

Public Law 100-86
100th Congress

An Act

Aug. 10, 1987

[H.R. 27]

Competitive
Equality
Banking Act of
1987.
12 USC 226 note.

To regulate nonbank banks, impose a moratorium on certain securities and insurance activities by banks, recapitalize the Federal Savings and Loan Insurance Corporation, allow emergency interstate bank acquisitions, streamline credit union operations, regulate consumer checkholds, 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.

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(b) **TABLE OF CONTENTS.**—

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Competitive
Equality
Amendments of
1987.

12 USC 226 note.

TITLE I—FINANCIAL INSTITUTIONS COMPETITIVE EQUALITY

SEC. 100. SHORT TITLE.

This title may be cited as the “Competitive Equality Amendments of 1987”.

SEC. 101. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

(a) DEFINITIONS.—

(1) AMENDMENT TO DEFINITION OF BANK.—Section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)) is amended to read as follows:

“(c) BANK DEFINED.—For purposes of this Act—

“(1) IN GENERAL.—Except as provided in paragraph (2), the term ‘bank’ means any of the following:

“(A) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act.

“(B) An institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands which both—

“(i) accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

“(ii) is engaged in the business of making commercial loans.

“(2) EXCEPTIONS.—The term ‘bank’ does not include any of the following:

“(A) A foreign bank which would be a bank within the meaning of paragraph (1) solely because such bank has an insured or uninsured branch in the United States.

“(B) An insured institution (as defined in subsection (j)).

“(C) An organization that does not do business in the United States except as an incident to its activities outside the United States.

“(D) An institution that functions solely in a trust or fiduciary capacity, if—

“(i) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

“(ii) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

12 USC 1813.

"(iii) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

"(iv) such institution does not—

"(I) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act; or

12 USC 248a.

"(II) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act.

12 USC 461.

"(E) A credit union (as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act).

"(F) An institution which—

"(i) engages only in credit card operations;

"(ii) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;

"(iii) does not accept any savings or time deposit of less than \$100,000;

"(iv) maintains only one office that accepts deposits; and

"(v) does not engage in the business of making commercial loans.

"(G) An organization operating under section 25 or section 25(a) of the Federal Reserve Act.

12 USC 601-604a, 611-631.

"(H) An industrial loan company, industrial bank, or other similar institution which is—

"(i) an institution organized under the laws of a State which, on March 5, 1987, had in effect or had under consideration in such State's legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act—

12 USC 1811 note.

"(I) which does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties;

"(II) which has total assets of less than \$100,000,000; or

"(III) the control of which is not acquired by any company after the date of the enactment of the Competitive Equality Amendments of 1987; or

"(ii) an institution which does not, directly, indirectly, or through an affiliate, engage in any activity in which it was not lawfully engaged as of March 5, 1987,

except that this subparagraph shall cease to apply to any institution which permits any overdraft (including any intraday overdraft), or which incurs any such overdraft in such institution's account at a Federal Reserve bank, on behalf of an affiliate if such overdraft is not the result of an inadvertent computer or accounting error that is beyond the control of both the institution and the affiliate.

"(I) The Investors Fiduciary Trust Company, located in Kansas City, Missouri, so long as such institution—

"(i) engages only in trust, fiduciary, and agency activities in which it was lawfully engaged on March 5, 1987;

"(ii) engages in such activities only at the same number of locations at which such activities were conducted on such date;

"(iii) does not accept demand deposits other than demand deposits which are maintained by such institution in—

"(I) a trust or fiduciary capacity;

"(II) the institution's capacity as a custodian or as a paying, transfer, shareholder servicing, securities clearing, escrow, or dividend disbursing agent; or

"(III) any capacity which is incidental to the trust or fiduciary activities of the institution;

"(iv) does not engage in the business of making commercial loans;

"(v) does not exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act; and

"(vi) is not directly or indirectly controlled by any company other than a company which directly or indirectly controlled such institution on March 5, 1987.

"(J) A savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) which—

"(i) is an insured bank (as defined in section 3(h) of such Act);

"(ii) is a subsidiary of the Great Western Financial Corporation as a result of an approval in writing by the State bank supervisor of the State of New York before June 30, 1987;

"(iii) meets or exceeds the investment requirements which an insured institution must meet in order to be a qualified thrift lender under section 408(o) of the National Housing Act; and

"(iv) does not, directly, or through insurance products such savings bank receives from or provides to the Great Western Financial Corporation, engage in the sale or underwriting of insurance,

except that this subparagraph shall cease to apply with respect to such savings bank or any successor institution if any deposits of any other subsidiary or affiliate of the Great Western Financial Corporation which are subject to an assessment of an insurance premium under subsection (b) or (c) of section 404 of the National Housing Act are, directly or indirectly by any device whatsoever, transferred to or acquired by such savings bank or any successor institution which would have the effect of materially reducing such premium assessments. The exemption provided by this subparagraph shall cease to apply if Great Western Financial Corporation uses such savings bank or any successor institution as a vehicle to move such Corporation from Federal Savings and Loan Insurance Corporation insurance to Federal Deposit Insurance Corporation insurance.

12 USC 461.

Post, p. 563.

Post, p. 571.

Post, p. 601.

"(3) DISTRICT BANK.—The term 'District bank' means any bank operating under the Code of Law for the District of Columbia."

(2) AMENDMENT TO DEFINITION OF THRIFT INSTITUTION.—Section 2(i) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(i)) is amended to read as follows:

"(i) THRIFT INSTITUTION.—For purposes of this Act, the term 'thrift institution' means—

"(1) any domestic building and loan or savings and loan association;

"(2) any cooperative bank without capital stock organized and operated for mutual purposes and without profit;

"(3) any Federal savings bank; and

"(4) any State-chartered savings bank the holding company of which is registered pursuant to section 408 of the National Housing Act."

Post, p. 571.

(3) ADDITIONAL DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by adding at the end thereof the following new subsections:

"(j) INSURED INSTITUTION.—For purposes of this Act, the term 'insured institution' has the meaning given to such term in section 408(a)(1) of the National Housing Act.

"(k) AFFILIATE.—For purposes of this Act, the term 'affiliate' means any company that controls, is controlled by, or is under common control with another company.

"(l) SAVINGS BANK HOLDING COMPANY.—For purposes of this Act, the term 'savings bank holding company' means any company which controls one or more qualified savings banks if the aggregate total assets of such savings banks constitute, upon formation of the holding company and at all times thereafter, at least 70 percent of the total assets of such company.

"(m) QUALIFIED SAVINGS BANK.—For purposes of this Act, the term 'qualified savings bank'—

"(1) means any savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) which was organized on or before March 5, 1987; and

Post, p. 563.

"(2) includes any cooperative bank that is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) and any interim savings bank that is established to facilitate a corporate reorganization, or the formation of a holding company, involving a savings bank described in paragraph (1)."

(b) IMMEDIATE DIVESTITURE REQUIREMENT.—Section 4(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(a)(2)) is amended by adding at the end thereof the following sentence: "Notwithstanding any other provision of this paragraph, if any company that became a bank holding company as a result of the enactment of the Competitive Equality Amendments of 1987 acquired, between March 5, 1987, and the date of the enactment of such Amendments, an institution that became a bank as a result of the enactment of such Amendments, that company shall, upon the enactment of such Amendments, immediately come into compliance with the requirements of this Act."

(c) CERTAIN COMPANIES NOT TREATED AS BANK HOLDING COMPANIES; LIMITATIONS ON CERTAIN BANKS.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended by adding at the end thereof the following new subsections:

"(f) CERTAIN COMPANIES NOT TREATED AS BANK HOLDING COMPANIES.—

"(1) IN GENERAL.—Except as provided in paragraph (9), any company which—

"(A) on March 5, 1987, controlled an institution which became a bank as a result of the enactment of the Competitive Equality Amendments of 1987; and

"(B) was not a bank holding company on the day before the date of the enactment of the Competitive Equality Amendments of 1987,

shall not be treated as a bank holding company for purposes of this Act solely by virtue of such company's control of such institution.

"(2) LOSS OF EXEMPTION.—Paragraph (1) shall cease to apply to any company described in such paragraph if—

"(A) such company directly or indirectly—

"(i) acquires control of an additional bank or an insured institution (other than an insured institution described in paragraph (10) of this subsection) after March 5, 1987; or

"(ii) acquires control of more than 5 percent of the shares or assets of an additional bank or an insured institution other than—

"(I) shares acquired in a bona fide fiduciary capacity;

"(II) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

"(III) shares held in an account solely for trading purposes;

"(IV) loans or other accounts receivable acquired in the normal course of business; and

"(V) shares or assets of an insured institution described in paragraph (10) of this subsection; or

"(B) any bank subsidiary of such company fails to comply with the restrictions contained in paragraph (3)(B).

"(3) LIMITATION ON BANKS CONTROLLED BY PARAGRAPH (1) COMPANIES.—

"(A) FINDINGS.—The Congress finds that banks controlled by companies referred to in paragraph (1) may, because of relationships with affiliates, be involved in conflicts of interest, concentration of resources, or other effects adverse to bank safety and soundness, and may also be able to compete unfairly against banks controlled by bank holding companies by combining banking services with financial services not permissible for bank holding companies. The purpose of this paragraph is to minimize any such potential adverse effects or inequities by temporarily restricting the activities of banks controlled by companies referred to in paragraph (1) until such time as the Congress has enacted proposals to allow, with appropriate safeguards, all banks or bank holding companies to compete on a more equal basis with banks controlled by companies referred to in paragraph (1) or, alternatively, proposals to permanently restrict the activities of banks controlled by companies referred to in paragraph (1).

“(B) LIMITATIONS.—Until such time as the Congress has taken action pursuant to subparagraph (A), a bank controlled by a company described in paragraph (1) shall not—

“(i) engage in any activity in which such bank was not lawfully engaged as of March 5, 1987;

“(ii) offer or market products or services of an affiliate that are not permissible for bank holding companies to provide under subsection (c)(8), or permit its products or services to be offered or marketed by or through an affiliate (other than an affiliate that engages only in activities permissible for bank holding companies under subsection (c)(8)), unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date;

“(iii) after the date of the enactment of the Competitive Equality Amendments of 1987, permit any overdraft (including an intraday overdraft), or incur any such overdraft in such bank's account at a Federal Reserve bank, on behalf of an affiliate, other than an overdraft described in subparagraph (C); or

“(iv) increase its assets at an annual rate of more than 7 percent during any 12-month period beginning after the end of the 1-year period beginning on the date of the enactment of the Competitive Equality Amendments of 1987.

“(C) PERMISSIBLE OVERDRAFTS DESCRIBED.—For purposes of subparagraph (B)(iii), an overdraft is described in this subparagraph if—

“(i) such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the bank and the affiliate; or

“(ii) such overdraft—

“(I) is permitted or incurred on behalf of an affiliate which is monitored by, reports to, and is recognized as a primary dealer by the Federal Reserve Bank of New York; and

“(II) is fully secured, as required by the Board, by bonds, notes, or other obligations which are direct obligations of the United States or on which the principal and interest are fully guaranteed by the United States or by securities and obligations eligible for settlement on the Federal Reserve book entry system.

“(4) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—If any company described in paragraph (1) loses the exemption provided under such paragraph by operation of paragraph (2), such company shall divest control of each bank it controls within 180 days after such company becomes a bank holding company due to the loss of such exemption.

“(5) SUBSECTION CEASES TO APPLY UNDER CERTAIN CIRCUMSTANCES.—This subsection shall cease to apply to any company described in paragraph (1) if such company—

“(A) registers as a bank holding company under section 5(a) of this Act;

"(B) immediately upon such registration, complies with all of the requirements of this Act, and regulations prescribed by the Board pursuant to this Act, including the nonbanking restrictions of this section; and

12 USC 1842.

"(C) does not, at the time of such registration, control banks in more than one State, the acquisition of which would be prohibited by section 3(d) of this Act if an application for such acquisition by such company were filed under section 3(a) of this Act.

"(6) INFORMATION REQUIREMENT.—Each company described in paragraph (1) shall, within 60 days after the date of enactment of the Competitive Equality Amendments of 1987, provide the Board with the name and address of such company, the name and address of each bank such company controls, and a description of each such bank's activities.

Reports.

"(7) EXAMINATION.—The Board may, from time to time, examine a company described in paragraph (1), or a bank controlled by such company, or require reports under oath from appropriate officers or directors of such company or bank solely for purposes of assuring compliance with the provisions of this subsection and enforcing such compliance.

"(8) ENFORCEMENT.—

12 USC 1818.

"(A) IN GENERAL.—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this Act which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company or bank were a State member insured bank.

12 USC 1811
note.

"(B) APPLICATION OF OTHER ACT.—Any violation of this Act by any company described in paragraph (1), and any bank controlled by such company, may also be treated as a violation of the Federal Deposit Insurance Act for purposes of subparagraph (A).

"(C) NO EFFECT ON OTHER AUTHORITY.—No provision of this paragraph shall be construed as limiting any authority of the Comptroller of the Currency or the Federal Deposit Insurance Corporation.

"(9) TYING PROVISIONS.—A company described in paragraph (1) shall be—

12 USC 1971-
1978, 375b.

"(A) treated as a bank holding company for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section; and

"(B) subject to the restrictions of section 106 of the Bank Holding Company Act Amendments of 1970, in connection with any transaction involving the products or services of such company or affiliate and those of a bank affiliate, as if such company or affiliate were a bank and such bank were a subsidiary of a bank holding company.

"(10) EXEMPTION UNAFFECTED BY CERTAIN EMERGENCY ACQUISITIONS.—For purposes of clauses (i) and (ii)(V) of paragraph (2)(A), an insured institution is described in this paragraph if—

"(A) the insured institution was acquired (or any shares or assets of such institution were acquired) by a company

described in paragraph (1) in an acquisition under section 408(m) of the National Housing Act; and

Post, p. 621.

“(B) either—

“(i) the insured institution is located in a State in which such company controlled a bank on March 5, 1987; or

“(ii) the insured institution has total assets of \$500,000,000 or more at the time of such acquisition.

“(g) LIMITATIONS ON CERTAIN BANKS.—

“(1) IN GENERAL.—Notwithstanding any other provision of this section (other than the last sentence of subsection (a)(2)), a bank holding company which controls an institution that became a bank as a result of the enactment of the Competitive Equality Amendments of 1987 may retain control of such institution if such institution does not—

“(A) engage in any activity after the date of the enactment of such Amendments which would have caused such institution to be a bank (as defined in section 2(c), as in effect before such date) if such activities had been engaged in before such date; or

Ante, p. 554.

“(B) increase the number of locations from which such institution conducts business after March 5, 1987.

“(2) LIMITATIONS CEASE TO APPLY UNDER CERTAIN CIRCUMSTANCES.—The limitations contained in paragraph (1) shall cease to apply to a bank described in such paragraph at such time as the acquisition of such bank, by the bank holding company referred to in such paragraph, would not be prohibited under section 3(d) of this Act if—

12 USC 1842.

“(A) an application for such acquisition were filed under section 3(a) of this Act; and

“(B) such bank were treated as an additional bank (under section 3(d)).

“(h) TYING PROVISIONS.—

“(1) APPLICABLE TO CERTAIN EXEMPT INSTITUTIONS AND PARENT COMPANIES.—An institution described in subparagraph (D), (F), (G), (H), (I), or (J) of section 2(c)(2) shall be treated as a bank, and a company that controls such an institution shall be treated as a bank holding company, for purposes of section 106 of the Bank Holding Company Act Amendments of 1970 and section 22(h) of the Federal Reserve Act and any regulation prescribed under any such section.

12 USC
1971-1978.
12 USC 375b.

“(2) APPLICABLE WITH RESPECT TO CERTAIN TRANSACTIONS.—A company that controls an institution described in subparagraph (D), (F), (G), (H), (I), or (J) of section 2(c)(2) and any of such company's other affiliates, shall be subject to the tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 in connection with any transaction involving the products or services of such company or affiliate and those of such institution, as if such company or affiliate were a bank and such institution were a subsidiary of a bank holding company.”

(d) SAVINGS BANK ACTIVITIES.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end thereof the following new subsection:

Post, p. 579.

“(f) SAVINGS BANK SUBSIDIARIES OF BANK HOLDING COMPANIES.—

“(1) IN GENERAL.—Notwithstanding any other provision of this Act (other than paragraphs (2) and (3)), any qualified savings bank which is a subsidiary of a bank holding company

may engage, directly or through a subsidiary, in any activity in which such savings bank may engage (as a State chartered savings bank) pursuant to express, incidental, or implied powers under any statute or regulation, or under any judicial interpretation of any law, of the State in which such savings bank is located.

"(2) **INSURANCE ACTIVITIES.**—Except as provided in paragraph (3), any insurance activities of any qualified savings bank which is a subsidiary of a bank holding company shall be limited to insurance activities allowed under section 4(c)(8).

"(3) **SAVINGS BANK LIFE INSURANCE.**—Any qualified savings bank permitted, as of March 5, 1987, to engage in the sale or underwriting of savings bank life insurance may sell or underwrite such insurance after such savings bank is a subsidiary of a bank holding company if—

"(A) the savings bank is located in the State of Connecticut, Massachusetts, or New York;

"(B) such activity is expressly authorized by the law of the State in which such savings bank is located;

"(C) the savings bank retains its character as a savings bank;

"(D) such activity is carried out by the savings bank directly and not by—

"(i) any subsidiary or affiliate of the savings bank; or

"(ii) the bank holding company which controls such savings bank;

"(E) such activity is carried out by the savings bank in accordance with any residency or employment limitations set forth in the savings bank life insurance statute in effect on March 5, 1987, in the State in which such bank is located; and

"(F) such activity is otherwise carried out in the same manner as savings bank life insurance activity is carried out in the State in which such bank is located by savings banks which are not subsidiaries of any bank holding company registered under this Act.

"(4) **SUBSECTION SHALL CEASE TO APPLY UNDER CERTAIN CIRCUMSTANCES.**—If any company which is not a savings bank or a savings bank holding company acquires control of a qualified savings bank, such savings bank shall cease to engage in any activity authorized under paragraph (1) or (3) before the end of the 2-year period beginning on the date such company acquires control, unless such activity is otherwise authorized pursuant to this Act.

"(5) **SPECIAL ASSET AGGREGATION RULE FOR PURPOSES OF PARAGRAPH (3).**—For the sole purpose of determining whether a qualified savings bank may continue to sell and underwrite savings bank life insurance in accordance with this subsection after control of such savings bank is acquired by a bank holding company, the assets of any other bank affiliated with, or under contract to affiliate with, such savings bank as of March 5, 1987, shall be treated as assets of the savings bank in determining whether such bank holding company is a savings bank holding company."

(e) **THRIFT INSTITUTIONS' BANK.**—Section 2(a)(5)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)(E)) is amended to read as follows:

12 USC 1843.
State and local
governments.

Connecticut.
Massachusetts.
New York.

“(E) No company is a bank holding company by virtue of its ownership or control of any State-chartered bank or trust company which—

“(i) is wholly owned by thrift institutions or savings banks; and

“(ii) is restricted to accepting—

“(I) deposits from thrift institutions or savings banks;

“(II) deposits arising out of the corporate business of the thrift institutions or savings banks that own the bank or trust company; or

“(III) deposits of public moneys.”

(f) EFFECT ON STATE AUTHORITY TO REGULATE.—Section 7 of the Bank Holding Company Act of 1956 (12 U.S.C. 1846) is amended—

(1) by striking out “The enactment by the Congress of the Bank Holding Company Act of 1956 shall not” and inserting in lieu thereof “No provision of this Act shall”; and

(2) by inserting “companies,” before “banks”.

(g) AMENDMENT TO FEDERAL DEPOSIT INSURANCE ACT.—

(1) IN GENERAL.—Section 3(g) of the Federal Deposit Insurance Act (12 U.S.C. 1813(g)) is amended to read as follows:

“(g) SAVINGS BANK.—The term ‘savings bank’ means a bank (including a mutual savings bank) which transacts its ordinary banking business strictly as a savings bank under State laws imposing special requirements on such banks governing the manner of investing their funds and of conducting their business.”

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 27(a) of the Federal Deposit Insurance Act is amended by striking out “and insured mutual savings banks”.

12 USC 1831d.

(h) 1987 AMENDMENT TRANSITION RULE.—

12 USC 1841 note.

(1) DELAY IN APPLICATION OF AMENDMENT TO CERTAIN INSTITUTIONS.—If—

(A) on March 5, 1987, an institution was not a bank (as defined in section 2(c) of the Bank Holding Company Act of 1956), as in effect on such date; and

Ante, p. 554.

(B) any person which had a controlling interest in such institution on March 5, 1987, made a public announcement before such date that the transfer or other disposition of such person’s controlling interest in such institution was being considered,

the institution shall not become a bank (for purposes of the Bank Holding Company Act of 1956) due to the amendment made to such section 2(c) by this section before the date on which such institution fails to meet any requirement of paragraph (2).

12 USC 1841 note.

(2) REQUIREMENTS FOR APPLICATION OF SUBSECTION.—This subsection shall not apply with respect to any institution described in paragraph (1) unless—

(A) the transfer or other disposition of the controlling interest referred to in such paragraph is completed, or an agreement to make such transfer or other disposition is in effect (or is subject only to final approval by the appropriate Federal and State regulatory agencies), before the end of the 180-day period beginning on the date of the enactment of this title;

(B) a written notice by the person acquiring a controlling interest in such institution (pursuant to the transfer or

Ante, p. 554.

other disposition described in subparagraph (A)) of such person's intention to operate such institution as an institution described in section 2(c)(2)(F) of the Bank Holding Company Act of 1956, as in effect after the enactment of this title is filed with the Board before the end of the 7-day period beginning on the later of the date of such transfer (or other disposition) or the date of the enactment of this title; and

(C) the operation of such institution as an institution described in such section 2(c)(2)(F) begins before the end of the 180-day period beginning on the date the transfer (or other disposition) described in subparagraph (A) is completed.

(3) **CONTROLLING INTEREST.**—For purposes of this subsection, a person has a controlling interest in any institution if such person controls—

(A) such institution; or

(B) any company which controls such institution,

as determined in accordance with the provisions of subsections (b) and (g) of section 2 of the Bank Holding Company Act of 1956.

SEC. 102. AMENDMENTS TO THE FEDERAL RESERVE ACT.

(a) **IN GENERAL.**—The Federal Reserve Act is amended by inserting after section 23A the following:

“RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES

“SEC. 23B. (a) **IN GENERAL.**—

“(1) **TERMS.**—A member bank and its subsidiaries may engage in any of the transactions described in paragraph (2) only—

“(A) on terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such bank or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies, or

“(B) in the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliated companies.

“(2) **TRANSACTIONS COVERED.**—Paragraph (1) applies to the following:

“(A) Any covered transaction with an affiliate.

“(B) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase.

“(C) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise.

“(D) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the bank or to any other person.

“(E) Any transaction or series of transactions with a third party—

“(i) if an affiliate has a financial interest in the third party, or

“(ii) if an affiliate is a participant in such transaction or series of transactions.

12 USC 371c-1.

“(3) TRANSACTIONS THAT BENEFIT AN AFFILIATE.—For the purpose of this subsection, any transaction by a member bank or its subsidiary with any person shall be deemed to be a transaction with an affiliate of such bank if any of the proceeds of the transaction are used for the benefit of, or transferred to, such affiliate.

“(b) PROHIBITED TRANSACTIONS.—

“(1) IN GENERAL.—A member bank or its subsidiary—

“(A) shall not purchase as fiduciary any securities or other assets from any affiliate unless such purchase is permitted—

“(i) under the instrument creating the fiduciary relationship,

“(ii) by court order, or

“(iii) by law of the jurisdiction governing the fiduciary relationship; and

“(B) whether acting as principal or fiduciary, shall not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of such bank.

“(2) EXCEPTION.—Subparagraph (B) of paragraph (1) shall not apply if the purchase or acquisition of such securities has been approved, before such securities are initially offered for sale to the public, by a majority of the directors of the bank who are not officers or employees of the bank or any affiliate thereof.

“(3) DEFINITIONS.—For the purpose of this subsection—

“(A) the term ‘security’ has the meaning given to such term in section 3(a)(10) of the Securities Exchange Act of 1934; and

“(B) the term ‘principal underwriter’ means any underwriter who, in connection with a primary distribution of securities—

“(i) is in privity of contract with the issuer or an affiliated person of the issuer;

“(ii) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or

“(iii) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

“(c) ADVERTISING RESTRICTION.—A member bank or any subsidiary or affiliate of a member bank shall not publish any advertisement or enter into any agreement stating or suggesting that the bank shall in any way be responsible for the obligations of its affiliates.

“(d) DEFINITIONS.—For the purpose of this section—

“(1) the term ‘affiliate’ has the meaning given to such term in section 23A (but does not include any company described in section (b)(2) of such section or any bank);

“(2) the terms ‘bank’, ‘subsidiary’, ‘person’, and ‘security’ (other than security as used in subsection (b)) have the meanings given to such terms in section 23A; and

“(3) the term ‘covered transaction’ has the meaning given to such term in section 23A (but does not include any transaction which is exempt from such definition under subsection (d) of such section).

15 USC 78c.

12 USC 371c.

“(e) REGULATIONS.—The Board may prescribe regulations to administer and carry out the purposes of this section, including—

“(1) regulations to further define terms used in this section;

and

“(2) regulations to—

“(A) exempt transactions or relationships from the requirements of this section; and

“(B) exclude any subsidiary of a bank holding company from the definition of affiliate for purposes of this section, if the Board finds such exemptions or exclusions are in the public interest and are consistent with the purposes of this section.”.

(b) CONFORMING AMENDMENTS.—Section 18(j) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)) is hereby amended—

(1) by inserting “and section 23B” after “section 23A” at each place it appears in paragraph (1); and

(2) by inserting “, 23B,” after “23A” in paragraph (3)(A).

(c) TREATMENT OF EDGE ACT AND AGREEMENT CORPORATIONS FOR PURPOSES OF THE BANK HOLDING COMPANY ACT.—

(1) IN GENERAL.—The paragraph of section 25(a) of the Federal Reserve Act which begins “Except as otherwise provided in this section, a majority” (the 11th full paragraph) (12 U.S.C. 619) is amended by adding at the end thereof the following: “Any company, other than a bank as defined in section 2 of the Bank Holding Company Act of 1956, that after March 5, 1987, directly or indirectly acquires control of a corporation organized or operating under the provisions of this section or section 25 shall be subject to the provisions of the Bank Holding Company Act of 1956 in the same manner and to the same extent that bank holding companies are subject thereto, except that such company shall not be by reason of this paragraph be deemed a bank holding company for the purpose of section 3 of the Bank Holding Company Act of 1956.”.

(2) EXCEPTION.—The amendment made by paragraph (1) does not apply to an acquisition pursuant to the application by Midland Bank, plc, London, England, pending before the Board of Governors of the Federal Reserve System on July 1, 1987, to acquire a corporation organized or operating under section 25(a) of the Federal Reserve Act. If Midland Bank, plc, London, England, is not otherwise subject to section 4 of the Bank Holding Company Act of 1956, the financial activities of Midland Bank, plc, London, England, in the United States shall, upon the determination of the Board of Governors of the Federal Reserve System made at any time, be subject to section 4 of the Bank Holding Company Act of 1956.

SEC. 103. SECURITIES AFFILIATIONS OF NONMEMBER INSURED BANKS.

(a) IN GENERAL.—Section 18(j) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)) is amended by redesignating paragraph (3) (as amended by section 102(b)(2)) and paragraph (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

“(3) SECURITIES AFFILIATIONS OF INSURED NONMEMBER BANKS.—

“(A) IN GENERAL.—The provisions of section 20 of the Banking Act of 1933 (relating to affiliations between member banks and organizations engaged principally in certain securities activities), and the provisions of section 32 of the Banking Act of 1933

12 USC 611-631.

Ante, pp. 554, 557.

12 USC 1841 note.

Ante, p. 561; *post*, p. 579.
England.
12 USC 619 note.

Ante, p. 557.

12 USC 377.

12 USC 78.

(relating to certain officer, director, or employee relationships involving a member bank and a person or organization primarily engaged in certain securities activities) shall apply to every insured nonmember bank in the same manner and to the same extent as if such insured nonmember bank were a member bank.

“(B) CONTINUATION OF CERTAIN AFFILIATIONS.—This paragraph shall not prohibit the continuation of such an affiliation or relationship which commenced before March 5, 1987, or the establishment of such an officer, director, or employee relationship in connection with any affiliation established before March 5, 1987.

“(C) 2-YEAR PERIOD.—An affiliation or officer, director, or employee relationship that becomes unlawful as a result of the enactment of this paragraph may continue for a period of 2 years after the date of enactment of this paragraph.

“(D) FOREIGN BANKS.—The provisions of this paragraph shall not apply to any foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978, solely because it has an insured branch in the United States, except that the provisions of section 32 of the Banking Act of 1933 shall apply to an insured branch as if it were an insured bank.

12 USC 3101.

12 USC 78.

“(E) EXCEPTIONS.—The provisions of this paragraph shall not apply to any institution described in subparagraph (D), (F), or (I) of section 2(c)(2) of the Bank Holding Company Act of 1956.

Ante, p. 554.

“(F) APPLICABILITY.—This paragraph shall apply during the period beginning on March 6, 1987, and ending on March 1, 1988.”

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 18(j)(4)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)) (as redesignated by subsection (a)) is amended by inserting “or any provision of section 20 of the Banking Act of 1933,” after “or any lawful regulation issued pursuant thereto,”.

12 USC 377.

SEC. 104. AMENDMENTS TO SAVINGS AND LOAN HOLDING COMPANY PROVISIONS OF THE NATIONAL HOUSING ACT.

(a) DEFINITIONS.—Section 408(a)(1) of the National Housing Act (12 U.S.C. 1730a(a)(1)) is amended—

- (1) by striking out “and” at the end of subparagraph (I);
- (2) by striking out the period at the end of subparagraph (J) and inserting in lieu thereof a semicolon; and
- (3) by adding at the end thereof the following new subparagraphs:

“(K) the terms ‘bank holding company’ and ‘bank’ have the meanings given to such terms in subsections (a) and (c), respectively, of section 2 of the Bank Holding Company Act of 1956; and

“(L) the term ‘acquire’ has the meaning given to such term in section 13(f)(8)(E) of the Federal Deposit Insurance Act.”.

Ante, pp. 554, 557.

12 USC 1823.

(b) HOLDING COMPANY ACTIVITIES.—Section 408(c) of the National Housing Act (12 U.S.C. 1730a(c)) is amended to read as follows:

“(c) HOLDING COMPANY ACTIVITIES.—

“(1) PROHIBITED ACTIVITIES.—Except as otherwise provided in this subsection, no savings and loan holding company and no subsidiary (of such company) which is not an insured institution shall—

“(A) engage in any activity or render any service for or on behalf of an insured institution subsidiary for the purpose or with the effect of evading any law or regulation applicable to such insured institution;

“(B) commence any business activity, other than the activities described in paragraph (2), after the date of the enactment of the Competitive Equality Amendments of 1987; or

“(C) continue any business activity, other than the activities described in paragraph (2), after the later of—

“(i) the end of the 2-year period beginning on the date of the enactment of the Competitive Equality Amendments of 1987; or

“(ii) the date on which such company received approval under subsection (e) of this section to become a savings and loan holding company.

“(2) EXEMPT ACTIVITIES.—The prohibitions of subparagraphs (B) and (C) of paragraph (1) shall not apply to the following business activities of any savings and loan holding company or any subsidiary (of such company) which is not an insured institution:

“(A) Furnishing or performing management services for an insured institution subsidiary of such company.

“(B) Conducting an insurance agency or escrow business.

“(C) Holding, managing, or liquidating assets owned or acquired from an insured institution subsidiary of such company.

“(D) Holding or managing properties used or occupied by an insured institution subsidiary of such company.

“(E) Acting as trustee under deed of trust.

“(F) Any other activity—

“(i) which the Board of Governors of the Federal Reserve System, by regulation, has determined to be permissible for bank holding companies under section 4(c) of the Bank Holding Company Act of 1956, unless the Corporation, by regulation, prohibits or limits any such activity for savings and loan holding companies; or

“(ii) in which multiple savings and loan holding companies were authorized (by regulation) to directly engage on March 5, 1987.

“(3) CERTAIN LIMITATIONS ON ACTIVITIES NOT APPLICABLE TO CERTAIN HOLDING COMPANIES.—Notwithstanding paragraphs (4) and (6) of this subsection, the limitations contained in subparagraphs (B) and (C) of paragraph (1) shall not apply to any savings and loan holding company (or any subsidiary of such company) which controls—

“(A) only 1 insured institution, if the insured institution subsidiary of such company is a qualified thrift lender (as determined under subsection (o)); or

“(B) more than 1 insured institution, if—

“(i) all, or all but 1, of the insured institution subsidiaries of such company were acquired pursuant to an acquisition under subsection (m) of this section or section 406(f); and

“(ii) all of the insured institution subsidiaries of such company are qualified thrift lenders (as determined under subsection (o)).

“(4) PRIOR APPROVAL OF CERTAIN NEW ACTIVITIES REQUIRED.—

“(A) IN GENERAL.—No savings and loan holding company and no subsidiary (of such company) which is not an insured institution shall commence, either de novo or by an acquisition (in whole or in part) of a going concern, any activity described in paragraph (2)(F)(i) of this subsection without the prior approval of the Corporation.

“(B) FACTORS TO BE CONSIDERED BY CORPORATION.—In considering any application under subparagraph (A) by any savings and loan holding company or any subsidiary of any such company which is not an insured institution, the Corporation shall consider—

“(i) whether the performance of the activity described in such application by the company or the subsidiary can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects of such activity (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices);

“(ii) the managerial resources of the companies involved; and

“(iii) the adequacy of the financial resources, including capital, of the companies involved.

“(C) CORPORATION MAY DIFFERENTIATE BETWEEN NEW AND ONGOING ACTIVITIES.—In prescribing any regulation or considering any application under this paragraph, the Corporation may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern.

“(D) APPROVAL OR DISAPPROVAL BY ORDER.—The approval or disapproval of any application under this paragraph by the Corporation shall be made in an order issued by the Corporation containing the reasons for such approval or disapproval.

“(5) GRACE PERIOD TO ACHIEVE COMPLIANCE.—If any insured institution referred to in paragraph (3) fails to maintain the status of such institution as a qualified thrift lender, the Corporation may allow, for good cause shown, any company which controls such institution (or any subsidiary of such company which is not an insured institution) up to 3 years to comply with the limitations contained in paragraph (1)(C).

“(6) SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES AFFECTED BY 1987 AMENDMENTS.—

“(A) EXCEPTION TO 2-YEAR GRACE PERIOD FOR ACHIEVING COMPLIANCE.—Notwithstanding paragraph (1)(C)(i), any company which received approval under subsection (e) of this section to acquire control of an insured institution between March 5, 1987, and the date of the enactment of the Competitive Equality Amendments of 1987 shall not continue any business activity other than the activities described in paragraph (2) after such date of enactment.

"(B) EXEMPTION FOR ACTIVITIES LAWFULLY ENGAGED IN BEFORE MARCH 5, 1987.—Notwithstanding paragraph (1)(C) and subject to subparagraphs (C) and (D), any savings and loan holding company which received approval, before March 5, 1987, under subsection (e) of this section to acquire control of an insured institution may engage, directly or through any subsidiary (other than an insured institution subsidiary of such company), in any activity in which such company or such subsidiary was lawfully engaged on such date.

"(C) TERMINATION OF SUBPARAGRAPH (B) EXEMPTION.—The exemption provided under subparagraph (B) for activities engaged in by any savings and loan holding company or a subsidiary of such company (which is not an insured institution) which would otherwise be prohibited under paragraph (1)(C) shall terminate with respect to such activities of such company or subsidiary upon the occurrence (after the date of the enactment of the Competitive Equality Amendments of 1987) of any of the following:

"(i) The savings and loan holding company acquires control of a bank or an additional insured institution (other than an insured institution acquired pursuant to subsection (m) of this section or section 406(f)).

"(ii) Any insured institution subsidiary of the savings and loan holding company fails to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986.

"(iii) The savings and loan holding company engages in any business activity—

"(I) which is not described in paragraph (2); and

"(II) in which it was not engaged on March 5, 1987.

"(iv) Any insured institution subsidiary of the savings and loan holding company increases the number of locations from which such insured institution conducts business after March 5, 1987 (other than an increase which occurs in connection with a transaction under subsection (m) of this section or section 406(f)).

"(v) Any insured institution subsidiary of the savings and loan holding company permits any overdraft (including an intraday overdraft), or incurs any such overdraft in its account at a Federal Reserve bank, on behalf of an affiliate, unless such overdraft is the result of an inadvertent computer or accounting error that is beyond the control of both the insured institution subsidiary and the affiliate.

"(D) ORDER BY CORPORATION TO TERMINATE SUBPARAGRAPH (B) ACTIVITY.—Any activity described in subparagraph (B) may also be terminated by the Corporation, after opportunity for hearing, if the Corporation determines, having due regard for the purposes of this title, that such action is necessary to prevent conflicts of interest or unsound practices or is in the public interest.

"(7) FOREIGN SAVINGS AND LOAN HOLDING COMPANY.—Notwithstanding any other provision of this section, any savings and loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof

Post, p. 613.

26 USC 7701.
100 Stat. 2095.

which is not an insured institution), which controls a single insured institution on the date of enactment of the Competitive Equality Amendments of 1987 shall not be subject to this subsection with respect to any activities of such holding company which are conducted exclusively in a foreign country.”.

(c) REQUIREMENTS FOR TREATMENT AS A QUALIFIED THRIFT LENDER.—

(1) IN GENERAL.—Section 408 of the National Housing Act (12 U.S.C. 1730a) is amended by adding at the end thereof the following new subsection:

“(o) QUALIFIED THRIFT LENDER REQUIREMENTS.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), any insured institution shall have the status of a qualified thrift lender if—

“(A) the qualified thrift investments of such insured institution equal or exceed 60 percent of the total tangible assets of such institution; and

“(B) the qualified thrift investments of such insured institution continue to equal or exceed 60 percent of the total tangible assets of such institution on an average basis in 3 out of every 4 quarters and 2 out of every 3 years.

“(2) TRANSITION RULE FOR CERTAIN INSTITUTIONS.—

“(A) IN GENERAL.—If any insured institution—

“(i) which was chartered as a savings bank or a cooperative bank under State law before October 15, 1982; or

“(ii) the principal assets of which were acquired from an institution which was chartered as a savings bank or a cooperative bank under State law before October 15, 1982,

meets the requirements of subparagraph (B), such insured institution shall be treated as a qualified thrift lender during the 10-year period beginning on January 1, 1988.

“(B) SUBPARAGRAPH (B) REQUIREMENTS.—An insured institution meets the requirements of this subparagraph if, in the determination of the Corporation—

“(i) the actual thrift investment percentage of such institution does not, after the date of the enactment of the Competitive Equality Amendments of 1987, decrease below the actual thrift investment percentage of such institution on such date of enactment; and

“(ii) the amount by which—

“(I) the actual thrift investment percentage of such institution at the end of each period described in the following table, exceeds

“(II) the actual thrift investment percentage of such institution on such date of enactment, is equal to or greater than the applicable percentage (as determined under the following table) of the amount by which 60 percent exceeds the actual thrift investment percentage of such institution on such date of enactment:

“For the following period:

The 2½-year period beginning on such date of enactment.....	25 percent
The 5-year period beginning on such date of enactment.....	50 percent
The 7½-year period beginning on such date of enactment.....	75 percent

The applicable percentage is:

"(3) EXCEPTIONS GRANTED BY CORPORATION.—Notwithstanding paragraph (1), the Corporation may grant such temporary and limited exceptions from the minimum actual thrift investment percentage requirement contained in such paragraph as the Corporation deems necessary if—

"(A) the Corporation determines that extraordinary circumstances exist, such as when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for an insured institution to meet such investment requirements; or

"(B) the Corporation determines that—

"(i) the grant of any such exception will facilitate an acquisition under section 406(f) or 408(m); and

"(ii) the acquired institution will comply with the transition requirements of paragraph (2)(B).

"(4) FAILURE TO MAINTAIN QTL STATUS.—Any insured institution which fails to maintain its status as a qualified thrift lender, as determined by the Corporation, may not thereafter be a qualified thrift lender for a period of 5 years.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) ACTUAL THRIFT INVESTMENT PERCENTAGE.—The term 'actual thrift investment percentage' means the percentage determined by dividing—

"(i) the amount of the qualified thrift investments of an insured institution, by

"(ii) the total amount of tangible assets of such insured institution.

"(B) QUALIFIED THRIFT INVESTMENTS.—The term 'qualified thrift investments' means, with respect to any insured institution, the sum of—

"(i) the aggregate amount of loans, equity positions, or securities held by the insured institution (or any subsidiary of such institution) which are related to domestic residential real estate or manufactured housing;

"(ii) the value of property used by such institution or subsidiary in the conduct of the business of such institution or subsidiary;

"(iii) subject to paragraph (6), the liquid assets of the type required to be maintained under section 5A of the Federal Home Loan Bank Act; and

"(iv) subject to paragraph (6), 50 percent of the dollar amount of the residential mortgage loans originated by such insured institution or subsidiary and sold within 90 days of origination.

"(6) LIMITATION ON TREATMENT OF CERTAIN ASSETS AS THRIFT INVESTMENTS.—The aggregate amount of the assets described in clauses (iii) and (iv) of paragraph (5)(B) which may be taken into account in determining the amount of the qualified thrift investments of any insured institution shall not exceed the amount which is equal to 10 percent of the tangible assets of such institution.

"(7) ADDITIONAL TRANSITION RULE.—The insured institution described in subsection (r)(2)(C) shall be treated as a qualified

Post, pp. 613, 575.

12 USC 1425a.

thrift lender during the 10-year period beginning on January 1, 1988, if the requirements of paragraph (2)(B) are met by such institution.”.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall take effect on January 1, 1988.

12 USC 1730a
note.

(3) **REGULATIONS.**—The Federal Savings and Loan Insurance Corporation shall prescribe, under the authority of section 408(h)(1) of the National Housing Act, regulations to carry out the provisions of the amendment made by paragraph (1) before January 1, 1988.

12 USC 1730a
note.

12 USC 1730a.

(d) TRANSACTIONS BETWEEN INSURED INSTITUTION SUBSIDIARIES AND CERTAIN AFFILIATES.—

(1) **IN GENERAL.**—Section 408 of the National Housing Act (12 U.S.C. 1730a(d)) is amended by adding after subsection (o) (as added by subsection (c) of this section) the following new subsection:

“(p) RESTRICTIONS ON ACTIVITIES OF CERTAIN INSURED INSTITUTION SUBSIDIARIES.—

“(1) TRANSACTIONS WITH CERTAIN AFFILIATES.—

“(A) **IN GENERAL.**—Transactions between any insured institution subsidiary of a savings and loan holding company and any affiliate (of such insured institution subsidiary) which is engaged only in business activities described in subsection (c)(2)(F)(i)—

“(i) shall not be subject to subsection (d); and

“(ii) shall be subject to the limitations and prohibitions specified in sections 23A and 23B of the Federal Reserve Act in the same manner and to the same extent as if such insured institution were a member bank.

12 USC 371c;
ante, p. 564.

“(B) **REGULATIONS.**—The Corporation may prescribe regulations for the purpose of defining and clarifying the applicability of the limitations and prohibitions described in subparagraph (A).

“(2) CROSS-MARKETING PRACTICES.—

“(A) **IN GENERAL.**—Notwithstanding any other provision of this section, an insured institution subsidiary of a diversified savings and loan holding company may not offer or market products or services of an affiliate that are not permissible for bank holding companies to provide under section 4(c)(8) of the Bank Holding Company Act of 1956 or permit its products or services to be offered or marketed by or through an affiliate (other than an affiliate that engages only in activities permissible for bank holding companies under section 4(c) of that Act), unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date.

12 USC 1843.

“(B) **EXCEPTION.**—This paragraph shall not apply so as to prohibit an insured institution subsidiary of a diversified savings and loan holding company from offering or marketing the products or services of an affiliate or from permitting its products or services to be offered or marketed by or through an affiliate if—

“(i) the savings and loan holding company is a reciprocal interinsurance exchange that acquired control of the insured institution before January 1, 1984; and

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“(ii) at least 90 percent of the customers of the savings and loan holding company and its subsidiaries and affiliates are active or former officers in the United States military services or the widows, widowers, divorced spouses, or current or former dependents of such officers.”

(2) **TECHNICAL AMENDMENT.**—Section 408(d) of the National Housing Act (12 U.S.C. 1730a(d)) is amended by striking out “No savings and loan” and inserting in lieu thereof “Except as provided in subsection (p), no savings and loan”.

(e) **TYING RESTRICTIONS.**—Section 408 of the National Housing Act (12 U.S.C. 1730a) is amended by inserting after subsection (p) (as added by subsection (d) of this section) the following new subsection:

“(q) **TYING RESTRICTIONS.**—

“(1) **STATE CHARTERED INSURED INSTITUTION SUBSIDIARIES.**—A State chartered insured institution subsidiary of a savings and loan holding company shall be subject to section 5(q) of the Home Owners’ Loan Act of 1933, and regulations prescribed under such subsection, in the same manner and to the same extent as an association (as defined in section 2(d) of such Act).

“(2) **HOLDING COMPANIES AND CERTAIN AFFILIATES.**—A savings and loan holding company and any of its affiliates (other than an insured institution) shall be subject to section 5(q) of the Home Owners’ Loan Act of 1933, and regulations prescribed under such subsection, in connection with transactions involving the products or services of such company or affiliate and those of an affiliated insured institution as if such company or affiliate were an association (as defined in section 2(d) of such Act).”

(f) **SAVINGS BANK AS INSURED INSTITUTION.**—

(1) **IN GENERAL.**—Section 408(n) of the National Housing Act (12 U.S.C. 1730a) is amended to read as follows:

“(n) **TREATMENT OF FDIC INSURED STATE SAVINGS BANKS AND COOPERATIVE BANKS AS INSURED INSTITUTIONS.**—

“(1) **IN GENERAL.**—Notwithstanding any other provision of law, a savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) and a cooperative bank that is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) upon application shall be deemed to be an insured institution for the purpose of this section, if the Corporation determines that such bank is a qualified thrift lender (as determined under subsection (o)).

“(2) **FAILURE TO MAINTAIN QTL STATUS.**—If any savings bank which is deemed to be an insured institution under paragraph (1) subsequently fails to maintain its status as a qualified thrift lender, as determined by the Corporation, such bank may not thereafter be a qualified thrift lender for a period of 5 years.”

(2) **TECHNICAL AND CONFORMING AMENDMENT.**—Section 408(a)(1)(A) of the National Housing Act (12 U.S.C. 1730a(a)(1)(A)) is amended by adding before the semicolon at the end thereof the following: “and a savings bank which is deemed by the Corporation to be an insured institution under subsection (n)”.

(g) **THRIFT ACQUISITIONS.**—Section 408(e)(3) of the National Housing Act (12 U.S.C. 1730(e)) is amended to read as follows:

“(3) **INTERSTATE ACQUISITIONS.**—No acquisition shall be approved by the Corporation under this subsection which will result in the

12 USC 1464.

12 USC 1462.

Ante, p. 563.

12 USC 1730a.

formation by any company, through one or more subsidiaries or through one or more transactions, of a multiple savings and loan holding company controlling insured institutions in more than one State, unless—

“(A) such company, or an insured institution subsidiary of such company, is authorized to acquire control of an insured institution subsidiary, or to operate a home or branch office, in the additional State or States pursuant to subsection (m);

“(B) such company controls an insured institution subsidiary which operated a home or branch office in the additional State or States as of March 5, 1987; or

“(C) the statute laws of the State in which the insured institution, control of which is to be acquired, is located are such that an insured institution chartered by such State could be acquired by an insured institution chartered by the State where the acquiring insured institution or savings and loan holding company is located (or by a holding company that controls such a State-chartered insured institution), and such statute laws specifically authorize such an acquisition by language to that effect and not merely by implication.”.

(h) EMERGENCY ACQUISITIONS.—Section 408(m)(1)(A)(i) of the National Housing Act (12 U.S.C. 1730a(m)(1)(A)(i)) is amended by inserting “(c),” before “(e)(2)”.

SEC. 105. AMENDMENT TO THE FEDERAL HOME LOAN BANK ACT.

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

Post, p. 601.

“(e) REDUCED ELIGIBILITY FOR ADVANCES FOR CERTAIN MEMBERS WHICH ARE NOT QUALIFIED THRIFT LENDERS.—

“(1) IN GENERAL.—Except as the Board may prescribe, a member that is not a qualified thrift lender may not receive advances in excess of the amount determined by multiplying—

“(A) the total amount of advances that such member would be eligible to receive in the absence of this subsection; by

“(B) such member’s actual thrift investment percentage.

“(2) EXCEPTIONS.—Paragraph (1) does not apply to—

“(A) a savings bank as defined in section 3(g) of the Federal Deposit Insurance Act;

Ante, p. 563.

“(B) an insured institution which was chartered prior to October 15, 1982, as a savings bank under State law; or

“(C) an insured institution which acquired its principal assets from an institution which was chartered prior to October 15, 1982, as a savings bank under State law.

“(3) DEFINITIONS.—As used in this subsection—

“(A) INSURED INSTITUTION.—The term ‘insured institution’ has the same meaning as in section 408(a)(1)(A) of the National Housing Act.

Ante, p. 594.

“(B) QUALIFIED THRIFT LENDER.—The term ‘qualified thrift lender’ has the same meaning as in section 408(o) of the National Housing Act.

Ante, p. 571.

“(C) ACTUAL THRIFT INVESTMENT PERCENTAGE.—The term ‘actual thrift investment percentage’ has the same meaning as in section 408(o)(5)(A) of the National Housing Act.”.

SEC. 106. SECURITIES AFFILIATIONS OF FSLIC INSURED INSTITUTIONS.

(a) IN GENERAL.—Section 408 of the National Housing Act (12 U.S.C. 1730a) is amended by inserting after subsection (q) (as added by section 104(e) of this title) the following new subsection:

“(r) SECURITIES AFFILIATIONS.—

12 USC 377.

12 USC 78.

“(1) IN GENERAL.—The provisions of section 20 of the Banking Act of 1933 (relating to affiliations between member banks and organizations engaged principally in certain securities activities) and the provisions of section 32 of the Banking Act of 1933 (relating to certain officer, director, or employee relationships involving a member bank and a person or organization primarily engaged in certain securities activities) shall be applicable to every insured institution in the same manner and to the same extent as if such insured institution were a member bank.

“(2) EXCEPTIONS.—This subsection does not prohibit—

Washington.

“(A) the continuation of such an affiliation or relationship which commenced prior to March 5, 1987, or the establishment of such an officer, director, or employee relationship in connection with any affiliation established before such date;

Ante, p. 566.

Minnesota.

“(B) the Washington Mutual Savings Bank, located in the State of Washington, from acquiring control of one or more insured institutions or establishing an officer, director, or employee relationship between such an insured institution and any affiliate of the savings bank referred to in section 18(j)(3)(B) of the Federal Deposit Insurance Act;

“(C) the acquisition of Peoples Savings and Loan Association of Owatonna, Minnesota, by Miller and Schroeder Holdings, Inc. (or any affiliate of such company), or the establishment of any officer, director, or employee relationship between such association and such company or any affiliate of such company, including Miller and Schroeder Financial, Inc.; or

“(D) such an affiliation or officer, director, or employee relationship which results from the acquisition by an organization described in paragraph (1) of an insured institution under subsection (m) of this section, if such institution has total assets of \$500,000,000 or more at the time of such acquisition.

“(3) TWO-YEAR PERIOD.—An affiliation or an officer, director, or employee relationship that becomes unlawful as a result of the enactment of this subsection may continue for a period of 2 years after the date of the enactment of this subsection.

Real property.

“(4) EXEMPT ACTIVITIES OF CERTAIN INSTITUTIONS.—Nothing in this subsection or section 18(j)(3) of the Federal Deposit Insurance Act prohibits an affiliation or an officer, director, or employee relationship between an insured institution or an institution which is eligible to become a member of a Federal Home Loan Bank, and an organization engaged principally in the issuance, sale, underwriting, or distribution, at wholesale or retail, or through syndicate participation, of—

“(A) securities representing or secured by interests in real estate or real estate loans or pools of real estate loans;

“(B) interests in partnerships formed primarily to own, operate, manage, or invest in real estate;

“(C) insurance products deemed to be securities, including without limitation variable annuities and variable life insurance;

“(D) securities of an investment company, as such term is defined in the Investment Company Act of 1940; and

15 USC 80a-1.

“(E) any securities to the extent such issuance, sale, underwriting, or distribution is permitted for national banks.

“(5) REGULATIONS.—

“(A) IN GENERAL.—The Corporation is authorized to issue rules and regulations and to publish interpretations governing the implementation of this subsection, and shall enforce the provisions of this subsection.

“(B) FEDERAL DEPOSIT INSURANCE CORPORATION AUTHORITY.—For the purpose of paragraph (4), the Federal Deposit Insurance Corporation is authorized to issue rules and regulations and publish interpretations with respect to savings banks and other institutions subject to section 18(j)(3) of the Federal Deposit Insurance Act.”.

Ante, p. 566.

(b) EXPIRATION DATE.—The amendment made by subsection (a) shall cease to be effective on March 1, 1988.

12 USC 1730a note.

SEC. 107. MUTUAL HOLDING COMPANY AMENDMENTS.

(a) IN GENERAL.—Section 408 of the National Housing Act (12 U.S.C. 1730a) is amended by inserting after subsection (r) (as added by section 106(a) of this title) the following new subsection:

“(s) MUTUAL HOLDING COMPANIES.—

“(1) IN GENERAL.—Notwithstanding any provision of Federal law other than this title, an insured institution operating in mutual form may reorganize so as to become a holding company by—

“(A) chartering an interim savings institution, the stock of which is to be wholly owned by the mutual institution; and

“(B) transferring the substantial part of its assets and liabilities, including all of its insured liabilities, to the interim savings institution.

“(2) DIRECTORS AND CERTAIN ACCOUNT HOLDERS’ APPROVAL OF PLAN REQUIRED.—A reorganization is not authorized under this subsection unless—

“(A) a plan providing for such reorganization has been approved by a majority of the board of directors of the mutual savings institution; and

“(B) in the case of an institution in which holders of accounts and obligors exercise voting rights, such plan has been submitted to and approved by a majority of such individuals at a meeting held at the call of the directors in accordance with the procedures prescribed by the institution’s charter and bylaws.

“(3) NOTICE TO THE CORPORATION; DISAPPROVAL PERIOD.—

“(A) NOTICE REQUIRED.—At least 60 days prior to taking any action described in paragraph (1), an insured institution seeking to establish a mutual holding company shall provide written notice to the Corporation. The notice shall contain such relevant information as the Corporation shall require by regulation or by specific request in connection with any particular notice.

"(B) TRANSACTION ALLOWED IF NOT DISAPPROVED.—Unless the Corporation within such 60-day notice period disapproves the proposed holding company formation, or extends for another 30 days the period during which such disapproval may be issued, the insured institution providing such notice may proceed with the transaction, if the requirements of paragraph (2) have been met.

"(C) GROUNDS FOR DISAPPROVAL.—The Corporation may disapprove any proposed holding company formation only if—

"(i) such disapproval is necessary to prevent unsafe or unsound practices;

"(ii) the financial or management resources of the insured institution involved warrant disapproval;

"(iii) the insured institution fails to furnish the information required under subparagraph (A); or

"(iv) the insured institution fails to comply with the requirement of paragraph (2).

"(D) RETENTION OF CAPITAL ASSETS.—In connection with the transaction described in paragraph (1), an insured institution may, subject to the approval of the Corporation, retain capital assets at the holding company level to the extent that such capital exceeds adequate reserves as prescribed pursuant to section 403(b) or the comparable provisions of State or Federal law.

"(4) OWNERSHIP.—Persons having ownership rights in the mutual institution pursuant to section 5(b)(1)(B) of the Home Owners' Loan Act of 1933 or State law shall have the same ownership rights with respect to the mutual holding company.

"(5) PERMITTED ACTIVITIES.—A mutual holding company may engage only in the following activities:

"(A) Investing in the stock of an insured institution.

"(B) Acquiring a mutual institution through the merger of such institution into an insured institution subsidiary of such holding company or an interim savings institution subsidiary of such holding company.

"(C) Subject to paragraph (6), merging with or acquiring another holding company, one of whose subsidiaries is an insured institution.

"(D) Investing in a corporation the capital stock of which is available for purchase by an insured institution under Federal law or under the law of any State where the subsidiary insured institution or institutions have their home offices.

"(E) Engaging in the activities described in subsection (c)(2), except subparagraph (B).

"(6) LIMITATIONS ON CERTAIN ACTIVITIES OF ACQUIRED HOLDING COMPANIES.—

"(A) NEW ACTIVITIES.—If a mutual holding company acquires or merges with another holding company under paragraph (5)(C), the holding company acquired or the holding company resulting from such merger or acquisition may only invest in assets and engage in activities which are authorized under paragraph (5).

"(B) GRACE PERIOD FOR DIVESTING PROHIBITED ASSETS OR DISCONTINUING PROHIBITED ACTIVITIES.—Not later than 2 years following a merger or acquisition described in para-

12 USC 1726.

12 USC 1464.

graph (5)(C), the acquired holding company or the holding company resulting from such merger or acquisition shall—

“(i) dispose of any asset which is an asset in which a mutual holding company may not invest under paragraph (5); and

“(ii) cease any activity which is an activity in which a mutual holding company may not engage under paragraph (5).

“(7) REGULATION.—Unless the context otherwise requires, a mutual holding company shall be subject to the other requirements of this section regarding regulation of holding companies.

“(8) DEFINITIONS.—For purposes of this subsection—

“(A) MUTUAL HOLDING COMPANY.—The term ‘mutual holding company’ means a corporation organized as a holding company under this subsection.

“(B) MUTUAL INSTITUTION.—The term ‘mutual institution’ means—

“(i) an insured institution; or

“(ii) a savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act), which is operating in mutual form.”

Ante, p. 563.

(b) AMENDMENT TO THE BANK HOLDING COMPANY ACT.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end thereof the following:

Ante, p. 561.

“(g) MUTUAL BANK HOLDING COMPANY.—

“(1) ESTABLISHMENT.—Notwithstanding any provision of Federal law other than this Act, a savings bank or cooperative bank operating in mutual form may reorganize so as to form a holding company.

“(2) REGULATION.—A corporation organized as a holding company under this subsection shall be regulated on the same terms and be subject to the same limitations as any other holding company which controls a savings bank.”

SEC. 108. LEASING AUTHORITY OF NATIONAL BANKS.

Section 5136 of the Revised Statutes (12 U.S.C. 24) is amended by adding at the end thereof the following:

“Tenth. To invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis, but such investment may not exceed 10 percent of the assets of the association.”

Real property.

SEC. 109. NOW ACCOUNTS.

Section 2(a)(2) of Public Law 93-100 (12 U.S.C. 1832(a)(2)) is amended by inserting the term “political,” immediately after “educational,”.

SEC. 110. EXEMPTION FROM AFFILIATE TRANSACTION RESTRICTIONS.

Section 408 of the National Housing Act (12 U.S.C. 1730a) is amended by inserting after subsection (s) (as added by section 107(a) of this title) the following new subsection:

“(t) EXEMPTION.—

“(1) IN GENERAL.—Subject to paragraph (2), but notwithstanding any other provision of law, an insured institution that is a subsidiary of an insured institution or insured institutions the

voting stock of which is 80 percent owned by the same company shall not be subject—

“(A) to the provisions of subsection (d) of this section as to transactions with such parent insured institution or affiliate insured institutions (and their subsidiaries), or

“(B) to the provisions of subsections (f) and (g).

“(2) **LOW QUALITY ASSETS.**—An insured institution (or its subsidiary) may not purchase a low quality asset, as such term is defined in section 23A of the Federal Reserve Act, from another insured institution (or its subsidiary) in a transaction exempted by this subsection and any transaction with another insured institution (or its subsidiary) under this subsection shall be on terms and conditions that are consistent with safe and sound financial practices.

“(3) **DEFINITION.**—For purposes of this subsection, an ‘insured institution’ includes an institution that was chartered prior to October 15, 1982, as a savings bank or cooperative bank under State law and that is or becomes a savings and loan holding company or is or becomes a subsidiary of a savings and loan holding company.”

SEC. 111. CONSIDERATION OF CERTAIN ACQUISITIONS.

(a) **AMENDMENT TO SECTION 408.**—Section 408(e) of the National Housing Act (12 U.S.C. 1730a(e)) is amended—

(1) by redesignating paragraph (4) as paragraph (5);

(2) by inserting a new paragraph (4) to read as follows:

“(4) **CONSIDERATION OF LOSS OF CERTAIN TAX BENEFITS.**—

“(A) **IN GENERAL.**—In each case in which a filing of any type is required by this section, or regulations prescribed under this section, before the acquisition of stock of an insured institution, the Corporation, in evaluating such filing, may consider the likelihood that the proposed acquisition will result in the loss or reduction of the tax benefits of the insured institution’s net operating loss carryforwards under section 382 of the Internal Revenue Code of 1986.

“(B) **REQUIRED CONSIDERATION IN CERTAIN CASES.**—The Corporation shall, with respect to any acquisition, give consideration to the likelihood of future loss or reduction of the tax benefits of an insured institution’s net operating loss carryforwards under section 382 of the Internal Revenue Code of 1986 if such net operating loss carryforwards result from the insured institution’s acquisition of one or more insured institutions under subsection (m) of this section or section 406(f) or pursuant to acquisitions that are otherwise deemed to be supervisory cases by the Corporation.

“(C) **PERMITTED TRANSACTIONS.**—Notwithstanding subparagraph (A) or (B), the Corporation may permit—

“(i) acquisitions in which the proposed acquirer commits itself in writing to maintain the ratio of tangible equity capital to liabilities of the insured institution to be acquired, as determined in accordance with generally accepted accounting principles, in an amount equal to the ratio in existence at the time of filing with the Corporation,

12 USC 371c.

Ante, p. 574.

26 USC 382.
100 Stat. 2095.

Post, p. 613.

“(ii) acquisitions which are approved by the holders of a majority of the voting stock of the institution to be acquired, or

“(iii) acquisitions pursuant to subsection (m) of this section or section 406(f) or pursuant to acquisitions that are otherwise deemed to be supervisory cases by the Corporation.”

Post, p. 613.

(b) AMENDMENT TO SECTION 407.—Section 407(q) of the National Housing Act (12 U.S.C. 1730(q)) is amended—

(1) by redesignating paragraphs (8) through (18) as paragraphs (9) through (19), respectively;

(2) by inserting a new paragraph (8) to read as follows:

“(8) CONSIDERATION OF LOSS OF CERTAIN TAX BENEFITS.—

“(A) IN GENERAL.—In each case in which a filing of any type is made under this subsection, or regulations prescribed under this section, before the acquisition of stock of an insured institution, the Corporation, in evaluating such filing, may consider the likelihood that the proposed acquisition will result in the loss or reduction of the tax benefits of an insured institution's net operating loss carryforwards under section 382 of the Internal Revenue Code of 1986.

26 USC 382.
100 Stat. 2095.

“(B) REQUIRED CONSIDERATION IN CERTAIN CASES.—The Corporation shall, with respect to any acquisition, give consideration to the likelihood of future loss or reduction of the tax benefits of an insured institution's net operating loss carryforwards under section 382 of the Internal Revenue Code of 1986 if such net operating loss carry forwards result from the insured institution's acquisition of one or more insured institutions under section 406(f) or 408(m) or pursuant to acquisitions that are otherwise deemed to be supervisory cases by the Corporation.

12 USC 1730a.

“(C) PERMITTED TRANSACTIONS.—Notwithstanding subparagraph (A) or (B), the Corporation may permit—

“(i) acquisitions in which the proposed acquirer commits itself in writing to maintain the ratio of tangible equity capital to liabilities of the insured institutions to be acquired, as determined in accordance with generally accepted accounting principles, in an amount equal to the ratio in existence at the time of filing with the Corporation,

“(ii) acquisitions which are approved by the holders of a majority of the voting stock of the institution to be acquired, or

“(iii) acquisitions under section 406(f) or 408(m), or are acquisitions that are otherwise deemed to be supervisory cases by the Corporation.”

TITLE II—MORATORIUM ON CERTAIN NONBANKING ACTIVITIES

SEC. 201. MORATORIUM ON CERTAIN NONBANKING ACTIVITIES.

12 USC 1841
note.

(a) APPLICABILITY.—The provisions of this section shall apply during the period beginning on March 6, 1987, and ending on March 1, 1988.

(b) MORATORIUM.—

(1) A foreign bank or other company covered by subsection (c) of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106(c)) shall not, under any provision of law which is not applicable to domestic bank holding companies, expand any activity in which it is engaged pursuant to that subsection by acquiring an interest in, or the assets of, a going concern. This paragraph shall not apply to any "domestically-controlled affiliate covered in 1978" as defined in that subsection.

(2) A Federal banking agency may not authorize or allow by action, inaction, or otherwise any bank holding company or subsidiary or affiliate thereof, any foreign bank or other company subject to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), or any insured bank or subsidiary or affiliate thereof to engage in the United States to any extent whatever—

(A) in the flotation, underwriting, public sale, dealing in, or distribution of securities if that approval would require the agency to determine that the entity which would conduct such activities would not be engaged principally in such activities,

(B) in any securities activity not legally authorized in writing prior to March 5, 1987, or

(C) in the operation of a nondealer marketplace in options.

Subparagraph (B) shall not affect (i) activities in which any bank holding company or subsidiary or affiliate thereof, any foreign bank or other company subject to the Bank Holding Company Act of 1956 under section 8(a) of the International Banking Act of 1978, or any insured bank or subsidiary or affiliate thereof acts only as an agent; (ii) activities which had been lawfully engaged in prior to March 5, 1987; or (iii) sales or transactions closed on or before June 30, 1987.

(3) A Federal banking agency may not issue any rule, regulation, or order that would have the effect of increasing the insurance powers of banks, bank holding companies, foreign banks or other companies subject to the Bank Holding Company Act of 1956 under section 8(a) of the International Banking Act of 1978, or banking or nonbanking subsidiaries thereof with respect to any activities in the United States, either with respect to specific banks or bank holding companies or subsidiaries thereof or generally beyond those expressly authorized for bank holding companies under subparagraphs (A) through (G) of section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)(A) through (G)).

(4) Except as provided in section 3(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(f)), as added by section 101(d) of this Act, the Board of Governors of the Federal Reserve System may not approve the acquisition by a bank holding company or by a foreign bank or other company subject to the Bank Holding Company Act of 1956 under section 8(a) of the International Banking Act of 1978, of any company, including a State-chartered bank, unless the bank holding company, foreign bank, or other company has agreed to limit the insurance activities in the United States of the company to be acquired to

those permissible under section 4(c)(8) of the Bank Holding Company Act of 1956. This paragraph shall not apply to the acquisition of a State-chartered bank that upon acquisition would be subject to the Bank Holding Company Act of 1956, pursuant to a reorganization plan under which the stockholders of the bank exchange their shares for shares in a newly created bank holding company which is not a subsidiary of any other company or to the acquisition of a State-chartered bank by a bank holding company that on March 6, 1987, controlled one or more State-chartered banks that have engaged in insurance activities identical to those of the newly acquired institution so long as the bank holding company agrees that it will—

12 USC 1843.

(A) within 2 years of the consummation of its acquisition of the State-chartered bank, divest or terminate that bank's impermissible insurance activities, and

(B) limit the bank's insurance activities during that 2-year period to the renewal of existing policies.

(5) A national bank or a Federal branch or agency of a foreign bank may not expand its insurance agency activities pursuant to the Act of September 7, 1916 (12 U.S.C. 92), into places where it was not conducting such activities as of March 5, 1987.

(6) A Federal banking agency may not issue any rule, regulation, or order that would have the effect of increasing real estate powers in the United States of banks, bank holding companies, foreign banks or other companies subject to the Bank Holding Company Act of 1956 under section 8(a) of the International Banking Act of 1978, or of any banking or non-banking subsidiaries of any such banks or companies.

12 USC 1841
note.
12 USC 3106.

(c) DEFINITIONS.—As used in this section and section 202—

(1) the term "affiliate" has the same meaning as in section 2(j)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(j)(2)), as added by section 101(a) of this Act;

(2) the term "bank holding company" has the same meaning as in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a));

(3) the term "Federal banking agency" has the same meaning as the term "appropriate Federal banking agency" has in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)); and

(4) the term "insured bank" has the same meaning as in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)).

(d) INSURANCE AUTHORITY OF BANKING ORGANIZATIONS.—Nothing in this section may be construed to increase or reduce the insurance authority of bank holding companies or banking or nonbanking subsidiaries thereof or of national banks under current law.

(e) INSURANCE AUTHORITY OF CERTAIN STATE-CHARTERED BANKS.—

(1) FREESTANDING STATE-CHARTERED BANKS.—Nothing in this section shall be construed to deny any State the authority to permit its State-chartered banks that are not controlled by bank holding companies from engaging in any insurance activity.

(2) STATE-CHARTERED SUBSIDIARIES OF BANK HOLDING COMPANIES.—In addition, neither the existence of the moratorium nor its expiration shall be construed to increase, decrease, or affect in any way the authority of State-chartered bank subsidiaries of bank holding companies with respect to insurance activities.

12 USC 1841
note.

SEC. 202. AUTHORITY OF FEDERAL BANKING AGENCIES.

Nothing in section 201 may be construed to prevent a Federal banking agency from issuing any rule, regulation, or order pursuant to its legal authority in existence on the day preceding the date of enactment of this Act to expand the securities, insurance, or real estate powers of banks or bank holding companies that are subject to the moratorium established under section 201 if the effective date of such rule, regulation, or order is delayed until the expiration of such moratorium.

12 USC 1841
note.

SEC. 203. INTENT OF CONGRESS.

(a) **COMPREHENSIVE CONGRESSIONAL REVIEW OF BANKING AND FINANCIAL LAWS.**—It is the intent of the Congress, through the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, to conduct a comprehensive review of our banking and financial laws and to make decisions on the need for financial restructuring legislation in the light of today's changing financial environment both domestic and international before the expiration of such moratorium.

(b) **CONGRESSIONAL INTENT NOT TO RENEW OR EXTEND MORATORIUM.**—It is the intent of the Congress not to renew or extend the moratorium established under section 201 whether or not subsequent banking legislation is passed by the Congress.

SEC. 204. AMENDMENTS TO THE INTERNATIONAL BANKING ACT OF 1978.

(a) **TERMINATION OF CERTAIN NONBANKING ACTIVITIES.**—Section 8(c) of the International Banking Act of 1978 (12 U.S.C. 3106(c)) is amended by adding at the end thereof the following new paragraph:

“(2) The authority conferred by this subsection on a foreign bank or other company shall terminate 2 years after the date on which such foreign bank or other company becomes a ‘bank holding company’ as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)); except that the Board may, upon application of such foreign bank or other company, extend the 2-year period for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall exceed 3 years in the aggregate.”

(b) **CLERICAL AMENDMENT.**—Section 8 of the International Banking Act of 1978 is amended by striking out “(c) After” and inserting in lieu thereof “(c)(1) After”.

SEC. 205. AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.

(a) **EXCEPTION TO NONBANKING PROHIBITIONS.**—Section 2(h) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(h)) is amended by striking out paragraph (2) and by adding after paragraph (1) the following new paragraphs:

“(2) Except as provided in paragraph (3), the prohibitions of section 4 of this Act shall not apply to shares of any company organized under the laws of a foreign country (or to shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States. For the purpose of this subsection, the

term 'section 2(h)(2) company' means any company whose shares are held pursuant to this paragraph.

"(3) Nothing in paragraph (2) authorizes a section 2(h)(2) company to engage in (or acquire or hold more than 5 percent of the outstanding shares of any class of voting securities of a company engaged in) any banking, securities, insurance, or other financial activities, as defined by the Board, in the United States. This paragraph does not prohibit a section 2(h)(2) company from holding shares that were lawfully acquired before the date of enactment of the Competitive Equality Banking Act of 1987.

"(4) No domestic office or subsidiary of a bank holding company or subsidiary thereof holding shares of a section 2(h)(2) company may extend credit to a domestic office or subsidiary of such section 2(h)(2) company on terms more favorable than those afforded similar borrowers in the United States.

"(5) No domestic banking office or bank subsidiary of a bank holding company that controls a section 2(h)(2) company may offer or market products or services of such section 2(h)(2) company, or permit its products or services to be offered or marketed by or through such section 2(h)(2) company, unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date."

TITLE III—FSLIC RECAPITALIZATION

SEC. 301. SHORT TITLE.

This title may be cited as the "Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987".

SEC. 302. FINANCING CORPORATION ESTABLISHED.

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 20 the following new section:

"SEC. 21. FINANCING CORPORATION.

"(a) **ESTABLISHMENT.**—Notwithstanding any other provision of law, the Board shall charter a corporation to be known as the Financing Corporation.

"(b) **MANAGEMENT OF FINANCING CORPORATION.**—

"(1) **DIRECTORATE.**—The Financing Corporation shall be under the management of a directorate composed of 3 members as follows:

"(A) The Director of the Office of Finance of the Federal Home Loan Banks (or the head of any successor to such office).

"(B) 2 members selected by the Federal Home Loan Bank Board from among the presidents of the Federal Home Loan Banks.

"(2) **TERMS.**—Each member appointed under paragraph (1)(B) shall be appointed for a term of 1 year.

"(3) **VACANCY.**—If any member leaves the office in which such member was serving when appointed to the Directorate—

"(A) such member's service on the Directorate shall terminate on the date such member leaves such office; and

"(B) the successor to the office of such member shall serve the remainder of such member's term.

Federal Savings
and
Loan Insurance
Corporation
Recapitalization
Act of 1987.
12 USC 226 note.

12 USC 1441.

"(4) **EQUAL REPRESENTATION OF BANKS.**—No president of a Federal Home Loan Bank may be appointed to serve an additional term on the Directorate until such time as the presidents of each of the other Federal Home Loan Banks have served as many terms on the Directorate as the president of such bank (before the appointment of such president to such additional term).

"(5) **CHAIRPERSON.**—The Chairman of the Federal Home Loan Bank Board shall select the chairperson of the Directorate from among the 3 members of the Directorate.

"(6) **STAFF.**—

"(A) **NO PAID EMPLOYEES.**—The Financing Corporation shall have no paid employees.

"(B) **POWERS.**—The Directorate may, with the approval of the Board, authorize the officers, employees, or agents of the Federal Home Loan Banks to act for and on behalf of the Financing Corporation in such manner as may be necessary to carry out the functions of the Financing Corporation.

"(7) **ADMINISTRATIVE EXPENSES.**—

"(A) **IN GENERAL.**—All administrative expenses of the Financing Corporation shall be paid by the Federal Home Loan Banks.

"(B) **PRO RATA DISTRIBUTION.**—The amount each Federal Home Loan Bank shall pay shall be determined by the Board by multiplying the total administrative expenses for any period by the percentage arrived at by dividing—

"(i) the aggregate amount the Board required such bank to invest in the Financing Corporation (as of the time of such determination) under paragraphs (4) and (5) of subsection (d) (as computed without regard to paragraph (3) or (6) of such subsection); by

"(ii) the aggregate amount the Board required all Federal Home Loan Banks to invest (as of the time of such determination) under such paragraphs.

"(C) **ADMINISTRATIVE EXPENSES DEFINED.**—For purposes of this paragraph, the term 'administrative expenses' does not include—

"(i) issuance costs (as such term is defined in subsection (g)(5)(A));

"(ii) any interest on (and any redemption premium with respect to) any obligation of the Financing Corporation; or

"(iii) custodian fees (as such term is defined in subsection (g)(5)(B)).

"(8) **REGULATION BY BOARD.**—The Directorate shall be subject to such regulations, orders, and directions as the Board may prescribe.

"(9) **NO COMPENSATION FROM FINANCING CORPORATION.**—Members of the Directorate shall receive no pay, allowances, or benefits from the Financing Corporation by reason of their service on the Directorate.

"(c) **POWERS OF FINANCING CORPORATION.**—The Financing Corporation shall have only the following powers, subject to the other provisions of this section and such regulations, orders, and directions as the Board may prescribe:

"(1) To issue nonvoting capital stock to the Federal Home Loan Banks.

"(2) To invest in any security issued by the Federal Savings and Loan Insurance Corporation under section 402(b) of the National Housing Act.

"(3) To issue debentures, bonds, or other obligations and to borrow, to give security for any amount borrowed, and to pay interest on (and any redemption premium with respect to) any such obligation or amount.

"(4) To impose assessments in accordance with subsection (f).

"(5) To adopt, alter, and use a corporate seal.

"(6) To have succession until dissolved.

"(7) To enter into contracts.

"(8) To sue and be sued in its corporate capacity, and to complain and defend in any action brought by or against the Financing Corporation in any State or Federal court of competent jurisdiction.

"(9) To exercise such incidental powers not inconsistent with the provisions of this section or section 402(b) of the National Housing Act as are necessary or appropriate to carry out the provisions of this section.

"(d) CAPITALIZATION OF FINANCING CORPORATION.—

"(1) PURCHASE OF CAPITAL STOCK BY FEDERAL HOME LOAN BANKS.—

"(A) IN GENERAL.—Each Federal Home Loan Bank shall invest in nonvoting capital stock of the Financing Corporation at such times and in such amounts as the Board may prescribe under this subsection.

"(B) PAR VALUE; TRANSFERABILITY.—Each share of stock issued by the Financing Corporation to a Federal Home Loan Bank shall have par value in an amount determined by the Board and shall be transferable only among the Federal Home Loan Banks in the manner and to the extent prescribed by the Board at not less than par value.

"(2) AGGREGATE DOLLAR AMOUNT LIMITATION ON ALL INVESTMENTS.—The aggregate amount of funds invested by all Federal Home Loan Banks in nonvoting capital stock of the Financing Corporation shall not exceed \$3,000,000,000.

"(3) MAXIMUM INVESTMENT AMOUNT LIMITATION FOR EACH FEDERAL HOME LOAN BANK.—The cumulative amount of funds invested in nonvoting capital stock of the Financing Corporation by each Federal Home Loan Bank shall not exceed the aggregate amount of—

"(A) the sum of—

"(i) the reserves maintained by such bank on December 31, 1985, pursuant to the requirement contained in the first 2 sentences of section 16; and

"(ii) the undivided profits (as defined in paragraph (7)) of such bank on such date; and

"(B) the sum of—

"(i) the amounts added to reserves after December 31, 1985, pursuant to the requirement contained in the first 2 sentences of section 16; and

"(ii) the undivided profits of such bank accruing after such date.

"(4) PRO RATA DISTRIBUTION OF 1ST \$1,000,000,000 INVESTED IN FINANCING CORPORATION BY HOME LOAN BANKS.—With respect to

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the first \$1,000,000,000 which the Board may require the Federal Home Loan Banks to invest in capital stock of the Financing Corporation under this subsection, the amount which each Federal Home Loan Bank (or any successor to such bank) shall invest shall be determined by the Board by applying to the total amount of such investment by all such banks the percentage appearing in the following table for each such bank:

"Bank	Percentage
Federal Home Loan Bank of Boston.....	1.8629
Federal Home Loan Bank of New York	9.1006
Federal Home Loan Bank of Pittsburgh.....	4.2702
Federal Home Loan Bank of Atlanta.....	14.4007
Federal Home Loan Bank of Cincinnati.....	8.2653
Federal Home Loan Bank of Indianapolis.....	5.2863
Federal Home Loan Bank of Chicago.....	9.6886
Federal Home Loan Bank of Des Moines	6.9301
Federal Home Loan Bank of Dallas	8.8181
Federal Home Loan Bank of Topeka.....	5.2706
Federal Home Loan Bank of San Francisco	19.9644
Federal Home Loan Bank of Seattle	6.1422

"(5) PRO RATA DISTRIBUTION OF AMOUNTS REQUIRED TO BE INVESTED IN EXCESS OF \$1,000,000,000.—With respect to any amount in excess of \$1,000,000,000 which the Board may require the Federal Home Loan Banks to invest in capital stock of the Financing Corporation under this subsection, the amount which each Federal Home Loan Bank (or any successor to such bank) shall invest shall be determined by the Board by multiplying such excess amount by the percentage arrived at by dividing—

"(A) the sum of the total assets (as of the most recent December 31) held by all insured institutions which are members of such bank; by

"(B) the sum of the total assets (as of such date) held by all insured institutions which are members of any Federal Home Loan Bank.

"(6) SPECIAL PROVISIONS RELATING TO MAXIMUM AMOUNT LIMITATIONS.—

"(A) IN GENERAL.—If the amount any Federal Home Loan Bank is required to invest in capital stock of the Financing Corporation pursuant to a determination by the Board under paragraph (5) (or under subparagraph (B) of this paragraph) exceeds the maximum investment amount applicable with respect to such bank under paragraph (3) at the time of such determination (hereinafter in this paragraph referred to as the 'excess amount')—

"(i) the Board shall require each remaining Federal Home Loan Bank to invest (in addition to the amount determined under paragraph (5) for such remaining bank and subject to the maximum investment amount applicable with respect to such remaining bank under paragraph (3) at the time of such determination) in such capital stock on behalf of the bank in the amount determined under subparagraph (B);

"(ii) the Board shall require the bank to subsequently purchase the excess amount of capital stock from the remaining banks in the manner described in subparagraph (C); and

"(iii) the requirements contained in subparagraphs (D) and (E) relating to the use of net earnings available

for dividends shall apply to such bank until the bank has purchased all of the excess amount of capital stock.

“(B) ALLOCATION OF EXCESS AMOUNT AMONG REMAINING HOME LOAN BANKS.—The amount each remaining Federal Home Loan Bank shall be required to invest under subparagraph (A)(i) is the amount determined by the Board by multiplying the excess amount by the percentage arrived at by dividing—

“(i) the amount of capital stock of the Financing Corporation held by such remaining bank at the time of such determination; by

“(ii) the aggregate amount of such stock held by all remaining banks at such time.

“(C) PURCHASE PROCEDURE.—The bank on whose behalf an investment in capital stock is made under subparagraph (A)(i) shall purchase, annually and at the issuance price, from each remaining bank an amount of such stock determined by the Board by multiplying the amount available for such purchases (at the time of such determination) by the percentage determined under subparagraph (B) with respect to such remaining bank until the aggregate amount of such capital stock has been purchased by the bank.

“(D) LIMITATION ON DIVIDENDS.—The amount of dividends which may be paid for any year by a bank on whose behalf an investment is made under subparagraph (A)(i) shall not exceed an amount equal to $\frac{1}{2}$ of the net earnings available for dividends of the bank for the year.

“(E) TRANSFER TO ACCOUNT FOR PURCHASE OF STOCK REQUIRED.—Of the net earnings available for dividends for any year of a bank on whose behalf an investment is made under subparagraph (A)(i), such amount as is necessary to make the purchases of stock required under subparagraph (A)(ii) shall be placed in a reserve account (established in such manner as the Board shall prescribe by regulations) the balance in which shall be available only for such purchases.

“(F) NET EARNINGS AVAILABLE FOR DIVIDENDS DEFINED.—For purposes of this paragraph, the term ‘net earnings available for dividends’ means the net earnings of a bank for any period as computed after reducing the amount of earnings for such period by the amount required to be carried (for such period) to reserves maintained by such bank pursuant to the first two sentences of section 16 of this Act.

“(7) UNDIVIDED PROFITS DEFINED.—For purposes of paragraph (3), the term ‘undivided profits’ means retained earnings minus the sum of—

“(A) that portion required to be added to reserves maintained pursuant to the first two sentences of section 16 of this Act; and

“(B) the dollar amounts held by the respective Federal Home Loan Banks in special dividend stabilization reserves on December 31, 1985, as determined under the following table:

12 USC 1436.

"Bank	Dollar amount
Federal Home Loan Bank of Boston	\$3.2 million
Federal Home Loan Bank of New York	7.7 million
Federal Home Loan Bank of Pittsburgh	5.2 million
Federal Home Loan Bank of Atlanta	12.3 million
Federal Home Loan Bank of Cincinnati	5.9 million
Federal Home Loan Bank of Indianapolis	37.4 million
Federal Home Loan Bank of Chicago	6.0 million
Federal Home Loan Bank of Des Moines	32.7 million
Federal Home Loan Bank of Dallas	45.0 million
Federal Home Loan Bank of Topeka	13.7 million
Federal Home Loan Bank of San Francisco	21.9 million
Federal Home Loan Bank of Seattle	33.6 million

"(e) OBLIGATIONS OF THE FINANCING CORPORATION.—

"(1) LIMITATION ON AMOUNT OF OUTSTANDING OBLIGATIONS.—

The aggregate amount of obligations of the Financing Corporation which may be outstanding at any time (as determined by the Board) shall not exceed the lesser of—

"(A) an amount equal to the greater of—

"(i) 5 times the amount of the nonvoting capital stock of the Financing Corporation which is outstanding at such time; or

"(ii) the sum of the face amounts (the amount of principal payable at maturity) of securities described in subsection (g)(2) which are held at such time in the segregated account established pursuant to such subsection; or

"(B) \$10,825,000,000.

"(2) ANNUAL LIMITATION ON NET NEW BORROWING.—Net new borrowing by the Financing Corporation—

"(A) shall not exceed an amount equal to \$3,750,000,000 in the 1-year period beginning on the date of the enactment of the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987; and

"(B) shall not exceed an amount equal to \$3,750,000,000 in each 1-year period beginning after the 1-year period described in subparagraph (A).

"(3) NET PROCEEDS TO BE INVESTED IN CAPITAL OF FSLIC.—

Subject to such terms and conditions as may be approved by the Board, the net proceeds of any obligation issued by the Financing Corporation shall be used to—

"(A) purchase capital certificates or capital stock issued by the Federal Savings and Loan Insurance Corporation under section 402(b)(1)(A) of the National Housing Act; or

"(B) refund any previously issued obligation the net proceeds of which were invested in the manner described in subparagraph (A).

"(4) LIMITATION ON TERM OF OBLIGATIONS.—No obligation of the Financing Corporation may be issued which matures—

"(A) more than 30 years after the date of issue; or

"(B) after December 31, 2026.

"(5) INVESTMENT OF UNITED STATES FUNDS IN OBLIGATIONS.—

Obligations issued under this section by the Financing Corporation with the approval of the Board shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer of the United States.

"(6) MARKET FOR OBLIGATIONS.—All persons having the power to invest in, sell, underwrite, purchase for their own accounts, accept as security, or otherwise deal in obligations of the Fed-

eral Home Loan Banks shall also have the power to do so with respect to obligations of the Financing Corporation.

“(7) NO FULL FAITH AND CREDIT OF THE UNITED STATES.—Obligations of the Financing Corporation and the interest payable on such obligations shall not be obligations of, or guaranteed as to principal or interest by, the Federal Home Loan Banks, the United States, or the Federal Savings and Loan Insurance Corporation and the obligations shall so plainly state.

“(8) TAX EXEMPT STATUS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), obligations of the Financing Corporation shall be exempt from tax both as to principal and interest to the same extent as any obligation of a Federal Home Loan Bank is exempt from tax under section 13.

12 USC 1433.

“(B) EXCEPTION.—The Financing Corporation, like the Federal Home Loan Banks, shall be treated as an agency of the United States for purposes of the first sentence of section 3124(b) of title 31, United States Code (relating to determination of tax status of interest on obligations).

“(9) OBLIGATIONS ARE EXEMPT SECURITIES.—Notwithstanding paragraph (7), obligations of the Financing Corporation shall be deemed to be exempt securities (within the meaning of laws administered by the Securities and Exchange Commission) to the same extent as securities which are direct obligations of the United States or are guaranteed as to principal or interest by the United States.

“(10) MINORITY PARTICIPATION IN PUBLIC OFFERINGS.—The Chairman of the Board and the Directorate shall ensure that minority owned or controlled commercial banks, investment banking firms, underwriters, and bond counsels throughout the United States have an opportunity to participate to a significant degree in any public offering of obligations issued under this section.

“(f) ASSESSMENT AUTHORITY OF THE FINANCING CORPORATION.—

“(1) IN GENERAL.—The Financing Corporation may, with the approval of the Board, assess on each insured institution an assessment, except that the aggregate amount assessed under this paragraph on any insured institution for any year may not exceed an amount equal to $\frac{1}{12}$ th of 1 percent of the aggregate amount of all accounts of insured members of such insured institution.

“(2) SUPPLEMENTAL ASSESSMENT AUTHORIZED.—Upon the unanimous vote of the Directorate that additional funds are needed to pay the interest on the obligations of the Financing Corporation because no other funds are available, the Financing Corporation may, with the approval of the Board and in addition to any assessment assessed under paragraph (1), assess on each insured institution an assessment, except that the aggregate amount assessed under this paragraph on any insured institution for any year may not exceed an amount equal to $\frac{1}{8}$ th of 1 percent of the aggregate amount of all accounts of insured members of such insured institution.

“(3) TOTAL AMOUNT OF ASSESSMENTS MAY NOT EXCEED INTEREST AND FINANCING COSTS.—The aggregate amount of all assessments assessed under paragraphs (1) and (2) for any year may not exceed—

“(A) the aggregate amount of—

“(i) issuance costs (as such term is defined in subsection (g)(5)(A)) incurred with respect to obligations issued during such year;

“(ii) interest paid on (and any redemption premium paid with respect to) obligations of the Financing Corporation during such year; and

“(iii) custodian fees (as such term is defined in subsection (g)(5)(B)) incurred during such year; minus

“(B) the aggregate amount of any payments under subsection (g)(4) during such year.

“(4) TERMINATION ASSESSMENTS.—

“(A) ASSESSMENT AUTHORIZED.—The Financing Corporation shall, with the approval of the Board, assess a termination assessment on any insured institution which ceases to be an insured institution.

“(B) MAXIMUM AMOUNT OF ASSESSMENT.—The amount of the assessment on any institution under subparagraph (A) shall be the amount which is equal to the sum of—

“(i) the amount which is equal to 2 times the last annual insurance premium payable by such institution under section 404(b) of the National Housing Act (including the amount of any assessment imposed under paragraph (1) of this subsection in lieu of any such premium); and

“(ii) the amount which is the product of—

“(I) the aggregate amount of all accounts of insured members of such institution (as of the date the institution ceases to be an insured institution); and

“(II) 2 times the rate (expressed as an annual rate) at which the supplemental assessment under section 404(c) of the National Housing Act was assessed against insured institutions by the Federal Savings and Loan Insurance Corporation in 1986.

“(C) REDUCTION IN ASSESSMENT ALLOWED FOR WEAKENED INSTITUTIONS.—The amount of any assessment which the Financing Corporation may otherwise impose under this paragraph on an institution (which ceases to be an insured institution) may be reduced by such amount as the Financing Corporation, with the approval of the Board, may deem appropriate when—

“(i) the institution poses a substantial risk to the assets of the Federal Savings and Loan Insurance Corporation; and

“(ii) such reduction is necessary to assist in the sale or other disposition of the institution.

“(D) TIME FOR PAYING ASSESSMENT.—

“(i) DUE WITHIN 30 DAYS.—If an assessment is imposed on an institution under subparagraph (A), the institution shall be obligated to pay such assessment before the end of the 30-day period beginning on the date on which such institution ceases to be an insured institution.

“(ii) SEMIANNUAL INSTALLMENTS WITH INTEREST.—Notwithstanding the requirement of clause (i), an institution may elect to pay the amount of any assess-

12 USC 1727.

Post, p. 601.

ment imposed under subparagraph (A) in semiannual installments during the period beginning no later than the end of the 30-day period referred to in clause (i) and ending no later than the end of the 2-year period beginning on the date such assessment is imposed, together with interest accruing on the unpaid balance of such amount at a variable rate equal to the sum of—

“(I) the bond equivalent yield on 6-month United States Treasury bills; and

“(II) 100 basis points.

“(E) EXIT FEE EQUALIZATION.—If any institution described in subparagraph (F) paid any exit fee, or the equivalent thereof (as determined by the Corporation), on or before the date of the enactment of the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987, the Corporation shall repay to such institution an amount equal to the amount by which the amount of such fee exceeds the amount which such institution would be required to pay if the amount of such fee were determined under this paragraph as of the date of the enactment of this Act.

“(F) PROVISIONS APPLICABLE TO CERTAIN INSTITUTIONS.—Except as provided in subparagraph (E), no assessment under this paragraph or insurance premium under section 407(d) of the National Housing Act may be imposed on an insured institution which, on or before March 31, 1987, had—

Post, p. 602.

“(i) its status as an insured institution terminated voluntarily, involuntarily, or by operation of law in connection with a conversion into, merger with, acquisition by, consolidation with, reorganization into, or combination by any means with, an institution the deposits of which are insured by the Federal Deposit Insurance Corporation;

“(ii) filed an application or notice with any State banking agency or authority, or with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Corporation or the Federal Home Loan Bank Board pursuant to a transaction which, upon consummation thereof, will result in the termination of the institution's status as an insured institution in connection with its conversion into, merger with, acquisition by, consolidation with, reorganization into, or combination by any means with, an institution the deposits of which are insured by the Federal Deposit Insurance Corporation; or

“(iii) entered into a letter of intent or a written memorandum of understanding, pursuant to a transaction which will result in the termination of the institution's status as an insured institution in connection with its conversion into, merger with, acquisition by consolidation with, reorganization into, or combination by any means with, an institution the deposits of which are insured by the Federal Deposit Insurance Corporation.

Michigan.

“(G) ADDITIONAL PROVISION.—Notwithstanding any other provision of law, the Federal Savings and Loan Insurance Corporation shall repay to Comerica, Inc. of Detroit, Michigan, an amount equal to any exit fee or equivalent thereof paid by Comerica, Inc.

“(5) PAYMENT TO FINANCING CORPORATION.—All assessments assessed by the Financing Corporation under paragraph (1), (2), or (4) shall be paid to the Financing Corporation.

“(g) USE AND DISPOSITION OF ASSETS OF THE FINANCING CORPORATION NOT INVESTED IN FSLIC.—

“(1) IN GENERAL.—Subject to such regulations, restrictions, and limitations as may be prescribed by the Board, assets of the Financing Corporation, which are not invested in capital certificates or capital stock issued by the Federal Savings and Loan Insurance Corporation under section 402(b)(1)(A) of the National Housing Act, shall be invested in—

“(A) direct obligations of the United States;

“(B) obligations, participations, or other instruments of, or issued by, the Federal National Mortgage Association or the Government National Mortgage Association;

“(C) mortgages, obligations, or other securities for sale by, or which have been disposed of by, the Federal Home Loan Mortgage Corporation under section 305 or 306 of the Federal Home Loan Mortgage Corporation Act; or

“(D) any other security in which it is lawful for fiduciary and trust funds to be invested under the laws of any State.

“(2) SEGREGATED ACCOUNT FOR ZERO COUPON INSTRUMENTS HELD TO ASSURE PAYMENT OF PRINCIPAL.—The Financing Corporation shall invest in, and hold in a segregated account, noninterest bearing instruments—

“(A) which are securities described in paragraph (1); and

“(B) the total of the face amounts (the amount of principal payable at maturity) of which is approximately equal to the aggregate amount of principal on the obligations of the Financing Corporation,

to assure the repayment of principal on obligations of the Financing Corporation.

“(3) DOLLAR AMOUNT LIMITATION ON INVESTMENT IN ZERO COUPON INSTRUMENTS FOR SEGREGATED ACCOUNT.—The aggregate amount invested by the Financing Corporation under paragraph (2) shall not exceed \$2,200,000,000 (as determined on the basis of the purchase price).

“(4) EXCEPTION FOR PAYMENT OF ISSUANCE COSTS, INTEREST, AND CUSTODIAN FEES.—Notwithstanding the requirements of paragraph (1), the assets of the Financing Corporation referred to in paragraph (1) which are not invested under paragraph (2) may be used to pay—

“(A) issuance costs;

“(B) any interest on (and any redemption premium with respect to) any obligation of the Financing Corporation; and

“(C) custodian fees.

“(5) DEFINITIONS.—For purposes of this subsection—

“(A) ISSUANCE COSTS.—The term ‘issuance costs’—

“(i) means issuance fees and commissions incurred by the Financing Corporation in connection with the issu-

Post, p. 597.

12 USC 1454,
1455.

ance or servicing of any obligation of the Financing Corporation; and

“(ii) includes legal and accounting expenses, trustee and fiscal and paying agent charges, costs incurred in connection with preparing and printing offering materials, and advertising expenses, to the extent that any such cost or expense is incurred by the Financing Corporation in connection with issuing any obligation.

“(B) CUSTODIAN FEES.—The term ‘custodian fee’ means—

“(i) any fee incurred by the Financing Corporation in connection with the transfer of any security to, or the maintenance of any security in, the segregated account established under paragraph (2); and

“(ii) any other expense incurred by the Financing Corporation in connection with the establishment or maintenance of such account.

“(h) MISCELLANEOUS PROVISIONS RELATING TO FINANCING CORPORATION.—

“(1) TREATMENT FOR CERTAIN PURPOSES.—Except as provided in subsection (e)(8)(B), the Financing Corporation shall be treated as a Federal Home Loan Bank for purposes of sections 13 and 23.

12 USC 1433,
1443.

“(2) FEDERAL RESERVE BANKS AS DEPOSITARIES AND FISCAL AGENTS.—The Federal Reserve banks are authorized to act as depositaries for or fiscal agents or custodians of the Financing Corporation.

“(3) APPLICABILITY OF CERTAIN PROVISIONS RELATING TO GOVERNMENT CORPORATION.—Notwithstanding the fact that no Government funds may be invested in the Financing Corporation, the Financing Corporation shall be treated, for purposes of sections 9105, 9107, and 9108 of title 31, United States Code, as a mixed-ownership Government corporation which has capital of the Government.

“(i) FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION INDUSTRY ADVISORY COMMITTEE.—

“(1) ESTABLISHMENT.—There is hereby established the Federal Savings and Loan Insurance Corporation Industry Advisory Committee (hereinafter in this subsection referred to as the ‘Committee’).

“(2) MEMBERSHIP.—

“(A) APPOINTMENT.—The Committee shall consist of 13 members selected as follows:

“(i) 1 member appointed by the Chairman of the Board from among individuals who are officers of insured institutions and who are not members of the Board or employees of the Board, the Federal Savings and Loan Insurance Corporation, or the Board of Directors of any Federal Home Loan Bank.

“(ii) 1 member elected from each Federal Home Loan Bank district (by the members of the Board of Directors of each such bank who were elected by the members of such bank) from among individuals who are officers of insured institutions.

“(B) TERMS.—Members shall be appointed or elected for terms of 1 year.

"(C) **CHAIRPERSON.**—The member appointed under subparagraph (A)(i) shall be the chairperson of the Committee.

"(D) **VACANCIES.**—Any vacancy on the Committee shall be filled in the manner in which the original appointment was made.

"(E) **PAY AND EXPENSES.**—Members of the Committee shall serve without pay but each member of the Committee shall be reimbursed, in such manner as the Board may prescribe by regulation, by the Federal Home Loan Bank which elected such member (and, in the case of the member appointed by the Chairman of the Board, by the Board) for expenses incurred in connection with attendance of such members at meetings of the Committee.

"(F) **MEETINGS.**—The Committee shall meet from time to time at the call of the chairperson or a majority of the members.

Reports.

"(3) **DUTIES OF THE COMMITTEE.**—The duties of the Committee are as follows:

Post, p. 603.

"(A) To review the reports and budgets prepared pursuant to section 402(k) of the National Housing Act and any other matter which the Board may present for the Committee's consideration.

"(B) To confer with the Board on the reports, budgets, and other matters reviewed under subparagraph (A).

"(C) To prepare written comments and recommendations for the Board and the Federal Savings and Loan Insurance Corporation with respect to the reports, budgets, and other matters reviewed under subparagraph (A) (which shall be submitted to the Board in a timely manner after each meeting).

"(4) **ANNUAL REPORT.**—

"(A) **REQUIRED.**—Not later than January 15 of each year, the Committee shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(B) **CONTENTS.**—The report required under subparagraph (A) shall describe the activities of the Committee during the preceding year and the reports and recommendations made by the Committee to the Board and the Federal Savings and Loan Insurance Corporation during such year.

"(5) **REGULATIONS.**—The Board shall prescribe such regulations as the Board determines to be appropriate to avoid conflicts of interest with respect to the disclosure to and use by members of the Committee of information relating to the Board, the Federal Savings and Loan Insurance Corporation, the Federal Home Loan Banks, and the Federal Asset Disposition Association.

5 USC app.

"(6) **FEDERAL ADVISORY COMMITTEE ACT DOES NOT APPLY.**—The Federal Advisory Committee Act shall not apply to the Committee.

"(7) **TERMINATION.**—The Committee shall terminate when the Financing Corporation terminates under subsection (j).

"(j) **TERMINATION OF THE FINANCING CORPORATION.**—

"(1) IN GENERAL.—The Financing Corporation shall be dissolved, as soon as practicable, after the earlier of—

"(A) the date by which all stock purchased by the Financing Corporation in the Federal Savings and Loan Insurance Corporation has been retired; or

"(B) December 31, 2026.

"(2) BOARD AUTHORITY TO CONCLUDE THE AFFAIRS OF FINANCING CORPORATION.—Effective on the date of the dissolution of the Financing Corporation under paragraph (1), the Board may exercise, on behalf of the Financing Corporation, any power of the Financing Corporation which the Board determines to be necessary to settle and conclude the affairs of the Financing Corporation.

"(k) REGULATIONS.—The Board may prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations defining terms used in this section.

"(l) DEFINITIONS.—For purposes of this section—

"(1) INSURED INSTITUTION.—The term 'insured institution' has the meaning given to such term by section 401(a) of the National Housing Act.

12 USC 1724.

"(2) INSURED MEMBER.—The term 'insured member' has the meaning given to such term by section 401(b) of the National Housing Act.

"(3) DIRECTORATE.—The term 'Directorate' means the directorate established in the manner provided in subsection (b)(1) to manage the Financing Corporation."

SEC. 303. MIXED OWNERSHIP GOVERNMENT CORPORATION.

Section 9101(2) of title 31, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(K) The Financing Corporation."

SEC. 304. RECAPITALIZATION OF FSLIC.

Section 402(b) of the National Housing Act (12 U.S.C. 1725(b)) is amended to read as follows:

"(b) ISSUANCE AND SALE OF CAPITAL CERTIFICATES AND STOCK TO FINANCING CORPORATION.—

"(1) AUTHORIZATION TO ISSUE.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, the Corporation may issue—

"(i) nonredeemable capital certificates; and

"(ii) redeemable nonvoting capital stock.

"(B) REQUIREMENT RELATING TO AMOUNT OF STOCK.—The aggregate amount of stock issued by the Corporation under subparagraph (A)(ii) shall be equal to the aggregate amount of the investments made by the Federal Home Loan Banks in the capital stock of the Financing Corporation under section 21 of the Federal Home Loan Bank Act.

Ante, p. 585.

"(C) CERTIFICATES AND STOCK MAY BE SOLD ONLY TO FINANCING CORPORATION.—Capital certificates and stock issued under subparagraph (A) may be sold only to the Financing Corporation in the manner and to the extent provided in section 21 of the Federal Home Loan Bank Act and this subsection.

"(D) PROCEEDS OF SALE ARE PART OF PRIMARY RESERVE.—The proceeds of any sale of capital certificates or stock under this paragraph shall be considered part of the pri-

12 USC 1727.

mary reserve established by the Corporation pursuant to section 404(a).

"(E) NO DIVIDENDS.—The Corporation shall pay no dividends on any capital certificates or stock issued under this paragraph.

"(2) EQUITY RETURN ACCOUNT.—

"(A) IN GENERAL.—The Corporation shall establish and maintain (until all capital stock issued under subparagraph (A)(ii) of paragraph (1) has been paid off and retired) an equity return account—

"(i) which shall consist only of amounts contributed in accordance with the requirements of subparagraph (B);

"(ii) which shall not be treated as reserves of the Corporation; and

"(iii) the earnings accruing in which shall be transferred in the manner provided in subparagraph (D).

"(B) CONTRIBUTIONS TO ACCOUNT.—

"(i) NO CONTRIBUTION IF RESERVES-TO-ACCOUNTS RATIO IS LESS THAN 0.5 PERCENT.—No contribution shall be made to the equity reserve account established pursuant to subparagraph (A) in any year in which the reserves-to-accounts ratio is less than 0.5 percent.

"(ii) ANNUAL CONTRIBUTIONS REQUIRED.—Except as provided in clause (i), the Corporation shall make contributions to the equity reserve account established pursuant to subparagraph (A)—

"(I) at the end of each year beginning after 1996 through the final payoff year (as defined in clause (vii)); and

"(II) in amounts determined under clauses (iii), (iv), (v), and (vi) of this subparagraph.

"(iii) AMOUNT OF PRIMARY CONTRIBUTION.—The primary contribution to the equity return account for any year for which a contribution is required to be made shall be the amount determined by dividing—

"(I) the aggregate amount of capital stock issued by the Corporation and purchased by the Financing Corporation under paragraph (1)(A); by

"(II) the number of years between the first year beginning after 1996 in which the reserves-to-accounts ratio is equal to or greater than 0.5 percent and the final payoff year (taking into account the first and last year described).

"(iv) AMOUNT OF ADDITIONAL CONTRIBUTION ALLOWED IF RESERVES-TO-ACCOUNTS RATIO DOES NOT EXCEED 1.25 PERCENT.—In any year in which the reserves-to-accounts ratio is equal to or greater than 1 percent but less than 1.25 percent, the Federal Home Loan Bank Board may require the Corporation to make an additional contribution of an amount not to exceed the amount determined by dividing—

"(I) the investment return amount (as defined in clause (viii)) computed at an annual compound rate not to exceed 6 percent; by

"(II) the number of years between the first year beginning after 1996 in which the reserves-to-

accounts ratio was equal to or greater than 1 percent and the final payoff year (taking into account the first and last year described).

“(v) AMOUNT OF ADDITIONAL CONTRIBUTION ALLOWED IF RESERVES-TO-ACCOUNTS RATIO DOES NOT EXCEED 1.75 PERCENT.—In any year in which the reserves-to-accounts ratio is equal to or greater than 1.25 percent but less than 1.75 percent, the Federal Home Loan Bank Board may require the Corporation to make an additional contribution of an amount not to exceed the amount determined by dividing—

“(I) the investment return amount computed at an annual compound rate not to exceed 8 percent, minus the sum of any amounts contributed under clause (iv); by

“(II) the number of years between the first year beginning after 1996 in which the reserves-to-accounts ratio was equal to or greater than 1.25 percent and the final payoff year (taking into account the first and last year described).

“(vi) AMOUNT OF ADDITIONAL CONTRIBUTION ALLOWED IF RESERVES-TO-ACCOUNTS RATIO EXCEEDS 1.75 PERCENT.—In any year in which the reserves-to-accounts ratio is equal to or greater than 1.75 percent, the Federal Home Loan Bank Board may require the Corporation to make an additional contribution of an amount not to exceed the amount determined by dividing—

“(I) the investment return amount computed at an annual compound rate not to exceed 10 percent, minus the sum of any amounts contributed under clause (iv) or (v); by

“(II) the number of years between the first year beginning after 1996 in which the reserves-to-accounts ratio was equal to or greater than 1.75 percent and the final payoff year (taking into account the first and last year described).

“(vii) FINAL PAYOFF YEAR DEFINED.—For purposes of this subparagraph, the term ‘final payoff year’ means the year of maturity of the last maturing obligation of the Financing Corporation (which was issued under section 21 of the Federal Home Loan Bank Act and matures before January 1, 2027).

“(viii) INVESTMENT RETURN AMOUNT.—For purposes of clauses (iv), (v), and (vi), the term ‘investment return amount’ means the amount which would be realized on the aggregate amount invested by the Financing Corporation in capital stock issued by the Corporation under paragraph (1) over the period of the investment if the return on the investment is computed at the rate described in subclause (I) of the respective clauses.

“(C) INVESTMENT OF AMOUNTS IN ACCOUNT.—Amounts accumulating in the equity return account may be invested in such manner as the Corporation determines.

“(D) TRANSFER OF EARNINGS TO PRIMARY RESERVE.—Earnings accruing on any investment (under subparagraph (C)) of amounts in the equity return account shall be transferred to the primary reserve account of the Corporation

Ante, p. 585.

12 USC 1727.

established pursuant to section 404(a) as such earnings are realized by the Corporation and shall not be treated as amounts in the account.

Ante, p. 585.

“(E) RETIREMENT OF CAPITAL STOCK USING BALANCE IN ACCOUNT.—Upon maturity of all obligations of the Financing Corporation under section 21 of the Federal Home Loan Bank Act, the Corporation shall pay off and retire any capital stock issued under paragraph (1)(A)(ii) using only amounts accumulated in the equity return account.

“(F) RESERVES-TO-ACCOUNTS RATIO DEFINED.—For purposes of this paragraph, the term ‘reserves-to-accounts ratio’ means, with respect to any year, the amount determined by dividing—

“(i) the amount of reserves of the Corporation (determined as of December 31 of the preceding year); by

“(ii) the aggregate amount of all accounts of all of its insured members (determined as of such date).

“(3) FINANCING CORPORATION DEFINED.—For purposes of this subsection, the term ‘Financing Corporation’ means the Financing Corporation established under section 21 of the Federal Home Loan Bank Act.

“(4) NO REDUCTION OR SUSPENSION OF INSURANCE PREMIUMS WHILE STOCK IS OUTSTANDING.—Notwithstanding any other provision of law, the provisions of subsections (b)(2) and (g) of section 404 shall not apply as long as any share of capital stock issued under paragraph (1)(A)(ii) is outstanding.”.

12 USC 1727.

SEC. 305. FSLIC AUTHORITY TO CHARGE PREMIUMS REDUCED BY AMOUNT OF FINANCING CORPORATION ASSESSMENTS.

Section 404 of the National Housing Act is amended by adding at the end thereof the following new subsection:

“(j) AUTHORITY TO CHARGE PREMIUMS REDUCED BY AMOUNT OF FINANCING CORPORATION ASSESSMENTS.—Notwithstanding any other provision of this section, the sum of—

“(1) the amount of any premium required to be paid by any insured institution under subsection (b)(1); and

“(2) the amount of any premium authorized to be assessed by the Corporation under subsection (c) with respect to such institution,

for any period shall be reduced by the amount of any assessment paid for such period by such insured institution to the Financing Corporation pursuant to section 21(f) of the Federal Home Loan Bank Act.”.

SEC. 306. MISCELLANEOUS PROVISIONS.

(a) FEDERAL HOME LOAN BANK DIVIDENDS.—Section 16 of the Federal Home Loan Bank Act (12 U.S.C. 1436) is amended by adding at the end thereof the following new subsection:

“(c) EXCEPTION IN CASE OF LOSSES IN CONNECTION WITH FINANCING CORPORATION STOCK.—

“(1) IN GENERAL.—Notwithstanding subsection (a) of this section, if—

“(A) a Federal Home Loan Bank incurs a chargeoff or an expense in connection with such bank’s investment in the stock of the Financing Corporation under section 21;

"(B) the Board determines there is an extraordinary need for the member institutions of the bank to receive dividends; and

"(C) the bank has reduced all reserves (other than the reserve account required by the first 2 sentences of subsection (a)) to zero,

the Board may authorize such bank to declare and pay dividends out of undivided profits (as such term is defined in section 21(d)(7)) or the reserve account required by the first 2 sentences of subsection (a).

Ante, p. 585.

"(2) REQUIREMENTS OF SECTION 21 NOT AFFECTED.—Notwithstanding any payment of dividends by any Federal Home Loan Bank pursuant to an authorization by the Board under paragraph (1), the applicable provisions of section 21 shall continue to apply with respect to such bank, and to such bank's investment in the Financing Corporation, in the same manner and to the same extent as if such payment had not been made."

(b) CONFORMING AMENDMENT.—Section 402(h) of the National Housing Act (12 U.S.C. 1725(h)) is amended—

(1) by striking out "After the effective date" and inserting in lieu thereof "(1) After the effective date"; and

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

"(2) The first three sentences of paragraph (1) shall not apply to stock issued by the Corporation to the Financing Corporation under subsection (b)(1)(A)."

(c) LIMITATION ON SPECIAL ASSESSMENT.—Section 404(c) of the National Housing Act (12 U.S.C. 1727(c)) is amended—

(1) by striking out "(c) The Corporation" and inserting in lieu thereof "(c)(1) SPECIAL ASSESSMENT.—Subject to paragraph (2), the Corporation"; and

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

"(2) LIMITATIONS ON AMOUNT OF ASSESSMENT.—The amount of any additional premium assessed by the Corporation against any insured institution under paragraph (1) in any of the following years shall not exceed the amount listed in connection with each such year in the following table (unless the Federal Home Loan Board determines that severe pressures on the Corporation exist which necessitate an infusion of additional funds):

"For year:	The amount of the additional premium may not exceed:
1987	$\frac{5}{8}$ of 1 percent of the total amount of the accounts of the insured members of such institution;
1988	$\frac{1}{2}$ of 1 percent of the total amount of the accounts of the insured members of such institution;
1989	$\frac{1}{4}$ of 1 percent of the total amount of the accounts of the insured members of such institution;
1990	$\frac{1}{8}$ of 1 percent of the total amount of the accounts of the insured members of such institution;
1991	$\frac{1}{4}$ of 1 percent of the total amount of the accounts of the insured members of such institution."

(d) PRIORITY OF SECURED INTERESTS.—Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended by adding at the end thereof the following new subsection:

"(e) PRIORITY OF CERTAIN SECURED INTERESTS.—Notwithstanding any other provision of law, any security interest granted to a Federal Home Loan Bank by any member of any Federal Home Loan Bank or any affiliate of any such member shall be entitled to priority over the claims and rights of any party (including any receiver, conservator, trustee, or similar party having rights of a lien creditor) other than claims and rights that—

"(1) would be entitled to priority under otherwise applicable law; and

"(2) are held by actual bona fide purchasers for value or by actual secured parties that are secured by actual perfected security interests."

(e) COORDINATION OF TERMINATION ASSESSMENT WITH FINAL INSURANCE PREMIUM.—Section 407(d) of the National Housing Act (12 U.S.C. 1730(d)) is amended—

(1) by striking out "(d)" and inserting in lieu thereof "(d)(1) FINAL INSURANCE PREMIUM"; and

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

"(2) EXCEPTION RELATING TO FINAL INSURANCE PREMIUM.—If an institution (whose status as an insured institution is terminated) pays an assessment to the Financing Corporation under section 21(f)(4) of the Federal Home Loan Bank Act with respect to such termination, the institution shall not be obligated to pay the final insurance premium described in the third sentence of paragraph (1)."

(f) SECTION 404(f) DOES NOT APPLY TO INSTITUTIONS WHICH CEASE TO BE FSLIC INSURED.—Section 404(f) of the National Housing Act (12 U.S.C. 1727(f)) is amended—

(1) by striking out "(f) If" and inserting in lieu thereof "(f)(1) PRO RATA DISTRIBUTION ON TERMINATION OF INSURED STATUS.—If"; and

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

"(2) EXCEPTION.—In the case of an institution which—

"(A) ceases to be an insured institution; and

"(B) is required to pay an assessment to the Financing Corporation under section 21(f)(4) of the Federal Home Loan Bank Act with respect to the termination of such insured status, paragraph (1), the last sentence of subsection (e)(1), and subsection (i)(4) shall not apply with respect to such institution."

(g) SECONDARY RESERVE.—Section 404 of the National Housing Act (12 U.S.C. 1727) is amended by striking out subsection (h).

(h) 1-YEAR PROHIBITION ON TERMINATION OF FSLIC INSURED STATUS.—

(1) IN GENERAL.—No association or insured institution may take any action which would result in the voluntary termination of its status as an insured institution during the 1-year period beginning on the date of the enactment of this Act.

(2) EXCEPTION.—Paragraph (1) shall not apply with respect to any association or institution described in section 21(f)(4)(F) of the Federal Home Loan Bank Act (as added by section 302 of this title).

(3) AUTHORITY OF FSLIC TO ARRANGE EMERGENCY ACQUISITIONS NOT AFFECTED.—Paragraph (1) shall not affect the authority of the Federal Savings and Loan Insurance Corporation to arrange for the acquisition of an association or insured institution under section 406(f) or 408(m) of the National Housing Act.

Ante, p. 585.

12 USC 1730
note.

12 USC 1729,
1730a.

(4) DEFINITIONS.—For purposes of this subsection—

(A) ASSOCIATION.—The term “association” has the meaning given to such term under section 2(d) of the Home Owners’ Loan Act of 1933.

12 USC 1462.

(B) INSURED INSTITUTION.—The term “insured institution” has the meaning given to such term in section 401(a) of the National Housing Act.

12 USC 1724.

(i) FSLIC REPORT REQUIREMENTS.—Section 402 of the National Housing Act is amended by adding at the end thereof the following new subsection:

12 USC 1725.

“(k) REPORTS AND BUDGETS REQUIRED.—

“(1) QUARTERLY REPORTS AND BUDGETS.—Before the end of the 2-week period beginning on the first day of each calendar quarter, the Corporation shall complete a detailed written report and budget describing and explaining—

“(A) planned or anticipated activities and estimates of receipts and expenditures for such calendar quarter; and

“(B) the activities, receipts, and expenditures for the preceding calendar quarter.

“(2) SEMIANNUAL REPORT.—Before the end of the 30-day period beginning on the first day of each semiannual period, the Corporation shall complete a detailed written report and budget describing and explaining the activities, receipts, and expenditures for the preceding semiannual period.

“(3) SUBMISSION OF SEMIANNUAL REPORT TO CONGRESS.—The Corporation shall submit a copy of each semiannual report required under paragraph (2) to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

“(4) ACTIVITIES, ETC., OF FEDERAL ASSET DISPOSITION ASSOCIATION.—Activities, receipts, and expenditures of the Federal Asset Disposition Association (or any successor thereto) shall be included in any report or budget required under this subsection.

“(5) DEFINITIONS.—For purposes of this subsection—

“(A) ACTIVITIES.—The term ‘activities’ includes any activity engaged in with respect to any insured institution in financial difficulty.

“(B) SEMIANNUAL PERIOD.—The term ‘semiannual period’ means—

“(i) the period beginning on January 1 of any calendar year and ending June 30 of such year; and

“(ii) the period beginning on July 1 of any calendar year and ending December 31 of such year.”.

SEC. 307. SECONDARY RESERVE PROVISIONS.

(a) OFFSETS AGAINST PREMIUMS AUTHORIZED.—Section 404(e) of the National Housing Act (12 U.S.C. 1727(e)) is amended—

(1) by striking out “(e) The Corporation” and inserting in lieu thereof “(e)(1) The Corporation”; and

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

“(2) SECONDARY RESERVE OFFSETS AGAINST PREMIUMS.—

“(A) OFFSETS IN PREMIUM YEARS BEGINNING BEFORE 1993.—Subject to the maximum amount limitation contained in subparagraph (B) and notwithstanding any other provision of law, an insured institution may offset such institution’s pro rata share of the statutorily prescribed amount against any pre-

mium assessed against such insured institution under subsection (c) for any premium year beginning after 1987 and before 1993.

“(B) ANNUAL MAXIMUM AMOUNT LIMITATION.—The amount of any offset allowed for any insured institution under subparagraph (A) for any premium year referred to in subparagraph (A) shall not exceed an amount which is equal to 20 percent of such institution's pro rata share of the statutorily prescribed amount (as computed for the calendar year in which such premium year begins).

“(C) OFFSETS IN PREMIUM YEARS BEGINNING AFTER 1992.—Notwithstanding any other provision of law, an insured institution may offset such institution's pro rata share of the statutorily prescribed amount against any premium assessed against such insured institution under this section for any premium year beginning after 1992.

“(D) STATUTORILY PRESCRIBED AMOUNT DEFINED.—For purposes of this paragraph, the term ‘statutorily prescribed amount’ means—

“(i) with respect to calendar year 1988, the sum of \$823,705,000; and

“(ii) with respect to any calendar year beginning after 1988, the sum contained in clause (i) minus the aggregate amount of offsets made by all insured institutions before the beginning of the calendar year for which such computation is being made.

“(E) INSURED INSTITUTION'S PRO RATA AMOUNT.—For purposes of this paragraph, an insured institution's pro rata share of the statutorily prescribed amount is the percentage which is equal to such institution's pro rata share of the secondary reserve as determined under this subsection on the day before the date on which the Corporation ceased to recognize the secondary reserve.

“(F) PREMIUM YEAR DEFINED.—For purposes of this paragraph, the term ‘premium year’ means, with respect to any insured institution, the 1-year period for which a premium is assessed against such insured institution under subsection (b) or (c).”

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 404(d)(1) of the National Housing Act (12 U.S.C. 1727(d)) is amended—

(A) by striking out the second sentence of subparagraph (A);

(B) by striking out paragraph (B); and

(C) by striking out “(1)(A)” and inserting in lieu thereof “(1)”.

(2) Section 404(g) of the National Housing Act (12 U.S.C. 1727(g)) is amended by striking out the second sentence.

Thrift Industry
Recovery Act.

TITLE IV—THRIFT INDUSTRY RECOVERY PROVISIONS

12 USC 226 note.

SEC. 401. SHORT TITLE.

This title may be cited as the “Thrift Industry Recovery Act”.

SEC. 402. THRIFT INSTITUTION ACCOUNTING, APPRAISAL, AND RESERVE STANDARDS.

(a) **FEDERALLY CHARTERED THRIFTS.**—The Home Owners' Loan Act of 1933 (12 U.S.C. 1461 et seq.) is amended by redesignating section 9 as section 11 and by inserting after section 8 the following new section:

12 USC 1468.

"SEC. 9. ACCOUNTING PRINCIPLES AND OTHER STANDARDS AND REQUIREMENTS.

12 USC 1467.

"(a) IN GENERAL.—The Board shall prescribe regulations which make the following provisions applicable to associations for regulatory purposes:

Regulations.

"(1) ASSET CLASSIFICATION SYSTEM.—An asset classification system shall be established which is consistent with the asset classification system established by the Federal banking agencies, except that such system shall provide that the principal supervisory agent of the Board for each Federal home loan bank district may, in such agent's discretion—

"(A) require an association to create additional general loss reserves on the basis of an evaluation of such institution's assets; or

"(B) determine whether a restructured loan asset which is in a nonperforming status or with respect to which the borrowers have otherwise failed to remain in compliance with the repayment terms at the time of such restructuring shall be classified.

"(2) APPRAISAL STANDARD.—An appraisal standard shall be established which is consistent with the appraisal standard established by the Federal banking agencies.

"(3) REAPPRAISAL UPON FORECLOSURE.—Generally accepted accounting principles shall apply to any reappraisal of the value of property securing any loan or other extension of credit upon any foreclosure on such property by an association (or any other action by the association in lieu of foreclosure).

Real property.

"(4) AUTHORIZING USE OF FASB 15 FOR TROUBLED DEBT RESTRUCTURING.—If—

"(A) an association engages in troubled debt restructuring with respect to any loan by the association; and

"(B) the troubled debt restructuring complies with Statement of Financial Accounting Standards Numbered 5 and Statement of Financial Accounting Standards Numbered 15 (as issued by the Financial Accounting Standards Board), regulatory accounting principles shall allow the association to account for the effects of the troubled debt restructuring and to account for such association's investment in the original debt instrument (or other agreement which is subject to such restructuring) in the manner provided in such statements.

"(5) CERTAIN LOAN LOSS RESERVES TREATED AS CAPITAL FOR CERTAIN PURPOSES.—Any amount which an association holds in any account as a general loss reserve may be treated, at the option of the association, as capital of the association for purposes of determining regulatory capital or regulatory net worth with respect to such association, to the extent such treatment is consistent with the procedures established by the Federal banking agencies.

"(b) UNIFORM GAAP ACCOUNTING STANDARDS REQUIRED.—

Regulations.

"(1) IN GENERAL.—Except as otherwise provided in this section, the Board shall prescribe, by regulation, uniformly applicable accounting standards to be used by all associations for the purpose of determining compliance with any rule or regulation issued by the Board or the Federal Savings and Loan Insurance Corporation to the same degree that generally accepted accounting principles are used to determine compliance with rules and regulations of the Federal banking agencies.

"(2) EXCEPTION FOR CERTAIN INSTITUTIONS AND TRANSACTIONS.—Notwithstanding the requirement contained in paragraph (1)(A), the Board may suspend the application of any such standard with respect to any association or transaction if—

"(A) the application of such standard to an association and a company that controls such association would result in such association and company being treated differently than a bank and such bank's holding company considered on a consolidated basis; and

"(B) the transaction was consistent with generally accepted accounting principles when such transaction was completed.

"(c) ASSET EVALUATIONS.—The Board may not require an association to establish reserves against, or write down the value of, any asset in an amount in excess of the amount which would result from an evaluation of such asset which is consistent with generally accepted accounting principles, except that evaluations which are consistent with the practice of the Federal banking agencies may be used for supervisory purposes.

"(d) ACCOUNTING FOR SUBORDINATED DEBT AND GOODWILL.—No provision of this section shall affect the authority of the Board to authorize associations to utilize subordinated debt and goodwill in meeting reserve and other regulatory requirements.

"(e) LOSS DEFERRALS.—Notwithstanding any other provision of this section—

"(1) associations may continue, for purposes of determining regulatory net worth and capital, to defer and amortize gains and losses from the disposition of assets pursuant to regulations of the Board in effect before the enactment of the Thrift Industry Recovery Act; and

"(2) the use of such deferrals and amortizations, consistently with the regulations referred to in paragraph (1), shall not reduce the ability of an association to comply with any other rule issued or regulation prescribed by the Board.

"(f) FEDERAL BANKING AGENCY DEFINED.—For purposes of this section, the term 'Federal banking agency' means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation."

(b) STATE CHARTERED, FEDERALLY INSURED THRIFTS.—Title IV of the National Housing Act (12 U.S.C. 1724 et seq.) is amended by adding at the end thereof the following new section:

12 USC 1730h.

"SEC. 415. ACCOUNTING PRINCIPLES AND OTHER STANDARDS AND REQUIREMENTS.

Regulations.

"(a) IN GENERAL.—The Corporation shall prescribe regulations which make the following provisions applicable to insured institutions for regulatory purposes:

"(1) **ASSET CLASSIFICATION SYSTEM.**—An asset classification system shall be established which is consistent with the asset classification system established by the Federal banking agencies, except that such system shall provide the principal supervisory agent of the Federal Home Loan Bank Board for each Federal home loan bank district may, in such agent's discretion—

"(A) require an insured institution to create additional general loss reserves on the basis of an evaluation of such institution's assets; or

"(B) determine whether a restructured loan asset which is in a nonperforming status or with respect to which the borrowers have otherwise failed to remain in compliance with the repayment terms at the time of such restructuring shall be classified.

"(2) **APPRAISAL STANDARD.**—An appraisal standard shall be established which is consistent with the appraisal standard established by the Federal banking agencies.

"(3) **REAPPRAISAL UPON FORECLOSURE.**—Generally accepted accounting principles shall apply to any reappraisal of the value of property securing any loan or other extension of credit upon any foreclosure on such property by an insured institution (or any other action by the insured institution in lieu of foreclosure).

"(4) **AUTHORIZING USE OF FASB 15 FOR TROUBLED DEBT RESTRUCTURING.**—If—

"(A) an insured institution engages in troubled debt restructuring with respect to any loan by the insured institution; and

"(B) the troubled debt restructuring complies with Statement of Financial Accounting Standards Numbered 5 and Statement of Financial Accounting Standards Numbered 15 (as issued by the Financial Accounting Standards Board), regulatory accounting principles shall allow the insured institution to account for the effects of the troubled debt restructuring and to account for such insured institution's investment in the original debt instrument (or other agreement which is subject to such restructuring) in the manner provided in such statements.

"(5) **CERTAIN LOAN LOSS RESERVES TREATED AS CAPITAL FOR CERTAIN PURPOSES.**—Any amount which an insured institution holds in any account as a general loss reserve may be treated, at the option of the insured institution, as capital of the insured institution for purposes of determining regulatory capital or regulatory net worth with respect to such insured institution, to the extent such treatment is consistent with the procedures established by the Federal banking agencies.

"(b) **UNIFORM GAAP ACCOUNTING STANDARDS REQUIRED.**—

"(1) **IN GENERAL.**—Except as otherwise provided in this section, the Corporation shall prescribe, by regulation, uniformly applicable accounting standards to be used by all insured institutions for the purpose of determining compliance with any rule or regulation issued by the Corporation or the Federal Home Loan Bank Board to the same degree that generally accepted accounting principles are used to determine compliance with rules and regulations of the Federal banking agencies.

Regulations.

"(2) EXCEPTION FOR CERTAIN INSTITUTIONS AND TRANSACTIONS.—Notwithstanding the requirement contained in paragraph (1)(A), the Corporation may suspend the application of any such standard with respect to any insured institution or any transaction if—

"(A) the application of such standard to an insured institution and a company that controls such insured institution would result in such insured institution and company being treated differently than a bank and such bank's holding company considered on a consolidated basis; and

"(B) the transaction was consistent with generally accepted accounting principles when such transaction was completed.

"(c) ASSET EVALUATIONS.—The Corporation may not require an insured institution to establish reserves against, or write down the value of, any asset in an amount in excess of the amount which would result from an evaluation of such asset which is consistent with generally accepted accounting principles, except that evaluations which are consistent with the practice of the Federal banking agencies may be used for supervisory purposes.

"(d) ACCOUNTING FOR SUBORDINATED DEBT AND GOODWILL.—No provision of this section shall affect the authority of the Corporation to authorize insured institutions to utilize subordinated debt and goodwill in meeting reserve and other regulatory requirements.

"(e) LOSS DEFERRALS.—Notwithstanding any other provision of this section—

"(1) insured institutions may continue, for purposes of determining regulatory net worth and capital, to defer and amortize gains and losses from the disposition of assets pursuant to regulations of the Corporation in effect before the enactment of the Thrift Industry Recovery Act; and

"(2) the use of such deferrals and amortizations, consistently with the regulations referred to in paragraph (1), shall not reduce the ability of an insured institution to comply with any other rule issued or regulation prescribed by the Corporation.

"(f) FEDERAL BANKING AGENCY DEFINED.—For purposes of this section, the term 'Federal banking agency' means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation."

12 USC 1467
note.

(c) REPORT TO CONGRESS.—Not later than the end of the 90-day period beginning on the date of the enactment of this Act—

(1) the Federal Home Loan Bank Board shall submit a copy of the proposed regulations required to be prescribed under the amendment made by subsection (a) to the Congress; and

(2) the Federal Savings and Loan Insurance Corporation shall submit a copy of the proposed regulations required to be prescribed under the amendment made by subsection (b) to the Congress.

(d) EFFECTIVE DATE OF REGULATIONS.—

12 USC 1467
note.

(1) IN GENERAL.—Except as provided in paragraph (2), any regulation required to be prescribed under the amendment made by subsections (a) and (b) shall be implemented not later than the end of the 150-day period beginning on the date of the enactment of this Act.

(2) UNIFORM GAAP ACCOUNTING STANDARDS.—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the regulations required to be prescribed pursuant to subsection (b) of the amendments made by subsections (a) and (b) of this section shall take effect on December 31, 1987. Effective date.

(B) **COMPLIANCE AT A LATER DATE.**—If any association or insured institution demonstrates to the satisfaction of the Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation, as the case may be, that it is not feasible for such association or institution to achieve compliance with the regulations referred to in subparagraph (A) by the date contained in such subparagraph, the Board or Corporation may approve a plan submitted by an association or insured institution which allows such association or institution to comply with such regulations at a later date to the extent such later date is the earlier of—

(i) the date by which, in the determination of the Board or Corporation, it is feasible for such association or insured institution to achieve compliance with such regulations; or

(ii) December 31, 1993.

SEC. 403. AUDIT OF FEDERAL ASSET DISPOSITION ASSOCIATION.

Section 9105(a) of title 31, United States Code (relating to audits) is amended by inserting at the end thereof the following new paragraph:

“(3)(A) Notwithstanding any other provision of law and under such regulations as the Comptroller General may prescribe, the Comptroller General shall perform a financial audit of the Federal Asset Disposition Association on whatever basis the Comptroller General determines to be necessary.

“(B) The Federal Asset Disposition Association shall—

“(i) make available to the Comptroller General for audit all records and property of, or used or managed by, the Association which may be necessary for the audit; and

“(ii) provide the Comptroller General with facilities for verifying transactions with the balances or securities held by any depository, fiscal agent, or custodian.

“(C) For purposes of this paragraph, the term ‘Federal Asset Disposition Association’ means the savings and loan association established by the Federal Savings and Loan Insurance Corporation under section 406 of the National Housing Act to manage and liquidate nonperforming assets on behalf of such Corporation in accordance with such section.”

12 USC 1729.

SEC. 404. THRIFT INDUSTRY RECOVERY REGULATIONS.

(a) **FEDERALLY CHARTERED THRIFTS.**—The Home Owners’ Loan Act of 1933 (12 U.S.C. 1461 et seq.) is amended by adding after section 9 (as added by section 402(a) of this title) the following new section:

“SEC. 10. THRIFT INDUSTRY RECOVERY REGULATIONS.

12 USC 1467a.

“(a) **IN GENERAL.**—The Board shall prescribe capital recovery regulations for regulating and supervising troubled but well-managed and viable associations in a manner which will maximize the long-term viability of the thrift industry at the lowest cost to the Federal Savings and Loan Insurance Corporation.

"(b) CAPITAL RECOVERY.—The regulations required to be prescribed under subsection (a) shall provide that an association with net worth of 0.5 percent or more, as determined in accordance with regulatory accounting principles, may be allowed to continue to operate and be eligible for capital forbearance if—

"(1) the Board determines that the association's weak capital condition is—

Minorities.

"(A) primarily the result of losses recognized on, the nonperforming status of, or the failure of borrowers to otherwise remain in compliance with the repayment terms of, loans, or participations in loans, the value of the collateral for which has been adversely affected by economic conditions in a designated economically depressed region; or

"(B) primarily the result of losses recognized on, the nonperforming status of, or the failure of borrowers to otherwise remain in compliance with the repayment terms of, loans, or participation in loans, made by a minority association 50 percent or more of whose loan assets are minority loans and 50 percent or more of whose originated loans are construction or permanent loans for 1 to 4 family residences;

"(2) the Board determines that the association's weak capital condition is not the result of imprudent operating practices, such as practices that were speculative at the time the practices were undertaken, insider abuses, excessive operating expenses, dividends paid by the association, or actions taken solely for the purpose of qualifying for capital recovery under this subsection;

"(3) the Board approves a plan submitted by the association for increasing such association's capital; and

"(4) the association—

"(A) adheres to the plan approved under paragraph (3); and

Reports.

"(B) submits regular and complete reports on such association's progress in meeting the association's goals under such plan.

"(c) ASSOCIATIONS WITH NET WORTH OF LESS THAN 0.5 PERCENT MAY PARTICIPATE IN CAPITAL RECOVERY.—In the regulations required to be prescribed under subsection (a), the Board may provide that a well-managed association with a net worth of less than 0.5 percent, as determined in accordance with regulatory accounting principles, may, in the discretion of the Board, be allowed to continue to operate and be eligible for capital forbearance if—

"(1) the conditions described in each paragraph of subsection (a) have been met with respect to such association; and

"(2) the association has reasonable and demonstrable prospects of returning to a satisfactory capital level, as determined by the Board.

"(d) DEFINITIONS.—For purposes of this section—

"(1) DESIGNATED ECONOMICALLY DEPRESSED REGION DEFINED.—The term 'designated economically depressed region' means any geographical region which the Board determines, by regulation, to be a region within which real estate values have suffered serious declines due to severe economic conditions, such as a decline in energy or agricultural values or prices.

"(2) MINORITY.—The term 'minority' means any Black American, Native American, Hispanic American, or Asian American.

"(3) MINORITY ASSOCIATION.—The term 'minority association' means any association of which—

"(A) more than 50 percent of the ownership or control (of such association) is held by minority individuals; and

"(B) more than 50 percent of the net profit or loss (of such association) accrues to minority individuals.

"(4) MINORITY LOAN.—The term 'minority loan' means any obligation or other extension or advance of credit which is made to 1 or more minority individuals or to any person which is owned or controlled by 1 or more minority individuals."

(b) STATE CHARTERED, FEDERALLY INSURED THRIFTS.—Title IV of the National Housing Act (12 U.S.C. 1724 et seq.) is amended by adding after section 415 (as added by section 402(b) of this title) the following new section:

"SEC. 416. THRIFT INDUSTRY RECOVERY REGULATIONS.

12 USC 1730i.

"(a) IN GENERAL.—The Corporation shall prescribe capital recovery regulations for regulating and supervising troubled but well-managed and viable insured institutions in a manner which will maximize the long-term viability of the thrift industry at the lowest cost to the Corporation.

"(b) CAPITAL RECOVERY.—The regulations required to be prescribed under subsection (a) shall provide that an insured institution with net worth of 0.5 percent or more, as determined in accordance with regulatory accounting principles, may be allowed to continue to operate and be eligible for capital forbearance if—

"(1) the Corporation determines that the insured institution's weak capital condition is—

"(A) primarily the result of losses recognized on, the nonperforming status of, or the failure of borrowers to otherwise remain in compliance with the repayment terms of, loans, or participations in loans, the value of the collateral for which has been adversely affected by economic conditions in a designated economically depressed region; or

"(B) primarily the result of losses recognized on, the nonperforming status of, or the failure of borrowers to otherwise remain in compliance with the repayment terms of, loans, or participation in loans, made by a minority institution 50 percent or more of whose loan assets are minority loans and 50 percent or more of whose originated loans are construction or permanent loans for 1 to 4 family residences;

Minorities.

"(2) the Corporation determines that the insured institution's weak capital condition is not the result of imprudent operating practices, such as practices that were speculative at the time the practices were undertaken, insider abuses, excessive operating expenses, dividends paid by the insured institution, or actions taken solely for the purpose of qualifying for capital recovery under this subsection;

"(3) the Corporation approves a plan submitted by the insured institution for increasing such institution's capital; and

"(4) the insured institution—

"(A) adheres to the plan approved under paragraph (3); and

Reports.

“(B) submits regular and complete reports on such institution’s progress in meeting the institution’s goals under such plan.

“(c) THRIFTS WITH NET WORTH OF LESS THAN 0.5 PERCENT MAY PARTICIPATE IN CAPITAL RECOVERY.—In the regulations required to be prescribed under subsection (a), the Corporation may provide that a well-managed insured institution with a net worth of less than 0.5 percent, as determined in accordance with regulatory accounting principles, may, in the discretion of the Corporation, be allowed to continue to operate and be eligible for capital forbearance if—

“(1) the conditions described in each paragraph of subsection (a) have been met with respect to such insured institution; and

“(2) the insured institution has reasonable and demonstrable prospects of returning to a satisfactory capital level, as determined by the Corporation.

“(d) DEFINITIONS.—For purposes of this section—

“(1) DESIGNATED ECONOMICALLY DEPRESSED REGION DEFINED.—The term ‘designated economically depressed region’ means any geographical region which the Corporation determines, by regulation, to be a region within which real estate values have suffered serious declines due to severe economic conditions, such as a decline in energy or agricultural values or prices.

“(2) MINORITY.—The term ‘minority’ means any Black American, Native American, Hispanic American, or Asian American.

“(3) MINORITY INSTITUTION.—The term ‘minority institution’ means any insured institution of which—

“(A) more than 50 percent of the ownership or control (of such insured institution) is held by minority individuals; and

“(B) more than 50 percent of the net profit or loss (of such insured institution) accrues to minority individuals.

“(4) MINORITY LOAN.—The term ‘minority loan’ means any obligation or other extension or advance of credit which is made to 1 or more minority individuals or to any person which is owned or controlled by 1 or more minority individuals.”

12 USC 1467a
note.

(c) IMPLEMENTATION REPORT TO CONGRESS.—The Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation shall each submit a report to Congress containing the proposed regulations required to be prescribed under subsection (a) or (b), as the case may be, not later than the end of the 90-day period beginning on the date of the enactment of this Act.

12 USC 1467a
note.

(d) EFFECTIVE DATE OF REGULATIONS.—The regulations required to be prescribed under the amendments made by subsections (a) and (b) shall be implemented not later than the end of the 150-day period beginning on the date of the enactment of this Act.

12 USC 1467a
note.

(e) AGENCY STUDY AND REPORT ON, AND CONGRESSIONAL REVIEW OF, CAPITAL RECOVERY.—

(1) STUDY AND REPORT REQUIRED.—Not later than January 31, 1989, the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation shall jointly—

(A) conduct a detailed evaluation of the effectiveness of the regulations required to be prescribed under the amendments made by subsections (a) and (b) in achieving an increased level of capitalization for thrift institutions; and

(B) submit a report to the Congress containing the findings and conclusions of the Board and the Corporation in

connection with the study required under subparagraph (A).

(2) CONGRESSIONAL REVIEW.—The Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate shall, upon receipt of the report under paragraph (1)(B), review the regulations and recommend such revisions to the regulations as may be appropriate.

SEC. 405. CAPITAL INSTRUMENT PURCHASE PROGRAM.

Section 406(f) of the National Housing Act (12 U.S.C. 1729(f)) is amended by adding at the end thereof the following new paragraph:

“(6) CAPITAL INSTRUMENT PURCHASE PROGRAM.—

“(A) IN GENERAL.—Notwithstanding any other provision of Federal law (other than subparagraph (C)) and without limitation on any other authority of the Corporation or the Federal Home Loan Bank Board, the Corporation may exercise its authority to purchase capital instruments in the case of any insured institution for which a plan for increasing capital has been approved by the Corporation pursuant to section 416 or by such Board pursuant to section 10 of the Home Owners’ Loan Act of 1933.

Ante, p. 611.

“(B) TERMS AND CONDITIONS.—Except as provided in subparagraph (C), the purchase of capital instruments under subparagraph (A) shall be subject to such terms and conditions as the Corporation may prescribe.

Ante, p. 609.

“(C) WARRANT REQUIREMENT.—

“(i) IN GENERAL.—In the case of an insured institution with capital stock, the Corporation shall require such institution to negotiate with the Corporation warrants for the purchase of shares of stock as a condition for the purchase of capital instruments by the Corporation, on such terms and conditions as the Corporation may prescribe.

“(ii) MUTUAL INSTITUTIONS.—If any insured institution—

“(I) which is organized on a mutual basis; and

“(II) with respect to which the Corporation has purchased capital instruments,
converts to a stock charter, such insured institution shall comply with the requirements of clause (i) immediately upon such conversion.

“(iii) MAXIMUM AMOUNT.—The amount of shares for which warrants are negotiated under subparagraph (A) with respect to any insured institution shall not exceed the total number of shares outstanding at the time such warrants are issued to the Corporation.

“(iv) REDEMPTION BY INSURED INSTITUTION.—Upon the full redemption of the capital instruments by an insured institution, including all accumulated unpaid dividends, the Corporation may, at the discretion of the Corporation, tender the warrants for redemption by the insured institution.

“(v) PAYMENT ON REDEMPTION.—Upon any redemption of warrants under clause (iv), the insured institution shall pay the Corporation the difference between the fair market value of the warrants on the date of redemption and the exercise price of such warrants.

12 USC 1727.

“(vi) PROCEEDS FROM REDEMPTION OF WARRANTS.—The proceeds of any sale or redemption of warrants under clause (iv) shall be deposited in and be considered a part of the primary reserve established under section 404(a).

31 USC 3101.

“(D) DIVIDENDS.—Capital instruments purchased by the Corporation under subparagraph (A) shall pay dividends at a reasonable rate, as determined by the Corporation, and the rate shall be indexed to obligations issued by the Secretary of the Treasury under subchapter I of chapter 31 of title 31, United States Code.

“(E) PRIORITY.—

Claims.

“(i) IN GENERAL.—In the event of the liquidation or reorganization of any insured institution with respect to which the Corporation holds capital instruments under this paragraph, the Corporation shall have priority over—

“(I) any claim, other than a claim described in clause (ii), arising out of any equity interest in such insured institution; and

“(II) any right of any holder of an equity interest in such insured institution to participate in future earnings.

“(ii) DIVIDENDS.—

“(I) NO OTHER DIVIDENDS.—No dividends may be paid on any class of equity instruments of any insured institution (other than a capital instrument held by the Corporation) until all dividends, including accumulated unpaid dividends, on the capital instruments are paid.

“(II) PROHIBITION CEASES IF PAYMENT REDEMPTION PAYMENTS AND DIVIDENDS ARE CURRENT.—If all payments on capital instruments held by the Corporation with respect to any insured institution, including redemption payments and dividends, are current, dividends on other classes of equity instruments of such insured institution may be paid, notwithstanding subclause (I).”.

SEC. 406. MINIMUM CAPITAL REQUIREMENTS.

(a) FEDERALLY CHARTERED THRIFTS.—Section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464) is amended by adding at the end thereof the following new subsection:

“(s) MINIMUM CAPITAL REQUIREMENTS.—

12 USC 3907.

“(1) IN GENERAL.—Consistent with the purposes of section 908 of the International Lending Supervision Act of 1983 and the capital requirements established pursuant to such section by the appropriate Federal banking agencies (as defined in section 903(1) of such Act), the Board shall require all associations to achieve and maintain adequate capital by—

12 USC 3902.

“(A) establishing minimum levels of capital for associations; and

“(B) using such other methods as the Board determines to be appropriate.

“(2) MINIMUM CAPITAL LEVELS MAY BE DETERMINED BY BOARD ON CASE-BY-CASE BASIS.—The Board may establish the minimum level of capital for an association at such amount or at such ratio of capital-to-assets as the Board determines to be necessary or appropriate for such association in light of the particular circumstances of the association.

“(3) UNSAFE OR UNSOUND PRACTICE.—In the Board’s discretion, the Board may treat the failure of any association to maintain capital at or above the minimum level required by the Board under this subsection as an unsafe or unsound practice within the meaning of subsection (d).

“(4) DIRECTIVE TO INCREASE CAPITAL.—

“(A) PLAN MAY BE REQUIRED.—In addition to any other action authorized by law, including paragraph (3), the Board may issue a directive requiring any association which fails to maintain capital at or above the minimum level required by the Board to submit and adhere to a plan for increasing capital which is acceptable to the Board.

“(B) ENFORCEMENT OF PLAN.—Any directive issued and plan approved under subparagraph (A) shall be enforceable under subsection (d)(8) to the same extent and in the same manner as an outstanding order which was issued under subsection (d)(2) and has become final.

“(5) PLAN TAKEN INTO ACCOUNT IN OTHER PROCEEDINGS.—The Board may—

“(A) consider an association’s progress in adhering to any plan required under paragraph (4) whenever such association or any affiliate of such association (including any company which controls such association) seeks the approval of the Board for any proposal which would have the effect of diverting earnings, diminishing capital, or otherwise impeding such association’s progress in meeting the minimum level of capital required by the Board; and

“(B) disapprove any proposal referred to in subparagraph (A) if the Board determines that the proposal would adversely affect the ability of the association to comply with such plan.”.

(b) STATE CHARTERED, FEDERALLY INSURED THRIFTS.—Section 407 of the National Housing Act (12 U.S.C. 1730) is amended by adding at the end thereof the following new subsection:

“(t) MINIMUM CAPITAL REQUIREMENTS.—

“(1) IN GENERAL.—Consistent with the purposes of section 908 of the International Lending Supervision Act of 1983 and the capital requirements established pursuant to such section by the appropriate Federal banking agencies (as defined in section 903(1) of such Act), the Corporation shall require all insured institutions to achieve and maintain adequate capital by—

12 USC 3907.

“(A) establishing minimum levels of capital for insured institutions; and

12 USC 3902.

“(B) using such other methods as the Corporation determines to be appropriate.

“(2) MINIMUM CAPITAL LEVELS MAY BE DETERMINED BY CORPORATION ON CASE-BY-CASE BASIS.—The Corporation may establish the minimum level of capital for an insured institution at such amount or at such ratio of capital-to-assets as the Corporation determines to be necessary or appropriate for such insured institution in light of the particular circumstances of the insured institution.

“(3) UNSAFE OR UNSOUND PRACTICE.—In the Corporation’s discretion, the Corporation may treat the failure of any insured institution to maintain capital at or above the minimum level required by the Corporation under this subsection as an unsafe or unsound practice within the meaning of subsection (e).

"(4) DIRECTIVE TO INCREASE CAPITAL.—

"(A) PLAN MAY BE REQUIRED.—In addition to any other action authorized by law, including paragraph (3), the Corporation may issue a directive requiring any insured institution which fails to maintain capital at or above the minimum level required by the Corporation to submit and adhere to a plan for increasing capital which is acceptable to the Corporation.

"(B) ENFORCEMENT OF PLAN.—Any directive issued and plan approved under subparagraph (A) shall be enforceable under subsection (k) to the same extent and in the same manner as an outstanding order which was issued under subsection (e) and has become final.

"(5) PLAN TAKEN INTO ACCOUNT IN OTHER PROCEEDINGS.—The Corporation may—

"(A) consider an insured institution's progress in adhering to any plan required under paragraph (4) whenever such insured institution or any affiliate of such insured institution (including any company which controls such insured institution) seeks the approval of the Corporation for any proposal which would have the effect of diverting earnings, diminishing capital, or otherwise impeding such insured institution's progress in meeting the minimum level of capital required by the Corporation; and

"(B) disapprove any proposal referred to in subparagraph (A) if the Corporation determines that the proposal would adversely affect the ability of the insured institution to comply with such plan."

12 USC 1437
note.

SEC. 407. IMPROVEMENTS IN THE SUPERVISORY PROCESS.

12 USC 1725.

(a) ENHANCED FLEXIBILITY IN THE SUPERVISORY PROCESS.—The Federal Home Loan Bank Board (acting as such under the Federal Home Loan Bank Act and in the Board's capacity as the board of trustees of the Federal Savings and Loan Insurance Corporation under section 402(a) of the National Housing Act) shall issue guidelines which provide greater flexibility for supervisory agents, examiners, and other employees and agents of the Board, the Federal Savings and Loan Insurance Corporation, and the Federal home loan banks in applying regulations, standards, and other requirements of the Board or such Corporation with regard to particular situations or particular thrift institutions.

(b) PARTICULAR GUIDELINES REQUIRED.—The guidelines issued under subsection (a) shall contain the following provisions:

(1) FLEXIBLE APPROVAL PROCESS FOR RENEGOTIATED LOANS.—A provision establishing a flexible procedure for obtaining supervisory approval of the terms of loans renegotiated by thrift institutions if a supervisory agreement is in effect between such institution and the principal supervisory agent of the Federal home loan bank district where such institution is located.

(2) RECOGNITION OF ADDITIONAL FINANCIAL CAPABILITY OF A BORROWER.—A provision permitting examiners and other employees and agents of the Board, the Federal Savings and Loan Insurance Corporation, and the Federal home loan banks to take into account, to the extent consistent with the practices of the Federal banking agencies, other financial resources of a borrower (in addition to the financial assets of the borrower which are pledged to secure a loan) in classifying the assets of

the thrift institution which holds a loan made to such borrower or with recourse to the borrower.

(3) APPRAISAL REVIEW.—A provision establishing an appraisal review system to avoid overly optimistic or conservative appraisals with the goal of achieving appraisals that are more consistent in reflecting underlying values.

(4) 1-TO-4 FAMILY RESIDENCES.—A provision eliminating the scheduled item system except as such system relates to 1-to-4 family residences.

(c) DEFINITIONS.—For purposes of subsections (a) and (b)—

(1) THRIFT INSTITUTION.—The term “thrift institution” means—

(A) any association (within the meaning given to such term in section 2(d) of the Home Owners’ Loan Act of 1933); 12 USC 1462.

(B) any insured institution (within the meaning given to such term in section 401(a) of the National Housing Act); 12 USC 1724.
and

(C) any member (within the meaning given to such term in section 2(4) of the Federal Home Loan Bank Act). 12 USC 1422.

(2) BOARD.—The term “Board” means the Federal Home Loan Bank Board.

(3) FEDERAL BANKING AGENCY.—The term “Federal banking agency” means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

(d) NONADVERSARIAL REVIEW OF CERTAIN SUPERVISORY DECISIONS.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 22 the following new section:

“SEC. 22A. INFORMAL REVIEW OF CERTAIN SUPERVISORY DECISIONS. 12 USC 1442a.

“(a) REVIEW OF CERTAIN SUPERVISORY DECISIONS.—The Board shall establish an informal review procedure under which any association, insured institution, or member may obtain a review, by the principal supervisory agent for the Federal home loan bank district in which such association, institution, or member is located, of any decision by any examiner or supervisory agent of the Federal home loan bank for such district with respect to—

“(1) the appraisal value of—

“(A) any loan held by the association, insured institution, or member; or

“(B) any property serving as collateral to secure the repayment of any loan (held by the association, institution, or member);

“(2) the classification of any loan held by the association, institution, or member; or

“(3) any requirement imposed on the association, institution, or member to establish or to add to a reserve or allowance for a possible loss on any loan held by such institution.

“(b) STANDARDS FOR REVIEW.—The review procedure established pursuant to subsection (a) shall provide that the principal supervisory agent for the appropriate Federal home loan bank district, after taking into account the report described in subsection (c)(2) by the arbiter (or panel of arbiters), shall approve, modify, or set aside any decision for which a review has been requested on the basis of the supervisory agent’s review of all the facts and the regulations applicable to such decision and shall take such action as such agent

may determine to be necessary or appropriate in light of such review.

"(c) **APPOINTMENT OF INDEPENDENT ARBITER.**—The review procedure established pursuant to subsection (a) shall provide for the appointment (by the principal supervisory agent for the appropriate Federal home loan bank district, upon the filing of a request for a review under this section by an association, insured institution, or member) of an independent arbiter (or, upon the request of such association, institution, or member, a panel of independent arbiters) who shall—

"(1) review the decision which is the subject of the review in light of all the facts of the case and the regulations applicable to such determination; and

"(2) report the conclusions and recommendations of the independent arbiter (or the panel) with respect to the decision under review to the principal supervisory agent for the appropriate Federal home loan bank district and the association, insured institution, or member.

"(d) **CONSOLIDATION OF REVIEWS OF RELATED DECISIONS.**—The principal supervisory agent may consolidate requests for review under this section of related decisions and conduct a single review of all such related decisions.

"(e) **25-DAY ARBITER REVIEW PERIOD; 20-DAY PSA REVIEW PERIOD.**—

"(1) **ARBITER REVIEW.**—The review procedure established pursuant to subsection (a) shall provide that any review described in subsection (c) by an arbiter (or panel of arbiters) shall be completed before the end of the 25-day period beginning on the date the request for the review was filed with the principal supervisory agent.

"(2) **REVIEW BY PSA.**—The review procedure established pursuant to subsection (a) shall provide that any review by the principal supervisory agent of an arbiter's report described in subsection (c)(2) (or the report of a panel of arbiters) shall be completed before the end of the 20-day period beginning on the date the agent receives such report.

"(3) **ONLY BUSINESS DAYS INCLUDED.**—Saturdays, Sundays, and holidays shall not be taken into account in determining the periods described in paragraphs (1) and (2).

"(f) **CLARIFICATION OF RELATIONSHIP BETWEEN INFORMAL REVIEW AND OTHER AVAILABLE REVIEW.**—

"(1) **INFORMAL REVIEW NOT EXCLUSIVE.**—The informal review procedure established pursuant to subsection (a) for reviewing any decision referred to in such subsection shall be in addition to, and not in lieu of, any other procedure established by law, or any regulation of the Board, which provides for formal administrative or judicial review of such decision.

"(2) **ONLY THE ORIGINAL DECISION IS WITHIN SCOPE OF ADMINISTRATIVE AND JUDICIAL REVIEW.**—If any association, insured institution, or member seeks administrative or judicial review of any examiner or supervisory agent decision for which such association, insured institution, or member obtained an informal review under the procedure established pursuant to subsection (a), such administrative or judicial review shall be carried out—

"(A) without regard to the fact that such informal review was made; and

“(B) without admitting into evidence, or otherwise taking into account, the findings, recommendations, or conclusions of the principal supervisory agent and the independent arbiter (or the panel of independent arbiters) which conducted the informal review.

“(3) INFORMAL REVIEW NOT SUBJECT TO FORMAL REVIEW.—The findings, recommendations, or conclusions of any principal supervisory agent who conducted a review under the procedure established pursuant to subsection (a) are not decisions which may be subject to review by the Board or any court under any regulation of the Board or any law.

“(g) EXPENSES OF REVIEW BORNE BY ASSOCIATION, INSTITUTION, OR MEMBER.—All reasonable expenses incurred as a direct or indirect result of any review under the procedure established pursuant to subsection (a) shall be paid by the association, insured institution, or member which requested the review.”.

SEC. 408. PREVENTION OF INSOLVENCIES.

Before the end of the 6-month period beginning on the date of the enactment of this Act, the Federal Home Loan Bank Board shall submit a report to the Congress containing—

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(1) a detailed description of the steps the Board has taken and is planning to take to prevent additional failures of thrift institutions; and

(2) such recommendations for legislation as the Board may determine to be appropriate.

SEC. 409. FEASIBILITY STUDY RELATING TO ESTABLISHMENT OF ASSET HOLDING CORPORATION.

(a) STUDY REQUIRED.—The Federal Home Loan Bank Board shall study the feasibility of establishing an asset holding corporation to relieve thrift institutions of the burden of carrying and maintaining troubled real estate assets by providing for the acquisition of such assets by such corporation.

Real property.

(b) FACTORS TO BE CONSIDERED.—In studying the feasibility of establishing an asset holding corporation, the Federal Home Loan Bank Board shall—

(1) estimate the cost of establishing and operating such corporation for the purposes intended;

(2) consider whether sufficient capital for the establishment and operation of the corporation can be obtained from the private sector or from the Federal home loan bank system without any Government investment in the corporation;

(3) develop standards for determining the type and condition of real estate assets which would be eligible for acquisition by such corporation and estimate the total value of such real estate; and

(4) develop a proposal for allowing participating thrift institutions to obtain an equity participation in the corporation.

(c) REPORT REQUIRED.—The Federal Home Loan Bank Board shall prepare and submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 6 months after the date of the enactment of this Act, a report containing the findings and conclusions of the Board with respect to the study required under subsection (a) and any recommendation of

the Board for legislation which the Board determines may be necessary or appropriate.

12 USC 1437
note.

SEC. 410. NOTICE AND DISAPPROVAL PROCEDURE REQUIRED FOR ALL APPLICATIONS TO THE BANK BOARD.

(a) **IN GENERAL.**—The Federal Home Loan Bank Board shall promulgate guidelines which provide that with respect to each type of completed application (other than an application under section 408(g) of the National Housing Act) by any person for approval by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation, the application shall be deemed to be approved as of the end of the period prescribed under such guidelines unless the Board or the Federal Savings and Loan Insurance Corporation, as the case may be, approves or disapproves such application before the end of such period.

(b) **APPLICATION FOR HOLDING COMPANY INDEBTEDNESS.**—Section 408(g) of the National Housing Act (12 U.S.C. 1730a(g)) is amended by adding at the end thereof the following new paragraph:

“(7) Any completed application under this subsection shall be deemed to be approved as of the end of the 60-day period beginning on the date such application was filed, unless the Corporation issues notice of approval or disapproval of the application before the end of such period.”

(c) **REPORT TO CONGRESS.**—Before the end of the 60-day period beginning on the date of the enactment of this Act, the Federal Home Loan Bank Board shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing the guidelines required to be promulgated under subsection (a).

(d) **EFFECTIVE DATE.**—The guidelines required to be promulgated under subsection (a) shall take effect at the end of the 60-day period referred to in subsection (c).

12 USC 1437
note.
Reports.

SEC. 411. GUIDELINES FOR ASSET DISPOSITION.

Not later than 6 months after the date of the enactment of this Act, the Federal Home Loan Bank Board shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing appropriate new guidelines which—

(1) prevent the dumping of assets over which it has direct or indirect control; and

(2) the Board shall promulgate at the end of such period.

12 USC 1437
note.

SEC. 412. EXPANSION OF USE OF UNDERUTILIZED MINORITY THRIFT INSTITUTIONS.

(a) **CONSULTATION ON EXPANDED USE.**—The Secretary of the Treasury shall consult with the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation on methods for increasing the use of underutilized minority thrift institutions as depositaries or financial agents of Federal agencies.

(b) **DESIGNATION OF MINORITY THRIFT INSTITUTIONS INVOLVED IN CAPITAL RECOVERY PROGRAM AS UNDERUTILIZED THRIFT.**—If the Federal Home Loan Bank Board approves any plan submitted under regulations prescribed under section 10 of the Home Owners' Loan Act of 1933 (as added by section 404(a) of this title) or section 416 of

Ante, p. 609.

the National Housing Act (as added by section 404(c) of this title) by any minority institution (as defined in each such section), such minority institution shall be designated by the Board as an underutilized thrift institution for purposes of increasing the use of such association as a depository or financial agent of other Federal agencies. *Ante*, p. 611.

(c) **REPORT TO CONGRESS.**—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury, the Federal Home Loan Bank Board, and the Federal Savings and Loan Insurance Corporation shall each submit a report to the Congress on actions taken by such Secretary or agency pursuant to subsection (a) or (b).

(d) **THRIFT INSTITUTION DEFINED.**—For purposes of this section, the term “thrift institution” has the meaning given to such term in section 407(c)(1).

SEC. 413. AUTHORITY OF INDEPENDENT CONTRACTORS, CONSULTANTS, AND COUNSEL.

(a) **FEDERALLY CHARTERED THRIFT INSTITUTIONS.**—Section 5(d)(6) of the Home Owners’ Loan Act of 1933 (12 U.S.C. 1464(d)(6)) (relating to appointments of receivers and conservators) is amended by adding at the end thereof the following new subparagraph:

“(E) **DISCLOSURE REQUIREMENT FOR THOSE ACTING ON BEHALF OF CONSERVATOR.**—A conservator shall require that any independent contractor, consultant, or counsel employed by the conservator in connection with the conservatorship of an association pursuant to this section shall fully disclose to all parties with which such contractor, consultant, or counsel is negotiating, any limitation on the authority of such contractor, consultant, or counsel to make legally binding representations on behalf of the conservator.”.

(b) **FEDERALLY INSURED STATE CHARTERED THRIFT INSTITUTIONS.**—Section 406(b) of the National Housing Act (12 U.S.C. 1730) (relating to involuntary termination of insurance) is amended by adding at the end thereof the following new paragraph:

“(4) **DISCLOSURE REQUIREMENT FOR THOSE ACTING ON BEHALF OF CORPORATION.**—The Corporation shall require that any independent contractor, consultant, or counsel employed by the Corporation in connection with the management or liquidation of an insured institution shall fully disclose to all parties with which such contractor, consultant, or counsel is negotiating, any limitation on the authority of such contractor, consultant, or counsel to make legally binding representations on behalf of the Corporation.”.

SEC. 414. EXTENSION OF FORBEARANCE PREVIOUSLY PROVIDED IN THE ACQUISITION OF TROUBLED THRIFT INSTITUTIONS.

Section 408(m)(1)(A) of the National Housing Act (12 U.S.C. 1730a(m)(1)(A)) is amended by adding at the end thereof the following new clause:

“(iv) If, in connection with a merger, consolidation, transfer, or acquisition of an insured institution under this subparagraph before March 31, 1987, forbearance measures have been included in the agreement governing the supervisory action with respect to such transaction, the period of forbearance in such agreement shall be extended for an additional 5 years upon a showing by the acquiring or resulting insured institution that any failure to meet any requirement, restriction, or limitation specified in such agreement with respect to any such forbearance measure is attributable to the assets

or liabilities (of the acquired or merged insured institution) which were acquired by or assumed by the acquiring or resulting insured institution.”.

12 USC 1437
note.

SEC. 415. CONGRESSIONAL OVERSIGHT.

(a) **BANKING COMMITTEE REVIEW OF PANEL ACTIONS.**—The Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate shall monitor and review the actions taken by each review panel established pursuant to the amendment made by section 407(d) of this Act.

Ante, p. 616.
Reports.

(b) **OTHER CONGRESSIONAL OVERSIGHT.**—The Federal Home Loan Bank Board shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives, at the end of the 6-month period beginning on the date of the enactment of this title, at the end of the 1-year period beginning on such date, and on an annual basis after the end of such 1-year period, containing—

- (1) a description of the Board's existing manpower and talent;
- (2) an estimate of the Board's projected manpower and talent needs for the year, including the cost of such projected needs;
- (3) a description and explanation of the goals and objectives, of the Board and all its related entities (including the Federal Asset Disposition Association), for the coming year and the management strategies to be employed by such entities in accomplishing such goals and objectives;
- (4) a summary of the operations, receipts, expenses, and expenditures, of the Board and all its related entities (including the Federal Asset Disposition Association), during the preceding year; and

- (5) a summary of the operations and the aggregate receipts, expenses, and expenditures of any other person not referred to in paragraph (4), including receivers, conservators, accountants, attorneys, and consultants, who is engaged in any activity on behalf of the Board or any other entity which is referred to in such paragraph, to the extent such operations, receipts, expenses, and expenditures are in connection with such activity.

(c) **APPEARANCE.**—The Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation shall, before the beginning of each fiscal year, appear before the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate to describe and explain each such agency's plans and proposals with respect to administrative expenses for such fiscal year.

Reports.

(d) **GUIDELINES FOR EMPLOYMENT OF OUTSIDE ACCOUNTANTS, ATTORNEYS, CONSERVATORS, AND OTHER CONSULTANTS.**—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Federal Home Loan Bank Board shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing guidelines to improve the management of and control over all outside accountants, attorneys, conservators, consultants, and other persons whose services are employed by the Board, the Federal Savings and Loan Insurance Corporation, the Federal Asset Disposition Association, the principal supervisory agent for any Federal home loan bank district, or any other entity created, owned, or controlled by the

Board in connection with any function for which the Board has direct or indirect regulatory or supervisory responsibility.

SEC. 416. SUNSET.

(a) **IN GENERAL.**—The following provisions shall cease to be effective on the date that a notice is published in the Federal Register by the Financing Corporation pursuant to subsection (b):

(1) Paragraphs (2), (3), and (5) of—

(A) section 9(a) of the Home Owners' Loan Act of 1933; and

(B) section 415(a) of the National Housing Act, (as added by subsections (a) and (b), respectively, of section 402 of this title).

(2) Section 10 of the Home Owners' Loan Act of 1933 and section 416 of the National Housing Act (as added by subsections (a) and (b), respectively, of section 404 of this title).

(3) Paragraph (6) of section 406(f) of the National Housing Act (as added by section 405 of this title).

(4) Section 22A of the Federal Home Loan Bank Act (as added by section 407(d) of this title).

(5) Section 411 of this title.

(b) **NOTICE OF COMPLETION OF NET NEW BORROWING BY FINANCING CORPORATION.**—When the Financing Corporation established pursuant to section 21 of the Federal Home Loan Bank Act has completed all net new borrowing under such section, the Financing Corporation shall publish a notice of such fact in the Federal Register.

(c) **SAVINGS PROVISION.**—The termination by subsection (a) of the effectiveness of any provision described in such subsection shall not be construed to affect or limit any authority of the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation to prescribe any regulation or engage in any activity with respect to any association or insured institution under any other provision of law.

12 USC 1441
note.
Federal
Register,
publication.

Ante, pp. 605,
606.

Ante, pp. 609,
611.

Ante, p. 613.

Ante, p. 617.
Ante, p. 620.

Federal
Register,
publication.
Ante, p. 585.

TITLE V—FINANCIAL INSTITUTIONS EMERGENCY ACQUISITIONS

Financial
Institutions
Emergency
Acquisitions
Amendments of
1987.

SEC. 501. SHORT TITLE.

This title may be cited as the "Financial Institutions Emergency Acquisitions Amendments of 1987".

12 USC 1811
note.

SEC. 502. FDIC ASSISTED EMERGENCY INTERSTATE ACQUISITIONS.

(a) **GENERAL PROVISIONS.**—Section 13(f)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(1)) is amended to read as follows:

"(f) **ASSISTED EMERGENCY INTERSTATE ACQUISITIONS.**—(1) This subsection shall apply only to an acquisition of an insured bank or a holding company by an out-of-State bank or out-of-State holding company for which the Corporation provides assistance under subsection (c)."

(b) **EMERGENCY INTERSTATE ACQUISITIONS OF BANKS IN DANGER OF CLOSING.**—Section 13(f)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(3)) is amended to read as follows:

"(3) **EMERGENCY INTERSTATE ACQUISITIONS OF INSURED BANKS IN DANGER OF CLOSING.**—

"(A) ACQUISITION OF INSURED BANKS IN DANGER OF CLOSING.—One or more out-of-State banks or out-of-State holding companies may acquire and retain all or part of the shares or assets of, or otherwise acquire and retain—

"(i) an insured bank in danger of closing which has total assets of \$500,000,000 or more; or

"(ii) 2 or more affiliated insured banks in danger of closing which have aggregate total assets of \$500,000,000 or more, if the aggregate total assets of such banks is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks.

"(B) ACQUISITION OF A HOLDING COMPANY OR OTHER BANK AFFILIATE.—If one or more out-of-State banks or out-of-State holding companies acquire 1 or more affiliated insured banks under subparagraph (A) the aggregate total assets of which is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks, any such out-of-State bank or out-of-State holding company may also, as part of the same transaction, acquire and retain the shares or assets of, or otherwise acquire and retain—

"(i) the holding company which controls the affiliated insured banks so acquired; or

"(ii) any other affiliated insured bank.

"(C) REQUEST FOR ASSISTANCE BY CORPORATE BOARD OF DIRECTORS.—The Corporation may assist an acquisition or merger authorized under subparagraph (A) only if the board of directors or trustees of each insured bank in danger of closing which is being acquired has requested in writing that the Corporation assist the acquisition or merger.

"(D) CERTAIN ACQUISITIONS AUTHORIZED AFTER ASSISTANCE IS PROVIDED.—Notwithstanding paragraph (1), if—

"(i) at any time after the date of the enactment of the Financial Institutions Emergency Acquisitions Amendments of 1987, the Corporation provides any assistance under subsection (c) to an insured bank; and

"(ii) at the time such assistance is granted, the insured bank, the holding company which controls the insured bank (if any), or any affiliated insured bank is eligible to be acquired by an out-of-State bank or out-of-State holding company under this paragraph,

the insured bank, the holding company, and such other affiliated insured bank shall remain eligible, subject to such terms and conditions as the Corporation (in the Corporation's discretion) may impose, to be acquired by an out-of-State bank or out-of-State holding company under this paragraph as long as any portion of such assistance remains outstanding.

"(E) STATE BANK SUPERVISOR APPROVAL.—The Corporation may take no final action in connection with any acquisition under this paragraph unless the State bank supervisor of the State in which the bank in danger of closing is located approves the acquisition.

"(F) OTHER REQUIREMENTS NOT AFFECTED.—This paragraph does not affect any other requirement under Federal or State law for regulatory approval of an acquisition under this paragraph.

"(G) ACQUISITION MAY BE CONDITIONED ON RECEIPT OF CONSIDERATION FOR CORPORATION'S ASSISTANCE.—Any acquisition de-

scribed in subparagraph (D) may be conditioned on the receipt of such consideration for the Corporation's assistance as the Board of Directors deems appropriate."

(c) SPECIAL PROVISIONS APPLICABLE TO EMERGENCY INTERSTATE ACQUISITIONS.—

(1) COORDINATION WITH CERTAIN STATE LAWS.—Section 13(f)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(4)) is amended—

(A) by redesignating clauses (i), (ii), and (iii) as subparagraphs (A), (B), and (C), respectively;

(B) by amending subparagraph (A) (as so redesignated) to read as follows:

"(A) ACQUISITIONS NOT SUBJECT TO CERTAIN OTHER LAWS.—Section 3(d) of the Bank Holding Company Act of 1956, any provision of State law, the constitution of any State, and section 408(e)(3) of the National Housing Act shall not apply to prohibit any acquisition under paragraph (2) or (3), except that an out-of-State bank may make such an acquisition only if such ownership is otherwise specifically authorized."; and

12 USC 1842.

12 USC 1730a.

(C) by adding at the end thereof the following new subparagraphs:

"(D) SUBSEQUENT NONEMERGENCY INTERSTATE ACQUISITIONS SUBJECT TO STATE LAW.—

"(i) IN GENERAL.—Any out-of-State bank holding company which acquires control of an insured bank in any State under paragraph (2) or (3) may acquire any other insured bank and establish branches in such State to the same extent as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State may acquire any other insured bank or establish branches.

"(ii) DELAYED DATE OF APPLICABILITY.—Clause (i) shall not apply with respect to any out-of-State bank holding company referred to in such clause before the earlier of—

"(I) the end of the 2-year period beginning on the date the acquisition referred to in such clause with respect to such company is consummated; or

"(II) the end of any period established under State law during which such out-of-State bank holding company may not be treated as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State for purposes of acquiring other insured banks or establishing bank branches.

"(iii) DETERMINATION OF PRINCIPALLY CONDUCTED.—For purposes of this subparagraph, the State in which the operations of a holding company's insured bank subsidiaries are principally conducted is the State determined under section 3(d) of the Bank Holding Company Act of 1956 with respect to such holding company.

"(E) CERTAIN STATE INTERSTATE BANKING LAWS INAPPLICABLE.—Any holding company which acquires control of any insured bank or holding company under paragraph (2) or (3) or subparagraph (D) of this paragraph shall not, by reason of such acquisition, be required under the law of any State to divest any other insured bank or be prevented from acquiring any other bank or holding company."

(2) RECIPROCAL BANK FACTS AND MINORITY BANK OWNERSHIP TAKEN INTO ACCOUNT IN BIDDING PRIORITIES.—Section 13(f)(6) of

the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(6)) is amended—

(A) in subparagraph (B), by striking out clause (ii) and all that follows through clause (iv) and inserting in lieu thereof the following new clauses:

“(ii) Second, between depository institutions of the same type—

“(I) in different States which by statute specifically authorize such acquisitions; or

“(II) in the absence of such statutes, in different States which are contiguous.

“(iii) Third, between depository institutions of the same type in different States other than the States described in clause (ii).

“(iv) Fourth, between depository institutions of different types in the same State.

“(v) Fifth, between depository institutions of different types—

“(I) in different States which by statute specifically authorize such acquisitions; or

“(II) in the absence of such statutes, in different States which are contiguous.

“(vi) Sixth, between depository institutions of different types in different States other than the States described in clause (v).”; and

(B) by amending subparagraph (C) to read as follows:

“(C) MINORITY BANK PRIORITY.—In the case of a minority-controlled bank, the Corporation shall seek an offer from other minority-controlled banks before proceeding with the bidding priorities set forth in subparagraph (B).”.

(3) REAFFIRMATION OF THE RULE THAT NO ASSISTANCE IS AUTHORIZED FOR NONBANK SUBSIDIARIES OF HOLDING COMPANIES.—Section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)) is amended by adding at the end thereof the following new paragraph:

“(9) NO ASSISTANCE AUTHORIZED FOR NONBANK SUBSIDIARIES OF HOLDING COMPANIES.—

“(A) IN GENERAL.—The Corporation shall not provide any assistance to a subsidiary of a holding company which is not an insured bank in connection with any acquisition under this subsection.

“(B) INTERMEDIATE HOLDING COMPANY PERMITTED.—This paragraph does not prohibit an intermediate holding company from being a conduit for assistance ultimately intended for an insured bank.”.

(4) REPORTS REQUIRED.—Section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)) is amended by adding after paragraph (9) (as added by paragraph (3) of this subsection) the following new paragraph:

“(10) ANNUAL REPORT.—

“(A) REQUIRED.—In its annual report to Congress the Corporation shall include a report on the acquisitions under this subsection during the preceding year.

“(B) CONTENTS.—The report required under subparagraph (A) shall contain the following information:

“(i) The number of acquisitions under this subsection.

“(ii) A brief description of each such acquisition and the circumstances under which such acquisition occurred.”.

(5) **DETERMINATION OF TOTAL ASSETS.**—Section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)) is amended by adding after paragraph (10) (as added by paragraph (4) of this subsection) the following new paragraph:

“(11) **DETERMINATION OF TOTAL ASSETS.**—For purposes of this subsection, the total assets of any insured bank shall be determined on the basis of the most recent report of condition of such bank which is available at the time of such determination.”.

(d) **BANK IN DANGER OF CLOSING DEFINED.**—Section 13(f)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(8)) is amended—

(1) by adding at the end thereof the following new subparagraph:

“(D) the term ‘bank in danger of closing’ means an insured bank with respect to which the appropriate Federal or State chartering authority certifies in writing that—

“(i)(I) the bank is not likely to be able to meet the demands of such bank’s depositors or pay the obligations of the bank in the normal course of business, and

“(II) there is no reasonable prospect that the bank will be able to meet such demands or pay such obligations without Federal assistance; or

“(ii)(I) the bank has incurred or is likely to incur losses that will deplete all or substantially all of the capital of the bank, and

“(II) there is no reasonable prospect for the replenishment of the bank’s capital without Federal assistance;”;

(2) by striking out “and” at the end of subparagraph (B); and

(3) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon.

(e) **ACQUIRE DEFINED.**—Section 13(f)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(8)) is amended by adding after subparagraph (D) (as added by subsection (d) of this section) the following new subparagraph:

“(E) the term ‘acquire’ means to acquire, directly or indirectly, ownership or control through—

“(i) an acquisition of shares;

“(ii) an acquisition of assets or assumption of liabilities;

“(iii) a merger or consolidation; or

“(iv) any similar transaction;”.

(f) **AFFILIATED INSURED BANK DEFINED.**—Section 13(f)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(8)) is amended by adding after subparagraph (E) (as added by subsection (e) of this section) the following new subparagraph:

“(F) the term ‘affiliated insured bank’ means—

“(i) when used in connection with a reference to a holding company, an insured bank which is a subsidiary of such holding company; and

“(ii) when used in connection with a reference to 2 or more insured banks, insured banks which are subsidiaries of the same holding company; and”.

(g) **SUBSIDIARY DEFINED.**—Section 13(f)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(8)) is amended by adding after subparagraph (F) (as added by subsection (f) of this section) the following new subparagraph:

“(G) the term ‘subsidiary’ has the meaning given to such term in section 2(d) of the Bank Holding Company Act of 1956.”.

(h) **WAIVER OF NOTICE AND HEARING REQUIREMENTS.**—

(1) APPLICATION RELATING TO ACQUISITIONS.—Section 3(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(b)) is amended—

(A) by striking out “(b) Upon” and inserting in lieu thereof “(b)(1) NOTICE AND HEARING REQUIREMENTS.—Upon”; and

(B) by adding at the end thereof the following new paragraph:

“(2) WAIVER IN CASE OF BANK IN DANGER OF CLOSING.—If the Board receives a certification described in section 13(f)(8)(D) of the Federal Deposit Insurance Act from the appropriate Federal or State chartering authority that a bank is in danger of closing, the Board may dispense with the notice and hearing requirements of paragraph (1) with respect to any application received by the Board relating to the acquisition of such bank, the bank holding company which controls such bank, or any other affiliated bank.”

Ante, p. 627.

(2) APPLICATION RELATING TO NONBANKING ACTIVITIES.—Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended by striking out the semicolon at the end and inserting in lieu thereof a period and the following new sentences: “If an application is filed under this paragraph in connection with an application to make an acquisition pursuant to section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing. If an application described in the preceding sentence is approved, the Board shall publish in the Federal Register, not later than 7 days after such approval is granted, the order approving the application and a description of the nonbanking activities involved in the acquisition;”

Federal
Register,
publication.

(3) EARLY ANTITRUST REVIEW IN CASE OF EMERGENCY ACQUISITION OF FAILING BANK.—Section 11(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1849(b)) is amended—

(A) by striking out “(b) The Board” and inserting in lieu thereof “(b) ANTITRUST REVIEW.—

“(1) IN GENERAL.—The Board”;

(B) by moving all that follows 2 ems to the right; and
(C) by adding at the end thereof the following new paragraph:

“(2) SECTION 13(f) CASES.—(A) If—

“(i) the Federal Deposit Insurance Corporation learns that a bank insured by such Corporation is in danger of closing; and

“(ii) the Corporation is considering assisting the acquisition of such bank and its affiliated banks by another bank or holding company under section 13(f) of the Federal Deposit Insurance Act and such acquisition is subject to the approval of the Board under section 3 of this Act, the Corporation shall immediately notify the Board of such facts.

“(B) Upon receipt of notice from the Federal Deposit Insurance Corporation under subparagraph (A) or at such earlier time as deemed appropriate by the Board, the Board shall immediately notify the Attorney General of the United States of the facts concerning the possible acquisition.

“(C) Within 5 days of receiving notice under subparagraph (B), the Attorney General shall notify the Board in writing of the Attorney General’s preliminary finding as to the consistency of the possible acquisition with the antitrust laws.

“(D) The Board may reduce or eliminate the post-approval waiting period established under paragraph (1) for an acquisition to which this paragraph applies, except that such period may not be eliminated or reduced to less than 5 days without the concurrence of the Attorney General.”.

(i) **TECHNICAL AND CONFORMING AMENDMENTS.**—Section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)) is amended—

(1) in paragraph (5), by striking out “to permit”; and

(2) in paragraph (6)(A)—

(A) by striking out “where the closed bank” and inserting in lieu thereof “where the bank”; and

(B) by striking out “in-State bank holding company” and inserting in lieu thereof “in-State holding company”.

SEC. 503. BRIDGE BANKS.

(a) **ESTABLISHMENT OF BRIDGE BANKS.**—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) in subsection (h) by striking out “(h) As soon as” and inserting in lieu thereof “(h) **NEW BANKS.**—(1) As soon as”;

(2) by redesignating subsections (i), (j), (k), and (l) as paragraphs (2), (3), (4), and (5) of subsection (h), respectively; and

(3) by inserting after subsection (h)(5) (as redesignated by paragraph (2)) the following new subsection:

“(i) **BRIDGE BANKS.**—

“(1) **ESTABLISHMENT.**—When an insured bank is closed, the Corporation, in the Corporation’s discretion and subject to the conditions established in paragraph (2), may establish a bridge bank to—

“(A) assume the deposits of the closed bank;

“(B) assume such other liabilities of the closed bank as the Corporation, in the Corporation’s discretion, may determine to be appropriate;

“(C) purchase such assets of the closed bank as the Corporation, in the Corporation’s discretion, may determine to be appropriate; and

“(D) perform any other temporary function which the Corporation may prescribe in accordance with this Act.

“(2) **CONDITIONS.**—A bridge bank may be established under paragraph (1) only if the Board of Directors determines that—

“(A) the amount which is reasonably necessary to organize and operate such bridge bank will not exceed the amount which is reasonably necessary to save the cost of liquidating, including paying the insured accounts of, the closed bank or banks;

“(B) the continued operation of such insured bank is essential to provide adequate banking services in the community where such bank is located; or

“(C) that the continued operation of such insured bank is in the best interest of the depositors of the closed bank and the public.

“(3) **TRANSFER OF ASSETS AND LIABILITIES.**—

“(A) **IN GENERAL.**—Upon the organization of a bridge bank pursuant to this subsection, the Corporation, as re-

ceiver, or any other receiver appointed with respect to the closed insured bank may, subject to the approval of any such transfer by a court of competent jurisdiction, transfer any assets and liabilities of the closed insured bank to the bridge bank.

“(B) INTENT OF CONGRESS RELATING TO CONTINUING OPERATIONS.—It is the intent of the Congress that, in order to prevent unnecessary hardship or losses to the customers of the closed bank with respect to which a bridge bank is established, especially creditworthy farmers, small businesses, and households, the Corporation should—

“(i) continue to honor commitments made by the closed bank to creditworthy customers, and

“(ii) not interrupt or terminate adequately secured loans which are transferred under subparagraph (A) and are being repaid by the debtor in accordance with the terms of the loan instrument.

“(4) ORGANIZATION.—

“(A) ARTICLES OF ASSOCIATION.—The articles of association and the organization certificate of a bridge bank shall be executed by representatives designated by the Corporation.

“(B) INSURED NATIONAL BANK.—Each bridge bank shall be a national bank and shall be insured from the time of the organization of the bridge bank.

“(C) MANAGEMENT.—Each bridge bank shall be under the management of a board of directors consisting of 5 members appointed by the Board of Directors of the Corporation.

“(5) POWERS OF BRIDGE BANKS.—Each bridge bank established under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, a national bank, except that—

“(A) the Corporation may—

“(i) remove the directors of any bridge bank;

“(ii) fix the compensation of members of the board of directors of any bridge bank; and

“(iii) waive any requirement established under section 5145, 5146, 5147, 5148, or 5149 of the Revised Statutes (relating to directors of national banks) or section 31 of the Banking Act of 1933 which would otherwise be applicable with respect to directors of a bridge bank by operation of paragraph (4)(B);

“(B) the Corporation may indemnify the directors of a bridge bank on such terms as the Corporation determines to be appropriate;

“(C) no requirement under section 5138 of the Revised Statutes or any other provision of law relating to the capital of a national bank shall apply with respect to any bridge bank;

“(D) the Comptroller of the Currency may establish a limitation on the extent to which any person may become indebted to any bridge bank without regard to the amount of the bank's capital or surplus;

“(E) the board of directors of the bridge bank shall elect a chairperson who shall also serve in the position of chief executive officer;

12 USC 71-75.

12 USC 71a.

12 USC 51.

"(F) no bridge bank shall be required to purchase stock of any Federal Reserve bank; and

"(G) the Comptroller of the Currency may waive any requirement for a fidelity bond.

"(6) CAPITAL.—

"(A) **NO CAPITAL REQUIRED.**—The Corporation shall not be required to—

"(i) issue capital stock on behalf of any bridge bank established under this subsection; or

"(ii) purchase any capital stock of any bridge bank.

"(B) **OPERATING FUNDS IN LIEU OF CAPITAL.**—Upon the organization of a bridge bank, and thereafter as the Board of Directors may in its discretion deem necessary or advisable, the Corporation shall promptly make available to the bridge bank, upon such terms and conditions and in such form and amounts as the Board of Directors may prescribe, sufficient funds for the bridge bank to operate.

"(C) **AUTHORITY TO ISSUE CAPITAL STOCK.**—Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of any bridge bank to be issued and offered for sale on such terms and conditions as the Corporation determines to be appropriate and in an amount sufficient (in the discretion of the Corporation) to make possible the conduct of the business of the bridge bank on a sound basis.

"(7) NO FEDERAL STATUS.—

"(A) **AGENCY STATUS.**—A bridge bank is not an agency, establishment, or instrumentality of the United States.

"(B) **EMPLOYEE STATUS.**—Directors, officers, employees, or agents of the bridge bank are not officers or employees of the United States for purposes of title 5, United States Code, or any other provision of law.

"(8) **ASSISTANCE AUTHORIZED.**—The Corporation may, in its discretion, provide assistance under section 13(c) to facilitate the sale or merger of the bridge bank with another insured depository institution in the same manner and to the same extent as such assistance may be provided under such section with respect to a closed insured bank.

12 USC 1873.

"(9) **ACQUISITION BY OUT-OF-STATE BANK HOLDING COMPANY.**—Any depository institution, including an out-of-State bank, or any out-of-State holding company may acquire and retain the shares or assets of, or otherwise acquire and retain a bridge bank which has assumed the insured deposits of one or more closed banks which had total assets aggregating \$500,000,000 or more (determined in the manner provided in section 13(f)(11) at the time such insured bank was closed) in the same manner and to the same extent as such depository institution or such out-of-State holding company may acquire a closed insured bank under section 13(f)(2).

"(10) TERMINATION OF BRIDGE BANK.—

"(A) **IN GENERAL.**—A bridge bank shall terminate upon the occurrence of the earliest of the following:

"(i) The bridge bank merges or consolidates with another bank that is not a bridge bank.

"(ii) The bridge bank sells all or substantially all of the stock of the bridge bank other than to the Corporation or to another bridge bank.

"(iii) A holding company or another bank that is not a bridge bank assumes all, or substantially all of the deposits or other liabilities of a bridge bank.

"(iv) A period of 2 years following the date the bridge bank was organized expires without any other disposition of the assets and liabilities of the bank having occurred.

"(B) EXTENSION ALLOWED FOR 1 YEAR.—If the Board of Directors finds, after consultation with the Comptroller of the Currency, that an extension of time for winding up the affairs of the bank is in the best interest of the depositors of the closed bank and the public, the Corporation may extend the time period specified in subparagraph (A)(iv) for not to exceed one year.

"(11) 2 OR MORE BANKS.—The Corporation, in the Corporation's discretion, may establish a bridge bank under this subsection to assume the deposits of, assume any other liabilities of, and purchase any assets of 2 or more closed banks."

(b) DEFINITIONS.—Section 3(i) of the Federal Deposit Insurance Act (12 U.S.C. 1813(i)) is amended to read as follows:

"(i) NEW BANK AND BRIDGE BANK DEFINED.—

"(1) NEW BANK.—The term 'new bank' means a new national bank, other than a bridge bank, organized by the Corporation in accordance with section 11(h).

"(2) BRIDGE BANK.—The term 'bridge bank' means a new national bank organized by the Corporation in accordance with section 11(i)."

SEC. 504. CONVERSIONS.

(a) AMENDMENT TO THE NATIONAL HOUSING ACT.—Section 403 of the National Housing Act (12 U.S.C. 1726) is amended by adding at the end thereof the following:

"(e) If, upon application, and pursuant to a plan of conversion to an institution of a type eligible to be an insured institution, the Corporation, in its discretion, determines to grant insurance of accounts to a savings bank that is an insured bank (as the term 'insured bank' is defined in section 3(h) of the Federal Deposit Insurance Act), such insurance shall become effective at such time as the Corporation stipulates, at which time such institution automatically shall lose its status as such an insured bank. No change of deposit insurance agencies from the Federal Deposit Insurance Corporation to the Corporation shall be treated, for the purposes of section 18(i) of the Federal Deposit Insurance Act, as involving a conversion to a noninsured bank or institution, except that the Corporation shall provide the Federal Deposit Insurance Corporation with notification of any application that, if granted, would involve such a change of deposit insurance agencies, shall consult with the Corporation before disposing of the application, and shall provide the Federal Deposit Insurance Corporation with notification of the determination with respect to such application."

(b) AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—

(1) SECTION 18 (c) APPLICABILITY.—Section 18(c)(12) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(12)) is amended to read as follows:

"(12) The provisions of this subsection shall not apply to any transaction where the acquiring, assuming, or resulting institution is an insured Federal savings bank or an institution insured by the

Ante, p. 629.

Infra.

Federal Savings and Loan Insurance Corporation, except that any insured bank involved in the transaction shall notify the Corporation in writing at least 30 days prior to consummation of the transaction and, if any approval by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation is required in connection therewith, such approving authority shall provide the Corporation with notification of the application for approval, shall consult with the Corporation before disposing of the application, and shall provide notification to the Corporation of the determination with respect to said application.”

(2) **SECTION 18 (i) APPLICABILITY.**—Section 18(i) of such Act is amended by adding at the end thereof the following:

Ante, p. 632.

“(5) Nothing in this subsection shall apply to a conversion of an insured bank to an insured institution pursuant to section 403(e) of the National Housing Act (12 U.S.C. 1726(e)).”

SEC. 505. FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCIES NOT SUBJECT TO APPORTIONMENT OF FUNDS PROVISIONS.

(a) **FEDERAL DEPOSIT INSURANCE CORPORATION.**—Section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) is amended by adding at the end thereof the following:

“(9) **APPORTIONMENT.**—Notwithstanding any other provision of law, amounts received pursuant to any assessment under this section and any other amounts received by the Corporation shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.”

(b) **THE COMPTROLLER OF THE CURRENCY.**—The second paragraph of section 5240 of the Revised Statutes (12 U.S.C. 481) is amended by inserting after the fifth sentence the following: “Such funds shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.”

31 USC 1501 *et seq.*

(c) **THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION.**—Section 404 of the National Housing Act (12 U.S.C. 1727) is amended by adding at the end thereof the following:

“(k) **APPORTIONMENT.**—Notwithstanding any other provision of law, amounts received by the Corporation pursuant to any assessment under this Act, deposits required under this section and any other moneys received by the Corporation shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.”

(d) **THE FEDERAL HOME LOAN BANK BOARD.**—The Federal Home Loan Bank Act (12 U.S.C. 1421 *et seq.*) is amended by inserting after section 19 (12 U.S.C. 1439) the following:

“SEC. 12A. APPORTIONMENT.

12 USC 1439-1.

“Notwithstanding any other provision of law, amounts received pursuant to any assessment under this Act and any other moneys received by the Board shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.”

(e) **THE NATIONAL CREDIT UNION ADMINISTRATION.**—Title I of the Federal Credit Union Act (12 U.S.C. 1751 *et seq.*) is amended by adding at the end thereof the following:

“SEC. 128. APPORTIONMENT.

12 USC 1772b.

“Notwithstanding any other provision of law, funds received by the Board pursuant to any method provided by this Act, and in-

terest, dividend, or other income thereon, shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.”.

31 USC 1501 *et seq.*

SEC. 506. FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCIES NOT SUBJECT TO SEQUESTRATION.

2 USC 905.

(a) **IN GENERAL.**—Paragraph (1) of section 255(g) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) by inserting after the item relating to compensation of the President the following new item:

“Comptroller of the Currency;”;

(2) by inserting after the item relating to the exchange stabilization fund the following new items:

“Federal Deposit Insurance Corporation;

“Federal Home Loan Bank Board;

“Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation;” and

(3) by inserting after the item relating to intragovernmental funds the following new items:

“National Credit Union Administration;

“National Credit Union Administration, central liquidity facility;

“National Credit Union Administration, credit union share insurance fund;”.

2 USC 906.

(b) **CERTAIN EXPENSES.**—Section 256(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end thereof the following new paragraph:

“(4) Notwithstanding any other provision of law, this subsection shall not apply with respect to the following:

“(A) Comptroller of the Currency.

“(B) Federal Deposit Insurance Corporation.

“(C) Federal Home Loan Bank Board.

“(D) Federal Savings and Loan Insurance Corporation.

“(E) National Credit Union Administration.

“(F) National Credit Union Administration, central liquidity facility.”.

SEC. 507. LIQUIDATION PROCEEDINGS.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by inserting after subsection (i) (as added by section 503(a)(3) of this title) the following new subsection:

“(j) **CONDITIONS APPLICABLE TO LIQUIDATION PROCEEDINGS.**—

“(1) **CONSIDERATION OF LOCAL ECONOMIC IMPACT REQUIRED.**—The Corporation shall fully consider the adverse economic impact on local communities, including businesses and farms, of actions to be taken by it during the administration and liquidation of loans of a closed bank.

“(2) **ACTIONS TO ALLEVIATE ADVERSE ECONOMIC IMPACT TO BE CONSIDERED.**—The actions which the Corporation shall consider include the release of proceeds from the sale of products and services for family living and business expenses and shortening the undue length of the decisionmaking process for the acceptance of offers of settlement contingent upon third party financing.

“(3) **GUIDELINES REQUIRED.**—The Corporation shall adopt and publish procedures and guidelines to minimize adverse eco-

conomic effects caused by its actions on individual debtors in the community.”.

SEC. 508. CAPITAL POOLS.

(a) FINDINGS.—The Congress hereby finds that—

(1) the Federal Deposit Insurance Corporation has the statutory authority to engage in open bank assistance for failing banks under section 13(c) of the Federal Deposit Insurance Act to minimize losses to the insurance fund and to provide for the stability of the community;

12 USC 1873.

(2) communities in depressed regions of the Nation have had increasing difficulty in raising capital to infuse into locally operated, failing banks;

(3) States have the authority to establish capital pools to supplement Federal Deposit Insurance Corporation funds and outside capital in arranging open banks assistance plans; and

(4) it is not in the public interest to have a fire sale of assets acquired by the Federal Deposit Insurance Corporation as a part of their acquisitions of nonperforming loans of failed banks.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that the Federal Deposit Insurance Corporation should—

(1) exercise its discretionary authority to work with States which authorize capital pools described in subsection (a)(3) to save community banks during this time of great economic distress in certain regions of the country; and

(2) use its discretionary authority to negotiate sale of loans in the Corporation's capacity as receiver for a closed insured bank to banks in the area in which such closed bank is located in order to prevent further asset devaluation.

SEC. 509. PERMANENT EXTENSION OF CERTAIN TEMPORARY PROVISIONS OF LAW; 5-YEAR EXTENSION OF NET WORTH CERTIFICATES.

(a) PERMANENT EXTENSION.—Part D of title I of the Garn-St Germain Depository Institutions Act of 1982 is repealed.

12 USC 1464
note.

(b) 5-YEAR EXTENSION OF NET WORTH CERTIFICATES.—Section 206(a) of such Act (12 U.S.C. 1729 note) is amended by striking out “October 13, 1986” and inserting in lieu thereof “October 13, 1991”.

12 USC 1729,
1823.

(c) PRIOR AMENDMENTS NOT EFFECTIVE.—No amendment made by part D of title I or section 206 of the Garn-St Germain Depository Institutions Act of 1982, as in effect before the date of the enactment of this Act, to any other provision of law shall be deemed to have taken effect before the date of the enactment of this Act and any such provision of law shall be in effect as if no such amendment had been made before such date of enactment.

12 USC 1464
note.

12 USC 1729,
1823.

TITLE VI—EXPEDITED FUNDS AVAILABILITY

Expedited Funds
Availability Act.
12 USC 4001
note.

SEC. 601. SHORT TITLE.

This title may be cited as the “Expedited Funds Availability Act”.

SEC. 602. DEFINITIONS.

12 USC 4001.

For purposes of this title—

(1) **ACCOUNT.**—The term “account” means a demand deposit account or other similar transaction account at a depository institution.

(2) **BOARD.**—The term “Board” means the Board of Governors of the Federal Reserve System.

(3) **BUSINESS DAY.**—The term “business day” means any day other than a Saturday, Sunday, or legal holiday.

(4) **CASH.**—The term “cash” means United States coins and currency, including Federal Reserve notes.

(5) **CASHIER'S CHECK.**—The term “cashier's check” means any check which—

(A) is drawn on a depository institution;

(B) is signed by an officer or employee of such depository institution; and

(C) is a direct obligation of such depository institution.

(6) **CERTIFIED CHECK.**—The term “certified check” means any check with respect to which a depository institution certifies that—

(A) the signature on the check is genuine; and

(B) such depository institution has set aside funds which—

(i) are equal to the amount of the check; and

(ii) will be used only to pay such check.

(7) **CHECK.**—The term “check” means any negotiable demand draft drawn on or payable through an office of a depository institution located in the United States. Such term does not include noncash items.

(8) **CHECK CLEARINGHOUSE ASSOCIATION.**—The term “check clearinghouse association” means any arrangement by which participant depository institutions exchange deposited checks on a local basis, including an entire metropolitan area, without using the check processing facilities of the Federal Reserve System.

(9) **CHECK PROCESSING REGION.**—The term “check processing region” means the geographical area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations.

(10) **CONSUMER ACCOUNT.**—The term “consumer account” means any account used primarily for personal, family, or household purposes.

(11) **DEPOSITORY CHECK.**—The term “depository check” means any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board.

(12) **DEPOSITORY INSTITUTION.**—The term “depository institution” has the meaning given such term in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act. Such term also includes an office, branch, or agency of a foreign bank located in the United States.

(13) **LOCAL ORIGINATING DEPOSITORY INSTITUTION.**—The term “local originating depository institution” means any originating depository institution which is located in the same check processing region as the receiving depository institution.

(14) **NONCASH ITEM.**—The term “noncash item” means—

(A) a check or other demand item to which a passbook, certificate, or other document is attached;

(B) a check or other demand item which is accompanied by special instructions, such as a request for special advice of payment or dishonor; or

(C) any similar item which is otherwise classified as a noncash item in regulations of the Board.

(15) **NONLOCAL ORIGINATING DEPOSITORY INSTITUTION.**—The term “nonlocal originating depository institution” means any originating depository institution which is not a local depository institution.

(16) **PROPRIETARY ATM.**—The term “proprietary ATM” means an automated teller machine which is—

(A) located—

(i) at or adjacent to a branch of the receiving depository institution; or

(ii) in close proximity, as defined by the Board, to a branch of the receiving depository institution; or

(B) owned by, operated exclusively for, or operated by the receiving depository institution.

(17) **ORIGINATING DEPOSITORY INSTITUTION.**—The term “originating depository institution” means the branch of a depository institution on which a check is drawn.

(18) **NONPROPRIETARY ATM.**—The term “nonproprietary ATM” means an automated teller machine which is not a proprietary ATM.

(19) **PARTICIPANT.**—The term “participant” means a depository institution which—

(A) is located in the same geographic area as that served by a check clearinghouse association; and

(B) exchanges checks through the check clearinghouse association, either directly or through an intermediary.

(20) **RECEIVING DEPOSITORY INSTITUTION.**—The term “receiving depository institution” means the branch of a depository institution or the proprietary ATM in which a check is first deposited.

(21) **STATE.**—The term “State” means any State, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands.

(22) **TELLER'S CHECK.**—The term “teller's check” means any check issued by a depository institution and drawn on another depository institution.

(23) **UNITED STATES.**—The term “United States” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(24) **UNIT OF GENERAL LOCAL GOVERNMENT.**—The term “unit of general local government” means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

(25) **WIRE TRANSFER.**—The term “wire transfer” has such meaning as the Board shall prescribe by regulations.

SEC. 603. EXPEDITED FUNDS AVAILABILITY SCHEDULES.

12 USC 4002.

(a) **NEXT BUSINESS DAY AVAILABILITY FOR CERTAIN DEPOSITS.**—

(1) **CASH DEPOSITS; WIRE TRANSFERS.**—Except as provided in subsection (e) and in section 604, in any case in which—

(A) any cash is deposited in an account at a receiving depository institution staffed by individuals employed by such institution, or

State and local
governments.

(B) funds are received by a depository institution by wire transfer for deposit in an account at such institution, such cash or funds shall be available for withdrawal not later than the business day after the business day on which such cash is deposited or such funds are received for deposit.

(2) **GOVERNMENT CHECKS; CERTAIN OTHER CHECKS.**—Funds deposited in an account at a depository institution by check shall be available for withdrawal not later than the business day after the business day on which such funds are deposited in the case of—

(A) a check which—

- (i) is drawn on the Treasury of the United States; and
- (ii) is endorsed only by the person to whom it was issued;

(B) a check which—

- (i) is drawn by a State;
- (ii) is deposited in a receiving depository institution which is located in such State and is staffed by individuals employed by such institution;
- (iii) is deposited with a special deposit slip which indicates it is a check drawn by a State; and
- (iv) is endorsed only by the person to whom it was issued;

(C) a check which—

- (i) is drawn by a unit of general local government;
- (ii) is deposited in a receiving depository institution which is located in the same State as such unit of general local government and is staffed by individuals employed by such institution;
- (iii) is deposited with a special deposit slip which indicates it is a check drawn by a unit of general local government; and
- (iv) is endorsed only by the person to whom it was issued;

(D) the first \$100 deposited by check or checks on any one business day;

(E) a check deposited in a branch of a depository institution and drawn on the same or another branch of the same depository institution if both such branches are located in the same State or the same check processing region;

(F) a cashier's check, certified check, teller's check, or depository check which—

- (i) is deposited in a receiving depository institution which is staffed by individuals employed by such institution;
- (ii) is deposited with a special deposit slip which indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be; and
- (iii) is endorsed only by the person to whom it was issued.

(b) **PERMANENT SCHEDULE.**—

(1) **AVAILABILITY OF FUNDS DEPOSITED BY LOCAL CHECKS.**—Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 1 business day shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and

the business day on which the funds involved are available for withdrawal.

(2) **AVAILABILITY OF FUNDS DEPOSITED BY NONLOCAL CHECKS.**—Subject to paragraph (3) of this subsection, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 4 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) **TIME PERIOD ADJUSTMENTS FOR CASH WITHDRAWAL OF CERTAIN CHECKS.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), funds deposited in an account in a depository institution by check (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under paragraph (1) or (2).

(B) **5 P.M. CASH AVAILABILITY.**—Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this paragraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under paragraph (1) or (2). If funds deposited by checks described in both paragraph (1) and paragraph (2) become available for cash withdrawal under this paragraph on the same business day, the limitation contained in this subparagraph shall apply to the aggregate amount of such funds.

(C) **\$100 AVAILABILITY.**—Any amount available for withdrawal under this paragraph shall be in addition to the amount available under subsection (a)(2)(D).

(4) **APPLICABILITY.**—This subsection shall apply with respect to funds deposited by check in an account at a depository institution on or after September 1, 1990, except that the Board may, by regulation, make this subsection or any part of this subsection applicable earlier than September 1, 1990.

(c) **TEMPORARY SCHEDULE.**—

(1) **AVAILABILITY OF LOCAL CHECKS.**—

(A) **IN GENERAL.**—Subject to subparagraph (B) of this paragraph, subsections (a)(2), (d), and (e) of this section, and section 604, not more than 2 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a local originating depository institution and the business day on which such funds are available for withdrawal.

(B) **TIME PERIOD ADJUSTMENT FOR CASH WITHDRAWAL OF CERTAIN CHECKS.**—

(i) **IN GENERAL.**—Except as provided in clause (ii), funds deposited in an account in a depository institution by check drawn on a local depository institution that is not a participant in the same check clearing-house association as the receiving depository institution (other than a check described in subsection (a)(2)) shall be available for cash withdrawal not later than

the business day after the business day on which such funds otherwise are available under subparagraph (A).

(ii) **5 P.M. CASH AVAILABILITY.**—Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this subparagraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under subparagraph (A).

(iii) **\$100 AVAILABILITY.**—Any amount available for withdrawal under this subparagraph shall be in addition to the amount available under subsection (a)(2)(D).

(2) **AVAILABILITY OF NONLOCAL CHECKS.**—Subject to subsections (a)(2), (d), and (e) of this section and section 604, not more than 6 business days shall intervene between the business day on which funds are deposited in an account at a depository institution by a check drawn on a nonlocal originating depository institution and the business day on which such funds are available for withdrawal.

(3) **APPLICABILITY.**—This subsection shall apply with respect to funds deposited by check in an account at a depository institution after August 31, 1988, and before September 1, 1990, except as may be otherwise provided under subsection (b)(4).

(d) TIME PERIOD ADJUSTMENTS.—

(1) **REDUCTION GENERALLY.**—Notwithstanding any other provision of law, the Board shall, by regulation, reduce the time periods established under subsections (b), (c), and (e) to as short a time as possible and equal to the period of time achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of checks.

(2) **EXTENSION FOR CERTAIN DEPOSITS IN NONCONTIGUOUS STATES OR TERRITORIES.**—Notwithstanding any other provision of law, any time period established under subsection (b), (c), or (e) shall be extended by 1 business day in the case of any deposit which is both—

(A) deposited in an account at a depository institution which is located in Alaska, Hawaii, Puerto Rico, or the Virgin Islands; and

(B) deposited by a check drawn on an originating depository institution which is not located in the same State, commonwealth, or territory as the receiving depository institution.

(e) DEPOSITS AT AN ATM.—

(1) NONPROPRIETARY ATM—TEMPORARY SCHEDULE.—

(A) **IN GENERAL.**—Not more than 6 business days shall intervene between the business day a deposit described in subparagraph (B) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

(B) **DEPOSITS DESCRIBED IN THIS PARAGRAPH.**—A deposit is described in this subparagraph if it is—

(i) a cash deposit;

(ii) a deposit made by a check described in subsection (a)(2);

Regulations.

Alaska.
Hawaii.
Puerto Rico.
Virgin Islands.

(iii) a deposit made by a check drawn on a local originating depository institution (other than a check described in subsection (a)(2)); or

(iv) a deposit made by a check drawn on a nonlocal originating depository institution (other than a check described in subsection (a)(2)).

(C) **APPLICABILITY.**—This paragraph shall apply with respect to funds deposited at a nonproprietary automated teller machine after August 31, 1988, and before September 1, 1990.

(2) **NONPROPRIETARY ATM—PERMANENT SCHEDULE.**—

(A) **CASH, GOVERNMENT CHECKS, AND LOCAL CHECKS.**—Not more than 1 business day shall intervene between the business day on which a deposit described in paragraph (1)(B) (i), (ii), or (iii) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

(B) **NONLOCAL CHECKS.**—Not more than 4 business days shall intervene between the business day a deposit described in paragraph (1)(B)(iv) is made at a nonproprietary automated teller machine (for deposit in an account at a depository institution) and the business day on which funds from such deposit are available for withdrawal.

(C) **DETERMINATION OF “LOCAL ORIGINATING DEPOSITORY INSTITUTION”.**—For the purpose of this paragraph, a check is drawn on a local originating depository institution if that depository institution is located in the same check processing region as the receiving nonproprietary ATM.

(D) **APPLICABILITY.**—This paragraph shall apply with respect to funds deposited at a nonproprietary automated teller machine on or after September 1, 1990.

(3) **PROPRIETARY ATM—TEMPORARY AND PERMANENT SCHEDULES.**—The provisions of subsections (a), (b), and (c) shall apply with respect to any funds deposited at a proprietary automated teller machine for deposit in an account at a depository institution.

(4) **STUDY AND REPORT ON ATM'S.**—The Board shall, either directly or through the Consumer Advisory Council, establish and maintain a dialogue with depository institutions and their suppliers on the computer software and hardware available for use by automated teller machines, and shall, not later than September 1 of each of the first 3 calendar years beginning after the date of the enactment of this title, report to the Congress regarding such software and hardware and regarding the potential for improving the processing of automated teller machine deposits.

(f) **CHECK RETURN; NOTICE OF NONPAYMENT.**—No provision of this section shall be construed as requiring that, with respect to all checks deposited in a receiving depository institution—

(1) such checks be physically returned to such depository institution; or

(2) any notice of nonpayment of any such check be given to such depository institution within the times set forth in subsection (a), (b), (c), or (e) or in the regulations issued under any such subsection.

12 USC 4003.

SEC. 604. SAFEGUARD EXCEPTIONS.

(a) **NEW ACCOUNTS.**—Notwithstanding section 603, in the case of any account established at a depository institution by a new depositor, the following provisions shall apply with respect to any deposit in such account during the 30-day period (or such shorter period as the Board may establish) beginning on the date such account is established—

(1) **NEXT BUSINESS DAY AVAILABILITY OF CASH AND CERTAIN ITEMS.**—Except as provided in paragraph (3), in the case of—

(A) any cash deposited in such account;

(B) any funds received by such depository institution by wire transfer for deposit in such account;

(C) any funds deposited in such account by cashier's check, certified check, teller's check, depository check, or traveler's check; and

(D) any funds deposited by a government check which is described in subparagraph (A), (B), or (C) of section 603(a)(2), such cash or funds shall be available for withdrawal on the business day after the business day on which such cash or funds are deposited or, in the case of a wire transfer, on the business day after the business day on which such funds are received for deposit.

(2) **AVAILABILITY OF OTHER ITEMS.**—In the case of any funds deposited in such account by a check (other than a check described in subparagraph (C) or (D) of paragraph (1)), the availability for withdrawal of such funds shall not be subject to the provisions of section 603(b), 603(c), or paragraphs (1) and (2) of section 603(e).

(3) **LIMITATION RELATING TO CERTAIN CHECKS IN EXCESS OF \$5,000.**—In the case of funds deposited in such account during such period by checks described in subparagraph (C) or (D) of paragraph (1) the aggregate amount of which exceeds \$5,000—

(A) paragraph (1) shall apply only with respect to the first \$5,000 of such aggregate amount; and

(B) not more than 8 business days shall intervene between the business day on which any such funds are deposited and the business day on which such excess amount shall be available for withdrawal.

(b) **LARGE OR REDEPOSITED CHECKS; REPEATED OVERDRAFTS.**—The Board may, by regulation, establish reasonable exceptions to any time limitation established under subsection (b), (c), or (e) of section 603 for—

(1) the amount of deposits by one or more checks that exceeds the amount of \$5,000 in any one day;

(2) checks that have been returned unpaid and redeposited; and

(3) deposit accounts which have been overdrawn repeatedly.

(c) **REASONABLE CAUSE EXCEPTION.**—

(1) **IN GENERAL.**—In accordance with regulations which the Board shall prescribe, subsections (a)(2)(F), (b), (c), and (e) of section 603 shall not apply with respect to any check deposited in an account at a depository institution if the receiving depository institution has reasonable cause to believe that the check is uncollectible from the originating depository institution. For purposes of the preceding sentence, reasonable cause to believe requires the existence of facts which would cause a well-

grounded belief in the mind of a reasonable person. Such reasons shall be included in the notice required under subsection (f).

(2) **BASIS FOR DETERMINATION.**—No determination under this subsection may be based on any class of checks or persons.

(3) **OVERDRAFT FEES.**—If the receiving depository institution determines that a check deposited in an account is a check described in paragraph (1), the receiving depository institution shall not assess any fee for any subsequent overdraft with respect to such account, if—

(A) the depositor was not provided with the written notice required under subsection (f) (with respect to such determination) at the time the deposit was made;

(B) the overdraft would not have occurred but for the fact that the funds so deposited are not available; and

(C) the amount of the check is collected from the originating depository institution.

(4) **COMPLIANCE.**—Each agency referred to in section 610(a) shall monitor compliance with the requirements of this subsection in each regular examination of a depository institution and shall describe in each report to the Congress the extent to which this subsection is being complied with. For the purpose of this paragraph, each depository institution shall retain a record of each notice provided under subsection (f) as a result of the application of this subsection.

(d) **EMERGENCY CONDITIONS.**—Subject to such regulations as the Board may prescribe, subsections (b), (c), and (e) of section 603 shall not apply to funds deposited by check in any receiving depository institution in the case of—

(1) any interruption of communication facilities;

(2) suspension of payments by another depository institution;

(3) any war; or

(4) any emergency condition beyond the control of the receiving depository institution,

if the receiving depository institution exercises such diligence as the circumstances require.

(e) **PREVENTION OF FRAUD LOSSES.**—

(1) **IN GENERAL.**—The Board may, by regulation or order, suspend the applicability of this title, or any portion thereof, to any classification of checks if the Board determines that—

(A) depository institutions are experiencing an unacceptable level of losses due to check-related fraud, and

(B) suspension of this title, or such portion of this title, with regard to the classification of checks involved in such fraud is necessary to diminish the volume of such fraud.

(2) **SUNSET PROVISION.**—No regulation prescribed or order issued under paragraph (1) shall remain in effect for more than 45 days (excluding Saturdays, Sundays, legal holidays, or any day either House of Congress is not in session).

(3) **REPORT TO CONGRESS.**—

(A) **NOTICE OF EACH SUSPENSION.**—Within 10 days of prescribing any regulation or issuing any order under paragraph (1), the Board shall transmit a report of such action to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(B) CONTENTS OF REPORT.—Each report under subparagraph (A) shall contain—

- (i) the specific reason for prescribing the regulation or issuing the order;
- (ii) evidence considered by the Board in making the determination under paragraph (1) with respect to such regulation or order; and
- (iii) specific examples of the check-related fraud giving rise to such regulation or order.

(f) NOTICE OF EXCEPTION; AVAILABILITY WITHIN REASONABLE TIME.—

(1) IN GENERAL.—If any exception contained in this section (other than subsection (a)) applies with respect to funds deposited in an account at a depository institution—

(A) the depository institution shall provide notice in the manner provided in paragraph (2) of—

(i) the day the funds shall be made available for withdrawal; and

(ii) the reason the exception was invoked; and

(B) except where other time periods are specifically provided in this title, the availability of the funds deposited shall be governed by the policy of the receiving depository institution, but shall not exceed a reasonable period of time as determined by the Board.

(2) TIME FOR NOTICE.—The notice required under paragraph (1)(A) with respect to a deposit to which an exception contained in this section applies shall be made by the time provided in the following subparagraphs:

(A) In the case of a deposit made in person by the depositor at the receiving depository institution, the depository institution shall immediately provide such notice in writing to the depositor.

(B) In the case of any other deposit (other than a deposit described in subparagraph (C)), the receiving depository institution shall mail the notice to the depositor not later than the close of the next business day following the business day on which the deposit is received.

(C) In the case of a deposit to which subsection (d) or (e) applies, notice shall be provided by the depository institution in accordance with regulations of the Board.

(3) SUBSEQUENT DETERMINATIONS.—If the facts upon which the determination of the applicability of an exception contained in subsection (b) or (c) to any deposit only become known to the receiving depository institution after the time notice is required under paragraph (2) with respect to such deposit, the depository institution shall mail such notice to the depositor as soon as practicable, but not later than the first business day following the day such facts become known to the depository institution.

12 USC 4004.

SEC. 605. DISCLOSURE OF FUNDS AVAILABILITY POLICIES.

(a) NOTICE FOR NEW ACCOUNTS.—Before an account is opened at a depository institution, the depository institution shall provide written notice to the potential customer of the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into the customer's account.

(b) PREPRINTED DEPOSIT SLIPS.—All preprinted deposit slips that a depository institution furnishes to its customers shall contain a

summary notice, as prescribed by the Board in regulations, that deposited items may not be available for immediate withdrawal.

(c) MAILING OF NOTICE.—

(1) FIRST MAILING AFTER ENACTMENT.—In the first regularly scheduled mailing to customers occurring after the effective date of this section, but not more than 60 days after such effective date, each depository institution shall send a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into such customer's account, unless the depository institution has provided a disclosure which meets the requirements of this section before such effective date.

(2) SUBSEQUENT CHANGES.—A depository institution shall send a written notice to customers at least 30 days before implementing any change to the depository institution's policy with respect to when customers may withdraw funds deposited into consumer accounts, except that any change which expedites the availability of such funds shall be disclosed not later than 30 days after implementation.

(3) UPON REQUEST.—Upon the request of any person, a depository institution shall provide or send such person a written notice containing the specific policy of such depository institution with respect to when a customer may withdraw funds deposited into a customer's account.

(d) POSTING OF NOTICE.—

(1) SPECIFIC NOTICE AT MANNED TELLER STATIONS.—Each depository institution shall post, in a conspicuous place in each location where deposits are accepted by individuals employed by such depository institution, a specific notice which describes the time periods applicable to the availability of funds deposited in a consumer account.

(2) GENERAL NOTICE AT AUTOMATED TELLER MACHINES.—In the case of any automated teller machine at which any funds are received for deposit in an account at any depository institution, the Board shall prescribe, by regulations, that the owner or operator of such automated teller machine shall post or provide a general notice that funds deposited in such machine may not be immediately available for withdrawal.

(e) NOTICE OF INTEREST PAYMENT POLICY.—If a depository institution described in section 606(b) begins the accrual of interest or dividends at a later date than the date described in section 606(a) with respect to all funds, including cash, deposited in an interest-bearing account at such depository institution, any notice required to be provided under subsections (a) and (c) shall contain a written description of the time at which such depository institution begins to accrue interest or dividends on such funds.

(f) MODEL DISCLOSURE FORMS.—

(1) PREPARED BY BOARD.—The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this section and to aid customers by utilizing readily understandable language.

(2) USE OF FORMS TO ACHIEVE COMPLIANCE.—A depository institution shall be deemed to be in compliance with the requirements of this section if such institution—

(A) uses any appropriate model form or clause as published by the Board, or

(B) uses any such model form or clause and changes such form or clause by—

(i) deleting any information which is not required by this title; or

(ii) rearranging the format.

(3) **VOLUNTARY USE.**—Nothing in this title requires the use of any such model form or clause prescribed by the Board under this subsection.

(4) **NOTICE AND COMMENT.**—Model disclosure forms and clauses shall be adopted by the Board only after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

Federal
Register,
publication.

12 USC 4005.

SEC. 606. PAYMENT OF INTEREST.

(a) **IN GENERAL.**—Except as provided in subsection (b) or (c) and notwithstanding any other provision of law, interest shall accrue on funds deposited in an interest-bearing account at a depository institution beginning not later than the business day on which the depository institution receives provisional credit for such funds.

(b) **SPECIAL RULE FOR CREDIT UNIONS.**—Subsection (a) shall not apply to an account at a depository institution described in section 19(b)(1)(A)(iv) of the Federal Reserve Act if the depository institution—

12 USC 461.

(1) begins the accrual of interest or dividends at a later date than the date described in subsection (a) with respect to all funds, including cash, deposited in such account; and

(2) provides notice of the interest payment policy in the manner required under section 605(e).

(c) **EXCEPTION FOR CHECKS RETURNED UNPAID.**—No provision of this title shall be construed as requiring the payment of interest or dividends on funds deposited by a check which is returned unpaid.

12 USC 4006.

SEC. 607. MISCELLANEOUS PROVISIONS.

(a) **AFTER-HOURS DEPOSITS.**—For purposes of this title, any deposit which is made on a Saturday, Sunday, legal holiday, or after the close of business on any business day shall be deemed to have been made on the next business day.

(b) **AVAILABILITY AT START OF BUSINESS DAY.**—Except as provided in subsections (b)(3) and (c)(1)(B) of section 603, if any provision of this title requires that funds be available for withdrawal on any business day, such funds shall be available for withdrawal at the start of such business day.

(c) **EFFECT ON POLICIES OF DEPOSITORY INSTITUTIONS.**—No provision of this title shall be construed as—

(1) prohibiting a depository institution from making funds available for withdrawal in a shorter period of time than the period of time required by this title; or

(2) affecting a depository institution's right—

(A) to accept or reject a check for deposit;

(B) to revoke any provisional settlement made by the depository institution with respect to a check accepted by such institution for deposit;

(C) to charge back the depositor's account for the amount of such check; or

(D) to claim a refund of such provisional credit.

(d) **PROHIBITION ON FREEZING CERTAIN FUNDS IN AN ACCOUNT.**—In any case in which a check is deposited in an account at a depository institution and the funds represented by such check are not yet available for withdrawal pursuant to this title, the depository institution may not freeze any other funds in such account (which are otherwise available for withdrawal pursuant to this title) solely because the funds so deposited are not yet available for withdrawal.

(e) **EMPLOYEE TRAINING ON AND COMPLIANCE WITH THE REQUIREMENTS OF THIS TITLE.**—Each depository institution shall—

(1) take such actions as may be necessary fully to inform each employee (who performs duties subject to the requirements of this title) of the requirements of this title; and

(2) establish and maintain procedures reasonably designed to assure and monitor employee compliance with such requirements.

SEC. 608. EFFECT ON STATE LAW.

12 USC 4007.

(a) **IN GENERAL.**—Any law or regulation of any State in effect on September 1, 1989, which requires that funds deposited or received for deposit in an account at a depository institution chartered by such State be made available for withdrawal in a shorter period of time than the period of time provided in this title or in regulations prescribed by the Board under this title (as in effect on September 1, 1989) shall—

(1) supersede the provisions of this title and any regulations by the Board to the extent such provisions relate to the time by which funds deposited or received for deposit in an account shall be available for withdrawal; and

(2) apply to all federally insured depository institutions located within such State.

(b) **OVERRIDE OF CERTAIN STATE LAWS.**—Except as provided in subsection (a), this title and regulations prescribed under this title shall supersede any provision of the law of any State, including the Uniform Commercial Code as in effect in such State, which is inconsistent with this title or such regulations.

SEC. 609. REGULATIONS AND REPORTS BY BOARD.

12 USC 4008.

(a) **IN GENERAL.**—After notice and opportunity to submit comment in accordance with section 553(c) of title 5, United States Code, the Board shall prescribe regulations—

(1) to carry out the provisions of this title;

(2) to prevent the circumvention or evasion of such provisions; and

(3) to facilitate compliance with such provisions.

(b) **REGULATIONS RELATING TO IMPROVEMENT OF CHECK PROCESSING SYSTEM.**—In order to improve the check processing system, the Board shall consider (among other proposals) requiring, by regulation, that—

(1) depository institutions be charged based upon notification that a check or similar instrument will be presented for payment;

(2) the Federal Reserve banks and depository institutions provide for check truncation;

(3) depository institutions be provided incentives to return items promptly to the depository institution of first deposit;

(4) the Federal Reserve banks and depository institutions take such actions as are necessary to automate the process of returning unpaid checks;

(5) each depository institution and Federal Reserve bank—

(A) place its endorsement, and other notations specified in regulations of the Board, on checks in the positions specified in such regulations; and

(B) take such actions as are necessary to—

(i) automate the process of reading endorsements; and

(ii) eliminate unnecessary endorsements;

(6) within one business day after an originating depository institution is presented a check (for more than such minimum amount as the Board may prescribe)—

(A) such originating depository institution determines whether it will pay such check; and

(B) if such originating depository institution determines that it will not pay such check, such originating depository institution directly notify the receiving depository institution of such determination;

(7) regardless of where a check is cleared initially, all returned checks be eligible to be returned through the Federal Reserve System;

(8) Federal Reserve banks and depository institutions participate in the development and implementation of an electronic clearinghouse process to the extent the Board determines, pursuant to the study under subsection (f), that such a process is feasible; and

(9) originating depository institutions be permitted to return unpaid checks directly to, and obtain reimbursement for such checks directly from, the receiving depository institution.

(c) REGULATORY RESPONSIBILITY OF BOARD FOR PAYMENT SYSTEM.—

(1) RESPONSIBILITY FOR PAYMENT SYSTEM.—In order to carry out the provisions of this title, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate—

(A) any aspect of the payment system, including the receipt, payment, collection, or clearing of checks; and

(B) any related function of the payment system with respect to checks.

(2) REGULATIONS.—The Board shall prescribe such regulations as it may determine to be appropriate to carry out its responsibility under paragraph (1).

(d) REPORTS.—

(1) IMPLEMENTATION PROGRESS REPORTS.—

(A) REQUIRED REPORTS.—The Board shall transmit a report to both Houses of the Congress not later than 18, 30, and 48 months after the date of the enactment of this title.

(B) CONTENTS OF REPORT.—Each such report shall describe—

(i) the actions taken and progress made by the Board to implement the schedules established in section 603, and

(ii) the impact of this title on consumers and depository institutions.

(2) EVALUATION OF TEMPORARY SCHEDULE REPORT.—

(A) **REPORT REQUIRED.**—The Board shall transmit a report to both Houses of the Congress not later than 2 years after the date of the enactment of this title regarding the effects the temporary schedule established under section 603(c) have had on depository institutions and the public.

(B) **CONTENTS OF REPORT.**—Such report shall also assess the potential impact the implementation of the schedule established in section 603(b) will have on depository institutions and the public, including an estimate of the risks to and losses of depository institutions and the benefits to consumers. Such report shall also contain such recommendations for legislative or administrative action as the Board may determine to be necessary.

(3) **COMPTROLLER GENERAL EVALUATION REPORT.**—Not later than 6 months after section 603(b) takes effect, the Comptroller General of the United States shall transmit a report to the Congress evaluating the implementation and administration of this title.

(e) **CONSULTATION.**—In prescribing regulations under subsections (a) and (b), the Board shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration Board.

(f) **ELECTRONIC CLEARINGHOUSE STUDY.**—

(1) **STUDY REQUIRED.**—The Board shall study the feasibility of modernizing and accelerating the check payment system through the development of an electronic clearinghouse process utilizing existing telecommunications technology to avoid the necessity of actual presentment of the paper instrument to a payor institution before such institution is charged for the item.

(2) **CONSULTATION; FACTORS TO BE STUDIED.**—In connection with the study required under paragraph (1), the Board shall—

(A) consult with appropriate experts in telecommunications technology; and

(B) consider all practical and legal impediments to the development of an electronic clearinghouse process.

(3) **REPORT REQUIRED.**—The Board shall report its conclusions to the Congress within 9 months of the date of the enactment of this title.

SEC. 610. ADMINISTRATIVE ENFORCEMENT.

12 USC 4009.

(a) **ADMINISTRATIVE ENFORCEMENT.**—Compliance with the requirements imposed under this title, including regulations prescribed by and orders issued by the Board of Governors of the Federal Reserve System under this title, shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act in the case of—

12 USC 1818.

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and section 17 of the Federal

12 USC 1464.

12 USC 1730.

12 USC 1437.

Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and

12 USC 1751.

(3) the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any Federal credit union or insured credit union.

(b) ADDITIONAL POWERS.—

(1) **VIOLATION OF THIS TITLE TREATED AS VIOLATION OF OTHER ACTS.**—For purposes of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act.

(2) **ENFORCEMENT AUTHORITY UNDER OTHER ACTS.**—In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in such subsection may exercise, for purposes of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) ENFORCEMENT BY THE BOARD.—

(1) **IN GENERAL.**—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a) of this section, the Board of Governors of the Federal Reserve System shall enforce such requirements.

(2) **ADDITIONAL REMEDY.**—If the Board determines that—

(A) any depository institution which is not a depository institution described in subsection (a), or

(B) any other person subject to the authority of the Board under this title, including any person subject to the authority of the Board under section 605(d)(2) or 609(c),

has failed to comply with any requirement imposed by this title or by the Board under this title, the Board may issue an order prohibiting any depository institution, any Federal Reserve bank, or any other person subject to the authority of the Board from engaging in any activity or transaction which directly or indirectly involves such noncomplying depository institution or person (including any activity or transaction involving the receipt, payment, collection, and clearing of checks and any related function of the payment system with respect to checks).

(d) **PROCEDURAL RULES.**—The authority of the Board to prescribe regulations under this title does not impair the authority of any other agency designated in this section to make rules regarding its own procedures in enforcing compliance with requirements imposed under this title.

12 USC 4010.

SEC. 611. CIVIL LIABILITY.

(a) **CIVIL LIABILITY.**—Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under this title or any regulation prescribed under this title with respect to any person other than another depository institution is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A) in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than \$100 nor greater than \$1,000; or

(B) in the case of a class action, such amount as the court may allow, except that—

(i) as to each member of the class, no minimum recovery shall be applicable; and

(ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of \$500,000 or 1 percent of the net worth of the depository institution involved; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) **CLASS ACTION AWARDS.**—In determining the amount of any award in any class action, the court shall consider, among other relevant factors—

(1) the amount of any actual damages awarded;

(2) the frequency and persistence of failures of compliance;

(3) the resources of the depository institution;

(4) the number of persons adversely affected; and

(5) the extent to which the failure of compliance was intentional.

(c) **BONA FIDE ERRORS.**—

(1) **GENERAL RULE.**—A depository institution may not be held liable in any action brought under this section for a violation of this title if the depository institution demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(2) **EXAMPLES.**—Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a depository institution's obligation under this title is not a bona fide error.

(d) **JURISDICTION.**—Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year after the date of the occurrence of the violation involved.

(e) **RELIANCE ON BOARD RULINGS.**—No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) **AUTHORITY TO ESTABLISH RULES REGARDING LOSSES AND LIABILITY AMONG DEPOSITORY INSTITUTIONS.**—The Board is authorized to impose on or allocate among depository institutions the risks of loss and liability in connection with any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks. Liability under this subsection shall not exceed the amount of the

check giving rise to the loss or liability, and, where there is bad faith, other damages, if any, suffered as a proximate consequence of any act or omission giving rise to the loss or liability.

SEC. 612. PARITY IN CLEARING.

(a) **IN GENERAL.**—Section 11A of the Federal Reserve Act (12 U.S.C. 248a) is amended by adding at the end thereof the following:

“(e) All depository institutions, as defined in section 19(b)(1) (12 U.S.C. 461(b)(1)), may receive for deposit and as deposits any evidences of transaction accounts, as defined by section 19(b)(1) (12 U.S.C. 461(b)(1)) from other depository institutions, as defined in section 19(b)(1) (12 U.S.C. 461(b)(1)) or from any office of any Federal Reserve bank without regard to any Federal or State law restricting the number or the physical location or locations of such depository institutions.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on the date of enactment of this title.

SEC. 613. EFFECTIVE DATES.

(a) **DATE OF ENACTMENT.**—Except as provided in subsection (b), this title shall take effect on the date of the enactment of this title.

(b) **1 YEAR AFTER DATE OF ENACTMENT.**—Sections 603, 604, 605, 606, 610, and 611 shall take effect on September 1, 1988.

TITLE VII—CREDIT UNION AMENDMENTS

SEC. 701. SHORT TITLE.

This title may be cited as the “Credit Union Amendments of 1987”.

SEC. 702. SECOND MORTGAGE AND HOME IMPROVEMENT LOANS.

Section 107(5)(A)(ii) of the Federal Credit Union Act (12 U.S.C. 1757(5)(A)(ii)) is amended by striking out “fifteen years” and all that follows and inserting in lieu thereof “15 years or any longer term which the Board may allow;”.

SEC. 703. OWNERSHIP INTEREST.

Section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)) is amended by inserting “, representing equity,” after “payments”.

SEC. 704. FAITHFUL PERFORMANCE.

(a) **FINANCIAL OFFICER.**—Section 112 of the Federal Credit Union Act (12 U.S.C. 1761a) is amended by striking out the third sentence and inserting in lieu thereof the following: “The board shall elect from their number a financial officer who shall give adequate fidelity coverage in accordance with section 113(2) of this Act.”

(b) **ADEQUATE FIDELITY COVERAGE.**—Section 113 of the Federal Credit Union Act (12 U.S.C. 1761b) is amended by striking out paragraph (2) and inserting in lieu thereof the following:

“(2) provide adequate fidelity coverage for officers and employees having custody of or handling funds according to regulations issued by the Board;”.

SEC. 705. MEMBERSHIP OFFICERS.

Section 113(1) of the Federal Credit Union Act (12 U.S.C. 1761b(1)) is amended by striking out “of the board of directors” and inserting in lieu thereof “of the credit union”.

12 USC 248a
note.

12 USC 4001
note.

Credit Union
Amendments
of 1987.
12 USC 1751
note.

SEC. 706. NONPARTICIPATION.

Section 118 of the Federal Credit Union Act (12 U.S.C. 1764) is amended—

(1) by striking out “Subject to” in subsection (a) and inserting in lieu thereof “Except as provided in”; and

(2) by inserting “and enforce” after “adopt” in subsection (b).

SEC. 707. PROPERTY ACQUISITION FLEXIBILITY.

Section 120(i)(2) of the Federal Credit Union Act (12 U.S.C. 1766(i)(2)) is amended—

(1) by inserting after “reimbursement,” the following: “acquire and dispose of, by lease or purchase, real or personal property, without regard to the provisions of any other law applicable to executive or independent agencies of the United States,”; and

(2) by inserting after “this Act” the following: “, in accordance with the rules and regulations or policies established by the Board not inconsistent with this Act”.

SEC. 708. TREATMENT OF NCUAB FUNDS.

Title I of the Federal Credit Union Act is amended by adding at the end thereof the following:

“SEC. 129. TRUST FUND.

12 USC 1772c.

“Notwithstanding any other provision of law, all moneys of the Board shall be treated as trust funds for the purpose of section 256(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985. This section is effective for fiscal year 1986 and every fiscal year thereafter.”.

Ante, p. 634.**SEC. 709. TECHNICAL AND CLARIFYING AMENDMENTS; REMOVAL AND PROHIBITION AUTHORITY.**

Section 206(g) of the Federal Credit Union Act (12 U.S.C. 1786(g)) is amended—

(1) in paragraph (1), by striking out “director, officer, or committee member” each time it appears and inserting in lieu thereof “director, officer, committee member, or employee”; and

(2) in paragraph (2), by striking out “director, officer, or committee member” each place it appears and inserting in lieu thereof “director, officer, committee member, or employee”; and

(3) in paragraph (2), by striking out “any other person” and inserting in lieu thereof “any agent or other person”; and

(4) in paragraph (2), by inserting “employee, agent,” before “or other person”.

SEC. 710. EFFECT OF REMOVAL OR SUSPENSION.

Section 206(g) of the Federal Credit Union Act (12 U.S.C. 1786(g)) is amended by adding at the end thereof the following:

“(7)(A) Any person who, pursuant to this subsection, is removed, suspended, or prohibited from participation in the conduct of the affairs of an insured credit union shall also be removed, suspended, or prohibited from participation in the conduct of the affairs of any insured institution, any bank holding company or subsidiary of a bank holding company, any organization organized and operated under section 25(a) of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act, and any savings and loan holding company or subsidiary of a savings and loan holding com-

12 USC 1701.

pany (as those terms are defined in the National Housing Act), and any institution chartered by and subject to regulation by the Farm Credit Administration without the prior written approval of the appropriate Federal regulatory agency.

“(B) As used in subsection (g), the term ‘insured institution’ means an insured credit union or a depository institution whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.”.

SEC. 711. IMPOSITION OF CONSERVATORSHIP.

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

- (1) by striking out “or” at the end of subparagraph (A);
- (2) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof a semicolon; and
- (3) by adding at the end thereof the following:

“(C) there is a willful violation of a cease-and-desist order which has become final; or

“(D) there is concealment of books, papers, records, or assets of the credit union or refusal to submit books, papers, records, or affairs of the credit union for inspection to any examiner or to any lawful agent of the Board.”.

SEC. 712. REDUCTION IN STATE COMMENT WAITING PERIOD.

Section 206(h)(2)(B) of the Federal Credit Union Act (12 U.S.C. 1786(h)(2)(B)) is amended by striking out “ninety” and inserting in lieu thereof “30”.

SEC. 713. AUTHORITY AS CONSERVATOR.

Section 206(h) of the Federal Credit Union Act (12 U.S.C. 1786(h)) is amended—

- (1) by redesignating paragraph (8) as paragraph (9); and
- (2) by inserting after paragraph (7) the following:

“(8) The conservator shall have all the powers of the members, the directors, the officers, and the committees of the credit union and shall be authorized to operate the credit union in its own name or to conserve its assets in the manner and to the extent authorized by the Board.”.

SEC. 714. LIQUIDATION PROCEEDINGS.

(a) APPLICATION FOR SHOW CAUSE ORDER.—Section 207(a)(1) of the Federal Credit Union Act (12 U.S.C. 1787(a)(1)) is amended—

- (1) by inserting “(A)” after “(1)”; and
- (2) by adding at the end thereof the following:

“(B) Not later than 10 days after the date on which the Board closes a credit union for liquidation pursuant to paragraph (1), or accepts appointment as liquidating agent pursuant to subsection (b), such insured credit union may apply to the United States district court for the judicial district in which the principal office of such insured credit union is located or the United States District Court for the District of Columbia, for an order requiring the Board to show cause why it should not be prohibited from continuing such liquidation. Except as otherwise provided in this subparagraph, no court may take any action for or toward the removal of any liquidating agent or, except at the instance of the Board, restrain or affect the exercise of powers or functions of a liquidating agent.”.

(b) **LIQUIDATIONS SUBJECT TO REGULATION OF THE BOARD.**—Section 208(c) of the Federal Credit Union Act (12 U.S.C. 1788(c)) is redesignated as subsection (j) of section 207 (12 U.S.C. 1787) and is amended by striking out “subject to the regulation of the court or other public body having jurisdiction over the matter” and inserting in lieu thereof “subject only to the regulation of the Board, or, in cases where the Board has been appointed liquidating agent solely by a public authority having jurisdiction over the matter other than said Board, subject only to the regulation of such public authority”.

(c) **CONFORMING AMENDMENT.**—Section 208(d) of the Federal Credit Union Act (12 U.S.C. 1788(d)) is redesignated as section 208(c).

SEC. 715. TRANSFER OF FTC JURISDICTION TO NCUAB.

(a) **IN GENERAL.**—

(1) Sections 5(a)(2) and 6(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2) and 46(a)) are amended by inserting immediately after “section 18(f)(3),” the following: “Federal credit unions described in section 18(f)(4),”.

15 USC 57a.

(2) Section 6(b) of the Federal Trade Commission Act (15 U.S.C. 46(b)) is amended by inserting immediately after “section 18(f)(3),” the following “Federal credit unions described in section 18(f)(4),”.

(b) **INVESTIGATIONS OF FOREIGN TRADE CONDITIONS; REPORTS.**—The second proviso in section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended—

(1) by inserting immediately after “section 18(f)(3),” the following: “Federal credit unions described in section 18(f)(4),”; and

(2) by inserting immediately after “in business as a savings and loan institution,” the following: “in business as a Federal credit union,”.

(c) **REGULATIONS TO BE PRESCRIBED BY NCUAB.**—

(1) The second sentence of section 18(f)(1) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(1)) is amended by inserting immediately after “paragraph (3))” the following: “and the National Credit Union Administration Board (with respect to Federal credit unions described in paragraph (4))”.

(2) The last sentence of section 18(f)(1) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(1)) is amended—

(A) by striking “either such” and inserting in lieu thereof “any such”;

(B) by inserting “or Federal credit unions described in paragraph (4),” immediately after “paragraph (3),” each place it appears therein; and

(C) by inserting immediately after “with respect to banks” the following: “, savings and loan institutions or Federal credit unions”.

(3) Section 18(f) of the Federal Trade Commission Act (15 U.S.C. 57a(f)) is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and by inserting immediately after paragraph (3) the following:

“(4) Compliance with regulations prescribed under this subsection shall be enforced with respect to Federal credit unions under sections 120 and 206 of the Federal Credit Union Act (12 U.S.C. 1766 and 1786).”.

SEC. 716. ASSETS WHICH MAY BE PLEDGED.

(a) **IN GENERAL.**—Section 121 of the Federal Credit Union Act (12 U.S.C. 1767) is amended by adding at the end thereof the following new subsection:

State and local
governments.
Indians.

“(b) Any Federal credit union, upon the deposit with it of any funds by the Federal Government, an Indian tribe, or any State or local government or political subdivision thereof as otherwise authorized by this Act, is authorized to pledge any of its assets securing the payment of the funds so deposited.”.

(b) **CONFORMING AMENDMENT.**—Section 121 of the Federal Credit Union Act (12 U.S.C. 1767) is amended by striking out “Each” in the first sentence and inserting in lieu thereof “(a) Each”.

TITLE VIII—LOAN LOSS AMORTIZATION

SEC. 801. LOAN LOSS AMORTIZATION FOR AGRICULTURAL BANKS.

Ante, p. 623.

Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) is amended by adding at the end thereof the following:

“(j) **LOAN LOSS AMORTIZATION FOR CERTAIN BANKS.**—

“(1) **ELIGIBILITY.**—The appropriate Federal banking agency shall permit an agricultural bank to take the actions referred to in paragraph (2) if it finds that—

Fraud.

“(A) there is no evidence that fraud or criminal abuse on the part of the bank led to the losses referred to in paragraph (2); and

“(B) the agricultural bank has a plan to restore its capital, not later than the close of the amortization period established under paragraph (2), to a level prescribed by the appropriate Federal banking agency.

“(2) **SEVEN-YEAR LOSS AMORTIZATION.**—(A) Any loss on any qualified agricultural loan that an agricultural bank would otherwise be required to show on its annual financial statement for any year between December 31, 1983, and January 1, 1992, may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

Real property.

“(B) An agricultural bank may reappraise any real estate or other property, real or personal, that it acquired coincident to the making of a qualified agricultural loan and that it owned on January 1, 1983, and any such additional property that it acquires prior to January 1, 1992. Any loss that such bank would otherwise be required to show on its annual financial statements as the result of any such reappraisal may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

“(3) **REGULATIONS.**—Not later than 90 days after the date of enactment of this subsection, the appropriate Federal banking agency shall issue regulations implementing this subsection with respect to banks that it supervises, including regulations implementing the capital restoration requirement of paragraph (1)(B).

“(4) **DEFINITIONS.**—As used in this subsection—

“(A) the term ‘agricultural bank’ means a bank—

“(i) the deposits of which are insured by the Federal Deposit Insurance Corporation;

“(ii) which is located in an area the economy of which is dependent on agriculture;

“(iii) which has assets of \$100,000,000 or less; and

“(iv) which has—

“(I) at least 25 percent of its total loans in qualified agricultural loans; or

“(II) fewer than 25 percent of its total loans in qualified agricultural loans but which the appropriate Federal banking agency or State bank commissioner recommends to the Corporation for eligibility under this section, or which the Corporation, on its motion, deems eligible; and

“(B) the term ‘qualified agricultural loan’ means a loan made to finance the production of agricultural products or livestock in the United States, a loan secured by farmland or farm machinery, or such other category of loans as the appropriate Federal banking agency may deem eligible.

“(5) MAINTENANCE OF PORTFOLIO.—As a condition of eligibility under this subsection, the agricultural bank must agree to maintain in its loan portfolio a percentage of agricultural loans which is not lower than the percentage of such loans in its loan portfolio on January 1, 1986.”.

TITLE IX—FULL FAITH AND CREDIT OF FEDERALLY INSURED DEPOSITORY INSTITUTIONS

SEC. 901. REAFFIRMATION OF SECURITY OF FUNDS DEPOSITED IN FEDERALLY INSURED DEPOSITORY INSTITUTIONS.

(a) FINDINGS.—The Congress finds and declares that—

(1) since the 1930's, the American people have relied upon Federal deposit insurance to ensure the safety and security of their funds in federally insured depository institutions; and

(2) the safety and security of such funds is an essential element of the American financial system.

(b) SENSE OF CONGRESS.—In view of the findings and declarations contained in subsection (a), it is the sense of the Congress that it should reaffirm that deposits up to the statutorily prescribed amount in federally insured depository institutions are backed by the full faith and credit of the United States.

TITLE X—GOVERNMENT CHECKS

SEC. 1001. REPORT ON DIFFICULTY IN CASHING TREASURY CHECKS.

Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and transmit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the extent to which individuals who receive Treasury checks have difficulty cashing such checks.

SEC. 1002. TIME LIMIT ON PAYMENT OF TREASURY CHECKS.

Section 3328 of title 31, United States Code, is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following:

“(a) **TIME LIMIT ON TREASURY CHECKS.**—

31 USC 3329,
3330.

“(1) **IN GENERAL.**—Except as provided in sections 3329 and 3330 of this title—

“(A) the Secretary shall not be required to pay a Treasury check issued on or after the effective date of this section unless it is negotiated to a financial institution within 12 months after the date on which the check was issued; and

“(B) the Secretary shall not be required to pay a Treasury check issued before the effective date of this section unless it is negotiated to a financial institution within 12 months after such effective date.

“(2) **DEFERRAL PENDING SETTLEMENT.**—Notwithstanding the time limitations imposed by paragraph (1), if the Secretary is on notice of a question of law or fact about whether a Treasury check is properly payable when the check is presented for payment, the Secretary may defer payment on such check until the Comptroller General settles the question.

“(3) Nothing in this subsection shall be construed to affect the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued.”; and

(2) by adding at the end thereof the following:

“(f) **AUTHORITY TO DECLINE PAYMENT.**—Nothing in this section limits the authority of the Secretary to decline payment of a Treasury check after first examination thereof at the Treasury.”.

SEC. 1003. CANCELLATION OF TREASURY CHECKS.

Chapter 33 of title 31, United States Code, is amended by adding at the end of subchapter II the following new section:

“§ 3334. Cancellation and proceeds distribution of Treasury checks

“(a) **IN GENERAL.**—(1) The Secretary shall provide monthly to each agency that authorizes the issuance of Treasury checks a list of those checks issued for such agency on or after such effective date that have not been paid and have become more than 12 months old during the preceding month, beginning with the fourteenth month following the effective date of this section.

“(2) Such checks shall be canceled by the Secretary and the proceeds thereof shall be returned to the agency concerned and credited to the appropriation or fund account initially charged for the payment.

“(b) **CHECKS ISSUED BEFORE EFFECTIVE DATE.**—(1) Not later than 18 months after the effective date of this section, the Secretary shall identify and cancel all Treasury checks issued before such effective date that have not been paid in accordance with section 3328 of this title.

“(2) The proceeds from checks canceled pursuant to paragraph (1) shall be applied to eliminate the balances in accounts that represent uncollectible accounts receivable and other costs associated with the payment of checks and check claims by the Department of the Treasury on behalf of all payment certifying agencies. Any remaining proceeds shall be deposited to the miscellaneous receipts of the Treasury.

“(c) NO EFFECT ON UNDERLYING OBLIGATION.—Nothing in this section shall be construed to affect the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued.”.

SEC. 1004. LIMITATION ON RECLAMATION ACTIONS AND CLAIMS.

(a) IN GENERAL.—Section 3712(a) of title 31, United States Code, is amended to read as follows:

“(a) CLAIMS OVER FORGED OR UNAUTHORIZED ENDORSEMENTS.—

Fraud.

“(1) PERIOD FOR CLAIMS.—If the Secretary of the Treasury determines that a Treasury check has been paid over a forged or unauthorized endorsement, the Secretary may reclaim the amount of such check from the presenting bank or any other endorser that has breached its guarantee of endorsements prior to—

“(A) the end of the 1-year period beginning on the date of payment; or

“(B) the expiration of the 180-day period beginning on the close of the period described in subparagraph (A) if a timely claim is received under section 3702.

Infra.

“(2) CIVIL ACTIONS.—(A) Except as provided in subparagraph (B), the United States may bring a civil action to enforce the liability of an endorser, transferor, depository, or fiscal agent on a forged or unauthorized signature or endorsement on, or a change in, a check or warrant issued by the Secretary of the Treasury, the United States Postal Service, or any disbursing official or agent not later than 1 year after a check or warrant is presented to the drawee for payment.

“(B) If the United States has given an endorser written notice of a claim against the endorser within the time allowed by subparagraph (A), the 1-year period for bringing a civil action on that claim under subparagraph (A) shall be extended by 3 years.

“(3) EFFECT ON AGENCY AUTHORITY.—Nothing in this subsection shall be construed to limit the authority of any agency under subchapter II of chapter 37 of this title.”.

31 USC 3711.

(b) CLAIMS PRESENTED TO AGENCIES.—Section 3702(c) of title 31, United States Code, is amended to read as follows:

“(c) ONE-YEAR LIMIT FOR CHECK CLAIMS.—(1) Any claim on account of a Treasury check shall be barred unless it is presented to the agency that authorized the issuance of such check within 1 year after the date of issuance of the check or the effective date of this subsection, whichever is later.

“(2) Nothing in this subsection affects the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued.”.

SEC. 1005. REGULATIONS.

31 USC 3328
note.

The Secretary of the Treasury may prescribe such rules, regulations, and procedures as the Secretary deems necessary to implement the amendments made by sections 1002, 1003, and 1004, including the recertification of Treasury checks which have been canceled or for which a claim has been asserted or barred.

SEC. 1006. EFFECTIVE DATE.

31 USC 3328
note.

The amendments made by sections 1002, 1003, and 1004 shall become effective 6 months after the date of enactment of this Act or

on such later date as the Secretary of the Treasury may prescribe in regulations.

TITLE XI—INTEREST TO CERTAIN DEPOSITORS

SEC. 1101. INTEREST TO CERTAIN DEPOSITORS.

(a) **PAYMENT OF INTEREST REQUIRED.**—Notwithstanding any other provision of law, the Federal Deposit Insurance Corporation shall pay interest in accordance with the requirements of subsection (b) on nonnegotiable certificates (commonly referred to as “yellow certificates”) which—

New York.

(1) were issued by the Golden Pacific National Bank of New York, New York, before such bank was declared to be insolvent by the Comptroller of the Currency on June 21, 1985; and

12 USC 1813.

(2) have been determined to be insured deposits (as such term is defined in section 3(m)(1) of the Federal Deposit Insurance Act) in any judicial action or agency proceeding.

(b) **COMPUTATION OF INTEREST.**—Interest required to be paid under subsection (a) with respect to any certificate described in such subsection shall be computed—

New York.

(1) on the principal amount of that portion of such certificate which was determined to be an insured deposit;

(2) at the statutory rate of interest in effect under the law of the State of New York; and

(3) for the period beginning on June 21, 1985, and ending on the date on which the holder of such certificate, or the holder's representative, receives the payment of deposit insurance on account of such certificate from the Federal Deposit Insurance Corporation.

TITLE XII—MISCELLANEOUS PROVISIONS

SEC. 1201. HIGH YIELD BOND STUDY.

(a) **IN GENERAL.**—The Comptroller General, in consultation with the Securities and Exchange Commission, the Federal Home Loan Bank Board, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation, the Secretary of the Treasury, and the Secretary of Labor shall study on a comparative basis to other types of investments made by federally insured institutions the issuance of and investment in high yield, noninvestment grade bonds during the 5 years prior to the date of enactment of this Act, including—

(1) the identity and rating (as determined by Moody's, Standard and Poor's, or other nationally recognized bond rating house) of the issuers of these bonds;

(2) the identity of the major purchasers of these bonds, including but not limited to federally insured depository institutions;

(3) the percentage of the total amount of high yield, noninvestment grade bonds that are issued as a method of financing corporate takeovers;

(4) the identity of the purchasers including, but not limited to, federally insured depository institutions that invest in high

yield, noninvestment grade bonds that are issued as a method of financing corporate takeovers;

(5) the purposes for which high yield, noninvestment grade bonds are issued other than for financing corporate takeovers;

(6) a summary and analysis of the adequacy of current State and Federal laws that regulate investment in high yield, noninvestment grade bonds, by investors including, but not limited to, federally insured depository institutions and pension funds; and

(7) a review of the impact of the issuance of and investment in high yield, noninvestment grade bonds upon corporate debt as it relates to Federal monetary policy.

(b) **OTHER TYPES OF DIRECT INVESTMENT.**—In preparing this study, the Comptroller General, in consultation with the aforementioned Federal agencies, shall also examine all other types of direct investments made by Federally insured institutions and the effect these investments have had on Federal insurance funds.

(c) **PUBLIC HEARING.**—In addition to the collection of information through surveys, public document review, interviews, and other information-gathering methods, at least one joint public hearing shall be held during the course of conducting the study.

(d) **REPORTING DATE.**—The Comptroller General shall transmit a report containing the results of the study under this section to the Congress not later than 6 months after the date of enactment of this Act.

SEC. 1202. STUDY OF COMPETITIVE ISSUES IN THE PAYMENTS MECHANISM.

(a) **IN GENERAL.**—The Comptroller General, in coordination and consultation with the Board of Governors of the Federal Reserve System, shall conduct a study of—

(1) the Federal Reserve System's exemption from the imposition of presentment fees;

(2) the impact of the imposition of presentment fees on the efficiency of the check collection system; and

(3) whether the Federal Reserve System requires check clearinghouses to provide services to Federal Reserve banks and whether Federal Reserve banks should pay check clearinghouses for any such services.

(b) **REPORTING DATE.**—The Comptroller General shall submit its report to Congress not later than 6 months after the date of enactment of this Act.

SEC. 1203. STUDY AND REPORTS CONCERNING DIRECT INVESTMENTS.

12 USC 1437
note.

(a) **STUDY REQUIRED.**—The Federal Home Loan Bank Board shall conduct a study of the effect of direct investment activities on insured institutions, including comparative analyses of the effect of direct investment activities on—

(1) different sized insured institutions;

(2) State chartered insured institutions;

(3) federally chartered insured institutions; and

(4) insured institutions in each of the Supervisory Examinations Rating Classifications.

(b) **REPORT REQUIRED.**—Not later than 18 months after the date of enactment of this Act, the Federal Home Loan Bank Board shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Hous-

ing, and Urban Affairs of the Senate, a report containing the findings and conclusions of the Board with respect to the study required under subsection (a), including—

- (1) the findings and conclusions of the Board concerning the losses to the insurance fund and the degree to which such losses were the result of direct investment activities with respect to each of the classes of institutions described in subsection (a); and
- (2) a comparison of the effects of direct investment activities prior to April 16, 1987, and the effect of such activities on or after April 16, 1987, for each of the classes of institutions described in subsection (a) and the losses to the insurance fund as a result of such activities.

(c) **PRIOR REPORTS TO CONGRESS ON CHANGES TO DIRECT INVESTMENT REGULATIONS.**—

(1) **IN GENERAL.**—Not less than 90 days before final approval is given by the Federal Home Loan Bank Board to any regulation which repeals or modifies (or has the effect of repealing or modifying) any regulation limiting direct investment activities, the Board shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the proposed regulation and the reasons for the proposed regulation, including the effect of such regulation on the insurance fund.

(2) **PROSPECTIVE APPLICATION OF RULE.**—Paragraph (1) shall not apply with respect to Board Resolution Numbered 87-215 and Board Resolution Numbered 87-215A.

(d) **DIRECT INVESTMENT ACTIVITY DEFINED.**—For purposes of this section, the term “direct investment activities” means activities which are limited under Board Resolution Numbered 87-215 and Board Resolution Numbered 87-215A.

12 USC 3806.

SEC. 1204. ADJUSTABLE RATE MORTGAGE CAPS.

(a) **IN GENERAL.**—Any adjustable rate mortgage loan originated by a creditor shall include a limitation on the maximum interest rate that may apply during the term of the mortgage loan.

(b) **REGULATIONS.**—The Board of Governors of the Federal Reserve System shall prescribe regulations to carry out the purposes of this section.

(c) **ENFORCEMENT.**—Any violation of this section shall be treated as a violation of the Truth in Lending Act and shall be subject to administrative enforcement under section 108 or civil damages under section 130 of such Act, or both.

15 USC 1601
note.
15 USC 1607.
15 USC 1640.

(d) **DEFINITIONS.**—For the purpose of this section—

(1) the term “creditor” means a person who regularly extends credit for personal, family, or household purposes; and

(2) the term “adjustable rate mortgage loan” means any loan secured by a lien on a one- to four-family dwelling unit, including a condominium unit, cooperative housing unit, or mobile home, where the loan is made pursuant to an agreement under which the creditor may, from time to time, adjust the rate of interest.

(e) **EFFECTIVE DATE.**—This section shall take effect upon the expiration of 120 days after the date of enactment of this Act.

SEC. 1205. SEPARABILITY OF PROVISIONS.

12 USC 226 note.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Approved August 10, 1987.

LEGISLATIVE HISTORY—H.R. 27 (S. 790):

HOUSE REPORTS: No. 100-62 (Comm. on Banking, Finance and Urban Affairs) and No. 100-261 (Comm. of Conference).

SENATE REPORTS: No. 100-19 accompanying S. 790 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 133 (1987):

May 5, H.R. 27 considered and passed House.

May 14, considered and passed Senate, amended.

June 11, House disagreed to Senate amendments.

Aug. 3, House agreed to conference report.

Aug. 4, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 23 (1987):

Aug. 10, Presidential remarks.