the association's property, such as its real estate owned, and hold the proceeds of sale in interest-bearing securities pending the outcome of the litigation;

2. Allow FSLIC access to its books and records;

3. Expedite the litigation;

4. Appoint FSLIC receiver, and thus make it the agent for liquidation.

I have already discussed steps 1 and 2. With respect to step 1, I have stated that while the pending litigation does prevent the receiver from paying liquidating dividends, it in no way precludes timely and orderly liquidation of assets.

Turning to the third point, I regret to report on the status of the custody case, which lies at the heart of all the Marshall litigation. In that case, the permanent reserve shareholders of Marshall claim that the State had no authority to take custody. The case had been pending for 3 years. As far as we know, not a single witness has been called. The parties have been at issue over this long period on such matters as burden of proof and scope of discovery. The merits of the controversy have not yet been reached.

Although part of the delay has been due to the illness of the master to whom the case is assigned, and involvement with other Marshall litigation, the almost total lack of progress is most discouraging. Until that case is resolved, creditors, FSLIC and uninsured depositors must continue to wait—and all indications point to a very, very long wait. In this connection, I mention the fact that on at least one occasion, in response to our request that trial of the custody case be expedited, the State has told us that we are overly concerned with recovery of the $85 million paid by FSLIC to Marshall savers. We have replied that we are obliged to be concerned since recovery in this and other receivership cases is vital if the Corporation is to stand ready in the future to meet its commitments. I need not mention to you the importance of the Corporation's function to this industry and to the public.

In an effort to expedite resolution of the custody case, FSLIC attempted to intervene. This effort was vigorously opposed by the State, and ultimately FSLIC's participation in the custody case was limited, at least temporarily, by the State court to intervention by the majority directors of Marshall, who have been elected by the Insurance Corporation.

Turning to the fourth point, Illinois does have authority under its law to name FSLIC receiver. Indeed, in 1965, the then director of the department of financial institutions, Mr. Joseph E. Knight, did promise, in unmistakable and unequivocal terms, to appoint FSLIC receiver, FSLIC has invoked that promise. It has been unmistakably and unequivocably dishonored.

During 1967, a majority of the permanent reserve shares of Marshall was transferred to National American Life Insurance Co., a Louisiana corporation. Being concerned with the delay in liquidating Marshall's

assets, the company sent a representative to meet with the appropriate Illinois officials. The company's representative, in the presence of two members of the Board's staff, offered to dismiss all of the Marshall litigation on condition that the Insurance Corporation be appointed receiver. The Illinois authorities flatly rejected the offer and the entire matter continues on its weary and expensive course.

The record in Illinois does not end with the Marshall case. In 1966, Illinois took custody of, and appointed a receiver for, Old Reliable Savings & Loan Association, which is also located in a Chicago suburb. FSLIC has made insurance payments to the savers of Old Reliable in the amount of approximately $7¼ million. In this case, the permanent reserve shareholders did not choose to challenge the State's action. Nonetheless, the State receiver has refused our requests for information as to the progress of the liquidation.

In April of this year, the State of Illinois placed both Apollo Savings and Lawn Savings & Loan Association in receivership. These two State-chartered associations are located in the Greater Chicago area and together have about $125 million in savings. At this very moment the Insurance Corporation is paying the insured accounts in those institutions.

The savings and loan commissioner appointed Joseph E. Knight, to whom I referred earlier, receiver for both associations. Shortly prior to his appointment as receiver, Mr. Knight resigned as director, Illinois Department of Financial Institutions. That appointment specifically provides for compensation as receiver. The amount of the compensation, or the method of its computation, has not been disclosed.

If past experience is any indication, the Illinois authorities will continue to ignore the need to make restoration in a reasonable period of time and make up the loss in FSLIC's liquidity.

I might add, Mr. Chairman, that when Apollo and Lawn Savings are paid out, and they will be in the next few days, the Insurance Corporation will have paid out approximately $250 million in Chicago. I would like to say—I choose my words here cautiously and carefully—I would say that in the city of Chicago we are pretty much over the hump so far in disposing of problem cases. In all honesty, I also want to say that we have not completely cured the cancer. There are several others that are in difficulty. But in connection with that I want to stress just as much as I possibly can that the important thing for savers in Chicago associations to bear in mind is that if their accounts are insured by the FSLIC, whether it's a State association or Federal association, these insured funds are safe and the Government will keep its commitments. Sometimes this is not known when an association goes under. Understandably, fear is created, but I want to give that assurance here before this committee and to everyone concerned, that in any situation where FSLIC insurance is involved the saver's money is safe so far as his getting at least his full insured principal when payment is made.

The bill before you today would permit the Board to appoint the Corporation receiver. We are not in a situation like the commercial banks, I might add, Mr. Chairman. Usually 96 percent of the money in a savings and loan association, and frequently even in excess of that, is insured savings, and so, when we pay out an insured association,

we pay in excess of 96 percent and we have become by far the largest claimant and necessarily the party most concerned about how the matter is handled thereafter. The claim of the FSLIC, as I have said, is overwhelmingly larger than that of any other claimant in a receivership.

One clear and undeniable fact supports the importance of such an appointment—in every case upon the payment of insurance the Corporation becomes the largest claimant against the institution's assets. Its claim is overwhelmingly larger than that of any other party. Except perhaps for certain rights acquired under the law of escheat, the State never has any monetary claim of consequence in these cases.

It is clear that the Corporation, given its huge financial interest in every case, is the most highly motivated party available to do the job in an orderly and economical way.

I might add that the Corporation avoids an insurance payout where there is economic justification, so as to protect the Corporation and maintain its liquidity. The records show that in most cases we have avoided making insurance payouts by bulk sales or mergers or we have had voluntary liquidations and things of this sort.

In a recent case in Arizona the State authorities did appoint FSLIC receiver. The Board designated an FSLIC employee, paid under the Federal general schedule, to act as agent for the receiver for the association, and the Board's Office of the General Council provides overall legal guidance to local private counsel. By contrast, Illinois appointed a private party as receiver for Lawn and Apollo and private counsel provides legal services.

The Arizona case is proceeding in a highly satisfactory manner in the sense that FSLIC, creditors, and the uninsured depositors can look to meaningful reimbursement in a reasonable period of time.

This bill would enable the Board to prevent many of the problems I have discussed with you today. As I indicated earlier in my statement, an attack on the validity of a State's action in taking custody would not interfere with an orderly and economical liquidation by the Federal receiver. This alone would obviate many of the problems in the Marshall case. Even if serious litigation did arise, FSLIC, as receiver, could preserve the assets during the litigation. Given the Corporation's interest it would do everything possible to cure delinquencies, dispose of real estate owned and, as market conditions permitted, dispose of other assets.

I appreciate the fact that this type of legislation might raise in some peoples' minds the question of Federal-State relations. And my guess is that each State supervisor would react in a manner in keeping with what his State law is. My guess, further, is that some State supervisors would oppose the legislation and that some would favor it.

As I say, I think the thinking probably would be in keeping with the State law, which the particular supervisor is charged with administering. I want to point out that this bill deals with the expenditure and recovery of funds made available by insured institutions from every State in the Union. The liquidity of the Federal Saving and Loan Insurance Corporation is a matter of national concern and of national importance. And no one would suggest that the terms and conditions of expenditure and recovery of Federal funds is not a matter for Congress.

On this point I wish to stress that the provisions of the proposed legislation are not self-executing. The bill does not require the appointment of the Corporation as receiver. Instead, it gives the Board discretionary power to make such an appointment. I can assure you that where a State official takes oxer an association with the intent to rehabilitate or otherwise resolve the association's problems, and the plan has a reasonable chance of success, the Board would not intervene.

As I said earlier, we like to avoid payouts where possible. It is usually in the Corporation's interest to do so. I would say in conclusion, Mr. Chairman, something that has already been said before this committee in connection with the holding company legislation that was signed by the President in the early part of this year. We do have additional problem cases. We cannot anticipate what the results in each case are going to be. We do feel that in this request we are asking Congress to close the gap that, in our opinion, needs closing as evidenced by what has already taken place and that could take place in other States in connection with existing problem cases on our books, and to give us this reserve power for use when necessary.

All we seek here is a reserve power to prevent recurrence of the problems that have arisen in Illinois—and could arise elsewhere—with their potentially serious consequences to the Corporation.

The CHAIRMAN. Thank you for your very interesting and informative statement.

On page 8 you make reference to the Marshall Savings & Loan Association and you say the State of Illinois appointed a custodian on December 31, 1964. I assume that custodian appointment was for the purpose of trying to work out the problems of the association, is that right?

Mr. HORNE. Well, that could have been a purpose of it, yes, sir. And it so happens that in the State of Illinois, a custodian was appointed and it didn't trigger a payout. It has to be a receiver for the purpose of liquidation.

Now, it may have been that there was some confusion or some delay in trying to determine whether it was necessary to appoint a receiver for the purpose of liquidation. We do know that there were some legal questions. The Attorney General ruled that a receiver could be appointed for the purpose of liquidation. I do not know that there would have been much purpose here in trying to work out something. That could possibly have been the intention but the association was so large and was in such weak circumstances it was obvious it would take them quite a good deal of money to save it.

The CHAIRMAN. In any event, there had been no determination made as of that time that the association was insolvent or in such condition as to call for a receiver, I take it.

Mr. HORNE. The State took custody on December 31, 1964, for the purpose of further examination, reorganization, merger or liquidation. So that would answer your question, sir.

The CHAIRMAN. But it was 3½ months later before the receiver was named?

Mr. HORNE. Yes, sir.

The CHAIRMAN. During that time what was the status of the savers in that institution?

Mr. HORNE. Their money was——

The CHAIRMAN. Was it frozen?

Mr. HORNE. The money was frozen.

The CHAIRMAN. They could neither withdraw nor could you pay off?

Mr. HORNE. That is right.

The CHAIRMAN. Then a receiver was appointed.

Mr. HORNE. For the purpose of liquidation.

The CHAIRMAN. And at that point they become eligible to receive payments from the insurance corporation?

Mr. HORNE. Up to the insured amount, yes, sir, and we immediately proceeded to meet that commitment.

The CHAIRMAN. And I believe you said that generally the insured amount from one of these institutions is approximately 96 percent of all spare accounts?

Mr. HORNE. Yes, sir.

The CHAIRMAN. Do I understand correctly from your discussion of this situation that the FSLIC, which is an organization supported by insured savings and loan associations throughout the entire country, is powerless to move in a State case until a receiver is named and even then does not have access to the records sufficient to protect its own interests in the situation?

Mr. HORNE. This certainly has been the case in Illinois, Mr. Chairman. It would depend to a great extent on the attitude of the State supervisor authority as to whether or not it would be the case in other places.

The CHAIRMAN. Well, now, take the two cases you discussed in Illinois. I believe there were two specifically that you discussed. Do I understand correctly from your statement that you are not able to get sufficient information to assure that the interests of the corporation are protected?

Mr. HORNE. Yes, sir.

The CHAIRMAN. Do you have any reason to believe that there is or has been a wasting of assets?

Mr. HORNE. We have no information of an adequate enough nature that I could—that we have any assurance one way or the other. We do know that the State of Illinois has had authority granted by the court to proceed to liquidate. We do know that they could do so and invest the money and produce income from it until all the court cases are settled, but they have for some reason not taken advantage of that authority granted by the court.

The CHAIRMAN. Does the insurance coverage of FSLIC apply alike to all insured associations whether they are State, Federal, mutual or stock companies?

Mr. HORNE. Yes, sir. If any association is insured by the FSLIC, the answer to your question would be yes.

The CHAIRMAN. But your power, your right to handle those cases that go sour is not the same power?

Mr. HORNE. No, sir. It varies from State to State and in the case of a federally chartered association there is no question, of course, whatsoever. We automatically become the receiver. In the case of State associations its depends upon State law. It depends upon the attitude of the supervisor, of the State authorities to some degree. As I pointed

out, in the State of Illinois the law is clear that we could be appointed receiver, but the fact is we have not been.

The CHAIRMAN. Do you feel that this action is necessary on two points; first of all, it would give you uniformity of coverage of rights, and second, it would make it possible for you to protect the interests of the insurance corporation?

Mr. HORNE. Yes, sir; and we think both are important, particularly the latter.

The CHAIRMAN. Senator Proxmire?

Senator PROXMIRE. I understand one of the objections to this proposed legislation, Mr. Horne, is there is a conflict of interest here, that your Board would be interested in as rapid a liquidation as possible and that rapid liquidation, understandably from your standpoint, might work adversely as far as stockholders are concerned. After all, if you are going to liquidate, especially under present circumstances—if you are going to liquidate now, the interest rates what they are, you would have to liquidate at a loss. Presumably the depositors would be taken care of. Perhaps you could see to that. But you would want to do it promptly and expeditiously and it might be that the stockholders would be virtually wiped out.

Mr. HORNE. Senator, there are two or three remarks that I think would be necessary to respond to your question. As to our liquidating in a rapidly or disorderly manner——

Senator PROXMIRE. No, I do not mean disorderly. Of course, it would be orderly. But you have a duty to liquidate this as soon as you can. That is one of the reasons you want this legislation.

Mr. HORNE. Our main purpose in this regard is not necessarily to go out and speed up liquidation, although we certainly would not want to just sit there for years and years and hope that the property would appreciate in value to take care of the stockholders. Our insurance of accounts is not to take care of the stockholder. The stockholders operate under the private enterprise system. If he loses it, he loses it. If he makes a profit, he makes a profit. We are concerned about protecting the saver and we are concerned about protecting the insurance corporation and getting a return on the money that we lay out as we pay off insured savings accounts.

We also, of course, look at whether or not and how we liquidate could disrupt the regular market forces, so we very carefully——

Senator PROXMIRE. Disrupt what?

Mr. HORNE. Disrupt the regular market forces in the liquidation of property. So we very carefully make an orderly liquidation. Our requirements, I restate, are to protect the saver, to protect the insurance corporation, to protect the market in the manner we liquidate so that we do not harm other people that might have real estate, including savings and loan associations that might have real estate holdings.

It is not our requirement that we, to the detriment of the other three things I mentioned, take care of stockholders 5, 10, 15, 20 years down the road.

Senator PROXMIRE. Well, of course, you apply this law, though, on a national basis I could see how you might discourage the formation—the attraction of equity money into savings and loans which is so necessary now. You recognize, of course, better than anybody in the country how urgently we need savings and loans, how much the housing indus-

try relies on them, how serious the homebuilding industry has been suffering and if we adopt legislation that might possibly discourage the movement of funds into this area it might be a mistake. Have you gotten any reaction at all from the State commissioners around the country, consulted with them?

Mr. HORNE. I commented on that a few minutes ago. I said that my guess is—and I have not polled the savings and loan commissioners—my guess is that their attitude probably would be somewhat in accordance with what their own State law is on this subject.

Now, I have been told by at least one State supervisor that he was very much in favor of this legislation. My guess is that the response would be mixed, that some would support it, that some would oppose it.

Senator PROXMIRE. How long would it take you to poll them?

Mr. HORNE. I guess you could poll them in a couple of hours.

Senator PROXMIRE. Why would that not be a good idea?

Mr. HORNE. I think so, if we could reach them. But let me point out something to you, Senator, if I may, in regard to your concern about the formation of new savings and loan associations. There is no reason why anybody should have any objection or any hesitancy about forming a new savings and loan association if the demand is there and if they are willing to conduct and run the association on a sound, honest, and appropriate manner.

Unfortunately, this is not always the case and this is the primary reason why some of the associations, particularly of the type we are talking about here, have gone under.

Now, what bothers me a great deal more than whether we form new associations, is whether this agency has the authority to insure the saver that his money is safe, that he is going to be paid off when it is necessary to pay him off. How we maintain the public confidence in the 5,000 associations we already have is of much greater concern to me.

Senator PROXMIRE. Has there ever been a savings and loan depositor since the establishment of insurance, who has not been paid off?

Mr. HORNE. Up to the insured amount there has not been.

Senator PROXMIRE. How much of the loss has been for those whose deposites have exceeded the insured level?

Mr. HORNE. I do not know. If I understand your last question, Senator——

Senator PROXMIRE. How much total loss has there been for depositors whose deposits have exceeded the insured level; in other words, have not been covered by insurance and therefore were a liquidation loss?

Mr. HORNE. In Marshall, there are about $3 million involved.

Senator PROXMIRE. $3 million by depositors who had more than $15,000?

Mr. HORNE. More than $10,000 at that time. At that time the insured amount was $10,000. Now it is $15,000. If it had been $15,000 at that time the $3 million would probably have been less. But here is something that took place in the case of Marshall. There was several months delay before the receiver was—before even the insured savers were paid anything. In the meantime, the insured saver lost the use of his money. Also, we have had in excess of $84 million outlay; that is, the Insurance Corporation in Marshall, and we are getting no return on that money.

Senator PROXMIRE. What concerns me most about this is that it seems that most of this trouble is in one State, in Illinois. Have you had any other problems other than Illinois in regard to—that would justify this legislation?

Mr. HORNE. So far as specific trouble is concerned, most of our troubles have been in Illinois. We had a little problem in Arizona with one receivership which we were able to work out.

Another reason we have not had any more trouble is that in most other States we have been able to effect mergers or to——

Senator PROXMIRE. It seems questionable to me to have national legislation to meet the problem of one State.

Mr. HORNE. No; it is not quite that simple, Senator. I was pointing out two things and perhaps you have made reference to only one. There is some desire to have uniformity. Presently, so far as State-chartered associations are concerned, we have 50 different setups. Some are authorized to make us the receiver, as the case in Illinois, but Illinois did not do so; and some—about five States, I believe, are required to make us the receiver. It varies from State to State. So, having uniformity, and keep in mind that this is not self-executing—we are asking here only for the authority to step in if we think it is in the public interest and if we think after the person takes over there is no possible chance to work out a solution to it. We prefer working out a solution if we can because it usually helps to preserve the liquidity of the Insurance Corporation. So, for this reason, in most cases we have in other States been able to work out such solutions. But there is an element of uncertainty here that is permeating to some degree public confidence so the fact that there is such variation from State to State is one reason that we think uniformity would be helpful.

Another is—I do not mean to harp on this—is the fact that we are the ones who have the biggest stake. When an insured institution is paid out, about 96 percent or more of what is involved comes out of the Insurance Corporation. Where does the Insurance Corporation get its money? It gets its money from the insured associations all over the United States.

Senator PROXMIRE. We have to put these things in perspective. How big is the reserve of the Corporation now?

Mr. HORNE. We have approximately $2 billion.

Senator PROXMIRE. How big have the losses been?

Mr. HORNE. I can give you tables on that, but usually——

Senator PROXMIRE They are a tiny percentage. What is it, less than 1 percent?

Mr. HORNE. No. When we pay out—usually, Senator, when we pay out an association or when we otherwise take over bad assets through the process of a merger, our average loss comes to usually between 15 and 20 percent of the assets involved.

Senator PROXMIRE. Well, you paid out something like this, but——

Mr. HORNE. This is true when we pay out one——

Senator PROXMIRE. But you will get back funds from the assets that you liquidate.

Mr. HORNE. We get back some.

Senator PROXMIRE. You might get back most of it?

Mr. HORNE. We get back most of it, yes, sir. This is true, whether we pay out or whether we resolve a case through a merger—resolve a problem through a merger.

Senator PROXMIRE. You do not have a loss of 15 to 20 percent?

Mr. HORNE. Yes, sir.

Senator PROXMIRE. Not a realized loss?

Mr. HORNE. Yes, sir.

Senator PROXMIRE. So the realized loss would be that high a percentage in your reserves?

Mr. HORNE. No, of the assets—of the assets involved.

Senator PROXMIRE. I See.

Mr. HORNE. Let me point out something else, Senator, that has a bearing on this case. I do not feel that I am revealing anything here—well I know I am not revealing anything that has not already been revealed—but when we were asking for holding company legislation last year, which you granted us. I pointed out at that time that the insured funds of a person who has a savings account in an insured association, a federally insured association, is safe; but I also pointed out that we had quite a few of what we call "Category No. 1" problem cases amounting to quite a good deal of money.

Now, I do not know whether we are going to have to pay out these or how we are going to be able to resolve them, but this is another reason—looking into the future and measured also by what has already happened and what we know can happen down the road, this is another reason we are asking for this legislation, to give us this necessary protection.

Senator PROXMIRE. Could you supply for the record how much you have paid out for Illinois?

Mr. HORNE. About $250 million already.

Senator PROXMIRE. You paid out $250 million but as you said, you expected that you would be able to get most of that back?

Mr. HORNE. We do not know how long it is going to be.

Senator PROXMIRE. Right.

Mr. HORNE. We do not know how long it is going to be.

Senator PROXMIRE. It demonstrates that time is important?

Mr. HORNE. We do not even know at this time whether it is contemplated—we rather hope that it is contemplated that once liquidation does take place and if there is anything else, that we get out the principal and get some payment on our money and that is a problem that still is in the air. As to whether or not the $84 million we have out there, which may be there 10 or 15 years, we do not know if that $84 million is paid we will get interest on it.

Senator PROXMIRE. Can you provide for the record a report on how much you have paid out over the last 5 years?

Mr. HORNE. Yes, sir. But in this regard, let me point out, Senator, that where we can avoid making payout by the process of a merger or by the process of other devices we do so because it usually is in the interests of the corporation that we do so.

Senator PROXMIRE. I just have one more question. I understand the Illinois papers have reported charges by Mr. Hulman, who is incidentally our next witness, he is the Illinois State Savings and Loan Administrator that the Board acted too quickly in the Apollo case. Do you have any comment?

Mr. HORNE. Senator, I would like to—I would just like to answer your question, sir, by pointing out that Apollo was considered to be a major problem since early 1963 and in the 5-year period since 1963 there were eight examinations.

Senator PROXMIRE. There have been what?

Mr. HORNE. Eight examinations. In the same period there were eight supervisory conferences with the officers and directors. For seven consecutive semiannual periods, commencing with October 1964, Apollo failed to make the required transfers to its reserves. Not only were no restrictions imposed during 1965 and 1966 as a result of this failure, but during 1966 the Board permitted Apollo to increase its rate to meet competition. In the early part of 1966 the principal stockholders provided written assurance that net worth would be increased by $200,000. No such increase ever took place. No such pledge was ever fulfilled. In early 1968 Apollo's earnings had declined to the point where they were insufficient to meet dividend requirements, let alone permit addition to reserves.

Book net worth, which amounted to $3.9 million in April 1963, had declined to $1.6 million. Apollo was facing losses of $2.8 million but had a net worth of only $1.6 million to absorb such losses. Clearly, Apollo was insolvent.

During 1967 and 1968 four different groups, all of whom are fine and responsible, evidenced interest in acquiring control of Apollo. All came to the conclusion that the investment necessary to revitalize Apollo was so large as to make potential portfolio return unlikely.

During March 1968, two merger proposals which would have avoided a receivership were rejected by the principal stockholder basically because such proposals provided no insurance that he would recover his investment in one way or another. And that gets back, Senator, to a point that you were making a few moments ago. Naturally, I can understand the stockholder who owns an association and, for whatever reason—usually mismanagement—in the case that I have laid out here to this committee this morning, usually mismanagement or other improper actions, he is on the verge of losing his money; then when something has to be done he wants you to go in through the Insurance Corporation and restore his equity or make a transaction or a trade that will enable him to come out with worth which actually is not there.

Now, when he cannot get that, then I can understand why he would like to sit around 15 or 20 years, use the Insurance Corporation money free of charge and wait maybe for the property to appreciate so that he would get something down the road.

What we are concerned about—I am repeating again—is the saver. That is why the Insurance Corporation was created, to protect the saver, to protect the public confidence in this industry, not to make a mismanaged association—not to use Corporation money to pay off the stockholders of a mismanaged association.

Senator PROXMIRE. Thank you.

The CHAIRMAN. Mr. Horne, I have a couple of questions that Senator Bennett, who could not be present, requested that I ask you. Part of this may be repetitive, I'm not sure. It has been reported that Mr. Hulman told the Cook County Council of Insured Savings and Loan Associations that the reserves of Marshall have increased from $4 to $11 million. Do you have any comment on this?

Mr. HORNE. Mr. Chairman, of course, I cannot assess the accuracy of the reported statement since, as I have pointed out, we have been

refused access to Marshall's books and records. From what I know of Marshall's financial condition in 1965, I somewhat doubt its accuracy. If Mr. Hulman is suggesting that, after payment of all claims against Marshall, including those of FSLIC in the amount of about $84 million, and of the uninsured depositors in the amount of $2.8 million, $11 million will be available for distribution to Marshall's permanent reserve shareholders whose investment was no more than $725,000 initially, I have two questions. First, I should like to ask whether the $11 million takes into account anticipated losses on substandard assets for which loss reserves should be established?

And second, does the figure take into account interest for the use of the funds of the uninsured Marshall depositors of $2.8 million and the $84 million paid out by FSLIC to the insured depositors? While there have been no cases involving insurance payments by FSLIC, there is a long line of judicial decisions upholding in similar circumstances the right of FDLIC to interest. From an equitable point of view, attention should be called to the fact that in essence Mr. Hulman would seem to be taking the position that those persons who had invested risk equity capital, and in a relatively small amount, would be getting a free ride and a windfall at the expense of those persons who had entrusted their savings, including the FSLIC as subrogee to the equity holders under whose management the association had been ruined.

If that is his position it could only encourage strike or sham suits and delays in the liquidation of all Illinois stock associations.

As I pointed out earlier, we still have some that are going to have to be resolved one way or another. Since, if I understand Mr. Hulman correctly, no interest need be paid to the savers, including the FSLIC, the equity holders would benefit by the delay from the necessary increase in association assets resulting from the earnings on the good loans in the association's portfolio and the free use of our money.

This would encourage stockholders to cause delays until such time as they could obtain a windfall. This may happen in Apollo and Lawn. I can only hope this is not Mr. Hulman's position.

The CHAIRMAN. All right. Let me ask one other question at the request of Senator Bennett.

Senator Bennett is concerned that State authority not be overruled except where absolutely necessary. He has suggested that the bill be amended on page 2, line 10, to read—and I quote "necessary to protect the public interest." Would you comment on this proposed change in language?

Mr. HORNE. I can, but if I may, sir, I would ask general counsel to comment. I might add this. My first reaction is that, as I indicate in the last paragraph of my prepared testimony, my concern about the point that Senator Bennett has raised and my assurance—and given my assurance that if everything was going properly, we would not exercise this right.

Now, I have stressed that this right that we are asking for is not self-executing. Now, if you go to prove necessity, my reaction as a layman is that we could get tied up in court over an extended period of time and that might result in similar delays to what we have experienced. But I would like to analyze that a little bit more carefully and probably give a better——

The CHAIRMAN. Would you do it and let us know? Of course, what it amounts to is changing, in effect, changing from "advisable" to "necessary" to protect.

Mr. HORNE. I see nothing particularly wrong with it offhand unless it would take us into court for an extended period of time.

The CHAIRMAN. Thank you very much. We appreciate your statement.

Mr. HORNE. Thank you, sir. I appreciate being called.

(The following material was subsequently received from Mr. Horne:)

FEDERAL HOME LOAN BANK BOARD,
Washington, D.C., May 29, 1968.

HON. JOHN SPARKMAN,
Chairman, Committee on Banking and Currency,
U.S. Senate.

DEAR MR. CHAIRMAN: In accordance with Senator Proxmire's request, there is attached for inclusion in the record of the hearing on S. 3436 pertinent data with respect to the 12 insured institutions in which defaults occurred and insurance payments were made during the 34-year existence of the FSLIC. In addition, I am taking the liberty of replying briefly to some of the statements made by Justin Hulman, Savings and Loan Commissioner of the State of Illinois, during his testimony on S. 3436.

Mr. Hulman stated that, during the three years of the State-administered Marshall receivership, $7.5 million had been added to the institution's reserves as of March 31, 1968, and if that had been the situation on December 31, 1964, when the State took custody of Marshall, it would have been a solvent institution. While it is not entirely clear what Mr. Hulman was attempting to prove by this statement, it is noteworthy that he carefully avoided mentioning that this increase in the reserves was due to the fact that the receivership, during the three years, had free use of (1) the Corporation's approximate $84 million paid to the insured Marshall savers and (2) the $2.8 million owned by uninsured depositors.

Had the receivership been required to pay a dividend for the use of such funds at the competitive 1964 rate of 4.5% then paid by viable savings and loan associations in the Chicago area, the reserves of Marshall, instead of increasing by $7.5 million, would have decreased by approximately $4.2 million. The association would have been insolvent on March 31, 1968 by almost $11 million and not by the admitted insolvency of $6.68 million as of December 31, 1964.

If the liquidation of Marshall is delayed long enough, there presumably will be more than enough funds to pay off the entire principal amounts due to FSLIC, the uninsured depositors and other creditors of Marshall. The important question which will then arise, as to which question Mr. Hulman has not really addressed himself, is whether any remaining funds will be paid by the State-appointed receiver to the risk equity holders before interest at the legal rate is paid to the FSLIC, uninsured depositors, and other creditors who have had to wait for payment of their claims and whose funds were used during the receivership without cost "to increase the institution's reserves."

Mr. Hulman's argument that the appointment of FSLIC as receiver of Illinois insured institutions under the provisions of the proposed bill would constitute an "obvious conflict of interest" is rather puzzling. In the first place, and even assuming for the purpose of argument that there is a conflict of interest between the FSLIC as insurer and other claimants against receivership assets, the legislature of the State of Illinois has, in the very statute which Mr. Hulman is charged with administering, authorized the appointment of FSLIC as receiver for Illinois savings and loan institutions in default. It seems rather strange for an Illinois official to raise such an issue in the face of Illinois policy which in substance authorizes such an alleged conflict. In addition, Congress has established Federal policy in this area by requiring FSLIC to be appointed receiver for Federal associations and by tendering the services of the FSLIC as receiver for State-chartered insured institutions in default.

In any event, putting aside the fact that Mr. Hulman's contention is contrary to Federal policy and that of his own State of Illinois, there is in actuality no conflict of interest. Mr. Hulman intimates that such conflict exists because of FSLIC's alleged overriding interest in maintaining its liquidity. I would be

less than candid if I did not admit that FSLIC is concerned about the maintenance of its liquidity—which is essential if it is to meet its statutory obligations and responsibilities. Supervisors of State-chartered, Federally-insured institutions should be equally concerned so as to protect the integrity of the insurance system without which no Federally-insured institution could survive. I would suggest that any State supervisor who is not concerned with FSLIC liquidity is remiss in the discharge of his responsibilities.

Nevertheless, the maintenance of FSLIC liquidity in no way conflicts with FSLIC's role as liquidator of insured institutions. The FSLIC has had considerable experience in the disposition of substandard assets of associations which have gone out of business. It is now administering more than $100 million of assets of such institutions in the Chicago area. It has never engaged in "fire sales" of the assets which it is administering nor does it intend to do so in the future. All assets are disposed of as speedily as circumstances permit and at prevailing market values. By the same token, FSLIC does not and will not, in conducting liquidations of stock associations, delay liquidations simply on the theory that perhaps in the future something may happen which will inure to the benefit of the holders of the risk equity capital of such institutions, and in this manner bail them out of a situation which they have created. If this is Mr. Hulman's or any other State Supervisor's notion of an orderly liquidation, then I strongly suggest that this is a further and compelling reason for enactment of the proposed bill.

I should also like to correct the statement by Mr. Hulman as to FSLIC's position on the payment of interest. It is FSLIC's position that all savers (uninsured depositors and the FSLIC as transferee from insured savers) and creditors are entitled first to payment of the principal amount of each of their claims. In the event there are funds available after the full payment of the principal amount of such claims, those savers and creditors are entitled to interest at the legal rate for the use of their money during the liquidation before any of the holders of the risk equity capital receives one penny. The FSLIC does not, as Mr. Hulman stated, deny the uninsured saver or the creditor the right to interest. It does, however, deny the right of the risk equity holders to receive any payment before there is full recovery, both as to principal and interest, by savers and creditors.

Finally let me say that the Board is not in agreement with Mr. Hulman's assertion that authorizing the Board to appoint the FSLIC as receiver for insured institutions *ex parte* and without notice would be immoral. If he were correct, the action of Congress in granting the Board such power with respect to Federal savings and loan associations and granting similar authority to the Comptroller of the Currency in the appointment of receivers for National banks would have to be characterized as immoral.

I appreciate the courtesies that have been extended to me and I trust that this letter will be made part of the record of the hearing on S. 3436.

With kind regards, I am

Sincerely,

JOHN E. HORNE, *Chairman.*

DATA WITH RESPECT TO INSURANCE PAYMENTS DURING FSLIC'S 34-YEAR EXISTENCE

Name and location	Default date	Total savings	Insurance liability	Loss to uninsured
Security Federal Savings & Loan Association, Guymon, Okla	Jan. 17, 1940	$165,940	$164,336	0
Community Federal Savings & Loan Association, Independence, Mo.	Mar. 1, 1940	[1] 845,020	320,720	0
Trenton Banking & Loan Association, Trenton, Ohio	Apr. 12, 1940	28,456	28,456	0
Aetna Federal Savings & Loan Association, Topeka, Kans	Nov. 4, 1940	4,974,311	4,922,245	$1,891
First Federal Savings & Loan Association, Oklohoma City, Okla	Apr. 30, 1941	1,063,474	803,910	[2] 1,834
Dickinson County Baking & Loan Association, Abilene, Kans	May 26, 1941	44,269	44,269	0
Wapakoneta Banking & Savings Co., Wapakoneta, Ohio	June 27, 1941	435,744	422,906	193
Marshall Savings & Loan Association, Riverside, Ill	Apr. 8, 1965	87,052,726	84,178,870	([3])
Gibraltar Savings & Loan Association, Phoenix, Ariz	Aug. 19, 1966	27,597,346	27,002,372	([3])
Old Reliable Savings & Loan Association, Berwyn, Ill	Sept. 13, 1966	7,325,249	7,079,790	([3])
Lawn Savings & Loan Association, Evergreen Park, Ill	Apr. 26, 1968	66,856,978	([4])	([3])
Apollo Savings & Loan Association, Chicago, Ill	Apr. 26, 1968	55,690,000	([4])	([3])

[1] The Government, through the Treasury and HOLC, owned savings of approximately $524,000.
[2] HOLC also suffered $30,921 loss.
[3] Too early for reasonable estimates.
[4] Data not yet available.

STATEMENT BY JUSTIN HULMAN, SAVINGS AND LOAN COMMISSIONER OF ILLINOIS, AND PRESIDENT OF THE NATIONAL ASSOCIATION OF STATE SAVINGS & LOAN SUPERVISORS

The CHAIRMAN. Justin Hulman, savings and loan commissioner of the State of Illinois.

Mr. Hulman, we are glad to have copies of your prepared statement. It will be printed in its entirety in the record. We will be glad for you to discuss it or summarize it or proceed as you see fit.

Mr. HULMAN. I appreciate the opportunity you have afforded me to be heard on S. 3436. My name is Justin Hulman. I am savings and loan commissioner of the State of Illinois and president of the National Association of State Savings & Loan Supervisors, which organization represents all of the States in the Union except Alaska, which State, unlike the others, does not have State-chartered savings and loan institutions. Therefore, I appear here not only as savings and loan commissioner of Illinois and as president, and behalf, of the national association, but as a reasonably well informed, experienced and knowledgeable citizen and State public officer who is seriously disturbed and concerned not only by what I believe to be unwise intendments and thrusts of S. 3436 as it will affect, if enacted, the administrations by the States of a major segment of their financial institutions and economic well-being, but as well the unseemly and unexplained haste with which the Federal Home Loan Bank Board is pressing action on this bill.

Among other things, delicate Federal-State relations will be affected, adversely to the State, I respectfully suggest. In addition, the bill will add materially to the litigation and administrative burdens of the U.S. district courts. The burdens with which those courts are and have been subject has been of great concern to you distinguished gentlemen and to the bench and bar of the Nation. As you know, the American Law Institute will assemble in annual meeting in this city tomorrow morning to finalize during the next several days its study in depth in which it has been engaged for several years looking to its recommendations to you and your distinguished colleagues in the U.S. Judicial Conference respecting Federal diversity jurisdiction to the end that the heavy load of State law cases now imposed upon the Federal courts may be lessened and their projection into otherwise purely State affairs may be alleviated. Furthermore, my counsel advised me there are serious questions of constitutional validity present in this legislation involving impingement of the right of the States under the 10th amendment of our Constitution.

I shall, with your permission, present my views, hoping they will be of assistance to you. I hasten to say that the Federal Home Loan Bank Board has afforded me and the National Association of State Savings & Loan Supervisors, and I respectfully suggest you distinguished gentlemen as well, precious little time in the premises. For that reason, not to mention my own inadequacies, which I cheerfully acknowledge, this statement is not as full and as well organized and as helpful to you as I am confident it would have been had we been afforded the time that a matter of this importance and delicacy truly merits.

As I have said, I and the National Association of State Savings & Loan Supervisors are concerned and disturbed at what appears to

us to be an unseemly and unwarranted attempt by the Federal Home Loan Bank Board to cause this proposed legislation to be rushed through this Congress without an opportunity for interested and concerned citizens, State public officials and the States themselves, reasonable time to prepare and present and afford you distinguished gentlemen their views. I first heard about, let alone learned of, this bill on Monday of last week. I did not even see a copy of it until I came to Washington 2 days later on Wednesday. As of Friday of last week no Illinois savings and load association group had received a copy of the bill. The Federal Home Loan Bank Board proceeded in secrecy. It has sought darkness, not light, from the very industry which is most vitally affected by the bill's provisions. That industry is not informed as to its content as of the date of this hearing.

Needless to say, the National Association of State Savings and Loan Supervisors is vitally interested in this legislation. Because of the manner in which the three-man Federal Home Loan Bank Board proceeded, I did not have time to poll the membership of our organization though, fortunately, I was able to poll our executive committee. Each member polled advised me that he wished me strongly to oppose the enactment of S. 3436.

At the outset let me state that whenever I refer to the Federal Home Loan Bank Board I make reference to that Board, to the Federal Savings and Loan Insurance Corporation, and to the Federal Home Loan Bank System. The three Federal statutes creating and fixing the duties and responsibilities of the Board, the Corporation, and the Bank System, and the manner in which the Board has operated under that legislation, are such that all of the functions of the Board itself, the Insurance Corporation, and the Bank System are controlled and administered by the three-man Federal Home Loan Bank Board.

In light of the statements which, with your permission, I am about to make, I hope you gentlemen will understand that none of my remarks is directed at any individual or individuals. This matter is too important to the States as well as to the Federal Govrenment to engage in personalities even were I so disposed, which I am not, and when I refer to the Board I refer to the complex.

The heart of this bill is contained in section (2)(A). Under its provisions, upon the appointment by a State authority, such as myself as Commissioner of Savings and Loan Associations of Illinois, of "a conservator, receiver, or other legal custodian" (in other words, even when all the State supervisory authority does is take custody of an insured State savings and loan institution in the exercise of his supervisory and administrative powers), the Federal Home Loan Bank Board is given authority ex parte and without notice, meaning without consultation with anyone including the interested State authorities, to appoint the Federal Savings Loan Insurance Corporation as receiver with "authority to liquidate the institution in an orderly manner or to make such other disposition of the matter as it may deem to be in the best interests of the institution, its savers and the Corporation . . ."

The State and its interested citizens are at this point and thence forward excluded from the entire matter. Under the incorporation provision of section (2)(A)(i) of S. 3436, the only court granted jurisdiction in the premises is the U.S. district court.

Of course, upon the appointment of the Corporation as receiver, and this is no different from the law today, the Corporation must proceed promptly to make immediate payment to savers having deposits in the savings and loan institution up to the limit of $15,000.

Custody, for a number of reasons, may not necessarily dictate a final closing; therefore, appointment of the Corporation as receiver immediately following a custodial action by the State, as is permitted by this bill, could obviously be unnecessarily precipitous and consequently, work to the disadvantage of the institution, the savers and the public generally. This is wholly apart from what I respectfully represent as a shocking effect of this bill that the State supervisory authority and, in fact, any representative of the State is excluded from the matter upon the appointment of the Corporation as a receiver. Thus, in effect, the bill permits and, may I say, envisages the appointment of the Corporation by the Board as receiver for State-chartered savings and loan associations in direct conflict with methods and procedures provided by State law for custody and receivership of State associations. States' statutes and supervisory regulations become sterile and of no operation or effect upon the appointment of the Corporation as receiver.

It appears to me from my reading of the Congressional Record and from statements made by members of the three-man Federal Home Loan Bank Board that the inspiration for this bill has been my appointment, as Commissioner of Savings and Loan Associations of Illinois, of competent and experienced men as receivers of Illinois associations that required liquidation rather than the Federal Savings and Loan Insurance Corporation. I have seen no statements by way of any committee or other report in support of this bill, and I know of none that has been submitted to you distinguished gentlemen warranting this indirect, but invidious, slur upon my administration of Illinois savings and loan associations. I respectfully represent to you, as I will point out hereinafter, that the administration of the liquidation of the few Illinois savings and loan associations that required liquidation has been expeditious, effective, and at minimum cost. Because of this aspect of the matter, obviously personal to me, I deemed it my duty to appear here, make a statement, and answer all your questions, particularly as they relate to the administration of State-chartered savings and loan associations, whether or not in liquidation or custody.

We in Illinois are fortunate indeed, I suggest to you, in having been able to induce outstanding and competent men with great experience in this and related fields to manage our liquidations of our State-chartered insured savings and loan associations. The demonstrated efficiency and devotion of these men to their tasks have given us in Illinois quite efficient and low-cost liquidations.

The sum of these efforts, even in the face of delaying litigation in the case of one of those associations, is the anticipated payment of 100 percent of all claims of any kind or character whatsoever involving the insured savings and loan associations in liquidation in my State under my administration. You will please permit my observation that I seriously doubt the ability of the Federal Savings and Loan Insurance Corporation could approach or even attain the same low cost and efficient liquidating administration that we have been able to accomplish; this would be no reason, I respectfully suggest, for the interposition of the Corporation into State affairs merely because the Corporation would like to do the liquidating.

At this point you must have in mind that I would be expected to submit a specific or two, and this I am pleased to do. I will take the liberty of considering with you the case of Marshall Savings & Loan Association, located in Riverside, Ill. This was the first insured association to go into involuntary liquidation in Illinois in many years.

An audit of that association, prepared by certified public accountants pursuant to my request and order to them in July of 1964, was delivered to me by them in the afternoon of December 29, 1964. My study of that audit convinced me that the association was insolvent and the insolvency was in the amount of approximately $6,680,000. The book value of the assets as reflected in that audit was approximately $110 million. At 9 a.m., 1 business day later, December 31, 1964, we took custody of Marshall, the 1 day intervening being a Wednesday, a day the association was closed pursuant to its regular practice. At the time we took custody, not only was the association insolvent, but it owed the Federal Home Loan Bank of Chicago a sum in excess of $14,000,000. Its then prospective losses, and I mean by this the difference between the market and book values of its assets as reflected in the audit, approximated $11,300,000, for which it had reserves as per the audit of about $4,700,000.

I immediately ordered that no deposits be received and no deposit payouts be made. We proceeded with our custody, consisting of primarily inventorying, managing, and conserving the assets. We undertook consideration and stimulation of various proposals for reorganization and other means looking for a hoped for reopening of the association and avoidance of receivership, liquidation, and dissolution. But these latter efforts proved of no avail, and we appointed a receiver for Marshall on April 8, 1965, for the purpose of liquidation and dissolution. Twenty-nine days after custody, the board of directors of the association commenced time-consuming, delaying, vexatious, and liquidation-interfering litigation. The Federal Savings and Loan Insurance Corporation also instituted litigation, ultimately successful, to establish its right to vote the shares of the depositors to whom they had been subrogated. The legal proceedings instituted by the board of directors are still pending. In that litigation, the directors challenge, on various grounds, both the initial custody order and the receivership order which we had entered. It was not until November of 1967 that the chancellor before whom the legal proceedings are pending authorized the receiver to proceed with the conversion of the assets of the association into cash, but this under limited circumstances.

Despite the pending litigation, the receiver proceeded with the marshaling the ascsets of the association. By March 31, 1968, approximately 3 years later, despite the interference of the litigation, the receiver had repaid the entire $14 million indebtedness to the Federal Home Loan Bank of Chicago.

The receiver presently has on hand approximately $7,500,000 in interest-bearing U.S. Government obligations. Total reserves in possession of the receiver available for losses as of March 31, 1968, amount to $12,180,000, as against the $4,700,000 on hand December 31, 1964, as I have mentioned. This means that approximately $7,500,000 has been added to Marshall's reserves in the 3-year period that this association has been under the aegis of the State of Illinois. This further means that if Marshall Savings & Loan Association, now in liquidation,

had been in the same financial condition on December 31, 1964, that it is now it would have been a solvent corporation.

I respectfully suggest, with your permission, that if the State of Illinois continues with its orderly process of liquidating Marshall Savings & Loan, every depositor, the Federal Savings and Loan Insurance Corporation, all creditors, as well as the permanent reserve shareholders, will receive the full amount of their claims against the association.

This healthy situation applies as well to the liquidation of Old Reliable Savings & Loan Association which I placed in receivership liquidation on September 12, 1966, approximately a year and a half ago. Not only will all of the creditors, every depositor, the Federal Savings and Loan Insurance Corporation, and the permanent reserve shareholders receive the full amount of their claims against Old Reliable, but it appears now that there will be an excess of cash, the disposition of which will be submitted to our State court for resolution.

In recent weeks, and in fact on April 26 of this year, I found it necessary to place two Chicago-based savings and loan associations—Apollo Savings and Lawn Savings & Loan Association—into receivership liquidation.

I deem it fortunate that I was able to induce Joseph E. Knight, recently retired director of Department of Financial Institutions for the State of Illinois, to accept appointment as receiver of these two associations, and Albert E. Jenner, Jr., of Chicago, a nationally known attorney, known, I believe, to one or more of you, to serve as Mr. Knight's counsel. I anticipate that through his joint administration of both associations Mr. Knight will be able to accomplish his work with greater efficiency and at less cost than if I had appointed separate receivers.

From what reports are available to us, I am confident that the same results that we have achieved as to Marshall and Old Reliable will be achieved with respect to Apollo Savings and Lawn Savings & Loan Association, and even at less cost by way of administration comparatively than with respect to other associations.

I take the liberty of reporting to you affirmatively and with personal conviction that I seriously doubt that liquidations by the Federal Savings and Loan Insurance Corporation can possibly proceed with greater rapidity, with lower cost or better end results that we have achieved with respect to Marshall and Old Reliable and as we confidently expect we will receive with Apollo and Lawn.

This highlights another aspect of S. 3436, that of retroactivity. The bill provides in section (2)(A)(i) that the Federal Home Loan Bank Board is to have authority to appoint a receiver, conservator, or other legal custodian to replace any receiver heretofore appointed, including those presently functioning. It is a fair conclusion, I respectfully suggest, that in the event S. 3436 becomes law in its present form the Federal Home Loan Bank Board will appoint the Corporation to replace receivers now functioning who have been appointed to liquidate State-chartered insured savings and loan associations and, in particular, the receivers who have accomplished the splendid results in Illinois I have just related to you. I am at a loss to comprehend the reason for this; certainly I see no merit in it whatsoever, and I see much that is wrong and unjustified.

I turn now to an aspect of this matter which has caused myself and counsel concern, and which I draw to your attention. It appears to us that a material defect in this bill is the obvious conflicts of interest it creates between the Corporation, as receiver, and all other beneficiaries of the receivership. It is a fundamental legal requirement that a receiver be in a position to act and that he, in fact, act impartially with respect to all parties in interest. The Corporation, once having paid depositors to the extent of $15,000 of their deposits, is invariably the largest claimant with respect to the funds and assets of the association in receivership.

In addition, the Federal Home Loan Bank is invariably, as was true of Marshall and Old Reliable, and is true of Apollo and Lawn, the next largest single claimant against the assets of any insured association in receivership. Both the Bank and the Corporataion are, in turn, under control of the Federal Home Loan Bank Board which, under this bill, is given the right, ex parte and without consultation with or notice to anyone, to place a State-chartered insured State savings and loan association into receivership and liquidation. I respectfully submit that the conflict of interest is obvious. On the other hand, as against this situation, the appointment by me or other State authorities in my position, of receivers to liquidate State-chartered savings and loan associations avoids all prospect of conflict of interest. The State appointed receiver and his counsel stand aloof from the Federal Home Loan Bank Board and the Corporation as they do with respect to other claimants against the assets of the association in receivership. They are able to and do act wholly impartially and in the best interests of all interested parties, including the Home Loan Bank and the Corporation.

The Federal Home Loan Bank Board has frequently indicated, without submission of supporting facts to justify the disturbing consequences of this legislation, that the urgency for passage of a bill such as S. 3436 is dictated by its alleged need to maintain liquidity. Such approach could lead to total subordination of the creditors, the uninsured depositor, and the man who has risked his venture capital and, most important, preclude his opportunity of a fundamental right to have his day in court.

We in Illinois object strenuously to this Federal power philosophy. This attitude has resulted in this proposed legislation which definitely militates against a proper recovery of funds for uninsured depositors and for the stockholders. In fact, it would appear from statements made at the introduction of this bill that the Federal Home Loan Bank Board is more interested in the liquidity of the Federal Savings Loan Insurance Corporation than it is in anything else.

Also, public statements made by the Federal Home Loan Bank Board indicate a definite aversion on its part to stockholder savings and loan associations. This aversion is manifested in S. 3436. I respectfully suggest that this aversion will necessarily affect the judgment of the Board in making its decision to place State-chartered savings and loan associations into receivership. I would direct the attention of this committee to line 3 on page 3 of this proposed bill. That paragraph gives the Corporation the authority to liquidate or "to make such other dispositions of the matter as it may deem to be in the best interests of the institution, its savers, or the Corporation." Sav-

ings and loan association shareholders are not even mentioned. I would submit that stockholders of Corporations in this country who contribute their capital have proved to be necessary for the advancement of the economy of the Nation. Illinois has determined that its financial economy and the interests of its savings citizens are encouraged and advanced through capital contributing shockholders savings and loan associations. I think that for any governmental agency to disregard them is to deny the States and their citizens rights which they are entitled to under law.

Another indication of conflict of interest is that the Federal Home Loan Bank Board is claiming interest on the amount it paid out to the insured deposits at the Old Reliable Savings and Loan Association. It is claiming interest from the date of the payoff until it finally receives the amount which it so paid.

At the same time, it denies the right of other claimant to interest on their claims. This is a new and novel position for any insurer and, in fact, is one which is not logically sustainable. In any event this claim certainly evidences a position on the part of the Federal Home Loan Bank Board at odds with that of creditors, uninsured depositors and stockholders.

May I also respectfully suggest that to place the Board in a position as does this bill where the Board can ex parte and without notice force an association into liquidation and then automatically become the receiver and liquidator of that association would be, I think, a grave injustice and immoral.

Further, this bill does violence to the concept of State sovereignty. It removes a State-chartered and supervised financial institution, for which the State has responsibility, completely away from its jurisdiction and supervision at a crucial time in its corporate existence.

As you are, of course, thoroughly aware, we enjoy in this country a dual State-Federal system of savings and loan associations similar to that which exists with respect to banks. This bill violates that system and, in effect, does away with this concept which has proved itself beneficial in the development of the financial complex of this Nation. S. 3436, gentlemen, if enacted, portends a like incursion upon the banking system of this country. The camel's nose will be under the banking system tent. If the fact that a State financial institution such as a State-chartered savings and loan association is to be subject to the drastic consequences of S. 3436 merely because its deposits are Federally insured, then it would follow that insured State-chartered banks are also to be subjected.

Mr. Jenner, who deservedly enjoys a distinguished national reputation at the bar, and who, for that reason, I chose to serve as attorney for the receiver of Apollo and Lawn Savings, has advised me that there is serious question as to the validity of S. 3436 as respects the States rights provisions of the 10th amendment of the Federal Constitution. I am not a constitutional lawyer myself and can say no more than that his judgment is that the unbridled right given the Federal Home Loan Bank Board by S. 3436 to shunt aside any State regulatory body, ex parte and without notice, and deprive that State of all right to participate in the liquidation and demise of one of its State-chartered financial institutions, violates the rights of the States under the 10th amendment. Because of the speed and secrecy with which

the Federal Home Loan Bank Board has pursued and pushed S. 3436, Mr. Jenner has not had an opportunity to place his views in written form worthy of this distinguished committee, and consistent with the importance of this matter. He asked me to say to you in his behalf that if you will keep this record open for 2 weeks he will be pleased to prepare and file an appropriate written opinion. He is engaged this week with the annual meeting of the American Law Institute, a 1-day meeting of the American Bar Association standing committee on the Federal Judiciary, and a 3-day meeting of the U.S. Supreme Court Advisory Committee on the drafting of uniform rules of evidence, both of which committees he is the chairman.

It is interesting to note that the FDIC has not joined, in name at least, with the Federal Home Loan Bank Board, in requesting this legislation. In fact, it is also interesting to note that public statements made by both the FDIC and the Comptroller of the Currency at the time of the introduction of the Financial Institutions Act of 1966 indicated that they joined in the request for that bill solely at the request of the Federal Home Loan Bank Board. If my memory serves me correctly, the appropriate authorities representing the FDIC and the Comptroller stated that they did not need the powers granted by that act. I ask, "Is the lust for power by the Federal Home Loan Bank Board insatiable?"

All of the activities of my office of commissioner of savings and loan associations in the State of Illinois, all of its records, are open to this committee so that it can make whatever investigation it believes is required. In addition, the activities of the insured savings and loan associations now in liquidation in Illinois are open to this committee. I cheerfully tender those records for your study. I hope that before this committee makes any decision with regard to this bill it will make a comparison of the liquidating activities of the State of Illinois and the liquidating activities of the Federal Home Loan Bank Board, both in Illinois and in Arizona and every other State where savings and loan associations, State and Federal, have been or are in liquidation.

It is my opinion and urgent recommendation to this distinguished committee that a thorough and complete investigation of the Federal Home Loan Bank Board activities over the past 10 years should be made. The records of our office indicate that just about every savings and loan association in Illinois which has been forcibly merged or gone into liquidation in recent years got into trouble prior to the year 1960. The Federal Home Loan Bank Board had within its grasp the power to have prevented considerable of the serious losses that have occurred to the Federal Savings Loan Insurance Corporation.

I would hope that the end result of such investigation would be the separation of the Federal Savings Loan Insurance Corporation from the Federal Home Loan Bank Board. This was suggested by the General Accounting Office as long ago as 1949. It was recommended by the Hoover commission, by the National Association of State Savings and Loan Supervisors, and I understand that quite recently the Savings Associations Trade Executives have also recommended that this be accomplished.

I do not think that the savings and loan industry will ever be the kind of an industry it can and should be so long as the Federal Home

Loan Bank Board remains in the position it is now. They simply have not demonstrated the capability for administering the law which has been placed in their hands.

Returning to time and time pressure as I did at the outset of my remarks, may I respectfully request that you distinguished Members of the Senate of the United States keep the record of the hearings on S. 3436 open for not less than 2 weeks to enable me and my staff to assemble further pertinent data, refine my presentation of and elucidate further the considerations I have had the privilege, with your gracious permission, to advance today and also to bring to your attention additional pertinent matters bearing upon the invalidity of, lack of wisdom in, and far reaching seriously deleterious effects which S. 3436, if enacted, will have on State-chartered financial institutions, without compensating and compelling benefits to Federal interests.

The CHAIRMAN. Thank you, Mr. Hulman. First, let me ask you a couple of questions Senator Bennett suggested for me to ask.

First, Mr. Horne referred to an offer of the National American Life Insurance Co. in his statement. I am curious as to why you failed to accept the offer. Would not that have resulted in the dismissal of all the litigation?

Mr. HULMAN. I do not know whether it would. I am represented in Illinois by the attorney general of the State. He appointed several special assistant attorney generals to represent my office and myself. They both advised me that it would be illegal and improper for me to have done that. What it would have amounted to is that I would have been selling—literally selling my statutory obligations.

There was one other factor involved there, too. I am a defendant in a suit involving $50 million. It was suggested that part of the consideration for that whole deal would have been the dismissal of the suit against me. The attorney general felt that such would not be proper.

The CHAIRMAN. The second question. I understand that you are Mr. Knight's deputy and Mr. Horne testified he promised to appoint the FSLIC receiver. Could you tell us why you did not abide by that promise?

Mr. HULMAN. I was not present when any promise was made, but I will operate on the premise that one was. At the time a receiver was appointed, it was absolutely necessary that all of the litigation, all of the litigation surrounding Marshall, be completely controlled by the State of Illinois. As I said, the attorney general had appointed several special assistants to represent our particular office. Without complete control of the litigation, the entire situation would have become completely chaotic.

Marshall was in the State courts, Marshall was in the Federal courts. It had gone up to the Supreme Court, at least once, and inasmuch as the FSLIC is definitely a governmental agency with certain statutory responsibilities which it must abide by, had there been any conflict between what the Federal Home Loan Bank Board felt necessary and had—this is assuming that the Federal Home Loan Bank Board was the receiver—had there been any conflict between what the Federal Home Loan Bank Board felt was necessary to discharge its duty as compared to what our attorneys felt was necessary to discharge their duty, I would not have blamed the Federal Home Loan

Bank Board had they chosen to accept their responsibility even though it might have been in conflict with the best interests of Marshall or the State of Illinois.

The CHAIRMAN. Well, let me ask you this. You referred to the FDIC not desiring to be covered, by this type of legislation. Is it not true that FDIC already has that authority?

Mr. HULMAN. I do not know, sir. I do not believe so.

The CHAIRMAN. I understand that they have part of it but not the absolute right to be named receiver.

The thing that disturbs me about this is this difference between your position and the position taken by the Home Loan Bank Board is that you have something here in which both of you have an interest. You offered to make the records open to us, but according to Mr. Horne they are not open to the FSLIC, which is the one agency that is primarily concerned with this.

Mr. HULMAN. They are open now, Senator. I am the defendant in at least six different lawsuits——

The CHAIRMAN. What?

Mr. HULMAN. I am the defendant in at least six——

Senator PROXMIRE. I think the response to your question was that the records are open now. The records are open now.

The CHAIRMAN. Did you say that?

Mr. HULMAN. I said they are open now.

The CHAIRMAN. Are they open to the FSLIC?

Mr. HULMAN. But let me explain. They have not been open very long.

The CHAIRMAN. Apparently Mr. Horne did not know they were open.

Mr. HULMAN. No, and it would not surprise me that he did not. It is rather recent.

The CHAIRMAN. Let me ask, is anybody here representing FSLIC?

Mr. BROULLIRE. We are unaware of this.

The CHAIRMAN. FSLIC has not been informed?

Mr. BROULLIRE. No.

The CHAIRMAN. Give your name for the record, please.

Mr. BROULLIRE. My name is John Broullire. I am deputy director of FSLIC.

Mr. MOSCOV. Alan Moscov. I am general counsel for the Federal Home Loan Bank Board. We have made requests of Mr. Hulman in writing for information pertaining to the progress of the litigation liquidation. They have been denied in every case.

The CHAIRMAN. Now, you speak of conflict. Now, you see the conflicts that are presented to this committee?

Mr. HULMAN. I see that.

The CHAIRMAN. And I do not believe those conflicts ought to exist. As a matter of fact, I do not want to see the Federal Government overriding the State governments. I believe in the independence of the operations, but I do believe that where the Federal Government is insuring the accounts the Federal Government is entitled to all of the information that may be necessary to protect its position after having paid off those accounts. In other words, I believe, Mr. Horne testified that the insurance covered 96 percent of share accounts and they had been paid off. When you talk of conflict of interest you are talking

about 96 percent of your money and it seems to me that certainly the FSLIC is entitled to that information all along. And it seems to me that a lot of this could have been avoided if that had been available.

Mr. HULMAN. May I explain this, Mr. Senator?

The CHAIRMAN. Yes.

Mr. HULMAN. As I said, I am the defendant in about six different lawsuits. Three of the lawsuits demand money damages from me. The amount of money damages total, I think, $61 million.

Quite obviously, any one of them would rather seriously impair my financial standing. I am governed by what my attorneys tell me. I can not afford not to take their advice. Because of the money damages because of the Marshall litigation, they would make available only certain information to counsel for Marshall. They advised me not to make available to the FSLIC the information which they wanted. They did not feel that they could justify making it available to the FSLIC and not making it available to counsel that was sueing me.

The CHAIRMAN. Not making it available?

Mr. HULMAN. Not making it available to the lawyer who was sueing me. And it was for that reason that the FSLIC was not given the financial information.

The CHAIRMAN. It seems to me there is a great deal of difference there. Because here is the FSLIC who has paid out millions of dollars of Federal money and it was entitled to the right to protect that money that it paid out or else it ought not to be writing the insurance.

It seems to me that it just might be that you ought to take away from FSLIC the right to insure savings and loan associations where such conditions prevail. I do not suggest this seriously, but it seems to me that it is towards such a point that this conflict is leading and I do not think there is any necessity for the conflict.

Mr. HULMAN. I agree with you. May I go on and explain the statement I made that they should have the information now?

The CHAIRMAN. Yes.

Mr. HULMAN. It now is being down through a rule of court. The circuit court of Cook County, in April of this year, passed a rule in which they stated the manner in which administrative receiverships would present their information to the court. I think it was last Wednesday or Tuesday, somewhere around there, a motion was presented by our attorneys and I know that the attorney for one of the litigants in the Marshall case has received the full financial report. I assumed that either last Thursday or Friday the attorneys for the FSLIC in Chicago also acquired that information. They will get that information.

The CHAIRMAN. I earnestly hope you work out your differences. I am going to have to leave, but Senator Proxmire is able to stay. I regret not being able to hear the other witnesses.

Senator PROXMIRE. Mr. Hulman, what is the size of your executive board, how many members serve on it?

Mr. HULMAN. Seven, sir; including myself.

Senator PROXMIRE. And you polled each of the other six with regard to this legislation?

Mr. HULMAN. I was able to get hold of four of them.

Senator PROXMIRE. And can you specify who the four were? What States they represented?

Mr. HULMAN. Yes, sir. It was Conrad York from North Carolina, Leo Mortenson from Wisconsin, William Young from Washington—and I can't think of the other one.

Senator PROXMIRE. Will you supply that name for the record?

Mr. HULMAN. I will, sir.

Senator PROXMIRE. Are you intending to poll the other commissioners to determine what their views are in this legislation?

Mr. HULMAN. I have sent letters out to all of the State supervisors. I sent them out, I think, last Tuesday. Thus far—well, I received one letter which was not in reply to the letter which I wrote, but one of the commissioners did express his view and it was the commissioner from Arizona, in which he urged me strongly as State supervisor to oppose the enactment of this legislation.

Senator PROXMIRE. It is up to the chairman how long the record will remain open, but I hope you will give the committee as you receive these results or before we close the record as much material as you have on this and whatever the views are.

Mr. HULMAN. We will be glad to do so, sir.

Senator PROXMIRE. Now, on page 13, you say that you are confident that the liquidation methods you use now are more efficient and less costly than if the board should serve as liquidator. Then on page 20 you say all the records are open to this committee. Would you file for the record a complete breakdown of the expenses of the receivers appointed with the four liquidated Illinois associations including salaries of receivers and any other remunerations paid to the receivers?

Mr. HULMAN. I can furnish you with Marshall's today. I have a set of figures with me. You can have the others, yes, sir.

Senator PROXMIRE. Fine. When you correct your testimony you will have time to put that in the record. You will be given at least several days and perhaps longer than that to correct your testimony.

Now, Mr. Horne testified that the bank board has been denied access to the books of liquidated Illinois associations. Your comments so far as of today, as I understand it, is that you have some $61 million in lawsuits pending against you and for this reason you were advised by your attorneys that you should not disclose this information, is that correct?

Mr. HULMAN. That is right, yes, sir.

Senator PROXMIRE. For the record and for the—I am sure for your own sake, I think it would be a good idea for you to indicate the nature of these lawsuits, not in detail, but just indicate—these are against your office, really, I presume?

Mr. HULMAN. No, sir, they are directly——

Senator PROXMIRE. Your position as the commissioner of Savings and Loan, is that right?

Mr. HULMAN. Yes, sir. I am the defendant in those cases as the commissioner, but with the request for monetary damages against me personally, not against the State. In other words, if a judgment is rendered against me in those cases I am personally responsible not the State of Illinois. I would have to look to the legislature to be recompensed.

Senator PROXMIRE. But they are against you in your capacity as commissioner?

Mr. HULMAN. Yes, sir, that is right.

Senator PROXMIRE. In this connection I understand that the following speaker, Mr. Slipher, makes the following assertion. I would like to have your comment on it.

In regard to this legislation, he says this. "The membership of U.S. Savings and Loan overwhelmingly supports the idea that if the funds of the FSLIC are used to pay off the holders of accounts and insured institutions the FSLIC should be in charge of the liquidation of the assets. We are not dealing here with just a Federal agency and its prerogatives, but with the strength and earnings of the corporation itself.

"The savings and loan business pays for insurance of accounts. Its premiums and premium payments built the reserve of the insurance corporation. The earnings on the assets of the FSLIC contributes significantly to the increase of the FSLIC reserve." What is your comment on that?

Mr. HULMAN. The only comment I can make is that if I thought the FSLIC could have done it better they would have been the receiver. I am the one who is responsible for those assets in the State of Illinois.

Senator PROXMIRE. Yes, but as the chairman indicated, they have such a preponderant interest. They are representing such an overwhelming proportion of the claimants that where there may be a conflict of interest it involves on the one hand the overwhelming body of the claimants and on the other people who have a lesser claim, primarily the stockholders.

Mr. HULMAN. How could I distinguish between the size of the claimants, Senator? Is there someone who has $1,000 or $5,000 invested that may mean as much to him, if not more, than what the FSLIC put out?

Senator PROXMIRE. In all liquidations all of us know when you buy stock whether it be stock in a savings and loan association or stock in a private corporation that it is risk capital. But this risk you may lose or you may gain. The prospective reward is likely to be much bigger than the reward of the lenders, but your risk is greater, so that is the reason it balances out. Certainly, in this particular case the depositors have a prior, and I might describe it as an overwhelmingly, preponderant claim.

Mr. HULMAN. I believe that is true, sir, and that is why the laws provide that the creditors shall be paid first, then the depositors and then if there is anything left then it goes to the people who risked their capital. But whoever they may be they certainly are entitled to the full protection of the law.

Senator PROXMIRE. As I understand it, what this boils down to in terms of conflict of interest, is the matter of timing of the liquidation, isn't it? That is, your apparent view is that if the Home Loan Bank Board serves as the liquidator that they will liquidate more swiftly and therefore the stockholder may lose more of his capital than if it were more leisurely or more gradually liquidated?

Mr. HULMAN. Not only the stockholder but the uninsured depositor, too.

Senator PROXMIRE. On page 17, you indicate that the board has claimed interest on its insurance payments but has denied the rights of other claimants to interest on their claims. I understand the board

has taken the position that uninsured depositors are also entitled to interest on their claims?

Mr. HULMAN. But not creditors or stockholders, sir, to my knowledge.

Senator PROXMIRE. Well, the uninsured depositors are?

Mr. HULMAN. The uninsured depositors are, yes, sir, but I do not know how you make a distinction between anybody who has any money coming from the association.

Senator PROXMIRE. Well, of course, the whole nature of the savings and loan stock investment is a little bit peculiar, perhaps, but by and large you do not think of stockholders as having a claim and being entitled to being paid in interest as a precise amount over a specific period of time the same way as you would a lender.

Mr. HULMAN. I agree with that.

Senator PROXMIRE. So that the board's position of uninsured depositors would be entitled to this, too, stands up as logical.

Mr. HULMAN. If the one is entitled to interest, yes. If interest is paid, what happens to the principal? When is the interest attached? Is it to be paid? Would it not deplete principal available for distribution to the depositors?

Senator PROXMIRE. Well, Mr. Hulman, you make a very, very strong and effective presentation and we appreciate it very much. This is a tough problem for us and we very much appreciate your testimony.

Unfortunately, I can not tell you how long the record will be held open. I know it will be held open several days. The chairman has indicated they would not announce today how long it would be held open, but we will do our best to give every consideration to your request that it be held open for 2 weeks at least.

Mr. HULMAN. Thank you very much.

Senator PROXMIRE. We were interested in your constitutional position. I understand that you are relying on Mr. Jenner and you want to file his views within the next 2 weeks.

Mr. HULMAN. If it is at all possible, yes, sir, I would.

Senator PROXMIRE. Thank you very much, Mr. Hulman.

Mr. HULMAN. Thank you.

(Mr. Hulman subsequently submitted the following material:)

ILLINOIS SAVINGS AND LOAN COMMISSIONER,
Chicago, Ill., May 22, 1968.

Senator WILLIAM E. PROXMIRE,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR PROXMIRE: Immediately prior to the conclusion of the hearing on S. 3436 on May 20, 1968, you requested that I forward to you pertinent financial statements for Marshall and Old Reliable Savings and Loan Associations, including receivership fees. You also asked for the results of a poll which I stated I was conducting of the National Association of State Savings and Loan Supervisors.

Enclosed are copies of financial statements of Marshall, prepared by Ernst & Ernst, Certified Public Accountants, that were presented to the Circuit Court of Cook County, in Illinois on May 17, 1968. They have been prepared on a quarterly basis. A receiver was appointed to liquidate Marshall on April 8, 1965.

As for receivers' fees for Marshall, please be advised that there never have been any, and that is the reason that none appear anywhere in these statements. Marshall has had two receivers, one of whom was John R. Henson and the present one being Donald D. Swope. They were, and still are, employees of the State of Illinois. Mr. Henson is the Assistant Director of Financial Institu-

tions and Mr. Swope is Supervisor of this Office. You will note that the enclosed Order signed by Joseph E. Knight appointing Mr. Henson Receiver for Marshall provides that he shall serve without compensation and, when he resigned, the Order appointing Mr. Swope carried the same provision. There is also enclosed a copy of that Order. Inasmuch as Mr. Henson, Mr. Swope and I have been able to direct the affairs of Marshall in addition to our other duties, it was my judgment not to charge the State of Illinois for our services.

Three items contained in the Statements of Operations should be amplified. The first is line 12, compensation to directors, officers and employees. There are no monies paid to officers and directors. The entire sum represents salaries paid to necessary operating employees. The second item is line 14, expense accounts. A letter dated May 21, 1968, from Albert Claessens fully explains these sums. No employees of Marshall, including the Receiver or the Assistant to the Receiver, have expense accounts at the association.

The third item is line 24, supervising examinations. Mr. Claessens, Assistant to the Receiver, is an employee of this Office, stationed at Marshall on a full time basis. At various times we have sent other State employees to assist him. Inasmuch as these State employees, when working, spend full time on the job at Marshall, it was my judgment that their regular compensation be paid by Marshall until they return to their regular State duties. Mr. Claessens and those State of Illinois employees assigned to him are paid directly by the State of Illinois. Accordingly, each month Marshall sends this Office a check in the amount paid to Mr. Claessens and his State employee assistants. This check is then deposited in the General Revenue Fund of the State of Illinois. Thus, all expenses that could be categorized as receivership fees at Marshall Savings and Loan Association have totalled $56,651,09 for the entire period of Receivership, April 8, 1965, through March 31, 1968.

Financial data similar to the enclosed is being prepared by Peat, Marwick, Mitchell & Co. for the Old Reliable Savings and Loan Association, and I am informed that they will be ready in about two weeks. The information will be forwarded to you just as soon as we receive it.

You inquired about a poll of the National Association of State Savings and Loan Supervisors that I was conducting. The replies I have received to date indicated that no Supervisor had yet seen the bill and I, therefore, sent each Supervisor a copy of the bill, together with a request for immediate reconsideration of the matter, which letter is enclosed. In fairness to the situation, all letters received to date and any to follow from the Supervisors will be mailed to you. All letters herewith enclosed were sent to me before the writers had seen the bill. Some Supervisors may state their opinions differently after reading the bill. The views of Mr. Stowell of Arizona are particularly interesting since he is the one who appointed the FSLIC as Receiver for the Gibraltar Savings and Loan Association in August of 1966. This is the case referred to in Mr. Horne's testimony.

Mr. Albert E. Jenner is in Washington and because of total consumption of his time this week on matters relating to the Federal Judiciary, it shall be most difficult for him to brief his views regarding the constitutionality of S. 3436. If, by chance, you want to contact him, he may be reached at Ex 3–1640, the Supreme Court, care of Mr. Foley, through Saturday. In view of this and all of the other factors regarding this legislation, it would be immensely appreciated if the record could be kept open until Monday, June 3, 1968, so that his views and other pertinent documentation can be made a part of the record.

I deeply appreciate the courtesies you and the Committee extended to me at all times during my stay in Washington. I sincerely hope that it will please the Committee to keep the record on S. 3436 open long enough for us to complete and deposit documents that must certainly have sufficient weight to warrant their consideration by the Committee in its deliberations on this bill.

May I again thank you for your kindnesses and ask that this letter be made a part of the records of the hearings on S. 3436.

Yours very truly,

JUSTIN HULMAN, *Commissioner.*

REPLY STATEMENT OF JUSTIN HULMAN, COMMISSIONER OF SAVINGS AND LOAN ASSOCIATIONS OF THE STATE OF ILLINOIS

Mr. Chairman and members of the Committee.

I respectfully submit the following additional comments with respect to proposed S. 3436. These comments relate primarily to the statement and testimony

of John E. Horne, Chairman of the Federal Home Loan Bank Board before this Committee.

It should be remembered at the outset that the Federal Savings and Loan Insurance Corporation is not a governmental agency operating with public funds supplied by congressional appropriation. Rather, it is an insurance company functioning on private, non-governmental funds supplied by the very savings and loan associations whose deposits it insures. Each insured association pays F.S.L.I.C. annual premiums equal to 1/12th of one per cent per year of its total (insured and uninsured) deposits. (As of March 30, 1968, the total amount of deposits of insured associations was $121,579,234,000.) F.S.L.I.C. has long since repaid the $750,000,000 of initial capital originally loaned to it many years ago by an agency of the United States, and although it has the right to borrow up to that amount again should the need ever arise, none has arisen, and F.S.L.I.C. has functioned for many years and is functioning on the premiums it collects from insured associations and which it has accumulated over the years. Accordingly, F.S.L.I.C., though it is a public federal corporation, has the characteristics of a private insurance company operating at a substantial profit.

It should also be remembered in considering the proposed bill that the three members comprising the Federal Home Loan Bank Board are also the directors of the Federal Savings and Loan Insurance Corporation. Thus, F.S.L.I.C., although in theory subject to the supervision of another federal authority of which it is independent, is in fact merely an arm of the F.H.L.B.B. and is answerable to no federal authority. The proposed bill, accordingly, would allow the principal creditor[1] of an insured state savings and loan association, *ex parte* and without notice to or consultation with any state supervisory authority or with any representative of the savings and loan associations, to appoint itself as the receiver and to proceed with and complete the liquidation without supervision, as a practical matter, by any outside authority, state or federal, administrative or judicial.

The argument that S. 3436 does not make the F.S.L.I.C. receiver in all cases but only those in which the Federal Home Loan Bank Board (whose members are the directors of F.S.L.I.C.) acts to appoint it is unrealistic and misleading. An administrative agency requesting power from Congress upon the representation that it is needed on an emergency basis surely must intend to use it. The intent of F.H.L.B.B. to use the power is made apparent by the provisions of the bill F.S.L.I.C. proposes, making it applicable retroactively to insured associations in state custody or receivership. This bill, if it becomes law, would give the Board the authority to oust presently functioning state appointed and supervised receivers in connection with the few existing receiverships of insured state savings and loan associations.

The effect of the bill would be to destroy those state statutory plans, of which Illinois is an example, which provide for rehabilitation of state-chartered savings and loan associations in appropriate cases. Appointment of a custodian, which may lead to and contemplates the possibility of rehabilitation of the association rather than liquidation (see, *e.g.*, Ill. Rev. Stat., 1967, Cr. 38, § 848 et seq.), is ground for appointment of F.S.L.I.C. as receiver and liquidation of the association under S. 3436, upon the finding that this would be "in the public interest." The latter phrase is a Mother Hubbard so indefinite in content that it could mean virtually anything and therefore means nothing. It is hardly a reasonable standard for the *ex parte* exercise of delegated powers that will have, when exercised, patently drastic effects not only upon the state-chartered association in question, its depositors, creditors and shareholders, but upon the state that chartered it.

The effect of this pliable and illusory standard of "public interest" is to confer upon the Board of Directors of the F.H.L.B.B., whose three members comprise the Board of Directors of F.S.L.I.C., the power to destroy at will any plan by state regulatory authorities for the orderly liquidation or rehabilitation of a state-chartered savings and loan association. Appointment by state authorities of a custodian or receiver pursuant to the state statutory scheme would authorize federal intervention. In attempting to exercise its statutory powers with respect to an important segment of its financial institutions, the state would be operating in limbo, never knowing when the F.H.L.B.B. and F.S.L.I.C. would exercise their absolute power to sweep away state regulation of one of its state-chartered financial institutions and substitute unsupervised federal regulation.

[1] F.S.L.I.C. becomes the principal creditor upon appointment of a receiver, since the appointment triggers its obligation as insurer to pay insured deposits. Furthermore, F.H.L.B. is the second largest principal creditor, because insured associations facing possible custody or receivership invariably have borrowed large sums from F.H.L.B.

The existence of this arbitrary power, exercisable *ex parte* without notice to or consultation with state authorities or anyone else, to displace the state regulatory scheme would have a chilling effect upon state legislatures in the framing of regulatory statutes respecting financial institutions and upon state supervisory authorities in administering the statutes.

The retroactive application of the bill to existing state receiverships would result not only in undesirable and unnecessary rupture of federal-state relationships with respect to state-chartered financial institutions, but as well, in waste and unnecessary expense to the association in liquidation. The transfer of the administration of a complex receivership from one receiver and his assistants and counsel to another receiver and its assistants and counsel could only result in costly duplication and waste. In addition, retroactive application of the bill would divest the bonded state receiver of the receivership estate but leave him with obligations imposed upon him by state law which he is powerless to discharge. Mr. Horne implies, but submits nothing whatever in support thereof, that federal receivership and liquidation would be more efficacious than state receivership. I respectfully submit that something more than mere declamation by a principal creditor of state financial institutions is called for to warrant enactment of this drastic legislation.

The unsupported argument advanced by Mr. Horne that S. 3436 will result in more speedy payouts to savers of closed state-chartered associations is without substance. Payouts to savers are made upon "default," which term is defined in Section 401(d) of the National Housing Act:

"The term 'default' means an adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured institution for the purpose of liquidation."

This definition is not changed by S. 3436, which merely gives the F.H.L.B.B. authority to create still another "default" by appointing a receiver. Unless F.H.L.B.B. exercised this authority arbitrarily and without regard for the rights of all who have property interests in the association, there should be no material difference in the time of the appointment of a receiver by the state or federal agency.

The argument that F.S.L.I.C. is the largest single claimant[2] and therefore has a better right to administer a liquidation of an insured state-chartered association than the state, which, unlike F.H.L.B.B. and F.S.L.I.C., has no monetary interest,[3] ignores the fundamental principles which under our law govern the liquidation and distribution of assets among creditors. If F.S.L.I.C. were a private insurance corporation rather than an insurance corporation created by Congress no one would contend that it, among all of the creditors, should be entitled to seize the assets of the debtor and conduct *ex parte* a liquidation and distribution thereof. The fact that F.S.L.I.C. is federally chartered does not diminish its self-interest and that of the F.H.L.B.B., or the position of conflict of interest in which they would necessarily find themselves, if given authority to order an *ex parte* liquidation and to conduct it without supervision and to the exclusion of the state that chartered the association.

The state officers, on the other hand, have a duty to all the people of the state and to all those who have interests in the association. In Illinois, for example, the Commissioner of Savings and Loan Associations, who makes the determination of whether custodianship or liquidation is required, is a public officer, an official of the State of Illinois. The custodian or receiver appointed by the Commissioner is responsible to the Commissioner, is, unlike the F.H.L.B.B. and the F.S.L.I.C., independent of all creditors and others interested, occupies a fiduciary relationship to all creditors, and has no interest that would lead him to the preferment of one creditor over others or undue preferment of creditors as a group over others having legitimate interests, such as permanent reserve shareholders.

The argument that F.S.L.I.C. would be able to carry on the receivership more efficiently and inexpensively than a receiver appointed by state authorities not only ignores the nature of bureaucracy but cannot be sustained in the face of realities. Independent local receivers with business and financial experience are much more likely to realize the maximum amounts from liquidation than are government employees of a governmental agency that is the principal creditor

[2] And the F.H.L.B. is the second largest claimant.

[3] But the state does have an understandably healthy and impartial interest in its financial institutions.

of the institution under liquidation. This is particularly so when the state liquidator is aided and supervised by state public supervisory authorities having no monetary or other self-interest.

No saving in legal expense would result from an F.S.L.I.C. receivership. The F.S.L.I.C. (as Mr. Horne's statement concedes) employs private counsel to carry out the receivership, as do the state authorities. While the F.S.L.I.C.'s private counsel may receive some advice from the counsel of the Federal Home Loan Bank Board, as Mr. Horne asserts, counsel for state-appointed receivers obtain very substantial assistance from the office of the attorney general of the state.

The argument that the federally controlled liquidation is more efficient or less expensive than the state ignores history. We confidently predict that the Illinois receiverships of state-chartered savings and loan associations will result in substantially greater benefits to depositors and other creditors at substantially lower cost than comparable F.S.L.I.C. receiverships.

Mr. Horne's criticism of the conduct of the Marshall Savings and Loan Association receivership in Illinois is unwarranted and indicates that, unfortunately, he is not fully apprised of the pertinent facts. It is true that the Marshall receivership proceedings have been pending for slightly over three years, but the state-appointed receivership has played no part in this, and had F.S.L.I.C. been appointed receiver no time would have been gained. Furthermore, while F.S.L.I.C. and the shareholders of Marshall have pursued their litigious paths, the state-appointed receiver has quietly and efficiently pursued his tasks of administering and marshalling the association's assets. He has paid the association's $14,000,000 indebtedness to the F.H.L.B. and otherwise conducted the liquidation to the full extent authorized by the State court.

A major responsibility for the delays in the Marshall litigation must be borne by F.S.L.I.C. itself. Mr. Horne has not reported the important fact that the custody case before the master in chancery was proceeding apace when F.S.L.I.C. filed a declaratory judgment counterclaim in a related proceeding which brought the whole complex of litigation to a grinding halt while the trial of the F.S.L.I.C.'s counterclaim and the shareholders' appeal thereof to the Illinois reviewing courts proceeded on its weary and expensive way. In the counterclaim F.S.L.I.C. sought a declaratory judgment that it had a right to vote the shares of withdrawable accounts which it had paid off pursuant to its insurance contract. The resolution of this wholly sterile issue favorably to F.S.L.I.C., which enabled it to elect Marshall directors and officers but gave it no practical advantage we are aware of, was obtained at the expense of the progress of the litigation and the interests of the long suffering creditors of the association. At long last, when the appeals were over and F.S.L.I.C.'s theoretical position had been vindicated, the master fell ill, and this caused further extensive delay in the proceeding. If. F.S.L.I.C.'s declaratory judgment counterclaim, which as a practical matter accomplished nothing, had not been filed and pursued, it is probable that the Marshall litigation would long since have reached the point at which liquidation would have been accomplished and liquidating dividends paid.

The assertion that the Marshall receiver was authorized by the state court to liquidate the association is not only erroneous but flies in the face of the record. The only authority to liquidate was conferred in an order, a copy of which is attached to this statement, which authorized limited liquidation when "in the opinion of the Receiver it shall be necessary or desirable, in order to collect and conserve specific assets of Defendant or to prevent undue loss or deterioration in the value thereof, to convert the same to cash . . .," subject to the approval of the court. The order also provided, "Nothing contained in this order shall be deemed to authorize the dissolution or winding up of the affairs of Defendant." Accordingly, the court in the Marshall litigation did not authorize liquidation, and the receiver had and has no authority to proceed with liquidation except for the limited purpose of conserving assets, which he has been at pains efficiently to accomplish.

Mr. Horne's statement implies that if F.S.L.I.C. have been appointed receiver of Marshall, the litigation would somehow have been avoided or shortened. This is, of course, not so. The issue presented by the litigation, viz., the existence of grounds for the custodianship and later the receivership, would have been raised and litigated in precisely the same way no matter who the receiver was. And, it may be added, the same issue would have been presented to a federal court if S. 3436 had been in effect. In fact, F.S.L.I.C. was a party to the Marshall litigation and had as much of an opportunity to expedite that litigation as it would have if it had been the receiver.

The assertion that the Marshall litigation could have been disposed of through acceptance of an offer made by a representative of National American Insurance Company, which acquired the interests of a majority of permanent reserve shareholders of Marshall, also ignores the facts. In the first place, the authority of the alleged representative of National American to dismiss all of the Marshall litigation was never established despite requests of counsel for the receiver and the Commissioner of Illinois Savings and Loan Associations. In fact, he was unable to state what position would be taken with respect to that litigation by other persons who had evidenced an interest in pursuing the litigation, or that all the litigation related to Marshall could be dismissed even by those he represented. It is not true that "the Illinois authorities flatly rejected the offer" of the representative of National American. In their last meeting with him, the matter was left open to enable him to report back on a key aspect of the matter under discussion, but he never did so. It is simply not true that the Illinois authorities have failed or would ever fail to give fair consideration to any proposal for a speedy termination of the Marshall litigation.

The allegation that Illinois receivers have failed to provide information to F.S.L.I.C. with respect to the Illinois receivership is a misleading oversimplification. The Attorney General of Illinois, representing the Marshall receiver, advised him that the receiver has an obligation to treat all creditors, F.S.L.I.C. included, equally, and that it would be unwise to give any preferment either to F.S.L.I.C. or any other interested party in the matter of information or otherwise. Accordingly, it was suggested to F.S.L.I.C. that it apply to the court for an order directing the receiver to furnish such information as F.S.L.I.C. desired, and it was further indicated that the Attorney General of Illinois, as attorney for the receiver, would make no objection to the granting of the application. F.S.L.I.C. failed to request such an order in either the Marshall or the Old Reliable case, as to which it also improperly complains it was not furnished with information.

This problem has now been resolved through the adoption by the Circuit Court of Cook County of a general order (General Order No. 3–6) requiring receivers in statutory liquidation proceedings to file a "quarterly statement of the condition of the estate being administered setting forth the assets and liabilities thereof at the close of each quarter of its fiscal year and a statement of operations for said quarter of its fiscal year." (A copy of this order is submitted with this statement.) The Commissioner and the Illinois receivers have welcomed the adoption of this order and have complied with it. Full information concerning all pending Illinois statutory receiverships in accordingly available to F.S.L.I.C.

The assertion that the Illinois Attorney General and the Illinois receivers have been less than diligent in the liquidation of Marshall is utterly without foundation. As I have pointed out, the receiver has not been authorized by the court to liquidate the association. He has authority to collect and conserve the assets of Marshall (which he has done) and to liquidate only to the extent necessary to prevent undue loss or deterioration of the value of particular assets. The receiver has thus been required to operate within strict guidelines set by the court. Nevertheless, he has succeeded in paying off a $14,000,000 debt to the Federal Home Loan Bank of Chicago. He has approximately $7,750,000 rotating in interest-bearing United States Government securities. Almost all of Marshall's real estate is being managed by Baird and Warner and Arthur Rubloff and Company, two of the largest and most reputable real estate management firms in Chicago. The results of the receiver's administration of the assets of Marshall have been furnished to this Committee.

All the litigation involving the state administration of the Marshall receivership is being handled by the Honorable William G. Clark, Attorney General of Illinois, and his assistant attorneys general. The assertion that the Attorney General of Illinois and the Illinois courts are not doing everything possible to expedite the Marshall litigation is an unwarranted reflection upon the Attorney General and the Illinois courts.

It is the position of F.H.L.B.B. that adoption of S. 3436 would reduce litigation. So far as the right to proceed with the liquidation is concerned, this is not necessarily true, for the question of the right to appoint F.S.L.I.C. or any other entity or person as receiver is subject to judicial review; that question carries with it the question of whether grounds existed under state law for the appointment of a custodian on December 31, 1964 or receiver on April 8, 1965. It is true that once the propriety of the liquidation has been judicially determined and any other pertinent litigation has been disposed of, S. 3436 would permit F.S.L.I.C. to liquidate the association virtually without supervision, while under the state liquidation pattern court approval understandably must be obtained

for the sale of assets and other major steps in the liquidation. This requirement, however, has not been and is not likely to be a source of delay. Court supervision at this stage, and the requirement of public reporting of the progress of the liquidation, are wholesome requirements from which S. 3436 would entirely exempt F.S.L.I.C. This exemption, coupled with F.S.L.I.C.'s interest as the major creditor of the association in liquidation, would invite arbitrary disregard of the rights of other creditors and of permanent reserve shareholders.[4]

F.S.L.I.C. points to a liquidation of an Arizona-chartered savings and loan association for which F.S.L.I.C. has been appointed receiver, as indicating that it can liquidate with greater efficiency and dispatch than a receiver appointed under a state regulatory statute. Mr. Horne supplies no facts; he rests upon mere assertions. We are advised by the Arizona Superintendent of Banks (who appointed the F.S.L.I.C. as receiver) that no liquidating dividend has yet been paid by F.S.L.I.C. in the Arizona receivership despite the fact that F.S.L.I.C. was appointed receiver in August 1966 and the further fact that (unlike Marshall Savings & Loan) there has been no litigation challenging the validity of the liquidation proceedings.[5] Moreover, the Arizona Superintendent of Banks, in a letter dated May 14, 1968 addressed to me, and submitted to this Committee, expresses strong opposition to S. 3436 and expressly requests me, as President of the National Association of State Savings and Loan Supervisors, to take a stand against the bill. Nothing in the Arizona experience supports F.S.L.I.C.'s claim to superiority in the conduct of receiverships.

In closing, it should be pointed out that Congress long ago adopted and has consistently adhered to a policy of leaving the liquidation of state savings and loan associations to the states. In *Security Building & Loan Association* v. *Spurlock* 65 F. 2d 768, 771 (9th Cir. 1933), the Court of Appeals for the Ninth Circuit said (65 F. 2d at 772) :

"It is clear from the amendment excepting building and loan associations [from the Bankruptcy Act] that Congress intended to cede jurisdiction over these associations to the states and allow the affairs of such building and loan associations to be administered, and its assets distributed under the state laws and state supervision rather than under the Bankruptcy Act. The [Senate] reports above quoted put the matter beyond doubt, if there is otherwise room for doubt."

It is ironic that Congress, having exempted state savings and loan associations from the rigors of the Bankruptcy Act in deference to the strong local interest in the supervision and control of such associations, is now being asked to impose upon them a much harsher scheme than bankruptcy. No reorganization or other rehabilitation plan is contemplated. Instead of the notice and judicial supervision provided for in the Bankruptcy Act, S. 3436 provides for an order to be entered *ex parte* and without notice and liquidation to be conducted *ex parte* and without any disclosure requirement or supervision by any authority state or federal.

Congress should not depart, I respectfully submit, from the wise policy of non-interference with state regulation of state-chartered savings and loan associations.

I wish to thank the Committee for granting me the opportunity to express these views on the proposed bill.

In the Circuit Court of Cook County, Illinois, County Department, Chancery Division

No. 65 CH 1875

JUSTIN HULMAN, COMMISSIONER OF SAVINGS AND LOAN ASSOCIATIONS OF THE STATE OF ILLINOIS, PLAINTIFF, v. MARSHALL SAVINGS AND LOAN ASSOCIATION, A CORPORATION, DEFENDENT

ORDER

This cause having come on to be heard on the Petition of Justin Hulman, as Commissioner of Savings and Loan Associations of the State of Illinois, Plaintiff herein, for an Order Authorizing the Receiver of Marshall Savings and Loan

[4] It is difficult to assess F.S.L.I.C.'s position in this regard. Mr. Horne complains, albeit without justification, that F.S.L.I.C. has not been able to obtain all the information it has sought. On the other hand, under S3436, F.S.L.I.C., if appointed, will conduct liquidation *ex parte*, without supervision by a court or otherwise, without notice to, or any participation whatever on the part of interested state authorities, and with no obligation to provide information to admittedly vitally interested creditors, shareholders and others.

[5] It is noteworthy that Mr. Horne complains that a liquidating dividend has not as yet been paid by the receiver of Old Reliable Savings and Loan, but he fails to mention that the receiver was appointed in September 1966, one month *after* the appointment of F.S.L.I.C. as receiver of the Arizona association.

Association to Proceed With the Liquidation, Winding Up, and Dissolution of the Association, and on the Answers thereto filed by Federal Savings and Loan Insurance Corporation, National American Life Insurance Company, William Flowers, Edgar A. Rankin, and Gordon Ingebritson, etc., and the Court having heard arguments of counsel representing all parties before the Court; and

This Court having entered an order in this cause on February 2, 1966, which provided in part as follows:

"4. John R. Henson, as Receiver of Marshall Savings and Loan Association, is not presently authorized to proceed with the actual liquidation and dissolution of Defendent.

"5. Since April 9, 1965, John R. Henson, as Receiver of Marshall Savings and Loan Association, has been and is presently vested with the power, duty, and responsibility of collecting and conserving the assets of Defendant until it can be determined whether he is authorized to proceed with the actual liquidation and dissolution of Defendant as prayed for in the Complaint herein.

* * * * * * *

"9. This order is without prejudice to Plaintiff's right:

"(a) To apply to the Court for further orders regarding the powers, duties, and status of the Receiver,

"(b) To apply to the Court for orders authorizing the exercise of powers enumerated in Section 10–3 of the Illinois Savings and Loan Act, to the extent not inconsistent with the purposes of collecting and conserving the assets of Defendant and not constituting an actual liquidation or dissolution of Defendant."

The Court finds:

1. That this cause, as well as the cause entitled Flanagan v. Hulman, 65 CH 456, are still pending in this Court and undetermined, and that considerable additional time may pass before said causes are fully and finally determined.

2. That in the meantime, in order to collect and conserve the assets of Defendant and to prevent undue loss or deterioration in the value thereof, it may be or become necessary from time to time for the Receiver to convert certain assets to cash or otherwise to exercise certain of the powers enumerated in Section 10–3 of the Illinois Savings and Loan Act.

3. That it may be in the best interests of all parties to the pending litigation and of all other parties claiming any right or interest in Defendant, regardless of the ultimate outcome of said litigation, for the Receiver to be authorized from time to time during the pendency of the litigation to convert certain assets to cash or otherwise to exercise such of the powers enumerated in said Section 10–3 to such extent as may be necessary to more effectively collect and conserve the assets of Defendant and prevent undue loss or deterioration therein.

It is Therefore Ordered:

1. Whenever in the opinion of the Receiver it shall be necessary or desirable, in order to collect and conserve specific assets of Defendant or to prevent undue loss or deterioration in the value thereof, to convert the same to cash or otherwise to exercise with respect to such assets any of the powers enumerated in Section 10–3 of the Illinois Savings and Loan Act, the Receiver is authorized to proceed with the taking of such action, subject, however, to approval by order of this Court, and to petition this Court for appropriate orders authorizing and approving such action, all in conformity with the provisions of said Section 10–3.

2. Notice of all such Petitions shall be served upon counsel representing all parties to this cause, and opportunity shall be afforded all parties to be heard on all such Petitions. Nothing in this Order shall be deemed to constitute an expression of opinion by the Court as to the action to be taken on any such Petition.

3. The Receiver is authorized to invest and reinvest proceeds coming into his hands, including the proceeds of any sales of assets of the Defendant, in accordance with the powers conferred upon him by law, as defined in the aforesaid Order entered by this Court on February 2, 1966, and shall retain all such proceeds pending further order of this Court entered in this cause or in cause Number 65 CH 456, or in both, with respect to the distribution or disposition thereof.

4. Nothing contained in this Order shall be deemed to authorize the dissolution or winding up of the affairs of Defendant.

5. Nothing contained in this Order shall be deemed to impair, abrogate, or restrict the provisions of the aforesaid Order entered by this Court on February 2, 1966.

Enter:

(S) HARRINGTON,
Judge of the Circuit Court.

In the Circuit Court of Cook County, Illinois

General Order No. 3–6

Subject: Filing of Reports in Statutory Liquidation Proceedings.

It Is Hereby Ordered that:

(a) In any action filed in the Circuit Court of Cook County seeking liquidation, dissolution or other statutory relief under any statute of this state where a liquidator, receiver or other similar officer has been appointed by and is acting under the authority of any executive or administrative official of this state, the liquidator, receiver or other such officer shall file with this court a quarterly statement of the condition of the estate being administered setting forth the assets and liabilities thereof at the close of each quarer of its fiscal year and a statement of operations for said quarter of its fiscal year.

(b) In any such action pending in the Circuit Court of Cook County on the date of this order, the liquidator, receiver or other such officer shall file within 60 days of this date quarterly statements as aforesaid covering each fiscal quarter since the filing of the action, and thereafter for each subsequent quarter of its fiscal year.

(c) Each report shall be filed on a detailed form authorized by the state official having jurisdiction of said liquidator, receiver or other such officer.

(d) Copies of said quarterly reports shall be served upon each counsel of record who has filed an appearance in the proceeding on behalf of any party named in the Complaint or on behalf of any party added thereafter by order of court.

Dated this 22nd day of April, A.D., 1968. This order shall be spread upon the records of this Court and published.

Enter:

JOHN S. BOYLE,
Chief Judge, Circuit Court of Cook County.

ILLINOIS SAVINGS AND LOAN COMMISSIONER,
Chicago, Ill., June 1, 1968.

SENATE BANKING AND CURRENCY COMMITTEE,
New Senate Office Building,
Washington, D.C.

GENTLEMEN: Enclosed is a statement prepared by me which is a reply to the testimony of Chairman John E. Horne, of the Federal Home Loan Bank Board, given on May 20, 1968, regarding proposed Senate Bill S. 3436. There are several attachments to my statement which are also enclosed.

Also enclosed are a number of letters received by me from various State Savings and Loan Supervisors throughout the country. These replies were sent to me as a result of a letter from me requesting their stand regarding S. 3436.

I respectfully request that all of the enclosed material be added to the record on S. 3436 and be made a part thereof.

Sincerely yours,

JUSTIN HULMAN.

STATE BANKING DEPARTMENT,
Phoenix, Ariz., May 14, 1968.

Mr. JUSTIN HULMAN,
President, National Association of State Savings & Loan Supervisors, Chicago, Ill.

DEAR JUSTIN: I note in the May 10 issue of National League of Insured Savings Associations Letter that there has been a bill introduced in the Senate providing for the Federal Savings and Loan Insurance Corporation to be named

receiver of a state savings and loan association where they have to pay out on insured accounts. I have a feeling that this might be aimed at you because I understand you refused to recommend them for receiver in at least one instance.

I have today written both my Senators urging that they vote against such legislation, and I am asking you as President of our association to urge the association to take a stand against the bill. If the association does not care to take such a stand, then I am questioning the reason for the associations' existence.

In almost six years of being a member of this association I cannot recall a single instance when a firm stand was taken to override the thinking of the Federal Home Loan Bank Board. I think it is time we stopped such foolishness and stood up for the rights of state supervisors.

Kindest regards.

Sincerely,

F. J. STOWELL.

DEPARTMENT OF INVESTMENT,
DIVISION OF SAVINGS AND LOAN,
San Francisco, Calif., May 24, 1968.

NATIONAL ASSOCIATION OF STATE SAVINGS & LOAN SUPERVISORS,
Chicago, Ill.

(Attention of Mr. Justin Hulman, president).

GENTLEMEN: This will acknowledge receipt of your communication of May 21, 1968 pertaining to the above bill. In the absence of Dr. Preston Martin, Savings and Loan Commissioner, I am presenting to you our view of this bill. The contents of this communication have been discussed with Dr. Martin.

The bill as it is presently written is objectionable. If the Federal Savings and Loan Insurance Corporation is called upon to pay savers it should be in the position of being able to administer the assets of the association in order to recoup its loss and to generally maintain control over the association. The present bill should be amended to provide that if a state supervisory authority appoints a receiver or other legal custodian for the purpose of liquidation that the Bank Board should have the power to appoint the Insurance Corporation as receiver if the state supervisory authority has not done so.

The supervisory authority in California would want the ability to appoint a conservator or receiver for purposes other than for liquidation in order to work out possible internal problems such as management quarrels or to assist in the consummation of a merger. Under these conditions the Bank Board should not have the power to appoint the Insurance Corporation as receiver nor should there be a need for doing so where there has been no appointment of a legal custodian for purposes of liquidation.

In addition the bill should be clarified to provide that if the Bank Board appoints the Insurance Corporation as receiver the association should have the same right as a federal savings and loan association to contest the appointment of such receiver by review.

If the foregoing objections were to be clarified by amendment we would have no objection to the bill.

Sincerely,

SAUL PERLIS, *Chief Counsel.*

ANALYSIS OF S. 3436

The provisions of S. 3436 are applicable wherever: (a) any "conservator, receiver, or other legal custodian" is appointed for a state-chartered, insured association regardless of whether "for the purpose of liquidation," *or* (b) such institution is "closed" and the Federal Home Loan Bank Board determines it "advisable in the public interest" to appoint the Federal Savings and Loan Insurance Corporation receiver.

Whenever the provisions of the Bill are applicable, the Board and the Insurance Corporation would have all the power, to the exclusion of state officials and all courts, federal and state, that they now have over federal associations in receivership, even though no ground for appointment of a receiver existed. Both federal and state courts would be prohibited from interfering with "the exercise of powers or functions" of the corporation "except as otherwise provided" in Sec. 5(d) of the Home Owners' Loan Act. Since S. 3436 would authorize the appointment of the FSLIC as receiver even though grounds for such an appoint-

ment under such section 5(d) did not exist, judicial review would seem to be largely non-existent. The Board's power to regulate would encompass reorganization, liquidation and merger. In the questionable event the Bill, if enacted, is held to be constitutionally valid, all provisions of state law in conflict with such regulations would arguably be subordinated to Bank Board regulations. Without making any of the findings prerequisite to compulsory liquidation of a federal association, the Board could override conflicting provisions of state law and proceed to liquidate—or merge or reorganize or operate—the association.

The combination of the provision excluding both federal and state courts from taking "any action for or toward the removal" of the corporation as receiver, or restricting or affecting "the exercise of (its) powers or functions" except as otherwise provided in Sec. 5(d) of the Home Owners' Loan Act of 1933 as amended, with the elimination of any necessity that the grounds for appointment of a receiver under Sec. 5(d) exist, would give the Bank Board greater power in these respects over state-chartered associations than it has over federal associations.

CONSTITUTIONALITY

The Bill presents grave constitutional questions. No opinion can be expressed on these questions without study and consideration probihited by time factors.

NECESSITY

The necessity, if there is such, for the Bill apparently flows principally from two factors which have been the subject of discussion within the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the industry for decades:

(1) Possible asset wastage of receiverships administered by state administrative authorities or state courts with the FSLIC on the sidelines and unable to protect itself as the insurer of the institution's savings accounts; and

(2) Possibility that savers in insured institutions may not be able to withdraw their savings on demand, or within a reasonable period of time, in situations which, under the present definition of "default" in N.H.A., Section 401(d), do not permit the FSLIC to pay insurance on such accounts.

APPRAISAL OF "NECESSITY"

Every person sophisticated in this area has had to recognize for many years that the two factors listed under "necessity" are genuine matters of important and even urgent concern that require some form of substantial legislative action. The industry in California as recently as this year gave the state authorities specific legislative proposals in the interests of meeting these problems to the extent that they may be said to exist in California. In fact, the California League has long been in the forefront of those demanding that both federal and state authorities face up to these problems.

That legislation is necessary does not *ipso facto* make the provisions of S. 3436 necessary or desirable. Of all the suggestions ever made to meet these problems, this is among the most drastic, and constitutionally the most questionable.

ALTERNATIVES

The legislation proposed by the State League to the California authorities was the product of careful and considered judgment and balancing of factors, and is an alternate to S. 3436. Innumerable other alternatives have been proposed, or could be devised.

SAVINGS AND LOAN DEPARTMENT,
Denver, Colo., May 20, 1968.

Mr. JUSTIN HULMAN,
President, National Association of State Savings & Loan Supervisors, Chicago, Ill.

DEAR JUD: I am opposed to further concentration of authority in the Federal Home Loan Bank Board as would be the case if Congress passed legislation making mandatory the appointment of the FSLIC as receiver for insured state chartered associations.

I am not familiar with the laws of Illinois and do not know what legal roadblocks can delay the liquidation of an association when you as Commissioner decide there is no alternative to liquidation. Neither have I been informed by the Board as to why they are trying to force such controls on all states in order to be able to cope with a situation, whatever it may be, in Illinois.

If I believe for one minute that the Board could be expected to act on the merits of each case in the application of regulations, I would be less opposed to granting them additional authority.

Sincerely yours,

GUY L. REED,
Savings and Loan Commissioner.

BANKING DEPARTMENT,
Hartford, Conn., May 16, 1968.

Mr. JUSTIN HULMAN,
President, National Association of State Savings & Loan Supervisors, Chicago, Ill.

DEAR JUD: I think that the National Association of State Savings and Loan Supervisors should be represented at the hearing on May 20, 1968 before Senator Proxmire's Senate Financial Institutions Subcommittee in connection with the proposed legislation whereby the Federal Home Loan Bank Board would be appointed receiver of insured savings and loan associations in liquidation.

This situation would be tolerable in those states that do not have provision for the appointment of a receiver for a state-chartered savings and loan association in the event that some difficulty has arisen which would require the appointment of a receiver. In states such as Illinois and Connecticut, the proposed legislation would definitely be an invasion of state rights if it were mandatory for the Federal Home Loan Bank Board to take over the receivership in case of trouble.

I hope that our association will be successful in blocking this type of legislation.

Yours very truly,

REINHARD J. BARDECK,
Deputy Commissioner.

OFFICE OF THE COMPTROLLER,
Tallahassee, Fla., May 23, 1968.

Mr. JUSTIN HULMAN,
President, National Association of State Savings & Loan Supervisors, Chicago, Ill.

DEAR MR. HULMAN: Thank you for your memorandum of May 20, 1968, above reference.

As you are perhaps aware, Section 667.13, Florida Statutes, provides that FSLIC may act as receiver or liquidator upon appointment of the State Comptroller.

Sincerely,

FRED O. DICKINSON, Jr.,
State Commissioner of Banking.
By EDWARD J. LEE,
Assistant Deputy Commissioner.

DEPARTMENT OF FINANCIAL INSTITUTIONS,
Indianapolis, Ind., May 27, 1968.

Mr. JUSTIN HULMAN,
President, National Association of State Savings & Loan Supervisors, Chicago, Ill.

DEAR JUSTIN: We today received a copy of the above captioned bill and, of course, have not had the full opportunity to review its provisions to our related Indiana Financial Institutions Act, or have the Bill thoroughly reviewed by our legal counsel, the Office of Indiana Attorney General.

I have discussed the proposed Federal legislation with Dr. Donald H. Sauer, Director of the Department, and at this date, we may not take strong position for or against the Bill.

Sincerely,

MACK W. SLUSSER,
Supervisor, Building and Loan Division.

DEPARTMENT OF BANKING AND SECURITIES,
Frankfort, Ky., May 22, 1968.

Mr. JUSTIN HULMAN,
President, National Association of State Savings & Loan Supervisors, Chicago, Ill.

DEAR MR. HULMAN: The Kentucky law presently provides that the Federal Savings and Loan Insurance Corporation shall be tendered appointment as receiver or co-receiver if a state-chartered insured savings and loan association encounters liquidation problems. This is enabling legislation and not mandatory.

Since the state of Kentucky presently has such consideration under KRS 289.760, subsection (2), we do not favor additional legislation in this direction.

Sincerely yours,

E. G. ADAMS, *Commissioner.*

DEPARTMENT OF BANKS AND BANKING,
Augusta, Maine, May 16, 1968.

Mr. JUSTIN HULMAN,
President, National Association of State Savings & Loan Supervisors, Chicago, Ill.

DEAR MR. HULMAN: In reply to your inquiry of May 14, I have no objection to the passage of this Bill.

Very truly yours,

IRL E. WITHEE,
Deputy Bank Commissioner.

OFFICE OF THE COMMISSIONER OF BANKS,
Boston, Mass., May 22, 1968.

Mr. DONALD D. SWOPE,
Supervisor, Office of Savings and Loan Commissioner,
Springfield, Ill.

DEAR DON: Not having had the benefit of reviewing Jud's testimony before the congressional committee on Banking and Currency, but simply reading Chairman Horne's expression of his Agency's opinion to this same committee, I find myself in a position unable to express any opinion of the proposed legislation. Reminding you once more that as a State Supervisor, regulating no federally-insured banks, I am of the firm belief that any expression of opinion on my part would be of little consequence to any one of the interested parties.

While I usually try to support the policies and positions of our Association, I feel that taking sides in this controversial legislation would put me in the proverbial position of "the man with two hats". In this sense, Don, I feel that it would be incompetent and irrelevant for me to offer any expression of opinion to either the Federal Home Loan Bank or to any other interested party or agency.

With cordial regards, I remain,

Yours truly,

DAVID J. COLEMAN,
Director of Cooperative Bank Examinations.

DEPARTMENT OF COMMERCE,
Lansing, Mich., May 23, 1968.

Mr. JUSTIN HULMAN,
President, National Association of State Savings & Loan Supervisors, Chicago, Ill.

DEAR MR. HULMAN: We have reviewed the proposed Federal legislation reflected in bill No. S. 3436 and the testimony of Chairman John Horne of the Federal Home Loan Bank Board before the Committee on Banking and Currency of the United States Senate. You have asked our views with respect to this proposed legislation.

We do not object to the principle of the Board being appointed as receiver by our courts with the approval of the State Supervisory Authority and would probably welcome this appointment.

We do object to legislation which usurps the right of the State Supervisory Authority and our courts to determine when, or if, the FSLIC, alone, shall act as receiver in the case of a jointly-supervised insured State-chartered savings and loan association.

Congress has by its actions, concentrated in a three-man Federal Home Loan Bank Board, both the chartering and regulation of Federal associations, and, the operation of the Federal Savings and Loan Insurance Corporation which insures both the State and Federal associations. The Board has already been provided regulatory authority which has been utilized to defeat the value to the public of the dual system of chartering of the savings and loan associations by requiring the State association, if it is to be insured, to function under equivalent rules to the Federal association.

This Board may accept or reject an application for insurance, establish the premium costs and the reserve requirements. It establishes rules and regulations for the conduct of the association and interprets its own rules. It examines the affairs of the association and it has case-basis "cease and desist" powers which were given with the promise to remove broad regulatory rules which were aimed at a few improperly operated associations. Such promise has not yet been fulfilled.

Now if they have failed in assuming the joint supervisory responsibilities for which they have the power they would like the additional power to determine if, or whether to liquidate an association.

Our mutual type Michigan associations have no control over the risks that the Insurance Corporation assumes either as to the corporate structure of the association insured, its geographic location or the quality of its management. We only know they are anxious to assume this risk and to broaded their scope of regulatory powers over all associations.

They already have the power to cancel insurance coverage for failure of an association to function in a safe and sound manner which, if threatened, would bring much pressure to bear on any State regulatory or supervisory authority whom they otherwise might have failed to control completely.

The continued request for additional powers can only realistically result in the conversion of the State-chartered association to the Federal-chartered, or the advent of a new and different insurance program which would result in the withdrawal from the FSLIC and the Bank Board System.

Sincerely yours,

B. D. BENNETT,
Director, Saving and Loan Division,
Financial Institutions Bureau.

DEPARTMENT OF BUSINESS AND ADMINISTRATION,
Jefferson City, Mo., May 23, 1968.

MR. JOHN J. BRADY,
Executive Secretary, Advisory Council,
Federal Home Loan Bank Board, Washington, D.C.

DEAR MR. BRADY: The correspondence has been received by this office concerning Bill S. 3436 which was introduced in the Senate at the request of the Federal Home Loan Bank Board. A copy of this Bill has been studied together with the provisions of our Revised Statutes 369.575 RSMo which authorizes the Supervisor to request the Federal Savings and Loan Insurance Corporation to act as receiver in cases of default and liquidation of state chartered associations.

As I read this Senate Bill it appears that the Federal Home Loan Bank Board has the discretionary power to appoint a receiver in default cases involving state chartered associations where this is advisable in the public interest. Certainly I have no objection to the appointment of the Federal Savings and Loan Insurance Corporation as receiver in cases where a default has occurred and is occurring and an association is in default and liquidation.

However, I do not think that this power should be granted to the Board in all instances or for any reason whatsoever especially since the Board by recent Federal legislation has the power to issue Cease and Desist orders wherever there are unsafe and other unsound practices involved.

Very truly yours,

FRANK J. CORDES, Jr., *Supervisor.*

DEPARTMENT OF BANKING,
Lincoln, Nebr., May 23, 1968.

Mr. JUSTIN HULMAN,
President, National Association of State Savings & Loan Supervisors, Chicago, Ill.

DEAR MR. HULMAN: We have your communication of May 21, 1968 relative to S3436 which has been introduced into the Senate at the request of the Federal Home Loan Bank.

We have a telegram from Mr. John J. Brady, Secretary of the Federal Home Loan Bank Board, in which we are lead to believe that this measure would permit FSLIC to act as receiver in certain instances, but that it would not be mandatory that it so act.

Our Attorney for the Department in reading the bill came to the conclusion that the appointment of the FSLIC as receiver was optional.

Frankly we have no objection to the FSLIC operating as receiver of insured building and loans and would enter no objection to the passage of the bill.

Yours very truly,

C. R. HAINES,
Director of Banking.

DEPARTMENT OF BANKING AND INSURANCE,
Trenton, N.J., May 21, 1968.

JUSTIN HULMAN,
President, National Association of State Savings & Loan Supervisors, Chicago, Ill.

DEAR JUSTIN: Please refer to our letter to you of May 17, 1968 and to our telephone conversation today relative thereto.

As stated in the letter, we do not have before us the bill proposed by the Federal Home Loan Bank Board relative to "receiverships" of savings and loan associations where the accounts of the members are insured through the Federal Savings and Loan Insurance Corporation.

As set forth in our letter, because of the great stake the F.S.L.I.C. has in a matter of this kind, we are of the opinion that our law which permits the Board to elect to join with the Commissioner in a liquidation is as it should be. In this way the State of New Jersey is represented as it should be in connection with one of its corporate creatures (the state-chartered association) because there is always the possibility that members with accounts above the $15,000 maximum pay off by the F.S.L.I.C. are involved.

Any federal legislation proposed which would have the effect of completely eliminating the State from a liquidation proceeding, would, in our opinion, be improper and perhaps of doubtful legality.

We do not believe that any federal legislation should be enacted which would have the effect or objective of eliminating the State from the picture completely.

As indicated in our letter of May 17, 1968 we are of the opinion that our statute law in this regard is the proper answer to the desire of the federal people to be represented in a liquidation of a state-chartered, federally insured association. And our statute was enacted in this regard years ago when the F.S.L.I.C. was insuring many of our associations in New Jersey.

Sincerely yours,

JEROME B. MCKENNA,
Deputy Commissioner.

DEPARTMENT OF COMMERCE,
Columbus, Ohio, May 22, 1968.

Mr. JUSTIN HULMAN,
President, National Association of State Savings & Loan Supervisors, Chicago, Ill.

DEAR JUD: I have your letter of May 21, 1968, enclosing copy of Bill No. S. 3436 which you state was introduced in the Senate at the request of FHLBB.

On May 20, 1968, I wired you as follows:

"S. 3436 has serious implications of conflict of interest and erosion of State rights. Am not unsympathetic with FSLIC problem but initially adverse to its proposed solution. I urge delay in committee action to provide more time for study of the measure and alternative solutions to the problem it seeks to solve."

At this time, there is very little substance that I can add to what already has been stated in my telegram, as it seems that it still states my position.

For your information, I am attaching a copy of "Analysis of S. 3436" which was prepared by the Ohio Savings and Loan League, and copy of which I received May 20. Before more can be said, the Bill will need to be studied in detail as soon as matters demanding my attention can be put aside.

Sincerely,

RAYMOND P. DAY,
Superintendent of Building and Loan Associations.

ANALYSIS OF S. 3436

S. 3436, a bill to provide for the appointment of FSLIC as receiver, was introduced on May 3 at the request of the Federal Home Loan Bank Board by Senators Sparkman, Proxmire and Bennett. The bill would empower the Federal Home Loan Bank Board to appoint FSLIC as receiver of an FSLIC insured State-chartered savings and loan association whenever either an official custodian has been appointed by some agency other than the Federal Home Loan Bank Board or the institution has been closed by or under State law and whenever in either event appointment of FSLIC as receiver is in the public interest. Under these circumstances, FSLIC would have the same authority as receiver that it would have as receiver of a Federal savings and loan association. FSLIC as receiver would take over control of the association from any official custodian appointed by any agency other than the Federal Home Loan Bank Board.

As receiver, FSLIC could liquidate the association in an orderly manner or make other disposition of the matter as it deems in the best interests of the association, its savers and FSLIC. In acting under this receivership authority, the Board takes the place of any court or other public authority having jurisdiction over the matter.

It would be a crime punishable by a fine up to $5,000 or imprisonment up to 1 year, or both, to refuse to surrender possession of the property, business or assets to FSLIC upon its demand. FSLIC would proceed to liquidate the association.

Since its appointment as receiver would be for the purpose of liquidation of the association, FSLIC could pay out insurance proceeds as soon as it had been appointed receiver.

If enacted into law, the bill would place the Board in a position to supersede any action taken by a State regulatory agency or court in naming a "conservator, receiver, or other legal custodian" for an FSLIC-insured State-chartered association or in closing such as association, provided, that the Board determines that appointment of FSLIC as receiver would be in the public interest and provided further that there exists one of the grounds upon which the Board could appoint FSLIC as receiver of a Federal savings and loan association. There are 5 such grounds as follows:

1. insolvency of the association.
2. substantial dissipation of its assets or earnings due to any violation of law, rule or regulations or to any unsafe or unsound practice.
3. unsafe or unsound condition to transact business.
4. willful violation of a final cease-and-desist order.
5. concealment of books, papers, records, or assets or refusal to submit books, papers, records or affairs for inspection to an examiner or lawful agent of the Board.

Under these conditions the Board could place an association in liquidation even though an appropriate State agency or court had determined that no more than a conservatorship or other temporary custody was required, looking toward reopening of the association for public operation.

Once named receiver under the provisions of this bill, FSLIC and the Board would have the same status, functions and authority they would have if FSLIC had been named receiver of a Federal savings and loan association, and all the applicable provisions of Section 5(d) of the Home Owners' Loan Act of 1933 as revised by the Financial Institutions Supervisory Act of 1966 would come into play.

The bill notes specifically that the provisions thus made applicable would include Section 5(d)(6)(C), which bars any court from taking action toward removal of a receiver or, except at the instance of the Board, restraining the exercise of the receiver's powers or functions, except as otherwise provided in Section 5(d). Section 5(d)(6)(A) authorizes the Board to appoint a receiver ex parte and without notice if in its opinion a ground for appointment exists.

Section 5(d)(6)(A) further provides that within 30 days after such an appointment, the association may petition a Federal District Court for an order removing the receiver, and that court is to consider the petition on its merits and either dismiss it or direct the Board to remove the receiver. Under Section 5(d)(6)(A), if such a petition for removal of the receiver is filed, all other actions or proceedings under Section 5(d) to which the association is a party are to be stayed while the petition for removal is pending.

The bill also notes specifically that Section 5(d)(11) would apply once the Board appoints a receiver under this bill. That provision empowers the Board to make rules and regulations for reorganization, consolidation, liquidation and dissolution of associations, for their merger with other FSLIC-insured institutions, for associations in receivership and the conduct of receiverships. It also permits the Board by regulation or otherwise to provide for the exercise of functions by members, directors or officers of an association during receivership.

The bill further expressly notes that Section 5(d)(14) is applicable. This provision would bring directors, officers, employees, agents, former directors, former officers, holders of withdrawable accounts, boards of directors and other governing boards of the State-chartered association within the meaning of Section 5(d) references to such personnel of Federal savings and loan associations. It also empowers the Board to define all terms used in this Section 5(d)(14) and all other terms used in Section 5(d).

Under existing law, both FSLIC and FDIC, respectively, are permitted to serve as receiver of a State-chartered institution insured by FSLIC or FDIC. This bill would empower the Federal Home Loan Bank Board to require FSLIC to serve as such receiver and would authorize that Board to appoint FSLIC as receiver under the conditions prescribed in the bill. The bill contains no provisions that would confer parallel powers on the FDIC.

The philosophy of the bill appears to be that he who pays the piper may call the tune. It is another example of seeking power for a Federal agency over a State-chartered corporation on the theory that the paying Federal agency should be in a controlling position to protect its assets where the Federal Home Loan Bank Board, which heads FSLIC, determines this to be advisable.

Some may view such a request for expansion of Federal power as an occasion to renew a request that the insuring agency (FSLIC) be separated from control of the Board that also has the power to charter and supervise Federal savings and loan associations. The Board has tended to view its authority and powers as head of (1) FSLIC, (2) the Federal savings and loan system and (3) the Federal home loan bank system to be interchangeable and parts of a single aggregate of powers. This view would not be feasible if control of FSLIC is separated from the Federal Home Loan Bank Board. In the banking field, control of FDIC is separate from the Comptroller of the Currency, who controls the chartering and supervision of national banks and the Federal Reserve Board that administers the Federal Reserve System.

If the Federal Home Loan Bank Board seeks, as it does in this bill, to extend the degree of its control over State-chartered corporations by virtue of its status as an insurer of savings accounts, a cogent argument can be advanced that the same Board ought not to be the Federal agency placed in charge of encouraging the establishment and development of a system of Federally chartered savings and loan associations.

Continuing the process of diminution of the independent status of State-chartered institutions that was accomplished in part by enactments of the Federal Institutions Supervisory Act of 1966, the bill would further decrease the present degree of independence of State-chartered institutions in the so-called "dual system" of savings and loan associations. State regulatory authorities would attempt to exercise their powers to conserve or close associations at the sufferance of a Federal insuring agency, which under the liberal powers granted to it in the bill could decide to compel liquidation of the State-chartered institution regardless of the judgment of State regulatory authorities. The bill would grant the Federal agency the means to work its will by appointing FSLIC as receiver of the State-chartered FSLIC-insured institution for the purpose of liquidating the institution.

Opinion as to acceptability of the bill hinges largely on whether such disadvantages are outweighed by public interest advantages and advantages to savings and loan associations that pay FSLIC insurance premiums presumably obtainable if FSLIC acts as receiver to liquidate the association and recoup to the optimum feasible extent the insurance payouts made to savers in the association by FSLIC.

Nothing in the language of the bill itself discloses it, but one argument heard in support of the bill runs to the effect that FSLIC handles receiverships at lower net cost than do receivers appointed by State authorities.

Another argument made for the bill is that it enables FSLIC to pay out insurance proceeds earlier than it could if it remains dependent upon State action with reference to the conservation or closing of an FSLIC-insured association. Present law permits FSLIC to make such a payout only when an official custodian is placed in charge of the association for the purpose of liquidation.

Alternative legislative paths are open that could authorize FSLIC to accelerate that a payout in its discretion without adopting the provisions of this particular bill. So the major motive for the bill appears to be to gain for the Federal Home Loan Bank Board as head of FSLIC more power to handle liquidation of an association to whose savers FSLIC has paid out savings insurance proceeds once a state authority has placed an official custodian in charge of the association or has closed the association.

DEPARTMENT OF COMMERCE,
CORPORATION DIVISION,
Salem, Oreg., May 24, 1968.

Mr. JUSTIN HULMAN,
President, National Association of State Savings & Loan Supervisors, Chicago, Ill.

DEAR JUD: I appreciated your sending me a copy of Bill No. S3436. You will understand that our office has not as yet had time to fully examine and consider this Bill; however, from our examination so far, it would appear to me that this is unwise legislation, primarily for the reason that under this Bill the FSLIC can usurp and supersede the Supervisor of savings and loan associations in this state from his authority and his duty to take action with respect to any particular association. We feel that this type of usurpation is not to the public interest of the savers of this state in state associations.

We will give further consideration and study to this Bill and keep you advised of any additional comments we may have.

Sincerely,

W. J. P. FARRELL,
Savings and Loan Supervisor.

DEPARTMENT OF BANKING,
Harrisburg, Pa., May 17, 1968.

Mr. JUSTIN HULMAN,
President, National Association of State Savings & Loan Supervisors, Chicago, Ill.

DEAR JUD: We appreciate very much receiving your bulletin of May 14, 1968 indicating that the Federal Home Loan Bank Board has caused legislation to be introduced in Congress which would make it mandatory for the FSLIC to be appointed Receiver in any instance where it is required to use insurance funds of the Corporation to meet its liability to a State savings and loan association's savers.

This type of legislation by the Congress would conflict with Pennsylvania law which provides that the Pennsylvania Department of Banking shall take possession of the business and property of an institution and that the Secretary of Banking of the Commonwealth of Pennsylvania shall, by operation of law, simultaneously take over such possession from the Department of Banking and become Receiver of such institution. His official title, when thus in possession of the business and property of an institution, shall be Receiver of such institution.

I will write you as soon as I am able to obtain a copy of the bill from the N.L.I.S.A. and the official position of this Department.

Yours very truly,

W. L. BRENNEMAN,
Director, Building and Loan Bureau.

DEPARTMENT OF GENERAL ADMINISTRATION,
Olympia, Wash., May 17, 1968.

Mr. JUSTIN HULMAN,
President, National Association of State Savings & Loan Supervisors, Chicago, Ill.

DEAR MR. HULMAN: Thank you for your recent bulletin about the FHLBB-sponsored legislation concerning the appointment of the FSLIC as receiver of an association where it is required to use insurance funds.

I have not had an opportunity to review the proposed legislation and am surprised that it has been introduced without consultation with state supervisors, either through our Executive Committee or the Liaison Committee which, I understood, was established to confer with the Federal Home Loan Bank Board on matters of mutual concern.

From what I have heard about this legislation, it would be in conflict with Washington state statutes. RCW 33.40.050 states, in part, "If the court shall determine that said association should be liquidated, it shall appoint the Supervisor, *and no other person* (emphasis mine), as the liquidator of such association and fix and require a bond to be given by the liquidator conditioned for the faithful performance of his duties as such. . . ."

As indicated, the proposed legislation would appear to be in direct conflict with the law under which the savings and loan associations of state charter have been regulated with considerable success for many years in Washington. Again, I am perturbed that such legislation might be proposed without prior consultation with state supervisors, individually or collectively. It is possible that some supervisors, operating under less explicit statutes, might welcome being relieved of this distasteful responsibility. Many I am sure, would consider it a further incursion of their authority.

Very truly yours,

WILLIAM E. YOUNG,
Supervisor, Division of Savings & Loan Associations.

OFFICE OF COMMISSIONER OF SAVINGS & LOAN,
Madison Wis., May 27, 1968.

Mr. JUSTIN HULMAN,
Illinois Savings & Loan Commissioner,
Chicago, Ill.

DEAR COMMISSIONER HULMAN: In response to your inquiry regarding Senate Bill 3436, I am absolutely opposed to the purposes of this bill. I would hope that you as President of the National Association of State Savings and Loan Supervisors would express strong opposition to this legislation in Congress. You can rest assured that the Wisconsin delegation will be appraised of my feelings in this area.

I think it is also necessary at this time to present to Congress that it is the Board's opinion that its powers as the regulators of the Federal Savings and Loan System, the Federal Home Loan Bank System, and the Federal Savings and Loan Insurance Corporation are a single set of powers, and that our position is that the Insurance Corporation be separate from the Federal Home Loan Bank Board.

Sincerely,

LEO MORTENSEN, *Commissioner.*

MARCH 2, 1967.

Hon. WILLIAM PROXMIRE,
U.S. Senate, Washington, D.C.

DEAR SENATOR PROXMIRE: May this letter serve as a view of the Federal Home Loan Bank Board and its operation as seen through the eyes of state supervision. While the following refers specifically to situations in Wisconsin, my contact with supervisors from other states reveals that they have had similar experience regarding lack of cooperation from Washington.

The most salient and recurring problem is the disregard for state law exhibited by the Federal Home Loan Bank Board. No comity appears to exist between state law and federal law as administered by the Board. State laws are respected only when they do not conflict with the policies established by this three-man group.

The granting of branches provides an excellent example. In mid-1964 the Board let it be known in no uncertain terms that it would grant branch offices to federal savings and loan associations in Wisconsin. At that time, Section 215.03(7) of the Wisconsin Statutes expressly stated that state-chartered associations could not maintain branches. This law had been respected for many years.

On September 8, 1964, a proposed amendment to the federal regulations relating to the establishment of branch offices was issued. On September 17, 1964, John W. Cleary, who was then Commissioner, wrote to the Board suggesting an amendment prohibiting federal associations located in states that did not allow branching from establishing branches. Acknowledgement of this suggestion was received stating that it would be considered. The suggestion was then ignored, and the branching of federals commenced in Wisconsin.

Two federal branches were granted in 1965. Because state-chartered associations were at a definite disadvantage, a bill permitting state associations to branch, was introduced into the Legislature in an attempt to maintain parity between state and federal associations. Many who had been opposed to branches, and still felt that they were not in the best interest of either the public or the industry, acceded and supported the bill as a matter of necessity. The branch bill passed, and effective December 11, 1965, state-chartered savings and loans could maintain branches. The Federal Home Loan Bank Board had foisted its will on the people of Wisconsin, with complete disregard for state law.

This disregard continues in the Board's policies in granting branches. Wisconsin law states that no branch shall be located within one mile of another association. Federal branches have been granted within approximately four blocks and two blocks of existing associations. Here again state law is not recognized by the Board.

Other instances of disregard for Wisconsin law can also be cited. The Federal Home Bank Board has ruled that by 1968 all insured associations must have audits by independent public accountants. Our statutes provide that the board of directors of an association may, by resolution, employ public accountants or accept the audit made by the Commissioner. The Board ruling takes away this choice.

Another aspect of this resolution is its effect upon associations in the northern part of the state. Public accountants with the specialized knowledge required for savings and loan work are not available in all areas. The costs of independent audits in some areas will be extremely burdensome, and, in our opinion, not in the best interest of the association and its members.

Beyond the area of violation of state law, another point of friction arises between state and federal supervision concerning the relative treatment of state and federal associations. The Federal Home Loan Bank Board is charged with chartering and supervising federal associations, as well as the direction of the Federal Savings and Loan Insurance Corporation which insures the accounts of both state and federal savings and loans. Such a form of organization gives the Board substantial control over state-chartered associations through the Federal Savings and Loan Insurance Corporation, while at the same time it has a vested interest in the operation of federal associations. This results in the apparent favoritism of federals, in spite of the fact that at the end of 1965, 2,482 of the associations insured by the Federal Savings and Loan Insurance Corporation were state chartered and only 1,981 federally chartered.

An indication of this favoritism can be seen in the speed with which mergers have been approved here in Wisconsin. One absorption was approved by the Board three and one-half months after the effective date. Three other mergers have taken place and have not yet been approved by Washington. The time lapses since the effective dates of these mergers have been five to 12 months. These all concerned state-chartered associations.

One other merger involved federal associations. A state-chartered association converted to a federal and subsequently merged. In this instance, 21 days after approval of the preliminary application for conversion, the merger with a federal was approved.

Antitrust considerations are supposedly holding up at least two of the state approvals. Why was this not a factor in the federal merger? The whels would seem to turn faster when federals are involved.

Perhaps an even more clear-cut case of partiality can be seen in the chartering of a new association. The state-chartered association in Stevens Point applied for insurance of accounts at approximately the same time as a group applied for a new federal charter in this community. The state association was well established, had no major problems, and was one of the fastest growing in Wisconsin.

It had submitted to a costly eligibility examination by the Federal Savings and Loan Insurance Corporation, and had agreed to comply with all the Corporation's conditions. Insurance was never granted. At the same time, while it is questionable whether the area can support two associations, a new federal charter was granted. The average population per savings and loan office in Wisconsin is approximately 27,000, and Stevens Point with a population of approximately 18,000 now has two associations. Had the Board taken an impartial view, the people of this area could have been adequately served with greater safety by the state association had it been insured.

The Board has also chosen to interpret Wisconsin law. By so doing relative to real estate sold on contract, federal associations are not as restricted as state-chartered associations when making required reserve transfers.

While, other than in the areas cited, the attitude is difficult to quantify, the Board appears to feel that they have final supervisory power and that they can and will do as they please. They appear to take little or no heed of state law and state supervision.

Communications and cooperation between our departments has become somewhat less than ideal. We have not, for example, received notice of impending Federal Savings and Loan Insurance Corporation rule changes until only a few days before they became effective. This puts us in a bad position in attempting to maintain parity between state and federal associations, as our Administrative Code must often be amended.

While a change in attitude toward state law and supervision on the part of the Board might be difficult to effect, it would certainly be desirable and is to be hoped for. To be more concrete, one step that might be desirable, and in our opinion logical, would be the separation of the functions of the Federal Home Loan Bank Board. Under the present form of organization with the same group supervising federal associations as is making policy through the Federal Savings and Loan Insurance Corporation, the Board has a vested interest in promoting federals over state-chartered savings and loan associations.

This dissatisfaction with the present structure of the Federal Home Loan Bank Board is not held by myself alone. The National Association of State Supervisors at their 27th Annual Conference in Baltimore on the 15th of November 1966 passed a resolution in favor of the separation of the Insurance Corporation from the Federal Home Loan Bank Board.

In addition, the National League of Insured Savings Associations in their weekly News Letter of February 17th published as their 1967 legislative recommendations to seek either "independent status or a three-man board independent of the Federal Home Loan Bank Board except for administrative purposes."

On the basis of these organizations' thinking I would respectfully suggest that inquiries into the Board's policies and philosophies would be in order.

Any changes in the policies or scope of responsibility of the Federal Home Loan Bank Board along the lines suggested or implied which you could effect would, we feel, be in the best interests of the more than one-half million members of state-chartered savings and loan associations in Wisconsin.

Thank you very much for your time and interest. Please feel free to contact this office if we can ever be of assistance to you.

Very truly yours,

LEO MORTENSEN, *Commissioner.*

RAYMOND, MAYER, JENNER & BLOCK,
Chicago, Ill., June 1, 1968.

Hon. JOHN SPARKMAN,
Chairman, Committee on Banking and Currency,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SPARKMAN: At the request of Justin B. Hulman, Esq., Commissioner of Savings and Loan Associations for the State of Illinois, I respectfully submit to your Honorable Committee, the Committee on Banking and Currency of the United States Senate, the following legal opinion concerning the validity of Senate Bill 3436, if enacted into law.

In my opinion the bill, if passed, would be unconstitutional in both its substantive and procedural provisions. Substantively, it contravenes the Tenth Amendment to the Constitution of the United States by sanctioning a forbidden encroachment on state powers. In its failure to provide for fair notice and hearing to

persons aggrieved by its operation, it would contravene due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

I will treat these matters seriatim.

The Bill Proposes an Unconstitutional Encroachment On The Reserved Powers Of The States.

The Tenth Amendment to the United States Constitution provides, in part, that "powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively. . . ." This Amendment embodies the concept of separation of powers, between the states on the one hand and the United States on the other hand, which is fundamental to our constitutional form of government. The Tenth Amendment has been consistently interpreted to guarantee a residuum of rights to the states and to protect against their encroachment by the Federal Governmen.

Senate Bill 3436 is a deliberate attempt to impair the functioning of insured state chartered savings and loan associations and to transfer the responsibility for their supervision from responsible state officials to an instrumentality of the United States Government. The proposed bill rejects any compromise between harmonious state and federal interests. It constitutes a naked usurpation of power now being exercised by responsible state officials.

This is not the first instance in which the Federal Government has attempted to encroach upon the powers of the state officials to administer state-chartered financial institutions. In an opinion authored by Mr. Justice, Benjamin Cardozo, the United States Supreme Court unanimously invalidated a federal statute which would have allowed depositors in state savings and loan associations to convert the associations into federal institutions without state approval. *Hopkins Federal Savings and Loan Association* vs. *Cleary*, 296 U.S. 315 (1935). The statutory provision invalidated in the *Cleary* case empowered state-chartered institutions to convert to federally-chartered institutions upon the affirmative vote of 51% of the withdrawable shareholders. The Supreme Court held that the federal statute was unconstitutional because it removed from the state officials the authority to decide whether to terminate the existence of state savings and loans. This case is clearly applicable to the circumstances facing this Committee and militates against passage of the proposed bill.

In describing the state interest in chartering and supervising state savings and loan associations the Supreme Court in *Cleary* observed (296 U.S. at 337) :

"The state, which brings them into being, has an interest in preserving their existence, for only thus can they attain the ends of their creation. . . . How they shall be formed, how maintained and supervised, *and how and when dissolved*, are matters of governmental policy, which it would be an intrusion for another government to regulate by statute or decision, except when reasonably necessary for the fair and effective exercise of some other and cognate power explicitly conferred." (Emphasis added.)

The Court proceeded to describe the infringement by the federal government upon this basic state right as follows (Id. at 337) :

"Wisconsin, planning these agencies in furtherance of the common good and purposing to preserve them that the good may not be lost, is now informed by the Congress, speaking through a statute, that the purpose and the plan shall be thwarted and destroyed. By the law of the state, associations such as these may be dissolved in ways and for causes carefully defined, in which event the assets shall be converted into money and applied, so far as adequate, to the payment of the creditors. By the challenged Act of Congress, the same associations are *dissolved in other ways and for other causes*, and from being creatures of the state become creatures of the nation. In this there is an invasion of the sovereignty or quasi-sovereignty of Wisconsin and an impairment of its public policy, which the state is privileged to redress as a suitor in the courts so long as the Tenth Amendment preserves a field of autonomy against federal encroachment." (Emphasis supplied.)

The Supreme Court believed the rule applied in the *Cleary* case was essential to a healthy federalism. Mr. Justice Cardozo reasoned (296 U.S. at 338) that as long as the state and federal savings institutions exist side by side, the federal government has no power to eliminate that residuum of power reserved to the states. The Court viewed the action of Congress as a usurpation of the states' powers to regulate state-chartered savings institutions as they see fit. While recognizing the broad powers reposed in Congress under the Commerce

Clause, the Court properly protected state autonomy as guaranteed by the Tenth Amendment. The Court concluded (296 at 338–39) : "The destruction of associations established by a state is not an exercise of power reasonably necessary for the maintenance by the central government of other associations created by itself in furtherance of kindred ends." Nothing has detracted from the continuing vitality of the *Cleary* decision. It stands for the proposition that Congress cannot constitutionally oust state regulatory authorities of jurisdiction of state chartered savings and loan associations.

The proposed bill would sanction liquidation of state associations which state authorities under state law have determined should be rehabilitated. The Illinois Savings and Loan Act, for instance, empowers the State Commissioner to take custody of an association in financial difficulty and to attempt to restore its affairs to proper order. Ill. Rev. Stat. 1967, Ch. 32, §§ 848–55. Senate Bill 3436 would permit a federal agency to ignore this remedial action and force the state-chartered association into liquidation to close forever. The Illinois authorities have discretionary powers to negotiate and suggest mergers for associations under custody, which powers have kept associations in existence. S. 3436 would empower the three men who are directors of both the F.H.L.B.B. and the F.S.L.I.C., *ex parte* and without notice to, consultation with, or the consent of the state, to terminate the powers granted the state authorities by state law and sentence the association to death.

Even in a case in which the state has determined that a state-chartered association should be liquidated, there continues to be a strong state interest in the carrying out of the liquidation. The protection of uninsured as well as insured depositors, secured and unsecured creditors of the association, and permanent reserve shareholders, and the protection of the public confidence in state-chartered savings and loan institutions, are matters in which the state properly has a vital interest which should not be overridden by the Federal Government, whose policies upon these matters (*e.g.*, the consideration due permanent reserve shareholders) often differs from those of the states. S. 3436 would usurp the powers of the states in these areas in which the state has a vital local interest.

The state interest in promoting home ownership by its citizens and thrift among them and its proper interest in regulating the affairs of its local, state-chartered financial institutions should not and cannot be usurped by the Federal government.

The Bill Violates Fundamental Principles of Due Process.

An opportunity for a hearing is an indispensible and fundamental requisite of due process of law. *E.g.*, *Morgan* vs. *United States*, 304 U.S 1 14–15 (1938) ; *Ohio Bell Telephone Co* v *Commission*, 301 U.S. 292, 300, 302 (1936) ; *Baker* vs. *Baker, Eccles & Co.*, 242 U.S. 394, 403 (1916) ; *Londoner* vs. *Denver*, 210 U.S. 373, 386 (1908) ; *Hornsby* v. *Allen*, 326 F. 2d 605, 608 (5th Cir. 1964) ; *Philadelphia Co.* v. *SEC*, 175 F. 2d 808, 817 (D.C. Cir. 1948).

The proposed bill contains no provision for notice or hearing with respect to the disposition of assets. Thus, persons who have direct interests in the liquidation of state-chartered savings and loan associations and whose interests are not insured or insured only in part, such as withdrawable shareholders having deposits in amounts exceeding $15,000, general creditors, contract and other claimants, and permanent reserve shareholders, are effectively precluded from obtaining any hearing on objections to the administration and disposition of the association's assets by the F.S.L.I.C. F.S.L.I.C.'s actions, which may include selling to itself, are subject to no review except by a Board comprised of F.S.L.I.C.'s own directors and are not subject to the scrutiny of the courts, state or federal, or an administrative tribunal, state or federal, upon the petition of an aggrieved party. The proposed bill also expressly authorized the F.S.L.I.C. to purchase assets from itself as receiver, *ex parte* and without notice and without judicial sanction of any nature. Other parties have property interests in the receivership estate, such as general creditors, withdrawable shareholders having deposits in excess of $15,000, and permanent reserve shareholders, are competing with the F.S.L.I.C. as to the conservation, administration, and distribution of the assets but are completely denied any forum for challenging F.S.L.I.C.'s actions as receiver.

This lack of any procedural safeguards for other interested parties denies them due process of law and is a major constitutional infirmity in the Bill. As Mr. Justice Douglas stated when concurring in the majority opinion of the Supreme Court in *Joint Anti-Fascist Refugee Committee* v. *United States*, 341 U.S. 123, 179 (1951) :

"It is not without significance that most of the Bill of Rights are procedural. It is procedure that tells much of the difference between rule by law and rule by whim or caprice. Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law."

Commenting on the necessity for notice and a hearing in administrative proceedings, the Court in *Philadelphia Co.* v. *SEC*, *supra*, noted (175 F. 2d at 817):

"It is elementary also in our system of law that adjudicatory action cannot validly be taken by any tribunal, whether judical or administrative, except upon a hearing wherein each party shall have opportunity to know of the claims of his opponent, to hear the evidence introduced against him, to cross examine witnesses, to introduce evidence in his own behalf, and to make argument. This is a requirement of the due process clause of the Fifth Amendment of the Constitution."

The proceedings authorized by the proposed bill can be dramatically contrasted with state liquidation proceedings, which provide judicial supervision of the administration, conservation, and disposition of assets. In Illinois, all creditors, secured and unsecured, are given the protection of court approval for any sale, lease, contract, settlement or other significant transaction regarding the administration, conservation, and disposition of assets. Ill. Rev. Stat., 1967, Ch. 32, §§ 923, 925. S. 3436 affords no one, whether interested state agencies, creditors, uninsured withdrawable shareholders, or permanent reserve shareholders, the right or privilege to obtain information from F.S.L.I.C. respecting its administration of the receivership estate.

Of material significance is the matter of accountants, attorneys, property management, and other like fees. Under S. 3436, F.S.L.I.C. may fix and pay whatever it sees fit without notice to parties vitally interested in the conserving of the assets and without supervision or approval of any independent judicial or administrative agency.

It is particularly important to note that a major class of interested parties, permanent reserve shareholders, does not exist under the Federal Statutes. By a mechanical insertion of the proposed bill into existing federal law, S. 3436 would ignore these important equity interests and afford them no recourse whatsoever.

This situation is aggravated because of the manifest and insidious conflict of interest in which the Federal Home Loan Bank Board and the F.S.L.I.C. (where directors are the members of the Home Loan Bank Board) find themselves. Usually the Board is itself the major secured creditor when an insured state-chartered savings and loan association is in financial trouble; and F.S.L.I.C. becomes the principal unsecured creditor as soon as the association is placed in receivership. By appointing F.S.L.I.C. as receiver, the Board is placing its alter-ego in a position of supervising and using its discretion in the disposition of assets with respect to which the Board and its alter-ego are the major secured and unsecured claimants. Their interests conflict with those of other creditors and parties interested in the estate. The conflict is most apparent in the case of permanent reserve shareholders who stand in an inferior position to the Board and are the first to bear losses resulting from injudicious liquidation.

A receiver assumes the hole of a fiduciary and is charged with preserving and liquidating the assets of the debtor for the benefit of all creditors and shareholders. The proposed bill would authorize one of the creditor-beneficiaries to act *ex parte* as unsupervised fiduciary and administer and liquidate the estate without notice to or information given to persons interested in the estate, thus putting it in a position to abuse the rights of other creditor beneficiaries with conflicting claims. This is, in itself, a startling departure from fundamental notions of fiduciary obligations.

The United States Supreme Court at an early date recognized the clear requirement that a fiduciary may not deal or be in a position to deal in his own behalf. In *Michoud* v. *Girod*, 45 U.S. 503 (1846) the Court set aside a sale by executors of a testator's property to their own nominees. In doing so the Court stated (p. 555):

"The general rule stands upon our great moral obligation to refrain from placing ourselves in relations which ordinarily excite a conflict between self-interest and integrity. It restrains all agents public and private; but the value of the prohibition is most felt, and its application is more frequent, in the private relations in which the vendor and purchaser may stand towards each other. The disability to purchase is a consequence of that relation between them which imposes on the one a duty to protect the interest of the other, the faithful discharge of which duty his own personal interest may withdraw him. In this conflict of

interest, the law wisely interposes. It acts not on the possibility, that, in some cases, the sense of that duty may prevail over the motives of self-interest, but it provides against the probability in many cases, and the danger in all cases, that the dictates of self-interest will exercise a predominant influence, and supersede that of duty. It therefore prohibits a party from purchasing on his own account that which his duty or trust requires him to sell on account of another, and from purchasing on account of another that which he sells on his own account. In effect, he is not allowed to unite the two opposite characters of buyer and seller, because his interests, when he is the seller or buyer on his own account, are directly conflicting with those of the person on whose account he buys or sells."

The proposed Bill is an unwarranted and unconstitutional departure from these principles.

The situation sanctioned by S. 3436 could be analogized to a hypothetical amendment of the Bankruptcy Act which would allow the Internal Revenue Service to appoint itself trustee in bankruptcy when the debtor has federal tax liability, with full power, unsupervised by any court or administrative agency, to sell assets of the estate to itself or others at any price, engage lawyers, accountants and others and pay fees and expenses as its whim and caprice should dictate, all without any procedure for other creditors or for shareholders and others interested in the estate to obtain information and to seek protection from the potential for abuse thus reposed in IRS.

The conflict of interest raised by S. 3436's imposition of federal authorities as receiver and creditor creates an obvious potential for abuse. Competing creditors, shareholders, and others interested are not afforded a forum for correcting abuses. This amomalous result underscores the necessity of notice, the obtaining of information, and for a hearing of grievances as guaranteed by the Constitution of the United States. The complete absence of these safeguards violates due process.

Respectfully submitted,

ALBERT E. JENNER, Jr.

Senator PROXMIRE. Now, I understand that the next two witnesses are willing to file their statement, although, if they would like to appear, I would be happy to hear them.

(The prepared statements of Raleigh W. Greene, Stephen Slipher, and additional material for the record follow:)

FIRST FEDERAL SAVINGS,
St. Petersburg, Fla., May 23, 1968.

Hon. WILLIAM PROXMIRE,
Senate Banking and Currency Committee,
New Senate Office Building, Washington, D.C.

DEAR SENATOR PROXMIRE: I address this letter to you in my capacity as Chairman of the Legislative Committee of the National League of Insured Savings Associations and in my individual capacity as President of the First Federal Savings and Loan Association of St. Petersburg.

I am taking the liberty of enclosing a copy of the testimony that I offered before your committee on Monday, May 20, 1968. I as well recommend highly to you the testimony offered by the United States Savings and Loan League and especially that presented to the committee by the Honorable John Horne, Chairman of the Federal Home Loan Bank Board.

In addition to the material submitted formally to the committee, may I suggest your consideration of the following:

1. Under the various existing state laws, it is conceivable that the FSLIC could find itself in a position whereby its assets would be completely tied up for an indeterminate period of time in the event of major trouble with institutions in states similar to Illinois. The Insurance Corporation has already paid out 250 million dollars in the Chicago area for receiverships alone. The Corporation has paid further sums in solving other problem cases in and about Chicago which, when added to the 250 million previously mentioned, brings the total exposure in Illinois to approximately 400 million dollars. Similar situations could arise throughout the country. If this were to happen, the Corporation's assets could be frozen in protracted litigation going forward in the state courts to the end hat there could be a loss of public confidence in the integrity of the Insurance

Corporation which, in many respects, is the bulwark of the public's acceptance of both our type public thrift institutions and commercial banks. To endanger that public confidence is not only a threat to the continued thrift habit of the American public, but as well a very serious threat to the continued flow of dollars into the private housing sector.

2. In the event of a default resulting in liquidation of an insured association, the Insurance Corporation is required to make prompt payment of insurance. In doing so it becomes subrogated to the claim of the holders of insured accounts which, in such cases, average at least 96% of total account balances. Any creditor obligations usually run to a Federal Home Loan Bank. Under the Illinois statute, however, a state court receivership prevents the Insurance Corporation or its close affiliate, the Federal Home Loan Bank of Chicago, from exercising any control over the liquidation of the assets which belongs almost exclusively to it and the Federal Home Loan Bank.

It is essential in the public interest that the Insurance Corporation's expenses and losses be held to the lowest possible levels. This is patently not possible with state court receiverships, as now generally constituted.

3. While I recognize that arguments have been put forth that the proposed bill may violate the Tenth Amendment of the United States Constitution, I would hasten to suggest that this would be a matter for the courts at a later date should someone attempt to test the validity of any Congressional act. I would certainly not presume to second-guess any court on a question of this kind and, therefore, would confine my comments to what I feel to be the overwhelming merits of the bill not only in terms of the interest of the Insurance Corporation and the proper protection of its assets, but even more particularly the overriding question of the public interest.

I strongly urge passage of this bill and I hope that your distinguished committee will give it an overwhelmingly strong report.

I appreciate so much the courtesies extended the National League on the occasion of the hearing Monday.

Very truly yours,

RALEIGH W. GREENE.

STATEMENT OF RALEIGH W. GREENE, NATIONAL LEAGUE OF INSURED SAVINGS ASSOCIATIONS

Mr. Chairman and members of the Committee, my name is Raleigh W. Greene. I am Chairman of the Legislation Committee of the National League of Insured Savings Associations, a nationwide trade association serving the savings and loan industry. I am also President of First Federal Savings and Loan Association of St. Petersburg, Florida.

I appear here today on behalf of the National League to support S. 3436, a bill to provide for the appointment of the Federal Savings and Loan Insurance Corporation as receiver. This proposed legislation would offer a dual advantage. It would make it possible in the discretion of the Federal Home Loan Bank Board to assist savers in insured institutions by triggering the mechanism leading to early payout of insurance proceeds by FSLIC. It would also grant the Board as head of FSLIC a more effective role in the liquidation of assets of an institution in which such a payout has occurred.

As I understand the bill, whenever a conservator, receiver or other legal custodian has been appointed for a State-chartered savings and loan association by any appointing agent other than the Federal Home Loan Bank Board, that Board in its discretion could appoint the FSLIC as receiver for purposes of liquidation provided the conditions prescribed in the bill are fulfilled. Those conditions require that the Board be able to determine that a reason exists that would authorize it to designate FSLIC as receiver for a Federal savings and loan association. A second condition is that appointment of FSLIC as receiver be advisable in the public interest, as determined by the Board.

Under the National Housing Act, it is necessary that a "default" by an insured institution occur before FSLIC may pay insurance proceeds to savers in the institution. Section 405(b), National Housing Act. That Act defines "default" as an official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver or other legal custodian is appointed for an insured institution for the purpose of liquidation.

By authorizing the Board to appoint a receiver for the purpose of liquidation, this bill would enable FSLIC to start thereafter to make immediate payouts of

insurance proceeds to the savers. Unfortunately, situations can develop and have developed wherein a savings and loan association is in a sort of suspended animation. On the one hand its doors are closed to the public for the purpose of preventing withdrawal of savings yet on the other hand, steps are not taken by the State supervisory authority to have a receiver appointed for the purpose of liquidation. While that condition prevails, FSLIC is unable to help the savers because the only event that legally authorizes it to make payment of insurance proceeds has not transpired. This legislation will alleviate that situation by furnishing the Board a large measure of discretion in appointing FSLIC as receiver for the purpose of liquidation.

Another major advantage of this proposed legislation is that it should enable FSLIC to play a larger role in recovery on assets of the insured institution during the process of liquidation. FSLIC has a very substantial investment in a savings and loan association once it has paid insurance proceeds to the savers. From a purely economic viewpoint it should be placed in a position to obtain maximum dollar value in the disposal of the assets of the insured institution in order to make possible maximum repayment to the FSLIC for replenishment of its insurance reserves. This bill would place the Federal Home Loan Bank Board in a position to see that FSLIC occupies such a role. As receiver, FSLIC would handle the sale or other disposition of assets of the insured institution. With FSLIC acting as receiver, the net recovery on assets of the closed association would not be made smaller due to the payment of fees or other compensation for services payable to a receiver other than FSLIC.

Using its best judgment, FSLIC could make an optimum recovery of funds from the disposition of assets. This recovery would help to maintain FSLIC insurance reserves in the best condition practicable under a given set of circumstances. It would reduce the need for collection of larger premiums or similar assessments that other insured institutions would otherwise be called upon to pay.

Argument can be made that private insurers do not possess the power of control over disposition of assets and over the business affairs of the insured that this bill would vest in FSLIC. But FSLIC is a unique type of institution. Formed under authority of the Congress in order to instil confidence in savers, it contains a large measure of public interest. It is not merely a business enterprise. It was purposely designated by the Congress as an instrumentality of the Federal government. FSLIC enjoys the privilege of a tieline to the United States Treasury for the purpose of obtaining capital should FSLIC's own insurance reserves built up from other sources prove to be insufficient to accomplish the purposes of the organization. While fortunately this tieline has never had to be used, its mere existence imparts a true public interest to the operations of FSLIC. Enabling FSLIC to serve as receiver will make it less likely that it will find it necessary to borrow funds from the United States Treasury. In these days of heavy demand for public funds, such a result deserves encouragement.

The National League urges early enactment of S. 3436.

Thank you for the opportunity of presenting these comments.

STATEMENT OF STEPHEN SLIPHER, LEGISLATIVE DIRECTOR, UNITED STATES SAVINGS AND LOAN LEAGUE

The United States Savings and Loan League* supports S. 3436 to provide for the appointment of the Federal Savings and Loan Insurance Corporation as receiver in the event a state-chartered insured institution is closed by the state supervisor or a conservator, receiver or other legal custodian has been appointed by the state supervisor if the Federal Home Loan Bank Board finds that grounds for a receivership exist and if appointment of the FSLIC as receiver would be in the public interest.

The League regrets that legislation of this type is necessary but we believe that it may well be the only course of action. We believe this bill is not only in the

*The United States Savings and Loan League has a membership of 5,100 savings and loan associations, representing over 95 percent of the assets of the savings and loan business. League membership includes all types of associations—Federal and State chartered, insured and uninsured, stock and mutual. The principal officers are: Hans Gehrke, Jr., President, Detroit, Mich.; Tom B. Scott, Jr., Vice President, Jackson, Miss.; C. R. Mitchell, Legislative Chairman, Kansas City, Mo.; Normal Strunk, Executive Vice President, Chicago, Ill.; and Steve Slipher, Legislative Director, Washington, D.C. League headquarters is at 221 North LaSalle Street, Chicago, Ill.; and the Washington office is maintained at 425 13th Street NW., Washington, D.C., telephone 638–6334.

public interest but in the interest of the entire savings and loan business as well. We point out that developments in only a few states make this legislation necessary and that the state supervisory system in practically every state works well. Use of the authority granted to the Federal Home Loan Bank Board in this legislation will be used in only a few instances in only a few states where there may be an absence of necessary cooperation between the state supervisors and the Federal Home Loan Bank Board.

In theory, this legislation does some violence to the concept of state supervisory responsibility over state-chartered institutions. It, to some extent, removes some of the prerogatives of the state supervisors. The Federal Government, however, through the FSLIC, has undertaken to insure the safety of the public's savings in some 2,400 state-chartered savings and loan associations up to the allowable insurance limit. This gives the Federal Government substantial responsibility to make certain that a system of FSLIC insurance works well and that there will be no unnecessary delays in the Federal Government's honoring its contract and assurance to the millions of people who have accounts in institutions insured by the FSLIC. The public expects their money in our institutions to be safe and readily available, and delays in the payment of FSLIC funds to account holders in insured institutions that are closed must be avoided. The reputation of the Federal Government as well as the state government is at stake in the case of state-chartered institutions insured by the FSLIC.

The entire savings and loan business has a stake in prompt action on the part of the Insurance Corporation when payments to savers by the Insurance Corporation are called for and that is when an insured institution is closed.

The membership of the U.S. Savings and Loan League overwhelmingly supports the idea that if the funds of the FSLIC are used to pay off the holders of accounts in insured institutions, the FSLIC should be in charge of the liquidation of the assets. We are not dealing here with just a Federal agency and its prerogative but the strength and earnings of the Insurance Corporation itself. The savings and loan business pays for insurance of accounts. Its premiums and premium prepayments built the reserves of the Insurance Corporation. The earnings on the assets of the FSLIC contribute significantly to the increase in the FSLIC reserve.

The law provides that when the reserves of the FSLIC reach two percent of insured liability, the premium prepayments and the premium payments themselves will stop.

Rapid progress has been made in the last ten years in building the reserves of the FSLIC. Every institution looks forward to the day when the FSLIC reserves will reach the point that the annual cost of insurance of accounts to the insured institution is significantly reduced. The business thus has a stake in the earnings of the FSLIC and prompt recapture by the Insurance Corporation of funds it has disbursed.

The funds of the Insurance Corporation should be used for the benefit of the public generally and to assure the continued strength of the savings and loan business and the broad confidence of the American public in the safety and availability of the funds in insured institutions. We believe that this objective can best be met by the Insurance Corporation itself being responsible for the liquidation of the assets of insured institutions placed in receivership.

This legislation would also permit the Congress to watch more closely and have greater control over the assets of the Insurance Corporation and the management of it. After all, Congress created the FSLIC, it passes the laws under which it operates and it is, in fact, a Federal corporation in operation.

Fortunately, there are very few institutions that have been operated in such a manner that they have required the use of FSLIC funds to protect the funds of savers in insured institutions. Fortunately, there have been very few cases where FSLIC insured institutions have had to be placed in receivership. We are confident that this kind of action will be very rare in the future.

This is not a nationwide problem but a problem of isolated institutions in a few areas. There appears, however, to be no way to legislate with respect to this question in just a few states, and broad legislation covering insured institutions everywhere is required. We have confidence in the Federal Home Loan Bank Board and, of course, confidence that this Committee and the Congress would act quickly in the highly unlikely event that this law were abused.

In closing, I would like to point out that the U.S. League has consistently supported legislation which is directed at strengthening and protecting the savings and loan business in its entirety. We supported the legislation providing

for prepaid premiums which have been the primary factor in raising the Insurance Corporation's reserve ratio to an all-time high. We supported the proposal for standby deposits in the FSLIC by member institutions. We have supported the Federal Supervisory Act and the Savings and Loan Holding Company Bill.

We did this because we recognize that public confidence is our most valuable asset. We felt that all of those proposals—and we feel that this proposal—are in the direction of protecting and enhancing the confidence of the public in our institutions.

STATEMENT OF THE CALIFORNIA SAVINGS AND LOAN LEAGUE, FRANKLIN HARDINGE, JR., EXECUTIVE VICE PRESIDENT

The California Savings and Loan League, the trade association for the $28 billion savings and loan business in California, wishes to make its views known on S. 3436 involving the appointment of the Federal Savings and Loan Insurance Corporation as receiver in the case of state-chartered insured associations. In general, we understand the problem which prompts this bill to be introduced, and we are completely sympathetic with the objectives of the bill. However, it is our considered judgment, based upon a thorough discussion of the facts by our Legislation and Taxation Committee and the Executive Committee of the California Savings and Loan League, that some of the problems which the bill seeks to solve can be solved and yet not cause other problems which are disturbing to California and other states. Other objectives of this bill cannot be achieved because the methods of solution proposed appear to eliminate adequate "due process" to state insured associations and thus are not constitutional—no matter how much they appear "in the public interest."

This bill, as introduced, for the first time gives the Home Loan Bank Board, a federal executive agency, power to appoint itself receiver for a state-chartered insured institution whether or not the state supervisor wishes or believes such receivership is in order. It has always been a fundamental principle of government in this country that the states have exclusive power over their own instrumentalities and that the Federal government may not interfere with this power.

The proposed legislation provides that the Federal Home Loan Bank Board may appoint the FSLIC as receiver for any state-chartered insured institution if a conservator, receiver, or other legal custodian has been appointed by state authorities, whether or not for the purpose of liquidation or if such institution has been closed. Thus, if the state appointed a conservator for a completely solvent state-chartered insured institution because of a proxy fight, the Board could appoint a receiver for the purpose of liquidating this perfectly solvent institution.

We have been assured that the Board would not want to do this; therefore, there should be no apprehension over these broad powers. Of course, the facts are that, if the bill is not amended, the Board could step in at any time a state commissioner had appointed any type of legal custodian and, as receiver, would have full power to liquidate, merge, or reorganize the institution, and the state commissioner would have no authority over the institution.

The solution we propose to this problem is to enable the Bank Board to appoint the FSLIC as receiver *only* after it has been notified by the state authority that a conservator, receiver or custodian has been appointed *for the purpose of liquidation.* We would not change the provision that the Board may appoint the FSLIC as receiver when it determines that the institution has been "closed." We have been advised in a telephone conservation with the general counsel of the Bank Board that he opposes our proposed change for the reason that certain state authorities would not notify the Bank Board of the appointment in accordance with our proposal. However, we contend that the Board's authority, under the bill, to appoint the FSLIC as receiver would become effective when the association had been "closed" (as defined by the Board) without notice from the state authority.

Furthermore, the bill, as proposed, would effectively eliminate Subsection (c) of Section 406 of the National Housing Act dealing with the payment of insurance by the corporation in the event a state-chartered insured institution goes into default. The current law provides that the FSLIC *must accept* a receivership for the purpose of liquidation from a state authority *if tendered.* Under these conditions, therefore, a state-chartered insured institution which is taken over by a state authority would have the right to challenge in the courts such takeover on the merits, and the FSLIC which would be tendered the receivership would have

to take such receivership subject to this court review. We have been informed by the general counsel of the Federal Home Loan Bank Board that the purpose of the words "whether or not" found on page 2, line 1 of the bill is to eliminate this requirement of accepting the receivership from a state official.

We are informed by the general counsel that the drastic diminution of court review as provided by the bill is to make it easier for the FSLIC to become the receiver with little or no chance of such receivership being upset. To draw a parallel, we believe that the police of this country would consider their job as being made easier if they could not only cause the arrest but determine, without going to court, whether the persons arrested were retained in custody and for how long. We contend that the police, in general, are nice people who do not want to put people in jail. However, their powers are limited to arrest, and the court is the one which determines if the arrest is proper. We agree that the provisions of the bill would make it "easier" for the Board to work without interference to pay out to insured account holders and liquidate institutions. We concede that the Board personnel would not want to put institutions into receivership if they did not have to. But, just as is the case with the police of this nation, laws are set up to curb the abuses of power, and, therefore, court review cannot be escaped by *any* executive agency in this country.

The bill in its proposed form provides that, upon taking possession by the FSLIC, the Board and the Insurance Corporation would have all the power over a state association, to the exclusion of state officials and all courts, Federal and state, that they now have over Federal associations in receivership even though no ground for appointment of a receiver existed. Both Federal and state courts would be prohibited from interfering with "the exercise of powers or functions" of the Corporation "except as otherwise provided" in Section 5(d) of the Home Owners' Loan Act. This means that the only right of the state association to judicial review would be to bring an action in the Federal courts for dismissal of the receiver. The only review to which the institution would be entitled in such action would be (1) whether or not a conservator, receiver, or custodian was appointed for the institution, and (2) whether or not the Board determined that the appointment of the FSLIC as receiver was advisable in the public interest. Thus, under the proposal, judicial review on the merits for institutions taken over would be virtually nonexistent.

During the questioning of Illinois Savings and Loan Commissioner Hulman, Senator Sparkman raised some questions designed to find out if the powers requested in the proposed legislation are like powers which FDIC already has. We are informed that, in approximately 21 states, the state banking laws provide that, in the event a state bank is placed into receivership by the state authority, the receivership must be tendered to the FDIC. We have talked with the general counsel of the Federal Deposit Insurance Corporation by phone and have learned the following:

(1) In the event that such receivership is caused by the state authority and the receivership is tendered to the FDIC, the fact that the receivership had been accepted by the FDIC would in no way affect the right of the stockholders of the commercial bank to a review in the courts of the merits of the receivership.

(2) If the FDIC was aware of litigation started by the stockholders or of the possibility of litigation, this would not deter the FDIC from paying out the accounts of insured depositors in accordance with its contract, unless it was specifically enjoined from doing so by the courts.

(3) In the event that, as a result of the litigation, the court determined the receivership was not proper, the FDIC might be in a position of having paid out some or all of the accounts which would then have to be worked out with the ownership of the bank. On the other hand, if the condition of the bank was such that the receivership was proper, the court would not deny the receivership.

Therefore, it would appear that the FDIC is in the identical position as the FSLIC, and it does not have special authority over state-chartered insured banks such as is being sought by the FHLBB over state-chartered insured associations in the proposed legislation.

The amendment proposed by the California League would provide that the Federal court could review the grounds upon which the association was taken over under state lay by state authorities. Federal associations when taken over by the Bank Board have the right to a judicial determination that grounds exist for the appointment of a receiver. Thus, we believe that the rights of both insured state and federal institutions must remain identical.

The general counsel of the Bank Board opposes the League proposal and contends that it is necessary that judicial review, as proposed, be eliminated because the Bank Board would be put in the position of having to defend the initial appointment under state law. Further, he says that the Board would be reluctant to take over as receiver until it had determined with some certainty that the initial appointment was proper under state law, and, therefore, that payment of insurance of accounts would be delayed until such determination had been made. He contends that the fact that judicial review would be much broader for federal associations is not a justification for failing to cure the problem of management opposition to a take-over of a state association.

We submit that the Senate Banking and Currency Committee had every reason to believe that the provisions of S. 3436 would not produce such a drastic change as it does dealing with judicial review. On page 5 of his testimony, Chairman Horne states that the Board's appointment of the FSLIC as receiver would be subject to prompt judicial review and that the "court could either dismiss the action on the merits or direct the Board to remove the receiver." We have demonstrated above that court review involved would not be on merits but would be on substantially reduced grounds.

The general counsel further advised that the question of the constitutionality of depriving a state institution of the right to judicial review had been carefully researched by the Board's legal staff and the staff had concluded that the proposal was constitutional since the institution had the opportunity to avoid being subjected to the proposal by the means of terminating its insurance of accounts. The California League has grave doubts that the remedy suggested is meaningful, and it has greater doubts as to the constitutionality of any statute which provides for the take-over of private property without the right to a review by the courts on the merits.

In California there is the largest number of guarantee stock associations of any state in the Union. We have read with interest and concern the testimony of Chairman Horne of the Federal Home Loan Bank Board and the questioning of him by the Committee. He has stated very plainly that the obligations and responsibilities of the Federal Savings and Loan Insurance Corporation are first to protect the insured saver; second, to protect the Insurance Corporation; and, third, to protect the market place as the Insurance Corporation carries out its liquidating function. We feel it is a glaring omission that, in the role of a receiver, the Corporation appears to have no obligation in the course of the liquidation to the uninsured savings account holder or to the equity position of the association whether it be represented by an interest in the reserves of a mutual institution or whether it be represented by the guarantee stock of a capital stock association.

We believe very firmly that a receiver should be a disinterestd party who is willing to liquidate the assets in the most efficient way, realizing the maximum possible return from the disposition of assets so that all those who are in a liability position in the association will have the maximum return from such receivership. We believe that there should be a clear expression of policy so that, when the Federal Savings and Loan Insurance Corporation is acting as receiver, it will not feel that its obligations have been fulfilled when it pays off all insured account holders and then reimburses itself for the out-of-pocket money it has paid out from the assets of the Insurance Corporation in making good to insured account holders. The Insurance Corporation should be given a mandate by Congress that its obligation extends also to the uninsured account holders and to realize any equity which is possible by reason of the way in which the liquidation takes place. We concede that it is highly possible that a desired result could be achieved if a state-appointed receiver were acting. However, we are inclined to the belief that the Federal Savings and Loan Insurance Corp. on the average will be able to protect itself and the liquidity of the Insurance Corporation will be better maintained if it is doing its own liquidating.

For instance, we take note of the statement of Mr. Hulman that the net worth of Marshall Savings and Loan Association has increased by $7½ million in the three-year period the state receiver has been in control. We call to the Committee's attention that the receiver is paying no interest on the money put up by the FSLIC; therefore, we would expect the net worth of such association to have increased in the last three years. However, we also call to the Committee's attention that the receiver, by not paying out 4½ percent interest on the $85 million put up by the FSLIC, has saved at least $11½ million. Thus, the question can be raised as to why the net worth of this institution was not increased by $11½ million rather than by $7½ million, because no interest has been paid either to the FSLIC or to the uninsured account holders in Marshall Savings.

We note with interest that section of Chairman Horne's testimony in which he stated that the books of the FSLIC are open to parties interested in the liquidation of an insured institution. We commend Chairman Horne for this policy which is in contrast to the policy of the receivers in Illinois who have been unwilling to reveal even to the Insurance Corporation any reports on the course of liquidation or management of the several associations in the hands of state-appointed receivers of associations formerly insured. We believe that interested parties must have the right to see for themselves that the maximum realization from assets is being achieved to the end that all those who have an interest in the final results of such liquidation can be satisfied that the best possible job has been done and the best possible return to such interested parties has been achieved.

In conclusion, we hope that the Congress will pass legislation along the lines of the proposals we are making. The FSLIC would be in far better position than it is now, since it would have a means of obtaining possession of assets of associations where a pay-out has been made by the FSLIC to insured account holders. On the other hand, by continuing to be subject to court review, the FSLIC is in no better position now than it has been and is presently. It is in no better position or no worse position than is the FDIC. Thus, the California League urges the Committee to give favorable consideration to its proposals for amendments to S. 3436 (see below).

S. 3436

Page 1, Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of section 406 of the National Housing Act is amended (1) by inserting "(1)" immediately after "(c)", and (2) by adding thereto at the end thereof the following new paragraphs:

"(2)(A) In the event the Federal Home Loan Bank Board ~~determines~~ is notified by the appropriate State supervisory authority that —

"(i) A conservator, receiver, or other legal custodian, whether or not the Corporation, has been ~~or is hereafter~~ appointed (otherwise than by the Federal Home Loan Bank Board) for an insured institution other than a Federal savings and loan association, ~~whether or not~~ for the purpose set forth in subdivision (d) of section 401, or, in the event that the Board determines that by or under State law, an insured institution other than a Federal savings and loan association has been ~~or is hereafter~~ closed, and

"(ii) An appointment under this paragraph (2) is advisable in the public interest,

said Board shall without further inquiry have under this paragraph (2) the same authority to appoint the Corporation as receiver for such institution ~~that it would have~~ as provided under subparagraph (A) of

paragraph (6) of subsection (d) of section 5 of the Home Owners' Loan Act of 1933 ~~if the insured institution were a~~ , in respect to a Federal savings and loan association ~~and grounds existed~~ except that no other ground for the appointment of a receiver ~~therefor under said subparagraph (A)~~. shall be required.

"(B) When the Corporation is appointed as receiver pursuant to the foregoing provisions of this paragraph (2) —

~~"(i) the provisions of said subsection (d) (including but not limited to subparagraph (C) of paragraph (6) and paragraph (11) thereof), as from time to time in effect, shall be applicable in the same manner and to the same extent that they would be applicable, and the Corporation and said Board shall respectively have the same status, functions, and authority that they respectively would have under said subsection (d), if the insured institution were a Federal savings and loan association and the appointment of the Corporation by said Board as receiver therefor had been made pursuant to the provision of said subsection (d) referred to in subparagraph (A) of this paragraph (2). The provisions of paragraph (14) of said subsection (d) shall be applicable in the same manner and to the same extent that they would be applicable if the insured institution were an institution referred to in the first sentence of said paragraph.~~

"(i) the Board, the Corporation and the insured institution shall have all the status, functions, authority and rights, including the right to review upon the merits, as provided in paragraphs (1), (6), (11) and (14) of subsection (d) of section 5 of the Home Owners' Loan Act of 1933, as if the insured institution were a Federal savings and loan association

The review upon the merits provided in such paragraph (6) of subsection (d) shall include the grounds upon which the appropriate State authority imposed a conservatorship, receivership or custodianship upon such insured institution.

Page 3, 14 "(ii) the Corporation shall have authority to liqui-
15 date the institution in an orderly manner or to make
16 such other disposition of the matter as it may deem to
17 be in the best interests of the institution, its savers,
18 its stockholders, and the Corporation, and for the purposes of
19 this paragraph (2) the language "the court or other public authority
20 having jurisdiction over the matter" in subsection (d)
21 of this section shall mean said Board.
22 "(C) Whenever a receiver appointed by the Corporation
23 under this paragraph (2) demands possession of the prop-
24 erty, business, and assets of any institution, or of any part
Page 4, 1 thereof, the refusal by any person to comply with the de-
2 mand shall be punishable by a fine of not more than $5,000
3 or imprisonment for not more than one year, or both."

STATEMENT OF TOM BANE, PRESIDENT, COUNCIL OF SAVINGS AND LOAN STOCK COMPANIES

Mr. Chairman, the Council of Savings and Loan Stock Companies resolved at its Annual Convention on May 25, 1968 to support passage of S. 3436 with certain amendments that would recognize the integrity of state supervisors and give some measure of protection to stockholders of insured institutions.

The Federal Home Loan Bank Board's position on S. 3436 is obviously a compelling one. There can be no serious question, we believe, that when the Federal Savings and Loan Insurance Corporation pays out on its insurance of accounts in a default situation, and thus becomes subrogated to the claims of the insured account holders, it has an interest of great magnitude in the liquidation of the insured institution. FSLIC is naturally the largest creditor of the association in default, and it has a public responsibility to recover for the insurance fund as large a portion of the amount paid out as it can.

It is also obvious that federal insurance of accounts has contributed immeasurably to the strength of the savings and loan industry and to the public's confidence in these institutions. It follows, therefore, that measures designed to fortify these results should be generally deserving of support from the industry.

There are important countervailing considerations, however, that must not be overlooked in our eagerness to strengthen FSLIC. An important segment of this industry is subject to dual regulation by federal and state authorities. Effective supervision at the state level should be considered an added element of strength for FSLIC. Obviously, to the extent state supervision can assist in preventing defaults in insured state-chartered institutions, the federal insurance fund is given added protection. It follows from this, we think, that federal legislation that would have the effect of nullifying the role and responsibility of state supervisors should be cautiously approached.

In short, we feel that legislation in this area should attempt to achieve some balancing of the substantial federal and state interests. This Committee's concern that such interests be balanced is a matter of public record. In the 89th Congress, when this Committee had before it S. 3158, the proposed "Financial Institutions Supervisory Act of 1966," it adopted an amendment to that bill that required FSLIC not merely to consult with state authorities before taking supervisory action, but to allow the state supervisor an opportunity to effect corrective action. The Committee's Report commented, in this connection, that the Committee "did not wish to take any action which would do violence to the balance between State and Federal functions and responsibilities" underlying the dual system. The Committee's amendment was intended as "a significant recognition in Federal statutes of the importance of the powers and responsibilities of the State supervisory authorities." S. Rep. No. 1482, 89th Cong., 2d Sess., p. 7 (1966).

S. 3436 violates this principle in one important respect. It would permit FSLIC to take over and liquidate an insured state-chartered institution in a situation in which the state authority had appointed a conservator or custodian for purposes *other* than liquidation. In granting such power the bill in practical effect obliterates the authority of the state supervisor to take control of an institution for the purpose of working out its problems and preserving it as a going concern.

The Council firmly believes that S. 3436 should be amended to provide that FSLIC may only take over as conservator, receiver or custodian when a "default" has occurred within the meaning of section 401(d) of the National Housing Act—that is, when a state conservator, receiver or custodian has been appointed *for the purpose of liquidation.* Inasmuch as FSLIC is not required by the Act to pay out on its insurance until there has been a default, we believe there is sound justification for preserving the role of the state supervisor until FSLIC's obligation matures.

Of course, even in the pre-default stage FSLIC has an interest in assuring that the association's assets are not being dissipated. For this reason we would support an amendment to S. 3436 that would allow FSLIC reasonable access to the books and records of an insured institution that has been taken over by a state supervisor prior to default.

Lastly, the Council believes that S. 3436 should be amended to make clear that when FSLIC does take over an insured state-chartered institution, it must give some heed to the interests of the association's stockholders. This could be accomplished simply by amending proposed section 406(c)(2)(B)(ii), at lines 14–18 of page 3 of S. 3436 to read as follows (new matter is underlined):

"(ii) the Corporation shall have authority to liquidate the institution in an orderly manner or to make such other disposition of the matter as it may deem to be in the best interests of the institution, its savers, *its stockholders*, and the Corporation. . . ."

It is a serious oversimplification to say, as Chairman Horne seems to suggest, that the interests of shareholders may be ignored because they have purposely put their investment at risk. Indeed, the fact that shareholders are willing to put capital into this industry is a source of strength to the industry. We cannot believe that the Board is interested in deterring the flow of risk capital to this industry, and we feel, therefore, that some recognition should be given to the interests of shareholders.

Moreover, while Chairman Horne is certainly correct in saying that Federal insurance of accounts is intended as a protection for account holders and not stockholders, it seems clear to us that in its role as receiver of an institution in default FSLIC has a potential conflict of interest that could needlessly work to the detriment of shareholders. FSLIC's primary interest in liquidating an associ-

ation is obviously to recover the amount of the insurance it has paid out. But in a liquidation there are other interests that must be recognized—the interests of persons whose deposits exceeded the insurable limit, the interests of other creditors, and the interests of stockholders. In granting the Board power to install FSLIC as receiver for a state-chartered institution, Congress should, we submit, make it aboundantly clear that in such situations FSLIC must scrupuously observe its fiduciary obligations to these other interests.

Mr. Chairman, with the amendments noted the Council of Savings and Loan Stock Companies is pleased to add its voice in support of S. 3436.

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