107TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 107–516
Part 2

FINANCIAL SERVICES REGULATORY RELIEF ACT OF 2002

JULY 22, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3951]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3951) to provide regulatory relief and improve productivity for insured depository institutions, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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99–006

The amendments (made to the committee print document containing the text of the amendment as reported by the Committee on Financial Services) are as follows:

After section 311, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 312. EXEMPTION FROM PREMERGER NOTIFICATION REQUIREMENT OF THE CLAYTON ACT.

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

Strike section 607 (and make such technical and conforming changes as may be appropriate).

PURPOSE AND SUMMARY

H.R. 3951, as reported by the Committee on the Judiciary, is intended to alter or eliminate statutory banking provisions in order to lessen the regulatory compliance burden on insured depository institutions and improve their productivity, as well as to make needed technical corrections to current statutes without compromising existing protections against anti-competitive behavior.

BACKGROUND AND NEED FOR THE LEGISLATION

A. BACKGROUND

On June 18, 2002, the Committee on Financial Services reported H.R. 3951, the "Financial Services Regulatory Relief Act of 2002" (*See* H. Rept. 107–516). The bill was sequentially referred to the Committee on the Judiciary for a period not later than July 22, 2002. The sections within the jurisdiction of the Committee on the Judiciary deal with the Federal courts, claims against the United States, and for regulation of the banking industry as it pertains to antitrust considerations.

H.R. 3951 provides the following regulatory improvements for national banks: (1) removes the prohibition on national and State banks expanding across State lines by opening branches; (2) allows the use of subordinated debt instruments to meet eligibility requirements for national banks to benefit from subchapter S tax treatment; (3) eliminates duplicative and costly reporting requirements on banks regarding lending to bank officials; (4) changes the exemption from the prohibition on management interlocks for banks in metropolitan statistical areas from $20 million in assets to $100 million; and (5) streamlines bank merger application regulatory requirements.

H.R. 3951 provides the following regulatory improvements for savings associations: (1) gives savings associations parity with banks with respect to broker-dealer and investment adviser Securities and Exchange Commission (SEC) registration requirements; (2) removes auto lending and small business lending limits and expands business lending limit for Federal thrifts; (3) allows Federal thrifts to merge with one or more of their non-thrift subsidiaries or affiliates, the same as national banks; (4) permits Federal thrifts to invest in service companies without regard to geographic restric-

tions; and (5) gives Federal thrifts the same authority as national and State banks to make investments primarily designed to promote community development.

H.R. 3951 provides the following regulatory improvements for credit unions: (1) allows privately insured credit unions to apply for membership to the Federal Home Loan Bank system; (2) expands the investment authority of Federal credit unions; (3) permits offering of check cashing and money transfer services to eligible members; (4) increases the limit on investment by Federal credit unions in credit union service organizations from 1 percent to 3 percent of shares and earnings; and (5) raises the general limit on the term of Federal credit union loans from 12 to 15 years.

H.R. 3951 provides the following regulatory improvements for Federal financial regulatory agencies: (1) provides agencies the discretion to adjust the examination cycle for insured depository institutions to use agency resources in the most efficient manner; (2) allows the agencies to share confidential supervisory information concerning an examined institution; (3) modernizes agency record keeping requirements to allow use of optically imaged or computer scanned images; (4) clarifies that agencies may suspend or prohibit individuals charged with certain crimes from participation in the affairs of any depository institution and not only the institution with which the individual is associated; and (5) allows bank examiners to receive credit cards from examined depository institutions if issued under the same terms and conditions as generally offered to the public.

These improvements will allow financial institutions to devote more resources to the business of lending to consumers and less to compliance with outdated and unneeded regulations. Reducing regulatory burden should lower credit costs for consumers and boost the national economy.

B. AMENDMENTS

An amendment offered by Mr. Bachus, which creates a new section 312 of H.R. 3951, amends the Clayton Act to exempt credit unions from a premerger notification requirement, and was adopted by voice vote.

Under provisions of the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976 (15 U.S.C. 18a), certain acquired and acquiring persons—including federally insured credit unions—must file a notification and report form with the Federal Trade Commission (FTC) to provide advance notification of mergers and acquisitions when the value of the transaction exceeds $50 million. The information submitted is reviewed by the FTC to determine if the proposed transaction may be anticompetitive and to justify, if appropriate, taking enforcement action to prevent the consummation of transactions that violate Section 7 of the Clayton Act. Only after observing the waiting period under the HSR Act may the companies complete the proposed transaction.

A tiered fee structure requires that companies pay a $45,000 filing fee for transactions valued at less than $100 million, $125,000 for transactions valued at $100 million to less than $500 million, and $280,000 for transactions valued at $500 million or more. (Transactions valued at less than $50 million are exempt from the requirement of filing the pre-merger notification forms).

Exempting federally insured credit unions from the pre-merger notification requirements of the HSR Act would in no way relieve credit unions from the prohibitions found in Section 1 of the Sherman Act which outlaws every contract, combination or conspiracy, in restraint of trade or those found in Section 2 of the Sherman Act which make it unlawful for a company to monopolize, or attempt to monopolize trade or commerce. Nor would such an exemption shield credit unions from Section 7 of the Clayton Act, which prohibits mergers and acquisitions in which the effect may be to substantially lessen competition or tend to create a monopoly.

In addition, if the attorney general of any State believed that the merger of two credit unions resulted in injury to persons residing in his/her State by virtue of alleged violations of either the Sherman or the Clayton Act, nothing would impede the ability of the attorney general to bring a civil action in the name of the State on behalf of those individuals living in that State. This action could be brought in any U.S. District Court having jurisdiction over the defendant.

An amendment offered by Ms. Jackson Lee to eliminate section 607 of H.R. 3951 was adopted by voice vote. Section 607 would have amended the Bank Holding Company Act of 1956, 12 U.S.C. § 1849(b), by eliminating an existing minimum 15 day waiting period for bank and bank holding companies to merge with or acquire another bank or bank holding company. Currently, the Bank Holding Act provides a 30 day waiting period, which may be reduced to 15 days upon a concurrence of the Attorney General and the relevant banking agency.

HEARINGS

No hearings were held on H.R. 3951.

COMMITTEE CONSIDERATION

On Wednesday, July 17, 2002, the Committee met in open session and ordered favorably reported the bill H.R. 3951, with amendment, by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes taken on H.R. 3951.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 3951 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

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

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3951, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 19, 2002.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3951, the Financial Services Regulatory Relief Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 3951—Financial Services Regulatory Relief Act of 2002.

SUMMARY

H.R. 3951 would affect the operations of financial institutions and the agencies that regulate them. Some provisions would address specific sectors: national banks could more easily operate as S corporations; thrift institutions would be given some of the same investment, lending, and ownership options available to banks; credit unions would have new options for investments, lending, mergers, and leasing Federal property; and certain privately insured credit unions could become members of the Federal Home Loan Bank system. The bill would modify regulatory procedures governing certain financial transactions, such as de novo branches and interstate mergers, and give agencies more flexibility in sharing data, retaining records, and scheduling exams. It also would limit the legal defenses that the United States could use against certain claims for monetary damages. Finally, H.R. 3951 would require insured depository institutions and credit unions to notify a consumer if information that may be construed as being adverse is being given to a credit reporting agency.

CBO estimates that enacting this bill would reduce Federal revenues by $23 million over the next 5 years and by a total of $72 million over the 2003–2012 period. In addition, we estimate that direct spending would increase by $17 million over the next 5 years and

by a total of $22 million over the 2003–2012 period. Because H.R. 3951 would affect direct spending and receipts, pay-as-you-go procedures would apply.

H.R. 3951 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost of complying with those requirements would not exceed the threshold for intergovernmental mandates established in UMRA ($58 million in 2002, adjusted annually for inflation).

H.R. 3951 contains several private-sector mandates as defined by UMRA. Those mandates would affect insured depository institutions and credit unions, uninsured banks, nondepository institutions that control depository institutions, certain parties affiliated with those depository institutions, and people charged with or convicted of crimes of dishonesty. At the same time, the bill would relax some restrictions on the operations of certain financial institutions. CBO estimates that the aggregate direct cost of private-sector mandates in the bill would exceed the annual threshold established in UMRA ($115 million in 2002, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3951 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars					
	2002	2003	2004	2005	2006	2007
CHANGES IN REVENUES						
Estimated Revenues[a]	0	-1	-3	-5	-6	-8
CHANGES IN DIRECT SPENDING[b]						
Estimated Budget Authority	0	1	1	1	7	7
Estimated Outlays	0	1	1	1	7	7

a. Negative revenues indicate a reduction in revenue collections.

b. CBO estimates that implementing H.R. 3951 could affect spending subject to appropriation, but we estimate that any such effect would be insignificant.

BASIS OF ESTIMATE

Most of the budgetary impacts of this legislation would result from three provisions: section 101, which would make it easier for national banks to convert to S corporation status; section 214, which would limit the Government's legal defenses against certain claims for monetary damages, and section 302, which would allow certain Federal credit unions to lease Federal land at no charge. For this estimate, CBO assumes that H.R. 3951 will be enacted in the fall of 2002.

HR. 3951 also would affect the workload at agencies that regulate financial institutions, but we estimate that the net change in agency spending would not be significant. Based on information from each of the agencies, CBO estimates that the change in ad-

ministrative expenses—both costs and potential savings—would average less than $500,000 a year over the next several years. Expenditures of the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), and the Federal Deposit Insurance Corporation (FDIC) are classified as direct spending and would be covered by fees or insurance premiums paid by the institutions they regulate. Any change in spending by the Federal Reserve would affect net revenues, while adjustments in the budget of the Securities and Exchange Commission would be subject to appropriation.

Revenues

CBO estimates that enacting H.R. 3951 would reduce Federal tax revenues collected from national and State-chartered banks and would have an insignificant effect on civil and criminal penalties collected for violations of the bill's provisions.

S CORPORATION STATUS. Under this bill, some national banks would find it easier to convert from C corporation status to S corporation status. section 101 would allow directors of national banks to be issued subordinated debt to satisfy the requirement that directors of a bank own qualifying shares in the bank. This provision would effectively reduce the number of shareholders of a bank by removing directors from shareholder status, making it easier for banks to comply with the 75-shareholder limit that defines eligibility for subchapter S election.

Income earned by banks taxed as C corporations is subject to the corporate income tax, and post-tax income distributed to shareholders is taxed again at individual income tax rates. Income earned by banks operating as S corporations is taxed only at the personal income tax rates of the banks' shareholders and is not subject to the corporate income tax. The average effective tax rate on S-corporation income is lower than the average effective tax rate on C-corporation income. CBO estimates that enacting this provision would reduce revenues by a total of $23 million over the 2003–2007 period and by $72 million over the 2002–2012 period.

Based on information from the Federal Reserve Board, the OCC, and private trade associations, CBO expects that most of the banks that would be affected are small, although banks and bank holding companies with assets over $500 million would also be affected. In addition, States are likely to amend the rules for State-chartered banks to match those for national banks. CBO expects that most conversions to Subchapter S status would occur between 2003 and 2006 and that national banks would convert earlier than State-chartered banks.

CIVIL AND CRIMINAL PENALTIES. H.R. 3951 would make all depository institutions—not just insured institutions—subject to certain civil and criminal fines for violating rules regarding breach of trust, dishonesty, and certain other crimes. CBO estimates that any additional penalty collections under those provisions would not be significant.

Direct Spending

CBO estimates that enacting H.R. 3951 would increase direct spending by a total of about $15 million over the 2003–2012 period to pay for increased litigation costs and larger payments for "good-

will" claims against the Government. The bill also would reduce offsetting receipts from credit unions that lease Federal facilities, and it could affect the cost of deposit insurance.

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

Background on Goodwill Cases. Under section 214, courts could not dismiss a claim arising out of the implementation of FIRREA on the basis of res judicata, collateral estoppel, or similar defenses if the defense was based on a decision, opinion, or order of judgment entered by any court prior to July 1, 1996. On that date, the Supreme Court decided *United States* v. *Winstar Corp.*, 518 U.S. 839 (1996), holding that the Government became liable for damages in breach of contract when the accounting treatment of "supervisory goodwill" that it had previously approved was prevented by enactment of FIRREA. About 100 "goodwill" cases against the Government are still pending before the courts, with claims totaling about $20 billion. CBO estimates that, under current law, such claims will cost the Government about $2 billion over the 2003–2012 period. Judgments, settlements, and litigation expenses for such claims are paid from the FSLIC Resolution Fund, and such payments do not require appropriation action.

By eliminating some defenses currently available to the United States in such cases, section 214 would increase the likelihood that some claims would reach a hearing on the merits, thereby allowing cases to proceed further in the judicial process than may otherwise be likely. According to the Department of Justice (DOJ) and the FDIC, this provision would affect only a few of the goodwill cases; claims in the affected cases could total about $200 million. (This provision also could affect cases in which the FDIC is the plaintiff as the receiver of a failed thrift, but any monetary awards to the FDIC would be intragovernmental payments and would have no net effect on the Federal budget.)

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

For this estimate, CBO assumes that defenses of res judicata and collateral estoppel would be just two of several possible defenses and other factors affecting awards of monetary damages and that barring them would therefore have a small effect on the potential costs of such claims. We estimate that enacting this provision would increase expected payments for such claims by about $10 million—or 5 percent of the $200 million in claims that may be affected by this provision. Given the pace of such litigation, we expect that those added costs would occur in 2006 and 2007. In addition, CBO estimates that DOJ's administrative costs would increase by

an average of about $1 million a year as a result of the added time and workload associated with those cases. This estimate is based on historical trends in the cost of litigating such claims.

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

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

CBO expects that enacting this provision would result in a loss of offsetting receipts from all credit union leases. Those lessees currently paying a fee would stop making those payments after they renew their current leases, all of which should expire within the next 5 years. In addition, credit unions that have long-term, no-cost leases would be able to renew them without becoming subject to the fees they otherwise would pay under current law. CBO estimates that enacting this provision would cost a total of about $2 million over the next 5 years and would cost an average about $700,000 annually after 2007.

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

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

Spending Subject to Appropriation

Section 312 would exempt federally insured credit unions from filing certain acquisition or merger notices with the Federal Trade

Commission (FTC). Under current law, the FTC charges filing fees ranging from $45,000 to $280,000, depending on the value of the transaction. The collection of such fees is contingent on appropriation action. Based on information from the FTC, CBO estimates that this exemption would have no significant effect on the amounts collected from such fees.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects through fiscal year 2006 are counted.

	By Fiscal Year, in Millions of Dollars										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Changes in outlays	0	1	1	1	7	7	1	1	1	1	1
Changes in receipts	0	-1	-3	-5	-6	-8	-9	-10	-11	-9	-10

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 3951 would preempt certain State laws and place new requirements on certain State agencies that regulate financial institutions. Both the preemptions and the new requirements would be mandates as defined in UMRA.

Section 209 would preempt certain State securities laws by prohibiting States from requiring agents representing a Federal savings association to register as brokers or dealers if they sell deposit products (CDs) issued by the savings association. Specifically, this provision would affect States that register exclusive agents of certain insurance companies who offer or sell CDs issued by the thrift they are affiliated with. Such a preemption would impose costs (in the form of lost revenues) on those States that currently require such registration. Information from representatives of the securities industry and securities regulators indicates that 16 States could be affected by this provision, but that only a small number of agents would fall under the preemption. CBO estimates that losses to States as a result of this prohibition would total less than $1 million a year.

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

Upon becoming a member of a Federal home loan bank, such a credit union would be eligible for loans from that bank. To preserve the value of these loans, section 301 would preempt certain State contract laws that otherwise would allow defaulting credit unions to avoid certain contractual obligations. Because those credit

unions are not currently eligible for membership in a Federal home loan bank, and accordingly, have no contracts for credit, this preemption, while a mandate, would impose no costs on State, local, or tribal governments.

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

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

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

CBO estimates that the cost of those mandates taken together would not exceed the threshold established in UMRA ($58 million in 2002, adjusted annually for inflation).

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 3951 contains several private-sector mandates as defined by UMRA. At the same time, the bill would relax some restrictions on the operations of certain financial institutions. CBO estimates that the aggregate direct costs of mandates in the bill would well exceed the annual threshold established in UMRA ($115 million in 2002, adjusted annually for inflation). CBO does not have sufficient data to provide an estimate of the total private-sector cost of complying with mandates in the bill, but we estimate that start-up costs would be at least $250 million and ongoing costs at least $600 million a year.

Mandates

The bill would impose mandates on insured depository institutions and credit unions, uninsured banks, nondepository institutions that control depository institutions, certain parties affiliated with those depository institutions, and people charged with or convicted of crimes of dishonesty. Mandates in the bill include a new consumer notification requirement, an expansion of the authority of the Federal Deposit Insurance Corporation over insured depositories controlled by a company that is not a depository institution

holding company, and expanded prohibitions on employment at financial institutions of people convicted of certain crimes.

CONSUMER NOTIFICATION REQUIREMENT. Section 409 would require insured depository institutions and insured credit unions to notify customers when information that is, or may be construed as, adverse to the interests of the customer is furnished to a consumer reporting agency.

To comply with this mandate, the affected institutions would incur start-up and ongoing costs. Start-up costs would include additional data processing, legal services, personnel training, and the design of notification forms. Primary ongoing costs would include the costs of producing and mailing notices and any additional personnel needed to answer customers' questions about the new notifications and to handle customer disputes.

Start-up Costs. Institutions that report information to consumer credit reporting agencies would have to keep track of the information furnished to such agencies and report it to the customer at the same time it is reported to the agency. The costs of required data processing changes could include the purchase and installation of software and equipment, programming and testing, and charges by third-party processors. Based on data from a Federal Reserve study of the cost of implementing the Truth in Savings Act, CBO estimates that the cost to set up data-processing systems could average about $15,000 per institution. About 16,500 insured depository institutions and credit unions furnish customer data to consumer reporting agencies. Thus, CBO estimates that the cost of data-processing systems would amount to at least $250 million. To the extent that the data processing changes necessary to comply with this mandate would likely be more complicated than what was necessary to comply with the Truth in Savings Act, the compliance costs would be larger.

Institutions also would likely incur legal costs, training costs, and the costs of designing and producing notification forms. CBO does not have adequate information to estimate those costs of complying with this mandate.

Ongoing Costs. According to industry sources, consumer reporting agencies receive about 2 billion updates per month on consumer accounts from all types of financial service firms. About 200 million to 300 million of those notices are obviously adverse reports, such as a report of late payments. Assuming that about half of those adverse notices are furnished by insured depository institutions, they would be responsible for at least 100 million to

150 million notices per month. Many additional types of reports, however, may be construed as an adverse report under the bill. For example, opening a new credit card account may be construed as adverse by a lender reviewing a credit report if an individual already has several lines of credit.

The ongoing cost of compliance would depend on whether the notices would have to be sent out separately to qualify as notifying the customer "at the same time" as the information is furnished to the consumer reporting agencies. Because the notices would have to be personalized (as opposed to a blanket policy disclosure that is the same for all customers), they would have to be mailed at a first-class rate. Depending upon the presorting done by the depository institution, first-class postage could range from 28 cents to 37

cents a piece. In addition to postage, mailing costs would include the cost of paper, envelopes, printing, and labor. According to industry sources, outside letter shops might charge between 50 cents and $1 a piece to mail such notices, including postage. (If insured depository institutions are allowed to include notices in monthly statements that they already send, the incremental cost of mailing could be much lower.) If separate notices are required, and if 100 million notices would be mailed per month at a cost of 50 cents each, the ongoing costs of producing and mailing such notices would be $600 million per year. But CBO expects the printing and mailing costs would probably be higher than this amount. In addition to those costs, institutions would incur ongoing expenses for any additional personnel who would be needed to respond to customers' inquiries, correct errors, and resolve disputes.

Because reporting to consumer credit reporting agencies is voluntary, it is possible that insured depository institutions might mitigate their cost of compliance by decreasing the frequency with which they report customer data to such agencies, or by reducing the information they report, or stop such reporting altogether. However, depository institutions would have to weigh the costs and benefits of reducing their reporting to consumer credit reporting agencies. For example, depository institutions themselves benefit from having more comprehensive information about a potential borrower's credit history when making decisions about extending credit to that individual.

EXPANSION OF THE FDIC'S AUTHORITIES. The Gramm-Leach-Bliley Act allowed new forms of affiliations among depositories and other financial services firms. Consequently, insured depository institutions may now be controlled by a company other than a depository institution holding company (DIHC). H.R. 3951 would amend current law so that certain regulatory authorities of the FDIC would apply to all commonly controlled depository institutions, regardless of the form of their holding company.

Under current law, if the FDIC suffers a loss from liquidating or selling a failed depository institution, the FDIC has the authority to obtain reimbursement from any insured depository institutions within the same DIHC. Section 407 would expand the scope of the FDIC's reimbursement power to include all insured depository institutions controlled by the same company, not just those controlled by the same DIHC. Section 408 would broaden the FDIC's authority to prohibit or limit any company that controls an insured depository from making "golden parachute" payments or indemnification payments to institution-affiliated parties of insured depositories. (Institution-affiliated parties include directors, officers, employees, and controlling shareholders.) CBO has no basis to estimate the costs of these mandates.

EMPLOYMENT PRACTICES. The bill would prevent people convicted of certain crimes from participating in the affairs of uninsured banks and would give bank regulatory agencies the authority to bar individuals charged with certain crimes of dishonesty from working at any depository institution. Section 604 would give the OCC and the Federal Reserve the authority to penalize uninsured banks for unauthorized participation by individuals convicted of certain crimes. Section 608 would expand the suspension, removal, and prohibition authority of Federal banking agencies and the Na-

tional Credit Union Administration Board with regard to individuals charged with certain crimes. CBO has no basis to estimate the cost of these mandates.

Other Private-Sector Effects

Several provisions of the bill would benefit financial institutions by allowing for greater flexibility of operations and relaxing certain restrictions. However, those provisions do not qualify as direct savings under UMRA since those benefits do not result directly from compliance with the mandates or affect the same activities as the mandates and cannot be netted against the mandate costs. Some of the provisions that would benefit the private sector are listed below:

- Section 101 would make it easier for some national banks to meet the requirements for S-corporation status, and could lower the taxes paid by those banks.
- Title II would give Federal thrift institutions some of the same powers available to banks, such as parity with banks with respect to investment adviser and broker-dealer registration requirements, allowing investments in community development and small businesses, ownership by trusts, and mergers with nonthrift affiliates.
- Title III would give Federal credit unions new options for investments, lending, and mergers, subject to certain terms and conditions. Section 302 would allow Federal agencies to lease land to Federal credit unions without charge under certain conditions. Section 312 would exempt insured credit unions from the requirement to file a notification and report form with the Federal Government in advance of a merger.
- Title IV would ease restrictions on interstate branching and mergers and eliminate reporting requirements regarding insider lending imposed on banks and banks' executive officers.

PREVIOUS ESTIMATES

On July 17, 2002, CBO transmitted a cost estimate for H.R. 3951 as ordered reported by the House Committee on Financial Services on June 6, 2002. The version ordered reported by the Committee on the Judiciary differs only with regard to the timing of antitrust reviews and the filing of pre-merger notifications by federally insured credit unions. CBO estimates that those differences would have no significant effect on the impact of the bill on the Federal budget or on the costs of the intergovernmental or private-sector mandates imposed by the bill.

ESTIMATE PREPARED BY:

Federal Costs: Kathleen Gramp (226–2860)
Federal Revenues: Pam Greene (226–2680)
Impact on State, Local, and Tribal Governments: Susan Sieg Tompkins (225–3220)
Impact on the Private Sector: Judith Ruud (226–2940)

ESTIMATE APPROVED BY:

Robert A. Sunshine

Assistant Director for Budget Analysis
and
G. Thomas Woodward
Assistant Director for Tax Analysis

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority for this legislation in article 1, section 8, clause 1 (relating to the general welfare of the United States); article 1, section 8, clause 3 (relating to the power to regulate interstate commerce); article 1, section 8, clause 5 (relating to the power to coin money and regulate the value thereof); and article I, section 8, clause 18 (relating to making all laws necessary and proper for carrying into execution powers vested by the Constitution in the government of the United States).

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following section by section analysis describes the sections of H.R. 3951 as reported by the Committee on the Judiciary.

TITLE I—NATIONAL BANKS

Provisions contained in title I were not referred to the Committee on the Judiciary, see H. Rept. 107–516 for analysis.

TITLE II—SAVINGS ASSOCIATIONS PROVISIONS

Section 213. Clarifying citizenship of Federal savings associations for Federal court jurisdiction. This section amends the Home Owners' Loan Act, 12 U.S.C. § 1464, by establishing home State citizenship for Federal savings associations in the State where the association's main office is located. Federal diversity jurisdiction requires all of the parties of a lawsuit be citizens of different States and there be at least $75,000 in dispute. Currently Federal savings associations do not satisfy the requirements of diversity jurisdiction because they are chartered by the Federal Government, typically operate in a number of States, and thus have no State citizenship. This section will conform the legal citizenship of Federal savings associations with that of national banks, which have been deemed citizens of the State where they are headquartered.

Section 214. Clarification of applicability of certain procedural doctrines. This section amends Section 11A(d) of the Federal Deposit Insurance Act, 12 U.S.C. § 1821a(d), by prohibiting the assertion of res judicata, collateral estoppel, or any similar defense or rule of law for claims brought against the United States or related agency based upon actions of the Federal Savings and Loan Insurance Corporation prior to its dissolution, or the Federal Home Loan Bank Board prior to its dissolution, and arising from th Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) or its implementation where any monetary recovery would be paid from the Federal Savings & Loan Insurance Corporation (FSLIC) Resolution Fund. During the savings and loan crisis of the 1980's, Federal thrift regulators sought to avoid incurring additional deposit insurance liabilities by encouraging healthy thrifts to take over ailing thrifts through supervisory mergers. In

exchange, the Federal thrift regulators offered to treat a failed thrift's negative net worth as supervisory goodwill and include it in regulatory capital. In 1989, Congress enacted FIRREA, which prohibited thrifts from counting supervisory goodwill as regulatory capital. In 1996, in *United States* v. *Winstar*, 518 U.S. 839 (1996), the Supreme Court held that the government had entered into contracts with the acquiring thrifts, and had breached those contracts when it implemented FIRREA's prohibitions on including supervisory goodwill in calculating regulatory capital. Section 214 seeks to ensure that all institutions entitled to pursue claims against the government under the *Winstar* decision be treated equally and given an opportunity to have those claims heard on their merits.

TITLE III—CREDIT UNION PROVISIONS

Section 312. Exemption from Premerger Notification Requirement of the Clayton Act. This section amends the Clayton Act to exempt credit unions form provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a) which require certain acquired and acquiring persons—including federally insured credit unions to file a notification and report form with the Federal Trade Commission (FTC) to provide advance notification of mergers and acquisitions when the value of the transaction exceeds $50 million.

TITLE IV—DEPOSITORY INSTITUTION PROVISIONS

Section 402. Statute of Limitations gor Judicial Review of Appointment of a Receiver for Depository Institutions. This section amends the National Bank Receivership Act, 12 U.S.C. § 191, the Federal Deposit Insurance Act, 12 U.S.C. § 1821(c)(7), and the Federal Credit Union Act, 12 U.S.C. § 1787(a)(1), by establishing a uniform 30 day statute of limitations for national banks, State chartered non-member banks, and credit unions to challenge decisions by the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and the National Credit Union Administrator to appoint a receiver. Current law generally provides that challenges to a decision by the Federal Deposit Insurance Corporation or the Office of Thrift Supervision to appoint a receiver for an insured State bank or savings association must be raised within 30 days of the appointment. See 12 U.S.C. §§ 1821(c)(7), 1464(d)(2)(B). However, there is no statutory limitation on national banks' ability to challenge a decision by the Office of the Comptroller of the Currency to appoint a receiver of an insured or uninsured national bank. As a result, the general 6 year statute of limitations currently applies to national banks in these instances. This protracted time period severely limits the Office of the Comptroller of the Currency's authority to mange insolvent national banks that are placed in receivership and the ability of the Federal Deposit Insurance Corporation to wind up the affairs of an insured national bank in a timely manner with legal certainty. *See James Madison, Ltd.* v. *Ludwig*, 82 F.3d 1085 (1996).

TITLE V—BANKING AGENCY PROVISIONS

Provisions contained in title V were not referred to the Committee on the Judiciary, see H. Rept. 107–516 for analysis.

TITLE VI—BANKING AGENCY PROVISIONS

Section 609. Streamlining Depository Institution Merger Application Requirements. This section 609 amends paragraph 4 of section 18(c) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(c), by establishing new competitive report requirements for depository institution merger applications. Currently, depository merger applications require competitive factors reports from the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Reserve, and the Office of Thrift Supervision, and the United States Department of Justice (DOJ). This section simplifies the competitive report requirement by requiring a report from the responsible banking agency and the DOJ, and requires that all report requests be filed with the FDIC to provide notice as it relates to the provision of Federal deposit insurance.

TITLE VII—CLERICAL AND TECHNICAL AMENDMENTS

Section 703. Other Technical Corrections. This section amends 18 U.S.C. § 1306 by making a technical correction to a cross reference to section 5136A of the Revised Statutes of the United States. 18 U.S.C. § 1306 imposes criminal penalties for national or State banks in violation of the banking laws, which prohibit banks from participating in a lottery. In 1999, when Gramm-Leach-Bliley, Pub. L. No. 106–102, was enacted, the law that prohibits national banks from participating in lotteries was re-designated from section 5136A to section 5136B of the Revised Statutes of the United States; however, no corresponding change was made to the cross reference in title 18. This section correctly amends title 18 to conform with the change made in 1999 by correctly changing the cross reference to section 5136B of the Revised Statutes of the United States.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported by the Committee on Financial Services, are shown in Report 107–516 part 1, filed on June 18, 2002.

The Committee on the Judiciary adopted amendments (shown at the beginning of this report) to the bill as reported by the Committee on Financial Services. Changes in provisions of existing law that would result from those amendments and differ from the changes that would result from the bill as reported by the Committee on Financial Services are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

SECTION 7A OF THE CLAYTON ACT

SEC. 7A. (a) * * *

* * * * * * *

(c) The following classes of transactions are exempt from the requirements of this section—

(1) * * *

* * * * * * *

(7) transactions which require agency approval under section 10(e) of the Home Owners' Loan Act, section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), *205(b)(3) of the Federal Credit Union Act (12 U.S.C. 1785(b)(3),* or section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 4(k) of the Bank Holding Company Act of 1956; and (B) does not require agency approval under section 3 of the Bank Holding Company Act of 1956;

* * * * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JULY 17, 2002

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

The Committee met, pursuant to notice, at 10:05 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order.

* * * * * * *

Pursuant to notice, I now call up the bill H.R. 3951, the "Financial Services Regulatory Relief Act," for purposes of markup and move its favorable recommendation to the House.

Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 3951, follows:]

[JUDICIARY COMMITTEE PRINT]

Union Calendar No.

107TH CONGRESS
2D SESSION

H. R. 3951

[Report No. 107–]

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2002

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

JUNE , 2002

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

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

[For text of introduced bill, see copy of bill as introduced on March 13, 2002]

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Financial Services Regulatory Relief Act of 2002".

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

TITLE I—NATIONAL BANK PROVISIONS

SEC. 101. NATIONAL BANK DIRECTORS.

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

(1) by striking "SEC. 5146. Every director must during" and inserting the following:

"SEC. 5146. REQUIREMENTS FOR BANK DIRECTORS.

"(a) RESIDENCY REQUIREMENTS.—Every director of a national bank shall, during";

(2) by striking "total number of directors. Every director must own in his or her own right" and inserting "total number of directors.

"(b) INVESTMENT REQUIREMENT.—

"(1) IN GENERAL.—Every director of a national bank shall own, in his or her own right,"; and

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

"(2) EXCEPTION FOR SUBORDINATED DEBT IN CERTAIN CASES.—In lieu of the requirements of paragraph (1) relating to the ownership of capital stock in the national bank, the Comptroller of the Currency may, by regulation or order, permit an individual to serve as a director of a national bank that has elected, or notifies the Comptroller of the bank's intention to elect, to operate as a S corporation pursuant to section 1362(a) of the Internal Revenue Code of 1986, if that individual holds debt of at least $1,000 issued by the national bank that is subordinated to the interests of depositors and other general creditors of the national bank.".

SEC. 102. VOTING IN SHAREHOLDER ELECTIONS.

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

(1) by striking "or to cumulate" and inserting "or, if so provided by the articles of association of the national bank, to cumulate";

(2) by striking the comma after "his shares shall equal"; and

(3) by adding at the end the following new sentence: "The Comptroller of the Currency may prescribe such regulations to carry out the purposes of

this section as the Comptroller determines to be appropriate.".

SEC. 103. SIMPLIFYING DIVIDEND CALCULATIONS FOR NATIONAL BANKS.

Section 5199 of the Revised Statutes of the United States (12 U.S.C. 60) is amended to read as follows:

"SEC. 5199. NATIONAL BANK DIVIDENDS.

"(a) IN GENERAL.—Subject to subsection (b), the directors of any national bank may declare a dividend of so much of the undivided profits of the bank as the directors judge to be expedient.

"(b) APPROVAL REQUIRED UNDER CERTAIN CIRCUMSTANCES.—A national bank may not declare and pay dividends in any year in excess of an amount equal to the sum of the total of the net income of the bank for that year and the retained net income of the bank in the preceding two years, minus any transfers required by the Comptroller of the Currency (including any transfers required to be made to a fund for the retirement of any preferred stock), unless the Comptroller of the Currency approves the declaration and payment of dividends in excess of such amount.".

SEC. 104. REPEAL OF OBSOLETE LIMITATION ON REMOVAL AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.

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

SEC. 105. REPEAL OF INTRASTATE BRANCH CAPITAL REQUIREMENTS.

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

(1) in the 2nd sentence, by striking ", without regard to the capital requirements of this section,"; and

(2) by striking the last sentence.

SEC. 106. CLARIFICATION OF WAIVER OF PUBLICATION REQUIREMENTS FOR BANK MERGER NOTICES.

The last sentence of sections 2(a) and 3(a)(2) of the National Bank Consolidation and Merger Act (12 U.S.C. 215(a) and 215a(a)(2), respectively) are each amended by striking "Publication of notice may be waived, in cases where the Comptroller determines that an emergency exists justifying such waiver, by unanimous action of the shareholders of the association or State bank" and inserting "Publication of notice may be waived if the Comptroller determines that an emergency exists justifying such waiver or if the shareholders of the association or State bank agree

by unanimous action to waive the publication requirement for their respective institutions".

SEC. 107. CAPITAL EQUIVALENCY DEPOSITS FOR FEDERAL BRANCHES AND AGENCIES OF FOREIGN BANKS.

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

"(g) CAPITAL EQUIVALENCY DEPOSIT.—

"(1) IN GENERAL.—Upon the opening of a Federal branch or agency of a foreign bank in any State and thereafter, the foreign bank, in addition to any deposit requirements imposed under section 6, shall keep on deposit investment securities, dollar deposits, or other similar types of assets approved by the Comptroller of the Currency in such amounts as the Comptroller of the Currency determines to be necessary for the protection of depositors and other investors and to be consistent with the principles of safety and soundness.

"(2) REGULATIONS REQUIRED.—The Comptroller of the Currency shall prescribe such regulations as the Comptroller determines to be necessary or appropriate for implementing the requirements estab-

lished under paragraph (1), in consultation with the Financial Institutions Examination Council.

"(3) SUMMARY OF CONSULTATION.—In publishing any proposed or final regulation under paragraph (2), the Comptroller of the Currency shall include a description of the issues taken into account in developing such regulation, a summary of the comments of the Financial Institutions Examination Council with respect to such regulation, and a statement describing the manner in which such comments were addressed by the Comptroller.".

(b) SUNSET PROVISION.—

(1) IN GENERAL.—The amendment made by subsection (a) shall cease to apply as of the date that the Board of Governors of the Federal Reserve System determines that any State described in paragraph (2) has in effect a provision of law or regulation applicable to State branches or agencies (of foreign banks) located in such State that is essentially equivalent to the amendment made by subsection (a). As of such date, section 4(g) of the International Banking Act of 1978 is amended to read as such section was in effect immediately before the effective date of the amendment made by subsection (a).

(2) DESCRIPTION.—A State referred to in paragraph (1) is any State in which are located branches and agencies (of foreign banks) the total assets of which constitute more than 50 percent of the total assets in the United States of all branches or agencies of foreign banks.

SEC. 108. EQUAL TREATMENT FOR FEDERAL AGENCIES OF FOREIGN BANKS.

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

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

Section 4(e) of the International Banking Act of 1978 (12 U.S.C. 3102(e)) is amended by inserting "if the maintenance of both an agency and a branch in the State is prohibited under the law of such State" before the period at the end.

TITLE II—SAVINGS ASSOCIATION PROVISIONS

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

(a) SECURITIES EXCHANGE ACT OF 1934.—

(1) DEFINITION OF BANK.—Section 3(a)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6)) is amended by striking "(A) a banking institution organized under the laws of the United States" and inserting "(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978)".

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

(A) in subparagraph (A)—

(i) in clause (ii), by striking "(i) or (iii)" and inserting "(i), (iii), or (iv)";

(ii) by striking "and" at the end of clause (iii);

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

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

"(iv) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the

Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding company; and";

(B) in subparagraph (B)—

(i) in clause (ii), by striking "(i) or (iii)" and inserting "(i), (iii), or (iv)";

(ii) by striking "and" at the end of clause (iii);

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

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

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

(C) in subparagraph (C)—

(i) in clause (ii), by striking "(i) or (iii)" and inserting "(i), (iii), or (iv)";

(ii) by striking "and" at the end of clause (iii);

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

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

"(iv) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation, a savings and loan holding company, or a subsidiary of a savings and loan holding company when the appropriate regulatory agency for such clearing agency is not the Commission; and";

(D) in subparagraph (D)—

(i) by striking "and" at the end of clause (ii);

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

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

"(iii) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation; and";

(E) in subparagraph (F)—

(i) by redesignating clauses (ii), (iii), and (iv) as clauses (iii), (iv), and (v), respectively; and

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

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

(F) at the end of the last undesignated paragraph, by inserting the following new sentence: "As used in this paragraph, the term 'sav-

ings and loan holding company' has the meaning given it in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).".

(b) INVESTMENT ADVISERS ACT OF 1940.—

(1) DEFINITION OF BANK.—Section 202(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(2)) is amended by striking "(A) a banking institution organized under the laws of the United States" and inserting "(A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978)".

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

(c) CONFORMING AMENDMENT TO THE INVESTMENT COMPANY ACT OF 1940.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)), as amended by section 213(c) of the Gramm-Leach-Bliley Act, is amended by inserting after "1956)" the following: "or any one

savings and loan holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 10 of the Home Owners' Loan Act)".

SEC. 202. INVESTMENTS BY FEDERAL SAVINGS ASSOCIATIONS AUTHORIZED TO PROMOTE THE PUBLIC WELFARE.

(a) IN GENERAL.—Section 5(c)(3) of the Home Owners' Loan Act (12 U.S.C. 1464(c)) is amended by adding at the end the following new subparagraph:

"(E) DIRECT INVESTMENTS TO PROMOTE THE PUBLIC WELFARE.—

"(i) IN GENERAL.—A Federal savings association may make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families through the provision of housing, services, and jobs.

"(ii) DIRECT INVESTMENTS OR ACQUISITION OF INTEREST IN OTHER COMPANIES.—Investments under clause (i) may be made directly or by purchasing interests in an entity primarily engaged in making such investments.

"(iii) PROHIBITION ON UNLIMITED LIABILITY.—No investment may be made

under this subparagraph which would subject a Federal savings association to unlimited liability to any person.

"(iv) SINGLE INVESTMENT LIMITATION TO BE ESTABLISHED BY DIRECTOR.—Subject to clauses (v) and (vi), the Director shall establish, by order or regulation, limits on—

"(I) the amount any savings association may invest in any 1 project; and

"(II) the aggregate amount of investment of any savings association under this subparagraph.

"(v) FLEXIBLE AGGREGATE INVESTMENT LIMITATION.—The aggregate amount of investments of any savings association under this subparagraph may not exceed an amount equal to the sum of 5 percent of the savings association's capital stock actually paid in and unimpaired and 5 percent of the savings association's unimpaired surplus, unless—

"(I) the Director determines that the savings association is adequately capitalized; and

"(II) the Federal Deposit Insurance Corporation determines, by order, that the aggregate amount of investments in a higher amount than the limit under this clause will pose no significant risk to the affected deposit insurance fund.

"(vi) MAXIMUM AGGREGATE INVESTMENT LIMITATION.—Notwithstanding clause (v), the aggregate amount of investments of any savings association under this subparagraph may not exceed an amount equal to the sum of 10 percent of the savings association's capital stock actually paid in and unimpaired and 10 percent of the savings association's unimpaired surplus.

"(vii) INVESTMENTS NOT SUBJECT TO OTHER LIMITATION ON QUALITY OF INVESTMENTS.—No obligation a Federal savings association acquires or retains under this subparagraph shall be taken into account for purposes of the limitation contained in

section 28(d) of the Federal Deposit Insurance Act on the acquisition and retention of any corporate debt security not of investment grade.".

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

"(A) [Repealed.]".

SEC. 203. MERGERS AND CONSOLIDATIONS OF FEDERAL SAVINGS ASSOCIATIONS WITH NONDEPOSITORY INSTITUTION AFFILIATES.

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

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by inserting after subparagraph (A) the following new subparagraph:

"(B) MERGERS AND CONSOLIDATIONS WITH NONDEPOSITORY INSTITUTION AFFILIATES.—

"(i) IN GENERAL.—Upon the approval of the Director, a Federal savings association may merge with any nondepository institution affiliate of the savings association.

"(ii) RULE OF CONSTRUCTION.—No provision of clause (i) shall be construed as—

"(I) affecting the applicability of section 18(c) of the Federal Deposit Insurance Act; or

"(II) granting a Federal savings association any power or any authority to engage in any activity that is not authorized for a Federal savings association under any other provision of this Act or any other provision of law.".

SEC. 204. REPEAL OF STATUTORY DIVIDEND NOTICE REQUIREMENT FOR SAVINGS ASSOCIATION SUBSIDIARIES OF SAVINGS AND LOAN HOLDING COMPANIES.

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

"(f) DECLARATION OF DIVIDEND.—The Director may—

"(1) require a savings association that is a subsidiary of a savings and loan holding company to give prior notice to the Director of the intent of the savings association to pay a dividend on its guar-

anty, permanent, or other nonwithdrawable stock; and

"(2) establish conditions on the payment of dividends by such a savings association.".

SEC. 205. MODERNIZING STATUTORY AUTHORITY FOR TRUST OWNERSHIP OF SAVINGS ASSOCIATIONS.

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

(1) by striking "trust," and inserting "business trust,"; and

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

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

(1) by striking "does not include—" and all that follows through "any company by virtue" where such term appears in subparagraph (A) and inserting "does not include any company by virtue";

(2) by striking "; and" at the end of subparagraph (A) and inserting a period; and

(3) by striking subparagraph (B).

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

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

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

"(4) [Repealed.]"; and

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

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

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

"(D) SMALL BUSINESS INVESTMENT COMPANIES.—Any Federal savings association may invest in 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies formed under the Small Business Investment Act

of 1958, except that the total amount of investments under this subparagraph may not at any time exceed the amount equal to 5 percent of capital and surplus of the savings association.".

SEC. 208. REMOVAL OF LIMITATION ON INVESTMENTS IN AUTO LOANS.

(a) IN GENERAL.—Section 5(c)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(1)) is amended by adding at the end the following new subparagraph:

"(V) AUTO LOANS.—Loans and leases for motor vehicles acquired for personal, family, or household purposes.".

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

"(VIII) Loans and leases for motor vehicles acquired for personal, family, or household purposes.".

SEC. 209. SELLING AND OFFERING OF DEPOSIT PRODUCTS.

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

"(4) SELLING AND OFFERING OF DEPOSIT PRODUCTS.—No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall directly or indirectly require any agent who represents 1 Federal savings association (as such term is defined in section 2(5) of the Home Owners' Loan Act (12 U.S.C. 1462(5)) in selling or offering deposit (as such term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)) products issued by such association to qualify or register as a broker, dealer, associated person of a broker, or associated person of a dealer, or to qualify or register in any other similar status or capacity.".

SEC. 210. FUNERAL- AND CEMETERY-RELATED FIDUCIARY SERVICES.

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

"(11) FUNERAL- AND CEMETERY-RELATED FIDUCIARY SERVICES.—

"(A) IN GENERAL.—A funeral director or cemetery operator, when acting in such capacity, (or any other person in connection with a contract or other agreement with a funeral director

or cemetery operator) may engage any Federal savings association, regardless of where the association is located, to act in any fiduciary capacity in which the savings association has the right to act in accordance with this section, including holding funds deposited in trust or escrow by the funeral director or cemetery operator (or by such other party), and the savings association may act in such fiduciary capacity on behalf of the funeral director or cemetery operator (or such other person).

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

"(i) CEMETERY.—The term 'cemetery' means any land or structure used, or intended to be used, for the internment of human remains in any form.

"(ii) CEMETERY OPERATOR.—The term 'cemetery operator' means any person who contracts or accepts payment for merchandise, endowment, or perpetual care services in connection with a cemetery.

"(iii) FUNERAL DIRECTOR.—The term 'funeral director' means any person who

contracts or accepts payment to provide or arrange—

"(I) services for the final disposition of human remains; or

"(II) funeral services, property, or merchandise (including cemetery services, property, or merchandise).".

SEC. 211. REPEAL OF QUALIFIED THRIFT REQUIREMENT WITH RESPECT TO OUT-OF-STATE BRANCHES.

Section 5(r)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(r)(1)) is amended by striking the ultimate sentence.

SEC. 212. SMALL BUSINESS AND OTHER COMMERCIAL LOANS.

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

"(W) SMALL BUSINESS LOANS.—Small business loans, as defined in regulations which the Director shall prescribe."

(b) INCREASE IN LENDING LIMIT ON OTHER BUSINESS LOANS.—Section 5(c)(2)(A) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(2)(A)) is amended by striking ", and

amounts in excess of 10 percent" and all that follows through "by the Director".

SEC. 213. CLARIFYING CITIZENSHIP OF FEDERAL SAVINGS ASSOCIATIONS FOR FEDERAL COURT JURISDICTION.

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

"(x) HOME STATE CITIZENSHIP.—In determining whether a Federal court has diversity jurisdiction over a case in which a Federal savings association is a party, the Federal savings association shall be considered to be a citizen only of the State in which such savings association has its main office.".

SEC. 214. CLARIFICATION OF APPLICABILITY OF CERTAIN PROCEDURAL DOCTRINES.

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

(1) by striking "LEGAL PROCEEDINGS.—Any judgment" and inserting "LEGAL PROCEEDINGS.—

"(1) IN GENERAL.—Any judgment"; and

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

"(2) CLARIFICATION OF APPLICABILITY OF CERTAIN PROCEDURAL DOCTRINES.—In any proceeding

*seeking a monetary recovery against the United States, or an agency or official thereof, based upon actions of the Federal Savings and Loan Insurance Corporation prior to its dissolution, or the Federal Home Loan Bank Board prior to its dissolution, and arising from the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 or its implementation, and where any monetary recovery in such proceeding would be paid from the FSLIC Resolution Fund or any supplements thereto, neither the United States Court of Federal Claims, the United States Court of Appeals for the Federal Circuit, nor any other court of competent jurisdiction shall dismiss, or affirm on appeal the dismissal of, the claims of any party seeking such monetary recovery, on the basis of res judicata, collateral estoppel, or any similar doctrine, defense, or rule of law, based upon any decision, opinion, or order of judgment entered by any court prior to July 1, 1996. Unless some other defense is applicable, in any such proceeding, the United States Court of Federal Claims, the United States Court of Appeals for the Federal Circuit, and any other court of competent jurisdiction shall review the merits of the claims of the party seeking such monetary relief and shall enter judgment accordingly.".

TITLE III—CREDIT UNION PROVISIONS

SEC. 301. PRIVATELY INSURED CREDIT UNIONS AUTHORIZED TO BECOME MEMBERS OF A FEDERAL HOME LOAN BANK.

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

"(5) CERTAIN PRIVATELY INSURED CREDIT UNIONS.—

"(A) IN GENERAL.—A credit union which has been determined, in accordance with section 43(e)(1) of the Federal Deposit Insurance Act and subject to the requirements of subparagraph (B), to meet all eligibility requirements for Federal deposit insurance shall be treated as an insured depository institution for purposes of determining the eligibility of such credit union for membership in a Federal home loan bank under paragraphs (1), (2), and (3).

"(B) CERTIFICATION BY APPROPRIATE SUPERVISOR.—

"(i) IN GENERAL.—For purposes of this paragraph and subject to clause (ii), a credit union which lacks Federal deposit in-

surance and which has applied for membership in a Federal home loan bank may be treated as meeting all the eligibility requirements for Federal deposit insurance only if the appropriate supervisor of the State in which the credit union is chartered has determined that the credit union meets all the eligibility requirements for Federal deposit insurance as of the date of the application for membership.

"(ii) CERTIFICATION DEEMED VALID.—If, in the case of any credit union to which clause (i) applies, the appropriate supervisor of the State in which such credit union is chartered fails to make a determination pursuant to such clause by the end of the 6-month period beginning on the date of the application, the credit union shall be deemed to have met the requirements of clause (i).

"(C) SECURITY INTERESTS OF FEDERAL HOME LOAN BANK NOT AVOIDABLE.—Notwithstanding any provision of State law authorizing a conservator or liquidating agent of a credit

union to repudiate contracts, no such provision shall apply with respect to—

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

"(ii) any security interest in the assets of such credit union securing any such extension of credit.".

(b) COPIES OF AUDITS OF PRIVATE INSURERS OF CERTAIN DEPOSITORY INSTITUTIONS REQUIRED TO BE PROVIDED TO SUPERVISORY AGENCIES.—Section 43(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (A)(i);

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

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

"(iii) in the case of depository institutions described in subsection (f)(2)(A) the deposits of which are insured by the private insurer, the National Credit Union Admin-

istration, not later than 7 days after that audit is completed; and

"(iv) in the case of depository institutions described in subsection (f)(2)(A) the deposits of which are insured by the private insurer which are members of a Federal home loan bank, the Federal Housing Finance Board, not later than 7 days after that audit is completed."; and

(4) by adding at the end of such section 43(a)(2) the following new subparagraph:

"(C) CONSULTATION.—The appropriate supervisory agency of each State in which a private deposit insurer insures deposits in an institution described in subsection (f)(2)(A) which—

"(i) lacks Federal deposit insurance; and

"(ii) has become a member of a Federal home loan bank,

shall provide the National Credit Union Administration, upon request, with the results of any examination and reports related thereto concerning the private deposit insurer to which such agency may have in its possession.".

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

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

(1) by striking "Upon application by any credit union" and inserting "Notwithstanding any other provision of law, upon application by any credit union";

(2) by inserting "on lands reserved for the use of, and under the exclusive or concurrent jurisdiction of, the United States or" after "officer or agency of the United States charged with the allotment of space";

(3) by inserting "lease land or" after "such officer or agency may in his or its discretion"; and

(4) by inserting "or the facility built on the lease land" after "credit union to be served by the allotment of space".

(b) CLERICAL AMENDMENT.—The heading for section 124 is amended by inserting "OR FEDERAL LAND" after "BUILDINGS".

SEC. 303. INVESTMENTS IN SECURITIES BY FEDERAL CREDIT UNIONS.

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

(1) in the matter preceding paragraph (1) by striking "A Federal credit union" and inserting "(a) IN GENERAL.—Any Federal credit union"; and

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

"(b) INVESTMENT FOR THE CREDIT UNION'S OWN ACCOUNT.—

"(1) IN GENERAL.—A Federal credit union may purchase and hold for its own account such investment securities of investment grade as the Board may authorize by regulation, subject to such limitations and restrictions as the Board may prescribe in the regulations.

"(2) PERCENTAGE LIMITATION.—In no event may the total amount of investment securities of any single obligor or maker held by a Federal credit union for the credit union's own account exceed at any time an amount equal to 10 percent of the net worth of the credit union.

"(3) INVESTMENT SECURITY DEFINED.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'investment security' means marketable obligations evidencing the indebtedness of any person in the form of bonds, notes,

or debentures and other instruments commonly referred to as investment securities.

"(B) FURTHER DEFINITION BY BOARD.—The Board may further define the term 'investment security'.

"(4) INVESTMENT GRADE DEFINED.—The term 'investment grade' means with respect to an investment security purchased by a credit union for its own account, an investment security that at the time of such purchase is rated in one of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization.

"(5) CLARIFICATION OF PROHIBITION ON STOCK OWNERSHIP.—No provision of this subsection shall be construed as authorizing a Federal credit union to purchase shares of stock of any corporation for the credit union's own account, except as otherwise permitted by law.".

SEC. 304. INCREASE IN GENERAL 12-YEAR LIMITATION OF TERM OF FEDERAL CREDIT UNION LOANS TO 15 YEARS.

Section 107(a)(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) (as so designated by section 303 of this title) is amended—

(1) in the matter preceding subparagraph (A), by striking "to make loans, the maturities of which shall not exceed twelve years except as otherwise provided herein" and inserting "to make loans, the maturities of which shall not exceed 15 years or any longer maturity as the Board may allow, in regulations, except as otherwise provided in this Act";

(2) in subparagraph (A)—

(A) by striking clause (ii);

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

(C) by inserting "and" after the semicolon at the end of clause (viii) (as so redesignated).

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

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

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

Section 107A(a) of the Federal Credit Union Act (12 U.S.C. 1757a(a)) is amended by inserting ", excluding

loans made to nonprofit religious organizations," after "total amount of such loans".

SEC. 307. CHECK CASHING AND MONEY TRANSFER SERVICES OFFERED WITHIN THE FIELD OF MEMBERSHIP.

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

"(12) in accordance with regulations prescribed by the Board—

"(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including electronic fund transfers); and

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

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

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

(1) by striking "or" at the end of clause (ii) of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; or"; and

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

"(D) a merger involving any such Federal credit union approved by the Board on or after August 7, 1998.".

SEC. 309. CONVERSIONS INVOLVING COMMON-BOND CREDIT UNIONS.

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

"(3) CRITERIA FOR CONTINUED MEMBERSHIP OF CERTAIN MEMBER GROUPS IN COMMUNITY CHARTER CONVERSIONS.—In the case of a voluntary conversion of a common-bond credit union described in paragraph (1) or (2) of subsection (b) into a community credit union described in subsection (b)(3), the Board shall prescribe, by regulation, the criteria under which the Board may determine that a member group or other portion of a credit union's existing membership, that is located outside the well-defined local community, neighborhood, or rural district that shall constitute the community charter, can be satisfac-

torily served by the credit union and remain within the community credit union's field of membership.".

SEC. 310. CREDIT UNION GOVERNANCE.

(a) EXPULSION OF MEMBERS FOR JUST CAUSE.—Subsection (b) of section 118 of the Federal Credit Union Act (12 U.S.C. 1764(b)) is amended to read as follows:

"(b) POLICY AND ACTIONS OF BOARDS OF DIRECTORS OF FEDERAL CREDIT UNIONS.—

"(1) EXPULSION OF MEMBERS FOR NONPARTICIPATION OR FOR JUST CAUSE.—The board of directors of a Federal credit union may, by majority vote of a quorum of directors, adopt and enforce a policy with respect to expulsion from membership, by a majority vote of such board of directors, based on just cause, including disruption of credit union operations, or on nonparticipation by a member in the affairs of the credit union.

"(2) WRITTEN NOTICE OF POLICY TO MEMBERS.—If a policy described in paragraph (1) is adopted, written notice of the policy as adopted and the effective date of such policy shall be provided to—

"(A) each existing member of the credit union not less than 30 days prior to the effective date of such policy; and

"(B) each new member prior to or upon applying for membership.".

(b) TERM LIMITS AUTHORIZED FOR BOARD MEMBERS OF FEDERAL CREDIT UNIONS.—Section 111(a) of the Federal Credit Union Act (12 U.S.C. 1761(a)) is amended by adding at the end the following new sentence: "The bylaws of a Federal credit union may limit the number of consecutive terms any person may serve on the board of directors of such credit union.".

(c) REIMBURSEMENT FOR LOST WAGES DUE TO SERVICE ON CREDIT UNION BOARD NOT TREATED AS COMPENSATION.—Section 111(c) of the Federal Credit Union Act (12 U.S.C. 1761(c)) is amended by inserting ", including lost wages," after "the reimbursement of reasonable expenses".

SEC. 311. PROVIDING THE NATIONAL CREDIT UNION ADMINISTRATION WITH GREATER FLEXIBILITY IN RESPONDING TO MARKET CONDITIONS.

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

TITLE IV—DEPOSITORY INSTITUTION PROVISIONS

SEC. 401. EASING RESTRICTIONS ON INTERSTATE BRANCHING AND MERGERS.

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

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

(2) CLERICAL AMENDMENT.—The heading for subsection (g) of section 5155 of the Revised Statutes of the United States is amended by striking "STATE 'OPT-IN' ELECTION TO PERMIT".

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

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

(2) CLERICAL AMENDMENT.—The heading for paragraph (4) of section 18(d) of the Federal Deposit Insurance Act is amended by striking "STATE 'OPT-

IN' ELECTION TO PERMIT INTERSTATE" and inserting "INTERSTATE".

(c) DE NOVO INTERSTATE BRANCHES OF STATE MEMBER BANKS.—The 3rd undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 321) is amended by adding at the end the following new sentences: "A State member bank may establish and operate a de novo branch in a host State (as such terms are defined in section 18(d) of the Federal Deposit Insurance Act) on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of a de novo branch of a national bank in a host State under section 5155(g) of the Revised Statutes of the United States. Such section 5155(g) shall be applied for purposes of the preceding sentence by substituting 'Board of Governors of the Federal Reserve System' for 'Comptroller of the Currency' and 'State member bank' for 'national bank'.".

(d) INTERSTATE MERGER OF BANKS.—

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

(A) by striking "Beginning on June 1, 1997, the" and inserting "The"; and

(B) by striking "insured banks with different home States" and inserting "an insured bank and another insured depository institution or trust company with a different home State than the resulting insured bank".

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

"(b) MERGER OF NATIONAL BANK TRUST COMPANY WITH ANOTHER TRUST COMPANY.—A national bank that is a trust company may engage in a consolidation or merger under this Act with any trust company with a different home State, under the same terms and conditions that would apply if the trust companies were located within the same State.".

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

"(5) INTERSTATE FIDUCIARY ACTIVITY.—

"(A) AUTHORITY OF STATE BANK SUPERVISOR.—The State bank supervisor of a State bank may approve an application by the State

bank, when not in contravention of home State or host State law, to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in a host State in which State banks or other corporations which come into competition with national banks are permitted to act under the laws of such host State.

"(B) NONCONTRAVENTION OF HOST STATE LAW.—Whenever the laws of a host State authorize or permit the exercise of any or all of the foregoing powers by State banks or other corporations which compete with national banks, the granting to and the exercise of such powers by a State bank as provided in this paragraph shall not be deemed to be in contravention of host State law within the meaning of this paragraph.

"(C) STATE BANK INCLUDES TRUST COMPANIES.—For purposes of this paragraph, the term 'State bank' includes any State-chartered trust company (as defined in section 44(g)).

"(D) OTHER DEFINITIONS.—For purposes of this paragraph, the term 'home State' and

'host State' have the meanings given such terms in section 44.".

(f) TECHNICAL AND CONFORMING AMENDMENTS.—

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

(A) in subsection (a)—

(i) by striking paragraph (4) and inserting the following new paragraph:

"(4) TREATMENT OF BRANCHES IN CONNECTION WITH CERTAIN INTERSTATE MERGER TRANSACTIONS.—In the case of an interstate merger transaction which involves the acquisition of a branch of an insured depository institution or trust company without the acquisition of the insured depository institution or trust company, the branch shall be treated, for purposes of this section, as an insured depository institution or trust company the home State of which is the State in which the branch is located."; and

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

(B) in subsection (b)—

(i) by striking "bank" each place such term appears in paragraph (2)(B)(i) and

inserting "insured depository institution or trust company";

(ii) by striking "banks" where such term appears in paragraph (2)(E) and inserting "insured depository institutions or trust companies";

(iii) by striking "bank affiliate" each place such term appears in that portion of paragraph (3) that precedes subparagraph (A) and inserting "insured depository institution affiliate";

(iv) by striking "any bank" where such term appears in paragraph (3)(B) and inserting "any insured depository institution";

(v) by striking "bank" where such term appears in paragraph (4)(A) and inserting "insured depository institution and trust company"; and

(vi) by striking "all banks" where such term appears in paragraph (5) and inserting "all insured depository institutions and trust companies";

(C) in subsection (d)(1), by striking "any bank" and inserting "any insured depository institution or trust company";

(D) in subsection (e)—

(i) by striking "1 or more banks" and inserting "1 or more insured depository institutions"; and

(ii) by striking "paragraph (2), (4), or (5)" and inserting "paragraph (2)";

(E) by striking clauses (i) and (ii) of subsection (g)(4)(A) and inserting the following new clauses:

"(i) with respect to a national bank or Federal savings association, the State in which the main office of the bank or savings association is located; and

"(ii) with respect to a State bank, State savings association, or State-chartered trust company, the State by which the bank, savings association, or trust company is chartered; and";

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

"(5) HOST STATE.—The term 'host State' means—

"(A) with respect to an insured depository institution, a State, other than the home State of the depository institution, in which the depository institution maintains, or seeks to establish and maintain, a branch; and

"(B) with respect to a trust company, a State, other than the home State of the trust company, in which the trust company acts, or seeks to act, in 1 or more fiduciary capacities.";

(G) in subsection (g)(10), by striking "section 18(c)(2)" and inserting "paragraph (1) or (2) of section 18(c), as appropriate,"; and

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

"(12) TRUST COMPANY.—The term 'trust company' means—

"(A) any national bank;

"(B) any savings association; and

"(C) any bank, banking association, trust company, savings bank, or other banking institution which is incorporated under the laws of any State,

that is authorized to act in 1 or more fiduciary capacities but is not in the business of receiving deposits other than trust funds (as defined in section 3(p)).".

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

(A) in paragraph (1)—

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

(ii) by redesignating subparagraph (D) as subparagraph (B); and

(B) in paragraph (5), by striking "subparagraph (B) or (D)" and inserting "subparagraph (B)".

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

"(c) DEFINITIONS.—For purposes of this section, the terms 'home State', 'out-of-State bank', and 'trust company' each have same meaning as in section 44(g) of the Federal Deposit Insurance Act.

(g) CLERICAL AMENDMENTS.—

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

(2) The heading for section 44(e) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(e)) is

amended by striking "BANKS" and inserting "INSURED DEPOSITORY INSTITUTIONS".

SEC. 402. STATUTE OF LIMITATIONS FOR JUDICIAL REVIEW OF APPOINTMENT OF A RECEIVER FOR DEPOSITORY INSTITUTIONS.

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

(1) by striking "SECTION 2. The Comptroller of the Currency" and inserting the following:

"SEC. 2. APPOINTMENT OF RECEIVER FOR A NATIONAL BANK.

"(a) IN GENERAL.—The Comptroller of the Currency"; and

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

"(b) JUDICIAL REVIEW.—If the Comptroller of the Currency appoints a receiver under subsection (a), the national bank may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such bank is located, or in the United States District Court for the District of Columbia, for an order requiring the Comptroller of the Currency to remove the receiver, and the court shall, upon the merits, dismiss such action or direct the Comptroller of the Currency to remove the receiver.".

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

"(7) JUDICIAL REVIEW.—If the Corporation is appointed (including the appointment of the Corporation as receiver by the Board of Directors) as conservator or receiver of a depository institution under paragraph (4), (9), or (10), the depository institution may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such depository institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to be removed as the conservator or receiver (regardless of how such appointment was made), and the court shall, upon the merits, dismiss such action or direct the Corporation to be removed as the conservator or receiver.".

(c) EXPANSION OF PERIOD FOR CHALLENGING THE APPOINTMENT OF A LIQUIDATING AGENT.—Subparagraph (B) of section 207(a)(1) of the Federal Credit Union Act (12 U.S.C. 1787(a)(1)) is amended by striking "10 days" and inserting "30 days".

(d) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall apply with respect to con-

servators, receivers, or liquidating agents appointed on or after the date of the enactment of this Act.

SEC. 403. REPORTING REQUIREMENTS RELATING TO INSIDER LENDING.

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

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

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

(b) REPORTING REQUIREMENTS REGARDING LOANS FROM CORRESPONDENT BANKS TO EXECUTIVE OFFICERS AND SHAREHOLDERS OF INSURED BANKS.—Section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(2)) is amended—

(1) by striking subparagraph (G); and

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

SEC. 404. AMENDMENT TO PROVIDE AN INFLATION ADJUSTMENT FOR THE SMALL DEPOSITORY INSTITUTION EXCEPTION UNDER THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.

Section 203(1) of the Depository Institution Management Interlocks Act (12 U.S.C. 3202(1)) is amended by striking "$20,000,000" and inserting "$100,000,000".

SEC. 405. ENHANCING THE SAFETY AND SOUNDNESS OF INSURED DEPOSITORY INSTITUTIONS.

(a) CLARIFICATION RELATING TO THE ENFORCEABILITY OF AGREEMENTS AND CONDITIONS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 49. ENFORCEMENT OF AGREEMENTS.

"(a) IN GENERAL.—Notwithstanding clause (i) or (ii) of section 8(b)(6)(A) or section 38(e)(2)(E), an appropriate Federal banking agency may enforce, under section 8, the terms of—

"(1) any condition imposed in writing by the agency on a depository institution or an institution-affiliated party (including a bank holding company) in connection with any action on any application, notice, or other request concerning a depository institution; or

"(2) any written agreement entered into between the agency and an institution-affiliated party (including a bank holding company).

"(b) RECEIVERSHIPS AND CONSERVATORSHIPS.—After the appointment of the Corporation as the receiver or conservator for any insured depository institution, the Corporation may enforce any condition or agreement described in paragraph (1) or (2) of subsection (a) involving such institution or any institution-affiliated party (including a bank holding company), through an action brought in an appropriate United States district court.".

(b) PROTECTION OF CAPITAL OF INSURED DEPOSITORY INSTITUTIONS.—Paragraph (1) of section 18(u) of the Federal Deposit Insurance Act (12 U.S.C. 1828(u)) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

SEC. 406. INVESTMENTS BY INSURED SAVINGS ASSOCIATIONS IN BANK SERVICE COMPANIES AUTHORIZED.

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

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 1(b)(4) of the Bank Service Company Act (12 U.S.C. 1861(b)(4)) is amended—

(A) by inserting ", except when such term appears in connection with the term 'insured depository institution'," after "means"; and

(B) by striking "Federal Home Loan Bank Board" and inserting "Director of the Office of Thrift Supervision".

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

(A) by striking paragraph (5) and inserting the following new paragraph:

"(5) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act;";

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

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

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

"(9) the terms 'State depository institution', 'Federal depository institution', 'State savings association' and 'Federal savings association' have the

meanings given the terms in section 3 of the Federal Deposit Insurance Act.".

(3) The 1st sentence of section 5(c)(4)(B) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(4)(B)) is amended by striking "by savings associations of such State and by Federal associations" and inserting "by State and Federal depository institutions".

(4) Subparagraph (A)(ii) and subparagraph (B)(ii) of section 1(b)(2) of the Bank Service Company Act (12 U.S.C. 1861(b)(2)) are each amended by striking "insured banks" and inserting "insured depository institutions".

(5) Section 1(b)(8) of the Bank Service Company Act (12 U.S.C. 1861(b)(8)) is further amended—

(A) by striking "insured bank" and inserting "insured depository institution"

(B) by striking "insured banks" each place such term appears and inserting "insured depository institutions"; and

(C) by striking "the bank's" and inserting "the depository institution's".

(6) Section 2 of the Bank Service Company Act (12 U.S.C. 1862) is amended by inserting "or savings associations, other than the limitation on the amount of investment by a Federal savings association con-

tained in section 5(c)(4)(B) of Home Owners' Loan Act" after "relating to banks".

(7) Section 4(c) of the Bank Service Company Act (12 U.S.C. 1864(c)) is amended by inserting "or State savings association" after "State bank" each place such term appears.

(8) Section 4(d) of the Bank Service Company Act (12 U.S.C. 1864(d)) is amended by inserting "or Federal savings association" after "national bank" each place such term appears.

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

"(e) A bank service company may perform—

"(1) only those services that each depository institution shareholder or member is otherwise authorized to perform under any applicable Federal or State law; and

"(2) such services only at locations in a State in which each such shareholder or member is authorized to perform such services.".

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

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

(A) in subsection (a)—

(i) by striking "insured bank" and inserting "insured depository institution"; and

(ii) by striking "bank's" and inserting "institution's".

(B) in subsection (b), by striking "insured bank" and inserting "insured depository institution"; and

(C) in subsection (c)—

(i) by striking "the bank or banks" and inserting "any depository institution"; and

(ii) by striking "capability of the bank" and inserting "capability of the depository institution".

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

(A) in subsection (b), by striking "insured bank" and inserting "insured depository institution";

(B) in subsection (c)—

(i) by striking "a bank" each place such term appears and inserting "a depository institution"; and

(ii) by striking "the bank" each place such term appears and inserting "the depository institution".

SEC. 407. CROSS GUARANTEE AUTHORITY.

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

"(A) such institutions are controlled by the same company; or".

SEC. 408. GOLDEN PARACHUTE AUTHORITY AND NONBANK HOLDING COMPANIES.

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

(1) in paragraph (2)(A), by striking "or depository institution holding company" and inserting "or covered company";

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

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

"(i) the insolvency of the depository institution or covered company;

"(ii) the appointment of a conservator or receiver for the depository institution; or

"(iii) the depository institution's troubled condition (as defined in the regulations prescribed pursuant to section 32(f)).";

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

(4) in paragraph (3) in the matter preceding subparagraph (A), by striking "depository institution holding company" and inserting "covered company";

(5) in paragraph (3)(A), by striking "holding company" and inserting "covered company";

(6) in paragraph (4)(A)—

(A) by striking "depository institution holding company" each place such term appears and inserting "covered company"; and

(B) by striking "holding company" each place such term appears (other than in connection with the term referred to in subparagraph (A)) and inserting "covered company";

(7) in paragraph (5)(A), by striking "depository institution holding company" and inserting "covered company";

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

"(D) COVERED COMPANY.—The term 'covered company' means any depository institution holding company (including any company required to file a report under section 4(f)(6) of the Bank Holding Company Act of 1956), or any other company that controls an insured depository institution."; and

(9) in paragraph (6)—

(A) by striking "depository institution holding company" and inserting "covered company,"; and

(B) by striking "or holding company" and inserting "or covered company".

SEC. 409. DUTY OF DEPOSITORY INSTITUTIONS TO INFORM CUSTOMERS OF CERTAIN ADVERSE ACTIONS.

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

"(x) DUTY TO NOTIFY OF ADVERSE ACTION.—Any insured depository institution that furnishes, to a consumer

reporting agency (as defined in section 603 of the Fair Credit Reporting Act), any information relating to a customer of the depository institution that is, or may be construed as being, adverse to the interests of the customer shall notify the customer, at the same time the information is furnished to the agency, that such information has been provided to such agency, together with a brief description of such information sufficient to allow the customer to determine the accuracy or completeness of the information so furnished.".

(b) INSURED CREDIT UNIONS.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end the following new subsection:

"(w) DUTY TO NOTIFY OF ADVERSE ACTION.—Any insured credit union that furnishes, to a consumer reporting agency (as defined in section 603 of the Fair Credit Reporting Act), any information relating to a shareholder or member of the insured credit union that is, or may be construed as being, adverse to the interests of the shareholder or member shall notify the shareholder or member, at the same time the information is furnished to the agency, that such information has been provided to such agency, together with a brief description of such information sufficient to allow the shareholder or member to determine the accuracy or completeness of the information so furnished.".

TITLE V—DEPOSITORY INSTITUTION AFFILIATES PROVISIONS

SEC. 501. CLARIFICATION OF CROSS MARKETING PROVISION.

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

(1) in subparagraph (B), by striking "subsection (k)(4)(I)" and inserting "subparagraph (H) or (I) of subsection (k)(4)"; and

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

"(C) THRESHOLD OF CONTROL.—Subparagraph (A) shall not apply with respect to a company described or referred to in clause (i) or (ii) of such subparagraph if the financial holding company does not own or control 25 percent or more of the total equity or any class of voting securities of such company.".

SEC. 502. AMENDMENT TO PROVIDE THE FEDERAL RESERVE BOARD WITH DISCRETION CONCERNING THE IMPUTATION OF CONTROL OF SHARES OF A COMPANY BY TRUSTEES.

Section 2(g)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(g)(2)) is amended by inserting ", un-

less the Board determines that such treatment is not appropriate in light of the facts and circumstances of the case and the purposes of this Act" before the period at the end.

SEC. 503. ELIMINATING GEOGRAPHIC LIMITS ON THRIFT SERVICE COMPANIES.

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

(1) by striking "corporation organized" and all that follows through "is available for purchase" and inserting "company, if the entire capital of the company is available for purchase"; and

(2) by striking "having their home offices in such State".

(b) TECHNICAL CORRECTIONS.—

(1) The heading for subparagraph (B) of section 5(c)(4) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(4)(B)) is amended by striking "CORPORATIONS" and inserting "COMPANIES".

(2) The 2nd sentence of section 5(n)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(n)(1)) is amended by striking "service corporations" and inserting "service companies".

(3) Section 5(q)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(q)(1)) is amended by striking "service corporation" each place such term appears in subparagraphs (A), (B), and (C) and inserting "service company".

(4) Section 10(m)(4)(C)(iii)(II) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)(C)(iii)(II)) is amended by striking "service corporation" each place such term appears and inserting "service company".

SEC. 504. CLARIFICATION OF SCOPE OF APPLICABLE RATE PROVISION.

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

(1) in paragraph (1), by striking "loan or discount" and all that follows through "the greater of—" and inserting "loan, discount, or credit sale made or upon any note, bill of exchange, financing transaction, or other evidence of debt issued to or acquired by any competing lender, shall be equal to not more than the greater of—";

(2) in paragraph (2), by striking subparagraph (A) and inserting the following:

"(A) the authority of any competing lender to take, receive, reserve, or charge interest on any

loan or credit sale made in any State other than the State referred to in paragraph (1); or"; and

(3) by adding at the end the following:

"(3) DEFINITION.—For purposes of this subsection, the term 'competing lender' means—

"(A) any insured depository institution whose home State is such State; and

"(B) any other person or entity engaged in the business of selling or financing the sale of property (and any services incidental to the sale of property) in such State, except that, with regard to any person or entity described in this subparagraph, such term does not include any person or entity engaged in the business of providing a short-term cash advance to any consumer in exchange for—

"(i) a consumer's personal check or share draft, in the amount of the advance plus a fee, where presentment or negotiation of such check or share draft is deferred by agreement of the parties until a designated future date; or

"(ii) a consumer's authorization to debit the consumer's transaction account, in the amount of the advance plus a fee, where

such account will be debited on or after a designated future date.".

TITLE VI—BANKING AGENCY PROVISIONS

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

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

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

(2) by inserting after paragraph (4), the following new paragraph:

"(5) WAIVER OF SCHEDULE WHEN NECESSARY TO ACHIEVE SAFE AND SOUND ALLOCATION OF EXAMINER RESOURCES.—Notwithstanding paragraphs (1), (2), (3), and (4), an appropriate Federal banking agency may make adjustments in the examination cycle for an insured depository institution if necessary to allocate available resources of examiners in a manner that provides for the safety and soundness of, and the effective examination and supervision of, insured depository institutions."; and

(3) in paragraphs (8) and (9), as so redesignated, by striking "paragraph (6)" and inserting "paragraph (7)".

SEC. 602. CREDIT CARD ACCOUNTS PERMITTED FOR BANK EXAMINERS ON SAME TERMS AS OTHER CONSUMERS.

Section 212 of title 18, United States Code, is amended by adding at the end the following new paragraph:

"With respect to any employee of a Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) including any examiner or assistant examiner, the provisions of this section and section 213 shall not prohibit such employee from applying for, or being a cardholder under, any credit card account under an open end consumer credit plan (as such terms are defined in the Truth in Lending Act), to the extent the terms and conditions applicable with respect to such account, and any credit extended under such account, are no more favorable to the employee than the terms and conditions that are generally applicable to credit card accounts established under open end consumer credit plans for other consumers.".

SEC. 603. INTERAGENCY DATA SHARING.

(a) FEDERAL BANKING AGENCIES.—Section 7(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(2))

is amended by adding at the end the following new subparagraph:

"(C) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Corporation (with respect to all insured depository institutions, including a depository institution for which the Corporation has been appointed conservator or receiver) or an appropriate State bank supervisor (with respect to a State depository institution) under subparagraph (A) or (B), a Federal banking agency may, in the agency's discretion, furnish any report of examination or other confidential supervisory information concerning any depository institution or other entity examined by such agency under authority of any Federal law, to—

"(i) any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity;

"(ii) to any officer, director, or receiver of such depository institution or entity; and

"(iii) any other person the Federal banking agency determines to be appropriate.".

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

"(8) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Board (with respect to all insured credit unions, including a credit union for which the Corporation has been appointed conservator or liquidating agent) or an appropriate State commission, board, or authority having supervision of a State-chartered credit union, the Board may, in the Board's discretion, furnish any report of examination or other confidential supervisory information concerning any credit union or other entity examined by the Board under authority of any Federal law, to—

"(A) any other Federal or State agency or authority with supervisory or regulatory authority over the credit union or other entity;

"(B) to any officer, director, or receiver of such credit union or entity; and

"(C) any other institution-affiliated party of such credit union or entity the Board determines to be appropriate.".

SEC. 604. PENALTY FOR UNAUTHORIZED PARTICIPATION BY CONVICTED INDIVIDUAL.

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

"(c) NONINSURED BANKS.—Subsections (a) and (b) shall apply to a noninsured national bank and a noninsured State member bank, and any agency or noninsured branch (as such terms are defined in section 1(b) of the International Banking Act of 1978) of a foreign bank as if such bank, branch, or agency were an insured depository institution, except such subsections shall be applied for purposes of this subsection by substituting the agency determined under the following paragraphs for 'Corporation' each place such term appears in such subsections:

"(1) The Comptroller of the Currency, in the case of a noninsured national bank or any Federal agency or noninsured Federal branch of a foreign bank.

"(2) The Board of Governors of the Federal Reserve System, in the case of a noninsured State member bank or any State agency or noninsured State branch of a foreign bank.".

SEC. 605. AMENDMENT PERMITTING THE DESTRUCTION OF OLD RECORDS OF A DEPOSITORY INSTITUTION BY THE FDIC AFTER THE APPOINTMENT OF THE FDIC AS RECEIVER.

Section 11(d)(15)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(15)(D)) is amended—

(1) by striking "RECORDKEEPING REQUIREMENT.—After the end of the 6-year period" and inserting "RECORDKEEPING REQUIREMENT.—

"(i) IN GENERAL.—Except as provided in clause (ii), after the end of the 6-year period"; and

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

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

SEC. 606. MODERNIZATION OF FDIC RECORDKEEPING REQUIREMENT.

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

"(f) PRESERVATION OF AGENCY RECORDS.—

"(1) IN GENERAL.— The Corporation may cause any and all records, papers, or documents kept by the Corporation or in the possession or custody of the Corporation to be—

"(A) photographed or microphotographed or otherwise reproduced upon film; or

"(B) preserved in any electronic medium or format which is capable of—

"(i) being read or scanned by computer; and

"(ii) being reproduced from such electronic medium or format by printing or any other form of reproduction of electronically stored data.

"(2) TREATMENT AS ORIGINAL RECORDS.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be deemed to be an original record for all purposes, including introduction in evi-

dence in all State and Federal courts or administrative agencies and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

"(3) AUTHORITY OF THE BOARD OF DIRECTORS.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be preserved in such manner as the Board of Directors shall prescribe and the original records, papers, or documents may be destroyed or otherwise disposed of as the Board of Directors may direct.".

SEC. 607. REPEAL OF MINIMUM ANTITRUST REVIEW PERIOD WITH THE AGREEMENT OF THE ATTORNEY GENERAL.

(a) ANTITRUST REVIEWS UNDER THE BANK HOLDING COMPANY ACT OF 1956.—The 4th sentence of section 11(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1849(b) is amended by striking ", but in no event less than fifteen calendar days after the date of approval".

(b) ANTITRUST REVIEWS UNDER THE FEDERAL DEPOSIT INSURANCE ACT.—The last sentence of section 18(c)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(6)) is amended by striking ", but in no event less than 15 calendar days after the date of approval".

SEC. 608. CLARIFICATION OF EXTENT OF SUSPENSION, REMOVAL, AND PROHIBITION AUTHORITY OF FEDERAL BANKING AGENCIES IN CASES OF CERTAIN CRIMES BY INSTITUTION-AFFILIATED PARTIES.

(a) INSURED DEPOSITORY INSTITUTION.—

(1) IN GENERAL.—Section 8(g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g) is amended—

(A) in subparagraph (A), by striking "the depository" each place such term appears and inserting "any depository";

(B) in subparagraph (B)(i), by inserting "of which the subject of the order is an institution-affiliated party" before the period at the end;

(C) in subparagraph (C), by striking "the depository" each place such term appears and inserting "any depository";

(D) in subparagraph (D)(i), by inserting "of which the subject of the order is an institution-affiliated party" after "upon the depository institution"; and

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

"(E) CONTINUATION OF AUTHORITY.—A Federal banking agency may issue an order under this paragraph with respect to an individual who is an institution-affiliated party at a depository institution at the time of an offense described in subparagraph (A) without regard to—

"(i) whether such individual is an institution-affiliated party at any depository institution at the time the order is considered or issued by the agency; or

"(ii) whether the depository institution at which the individual was an institution-affiliated party at the time of the offense remains in existence at the time the order is considered or issued by the agency.".

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

"(g) SUSPENSION, REMOVAL, AND PROHIBITION FROM PARTICIPATION ORDERS IN THE CASE OF CERTAIN CRIMINAL OFFENSES.—".

(b) INSURED CREDIT UNIONS.—

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

(A) in subparagraph (A), by striking "the credit union" each place such term appears and inserting "any credit union";

(B) in subparagraph (B)(i), by inserting "of which the subject of the order is, or most recently was, an institution-affiliated party" before the period at the end;

(C) in subparagraph (C), by striking "the credit union" each place such term appears and inserting "any credit union";

(D) in subparagraph (D)(i), by striking "upon such credit union" and inserting "upon the credit union of which the subject of the order is, or most recently was, an institution-affiliated party"; and

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

"(E) CONTINUATION OF AUTHORITY.—The Board may issue an order under this paragraph with respect to an individual who is an institution-affiliated party at a credit union at the

time of an offense described in subparagraph (A) without regard to—

"(i) whether such individual is an institution-affiliated party at any credit union at the time the order is considered or issued by the Board; or

"(ii) whether the credit union at which the individual was an institution-affiliated party at the time of the offense remains in existence at the time the order is considered or issued by the Board.".

(2) CLERICAL AMENDMENT.—Section 206(i) of the Federal Credit Union Act (12 U.S.C. 1786(i)) is amended by striking "(i)" at the beginning and inserting the following new subsection heading:

"(i) SUSPENSION, REMOVAL, AND PROHIBITION FROM PARTICIPATION ORDERS IN THE CASE OF CERTAIN CRIMINAL OFFENSES.—".

SEC. 609. STREAMLINING DEPOSITORY INSTITUTION MERGER APPLICATION REQUIREMENTS.

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

"(4) REPORTS ON COMPETITIVE FACTORS.—

"(A) REQUEST FOR REPORT.—In the interests of uniform standards, before acting on any application for approval of a merger transaction, the responsible agency, unless the agency finds that it must act immediately in order to prevent the probable failure of a depository institution involved, shall—

"(i) request a report on the competitive factors involved from the Attorney General; and

"(ii) provide a copy of the request to the Corporation (when the Corporation is not the responsible agency).

"(B) FURNISHING OF REPORT.—The report requested under subparagraph (A) shall be furnished by the Attorney General to the responsible agency—

"(i) not more than 30 calendar days after the date on which the Attorney General received the request; or

"(ii) not more than 10 calendar days after such date, if the requesting agency advises the Attorney General that an emergency exists requiring expeditious action.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The penultimate sentence of section 18(c)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(6)) is amended to read as follows: "If the agency has advised the Attorney General under paragraph (4)(B) of the existence of an emergency requiring expeditious action and has requested a report on the competitive factors within 10 days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency.".

SEC. 610. INCLUSION OF DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION IN LIST OF BANKING AGENCIES REGARDING INSURANCE CUSTOMER PROTECTION REGULATIONS.

Section 47(g)(2)(B)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1831x(g)(2)(B)(i)) is amended by inserting "the Director of the Office of Thrift Supervision," after "Comptroller of the Currency,".

TITLE VII—CLERICAL AND TECHNICAL AMENDMENTS

SEC. 701. CLERICAL AMENDMENTS TO THE HOME OWNERS' LOAN ACT.

(a) AMENDMENT TO TABLE OF CONTENTS.—The table of contents in section 1 of the Home Owners' Loan Act (12 U.S.C. 1461) is amended by striking the items relating to sections 5 and 6 and inserting the following new items:

"Sec. 5. Savings associations.
"Sec. 6. [Repealed.]".

(b) CLERICAL AMENDMENTS TO HEADINGS.—

(1) The heading for section 4(a) of the Home Owners' Loan Act (12 U.S.C. 1463(a)) is amended by striking "(a) FEDERAL SAVINGS ASSOCIATIONS.—" and inserting "(a) GENERAL RESPONSIBILITIES OF THE DIRECTOR.—".

(2) The section heading for section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) is amended to read as follows:

"SEC. 5. SAVINGS ASSOCIATIONS.".

SEC. 702. TECHNICAL CORRECTIONS TO THE FEDERAL CREDIT UNION ACT.

The Federal Credit Union Act (12 U.S.C. 1751 et seq.) is amended as follows:

(1) In section 101(3), strike "and" after the semicolon.

(2) In section 101(5), strike the terms "account account" and "account accounts" each place any such term appears and insert "account".

(3) In section 107(a)(5)(E) (as so designated by section 303 of this Act), strike the period at the end and insert a semicolon.

(4) In paragraphs (6) and (7) of section 107(a) (as so designated by section 303 of this Act), strike the period at the end and insert a semicolon.

(5) In section 107(a)(7)(D) (as so designated by section 303 of this Act), strike "the Federal Savings and Loan Insurance Corporation or".

(6) In section 107(a)(7)(E) (as so designated by section 303 of this Act), strike "the Federal Home Loan Bank Board," and insert "the Federal Housing Finance Board,".

(7) In section 107(a)(9) (as so designated by section 303 of this Act), strike "subchapter III" and insert "title III".

(8) In section 107(a)(13) (as so designated by section 303 of this Act), strike the "and" after the semicolon at the end.

(9) In section 109(c)(2)(i), strike "(12 U.S.C. 4703(16))".

(10) In section 120(h), strike "under the Act approved July 30, 1947 (6 U.S.C., secs. 6–13)," and insert "chapter 93 of title 31, United States Code,".

(11) In section 201(b)(5), strike "section 116 of".

(12) In section 202(h)(3), strike "section 207(c)(1)" and insert "section 207(k)(1)".

(13) In section 204(b), strike "such others powers" and insert "such other powers".

(14) In section 206(e)(3)(D), strike "and" after the semicolon at the end.

(15) In section 206(f)(1), strike "subsection (e)(3)(B)" and insert "subsection (e)(3)".

(16) In section 206(g)(7)(D), strike "and subsection (1)".

(17) In section 206(t)(2)(B), insert "regulations" after "as defined in".

(18) In section 206(t)(2)(C), strike "material affect" and insert "material effect".

(19) In section 206(t)(4)(A)(ii)(II), strike "or" after the semicolon at the end.

(20) In section 206A(a)(2)(A), strike "regulator agency" and insert "regulatory agency".

(21) In section 207(c)(5)(B)(i)(I), insert "and" after the semicolon at the end.

(22) In section 207(c)(8)(D)(ii)(I), insert a closing parenthesis after "Act of 1934".

(23) In the heading for subparagraph (A) of section 207(d)(3), strike "TO" and insert "WITH".

(24) In section 207(f)(3)(A), strike "category or claimants" and insert "category of claimants".

(25) In section 209(a)(8), strike the period at the end and insert a semicolon.

(26) In section 216(n), insert "any action" before "that is required".

(27) In section 304(b)(3), strike "the affairs or such credit union" and insert "the affairs of such credit union".

(28) In section 310, strike "section 102(e)" and insert "section 102(d)".

SEC. 703. OTHER TECHNICAL CORRECTIONS.

Section 1306 of title 18, United States Code, is amended by striking "5136A" and inserting "5136B".

Chairman SENSENBRENNER. The Chair now recognizes himself for 5 minutes for purposes of a statement.

This bill was reported by the Committee on Financial Services and was sequentially referred to the Judiciary Committee for a period not later than July 22, which is next Monday so we have to act on this bill today. Sections 213, 214, 402, 607, 609, and 703 are within the jurisdiction of this Committee and will be open for amendment.

The last time Congress overhauled the regulation of America's banking industry, the FIRREA law was enacted in 1989. At that time we were recovering from an S&L crisis which prompted Congress to develop comprehensive reform to restore the integrity and reliability of the banking industry. While FIRREA has generally been a large success, the bill addresses many shortcomings in the law. It is estimated that the annual cost of compliance with various State and Federal banking regulations is nearly $26 billion. While the need for effective banking regulation is absolutely necessary to ensure the soundness of banking institutions, enforce compliance with various consumer protection statutes, and combat money laundering and other financial crimes, this bill eliminates duplicative and unnecessary regulation. As a result, banking regulation will be more focused, regulators will be better prepared to conduct thorough and effective reviews, and banks should be able to improve productivity for the American consumer.

The bill was carefully reviewed by the Financial Services Committee during 2 days of hearing and subsequent markup. It has received wide bipartisan support and was adopted in that Committee by a voice vote. It is common-sense legislation because it eliminates bureaucratic red tape and costly regulations that are not being utilized, and I would urge the Members to support it.

At this point in time, I recognize the gentleman from Michigan, Mr. Conyers, for an opening statement.

Mr. CONYERS. Thank you, Mr. Chairman.

I agree with your opening statement, and I hope my colleagues on this side of the aisle will as well. The only thing that we would ask that you consider is the Waters amendment, which would—could make this a much shorter hearing. And I don't know if you——

Chairman SENSENBRENNER. Without objection, all Members may include opening statements in the record at this point.

Are there amendments? And the gentleman from Alabama has an amendment.

Mr. BACHUS. Thank you.

Chairman SENSENBRENNER. For what purpose does the gentleman from Alabama seek recognition?

Mr. BACHUS. Mr. Chairman, I have an amendment at the table, and I——

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to Judiciary——

Mr. CONYERS. Mr. Chairman, I reserve a point of order.

Chairman SENSENBRENNER. A point of order is reserved.

The CLERK. Amendment to Judiciary Committee Print to H.R. 3951, offered by Mr. Bachus——

Mr. BACHUS. Mr. Chairman, I'd ask that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

Amendment to Judiciary Committee Print

Of H.R. 3951

Offered by Mr. Baucus

After section 311, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 312. EXEMPTION FROM PREMERGER NOTIFICATION REQUIREMENT OF THE CLAYTON ACT.

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

Chairman SENSENBRENNER. The gentleman from Alabama is recognized for 5 minutes on the condition that the gentleman from Michigan has reserved a point of order. The gentleman from Alabama is recognized.

Mr. BACHUS. Mr. Chairman, my amendment's very simple. It amends current law to give credit unions the same exemption from the pre-merger notification requirements of Hart-Scott-Rodino that banks and thrifts already enjoy. As my colleagues know, that act requires that certain businesses that are planning to engage in merger transactions must file notice with the FTC and pay a $45,000 filing fee. The act sets forth specific exemptions for certain transactions that are already subject to review and approval by Federal agencies other than the FTIC, including mergers involving banks and thrifts that are reviewed by the Federal Reserve, the Comptroller, the FDIC, and OTS. As with these depository institutions, when credit unions merge, the transaction is subject to re-

view and approval by the Federal regulator, the National Credit Union Administration, which, like the FTIC, is an independent Federal agency.

I have heard no one offer any justification for why credit unions should be treated any differently from mergers involving banks and thrifts. My amendment simply ensures parity of treatment among the various kinds of financial institutions. This amendment has the strong support of the NCUA board. Its chairman, appointed by the President, has written a letter earlier this week endorsing the amendment. I'd like to move that that be made a part of the record.

Chairman SENSENBRENNER. Without objection.

[The letter follows:]

National Credit Union Administration

July 15, 2002

Office of the Chairman

The Honorable Spencer Bachus
Chairman
Subcommittee on Financial Institutions
and Consumer Credit
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Bachus:

As Chairman of the National Credit Union Administration (NCUA), I am writing in support of your amendment to bring parity to the treatment of credit unions under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR). Thank you for your interest in this important issue.

HSR requires that certain business entities which plan to engage in acquisition and merger transactions file notice with the Federal Trade Commission (FTC) and pay filing fees based on the asset size of the merging entity ranging from $45,000 to $280,000. Until recently, HSR was not a significant issue for credit unions because, due to the size of the overwhelming majority of credit unions, most were below the relevant thresholds. This remains the case for many, but with the growth of credit union assets in recent years, some proposed credit union mergers have been above the threshold and therefore subject to the HSR requirements.

NCUA believes that an exemption from HSR filing requirement is appropriate for credit union mergers for several reasons.

First, all other financial institutions are exempt from FTC review of their merger transactions. HSR subsection (c) sets forth various types of exempt transactions, including those transactions that are already subject to the review and approval of federal agencies other than the FTC. For example, HSR exempts pending bank and thrift mergers approved by the Federal Reserve, Office of the Comptroller of the Currency, Office of Thrift Supervision, or Federal Deposit Insurance Corporation. As with banks and thrifts who are exempted because they are subject to other federal regulatory oversight of merger activity, credit union mergers are likewise subject to review and approval by NCUA, their federal regulator. Under current law, despite the federal regulatory oversight upon which banks and thrifts were exempted, credit unions lack the statutory exemption that banks and thrifts enjoy.

Secondly, because credit unions by law may only serve a limited field of membership, credit union mergers have little adverse impact on consumer choice and are thus less

likely to raise the anticompetitive issues that HSR review was designed to monitor. With those statutory and regulatory membership restrictions in place, it is very rare that more than an incidental number of members would be eligible to join both of the credit unions that are merging.

Thank you again for your support of reducing unnecessary regulatory burden for credit unions by introducing this most important amendment. If I or any of our NCUA staff can be of assistance to you on this or any other matter, please do not hesitate to contact me.

Sincerely,

Dennis Dollar
Chairman

Mr. BACHUS. I would also like to thank the Federal Association of Federal Credit Unions and the Credit Union National Association, NAFCU and CUNA, for their support for this effort. I urge adoption of the amendment and reserve the balance of my time.

Mr. WATT. Would the gentleman yield for a second?

Mr. BACHUS. I would yield.

Mr. WATT. I wanted to inquire, apparently the amendment is fairly non-controversial except that your amendment refers to 17—12 U.S.C. 1785(b), and I'm told that the specific section that you want to amend would actually be 12 U.S.C. 1785(b), subparagraph (3), as opposed to the entire section.

Mr. BACHUS. That's correct.

Mr. WATT. I am wondering if the gentleman would entertain a—would amend his amendment to insert the reference to 1785(b)(3) as opposed to just 1785(b)?

Chairman SENSENBRENNER. Will the gentleman——

Mr. BACHUS. I consider that a perfecting——

Chairman SENSENBRENNER. Would the gentleman from Alabama yield? When the staff is given permission to make technical and conforming changes, should this bill be reported out, that issue can be picked up and the correction made pursuant to authority.

Mr. WATT. I think that this is a little bit more than a technical amendment, Mr. Chairman. This has substance to it because what the amendment currently does is waive all the provisions of the Clayton Act as opposed to just the specific pre-merger provision. So I don't think the staff can do this on a technical clean-up, and so I would ask the gentleman if he would include the reference specifically or at least let's make it clear that we are talking about 1785(b)(3).

Mr. BACHUS. We are. We're just talking about the pre-merger notification requirement alone. So I believe that what you are proposing is consistent with what I'm attempting to do. So I would accept the——

Chairman SENSENBRENNER. Without objection, the amendment is so modified.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The question—does the gentleman from Michigan insist upon his point of order?

Mr. CONYERS. No, sir, I do not.

Chairman SENSENBRENNER. The reservation is withdrawn. The question is——

Mr. CONYERS. No, wait a minute. I seek recognition.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CONYERS. Thank you.

We're back in this "hurry up and let's get out of here" stage today, aren't we, Mr. Bachus? In your other Committee, we hold hearings on this bill, H.R. 3951. In the Judiciary Committee, we hold no hearings. And then on top of it, you have the concern to come forward with an amendment with no discussion, no warning, that credit unions should be exempt from the Hart-Scott-Rodino. Could you explain to me——

Mr. BACHUS. Now——

Mr. CONYERS. Could you explain to me why you didn't bring it up in the bill that you originally introduced back in March but this morning, without a single hearing, you find it very timely to run it through? And I yield.

Mr. BACHUS. No, I appreciate the gentleman raising that. The provisions in the credit union title of 3951 are all amendments to the Federal Credit Union Act and other banking law. And my amendment amends the Clayton Act, as you said, but it was not included in the measure that came out of the Financial Services, a difference to this Committee's jurisdictional prerogative, and not——

Mr. CONYERS. Okay——

Mr. BACHUS.—because the Financial Services Committee had any concerns about the substance of the provision.

Mr. CONYERS. All right.

Mr. BACHUS. In fact, the Chairman has——

Mr. CONYERS. Okay, fine. Excuse me, sir.

Mr. BACHUS. So this——

Mr. CONYERS. Now that you've explained why it didn't come up in this Committee, could you please tell me why credit unions should be exempt from Hart-Scott-Rodino?

Mr. BACHUS. Yes. All we're exempting them from is the premerger notification requirement that the act exempted banks and thrifts from. So we're not exempting them from the whole act. We're simply exempting them from the requirement that they pay the $45,000 fee and get——

Mr. CONYERS. Okay, sir. Let me put it this way: Are you exempting them from the reporting—the credit unions from the reporting requirements of Hart-Scott-Rodino?

Mr. BACHUS. No, not other than——

Mr. CONYERS. No.

Mr. BACHUS. No.

Mr. CONYERS. Well, then, I have a staff problem because it's suggested from them that you are.

Mr. BACHUS. From who?

Chairman SENSENBRENNER. Will the gentleman from Michigan——

Mr. CONYERS. My staff.

Chairman SENSENBRENNER. Will the gentleman from Michigan yield?

Mr. CONYERS. The people that we pay to help us out.

Chairman SENSENBRENNER. Will the gentleman from Michigan yield?

Mr. CONYERS. Of course.

Chairman SENSENBRENNER. I think the best way to handle this is while we're voting on the journal vote is to resolve this problem. But the Chair notes the presence of a reporting quorum, and I think it would be a good idea to get the four bills that we have already debated reported out while we have a reporting quorum present.

So the Chair asks unanimous consent——

Mr. WEINER. Mr. Chairman? Mr. Chairman, in light of the fact that several of us had amendments to bills that have already been considered and you want to report out now, I move the Committee rise.

Chairman SENSENBRENNER. That is not in order. The motion to rise is not in order in a Committee session. The Chair asks——

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The previous question has been ordered on the four bills that were called up——

Ms. JACKSON LEE. Mr. Chairman, strike the last word.

Chairman SENSENBRENNER.—when a working quorum—the Committee is in recess——

Ms. JACKSON LEE. I move to reconsider the previous bills.

Chairman SENSENBRENNER. The Committee will be in recess until after this vote. Members will return——

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Chairman SENSENBRENNER.—promptly, and had the Members been here promptly at 10 o'clock, they would have had a chance to offer their amendments rather than attempting to backtrack.

[Recess.]

Chairman SENSENBRENNER. The Committee will be in order. The Chair notes the presence of a reporting quorum—working quorum, I'm sorry, correction.

When the Committee recessed, pending was the Bachus amendment to the bill H.R. 3951. Mr. Bachus was speaking at that time. The gentleman from Alabama is recognized.

Mr. BACHUS. Mr. Chairman, exempting federally insured credit unions from the pre-merger notification requirements of HSR Act would in no way relieve credit unions from prohibitions found in section 1 of the Sherman Act, which outlaws every contract combination or conspiracy in restraint of trade or those found in section 2 of the Sherman Act. It would make it unlawful for a company to monopolize or attempt to monopolize trade or commerce. Nor would such exemption shield credit unions from section 7 of the Clayton Act which prohibits mergers and acquisitions in which the effect may be to substantially lessen competition or tend to create a monopoly.

Credit union mergers involve institutions that hold only a small fraction of the deposits held for consumers in the Nation's financial system—it's actually less than 2 percent—and are, therefore, far less likely than mergers of banks and thrifts to raise the anti-competitive issues that Hart-Scott-Rodino review is designed to address. It makes—and this is the bottom line. It makes absolutely no sense to exempt banks and thrifts from this requirement and not credit unions, and that's what this—this is simply an amendment to offer equity to credit unions.

I yield back the balance of my time and ask for adoption of the amendment.

Mr. WATT. Would the gentleman yield?

Mr. BACHUS. I yield.

Mr. WATT. I just wanted to revise the prior unanimous consent request to reflect what I understand to be what we should be technically doing, and so I would ask unanimous consent that on line 4, after 205(b), we insert (3), and on line 5, after 1785(b), we insert (3).

Chairman SENSENBRENNER. Without objection, the modification is agreed to.

Mr. BACHUS. Thank you.

Chairman SENSENBRENNER. The gentleman from Alabama.

Mr. BACHUS. I yield back the balance of my time.

Chairman SENSENBRENNER. The question—the gentleman from North Carolina, Mr. Watt?

Mr. WATT. At the risk of prolonging this, I think Mr. Conyers and his staff may have had some problems about it because they thought this related to doing something substantially more than it really does. This is just a pre—a pre-exemption—pre-merger notification. It doesn't exempt credit unions from the provisions of the Clayton Act. It exempts them from just one minor pre-notice provision that banks and other financial institutions are already exempt from. If there were controversy, it really would have been controversy about the banks and other financial institutions being exempted, not the credit unions. Most of the credit unions aren't large enough to really have substantial antitrust implications, anyway. But I don't think there's a real problem with this, so I would ask bipartisan support for it.

Chairman SENSENBRENNER. The question is on agreeing to the——

Ms. JACKSON LEE. I have an amendment at the desk.

Chairman SENSENBRENNER. There is an amendment pending. Is this an amendment to the amendment?

Ms. JACKSON LEE. No. I'm sorry. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman from Alabama, Mr. Bachus. Those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it and the amendment is agreed to.

For what purpose does the gentlewoman from Texas seek recognition?

Ms. JACKSON LEE. An amendment at the desk——

Chairman SENSENBRENNER. The clerk will report the amendment.

Ms. JACKSON LEE. Ms. Waters and Ms. Jackson Lee.

The CLERK. Amendment to Committee—to the Judiciary Committee Print of H.R. 3951, offered by Ms. Waters and Ms. Jackson Lee.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

Amendment to Judiciary Committee Print

Of H.R. 3951

Offered by Ms. Waters

and Ms. Jackson-Lee

Page 74, strike lines 13 through 25 (and make such technical and conforming changes as may be appropriate).

Chairman SENSENBRENNER. And the gentlewoman from Texas, Ms. Jackson Lee, is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I ask that this amendment be studied by my colleagues. This bill is not a balanced bill. It gives very little to consumers while it takes away some of the few rights consumers have. Section 607, for example, repeals the current 15-day period that merging banks must well—must wait before completing their merger. The reason behind the 15-day period is straightforward and very important. It provides groups and individuals with an opportunity to challenge a merger before it is improved—before it's approved.

During the regular course of a bank merger process, both the Federal financial supervisory agency and the Department of Justice review the merger proposal for competitive concerns. The Federal financial agency also reviews the proposal for issues related to the Community Reinvestment Act and other fair lending laws. The Department of Justice does not undertake this second review.

Once the Federal banking agency approves a merger, the Department of Justice has 30 days in which to challenge the merger on antitrust grounds. The merging banks must wait at least 15 days before completing their merger, regardless of whether the DOJ decides to file a suit.

Under section 607, this minimum 35-day period would be eliminated in cases when the DOJ indicates it will not file suit challenging the merger, leaving the consumer without any relief. Unfortunately, eliminating the 15-day period also takes community groups, bank applicants, and other parties out of the loop. Right now those groups and individuals are able to file suit challenging the merger during the 15-day period whether or not the DOJ decides to file the suit. Eliminating that waiting period effectively removes any pre-consummation judicial review for any party.

The 15-day waiting period provides the only tool community groups have to ensure that a Federal financial supervisory agency complies with this responsibility under the CRA. Specifically, the CRA requires such agencies to consider a bank merger applicant's record and meet the requirements and the needs of its community.

Repealing the 15-day period provides regulatory relief to banks and other financial institutions at the expense of their communities. I would appreciate our colleagues joining us in support of our amendment, which does nothing more than strike the provision that removes the 15-day waiting period. Banks preparing to complete a proposed merger will not be injured by waiting 15 days, but community groups and individuals who are not given the opportunity to contest a proposed merger certainly will be.

I would think my colleagues, in light of the climate that we're in as it relates to corporate reform and knowing that community groups are always at a disadvantage as it relates to the CRA, notice the ability to organize and to present their grievances should cause us to be convinced that leaving in the 15-day period is in line with the horrific acts of the past that we've seen corporate—corporate involvement. We've seen unclean hands come to the table, and I believe the 15-day period is instructive, it is helpful, it balances this bill to include relief for the consumer. And I would hope that we would not want to pass this bill out of Judiciary where we are supposed to protect the rights of consumers under the Department of Justice by not having this provision in the legislation.

With that, I will yield back my time.

Chairman SENSENBRENNER. The gentleman from Alabama, Mr. Bachus?

Mr. BACHUS. Mr. Chairman, an identical amendment to this one——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BACHUS. Thank you. An identical amendment to this one was offered by Ms. Schakowsky at the Financial Services Committee markup of this legislation, and it was defeated on a rollcall vote. Section 607 amends the Bank Holding Company Act by eliminating an existing minimum 15-day waiting period for banks and bank holding companies to merge with or acquire another bank or bank holding company. Currently, the Bank Holding Act provides a 30-day waiting period which may be reduced to 15 days upon a concurrence of the Attorney General and the relevant banking agency. As a result, this section provides the Attorney General and Federal banking agencies more flexibility in processing acquisitions and mergers that do not significantly adversely—have adverse effects on competition.

The Justice Department is supportive of the additional flexibility provided by this section. The provision does not preclude challenges to acquisitions and mergers based on CRA. It only provides for expedited processing of acquisition or merger requests that the DOJ and responsible bank agencies deem not to pose a significant adverse effect on competition.

I disagree with the gentlelady on her interpretation of the provision, of this provision. She says that the provision in its current stage will wipe out a party's ability—a party that think it's aggrieved to file suit to challenge a merger order by the regulator. Actually, the provisions of the bill and the way they stand will not wipe out anyone's ability to challenge a decision of merger on CRA grounds.

The only preclusion will be to challenge the Justice Department on antitrust grounds. In fact, section 1848 of the Bank Holding

Company Act gives the right for an aggrieved party to obtain a review of such an order, a merger order, and specifically will be maintained for CRA. So in that regard, Mr. Chairman, the purpose of this language, in fact, was brought to us by the Federal Reserve because it requires both notices as well as the Department of Justice to sign off on the antitrust issues.

I yield back the balance of my——

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Michigan.

Mr. CONYERS. What we're doing here is saying that community organizations don't need 15 days to review a merger. Of course, the Department of Justice doesn't have any problem. They've got hundreds of lawyers, so 15 days one way or the other isn't going to mean that much, Mr. Bachus. What it does affect, though, are consumer organizations and people in minority communities who want to get information of fair lending practices, and people in rural areas, by the way, which you have some familiarity with. They're all—they're all getting wiped out. So, I mean, we are talking a couple of weeks.

Mr. BACHUS. Mr. Conyers, out of respect for the gentlelady from Texas and you——

Mr. CONYERS. And the gentlelady from California.

Mr. BACHUS.—I don't have any strong feelings about this amendment and would ask—I'm not going to urge its adoption because I have to defend the Financial Services Committee, but if I—an affirmative vote certainly wouldn't—I don't think it would have much effect.

Chairman SENSENBRENNER. Does the gentleman from Michigan yield back his time?

Mr. CONYERS. Yes, sir.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentlewoman from Texas, Ms. Jackson Lee. Those in favor——

Ms. JACKSON LEE. California.

Chairman SENSENBRENNER.—will say aye. Opposed, no?

The ayes appear to have it. The ayes have it and the amendment is agreed to.

Are there further amendments to the bill? If not, the Chair notes the presence of a reporting quorum. The question occurs on reporting the bill favorably as amended. Those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it and the bill as amended is reported favorably. Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendment adopted here today. Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, as provided by the House rules, in which to submit additional dissenting, supplemental, or minority views.

ADDITIONAL VIEWS

We support the version of H.R. 3951 as reported out of the Committee on the Judiciary, however, we wish to provide additional views regarding section 607 of the bill as it was reported out of the Financial Services Committee. This section amends section 11(b) the Bank Holding Company Act of 1956, 12 U.S.C. § 1849(b), and section 18(c)(6) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(c)(6), by eliminating the minimum waiting period for banks and bank holding companies to merge with or acquire other banks or bank holding companies. Section 607 was struck from the bill in the Committee on the Judiciary and we which to share our strong support for the decision to eliminate this provision.

Community organizations raised strong concerns about section 607 which repeals the pre-merger, mandatory 15-day waiting period with the Attorney General's approval. During the course of a bank merger process, both the Federal financial supervisory agency and the Department of Justice review the merger proposal for competitive concerns. After a Federal banking agency approves a merger, DOJ has 30 days to decide whether to challenge the merger approval on antitrust grounds. At a minimum, the merging banks must wait 15 days before completing their merger. Currently, banking law allows 3rd parties (other than Federal banking agencies or DOJ) to file suit during the post-approval waiting period. As proposed, section 607 would eliminate the minimum 15-day waiting period when DOJ indicates it will not file suit challenging the merger approval order.

We believe that this provision is anti-Community Reinvestment Act ("CRA") and strips the organizations' right to seek judicial review of Federal bank merger approval orders. Without such review, community organizations will be deprived of impartial means and mechanisms for ensuring that CRA performance obligations are taken into account when considering merger approvals. Community-based organizations use such suits to obtain information about the merger and ensure that the merger will not result in disproportionate branch closures in low-income or minority communities. We believe they play an important role in the public interest and would like to reaffirm our desire that the mandatory 15-day waiting period remain and that section 607, therefore, remain stricken from the bill.

In addition, we must express concern about an amendment that was suddenly raised and passed at the mark-up that eliminates merger filing requirements for credit unions. Due to the small size and limited offices of most credit unions, we remain concerned about closures that could result without any input from the communities affected.

JOHN CONYERS, JR.
WILLIAM D. DELAHUNT.

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