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STUDY OF BANKING LAWS

HEARINGS

BEFORE THE

COMMITTEE ON BANKING AND CURRENCY UNITED STATES SENATE

EIGHTY-FOURTH CONGRESS

SECOND SESSION

TO CONSIDER THE LEGISLATIVE RECOMMENDATIONS OF THE FEDERAL SUPERVISORY AGENCIES

PART 1

NOVEMBER 9 AND 10, 1956

Printed for the use of the Committee on Banking and Currency

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Study Authorized by the Committee on Banking and Currency Pursuant to Senate Resolution 155, 84th Congress, 2d Session

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STUDY OF BANKING LAWS

FRIDAY, NOVEMBER 9, 1956

UNITED STATES SENATE,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D. C.

The committee met, pursuant to call, in room 318, Senate Office Building, at 9:35 a. m., Senator A. Willis Robertson, acting chairman, presiding.

Present: Senators Robertson, Douglas, and Beall.

Also present: Donald L. Rogers, counsel, Banking and Currency Committee.

Senator ROBERTSON. The committee will please come to order.

We expect to have four other members of our committee here, but they are delayed. Pending their arrival we will take care of several preliminary matters.

First, I want to thank this splendid group of bankers and those interested in credit affairs for their willingness to serve on this advisory committee. We feel that we are particularly fortunate in prevailing on my good friend, Kenton Cravens, to serve as chairman of the Advisory Committee, and I feel highly gratified at the way he has organized the work and broken it down into subcommittees, so that those who are specialists in the various fields can center on proposals that they want the full advisory committee to act on at their next meeting in December.

Last July I was designated by Senator Fulbright to serve as acting chairman of the Senate Banking and Currency Committee for a study of the Federal statutes governing financial institutions and credit. The need for such an inquiry was evidenced by the fact that there had been no major revision of these laws in over 20 years. At the outset, I requested the Federal agencies concerned to review their statutory authority for the purpose of deleting obsolete provisions and adding new authority where needed. Trade associations in the financial field were also contacted and were requested to prepare appropriate recommendations.

In September, a 27-man advisory committee was selected to assist the Banking and Currency Committee. The recommendations of this highly competent group will make an important contribution to the study.

The committee counsel, Donald L. Rogers, was directed to prepare, with the assistance of the Federal supervisory agencies, all the necessary background information. In this connection, a compilation of the Federal statutes relating to banks, savings and loan associations, and credit unions has been prepared and published. In addition, the 176 legislative recommendations of the Federal supervisory agencies have been printed in book form.

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The purpose of our hearings today and tomorrow is to receive an oral explanation of the agencies' recommendations. I am happy to have the members of the advisory committee present to participate in these hearings.

It should be kept in mind during the course of this study that the major objective of the committee is to compile and clarify the Federal statutes governing financial institutions and credit. With that purpose in mind, the study will be addressed to a consideration of such matters as the elimination of obsolete provisions and the addition of such new provisions as may seem desirable in order to modernize and streamline the banking laws. These matters, largely of a technical and noncontroversial nature, will relate primarily to the administrative functions of the banking agencies and to operational details of institutions affected.

I may add there, these recommendations, as submitted, were supposed to be largely of a noncontroversial nature. I find they are not quite as noncontroversial as I had been led to believe. I may be in another fight reminiscent of our efforts to get a bank holding company bill through. We tried to make that as fair as possible, but never did succeed in pleasing everyone.

The committee will, of course, stand ready to consider any changes in the laws which may be needed at this time if such changes will enable federally regulated institutions to serve the people of our country more effectively or will aid in the efficient functioning of the Federal supervisory agencies. However, it is not intended to encroach on the field of credit and monetary policies, which were the subject of several congressional committee studies in recent years. Likewise it is not intended to consider fundamental changes in the law with respect to the structure of the supervisory agencies or of other lending and guaranty agencies, or the scope of their authority, or other questions of that character. Fundamental questions of this nature will be deferred until a later date so that the committee may presently proceed expeditiously with consideration of the more immediate needs to which its study is now directed.

I may pause there again and say a distinguished student of finance made a very fine speech at the American Bankers Association meeting in Los Angeles. He proposed some radical overall changes to give the administration the final veto power or control, if you please, over the credit policies of the Federal Reserve Board. I think Mr. Bell has since found that that was a little more controversial than he thought when he presented the issue to the bankers in California.

After the completion of the hearings tomorrow, the members of the Advisory Committee will meet to draw up their recommendations. We hope to receive the Advisory Committee's report by the middle of December. On the basis of this report, together with the recommendations of the agencies, the interested trade associations, and individuals, tentative legislation will be drawn up in the form of a committee-print bill.

I want to emphasize that word "tentative." We have to have a basis for public hearings and in the bill which the chairman with the help of the members of the committee acting on the advice that you gentlemen give us, will present, it does not mean that we are committed to any particular thing in that bill, but that it is a basis for public hear-

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ings. Of necessity we are going to put some controversial matters in that bill, but whether or not they are in the bill that we finally propose and hope to get congressional action on is another question. We will have before us, though, we hope, when Congress convenes on January 3, a bill known as a tentative bill or committee print, which will not be an official bill in the sense that it is what we are trying to put through, or that we are committed to the various provisions of. It has been more or less a similar practice on the House side—and I served 10 years on the Ways and Means Committee there—to have tentative proposals on tax changes presented to the committee, and then they conducted hearings and received testimony and then in executive session they wrote the bill they were really going to act on.

The bill will be prepared by the committee counsel in consultation with myself and other members of the Banking and Currency Committee. We expect to hold extensive public hearings on the committee print bill in January and February of next year. All interested persons will be given an opportunity to present their views at that time.

Before we introduce the first witness, Mr. Ray Gidney, the Comptroller of the Currency, I would like to recognize the chairman of the Advisory Committee, my friend and your friend from St. Louis.

Mr. CRAVENS. Thank you, Senator. I might just add my word of thanks for the fine turnout and the many members who are willing to serve. I think I might mention this too: That our procedure is to have our subcommittee chairmen at this table and also the members of that subcommittee who are directly interested in the testimony being given at a particular time. We have the members of the committee looking at the national banking laws and the Comptroller of the Currency situation up here now.

I do not have anything more to say, Senator, other than to ask our members to participate freely in the discussion.

Senator ROBERTSON. Thank you Mr. Cravens.

Senator Beall has suggested that it would be a good thing if at this time we would insert in the record the names of the members of the Advisory Committee. Without objection, the Chair will present that list to the reported to be inserted in the record.

(The list of the members of the Advisory Committee follows:)

1. Chairman: Kenton R. Cravens, president, Mercantile Trust Co., St. Louis, Mo.
2. Joseph A. Broderick, chairman of the board, East River Savings Bank, New York, N. Y.
3. W. J. Bryan, vice president, Third National Bank, Nashville, Tenn.
4. Henry A. Bubb, president, Capital Federal Savings & Loan Association, Topeka, Kans.
5. Lester V. Chandler, professor, department of economics, Princeton University, Princeton, N. J.
6. C. Francis Cocke, chairman of the board, First National Exchange Bank of Roanoke, Va.
7. Maxwell F. Eveleth, Sr., vice president and cashier, Ocean National Bank, Kennebunk, Maine.
8. Reese H. Harris, Jr., senior vice president, Connecticut Bank & Trust Co., Hartford, Conn.
9. Theodore Herz, partner, Price Waterhouse & Co., Washington, D. C.
10. Reed E. Holt, executive vice president, Walker Bank & Trust Co., Salt Lake City, Utah.
11. Norris O. Johnson, vice president, First National City Bank, New York, N. Y.
12. Vivian Johnson, president, First National Bank, Cedar Falls, Iowa.

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13. Homer J. Livingston, president, First National Bank of Chicago, Chicago, Ill.
14. C. Ward Macy, chairman, department of economics, University of Oregon, Eugene, Oreg.
15. John J. McCloy, chairman of the board, Chase-Manhattan Bank, New York, N. Y.
16. Edwin P. Messick, executive vice president, First National Bank & Trust Co. of Milford, Milford, Del.
17. W. Franklin Morrison, executive vice president, First Federal Savings & Loan Association, Washington, D. C.
18. Joseph M. Naughton, president, Second National Bank of Cumberland, Cumberland, Md.
19. Robert L. Oare, chairman of the board, First Bank & Trust Co. of South Bend, South Bend, Ind.
20. William W. Pratt, executive director, Pennsylvania Credit Union League, Harrisburg, Pa.
21. Everett D. Reese, chairman of the board, the Park National Bank of Newark, Newark, Ohio, and the First National Bank of Cambridge, Cambridge, Ohio.
22. J. V. Satterfield, Jr., president, First National Bank of Little Rock, Little Rock, Ark.; director, Little Rock branch, Federal Reserve Bank of St. Louis.
23. James E. Shelton, chairman of the board, Security-First National Bank of Los Angeles, Los Angeles, Calif.
24. M. B. Spragins, president, First National Bank of Huntsville, Huntsville, Ala.
25. J. Cameron Thomson, chairman of the board, Northwest Bancorporation, Minneapolis, Minn.
26. William W. Whiteman, Jr., president, Oklahoma Industrial Finance Corporation and Credit Service Loans Co., Oklahoma City, Okla.
27. Ben Wooten, president, First National Bank in Dallas, Dallas, Tex.

Senator ROBERTSON. The Chair will recognize Mr. Ray Gidney, the Comptroller of the Currency. Mr. Gidney.

STATEMENT OF RAY M. GIDNEY, COMPTROLLER OF THE CURRENCY, ACCOMPANIED BY L. A. JENNINGS, FIRST DEPUTY COMPTROLLER OF THE CURRENCY

Mr. GIDNEY. Mr. Chairman and members of the committee, I am very pleased to have this opportunity to come before your committee and to discuss the recommendations for changes in laws affecting national banks which we have made to the Senate Committee on Banking and Currency and which are contained in the committee print, Legislative Recommendations of the Federal Supervisory Agencies, issued October 12, 1956.

The National Bank Act represents legislation of long standing, of clear purpose, and of great value. It has proved to be an excellent statute, and the national banks which operate under it are a very important part of our banking system. Their assets are equal to approximately 46 percent of all bank assets in the United States, and about 54 percent of all commercial bank assets. Naturally, in a law of this kind, some provisions may become obsolete, or changing conditions and the public interest may require amendments or additions to the law. The majority of the changes we have suggested are of minor, corrective or technical nature. Others involve changes which are thought to be desirable in the interest of national banks and of the American public. They should be given full consideration before enactment. In this statement I wish to discuss this latter type of change but shall be pleased to answer questions concerning any of the proposals we have made. Some of the proposals involve percentage limitations of vary-

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ing kinds. We are open-minded as to all of the proposals, and realize that some of them may require adjustment in the light of discussion which will take place before the proposed legislation is introduced or enacted. The recommendations which I should like to discuss with you are the following. We have given them numbers. They will not be in exact sequence because the lesser items are saved for general reference.

Senator ROBERTSON. Mr. Gidney, if I may suggest at this point, I assume you will not undertake to explain the reasons for the elimination of obsolete sections, but you will say that they are obsolete. We have your printed statement on that.

Mr. GIDNEY. Yes. There are 22 which I did not intend to refer to specifically, and about 24, I think, that we shall cover, unless you become wearied.

Recommendation No. 2.—Additional Deputy Comptrollers

We recommend that statutory authority be provided to permit the appointment of two additional Deputy Comptrollers of the Currency. For many years each of the 3 Deputy Comptrollers has been charged with the primary duty of administering the responsibilities of our office as they pertain to 4 of the 12 Federal Reserve districts. On an average each Deputy must review all matters pertaining to about 1,550 of the 4,670 national banks. In addition, all recapitalization programs and stock dividends (there were 582 during 1955), branch investigation reports (533 during 1955), consolidations, mergers, and takeovers of banks (126 during 1955), new charter investigation reports (71 during 1955), and legal opinions given to banks numbering many hundreds each year, are reviewed by each of the three Deputies. Conferences with bankers occur daily and are time-consuming. Each Deputy holds an annual conference with the district chief examiner and the examiners of the four districts he supervises. Legislative work, the preparation of a portion of the annual report to the Congress, work with committees representing various bankers' organizations, and many other matters occupy their time. Within the past 2 years it became necessary for the First Deputy Comptroller to transfer the work of 2 Federal Reserve districts to the Chief National Bank Examiner, who is responsible for the work of 8 assistant chief national bank examiners located in Washington and the 12 district chief examiners located throughout the country. When one of the present three Deputies is away from the office for any reason, it is very difficult for the others to carry the workload. Even when all are present, a substantial amount of evening and weekend work is necessary. Two additional Deputies are needed to relieve this situation.

Mr. Chairman, I do not know whether you want to have questioning on each one of these.

Senator ROBERTSON. I think we could proceed more expeditiously if we let you finish your statement and then we will see what questions there are.

Mr. GIDNEY. I think that would be better for my purposes, and more helpful.

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Recommendation No. 5.—Restrict State authorities from subjecting national banks to examinations and licensing

We recommend an amendment which would prevent States from requiring national banks to become licensed under State laws or to qualify under State laws as licensed lenders in order to purchase or discount paper or for other purposes. In several States comprehensive laws have been enacted covering the making of small loans and installment loans, and the purchase of such loans from other lenders. Some of these laws such as that in Pennsylvania prohibit dealers from selling installment paper to any lender who has not qualified under the State law as a licensed lender. The effect of such a law may be that national banks must become licensed and, in effect, agree to be examined by State authorities, or be deprived of the opportunity to purchase installment paper. Such laws are in our opinion clearly unconstitutional as applied to national banks. That this is so has been recognized by the superintendent of banks of the State of New York, who very recently issued a ruling to the effect that national banks need not obtain a license under the New York statute. Other States, however, have not recognized the unconstitutionality of their laws as applied to national banks and we believe it would be very desirable if legislation were enacted expressly providing that national banks shall not be required to secure a license as an incident to their authority to make loans or discount paper and that no State law may interfere with the right of national banks to make loans or purchase installment paper, either by prohibiting dealers or others from selling such paper to a national bank which has not become licensed, or in any other manner. Similar considerations would arise if State laws should be enacted which would appear to curtail other powers granted to national banks by Federal statute or exercised under Federal statute as incidental banking powers.

Recommendation No. 6.—Contributions by national banks

This recommendation is for a provision to permit national banks to contribute to nonprofit educational institutions or to organizations established to benefit the community. Under present law it is not absolutely clear that national banks may make reasonable contributions to educational institutions not operated for profit although they can make other charitable contributions. National banks are sometimes asked to contribute to nonprofit educational institutions, and we have interpreted the existing statute to permit this. We believe, however, that the statute should be clarified on this point. With respect to organizations established for the purpose of civic improvement, or betterment, we have in mind chambers of commerce and local industrial development corporations which exist in many places for the purpose of bringing industry into the community in which the bank is located. Reasonable contributions to such organizations are expected from the banks and should in many cases ultimately benefit the banks. Under present law we have held that such contributions cannot be made. We recommend also that there be eliminated the requirement that the national bank making a contribution of the kind authorized by Federal statute must be located in a State the laws of which do not expressly prohibit State banking institutions from making contributions. We

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know of no State in which there are such laws, but we do not believe that any such laws which may be in or come into existence should apply to national banks.

Recommendation No. 8.—Consolidations and mergers of banks

It is recommended that the present statutes providing for the consolidation of two or more national banks, the consolidation of one or more State banks with a national bank under the charter of the national bank, and the merger of a small State or national bank with a larger national bank under the charter of the national bank, be amended in order to provide for uniformity in the present technical requirements of the statutes whenever this is possible. We have drafted appropriate amendments which will provide uniformity in provisions relating to notice of shareholders' meetings, the rights of dissenting shareholders who choose to sell their stock, the method of appraising the value of their stock, the manner of disposing of the stock they have relinquished, the transfer of fiduciary functions and administration of estates by operation of law without the necessity for obtaining court orders, and permitting removal of the continuing national bank as executor, administrator, etc., by a court of competent jurisdiction. It is believed that all of these recommendations are highly desirable in order to eliminate uncertainty as to applicable provisions of law and to provide as much uniformity as is possible in the statutory requirements relating to consolidations and mergers.

Recommendation No. 9.—Branches retained after consolidation or merger

This recommendation is to make it clear that when a national bank acquires another bank by consolidation or merger, the continuing bank may retain in operation all of its branches without the necessity of obtaining the approval of the Comptroller of the Currency and without the necessity, technically, of closing and reopening the branches. Under present law the Comptroller must reauthorize all of the branches of the continuing bank which were established subsequent to February 25, 1927, and issue new branch certificates covering such branches. Since this amendment would cover only the branches of the acquiring bank which are in lawful operation, we believe that there would be no possibility of it permitting avoidance of State branch banking laws or giving the national banks competitive advantage over State banks in the matter of branching.

Recommendation No. 10.—Capital of outside branches

We are withdrawing the recommendation which we have put in. We think it is not desirable.

Recommendation No. 13.—Unearned dividends

This recommendation is to make it clear that national banks may declare and pay dividends quarterly, semiannually, or annually, and that they are not confined to declaring and paying semiannual dividends. In addition we recommend that the approval of the Comptroller of the Currency be required if dividends to be paid in any one year will be greater than the bank's net profits for that year plus its retained net profits of the previous year. You will notice that this recommendation is slightly different than our original suggestion which was based upon a 6-month period. After further study of

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the matter we have concluded that it would be preferable to deal with this matter on the basis of dividends to be paid during a full year. The purpose of both our original recommendation and our present recommendation is to prevent depletion of the capital funds of a bank through excessive dividends. We believe that the formula which we are now recommending will accomplish this purpose and will also give the banks enough leeway that the Comptroller's approval will not be required in the case of normal and usual dividends. The Comptroller's approval will be required only in cases in which the total amount of dividends paid in a single year will exceed the total net profits for that year plus the net profits after dividends from the previous year. We believe that legislation along the lines suggested would be sound and would not restrict the payment of normal and warranted dividends by any national bank, but that it would enable the Comptroller to effectively cope with the infrequent case where a self-serving ownership seeks to take out of a bank an unduly large part of capital funds by an excessive dividend or dividends.

Recommendation No. 15.—Cumulative voting in the elections of national-bank directors

This recommendation would eliminate mandatory cumulative voting in the election of directors of national banks, but would permit those banks which wish to retain it to do so by providing for cumulative voting in their articles of association. Similar legislation was passed by the Senate during the 84th Congress and was favorably reported by the House Banking and Currency Committee, but was not finally enacted. It has been our experience that cumulative voting facilitates the election of undesirable individuals to the directorate of national banks against the wishes and best judgment of the majority owners of the bank, and that it is not a beneficial influence in the affairs of national banks. National banks can best be operated where there is a high degree of unity in the directorate and in the official staff, and where there is no factional division caused by minority groups forcing themselves into the directorate.

Recommendation No. 16.—Reserves required by holding-company affiliates

This recommendation is to make it clear that in the case of member banks having more than 1 holding-company affiliate, only 1 such affiliate shall be required to maintain the required reserve of 12 percent of the par value of the bank stocks controlled by it. In some cases banks have more than one holding company affiliate, and under the present language of the statute each such affiliate must establish and maintain the required reserve. Since a reserve of 12 percent of the par value of the bank stock is deemed adequate, there seems to be little reason to require the establishment and maintenance of a reserve of 24 percent of the par value of the bank stock if it happens that the bank has 2 holding-company affiliates. The present law would deter nonmember State banks having more than one holding-company affiliate from converting into national banks, and for this reason we recommend this change. The legislation should provide that the Board of Governors of the Federal Reserve System may designate which holding-company affiliate shall establish and maintain the required reserve.

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The reason for our interest in this is the fact that the old requirement has prevented certain banks from becoming national banks.

Recommendation No. 17.—Shareholders' lists

This recommendation is to eliminate the present provision of law that creditors of a national bank may inspect its list of shareholders, and to provide that shareholders of the bank may inspect its list of shareholders only for a proper purpose not inimical to the interests of the bank. The present provisions of law relate back to the days of double liability on bank stock when creditors and shareholders had a legitimate interest in knowing who might be called upon in the event of financial difficulties. With the elimination of double liability there is no longer any reason to permit the creditors of a national bank to inspect its list of shareholders, nor is there any reason to permit shareholders to inspect the shareholders' list except upon the showing of a proper purpose. There have come to our attention cases in which shareholders of national banks have taken advantage of the present law to inspect the shareholders' list merely for the purpose of compiling a mailing list to be used in connection with their businesses. We do not believe that national banks should be required to make available their lists of shareholders for such a purpose, or for other improper purposes, even to a person who is a shareholder of the bank.

Recommendation No. 21.—Removed director or officer voting stock

This is to prevent an officer or a director of a national bank, who has been removed from office in accordance with law, from retaining effective control of the bank from which he has been removed through electing the directors by voting his stock. There is nothing in the present law to prevent this from being done, so long as the removed individual does not participate in the management of the bank. It is our proposal that stock owned by an officer or director removed from office should be ineligible to be voted so long as it is retained by him or someone closely related to or controlled by him. We believe that the proposed legislation is necessary to make existing law fully effective in the case of officers or directors who own working control or a majority interest in a bank. Present law permitting removal of officers or directors has been used in the past only in rare instances, and it is not probable that it will be used very frequently in the future. However, it should be made fully effective in case it should be needed.

Recommendations Nos. 23 and 24.—Exceptions to 10-percent limit on obligations

The statute limiting the amount of loans which may be made by a national bank to any one person, copartnership, association, or corporation should be amended by adding a new sentence to the present exception 6 to Revised Statutes 5200 to permit national banks to make loans up to 15 percent of capital and surplus, in addition to the present limit of 10 percent of capital and surplus when the additional amount of the loan above the 10-percent limit is secured by shipping documents or warehouse receipts covering refrigerated or frozen readily marketable staples, fully covered by insurance. Under present limitations, loans covering such foods may, with a few exceptions, be made only up to 10 percent of the bank's capital and surplus. Frozen-food processors have made great improvements in methods of

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processing, freezing, shipping, and storing foods which must be kept under constant refrigeration. Where insurance can be obtained against loss resulting from a breakdown of the refrigeration machinery, it is believed that larger loans to the extent indicated should be permitted for a period not exceeding 6 months.

This statute should also be amended by adding a new exception which will permit national banks to acquire from dealers or other owners consumer installment paper such as conditional sales contracts or other types of installment paper covering the sale of commodities in an amount not exceeding 15 percent of the bank's capital and surplus in addition to the present 10 percent limit with respect to the amount of such paper acquired from any one dealer. The present exceptions to Revised Statutes 5200 do not provide for the purchase from one dealer or owner of nonnegotiable conditional sales contracts or installment consumer paper in an amount exceeding 10 percent of the bank's capital and surplus. If such paper is negotiable and bears the full recourse endorsement of the dealer or owner, this office has held that it may be acquired without any limit based on capital or surplus. We believe that both types of paper should be limited to 25 percent of a bank's capital and surplus insofar as reliance on the discounter is concerned.

The present exception 7 to Revised Statutes 5200 should be amended by adding a new sentence which will permit national banks to acquire obligations arising out of the sale of dairy cattle when such obligations bear a full recourse endorsement or unconditional guaranty of the dairy cattle dealer. Obligations covering the sale of dairy cattle are not covered under the present language of exception 7, and national banks should be permitted to acquire such paper in an amount not exceeding 15 percent of capital and surplus in addition to the customary 10 percent limit with respect to the obligations of any one dealer.

Recommendation No. 26.—Banking facilities at military posts

It is recommended that section 5153 of the Revised Statutes be amended to provide that national banks, when so requested by the Secretary of the Treasury, may open and operate banking offices exercising only such limited banking functions as are requested by the Secretary of the Treasury at military posts, camps, and other United States Government installations, and that such banking facilities not be considered as branches of national banks. This legislation is desirable to make it clear that such facilities of national banks are not subject to location restrictions in State laws with respect to the operation of branch offices. The operation of a limited banking facility office is permitted in cases where the Treasury Department has been requested by the Department of Defense to provide essential limited banking facilities for the convenience of military and civilian personnel stationed at a military post. The Attorney General has held that such limited banking offices may be opened under the general authority given to the Secretary of the Treasury under section 5153 of the Revised Statutes as amended. However, it is desirable that the national banking laws be amended to specifically authorize that such offices may be established and operated.

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Recommendation No. 27.—Reserves of national banks outside the United States

This deals with reserves of national banks located outside of the continental United States. Such banks are not required to be members of the Federal Reserve System but are required to keep reserves equal to 15 percent of deposits. Under present law four-fifths of the required reserves may consist of balances due from national banks approved by the Comptroller of the Currency and located in central reserve or reserve cities. It is undesirable to require approval by the Comptroller of the banks with which reserve balances are to be kept since as a practical matter he could hardly refuse to approve any bank chosen without giving rise to undesirable consequences. The banks with which reserve balances are to be kept should be chosen by the nonmember national banks on the same basis as correspondent banks are normally chosen, and the Comptroller's approval should not be required. In giving further consideration to this matter we have concluded that it is not necessary to require that the reserve balances be kept with national banks, and we would not object if such reserves were kept with State banks which are members of the Federal Reserve System.

Recommendation No. 33.—Appointment of conservator

There have been a small number of cases since 1933 where national banks have suffered losses arising from defalcations in amounts sufficient to exhaust the capital account. In such instances, the Comptroller under existing statutes must act at once to appoint the Federal Deposit Insurance Corporation as receiver or recommend that the Corporation make a loan on the unacceptable assets of the bank so as to permit its acquistion by another bank. Time does not usually permit the obtaining of all the facts necessary to arrive at an informed decision. It would be highly desirable to enact legislation permitting the Comptroller in such instances, if the circumstances warrant, to appoint the Federal Deposit Insurance Corporation as conservator of an insured national bank pending a thorough examination of the affairs of the bank so that an informed determination can be made as to the full extent of the loss and the possibilities of recapitalization. This would enable the Comptroller to determine whether the bank may be recapitalized, an continued in operation, whether the Federal Deposit Insurance Corporation should be appointed receiver and the bank liquidated, or whether it would be in the best interests of all concerned for a loan to be made by the Federal Deposit Insurance Corporation against the security of specified assets and the remaining assets acquired by some other bank which would also assume the deposit liabilities. The rights of all parties will be better protected if some period of time, not exceeding 30 days, is made available for the necessary examination and study of the condition of such insured banks. The legislation proposed would require the Federal Deposit Insurance Corporation to commence making payments under its insurance liability to depositors as soon as it is appointed conservator.

Recommendation No. 34.—Trust activities of national banks

It is recommended that the authority to grant trust powers to national banks should be transferred from the Board of Governors of

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the Federal Reserve System to the Comptroller of the Currency. It seems to us that this is logical. This is a matter which concerns national banks alone. These banks are chartered by the Comptroller of the Currency and their entire activities including their trust activities are supervised by him. There would seem to be no adequate reason why the authority to grant permission to national banks to exercise trust powers and to regulate the exercise of those powers should not be vested in the Comptroller of the Currency rather than the Board of Governors.

Recommendation No. 35.—Limitations on real-estate loans

This recommendation contains four suggestions for changes in section 24 of the Federal Reserve Act dealing with real-estate loans which may be made by national banks. All of these, in our opinion, represent warranted liberalizations. The first change would permit national banks to make loans to finance the construction of industrial or commercial buildings having maturities of not more than 18 months where there is a valid and binding agreement entered into by a financially responsible lender to advance the full amount of the bank's loan upon the completion of the buildings. Such loans need not be regarded as real-estate loans but could be regarded as construction loans subject to the aggregate limit on such loans. This change would also increase the aggregate limit on construction loans from 50 percent of capital to 50 percent of capital and surplus. The second change would permit national banks to make loans on leaseholds which have at least 10 years to run beyond the maturity date of the loan. Under present law leasehold loans can be made only if there is a renewable lease for a period of not less than 99 years or a lease having a period of not less than 50 years to run. These restrictions on leasehold loans have proven unrealistic and the present provision of law has been of little benefit either to national banks or to prospective borrowers. The third change would permit national banks to make construction loans upon the security of purchase contracts entered into pursuant to the provisions of the Public Buildings Purchase Contract Act of 1954, or the Post Office Department Property Act of 1954. Such loans would be regarded as ordinary commercial loans and not as real-estate loans, even though the banks might hold mortgages on the real estate. Under the proposed contracts with the Administrator of General Services or Postmaster General, the banks would be protected by bid and performance bonds with financially responsible sureties, thus assuring the banks that the loans can be made to qualify for repayment by the United States in annual installments extending over a period of from 10 to 25 years as provided in the above-mentioned statutes. It is believed that this legislation should be enacted to permit national banks to participate in the financing of the construction program of public buildings and post offices. The fourth change recommended is to permit national banks to make working-capital loans to manufacturing concerns without regard to limitations on real-estate loans even though the loans are secured by liens on the manufacturing plant, including the plant real estate. These loans are in actuality based upon the prospects of the business and are expected to be repaid from the proceeds of its operations.

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Recommendation No. 37.—Contributions by the Federal Deposit Insurance Corporation and the Federal Reserve Board to the Comptroller

This recommendation is to eliminate an inequity now existing between the State and National banking systems. This inequity comes about because national banks now bear the full expense of the supervision and the examinations which they receive from the Comptroller's Office, whereas State-insured banks, including State member banks, do not bear directly any of the expense of the Federal supervision and examinations which they receive. The Federal Deposit Insurance Corporation and the Federal Reserve System coordinate their examinations of State banks with the 48 State banking departments so that joint examinations are made in the great majority of instances. This enables the State banking departments, as well as the Federal Deposit Insurance Corporation and the Federal Reserve System to function with reduced manpower to the benefit of all concerned. Neither the Federal Deposit Insurance Corporation nor the Federal Reserve System makes any charge for examining State banks, and this results in reduced supervisory costs to the State banks which are not offset by any similar value received by national banks. The Federal Deposit Insurance Corporation and the Federal Reserve System currently employ 1,000 field examiners who function at no cost to the State banks examined. It is believed that a survey of the various State banking departments will disclose numerous instances where their examining staffs are inadequate to perform their examination functions without the assistance of Federal Deposit Insurance Corporation and Federal Reserve examiners. Thus it is quite clear that the State-chartered banks of the country are receiving a definite benefit through the use of Federal examiners at no cost to them.

At the end of 1955, the Federal Reserve System had 6,543 member banks with resources of $179 billion. National banks comprised 4,692 of the total membership and had $113 billion of the total resources. The FDIC is supported by national banks as well as State banks. National banks have contributed more than 50 percent of the FDIC fund.

At the end of 1955, the field examining force of the Comptroller of the Currency numbered 825. This represents approximately 27.7 percent of the total number of all bank examiners employed by the 48 State banking departments and the 3 Federal bank supervisory agencies.

The State banking departments of the country employ about 1,150 examiners and, as previously noted, there are 1,000 examiners now employed by the Federal Reserve and the FDIC. Their efforts are directed primarily to the examination of State banks holding about 53 percent of the banking resources and 63 percent of the banking offices.

It is estimated that the cost to the FDIC of examining State nonmember insured banks during 1955 was approximately $5 million and that the cost to the Federal Reserve System of examining State member banks was between 2 and 3 million dollars.

It is proposed that the FDIC shall pay to the Comptroller of the Currency annually an amount equal to 50 percent of the expenses incurred by it in examining State nonmember insured banks, and the

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Board of Governors of the Federal Reserve System shall pay to the Comptroller of the Currency annually an amount equal to 50 percent of the expense incurred by it and by the Federal Reserve banks in examining State member banks. The adoption of this recommendation will serve to eliminate this existing inequity between the State and National banking systems.

As an alternative proposal, consideration might be given to the payment by the Board of Governors of the Federal Reserve System and the FDIC to the Comptroller of the Currency for copies of the reports of examination of national banks, which are regularly given to the Federal Reserve System and made available to the FDIC, of 50 percent of the cost of making such examinations, 25 percent to be borne by the Federal Reserve System and 25 percent by the Federal Deposit Insurance Corporation. These reports of examination of national banks are essential to both the Federal Reserve and FDIC in discharging their responsibilities and duties and they are currently being furnished free of charge to the FDIC and at a nominal typing charge to the Federal Reserve System.

Recommendation No. 40.—Bonds of Home Owners' Loan Corporation

This recommendation is merely to eliminate an obsolete provision of law with respect to bonds of the Home Owners' Loan Corporation. It is in their field rather than ours. We have been informed that it is consistent with a recommendation being made by the Home Loan Bank Board.

Recommendation No. 42.—Mergers or consolidations by insured banks

This recommendation is to provide a sound means of dealing with the competitive aspects of bank mergers. It is proposed that any merger or consolidation or takeover involving an insured bank shall require the prior written consent of the appropriate bank supervisory authority. The approving authority shall be required to consider whether the effects of the transaction may be to lessen competition unduly or tend unduly to create a monopoly, as well as to consider the usual and highly important banking factors. In the interests of achieving uniform standards the approving authority in each case shall be required to seek the views of each of the other two Federal banking agencies, as to the competitive aspects, and shall be authorized to request the opinion of the Attorney General of the United States. We believe this to be the soundest method of dealing with the problem of maintaining competition in banking. Under this proposal banking factors would be weighed along with factors of competition, and these factors would be weighed by the Federal officials best qualified to evaluate them. The Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation have made recommendations identical with this one. The legislation proposed was passed by the Senate during this year but too late to be acted upon by the House of Representatives.

Recommendation No. 44.—National bank examination reports privileged against disclosure

It is believed that the confidential and privileged status of reports of examination and related documents should be made statutory. There is presently a Treasury Department regulation on this subject but this regulation has not served to eliminate controversies or to pre-

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vent attempts on the part of the litigants to subpena such documents for use in court. In all such cases the information legitimately needed from the reports of examination is obtainable from the books of the bank involved which can, of course, be subpenaed. Usually the litigant desires the report of examination to determine whether the bank examiners have criticized particular assets or the management of the bank and we do not regard this as an appropriate use of the report. So far, the Treasury Department has successfully resisted attempts to subpena these records although in a recent case it was necessary to appeal an adverse decision to a United States court of appeals. We believe that adoption of our proposal will serve to eliminate further controversies with respect to this matter, and to eliminate the possibility of bank examination reports being made public.

Recommendation No. 45.—Merged or consolidated bank as branch office

When a national bank in a non-branch-bank State is in a precarious financial condition, and the shareholders are unable to furnish additional capital, there is usually nothing that can be done except close and liquidate the bank. This results in the elimination of one or more banking units and sometimes leaves an entire community without banking services. Usually there are other nearby banks that could and would provide these communities with all necessary banking services through takeovers of the discontinuing banks, provided they were able to establish branches at the location of such banks, but the branch banking laws of certain States prevent their doing so. This would substantially ease the problem of the bank supervisory authorities and would be in the best interest of all concerned. We suggest that the legislation should provide that branches may be established under these circumstances only when it has been found by the Comptroller of the Currency that insolvency of the acquired bank is imminent, and when the Comptroller of the Currency has been advised in writing by the FDIC that the proposed acquisition and the establishment of the branch or branches by the acquiring bank is in its opinion in the public interest. Thus two agencies, the Comptroller of the Currency and the FDIC, would have to agree that the takeover and the establishment of the branch or branches would be necessary and desirable in the public interest. We believe that it is essential that a method of dealing with problems of this type and of permitting the continuance of necessary banking services in such situations be provided.

Recommendation No. 45A.—Administration of pension, profit-sharing and employee welfare plans

This recommendation is to provide basic statutory regulation of the more important aspects of retirement or pension, and profit-sharing accounts established by national banks. After having given full consideration to the problems in this field, we wish to make some changes in our original recommendation.

We believe that these accounts should be managed by not less than three individual trustees or by a corporate trustee. Adequate records of all transactions should be required to be maintained. All such accounts established should be approved by a majority of the shareholders of the bank.

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There should be limitations placed on borrowing by such accounts and on the purchase or ownership of property for the primary benefit of the bank or of any director or officer or employee thereof. The Comptroller of the Currency should be given the right to make examinations of the affairs of such accounts established by national banks except where the accounts are being administered by a corporate trustee which is completely independent of the bank. Such a corporate trustee would ordinarily be the trust department of another bank.

Limitations should be placed on bank stock and certain other investments which may be made by such accounts but in this area we believe a distinction must be made between retirement or pension accounts and profit-sharing accounts. We believe that retirement or pension accounts should be limited to owning not more than 5 percent of the outstanding stock of any bank, and should be limited to investing not more than 10 percent of its corpus in the capital stock of any one bank. The purpose of these recommendations is to prevent the retirement or pension account of a bank being used by that bank to acquire control of other banks, and to insure future recapitalization plans of the bank or banks whose stock is owned will not be adversely affected because of the inability of the pension account to exercise rights to purchase new stock; also to insure some degree of diversification. With respect to profit-sharing accounts we would impose no limitation on the percentage of the corpus which may be invested in any one bank's stock, but would provide that profit-sharing accounts may not purchase or own more than 10 percent of the outstanding stock of any bank. We would also qualify this provision in such a way that a bank whose retirement or pension accounts own 5 percent of the outstanding stock of any bank could not own more than an additional 5 percent of the outstanding stock of that bank in its profit-sharing account. In other words, a bank through its retirement or pension and profit-sharing accounts combined could own not more than 10 percent of the outstanding stock of another bank, but in its retirement or pension accounts could not own more than—that is superfluous. Thus if no stock were held in the retirement or pension accounts the profit-sharing account could buy up to 10 percent of the outstanding stock, but if 5 percent of the outstanding stock were held in the retirement or pension accounts the profit-sharing account would be limited to 5 percent of the outstanding stock of that bank.

We would also recommend that the Comptroller of the Currency be authorized to issue regulations to enforce compliance with the provisions of the law.

Those are the ones which I wish to discuss fully. There are 22 listed as an appendix, which I could read the titles of:

1. Comptroller of the Currency; salary.
3. Appointment and classification of clerks.
4. Home Owners' Loan Corporation obligations.
7. Change of location of a national bank.
11. School savings programs.
12. Payment of stock in national bank.
14. Increase of capital by vote of shareholders.
18. Shareholders individual liability.
19. Shareholders individual liability upon liquidation.
20. Election of national bank directors.

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22. Liabilities of national banks under Reconstruction Finance Corporation Act.
25. Loans secured by obligations of the United States.
28. Reports made to the Comptroller of the Currency.
29. Report of dividends and net earnings.
30. Shareholder approval of sale of assets in voluntary liquidation.
31. Personal liability of shareholders in receivership.
32. FDIC as receiver of national bank.
36. Deposits by persons or corporations not supervised by any State authority.
38. Furnishing confidential information to Federal intermediate credit banks.
39. National agricultural credit corporations.
41. Acting Comptroller of the Currency on Board of the FDIC.
43. Use of certain words as part of business name.

Those, I think, we have information on if there are questions about any of them.

I think that concludes the discussion I would like to make, Mr. Chairman, and I will be glad to try to answer questions.

Senator ROBERTSON. Thank you.

In order that we may have a complete record of all of your recommendations, the 22 technical ones as well as those you have mentioned, I will offer for the record at this time, without objection, the printed statement of your original recommendations, several of which you have subsequently modified to some extent. However, we will put that in to show the 22 technical changes and largely obsolete sections that could well go out of any new banking code.

Mr. GIDNEY. There may well be some of those that seem more important to others than they seem to us.

(The recommendations of the Comptroller General follow:)

RECOMMENDATION OF THE COMPTROLLER OF THE CURRENCY

LETTER OF TRANSMITTAL

THE SECRETARY OF THE TREASURY,
Washington, October 1, 1956.

Hon. A. WILLIS ROBERTSON,
United States Senate, Washington, D. C.

MY DEAR SENATOR: In compliance with the request contained in your letter of July 20, 1956, addressed to the Comptroller of the Currency, there are enclosed herewith recommendations as to the changes which it is believed should be made in the Federal statutes dealing with national banks which are administered by this Department.

Your attention is called to the fact that while the quoted statutes are identified by reference to their section numbers in the United States Code, the text has been actually taken from the Statutes at Large.

Time has not permitted obtaining the advice of the Bureau of the Budget as to the relationship of the proposals to the program of the President. This advice will be transmitted at a later date.

Very truly yours,

W. RANDOLPH BURGESS,
Acting Secretary of the Treasury.

1. COMPTROLLER OF THE CURRENCY; SALARY

Existing law

Title 12, U. S. C., sec. 2 (U. S. R. S., sec. 325).—The Comptroller of the Currency shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold his office for a term of five years unless sooner removed by the President, upon reasons to be communicated by him to the Senate; and he shall receive a salary at the rate of $15,000 a year.

Recommendation

To eliminate by amendment reference to the salary of the Comptroller of the Currency.

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Reasons

The Comptroller's compensation of $20,500 per annum is provided for under the Federal Executive Pay Act of 1956, therefore the obsolete reference in this statute to his salary should be eliminated.

2. Fourth and Fifth Deputy Comptrollers of Currency

Existing law

Title 12, U. S. C., sec. 4 (U. S. R. S. 327).—There shall be in the Bureau of the Comptroller of the Currency a Deputy Comptroller of the Currency, to be appointed by the Secretary who shall possess the power and perform the duties attached by law to the office of Comptroller during a vacancy in the office or during the absence or inability of the Comptroller. The Deputy Comptroller shall also take the oath of office prescribed by the Constitution and laws of the United States, and shall give a like bond in the penalty of fifty thousand dollars.

Title 12, U. S. C., sec 5.—An Assistant Deputy Comptroller shall be appointed by the Secretary of the Treasury, and shall possess the power and perform the duties attached by law to the office of the Comptroller during a vacancy in the office of Comptroller and Deputy Comptroller or during the absence or inability of the Comptroller and the Deputy Comptroller, and said Assistant Deputy Comptroller shall give a like bond in the penalty of fifty thousand dollars.

Title 12, U. S. C., sec. 6.—In addition to the two Deputy Comptrollers of the Currency now provided for by law, there shall be in the Bureau of the Comptroller of the Currency a third Deputy Comptroller of the Currency who shall be appointed in the same manner and shall take a like oath of office and give a like bond as the Deputy Comptrollers now provided for by law. Under the direction of the Comptroller of the Currency, such additional Deputy Comptroller shall have charge of the administration of the provisions of this title relating to the organization and operation of National Agricultural Credit Corporations and shall perform such other duties as shall be assigned to him by the Comptroller of the Currency.

Recommendation

It is recommended that the statutes be amended to provide for fourth and fifth Deputy Comptrollers of the Currency if, in the judgment of the Comptroller, one or both are essential to the adequate discharge of his responsibilities.

Reasons

The volume of work in the Comptroller's Office has greatly increased over the past several years, creating a need for additional Deputy Comptrollers. There has been a sizable increase in the number of branch applications, in the number of proposed mergers and consolidations which must be approved by the Comptroller, in capital increase programs on the part of the banks, etc. In addition, the pressure of the fierce competition which exists in banking today has caused banks to search for new methods of doing business and new ways of serving their customers to better advantage. All of these matters require the careful attention of a Deputy Comptroller of the Currency, and the burden placed on the present deputies is too great to be continued indefinitely. At the present time two additional Deputy Comptrollers are needed and would permit a greater amount of time and effort to be spent on important problems of banking supervision than is now possible. Since the Comptroller's staff is paid out of assessments on national banks, additional Government appropriations or expenditures would not be necessary.

3. Appointment and Classification of Clerks

Existing law

Title 12, U. S. C., sec. 8 (U. S. R. S., sec. 328).—The Comptroller of the Currency shall employ, from time to time, the necessary clerks, to be appointed and classified by the Secretary of the Treasury, to discharge such duties as the Comptroller shall direct.

Recommendation

To eliminate by amendment reference to appointment and classification by the Secretary of the Treasury of clerks employed by the Comptroller of the Currency.

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Reasons

The appointment and classification of employees of the Comptroller of the Currency are now subject to the Classification Act administered by the Civil Service Commission. In practice the Secretary of the Treasury does not classify employees of the Comptroller's Office.

4. Home Owners' Loan Corporation Obligations

Existing law

Title 12, U. S. C., sec. 24 (U. S. R. S., sec. 5136).—* * * Seventh. * * * The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: *Provided*, That the association may purchase for its own account investment securities under such limitations and restriction as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on the date of enactment of the Banking Act of 1935. As used in this section the term "investment securities" shall mean marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the Federal Home Loan Banks or the Home Owners' Loan Corporation. * * *.

Title 12, U. S. C., sec. 371c (Fed. Res. Act, sec. 23A, pars. 1–3).—No member bank shall (1) make any loan or any extension of credit to, or purchase securities under repurchase agreement from any of its affiliates, or (2) invest any of its funds in the capital stock, bonds, debentures, or other such obligations of any such affiliate, or (3) accept the capital stock, bonds, debentures, or other such obligations of any such affiliate as collateral security for advances made to any person, partnership, association, or corporation, if, in the case of any such affiliate, the aggregate amount of such loans, extensions of credit, repurchase agreements, investments, and advances against such collateral security will exceed 10 per centum of the capital stock and surplus of such member bank, or if, in the case of all such affiliates, the aggregate amount of such loans, extensions of credits, repurchase agreements, investments, and advances against such collateral security will exceed 20 per centum of the capital stock and surplus of such member bank.

Within the foregoing limitations, each loan or extension of credit of any kind or character to an affiliate shall be secured by collateral in the form of stocks, bonds, debentures, or other such obligations having a market value at the time of making the loan or extension of credit of at least 20 per centum more than the amount of the loan or extension of credit, or of at least 10 per centum more than the amount of the loan or extension of credit if it is secured by obligations of any State, or of any political subdivision or agency thereof: Provided, *That* the provisions of this paragraph shall not apply to loans or extensions of credit secured by obligations of the United States Government, the Federal intermediate credit banks, the Federal land banks, Federal Home Loan Banks, or the Home Owners' Loan Corporaiton, or by such notes, drafts, bills of exchange, or bankers' acceptances as are eligible for rediscount or for purchase by Federal reserve banks. A loan or extension of credit to a director, officer, clerk, or other employee or any representative of any such affiliate shall be deemed a loan to the affiliate to the extent that the proceeds of such loan are used for the benefit of, or transferred to, the affiliate.

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For the purpose of this section, the term "affiliate" shall include holding-company affiliates as well as other affiliates, and the provisions of this section shall not apply to any affiliate (1) engaged solely in holding the bank premises of the member bank with which it is affiliated; (2) engaged solely in conducting a safe-deposit business or the business of an agricultural credit corporation or livestock loan company; (3) in the capital stock of which a national banking association is authorized to invest pursuant to section 25 of this Act, as amended, or a subsidiary of such affiliate, all the stock of which (except qualifying shares of directors in an amount not to exceed 10 per centum) is owned by such affiliate; (4) organized under section 25 (e) of this Act, as amended, or a subsidiary of such affiliate, all the stock of which (except qualifying shares of directors in an amount not to exceed 10 per centum) is owned by such affiliate; (5) engaged solely in holding obligations of the United States or obligations fully guaranteed by the United States as to principal and interest, the Federal intermediate credit banks, the Federal land banks, the Federal Home Loan Banks, or the Home Owners' Loan Corporation; * * *.

Recommendations

It is recommended that section 5136 of the Revised Statutes and section 23A of the Federal Reserve Act be amended by deleting therefrom the words "Home Owners' Loan Corporation."

Reasons

The act of June 30, 1953 (67 Stat. 126), dissolved and abolished the Home Owners' Loan Corporation. We are informed that all bonds of the Corporation were retired on January 27, 1950. Since there are no longer any obligations of the HOLC outstanding, it would appear that reference to such obligations as eligible investments for national banks and as eligible collateral security for loans, should be eliminated from the statutes quoted above.

5. Restrict State Authorities From Subjecting National Banks to Examinations and Licensing

Existing law

Title 12, U. S. C., sec. 24 (U. S. R. S., sec. 5136).—Paragraph Seventh:

* * * * * * *

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title.

* * * * * * *

Recommendation

It is recommended that section 5136 of the Revised Statutes be amended by adding a proviso at the end of the first sentence in paragraph seventh thereof which would declare that no national bank shall be subjected to examination by, or required to be licensed by, or to pay any license or assessment fee, or penalty to, any State, political subdivision, or other agency or instrumentality of a State as an incident to such bank's right to make loans or to discount and negotiate promissory notes, drafts, bills of exchange, conditional sales contracts, and other evidences of debt or to carry on the business of banking.

Reasons

Various States have enacted legislation which requires national banks within the State to acquire a license from the State authorities in order to qualify as a licensed lender. These laws are to enable the State to protect the public in the field of small loans and installment purchase contracts. In order to acquire the obligations arising from these transactions national banks have in many cases elected to be licensed under the State law. These State laws customarily require examination of the licensed lenders by the State authorities. In some cases where the national banks have qualified as licensed lenders the State banking authorities have contended that such national banks should be subjected to examination as a licensed lender.

Any examining or other visitorial power attempted to be exercised by State officials over national banks in this respect would be in direct conflict with section

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5240 of the Revised Statutes (12 U. S. C. 484) and any attempt by the State to levy and collect a license tax appears to be in conflict with section 5219 of the Revised Statutes (12 U. S. C. 548) which defines the limits within which States may tax national banks. National banks derive their general powers from section 5136 of the Revised Statutes (12 U. S. C. 24) including all such incidental powers as are necessary to carry on the business of banking. Since installment purchase contracts represent evidences of debt national banks may legally acquire them. Therefore no State statute can deprive such banks of that power or append conditions which would require national banks to obtain licenses or pay license fees. However, some State officials disagree with this view and contend that the national banks must comply fully with all the provisions of the State law including the examining and licensing requirement. In order to eliminate controversies with State banking officials who seek to enforce State licensing and examining requirements with respect to national banks, section 5136 should be amended to follow the above recommendation. Amendment of this section in accordance with our recommendation will, of course, merely be declaratory of existing law.

6. Contributions by National Banks

Existing law

Title 12, U. S. C., sec. 24, par. eighth (*U. S. R. S., sec. 5136*).—Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

* * * * * * *

Eighth. To contribute to community funds, or to charitable, philanthropic, or benevolent instrumentalities conducive to public welfare, such sums as its board of directors may deem expedient and in the interests of the association, if it is located in a State the laws of which do not expressly prohibit State banking institutions from contributing to such funds or instrumentalities.

Recommendation

It is recommended that this statute be amended to permit national banks to make contributions in such sums as its board of directors may deem expedient and in the interests of the association to educational institutions not operated for profit and to organizations established for the purpose of civic improvement or betterment. The right of national banks to make such contributions should be made express. Organizations established for the purpose of civic improvement and betterment would include local development corporations designed to attract industry to the locality in which the bank is located.

This statute should also be amended to eliminate the requirement that the national bank must be located in a State the laws of which do not expressly prohibit State banking institutions from contributing to such funds or instrumentalities.

Reasons

There has always been doubt whether under the existing statute national banks could legally make contributions of the type which it is recommended they should be permitted to make. Since national banks may now make contributions to charitable, philanthropic, or benevolent instrumentalities conducive to public welfare, there would seem to be little doubt that they should also be permitted to make contributions to educational institutions which are not operated for private profit. Also, national banks existing in particular localities have the same moral obligations to support organizations established to benefit the community as do other corporations and individuals. Consequently, the law should permit them to make contributions to such organizations. It cannot be denied that local development corporations which seek to attract industry to their communities will, if successful, benefit the entire community and contributions to them would be in the best interests of the banks.

There is no reason why the status of State laws in relation to State banks should be a condition to the making of contributions by national banks.

7. Change of Location of a National Bank

Existing law

Title 12, U. S. C., sec. 30.—That any national banking association may change its name or the place where its operations of discount and deposit are to be

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carried on, to any other place within the State, but not more than thirty miles distant with the approval of the Comptroller of the Currency, by the vote of shareholders owning two-thirds of the stock of such association. A duly authenticated notice of the vote and of the new name or location selected shall be sent to the office of the Comptroller of the Currency; but no change of name or location shall be valid until the Comptroller shall have issued his certificate of approval of the same.

Recommendation

Amend statute to eliminate the word "place" and substitute the word "location" and provide that no change in location of the main office within the limits of the city, town, or village in which it is located will be permissble without the approval of the Comptroller of the Currency.

Reason

The Comptroller has interpreted this statute to mean that a bank may change the location of its head office within the city where it was chartered to do business without his approval. It is believed that all changes of location should be subject to his approval.

8. Consolidations and Mergers of Banks

Existing law

Title 12, U. S. C., sec. 33.—That any two or more national banking associations located within the same State, county, city, town, or village may, with the approval of the Comptroller of the Currency, consolidate into one association under the charter of either existing banks, on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each association proposing to consolidate, and be ratified and confirmed by the affirmative vote of the shareholders of each such association owning at least two-thirds of its capital stock outstanding, at a meeting to be held on the call of the directors after publishing notice of the time, place, and object of the meeting for four consecutive weeks in some newspaper published in the place where the said association is located, and if no newspaper is published in the place, then in a paper published nearest thereto, and after sending such notice to each shareholder of record by registered mail at least ten days prior to said meeting: *Provided*, That the capital stock of such consolidated association shall not be less than that required under existing law for the organization of a national bank in the place in which it is located: *And provided further*, That if such consolidation shall be voted for at said meetings by the necessary majorities of the shareholders of each of the associations proposing to consolidate, any shareholder of any of the associations so consolidated, who has voted against such consolidation at the meeting of the association of which he is a shareholder or has given notice in writing at or prior to such meeting to the presiding officer that he dissents from the plan of consolidation, shall be entitled to receive the value of the shares so held by him if and when said consolidation shall be approved by the Comptroller of the Currency, such value to be ascertained as of the date of the Comptroller's approval by an appraisal made by a committee of three persons, one to be selected by the shareholder, one by the directors, and the third by the two so chosen; and in case the value so fixed shall not be satisfactory to the shareholder he may within five days after being notified of the appraisal appeal to the Comptroller of the Currency, who shall cause a reappraisal to be made, which shall be final and binding; and if said reappraisal shall exceed the value fixed by said committee, the bank shall pay the expenses of the reappraisal; otherwise the appellant shall pay said expenses, and the value so ascertained and determined shall be deemed to be a debt due and be forthwith paid to said shareholder from said bank, and the share so paid shall be surrendered and after due notice sold at public auction within thirty days after the final appraisement provided for in this Act.

Publication of notice and notification by registered mail of the meeting provided for in the foregoing paragraph may be waived by unanimous action of the shareholders of the respective associations. Where a dissenting shareholder has given notice as above provided to the association of which he is a shareholder of his dissent from the plan of consolidation, and the directors thereof fail for more than thirty days thereafter to appoint an appraiser of the value of his shares, said shareholder may request the Comptroller of the Currency to appoint such appraiser to act on the appraisal committee for and on behalf of such association.

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If shares, when sold at public auction in accordance with this section, realize a price greater than their final appraised value, the excess in such sale price shall be paid to the shareholder. The consolidated association shall be liable for all liabilities of the respective consolidating associations. In the event one of the appraisers fails to agree with the others as to the value of said shares, then the valuation of the remaining appraisers shall govern.

Title 12, U. S. C., sec. 34.—That associations consolidating with another association under the provisions of this Act shall not be required to deposit lawful money for their outstanding circulation, but their assets and liabilities shall be reported by the association with which they have consolidated. And all the rights, franchises, and interests of the said national bank so consolidated in and to every species of property, personal and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such national bank into which it is consolidated without any deed or other transfer, and the said consolidated national bank shall hold and enjoy the same and all rights of property, franchises, and interests in the same manner and to the same extent as was held and enjoyed by the national bank so consolidated therewith.

Title 12, U. S. C., sec. 34a.—That any bank incorporated under the laws of any State, or any bank incorporated in the District of Columbia, may be consolidated with a national banking association located in the same State, county, city, town, or village under the charter of such national banking association on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each association or bank proposing to consolidate, and which agreement shall be ratified and confirmed by the affirmative vote of the shareholders of each such association or bank owning at least two-thirds of its capital stock outstanding, or by a greater proportion of such capital stock in the case of such State bank if the laws of the State where the same is organized so require, at a meeting to be held on the call of the directors after publishing notice of the time, place, and object of the meeting for four consecutive weeks in some newspaper of general circulation published in the place where the said association or bank is situated, and in the legal newspaper for the publication of legal notices or advertisements, if any such paper has been designated by the rules of a court in the county where such association or bank is situated, and if no newspaper is published in the place, then in a paper of general circulation published nearest thereto, unless such notice of meeting is waived in writing by all stockholders of any such association or bank, and after sending such notice to each shareholder of record by registered mail at least ten days prior to said meeting, but any additional notice shall be given to the shareholders of such State bank which may be required by the laws of the State where the same is organized. The capital stock of such consolidated association shall not be less than that required under existing law for the organization of a national banking association in the place in which such consolidated association is located. Upon such a consolidation, or upon a consolidation of two or more national banking associations under section 1 of this Act, the corporate existence of each of the constituent banks and national banking associations participating in such consolidation shall be merged into and continued in the consolidated national banking association and the consolidated association shall be deemed to be the same corporation as each of the constituent institutions. All the rights, franchises, and interests of each of such constituent banks and national banking associations in and to every species of property, real, personal, and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such consolidated national banking association without any deed or other transfer; and such consolidated national banking association, by virtue of such consolidation and without any order or other action on the part of any court or otherwise, shall hold and enjoy the same and all rights of property, franchise, and interests, including appointments, designations, and nominations and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any such constituent institution at the time of such consolidation: *Provided, however,* That where any such constituent institution at the time of such consolidation was acting under appointment of any court as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics or in any other fiduciary capacity, the consolidated national banking association shall be subject to removal by a court of competent jurisdiction in the same manner and to the same extent as was such constituent corporation prior to the consolidation, and nothing herein contained shall be con-

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strued to impair in any manner the right of any court to remove such a consolidated national banking association and to appoint in lieu thereof a substitute trustee, executor, or other fiduciary, except that such right shall not be exercised in such a manner as to discriminate against national banking associations, nor shall any such consolidated association be removed solely because of the fact that it is a national banking association. If such consolidation shall be voted for at said meetings by the necessary majorities of the shareholders of the association and of the State or other bank proposing to consolidate, and thereafter the consolidation shall be approved by the Comptroller of the Currency, any shareholder of either the association or the State or other bank so consolidated, who has voted against such consolidation at the meeting of the association of which he is a stockholder, or has given notice in writing at or prior to such meeting to the presiding officer that he dissents from the plan of consolidation, shall be entitled to receive the value of the shares so held by him if and when said consolidation shall be approved by the Comptroller of the Currency, such value to be ascertained as of the date of the Comptroller's approval by an appraisal made by a committee of three persons, one to be selected by the shareholder, one by the directors of the consolidated association, and the third by the two so chosen; and in case the value so fixed shall not be satisfactory to such shareholder he may within five days after being notified of the appraisal appeal to the Comptroller of the Currency, who shall cause a reappraisal to be made, which shall be final and binding; and the consolidated association shall pay the expenses of reappraisal, and the value as ascertained by such appraisal or reappraisal shall be deemed to be a debt due and shall be forthwith paid to said sharehlder by said consolidated association, and the shares so paid for shall be surrendered and, after due notice, sold at public auction within thirty days after the final appraisement provided for in this Act; and if the shares so sold at public auction shall be sold at a price greater than the final appraised value, the excess in such sale price shall be paid to the said shareholder; and the consolidated association shall have the right to purchase such shares at public auction, if it is the highest bidder therefor, for the purpose of reselling such shares within thirty days thereafter to such person or persons and at such price as its board of directors by resolution may determine. The liquidation of such shares of stock in any State bank shall be determined in the manner prescribed by the law of the State in such cases if such provision is made in the State law; otherwise as hereinbefore provided. No such consolidation shall be in contravention of the law of the State under which such bank is incorporated.

Where a dissenting shareholder has given notice as provided in this section to the bank of which he is a shareholder of his dissent from the plan of consolidation, and the directors thereof failed for more than thirty days thereafter to appoint an appraiser of the value of his shares, said shareholder may request the Comptroller of the Currency to appoint such appraiser to act on the appraisal committee for and on behalf of such bank. In the event one of the appraisers fails to agree with the others as to the value of said shares, then the valuation of the remaining appraisers shall govern.

Title 12, U. S. C., sec. 34b.—One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this Act, may merge into a national banking association located within the same State, under the charter of the receiving association.

(b) The merger agreement shall—

(1) be agreed upon in writing by a majority of the board of directors of each association or State bank participating in the plan of merger;

(2) be ratified and confirmed by the affirmative vote of the shareholders of each association or State bank owning at least two-thirds of the capital stock outstanding, at a meeting to be held on the call of the directors, after publishing notice of the time, place, and object of the meeting for four consecutive weeks in a newspaper with general circulation in the place where the association or State bank is located, and after sending such notice to each shareholder of record by registered mail at least ten days prior to the meeting, except to those shareholders who specifically waive notice;

(3) specify the amount of the capital stock of the receiving association which will be outstanding upon completion of the merger, the amount of stock (if any) to be allocated, and cash (if any) to be paid to the shareholders of the association or State bank being merged into the receiving association; and

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(4) provide the manner of disposing of any shares of the receiving association not taken by the shareholders of the association or State bank merged into the receiving association.

If a merger shall be voted for at the called meetings by the necessary majorities of the shareholders of each association or State bank participating in the plan of merger, any shareholder of any association or State bank to be merged into the receiving association who has voted against the merger at the meeting of the shareholders, or has given notice in writing at or prior to the meeting to the presiding officer that he dissents from the plan of merger, shall be entitled to receive the value of the shares held by him if and when the merger shall be approved by the Comptroller. The value of the shares shall be ascertained, as of the date of the meeting of the shareholders of the association or State bank approving the merger, by an appraisal made by a committee of three persons, composed of (i) one selected by the vote of the holders of a majority of the stock, the owners of which are entitled to payment in cash; (ii) one selected by the directors of the receiving association; and (iii) one selected by the two so selected. The valuation agreed upon by any two of the three appraisers shall govern. If the value so fixed shall not be satisfactory to any dissenting shareholder who has requested payment, that shareholder may, within five days after being notified of the appraised value of his shares, appeal to the Comptroller, who shall cause a reappraisal to be made which shall be final and binding as to value of the shares of the appellant. If, within ninety days from the date of consummation of the merger, for any reason, one or more of the appraisers have not been selected, or the appraisers have failed to determine the value of the shares, the Comptroller, upon written request of any interested party, shall cause an appraisal to be made which shall be final and binding on all parties. The expenses of the Comptroller in making the reappraisal or the appraisal, as the case may be, shall be paid by the receiving association. The value of the shares ascertained shall be promptly paid to the shareholders by the receiving association, and the shares so paid for shall be surrendered to and cancelled by the receiving association. The provisions of this paragraph shall apply only to shareholders of and stock owned by them in a bank or association being merged into the receiving association.

(c) The corporate existence of the merging association or State bank shall be merged into that of the receiving association. All rights, franchises, and interests of the merging association or State bank in and to every type of property (real, personal, and mixed) and choses in action shall be transferred to and vested in the receiving association by virtue of such merger without any deed or other transfer. The receiving association, upon the merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises, and interests, including appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any merging association or State bank at the time of the merger, subject to the conditions hereinafter provided.

Where any merging association or State bank, at the time of the merger, was acting under appointment of any court as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity, the receiving association shall be subject to removal by a court of competent jurisdiction in the same manner and to the same extent as was the merging association or State bank prior to the merger. Nothing contained in this section shall be considered to impair in any manner the right of any court to remove a receiving association and to appoint in lieu thereof a substitute trustee, executor, or other fiduciary, except that such right shall not be exercised in such a manner as to discriminate against national banking associations, nor shall any receiving association be removed solely because of the fact that it is a national banking association.

(d) Any national banking association which is a receiving association may issue stock, with the approval of the Comptroller and in accordance with law, to be delivered to the shareholders of a merging State bank or national banking association as provided for by a merger agreement, free from any preemptive rights of the shareholders of the receiving association.

Title 12, U. S. C., sec. 34c.—As used in this Act the term—

(1) "State bank" means any bank, banking association, trust company, savings bank (other than a mutual savings bank), or other banking institution

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which is engaged in the business of receiving deposits and which is incorporated under the laws of any State, or which is operating under the Code of Law for the District of Columbia (except a national banking association located in the District of Columbia);

(2) "State" means the several States, the several Territories, Puerto Rico, the Virgin Islands, and the District of Columbia;

(3) "Comptroller" means the Comptroller of the Currency; and

(4) "Receiving association" means the national banking association into which one or more national banking associations or one or more State banks, located within the same State, merge.

Recommendations

It is recommended that the statutes be amended to provide uniformity in the provisions for giving notice of shareholders' meetings, waiver of notice, dissenters' rights including appraisal of the value of the stock of dissenters and payment of the expenses of appraisal or reappraisal by the Comptroller of the Currency, and manner of disposing of stock not taken by dissenters but that no change be made in the merger provisions of title 12, United States Code, section 34b (b) confining dissenters' rights to the stockholders of the bank merged into the "receiving associations". It is also recommended that the statutes be amended to contain uniform provisions for the transfer of fiduciary functions and the administration of estates to the resulting combined bank automatically and by operation of law, without any order or other action on the part of any court or otherwise, and similar uniformity regarding the fiduciary bank's being subject to removal by a court of competent jurisdiction in the same manner and to the same extent as was the constituent association or bank to the consolidation or merger.

Reasons

There would appear to be no justification for requiring publication in the local newspaper for the publication of legal notices or advertisements in addition to publication in a newspaper of general circulation in one form of combination of banks and not in the others. It would appear that publication in a newspaper of general circulation published in the place where the association or bank is situated, or, if there is no such newspaper, then in a paper of general circulation published nearest thereto, is adequate. The phrase "or, if there is no such newspaper, then in a paper of general circulation, published nearest thereto" is not contained in the merger statute, title 12, United States Code, section 34b, and we believe it should be. There would likewise seem to be no justification for any variation in the provisions for giving notice of shareholders' meetings, the waiver of such notice and in dissenters' rights as to the procedure to be followed, the date on which the value of the dissenters' stock is to be determined, the applicability of that determined value to one or all dissenting stockholders, and the vote of dissenters required to choose a representative to participate in the appraisal of the value of such stock, and the payment for the expense of appraisal or reappraisal made by the Comptroller of the Currency. Futhermore, all three statutes should specify that the value of the dissenters' stock should be determined as of the date of the meeting approving such consolidation or merger since that is the date on which the dissenter was dissatisfied with the proposed consolidation or merger. Between the date of such shareholders' meeting and the date of the consummation of the consolidation or merger the stock of the bank owned by the dissented might appreciate substantially in value, from which the dissenter should not benefit, or might suffer a substantial depreciation in value, from which the dissenter should not suffer. All three statutes should provide that the stock of the constituent bank which he owns must be turned in for cancellation as a condition to the payment to him of its value, and that the stock of the resulting bank which would have been delivered to him is the stock which will be sold at auction. Nor is there justification for requiring that stock rejected by dissenters be sold at auction in one case, with any excess in the sale price above the appraised value going to the dissenting stockholder in two types of combinations but not in the third. The justification for confining dissenters' rights to stockholders of the bank which mergers into a receiving association under the provisions of title 12, United States Code, section 34b is that such statute is intended to be used only in cases of large banks taking over small banks where the value of the stock of the large bank will be affected only slightly, if at all.

The merger statute, title 12, United States Code, section 34b, contains a provision that the value of shares of the dissenters shall be ascertained as of the

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date of the meeting of shareholders of the association or state bank approving the merger by an appraisal made by a committee of three persons composed of "one selected by the vote of the holders of a majority of the stock, the owners of which are entitled to payment in cash: * * *", but title 12, United States Code, section 33 and title 12, United States Code, section 34a would appear to give each dissenting shareholder the separate right of appraisal. Furthermore, the merger statute provides that the valuation agreed upon by any 2 of the 3 appraisers shall govern, whereas no such provision is contained in title 12, United States Code, section 33 or title 12, United States Code, section 34a. Furthermore, the merger statute provides that the value of the shares of dissenters shall be ascertained as of the date of the meeting of the shareholders of the association or State bank approving the merger, whereas the other two statutes prescribe that such value should be ascertained as of the date of the Comptroller's approval of the consolidation. Again, the merger statute prescribes that if, within 90 days from the date of consummation of the merger, one or more of the appraisers have not been selected or the appraisers have failed to determine the value of the shares, the Comptroller, upon written request of any interested party, shall cause an appraisal to be made which shall be binding on all parties. That provision is not contained in the other two statutes. Also title 12, United States Code, section 33 provides, with respect to reappraisals of stock of dissenters by the Comptroller of the Currency, that if the reappraisal shall exceed the value fixed by the appraisal committee, the bank shall pay the expenses; otherwise the appellant shall pay said expenses. Title 12, United States Code, section 342 provides that the consolidated association shall pay the expenses of reappraisal, and title 12, United States Code, section 34b prescribes that in such case the receiving association shall pay the expenses of reappraisal. It would appear that with respect to the matters referred to in this paragraph there should be uniformity in the three statutes.

With respect to the transfer of fiduciary functions and the administration of estates, it is essential that these be transferred automatically to the resulting bank. Otherwise the fiduciary estates of various kinds would be deprived of anyone authorized to perform the duties of fiduciary with respect to such estates until they were transferred singly by appropriate court orders or by consents of the interested parties, including the beneficiaries in the case of private trusts. Such individual transfers would be costly and time-consuming and might, in fact, defeat a contemplated combination of two banks even though otherwise highly desirable and in the public interest.

9. Branches Retained After Consolidation or Merger

Existing Law

Title 12, U. S. C., sec. 36 (b) (U. S. R., sec. 5155).—If a State bank is hereafter converted into or consolidated with a national banking association, or if two or more national banking associations are consolidated, such converted or consolidated associations may, with respect to any of such banks, retain and operate any of their branches which may have been in lawful operation by any bank at the date of the approval of the Act.

Recommendation

It is recommended that this statute be amended to provide that upon the consolidation or merger of two or more national banking associations or of a State bank with a national banking association the continuing bank may retain and operate all of the branches which it had in lawful operation at the time of the merger or consolidation.

Reasons

A bank which takes over by merger or consolidation a State, or another national, bank should not for that reason have to give up the branches which it has in operation at the time of the consolidation or merger. The purpose of the existing law is to prevent a bank from acquiring branches where they could not legally be established under State law, by taking over other banks. This purpose does not exist in the case of branches of the continuing bank and there is no reason why it should not be permitted to continue without reestablishment and without securing anew the approval of the Comptroller of the Currency, the legally established branches which it already has in existence.

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10. Capital of Outside Branches

Existing Law

Title 12, U. S. C., sec. 36 (c) (U. S. R. S., sec. 5155).—A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town, or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: *Provided*, That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock.

Recommendation

It is recommended that the last sentence of this section be amended to make it clear that in its application it is not necessary to allocate capital for inside branches of national banks even though that would be required under State law in the case of State banks.

Reasons

Under existing law a national bank wishing to establish an outside branch must have combined capital and surplus equal to that which is required for the establishment of such a branch by a State bank. Some States require additional capital for branches located within the same city as the main office as well as additional capital for branches outside the main office city. National banks have never been required to have additional capital for the establishment of inside branches. It is not clear under the last sentence of this section that if a national bank having several inside branches wishes to establish an outside branch additional capital need not be allocated for each of the inside branches as well as for the outside branch to be established, even if the law of the State in which the national bank is located would require that to be done in the case of State banks. For example, if a national bank having 2 inside branches were situated in a State in which the laws of the State required $100,000 capital for the main office and $100,000 capital for each branch, including the inside branches, wished to establish an outside branch the inside branches need not be considered and the national bank would be permitted to establish an outside branch with a capital of $200,000 even though a similarly situated State bank would have to have $400,000 capital to establish the outside branch. This is a result of the fact that Congress has indicated that national banks must follow State law with respect to the amount of capital necessary for the establishment of branches only in the case of branches located outside the city, town, or village in which the bank is situated. This point should be clarified in the existing law.

11. School Savings Programs

Existing law

Title 12, U. S. C., sec. 36 (f).—The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United

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States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

Recommendation

It is recommended that this statute be amended by adding at the end thereof a proviso to the effect that the acceptance of deposits in furtherance of a school thrift or savings plan by an officer, employee, or agent of a national bank at any school located in the trade area of the bank shall not be construed to be the operation of a branch.

Reasons

As a general rule it is the position of this office that the acceptance of deposits by an agent of a national bank at a place other than the bank's offices constitutes branch banking under the definition contained in this section. However, we believe that the school savings program is desirable and that school children should be encouraged to save. Enactment of this legislation would remove any doubt that a national bank could participate in this activity.

12. Payment of Stock in National Bank

Existing law

Title 12, U. S. C., sec. 53 (U. S. R. S., sec. 5140).—At least fifty per centum of the capital stock of every association shall be paid in before it shall be authorized to commence business; and the remainder of the capital stock of such association shall be paid in installments of at least ten per centum each, on the whole amount of the capital, as frequently as one installment at the end of each succeeding month from the time it shall be authorized by the Comptroller of the Currency to commence business; and the payment of each installment shall be certified to the Comptroller, under oath, by the president or cashier of the association.

Title 12, U. S. C., section 26 (U. S. R. S., sec. 5168).—Whenever a certificate is transmitted to the Comptroller of the Currency, as provided in this Title, and the association transmitting the same notifies the Comptroller that at least fifty per centum of its capital stock has been duly paid in, and that such association has complied with all the provisions of this Title required to be complied with before an association shall be authorized to commence the business of banking, the Comptroller shall examine into the condition of such association, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each of its directors, and the amount of the capital stock of which each is the owner in good faith, and generally whether such association has complied with all the provisions of this Title required to entitle it to engage in the business of banking; and shall cause to be made and attested by the oaths of a majority of the directors, and by the president or cashier of the association, a statement of all the facts necessary to enable the Comptroller to determine whether the association is lawfully entitled to commence the business of bank'ng.

Title 12. U. S. C., sec. 54 (U. S. R. S., sec. 5141).—Whenever any shareholder, or his assignee, fails to pay any installment on the stock when the same is required by the preceding section to be paid, the directors of such association may sell the stock of such delinquent shareholder at public auction, having given three weeks' previous notice thereof in a newspaper published and of general circulation in the city or county where the association is located, or if no newspaper is published in said city or county, then in a newspaper published nearest thereto, to any person who will pay the highest price therefor, to be not less than the amount then due thereon, with the expenses of advertisement and sale; and the excess, if any, shall be paid to the delinquent shareholder. If no bidder can be found who will pay for such stock the amount due thereon to the association, and the cost of advertisment and sale, the amount previously paid shall be forfeited to the association, and such stock shall be sold as the directors may order, within six months from the time of such forfeiture, and if not sold it shall be canceled and deducted from the capital stock of the association. If any such cancellation and reduction shall reduce the capital of the association below the minimum of capital required by law the capital stock shall, within thirty days from the date of such cancellation, be increased to the required amount; in default of which a receiver may be appointed, according to the provisions of section fifty-two hundred and thirty-four, to close up the business of the association.

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Recommendation

It is recommended that the requirements in sections 5140 and 5168 of the Revised Statutes that 50 percent of capital stock be paid in be amended so as to require 100 percent of capital stock be paid in cash before a national bank shall be authorized to commence business. If such a change is deemed appropriate the provisions relating to installment payments in sections 5140 and 5141 should be eliminated from the statute.

Reasons

It is no longer deemed necessary that the statutes permit a national bank to open for business when only 50 percent of the capital stock has been paid in. It has been the practice of the Comptroller of the Currency since at least 1935 to require that 100 percent of the capital stock of a newly organized national bank must be paid in cash before it shall be authorized to commence business.

Before a national bank is permitted to open for business 100 percent of the capital stock should be paid in cash in order to provide a sound capital structure.

13. Unearned Dividends

Existing Law

Title 12, U. S. C., sec. 56.—No association, or any member thereof, shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association, equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by any association, while it continues its banking operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due to any association, on which interest is past due and unpaid for a period of six months, unless the same are well secured, and in process of collection, shall be considered bad debts within the meaning of this section. But nothing in this section shall prevent the reduction of the capital stock of the association under section fifty-one hundred and forty-three.

Title 12, U. S. C., sec. 60.—The directors of any association may, semiannually, declare a dividend of so much of the net profits of the association as they shall judge expedient; but each association shall, before the declaration of a dividend on its shares of common stock, carrying not less than one-tenth part of its net profits of the preceding half year to its surplus fund until the same shall equal the amount of its common capital: *Provided*, That for the purposes of this section, any amounts paid into a fund for the retirement of any preferred stock of any such association out of its net earnings for such half-year period shall be deemed to be an addition to its surplus fund if, upon the retirement of such preferred stock, the amount so paid into such retirement fund for such period may then properly be carried to surplus. In any such case the association shall be obligated to transfer to surplus the amounts so paid into such retirement fund for such period on account of the preferred stock as such stock is retired.

Recommendations

It is recommended that appropriate amendment to the statutes be enacted to require the approval of the Comptroller of the Currency before the directors of any national bank may declare and pay to shareholders of the association cash dividends which exceed the amount of net profits after taxes realized from banking operations during the previous 6 months' period. Furthermore, that amendment be made to the statutes to permit directors of national banks to declare dividends quarterly, semiannually, or annually, as long as all legal requirements are met.

Reasons

There have been cases where national banks have paid dividends in excess of net profits after taxes for the previous 6 months' period to shareholders even though such payment resulted in the dissipation of needed capital funds.

A recent instance occurred in which the controlling block of the capital stock of a strongly capitalized and well-managed national bank was sold to another shareholder. The new majority shareholder negotiated a deal whereby the quarters of the bank were sold for a large sum in excess of the book value, the profit of over $400,000 was credited to the undivided profits of the bank, and the bank entered into a long-term lease at unduly heavy rental expense for its occupancy of the banking house it formerly owned. It seems possible, if not

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likely, that the exorbitant terms of the lease rather than the real value of the property may have been the principal factor in the negotiation of the selling price of the banking house.

Under the new majority share ownership, the directors of the bank declared over $1 million in dividends which exceeded by $480,000 the profit on the sale of the banking house as well as net profits from operations for the year. Theretofore, the annual dividend to shareholders amounted to $30,000 and today no dividend is being paid. Although this depletion of the capital funds of the bank did not violate the above-quoted statutes, its effect was the creation of an undercapitalized position, particularly so in the light of the policies of the new management which engaged in self-serving lending activities of an unsafe and unsound nature. The Comptroller of the Currency warned the entire board of directors of the bank under title 12, United States Code, section 77 (Banking Act of 1933, sec. 30) which is a preliminary step toward their removal from office. However, the majority share ownership of the bank changed hands again and resulted in the election of another new board of directors. This bank still remains in an undercapitalized condition. Although the present management, which is the third within 2 years since the initial sale of control in 1954, has been advised of the need for additional capital funds, the matter must be delayed until the settlement of litigation between former and present principal shareholders arising out of charges of fraud and misrepresentation in the sale of the shares and the banking house.

It is deemed necessary to ask for the reasonable legal requirement that the Comptroller approve the payment of cash dividends exceeding the bank's net profits after taxes for the previous 6 months to prevent such situations from arising.

With respect to the recommendation concerning the frequency of declaration of dividends, many banks find it desirable to declare dividends at intervals more frequently than semiannually as now specifically provided in the law. To answer many inquiries concerning this subject the Comptroller of the Currency has incorporated the following ruling in the Digest of Opinions of the Office of the Comptroller of the Currency Relating to Operations and Powers of National Banks:

"6310A. Declaration and payment of dividends more frequently than semiannually.

"Under R. S. 5199 and 5204 (12 U. S. C. 60 and 56), the directors of a national bank are expressly empowered to declare dividends semiannually out of the bank's 'net profits.' However, until the bank's surplus equals its common capital, the bank must first carry 'not less than one-tenth part of its net profits of the preceding half year to its surplus fund.' (The 'preceding half year' refers to the six-months' period ending June 30 or December 31, as the case may be.) Such dividends may be made payable more often than semiannually, such as quarterly.

"The reference in R. S. 5199 to semiannual declaration of dividends is related to the requirement in the same sentence that, before declaration of a dividend, the bank shall carry not less than one-tenth part of its net profits to surplus until the same shall equal the amount of its common capital. There is no objection on the part of this office to more frequent declarations of dividends (for example, quarterly) so long as the bank's surplus fund is at least equal to its capital."

This ruling is based upon the opinion that the law is intended to be restrictive only as long as the surplus of the bank remains less than the amount of its capital. After the legally required capital and surplus relationship is established and no further transfers of portions of net profits to surplus must be made, there seems to be no reason for restricting the declaration of dividends to a semiannual basis if there is no conflict with other provisions of law. A clarification of the statute to deal with what appears to be all-inclusive restrictive language would be helpful.

14. Increase of Capital by Vote of Shareholders

Existing Law

Title 12, U. S. C., sec. 58.—Any national banking association may, with the approval of the Comptroller of the Currency, by the vote of shareholders owning two-thirds of the stock of such association increase its capital stock, in accordance with existing laws, to any sum approved by the said Comptroller,

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notwithstanding the limit fixed in its original articles of association and determined by said Comptroller; and no increase of the capital stock of any national banking association either within or beyond the limit fixed in its original articles of association shall be made except in the manner herein provided.

Recommendation

It is recommended that section 58 be repealed.

Reason

In 1950 the Attorney General was asked to consider whether or not a stock dividend which amounts to a capital increase could be issued under the provisions of title 12, United States Code, section 58. He held that under section 58 a national bank could not lawfully declare stock dividends. Thereafter title 12, United States Code, section 57, was amended in order to provide for an increase of capital stock by the declaration of a stock dividend. Since section 57 incorporates the subject matter of section 58, and national banks have availed themselves of section 57 instead of section 58, the latter should be repealed as it is now obsolete and never applied.

15. Cumulative Voting in the Election of National Bank Directors

Existing law

Title 12, U. S. C., sec. 61 (U. S. R. S., sec. 5144).—In all elections of directors, each shareholder shall have the right to vote the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal or to distribute them on the same principle among as many candidates as he shall think fit; and in deciding all other questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him; except that (1) this shall not be construed as limiting the voting rights of holders of preferred stock under the terms and provisions of articles of association, or amendments thereto, adopted pursuant to the provisions of section 302 (a) of the Emergency Banking and Bank Conservation Act approved March 9, 1933, as amended, (2) in the election of directors, shares of its own stock held by a national bank as sole trustee, whether registered in its own name as such trustee or in the name of its nominee, shall not be voted by the registered owner unless under the terms of the trust the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and unless such donor or beneficiary actually directs how such shares shall be voted, (3) shares of its own stock held by a national bank and one or more persons as trustees may be voted by such other person or persons, as trustees, in the same manner as if he or they were the sole trustee, and (4) shares controlled by any holding company affiliate of a national bank shall not be voted unless such holding company affiliate shall have first obtained a voting permit as hereinafter provided, which permit is in force at the time such shares are voted, but such holding company affiliate may, without obtaining such permit, vote in favor of placing the association in voluntary liquidation or taking any other action pertaining to the voluntary liquidation of such association. Shareholders may vote by proxies duly authorized in writing; but no officer, clerk, teller, or bookkeeper of such bank shall act as proxy; and no shareholder whose liability is past due and unpaid shall be allowed to vote. Whenever shares of stock cannot be voted by reason of being held by the bank as sole trustee, such shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite percentage of shares.

Recommendation

Amend the statute in order to eliminate mandatory cumulative voting in the election of directors of national banks but put such association to retain cumulative voting by so providing in their articles of association.

Reasons

A national bank can best be operated where there is a high degree of unity in the directorate and in the official staff. The successful operation of any bank depends upon confidence of stockholders in the management, confidence of different members of the management body in each other, and confidence of the depositors and the community in the bank as an organization. Confidence is not engendered by having a minority group force itself on the directorate of a bank by the use of the cumulative voting provision, and in cases where such an

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end has been accomplished it has been the usual experience that the party or parties thus added to the boards have pursued a course of troublemaking, thereby lessening the mutual confidence of the directorate and the confidence of the staff in the directorate, and in some cases, the confidence of the community in the bank.

Cumulative voting is not necessary in national banks because of the protection afforded to all classes of stockholders by the supervision exercised by the Office of the Comptroller of the Currency. National banks are regularly examined by the Office of the Comptroller and violations of law or actions not in the best interests of the stockholders are reported to the Comptroller by his examiners and corrective action is required by his office.

16. Reserves Required by Holding Company Affiliates

Existing law

Title 12, U. S. C., sec 61 (c) (U. S. R. S. 5144).—Notwithstanding the foregoing provisions of this section after five years after the enactment of the Banking Act of 1933, (1) any such holding comany affiliate the shareholders or members of which shall be individually and severally liable in proportion to the number of shares of such holding company affiliate held by them respectively, in addition to amounts invested therein, for all statutory liability imposed on such holding company affiliate by reason of its control of shares of stock of banks, shall be required only to establish and maintain out of net earnings over and above 6 per centum per annum on the book value of its own shares outstanding a reserve of readily marketable assets in an amount of not less than 12 per centum of the aggregate par value of bank stocks controlled by it, and (2) the assets required by this section to be possessed by such holding company affiliate may be used by it for replacement of capital in banks affiliated with it and for losses incurred in such banks, but any deficiency in such assets resulting from such use shall be made up within such period as the Board of Governors of the Federal Reserve System may by regulation prescribe; and the provisions of this subsection, instead of sub-section (b), shall apply to all holding company affiliates with respect to any shares of bank stock owned or controlled by them as to which there is no statutory liability imposed upon the holders of such bank stock.

Recommendation

It is recommended that this statute be amended to provide that where a holding company affiliate of a member bank is in turn owned by another corporation which by virtue of such ownership becomes a holding company affiliate, which in turn is owned by another corporation which is, therefore, a holding company affiliate, only the holding company affiliate which directly owns or controls a majority of the shares of capital stock of the member bank or the election of a majority of the directors of the member bank, should be required to maintain the requisite reserves.

Reasons

The purpose of this statute is to require that a holding company affiliate of a member bank must establish and maintain out of net earnings over and above 6 percent per annum on the book value of its own shares outstanding a reserve of readily marketable assets in an amount of not less than 12 percent of the aggregate par value of bank stocks controlled by it. The purpose of this requirement is to insure that a holding company affiliate owning bank stock will be in a position to aid the banks by replacement of capital in the event that losses make such replacement necessary. When such a reserve has been established and is maintained by a holding company affiliate directly owning bank stocks, there would seem to be no reason why parent companies of the holding company affiliate should also be required to maintain such reserves. In 1 case which recently came to our attention a single group of banks had 4 holding company affiliates in vertical alinement. Under these circumstances, and under the interpretation placed on this statute by the Board of Governors of the Federal Reserve System, each of these parent companies would be required to maintain the specified reserves so that in effect reserves of 48 percent rather than 12 percent would be required. This requirement would be a major deterrent to nonmember State banks owned by the holding company affiliate giving consideration to conversion into national banks. There is no justification for such a requirement and the language of this statute should be rewritten to bring it into conformity with the intent of Congress.

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17. Shareholders' Lists

Existing law

Title 12, U. S. C., sec. 62.—The president and cashier of every national banking association shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted. Such list shall be subject to the inspection of all the shareholders and creditors of the association, and the officers authorized to assess taxes under State authority, during business hours of each day in which business may be legally transacted. A copy of such list, verified by the oath of such president or cashier, shall be transmitted to the Comptroller of the Currency within ten days of any demand therefor made by him.

Recommendation

(1) This statute should be amended to eliminate the provision that creditors of the association may inspect the list of shareholders.

(2) This statute should be amended by qualifying the right of the shareholders to inspect the shareholders list by providing that they may inspect the shareholders list only for a proper purpose not inimical to the interests of the bank.

Reason

(1) Double liability of shareholders in national banks has now been eliminated. With the elimination of the double liability there is no longer any reason to permit the creditors of the banks to view the shareholders lists. The purpose of that requirement was so that the creditors would know who were the shareholders against whom double liability might be enforced in the event of the insolvency of the bank.

(2) There appears to be no reason why shareholders of national banks should have any greater right of access to shareholders lists than the shareholders of corporations generally. That right is generally limited to the right to inspect the shareholders list upon the showing of a proper purpose not inimical to the interests of the corporation. The present requirement related back originally to the double liability provisions of law, and there is no longer any need for the provision to be any broader than in the case of corporations generally.

18. Shareholders Individual Liability

Existing Law

Title 12, U. S. C., sec. 63 (U. S. R. S., sec. 5151).—The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares; except that shareholders of any banking association now existing under State laws, having not less than five millions of dollars of capital actually paid in, and a surplus of twenty per centum on hand, both to be determined by the Comptroller of the Currency, shall be liable only to the amount invested in their shares: and such surplus of twenty per centum shall be kept undiminished, and be in addition to the surplus provided for in this Title; and if at any time there is a deficiency in such surplus of twenty per centum, such association shall not pay any dividends to its shareholders until the deficiency is made good: and in case of such deficiency, the Comptroller of the Currency may compel the association to close its business and wind up its affairs under the provisions of Chapter four of this Title.

Title 12, U. S. C., sec. 64 (Federal Reserve Act, sec. 23, par. 1).—The stockholders of every national banking association shall be held individually responsible for all contracts, debts, and engagements of such association, each to the amount of his stock therein, at the par value thereof in addition to the amount invested in such stock. The stockholders in any national banking association who shall have transferred their shares or registered the transfer thereof within sixty days next before the date of the failure of such association to meet its obligations, or with knowledge of such impending failure, shall be liable to the same extent as if they had made no such transfer, to the extent that the subsequent transferee fails to meet such liability; but this provision shall not be construed to affect in any way any recourse which such shareholders might otherwise have against those in whose names such shares are registered at the time of such failure.

Title 12, U. S. C., sec. 64a (Banking Act of 1933, sec. 22, as amended by Banking Act of 1935, sec. 304).—The additional liability imposed upon shareholders

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in national banking associations by the provisions of section 5151 of the Revised Statutes, as amended, and section 23 of the Federal Reserve Act, as amended (U. S. C., title 12, secs. 63 and 64), shall not apply with respect to shares in any such association issued after the date of the enactment of this Act. Such additional liability shall cease on July 1, 1937, with respect to all shares issued by any association which shall be transacting the business of banking on July 1, 1937: *Provided*, That not less than six months prior to such date, such association shall have caused notice of such prospective termination of liability to be published in a newspaper published in the city, town, or county in which such association is located, and if no newspaper is published in such city, town, or county, then in a newspaper of general circulation therein. If the association fail to give such notice as and when above provided, a termination of such additional liability may thereafter be accomplished as of the date six months subsequent to publication, in the manner above provided. In the case of each association which has not caused notice of such prospective termination of liability to be published prior to May 18, 1953, the Comptroller of the Currency shall cause such notice to be published in the manner provided in this section, and on the date six months subsequent to such publication by the Comptroller of the Currency such additional liability shall cease.

Recommendation

To eliminate reference to shareholders individual liability by repealing sections 63 and 64 of title 12.

Reasons

Title 12, United States Code, section 64a, as amended May 18, 1953, has eliminated the individual liability of the shareholders of a national bank provided for in sections 63 and 64. Therefore, the provisions of both sections are obsolete and unnecessary and should be repealed.

19. Shareholders Individual Liability Upon Liquidation

Existing law

Title 12, U. S. C., sec. 65.—That when any national banking association shall have gone into liquidation under the provisions of section five thousand two hundred and twenty of said statutes, the individual liability of the shareholders provided for by section fifty-one hundred and fifty-one of said statutes may be enforced by any creditor of such association by a civil action brought by such creditor on behalf of himself and of all other creditors of the association, against the shareholders thereof, in the United States district court for the district in which such association may have been located or established.

Title 12, U. S. C., sec. 66 (U. S. R. S., sec. 5152).—Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust-funds would be, if living and competent to act and hold the stock in his own name.

Recommendation

To eliminate by repeal reference to enforcement of the shareholders individual liability by creditors upon liquidation and personal liability of representatives of stockholders.

Reasons

Since section 64a, title 12, United States Code, has eliminated shareholders individual liability, any reference to such liability in subsequent sections should be eliminated. Sections 65 and 66 are both obsolete.

20. Election of National Bank Directors

Existing law

Title 12, U. S. C., sec. 75 (U. S. R. S., sec. 5149).—If, from any cause, an election of directors is not made at the time appointed, the association shall not for that cause be dissolved, but an election may be held on any subsequent day, thirty days' notice thereof in all cases having been given in a newspaper published in the city, town, or county in which the association is located, and if no newspaper is published in such city, town, or county, such notice shall be published in a newspaper published nearest thereto. If the articles of association do not

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fix the day on which the election shall be held, or if no election is held on the day fixed, the day for the election shall be designated by the board of directors in their by-laws, or otherwise; or if the directors fail to fix the day, shareholders representing two-thirds of the shares may do so.

Recommendation

It is recommended that this statute be amended to provide that if an election of directors is not held at the meeting of shareholders called for that purpose because the date set in the articles of association falls on a legal holiday, the meeting shall be held on the next following business day.

Reasons

In some cases the day specified in the articles of association for annual shareholders' meeting at which directors will be elected will fall on a legal holiday in the State in which the bank is located. In such cases the practice has been for a brief shareholders' meeting to be held at which no business is transacted but the meeting adjourned until some subsequent date decided upon and the directors are elected at that adjournment of the annual meeting. It is believed that it would be preferable to provide by legislation that in this event the meeting shall be held and the directors elected on the netx following business day.

21. Removed Director or Officer Voting Stock

Existing law

Title 12, U. S. C., sec. 77 (Banking Act of 1939, sec. 30).—Whenever, in the opinion of the Comptroller of the Currency, any director or officer of a national bank, or of a bank or trust company doing business in the District of Columbia, or whenever, in the opinion of a Federal reserve agent, any director or officer of a State member bank in his district shall have continued to violate any law relating to such bank or trust company or shall have continued unsafe or unsound practices in conducting the business of such bank or trust company, after having been warned by the Comptroller of the Currency or the Federal reserve agent, as the case may be, to discontinue such violations of law or such unsafe or unsound practices, the Comptroller of the Currency or the Federal reserve agent, as the case may be, may certify the facts to the Board of Governors of the Federal Reserve System. In any such case the Board of Governors of the Federal Reserve System may cause notice to be served upon such director or officer to appear before such Board to show cause why he should not be removed from office. A copy of such order shall be sent to each director of the bank affected, by registered mail. If after granting the accused director or officer a reasonable opportunity to be heard, the Board of Governors of the Federal Reserve System finds that he has continued to violate any law relating to such bank or trust company or has continued unsafe or unsound practices in conducting the business of such bank or trust company after having been warned by the Comptroller of the Currency or the Federal reserve agent to discontinue such violation of law or such unsafe or unsound practices, the Board of Governors of the Federal Reserve System, in its discretion, may order that such director or officer be removed from office. A copy of such order shall be served upon such director or officer. A copy of such order shall also be served upon the bank of which he is a director or officer, whereupon such director or officer shall cease to be a director or officer of such bank: *Provided*, That such order and the findings of fact upon which it is based shall not be made public or disclosed to anyone except the director or officer involved and the directors of the bank involved, otherwise than in connection with proceedings for a violation of this section. Any such director or officer removed from office as herein provided who thereafter participates in any manner in the management of such bank shall be fined not more than $5,000, or imprisoned for not more than five years, or both, in the discretion of the court.

Recommendation

It is recommended that section 77 be amended to prevent a director or officer of a national bank who has been removed under the provisions of section 77 from voting his shares of stock for any purpose at regular or special meetings of the shareholders. The remaining outstanding stock shall be regarded as 100 percent of the bank's outstanding shares for all voting purposes. If the removed shareholder sells or transfers his shares, it may not be voted by the new owner unless the Comptroller of the Currency determines that the sale or transfer was bona fide and not merely an attempt by the removed officer to vote the shares through a third party.

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Reasons

The statute provides that any director or officer who has been removed from office is subject to a fine of not more than $5,000, or imprisonment for not more than 5 years, or both, in the discretion of the court if he participates in any manner in the management of the bank. However, there is nothing in the statute that prohibits a removed officer or director from voting the stock of the bank owned by him. Thus, if he owns more than 50 percent of the stock of the bank, he can, as a practical matter, manage the bank through those he is able to elect to the directorate, and, in order to eliminate his direct or indirect control, his stock while owned by him or anyone he controls should be deprived of its voting power and the remainder of the stock of the bank held by independent parties should be considered as representing 100 percent of the voting stock of the bank.

22. Liabilities of National Banks Under Reconstruction Finance Corporation Act

Existing law

Title 12, U. S. C., sec. 82 (U. S. R. S., sec. 5202; Federal Reserve Act, sec. 13, par. 9).—No national banking association shall at any time be indebted, or in any way liable, to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, except on account of demands of the nature following:

First. Notes of circulation.

Second. Moneys deposited with or collected by the association.

Third. Bills of exchange or drafts drawn against money actually on deposit to the credit of the association, or due thereto.

Fourth. Liabilities to the stockholders of the association for dividends and reserve profits.

Fifth. Liabilities incurred under the provisions of the Federal Reserve Act.

Sixth. Liabilities incurred under the provisions of the Reconstruction Finance Corporation Act.

Seventh. Liabilities created by the endorsement of accepted bills of exchange payable abroad actually owned by the endorsing bank and discounted at home or abroad.

Eighth. Liabilities incurred under the provisions of section 202 of title II of the Federal Farm Loan Act, approved July 17, 1916, as amended by the Agricultural Credits Act of 1923.

Ninth. Liabilities incurred on account of loans made with the express approval of the Comptroller of the Currency under paragraph (9) of section 5200 of the Revised Statutes, as amended.

Tenth. Liabilities incurred under the provisions of section 13b of the Federal Reserve Act.

Recommendation

Eliminate by amendment paragraph 6 of section 82, title 12, United States Code.

Reason

The Reconstruction Finance Corporation is in the process of liquidation which should be completed by June 1957. National banking institutions do not now have any liabilities incurred under the provisions of the Reconstruction Finance Act. The liabilities referred to are those represented by preferred stock sold by national banks to the Reconstruction Finance Corporation.

23. Exceptions to 10-Percent Limit on Obligations

Existing law

Title 12, U. S. C., sec. 84 (6) (U. S. R. S., sec. 5200).—Obligations of any person, copartnership, association, or corporation, in the form of notes or drafts secured by shipping documents, warehouse receipts, or other such documents transferring or securing title covering readily marketable nonperishable staples when such property is fully covered by insurance, if it is customary to insure such staples, shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus when the market value of such staples securing such obligation is not at any time less than 115 per centum of the face amount of such obligation, and to an additional increase of limitation of 5 per centum of such capital and surplus in addition to such 25 per centum of such capital and surplus when the market

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value of such staples securing such additional obligation is not at any time less than 120 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 30 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 125 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 35 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 130 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 40 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 135 per centum of the face amount of such additional obligation, and to a further additional increase of limitation of 5 per centum of such capital and surplus in addition to such 45 per centum of such capital and surplus when the market value of such staples securing such additional obligation is not at any time less than 140 per centum of the face amount of such additional obligation, but this exception shall not apply to obligations of any one person, copartnership, association, or corporation arising from the same transactions and/or secured upon the identical staples for more than 10 months.

Recommendations

(1) It is recommended that exception 6 to section 5200 of the Revised Statutes be amended by adding a new sentence which will permit national banks to acquire obligations of any person, copartnership, association, or corporation in the form of notes or drafts secured by shipping documents, warehouse receipts or other such documents transferring or securing title covering readily marketable staples, when such property is fully covered by insurance, to a limitation of 15 percent of the bank's capital and surplus, in addition to the statutory limitation of 10 percent of capital and surplus, when the market value of such staples securing such obligation is not at any time less than 115 percent of the face amount of such obligation, but this exception shall not apply to obligations of any one person, copartnership, association, or corporation arising from the same transaction and/or secured by the identical staples for more than 6 months. The present first sentence in exception 6 should be amended by changing the word "upon" to "by" in the last full line as quoted above.

(2) It is recommended that section 5200 of the Revised Statutes be amended to add a new exception which will permit a national bank to acquire from any one seller or dealer obligations arising out of the discount of installment consumer paper whether negotiable or nonnegotiable, which paper carries a full recourse endorsement or unconditional guaranty of the seller or dealer, to a limitation of 15 percent of the bank's capital and surplus in addition to such 10 percent of capital and surplus.

Reasons

(1) Exception 6 to Revised Statutes 5200 provides that readily marketable staples in order to qualify as security for loans under this exception must be nonperishable. Exception 6 has not been amended since 1927. In recent years frozen food processors have developed greatly improved methods in processing, freezing, and storing foods which must be kept under refrigeration before sale to consumers. Frozen packaged fruits, citrus juices, vegetables, meats, and seafood represent a substantial proportion of foods sold in retail stores. Where insurance can be obtained, it is believed that national banks should be permitted to lend to 1 obligor not more than 25 percent of capital and surplus when the security consists of readily marketable staples which are kept under refrigeration during the period of a loan not exceeding 6 months.

(2) Commercial and business paper arises out of the process of production, manufacture, or distribution of goods. It is so related to a commercial or business transaction that it is virtually self-liquidating. It is characteristically short term paper. It is intended to circulate like money and therefore is almost invariably negotiable in form. To promote the currency of this type of paper the law merchant adopted its most important principle; i. e., that if this paper is in negotiable form, an innocent purchaser for value will take it free of defenses which might exist between prior parties. Commercial and business paper that is negotiable in form is acceptable for discount at Federal Reserve banks under section 13 of the Federal Reserve Act and regulation A. Title 12, United

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States Code, section 84 (1), (2), and (3), permits national banks to loan on or purchase such paper without any limitations based on capital or surplus.

Installment consumer paper, however, is quite different from commercial and business paper. It is invariably longer term paper; it is not discountable at Federal Reserve banks under section 13 of the Federal Reserve Act and regulation A; and it is not intended for circulation in the same sense or degree as commercial or business paper. In consumer financing the commodity, the purchase of which is being financed, is the real and ultimate security for the lender. Consequently, it is not as traditional or important that consumer paper should be in negotiable form as that commercial or business paper should be. However, the Comptroller's office has consistently ruled that installment consumer paper purchased by national banks with the full recourse endorsement of the seller or dealer and which was negotiable could enjoy the provisions of title 12, United States Code, section 84 (2) and be acquired without any limitations based on capital or surplus. If the paper is not negotiable, the 10 percent limitation applies and this is too severe. This specific statute was not originally intended to deal with this type of paper. It is believed that all purchased or discounted installment consumer paper acquired from one dealer or seller which bears the full recourse endorsement or unconditional guaranty of such dealer or seller, whether negotiable or nonnegotiable, should be limited as to any one obligor to 25 percent of a bank's capital and surplus.

Whenever a question of the office requirement of negotiability has come up, our files show that it has been with reference to consumer paper which is usually in the form of conditional sales contracts. It is this type of paper that contains the provisions that are needed to protect the lender's security while it is being used and paid for by the borrower, for example, provisions that the borrower will keep the property in repair, keep it insured, pay taxes, etc. When such provisions are included in consumer paper, they definitely make the paper nonnegotiable under the uniform negotiable instruments law and the decisions of the courts. The lender cannot include such provisions in consumer paper and still have the paper considered to be negotiable in form and we cannot permit such provisions to be included in consumer paper and still require that the paper be negotiable in form.

It will be noted that it is not the negotiable form of the paper that makes it safer but rather the circumstances under which it is acquired, i. e., by a party who not only pays value for it but also has no knowledge of facts which might give a prior party a defense against the paper. If a bank is in fact an innocent purchaser for value, it is better off holding paper that is negotiable in form rather than paper that is not.

The banks and automobile dealers and other vendors have also worked out dealers' guaranty or repurchase agreements and reserve accounts for the holding of defaulted consumer paper. These arrangements cut down the need of the banks for the protection afforded by the innocent purchaser rule. It is believed that in actual practice the banks rely very much more heavily on these agreements than on the innocent purchaser rule for their protection.

Thus, it will be observed that, although banks may be better protected through the operation of the innocent purchaser rule if they hold negotiable consumer paper rather than nonnegotiable paper, it is open to question whether as a practical matter the actual amount of protection is any greater in the one case than in the other.

Therefore, it is deemed advisable that a new exception be added to section 84 dealing exclusively with installment consumer paper.

24. Exception to 10 Percent Limitation on Obligations Covering Dairy Cattle

Existing law

Title 12, U. S. C., sec 84 (U. S. R. S., sec. 5200).—* * *

(7) Obligations of any person, copartnership, association, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the notes covered by such documents shall be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

Recommendation

It is recommended that exception 7 to section 5200 of the Revised Statutes be amended by adding a new sentence which would permit national banks to acquire

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obligations of dealers in dairy cattle, arising out of the sale of dairy cattle, in the form of obligations of the dealers, or in the form of obligations of purchasers of dairy cattle which bear the full recourse endorsement or an unconditional guaranty of the dealer, to a limitation of 15 percent of capital and surplus, in addition to such 10 percent of capital and surplus.

Reasons

Exception 7 to the basic 10 percent limitation of capital and surplus covers obligations which are secured by liens on range animals (cattle, sheep, goats, horses, mules) or on cattle, sheep, or hogs being fattened for or shipped to market. It does not cover dairy cattle. It is believed advisable that the statute be amended to permit national banks to acquire obligations of dealers arising out of the sale of dairy cattle to a limitation of 15 percent of a national bank's capital and surplus in addition to the present limitation of 10 percent of capital and surplus. Frequently such obligations are not in the form to qualify under either exception 2 or 4 of Revised Statutes 5200 because they are not negotiable and thus may not qualify under exception 2, or because they have a maturity of more than six months and therefore will not qualify under exception 4. Where they arise out of the sale of dairy cattle they do not qualify under exception 7 in its present form.

25. Loans Secured by Obligations of the United States

Existing Law

Title 12, U. S. C., sec. 84 (U. S. R. S., sec. 5200).—The total obligations to any national banking association of any person, copartnership, association, or corporaiton shall at no time exceed 10 per centum of the amount of the capital stock of such association actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. The term "obligations" shall mean the direct liability of the maker or acceptor of paper discounted with or sold to such association and the liability of the endorser, drawer, or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to such association and shall include in the case of obligations of a copartnership or association the obligations of the several members thereof and shall include in the case of obligations of a corporation all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest. Such limitation of 10 per centum shall be subject to the following exceptions:

* * * * * * *

(8) Obligations of any person, copartnership, association, or corporation in the form of notes secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, Treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States, shall (except to the extent permitted by rules and regulations prescribed by the Comptroller of the Currency, with the approval of the Secretary of the Treasury) be subject under this section to a limitation of 15 per centum of such capital and surplus in addition to such 10 per centum of such capital and surplus.

Recommendation

It is recommended that exception eighth of section 5200 of the Revised Statutes be amended so as to eliminate the words "in the form of notes."

Reasons

Frequently the obligations referred to in exception 8 are not in the form of promissory notes but are repurchase or some other form of binding obligations. These agreements are considered to be of equal stature with a promissory note and therefore should be treated as an obligation as defined in the first paragraph of section 84.

It is believed that the requirement that the obligation in the case of such loans must be "in the form of a note" is too restrictive and that such loans should be permitted when the obligation held by the lending bank meets the definition of the term "obligations."

26. Banking Facilities at Military Posts

Existing law

Title 12, U. S. C., sec. 90 (U. S. R. S., sec. 5153).—All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be

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depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government: and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. The Secretary of the Treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safe-keeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government; *Provided*, That the Secretary shall, on or before the first of January of each year, make a public statement of the securities required that year for such deposits. And every association so designated as receiver or depositary of the public money shall take and receive at par all the national currency bills, by whatever association issued, which have been paid into the Government for internal revenue, or for loans or stocks: *Provided*, That the Secretary of the Treasury shall distribute the deposits herein provided for, as far as practicable, equitably between the different States and sections. * * *

Title 12, U. S. C., sec. 265.—All insured banks designated for that purpose by the Secretary of the Treasury shall be depositaries of public money of the United States (including, without being limited to, revenues and funds of the United States, and any funds the deposit of which is subject to the control or regulation of the United States or any of its officers, agents, or employees, and Postal Savings funds), and the Secretary is authorized to deposit public money in such depositaries, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government as may be required of them. The Secretary of the Treasury shall require of the insured banks thus designated satisfactory security by the deposit of United States bonds or otherwise, for the safekeeping and prompt payment of public money deposited with them and for the faithful performance of their duties as financial agents of the Government: *Provided*, That no such security shall be required for the safekeeping and prompt payment of such parts of the deposits of the public money in such banks as are insured deposits and each officer, employee, or agent of the United States having official custody of public funds and lawfully depositing the same in an insured bank shall, for the purpose of determining the amount of the insured deposits, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the United States having official custody of public funds and lawfully depositing the same in the same insured bank in custodial capacity. Notwithstanding any other provision of law, no department, board, agency, instrumentality, officer, employee, or agent of the United States shall issue or permit to continue in effect any regulations, rulings, or instructions or enter into or approve any contracts or perform any other acts having to do with the deposit, disbursement, or expenditure of public funds, or the deposit, custody, or advance of funds subject to the control of the United States as trustee or otherwise which shall discriminate against or prefer national banking associations, State banks members of the Federal Reserve System, or insured banks not members of the Federal Reserve System, by class, or which shall require those enjoying the benefits, directly or indirectly, of disbursed public funds so to discriminate. All Acts or parts thereof in conflict herewith are repealed. The term "insured bank" and "insured deposit" as used in this chapter shall be construed according to the definitions of such terms in section 1813 of this title.

Recommendation

It is recommended that section 5153 of the Revised Statutes be amended by adding a sentence at the end of the first paragraph to provide that national banks upon request of the Secretary of the Treasury may open and operate banking facilities at military posts, camps, and stations under their designation as depositories of public money and financial agents of the Government, without such banking facilities being considered as branch offices.

Reasons

Many banks under their designation as depositories of public money and financial agents of the Government have been requested by the Secretary of the Treasury to open and operate banking facilities exercising limited banking functions on military posts of the Army, Navy, and Air Force of the United States. Requests to provide limited banking services are made by the Secretary of the Treasury

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in cases where the Department of Defense has determined that banking facilities are necessary at specific military posts. Some of the bank facility offices carrying on the limited banking operations requested by the Secretary of the Treasury and Secretary of Defense are situated in States which prohibit branch banking and, therefore, no legally authorized branch of a national bank may be established under the provisions of section 5155 of the Revised Statutes (12 U. S. C. 36). It is believed advisable that Revised Statutes 5153 be amended to permit national banks to open and operate banking facilities exercising limited banking functions at military posts, camps, and stations, when so authorized by the Secretary of the Treasury, without such facilities being considered as branch offices of national banks.

27. Reserves of National Banks Outside the United States

Existing law

Title 12, U. S. C., sec. 144.—Four-fifths of the reserve of 15 per centum which a national bank located in Alaska or in a dependency or insular possession or any part of the United States outside of the continental United States, and not a member of the Federal Reserve System, is required to keep, may consist of balances due such bank from associations approved by the Comptroller of the Currency located in any one of the central reserve or reserve cities as now or hereafter defined by law or designated by the Board of Governors of the Federal Reserve System.

Recommendation

This statute should be amended to eliminate the requirement that the Comptroller of the Currency must approve the national banking associations at which the requisite reserves may be kept.

Reasons

It is believed that the power given to the Comptroller to approve the national banks in which reserves of national banks located outside the continental United States may be placed is ineffective in that it would be very difficult for the Comptroller to refuse to approve a particular national bank, or to withdraw his approval once it had been given. The withdrawal of such approval or the refusal to give such approval would undoubtedly cause rumors and doubts about the solvency of the bank not approved with perhaps serious harm resulting to that bank. Furthermore, should the Comptroller withdraw his approval and require such reserve deposits to be withdrawn from a particular bank and that bank shortly thereafter became insolvent, there might be serious questions raised as to whether the Comptroller was preferring one creditor of the insolvent bank over others.

It is believed that banks located outside the continental United States should select the national banks with which to keep their reserve deposits on the same basis on which other banks normally select the banks with which to carry correspondent balances. Substantially all banks carry correspondent balances with other banks and these correspondent banks are selected on the basis of management and capitalization. The banks outside the continental United States should be permitted to select the banks with which to carry their reserve balances on the same basis and the Comptroller of the Currency should not be required to approve the selections made.

28. Reports Made to the Comptroller of the Currency

Existing law

Title 12, U. S. C., sec. 161 (U. S. R. S., sec. 5211).—Every association shall make to the Comptroller of the Currency not less than three reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president, of of the cashier, or of a vice president, or of an assistant cashier of the association designated by its board of directors to verify such reports in the absence of the president and cashier, taken before a notary public properly authorized and commissioned by the State in which such notary resides and the association is located, or any other officer having an official seal, authorized in such State to administer oaths, and attested by the signature of at least three of the directors. Each such report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the association at the close of business on any past day by him specified, and shall be transmitted

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to the Comptroller within five days after the receipt of a request or requisition therefor from him; and the statement of resources and liabilities, together with acknowledgment and attestation in the same form in which it is made to the Comptroller, shall be published in a newspaper published in the place where such association is established, or if there is no newspaper in the place, then in the one published nearest thereto in the same county, at the expense of the association; and such proof of publication shall be furnished as may be required by the Comptroller. The Comptroller shall also have power to call for special reports from any particular association whenever in his judgment the same are necessary in order to obtain a full and complete knowledge of its condition.

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

Recommendation

This section should be amended to change from 5 to 10 days the time within which national banks must transmit required reports to the Comptroller of the Currency.

Reasons

It is difficult for some banks to compile the necessary information and furnish it to the Comptroller within the 5 days allowed, and it is believed that a 10-day period would be more realistic.

29. Report of Dividends and Net Earnings

Existing law

Title 12, U. S. C. sec. 163 (U. S. R. S., sec. 5212).—In addition to the reports required by the preceding section, each association shall report to the Comptroller of the Currency, within ten days after declaring any dividend, the amount of such dividend, and the amount of net earnings in excess of such dividend. Such reports shall be attested by the oath of the president or cashier of the association.

Recommendation

This statute should be repealed.

Reason

The Comptroller of the Currency requires and receives semiannually a report of the earnings and dividends of each national banking association. In addition, he has access to this information through the examinations performed by his examiners. The requiring of the reports of declaration of dividends no longer serves any useful purpose.

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30. Shareholder Approval of Sale of Assets in Voluntary Liquidation

Existing law

Title 12, U. S. C., sec. 181 (U. S. R. S., sec. 5220).—Any association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock.

The shareholders shall designate one or more persons to act as liquidating agent or committee, who shall conduct the liquidation in accordance with law and under the supervision of the board of directors, who shall require a suitable bond to be given by said agent or committee. The liquidating agent or committee shall render annual reports to the Comptroller of the Currency on the 31st day of December of each year showing the progress of said liquidation until the same is completed. The liquidating agent or committee shall also make an annual report to a meeting of the shareholders to be held on the date fixed in the articles of association for the annual meeting, at which meeting the shareholders may, if they see fit, by a vote representing a majority of the entire stock of the bank, remove the liquidating agent or committee and appoint one or more others in place thereof. A special meeting of the shareholders may be called at any time in the same manner as if the bank continued an active bank and at said meeting the shareholders may, by a vote of the majority of the stock, remove the liquidating agent or committee. The Comptroller of the Currency is authorized to have an examination made at any time into the affairs of the liquidating bank until the claims of all creditors have been satisfied, and the expense of making such examinations shall be assessed against such bank in the same manner as in the case of examinations made pursuant to section 5240 of the Revised Statutes, as amended (U. S. C., Title 12, secs. 484, 485; Supp. VII, Title 12, sec. 481–483).

Recommendation

It is recommended that section 5220 of the Revised Statutes be amended to require approval by shareholders owning two-thirds of the stock of any national bank before the assets of said bank may be sold to another banking institution in carrying out the liquidation of the selling bank.

Reasons

Section 5220 now requires shareholder approval of any vote to place a national bank in voluntary liquidation but does not require shareholder approval of any agreement entered into by the directors relating to a bulk sale of the bank's assets to another banking institution as a preliminary step to voting the bank into voluntary liquidation. In order to permit shareholders to have a vote on the vital question of selling the bank's assets it is believed the statute should be amended so as to require preliminary approval of the sale by shareholders owning two-thirds of the stock of the national bank.

31. Personal Liability of Shareholders in Receivership

Existing law

Title 12, U. S. C., sec. 191.—That whenever any national banking association shall be dissolved, and its rights, privileges, and franchises declared forfeited, as prescribed in section fifty-two hundred and thirty-nine of the Revised Statutes of the United States, or whenever any creditor of any national banking association shall have obtained a judgement against it in any court of record, and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the Comptroller shall become satisfied of the insolvency of a national banking association, he may, after due examination of its affairs, in either case, appoint a receiver, who shall proceed to close up such association, and enforce the perseonal liability of the shareholders, as provided in section fifty-two hundred and thirty-four of said statutes.

Title 12, U. S. C., sec. 192 (U. S. R. S., sec. 5234).—On becoming satisfied, as specified in sections fifty-two hundred and twenty-six and fifty-two hundred and twenty-seven, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the Comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, upon the order of a court

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of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the Comptroller, and also make report to the Comptroller of all his acts and proceedings: *Provided*, That the Comptroller may, if he deems proper, deposit any of the money so made in any regular Government depositary, or in any State or national bank either of the city or town in which the insolvent bank was located, or of a city or town as adjacent thereto as practicable; if such deposit is made he shall require the depositary to deposit United States bonds or other satisfactory securities with the Treasurer of the United States for the safekeeping and prompt payment of the money so deposited: *Provided*, That no security in the form of deposit of United States bonds, or otherwise, shall be required in the case of such parts of the deposits as are insured under section 12B of the Federal Reserve Act, as amended. Such depositary shall pay upon such money interest at such rate as the Comptroller may prescribe, not less, however, than two per centum per annum upon the average monthly amount of such deposits.

Recommendation

To eliminate by amendment reference to enforcement by a receiver of personal liability of shareholders.

Reasons

Title 12, United States Code, section 64a has eliminated shareholders individual liability. Therefore, reference to the enforcement of personal liability of shareholders in sections 191 and 192 should be eliminated.

32. Federal Deposit Insurance Corporation as Receiver of National Bank

Existing law

Title 12, U. S. C., sec. 197.—That whenever any association shall have been or shall be placed in the hands of a receiver, as provided in section fifty-two hundred and thirty-four and other sections of the Revised Statutes of the United States, and when, as provided in section fifty-two hundred and thirty-six thereof, the Comptroller of the Currency shall have paid to each and every creditor of such association, not including shareholders who are creditors of such association, whose claim or claims as such creditor shall have been proved or allowed as therein prescribed, the full amount of such claims, and all expenses of the receivership and the redemption of the circulating notes of such association shall have been provided for by depositing lawful money of the United States with the Treasurer of the United States, the Comptroller of the Currency shall call a meeting of the shareholders of such association by giving notice thereof for thirty days in a newspaper published in the town, city, or county where the business of such association was carried on, or if no newspaper is there published, in the newspaper published nearest thereto. At such meeting the shareholders shall determine whether the receiver shall be continued and shall wind up the affairs of such association, or whether an agent shall be elected for that purpose, and in so determining the said shareholders shall vote by ballot, in person or by proxy, each share of stock entitling the holders to one vote, and the majority of the stock in value and number of shares shall be necessary to determine whether the said receiver shall be continued, or whether an agent shall be elected. In case such majority shall determine that the said receiver shall be continued, the said receiver shall thereupon proceed with the execution of his trust, and shall sell, dispose of, or otherwise collect the assets of the said association, and shall possess all the powers and authority, and be subject to all the duties and liabilities originally conferred or imposed upon him by his appointment as such receiver, so far as the same remain applicable. In case the said meeting shall, by the vote of a majority of the stock in value and number of shares, determine that an agent shall be elected, the said meeting shall thereupon proceed to elect an agent, voting by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the person who shall receive votes representing at least a majority of stock in value and number shall be declared the agent for the purposes hereinafter provided; and whenever any of the shareholders of the association shall, after the election of such agent, have executed and filed a bond to the satisfaction of the Comptroller of the Currency, conditioned for the payment and discharge in

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full of each and every claim that may thereafter be proved and allowed by and before a competent court, and for the faithful performance of all and singular the duties of such trust, the Comptroller and the receiver shall thereupon transfer and deliver to such agent all the undivided or uncollected or other assets of such association then remaining in the hands or subject to the order and control of said Comptroller and said receiver, or either of them; and for this purpose said Comptroller and said receiver are hereby severally empowered and directed to execute any deed, assignment, transfer, or other instrument in writing that may be necessary and proper; and upon the execution and delivery of such instrument to the said agent the said Comptroller and the said receiver shall by virtue of this Act be discharged from any and all liabilities to such association and to each and all the creditors and shareholders thereof.

Upon receiving such deed, assignment, transfer, or other instrument the person elected such agent shall hold, control, and dispose of the assets and property of such association which he may receive under the terms hereof for the benefit of the shareholders of such association, and he may in his own name, or in the name of such association, sue and be sued and do all other lawful acts and things necessary to finally settle and distribute the assets and property in his hands, and may sell, compromise, or compound the debts due to such association, with the consent and approval of the circuit or district court of the United States for the district where the business of such association was carried on, and shall at the conclusion of his trust render to such district or circuit court a full account of all his proceedings, receipts, and expenditures as such agent, which court shall, upon due notice, settle and adjust such accounts and discharge said agent and sureties upon said bond. And in case any such agent so elected shall refuse to serve, or die, resign, or be removed, any shareholder may call a meeting of the shareholders of such association in the town, city, or village where the business of the said association was carried on, by giving notice thereof for thirty days in a newspaper published in said town, city or village, or if no newspaper is there published, in the newspaper published nearest thereto, at which meeting the shareholders shall elect an agent, voting by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and when such agent shall have received votes representing at least a majority of the stock in value and number of shares, and shall have executed a bond to the shareholders conditioned for the faithful performance of his duties, in the penalty fixed by the shareholders at said meeting, with two sureties, to be approved by a judge of a court of record, and file said bond in the office of the clerk of a court of record in the county where the business of said association was carried on, he shall have all the rights, powers, and duties of the agent first elected as hereinbefore provided. At any meeting held as hereinbefore provided administrators or executors of deceased shareholders may act and sign as the decedent might have done if living, and guardians of minors and trustees of other persons may so act and sign for their ward or wards or cestui que trust. The proceeds of the assets or property of any such association which may be undistributed at the time of such meeting or may be subsequently received shall be distributed as follows:

First. To pay the expenses of the execution of the trust to the date of such payment.

Second. To repay any amount or amounts which have been paid in by any shareholder or shareholders of such association upon and by reason of any and all assessments made upon the stock of such association by the order of the Comptroller of the Currency in accordance with the provisions of the statutes of the United States; and

Third. The balance ratably among such stockholders, in proportion to the number of shares held and owned by each. Such distribution shall be made from time to time as the proceeds shall be received and as shall be deemed advisable by the said Comptroller or said agent.

Recommendations

This section of the national banking laws should be amended so as to substitute the Federal Deposit Insurance Corporation in the place of the Comptroller of the Currency with respect to all insured national banks placed in receivership where the Federal Deposit Insurance Corporation is appointed receiver pursuant to the Federal Deposit Insurance Act of 1950, as amended.

Reasons

The Federal Deposit Insurance Act of 1950, as amended (12 U. S. C. 1821) requires the Comptroller of the Currency to appoint the FDIC as receiver of any

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insured national bank which is placed in receivership and provides that such receiver shall not be subject to the direction or supervision of the Secretary of the Treasury or the Comptroller of the Currency. Since the Comptroller does not supervise or direct the actions of the FDIC as receiver of an insured national bank, the statute quoted above should be amended so as to substitute the FDIC for the Comptroller of the Currency where the national bank involved is an insured national bank, thus permitting the FDIC to call the meeting of the shareholders of such insured national bank and require that the bond of any shareholders' agent elected at such meeting run to the FDIC.

33. Appointment of Conservators

Existing law

Title 12, U. S. C., sec. 202 (Bank Conservation Act, sec. 202).—As used in this title, the term "bank" means (1) any national banking association, and (2) any bank or trust company located in the District of Columbia and operating under the supervision of the Comptroller of the Currency; and the term "State" means any State, Territory, or possession of the United States, and the Canal Zone.

Title 12, U. S. C., sec. 203 (Bank Conservation Act, sec. 203).—Whenever he shall deem it necessary in order to conserve the assets of any bank for the benefit of the depositors and other creditors thereof, the Comptroller of the Currency may appoint a conservator for such bank and require of him such bond and security as the Comptroller of the Currency deems proper. The conservator, under the direction of the Comptroller, shall take possession of the books, records, and assets of every description of such bank, and take such action as may be necessary to conserve the assets of such bank pending further disposition of its business as provided by law. Such conservator shall have all the rights, powers, and privileges now possessed by or hereafter given receivers of insolvent national banks and shall be subject to the obligations and penalties, not inconsistent with the provisions of this title, to which receivers are now or may hereafter become subject. During the time that such conservator remains in possession of such bank, the rights of all parties with respect thereto shall, subject to the other provisions of this title, be the same as if a receiver had been appointed therefor. All expenses of any such conservatorship shall be paid out of the assets of such bank and shall be a lien thereon which shall be prior to any other lien provided by this Act or otherwise. The conservator shall receive as salary an amount no greater than that paid to employees of the Federal Government for similar services.

Title 12, U. S. C., sec. 204 (Bank Conservation Act, sec. 204).—The Comptroller of the Currency shall cause to be made such examinations of the affairs of such bank as shall be necessary to inform him as to the financial condition of such bank, and the examiner shall make a report thereon to the Comptroller of the Currency at the earliest practicable date.

Title 12, U. S. C., sec. 205 (Bank Conservation Act, sec. 205).—If the Comptroller of the Currency becomes satisfied that it may safely be done and that it would be in the public interest, he may, in his discretion, terminate the conservatorship and permit such bank to resume the transaction of its business subject to such terms, conditions, restrictions, and limitations as he may prescribe.

Title 12, U. S. C., sec. 206 (Bank Conservation Act, sec. 206).—While such bank is in the hands of the conservator appointed by the Comptroller of the Currency, the Comptroller may require the conservator to set aside and make available for withdrawal by depositors and payment of other creditors, on a ratable basis, such amounts as in the opinion of the Comptroller may safely be used for this purpose; and the Comptroller may, in his discretion, permit the conservator to receive deposits, but deposits received while the bank is in the hands of the conservator shall not be subject to any limitation as to payment or withdrawal, and such deposits shall be segregated and shall not be used to liquidate any indebtedness of such bank existing at the time that a conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of such bank existing at the time such conservator was appointed. Such deposits received while the bank is in the hands of the conservator shall be kept on hand in cash, invested in the direct obligations of the United States, or deposited with a Federal reserve bank. The Federal reserve banks are hereby authorized to open and maintain separate deposit accounts for such purpose, or for the purpose of receiving deposits from State officials in charge of State banks under similar circumstances.

Title 12, U. S. C., sec. 207 (Bank Conservation Act, sec. 207).—In any reorganization of any bank under a plan of a kind which, under existing law, requires

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the consent, as the case may be, (a) of depositors and other creditors or (b) of stockholders or (c) of both depositors and other creditors and stockholders, such reorganization shall become effective only (1) when the Comptroller of the Currency shall be satisfied that the plan of reorganization is fair and equitable as to all depositors, other creditors, and stockholders and is in the public interest and shall have approved the plan subject to such conditions, restrictions, and limitations as he may prescribe and (2) when, after a reasonable notice of such reorganization, as the case may require, (A) depositors and other creditors of such bank representing at least 75 percent in amount of its total deposits and other liabilities as shown by the books of the bank or (B) stockholders owning at least two-thirds of its outstanding capital stock as shown by the books of the bank or (C) both depositors and other creditors representing at least 75 percent in amount of the total deposits and other liabilities and stockholders owning at least two-thirds of its outstanding capital stock as shown by the books of the bank, shall have consented in writing to the plan of reorganization: *Provided, however*, That claims of depositors or other creditors which will be satisfied in full under the provisions of the plan of reorganization shall not be included among the total deposits and other liabilities of the bank in determining the 75 percent thereof as above provided. When such reorganization becomes effective, all books, records, and assets of the bank shall be disposed of in accordance with the provisions of the plan and the affairs of the bank shall be conducted by its board of directors in the manner provided by the plan and under the conditions, restrictions, and limitations which may have been prescribed by the Comptroller of the Currency. In any reorganization which shall have been approved and shall have become effective as provided herein, all depositors and other creditors and stockholders of such bank whether or not they shall have consented to such plan of reorganization, shall be fully and in all respects subject to and bound by its provisions, and claims of all depositors, and other creditors shall be treated as if they had consented to such plan of reorganization.

Title 12, U. S. C., sec. 208 (Bank Conservation Act, sec. 208).—After fifteen days after the affairs of a bank shall have been turned back to its board of directors by the conservator, either with or without a reorganization as provided in section 207 hereof, the provisions of section 206 of this title with respect to the segregation of deposits received while it is in the hands of the conservator and with respect to the use of such deposits to liquidate the indebtedness of such bank shall no longer be effective: *Provided*, That before the conservator shall turn back the affairs of the bank to its board of directors he shall cause to be published in a newspaper published in the city, town, or county in which such bank is located, and if no newspaper is published in such city, town, or county, in a newspaper to be selected by the Comptroller of the Currency published in the State in which the bank is located, a notice in form approved by the Comptroller, stating the date on which the affairs of the bank will be returned to its board of directors and that the said provisions of section 206 will not be effective after fifteen days after such date; and on the date of the publication of such notice the conservator shall immediately send to every person who is a depositor in such bank under section 206 a copy of such notice by registered mail addressed to the last known address of such person as shown by the records of the bank, and the conservator shall send similar notice in like manner to every person making deposit in such bank under section 206 after the date of such newspaper publication and before the time when the affairs of the bank are returned to its directors.

Title 12, U. S. C., sec. 209.—Conservators appointed pursuant to the provisions of this title shall be subject to the provisions of and to the penalties prescribed by sections 334, 656, and 1005 of Title 18, United States Code: and sections 202, 216, 281, 431, 432, and 433 of such Title 18, in so far as applicable, are extended to apply to contracts, agreements, proceedings, dealings, claims, and controversies by or with any such conservator or the Comptroller of the Currency under the provisions of this title.

Title 12, U. S. C., sec. 210 (Bank Conservation Act, sec. 210).—Nothing in this title shall be construed to impair in any manner any powers of the President, the Secretary of the Treasury, the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System.

Title 12, U. S. C., sec. 211 (Bank Conservation Act, sec. 211).—The Comptroller of the Treasury is hereby authorized and empowered, with the approval of the Secretary of the Treasury, to prescribe such rules and regulations as he may deem necessary in order to carry out the provisions of this title. Whoever violates any

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rule or regulation made pursuant to this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than one year, or both.

Title 12, U. S. C., sec. 212.—The right to alter, amend, or repeal this Act is hereby expressly reserved. 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 such provision to other persons or circumstances, shall not be affected thereby.

Recommendation

It is recommended that the above statute be revised to authorize the Comptroller of the Currency to appoint a conservator for any bank under his jurisdiction whenever there have been substantial losses or defalcations the amount of which is uncertain and cannot be ascertained without an examination of the bank, giving rise to a doubt as to the solvency of the bank. It should be provided that the conservator under the direction of the Comptroller shall take possession of the books and records and assets of every description of such bank, and take such action as may be necessary to conserve the assets of such bank pending further disposition of its business, as provided by law. Such conservator should have all the rights, powers, and privileges now possessed by or hereafter given, receivers of insolvent national banks, and should be subject to the obligations and penalties to which receivers are now or may hereafter become subject. While such bank is in the hands of the conservator the Comptroller should be authorized to require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, such amounts as in the opinion of the Comptroller may safely be used for this purpose but not in excess of $10,000 per depositor. If the bank is insured under the Federal Deposit Insurance Act and it is determined that the bank is insolvent the Comptroller of the Currency should be required to appoint the Federal Deposit Insurance Corporation receiver, which should have all the rights, duties, and powers prescribed by law, and, in the event that there have been withdrawals by depositors as above provided for, the amount of such withdrawal by each depositor should be deducted from the amount payable by the Federal Deposit Insurance Corporation to such depositor under the provisions of the Federal Deposit Insurance Act. All expenses of any such conservatorship should be paid out of the assets of such bank and should be a lien thereon which shall be prior to any other lien.

Reasons

From time to time a situation arises in a national bank where a large defalcation is discovered that is sufficient to wipe out the capital structure. However, the full extent of the defalcation cannot be determined pending further investigation and audit. Under existing statutes, immediate action is necessary to (1) place the bank in receivership and name the Federal Deposit Insurance Corporation as receiver, or (2) arrange by means of a loan from the Federal Deposit Insurance Corporation for the acquisition of the sound assets and assumption of the deposit liabilities of the insolvent bank by another bank. It is impossible to determine in some cases which of the two courses is in the best interests of the Federal Deposit Insurance Corporation pending an accurate determination of the size of the defalcation and the extent of the insolvency. If the bank is insolvent by a small amount, it is usually advantageous and better judgment for the Federal Deposit Insurance Corporation to grant a loan against the unacceptable assets and permit the insolvent bank to be taken over by another bank, as this eliminates all receivership expenses. If the extent of the insolvency is large, it is usually in the best interests of the Federal Deposit Insurance Corporation for the bank to be placed in receivership with the Federal Deposit Insurance Corporation named as receiver and the depositors of the bank protected up to $10,000 per depositor.

The suggestion made herein would allow the necessary time to determine the full amount of the defalcation and the extent of insolvency without injury to the ultimate position of the Federal Deposit Insurance Corporation when the final determination is made as to the disposition of the bank.

34. Trust Activities of National Banks

Existing law

Title 12, U. S. C. sec. 248 (k) (Federal Reserve Act, sec. 11 (k)).—The Board of Governors of the Federal Reserve System shall be authorized and empowered: * * *

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(k) To grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing powers by State banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be deemed to be in contravention of State or local law within the meaning of this Act.

National banks exercising any or all of the powers enumerated in this subsection shall segregate all assets held in any fiduciary capacity from the general assets of the bank and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this subsection. The State banking authorities may have access to reports of examinations made by the Comptroller of the Currency insofar as such reports relate to the trust department of such bank, but nothing in this Act shall be construed as authorizing the State banking authorities to examine the books, records, and assets of such bank.

No national bank shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the bank awaiting investment shall be carried in a separate account and shall not be used by the bank in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the Board of Governors of the Federal Reserve System.

In the event of the failure of such bank the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart in addition to their claim against the estate of the bank.

Whenever the laws of a State require corporations acting in a fiduciary capacity to deposit securities with the State authorities for the protection of private or court trusts, national banks so acting shall be required to make similar deposits and securities so deposited shall be held for the protection of private or court trusts, as provided by the State law.

National banks in such cases shall not be required to execute the bond usually required of individuals if State corporations under similar circumstances are exempt from this requirement.

National banks shall have power to execute such bond when so required by the laws of State.

In any case in which the laws of a State require that a corporation acting as trustee, executor, administrator, or in any capacity specified in this section, shall take an oath or make an affidavit, the president, vice president, cashier, or trust officer of such national bank may take the necessary oath or execute the necessary affidavit.

It shall be unlawful for any national banking association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made, may be fined not more than $5,000, or imprisoned not more than five years, or may be both fined and imprisoned, in the discretion of the court.

In passing upon applications for permission to exercise the powers enumerated in this subsection, the Board of Governors of the Federal Reserve System may take into consideration the amount of capital and surplus of the applying bank, whether or not such capital and surplus is sufficient under the circumstances of the case, the needs of the community to be served, and any other facts and circumstances that seem to it proper, and may grant or refuse the application accordingly: *Provided*, That no permit shall be issued to any national banking association having a capital and surplus less than the capital and surplus required by State law of State banks, trust companies, and corporations exercising such powers.

Any national banking association desiring to surrender its right to exercise the powers granted under this subsection, in order to relieve itself of the necessity of complying with the requirements of this subsection, or to have returned to it any securities which it may have deposited with the State authorities for the protection of private or court trusts, or for any oher purpose, may file with the Board of Governors of the Federal Reserve System a certified copy of a resolu-

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tion of its board of directors signifying such desire. Upon receipt of such resolution, the Board of Governors of the Federal Reserve System, after satisfying itself that such bank has been relieved in accordance with State law of all duties as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics or other fiduciary, under court, private, or other appointments previously accepted under authority of this subsection, may, in its discretion, issue to such bank a certificate certifying that such bank is no longer authorized to exercise the powers granted by this subsection. Upon the issuance of such certificate by the Board of Governors of the Federal Reserve System, such bank (1) shall no longer be subject to the provisions of this subsection or the regulations of the Board of Governors of the Federal Reserve System made pursuant thereto, (2) shall be entitled to have returned to it any securities which it may have deposited with the State authorities for the protection of private or court trusts, and (3) shall not exercise thereafter any of the powers granted by this subsection without first applying for and obtaining a new permit to exercise such powers pursuant to the provisions of this subsection. The Board of Governors of the Federal Reserve System is authorized and empowered to promulgate such regulations as it may deem necessary to enforce compliance with the provisions of this subsection and the proper exercise of the powers granted therein.

Recommendation

It is recommended that this statute be amended to transfer from the Board of Governors of the Federal Reserve System to the Comptroller of the Currency the power to grant to national banks the right to act in fiduciary capacities and to transfer from the Board of Governors of the Federal Reserve System to the Comptroller of the Currency the power to promulgate regulations in connection therewith.

Reasons

At the time national banks were first permitted to engage in trust activities, the power to grant to them permission to do so was given to he Board of Governors of the Federal Reserve System rather than to the Comptroller of the Currency. This statute applies only to national banks and not to State member banks. Since national banks, including their trust departments, are supervised, examined, and regulated by the Comptroller of the Currency, the power to grant to national banks authority to act in fiduciary capacities and to regulate their activities in those capacities should logically be vested in the Comptroller of the Currency rather than the Board of Governors of the Federal Reserve System. The Comptroller of the Currency is in a position to know whether a particular national bank should be permitted to exercise trust powers, and also what problems arise that need to be dealt with by regulation.

35. Limitations on Real Estate Loans

Existing law

Title 12, U. S. C., sec. 371 (Federal Reserve Act, sec. 24, pars. 1, 2, 3).—Any national banking association may make real estate loans secured by first liens upon improved real estate, including improved farm land and improved business and residential properties. A loan secured by real estate within the meaning of this section shall be in the form of an obligation or obligations secured by a mortgage, trust deed, or other instrument upon real estate, which shall constitute a first lien on real estate in fee simple or, under such rules and regulations as may be prescribed by the Comptroller of the Currency, on a leasehold (1) under a lease for not less than ninety-nine years which is renewable or (2) under a lease having a period of not less than fifty years to run from the date the loan is made or acquired by the national banking association, and any national banking association may purchase any obligation so secured when the entire amount of such obligation is sold to the association. The amount of any such loan hereafter made shall not exceed 50 per centum of the appraised value of the real estate offered as security and no such loan shall be made for a longer term than five years; except that (1) any such loan may be made in an amount not to exceed 66⅔ per centum of the appraised value of the real estate offered as security and for a term not longer than ten years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize 40 per centum or more of the principal of the loan within a period of not more than ten years, (2) any such loan may be made in an amount not to exceed 66⅔ per centum of the appraised

value of the real estate offered as security and for a term not longer than twenty years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan within a period of not more than twenty years, and (3) the foregoing limitations and restrictions shall not prevent the renewal or extension of loans heretofore made and shall not apply to real estate loans which are insured under the provisions of title II, title VI, title VIII, section 8 of title I, or title IX of the National Housing Act or which are insured by the Secretary of Agriculture pursuant to title I of the Bankhead-Jones Farm Tenant Act, or the Act entitled "An Act to promote conservation in the arid and semiarid areas of the United States by aiding in the development of facilities for water storage and utilization, and for other purposes," approved August 28, 1937, as amended. No such association shall make such loans in an aggregate sum in excess of the amount of the capital stock of such association paid in and unimpaired plus the amount of its unimpaired surplus fund, or in excess of 60 per centum of the amount of its time and savings deposits, whichever is the greater. Any such association may continue hereafter as heretofore to receive time and savings deposits and to pay interest on the same, but the rate of interest which such association may pay upon such time deposits or upon savings or other deposits shall not exceed the maximum rate authorized by law to be paid upon such deposits by State banks or trust companies organized under the laws of the State in which such association is located.

Any national banking association may make real-estate loans secured by first liens upon forest tracts which are properly managed in all respects. Such loans shall be in the form of an obligation or obligations secured by mortgage, trust deed, or other such instrument; and any national banking association may purchase any obligation so secured when the entire amount of such obligation is sold to the association. The amount of any such loan shall not exceed 40 per centum of the appraised value of the economically marketable timber offered as security and the loan shall be made upon such terms and conditions as to assure that at no time shall the loan balance exceed 40 per centum of the original appraised value of the economically marketable timber then remaining. No such loan shall be made for a longer term than two years; except that any such loan may be made for a term not longer than ten years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize the principal of the loan within a period of not more than ten years and at a rate of at least 10 per centum per annum. All such loans secured by first liens upon forest tracts shall be included in the permissible aggregate of all real estate loans prescribed in the preceding paragraph, but no national banking association shall make forest-tract loans in an aggregate sum in excess of 50 per centum of its capital stock paid in and unimpaired plus 50 per centum of its unimpaired surplus fund.

Loans made to finance the construction of residential or farm buildings and having maturities of not to exceed nine months, whether or not secured by a mortgage or similar lien on the real estate upon which the residential or farm building is being constructed, shall not be considered as loans secured by real estate within the meaning of this section but shall be classed as ordinary commercial loans: *Provided*, That no national banking association shall invest in, or be liable on, any such loan in an aggregate amount in excess of 50 per centum of its actually paid-in and unimpaired capital. Notes representing such loans shall be eligible for discount as commercial paper within the terms of section 13 of the Federal Reserve Act, as amended, if accompanied by a valid and binding agreement to advance the full amount of the loan upon the completion of the building entered into by an individual, partnership, association, or corporation acceptable to the discounting bank.

Loans made to established industrial or commercial businesses (a) which are in whole or in part discounted or purchased or loaned against as security by a Federal Reserve bank under the provisions of section 13b of this Act, (b) for any part of which a commitment shall have been made by a Federal Reserve bank under the provisions of said section, (c) in the making of which a Federal Reserve Bank participates under the provisions of said section, or (d) in which the Reconstruction Finance Corporation or the Housing and Home Finance Administrator or the Small Business Administration cooperates or purchases a participation under the provisions of the Reconstruction Finance Corporation Act, as amended, or of section 102 or 102a of the Housing Act of 1948, as amended, or of the Small Business Act of 1953, shall not be subject to the restrictions or limitations of this section upon loans secured by real estate.

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Recommendations

(1) Amend the statute to enable national banks to make loans to finance the construction of industrial or commercial buildings for terms of not more than 18 months where there is a valid and binding agreement entered into by a financially responsible lender to advance the full amount of the bank's loan upon completion of the buildings, without such loans being regarded as real estate loans, and to increase the aggregate limit on construction loans from 50 percent of capital to 50 percent of capital and surplus.

(2) Amend the statute to permit national banks to make loans on leaseholds which have at least 10 years to run beyond the maturity date of the loan.

(3) Amend the statute to permit national banks to make loans to finance the construction of buildings upon the security of purchase contracts entered into pursuant to the provisions of the Public Buildings Purchase Act of 1954 or the Post Office Department Property Act of 1954, without regard to the provisions of the section concerning loans on real estate.

(4) Amend the statute to permit national banks to make working capital loans to manufacturing or industrial enterprises secured by liens on the physical properties of the enterprise, including plant real estate, without such loans being regarded as real estate loans. Loans for the purpose of financing the construction of such plants, or to refinance existing mortgage indebtedness on such plants, must be regarded as subject to all pertinent provisions of this section.

Reasons

(1) Loans to finance the construction of industrial or commercial facilities having maturities of not more than 18 months where there is a valid and binding agreement entered into by a financially responsible lender to advance the full amount of the bank's loan upon the completion of the buildings are safe and desirable loans which national banks are now unable to make. Permitting them to make such loans would enable them to better compete with State banks in the financing of the construction of industrial and commercial facilities. If this legislation is enacted it will be desirable and necessary to raise the aggregate limits on construction loans.

(2) Present restrictions on leasehold loans have proven unrealistic and the present provision of law has been of little benefit either to national banks or to prospective borrowers. It is believed the restrictions can be liberalized without danger to the banks.

(3) Enactment of this legislation is necessary to aid the General Services Administration and the Post Office Department in securing financing for the construction of public buildings.

(4) Manufacturing and industrial companies or firms regularly borrow money for working capital purposes from national banks. In some cases, because of moderate credit weaknesses which must be assessed with great care because of the size of the loan and its repayment terms, and which could become more acute under adverse conditions or circumstances, it is considered prudent judgment on the part of bankers to require a collateral mortgage on the actual plant of the borrower. The loan is based on the premise that it will be used for normal working capital purposes and will be repaid from profitable operations, the liquidation of inventory or receivables, etc. The plant has, in most instances, salvage value only if it cannot be operated on a profitable basis. Such loans are in reality commercial loans and represent ordinary business financing. Such loans should not be treated as real-estate loans subject to the provisions of section 24 of the Federal Reserve Act (12 U. S. C. 371). The reasons behind that statute and the purpose for which the statute was deemed desirable do not apply in the case of this type of loan which will be liquidated in a normal business way, barring unforeseen reverses.

36. Deposits by Persons or Corporations Not Supervised by Any State Authority

Existing law

Title 12, U. S. C., sec. 378 (Banking Act of 1933, sec. 12, as amended by Banking Act of 1935, sec. 303).—(a) After the expiration of one year after the date of enactment of this Act it shall be unlawful—

(1) For any person, firm, corporation, association, business trust, or other similar organization, engaged in the business of issuing, underwriting, selling, or distributing, at wholesale or retail, or through syndicate participation, stocks, bonds, debentures, notes, or other securities, to engage at the same time to any extent whatever in the business of receiving deposits

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subject to check or to repayment upon presentation of a pass book, certificate of deposit, or other evidence of debt, or upon request of the depositor: *Provided*, That the provisions of this paragraph shall not prohibit national banks or State banks or trust companies (whether or not members of the Federal Reserve System) or other financial institutions or private bankers from dealing in, underwriting, purchasing, and selling investment securities to the extent permitted to national banking associations by the provisions of section 5136 of the Revised Statutes, as amended (U. S. C., Title 12, sec. 24; Supp. VII, Title 12, sec. 24): *Provided further*, That nothing in this paragraph shall be construed as affecting in any way such right as any bank, banking association, savings bank, trust company, or other banking institution, may otherwise possess to sell, without recourse or agreement to repurchase, obligations evidencing loans on real estate; or

(2) For any person, firm, corporation, association, business trust, or other similar organization to engage, to any extent whatever with others than his or its officers, agents or employees, in the business of receiving deposits subject to check or to repayment upon presentation of a pass book, certificate of deposit, or other evidence of debt, or upon request of the depositor, unless such person, firm, corporation, association, business trust, or other similar organization (A) shall be incorporated under, and authorized to engage in such business by, the laws of the United States or of any State, Teerritory, or District, or (B) shall be permitted by any State, Teerritory, or District to engage in such business and shall be subjected by the law of such State, Territory, or District to examination and regulation, or (C) shall submit to periodic examination by the banking authority of the State, Teerritory, or District where such business is carried on and shall make and publish periodic reports of its condition, exhibiting in detail its resources and liabilities, such examination and reports to be made and published at the same times and in the same manner and under the same conditions as required by the law of such State, Teerritory, or District in the case of incorporated banking institutions engaged in such business in the same locality.

(b) Whoever shall willfully violate any of the provisions of this section shall upon conviction be fined not more than $5,000 or imprisoned not more than five years, or both, and any officer, director, employee, or agent of any person, firm, corporation, association, business trust, or other similar organization who knowingly participates in any such violation shall be punished by a like fine or imprisonment, or both.

Recommendation

This section should be amended to prohibit the receipt of deposits by any person, corporation, etc., even though incorporated under, and authorized to engage in the business of receiving deposits by, the laws of any State, Territory, or district, unless subjected to the banking laws of such State, Territory, or district.

Reason

Recently a corporation incorporated under the laws of Texas was engaged in receiving deposits and was offering to pay 5 percent interest on such deposits. Upon investigation the Comptroller found that while this corporation was duly incorporated under the laws of the State of Texas its deposit activities were not supervised or regulated. The banking commissioner of Texas disclaimed jurisdiction on grounds that the company was incorporated under the insurance laws of Texas. The insurance commissioner stated that his jurisdiction was limited to regulating the insurance activities of this company and did not extend to regulation of its deposit activities. The Comptroller submitted the matter to the Department of Justice for a determination of whether this statute was being violated, and was advised that there was no violation. Subsequently, this company became bankrupt with loss to its depositors. Amendment of this statute in the manner suggested would prevent a recurrence of this situation.

37. Contributions by the Federal Deposit Insurance Corporation and the Federal Reserve Board to the Comptroller

Existing law

Title 12, U. S. C., sec. 482.—The Comptroller of the Currency shall fix the salaries of all bank examiners and make reports thereof to Congress. The expense of the examinations herein provided for shall be assessed by the Comp-

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troller of the Currency upon national banks in proportion to their assets or resources. The assessments may be made more frequently than annually at the discretion of the Comptroller of the Currency. The annual rate of such assessment shall be the same for all national banks, except that banks examined more frequently than twice in one calendar year shall, in addition, be assessed the expense of these additional examinations.

In addition to the expense of examination to be assessed by the Comptroller of the Currency as heretofore provided, all national banks exercising fiduciary powers and all banks or trust companies in the District of Columbia exercising fiduciary powers shall be assessed by the Comptroller of the Currency for the examination of their fiduciary activities a fee adequate to cover the expense thereof.

Recommendation

It is recommended that this statute be amended to provide that the Federal Deposit Insurance Corporation shall pay to the Comptroller of the Currency annually an amount equal to 50 percent of the expense incurred by it in examining State nonmember insured banks, and the Board of Governors of the Federal Reserve System shall pay to the Comptroller of the Currency annually an amount equal to 50 percent of the expense incurred by it and by the Federal Reserve banks in examining State member banks, and that the expenses of the Comptroller of the Currency not otherwise provided for shall be assessed by the Comptroller of the Currency upon the national banks in proportion to their assets and resources.

Reasons

National banks now bear the full expense of the supervision and the examinations which they receive from the Comptroller's Office. The entire expenses of the Comptroller's Office are paid out of assessments levied on national banks. State banks, on the contrary, which are supervised and examined by the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, do not bear directly any of the expense of such Federal supervision and examination. In the vast majority of cases State banks are examined jointly by the State authorities and by the examiners of the Federal Reserve banks or the Federal Deposit Insurance Corporation. In many States such examinations are conducted only once a year. By conducting joint examinations with Federal examiners State banking departments are enabled to operate with substantially smaller staffs and at less expense to the banks.

Thus State banks are to some extent subsidized by the Federal Government through the Federal Reserve System and the Federal Deposit Insurance Corporation, and they get the benefits of Federal supervision and examination at no direct cost to them. All national banks in the continental United States are members of the Federal Reserve system and are insured by the Federal Deposit Insurance Corporation. All of the funds of the Federal Deposit Insurance Corporation are derived from insurance assessments on insured banks including national banks. Thus national banks through their payments to the Federal Deposit Insurance Corporation are paying part of the cost of examining State banks. This inequity should be eliminated.

In some States the examination fees are very much less for State banks than for national banks particularly in the case of larger banks. This is an incentive for national banks to leave the national system and convert into State banks.

Through the payments suggested in the proposed amendment the examination fees assessed to the national banks by the Comptroller of the Currency could be reduced, thus restoring a more equitable balance between the State and National systems.

38. Furnishing Confidential Information to Federal Intermediate Credit Banks

Existing law

Title 12, U. S. C., sec., 1091.—In order to enable each Federal intermediate credit bank to carry out the purpose of this subchapter, the Comptroller of the Currency is hereby authorized and directed, upon the request of any Federal intermediate credit bank, (1) to furnish for the confidential use of such bank reports, records, and other information as he may have available relating to the financial condition of national banks through or for which the Federal intermediate credit bank has made or contemplates making discounts, and (2) to make through his examiners, for the confidential use of the Federal intermediate credit bank, examina-

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tions of organizations through or for which the Federal intermediate credit bank has made or contmeplates making discounts or loans: *Provided*, That no such examination shall be made without the consent of such organization except where such examination is required by law: *Provided*, That any organization, except State banks, trust companies, and savings associations, shall, as a condition precedent to securing rediscount privileges with the Federal intermediate credit bank of its district, file with such bank its written consent to its examination as may be directed by the Farm Credit Administration by farm credit examiners; and State banks, trust companies, and savings associations may be in like manner required to file their written consent that reports of their examination by constituted authorities may be furnished by such authorities upon request to the Federal intermediate credit bank of their district. Each Federal intermediate credit bank shall be examined and audited at least once each year by the Farm Credit Administration, and the results of such examination and audit shall be made public by the administration.

Recommendation

It is recommended that the first part of the first sentence through the words "required by law" be repealed.

Reasons

Federal intermediate credit banks are chartered and supervised by the Farm Credit Administration which under 12 U. S. C. 1095 is presently authorized to call upon the Comptroller of the Currency to make available in confidence reports and information relating to the condition of any national banking association to which the Administration or Federal intermediate credit bank contemplates making a loan or for which it has discounted or contemplates discounting paper, or which it is using or contemplates using as a custodian of securities or other credit instruments, or as a depositary. The individual Federal intermediate credit banks from time to time request the Farm Credit Administration to obtain from the Comptroller of the Currency the type of information referred to in 12 U. S. C. 1091 and 1095 and such necessary information is made available to the farm Credit Administration. The Comptroller of the Currency prefers to make such confidential information available to the supervisory authority, the Farm Credit Administration, rather than to the individual Federal intermediate credit banks, and as this practice has been followed administratively, it is recommended that 12 U. S. C. 1091 be amended as recommended above.

39. National Agricultural Credit Corporations

Existing law

Title 12, U. S. C., secs. 1151–1322.—

Recommendation

Repeal. If these sections are repealed references to the national agricultural credit corporations should be eliminated from sections 6 and 10 of title 12 of the United States Code.

Reasons

These statutes deal with the organization, operation, and dissolution of national agricultural credit corporations. The last national agricultural credit corporation was liquidated in 1938. Under the provisions of section 77 of the Banking Act of 1933 no national agricultural credit corporation may now be formed. Therefore, these provisions of law are obsolete.

40. Bonds of Home Owners' Loan Corporation as Lawful Investments

Existing law

[*1340*] *Title 12, U. S. C., sec. 1463 (c).*—* * * Such bonds shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guaranty shall be expressed on the face thereof, and such bonds 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 or officers thereof. * * *

Recommendation

It is recommended that title 12, United States Code, section 1463 (c), be repealed.

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Reasons

The act of June 30, 1953 (67 Stat. 126), dissolved and abolished the Home Owners' Loan Corporation. We are informed that all bonds of the corporation were retired on January 27, 1950. Since HOLC has been abolished and its bonds retired there is no longer any reason to list them as a lawful investment for trust funds.

41. Acting Comptroller of the Currency on Board of the Federal Deposit Insurance Corporation

Existing law

Title 12, U. S. C., sec. 1812 (Federal Deposit Insurance Act, sec. 2).—The management of the Corporation shall be vested in a Board of Directors consisting of three members, one of whom shall be the Comptroller of the Currency, and two of whom shall be citizens of the United States to be appointed by the President, by and with the advice and consent of the Senate. One of the appointive members shall be the Chairman of the Board of Directors of the Corporation and not more than two of the members of such Board of Directors shall be members of the same political party. Each such appointive member shall hold office for a term of six years. In the event of a vacancy in the office of the Comptroller of the Currency, and pending the appointment of his successor, or during the absence of the Comptroller from Washington, the Acting Comptroller of the Currency shall be a member of the Board of Directors in the place and stead of the Comptroller. In the event of a vacancy in the office of the Chairman of the Board of Directors, and pending the appointment of his successor, the Comptroller of the Currency shall act as Chairman. The members of the Board of Directors shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any insured bank, except that this restriction shall not apply to any member who has served the full term for which he was appointed. No member of the Board of Directors shall be an officer or director of any insured bank or Federal Reserve bank or hold stock in any insured bank; and before entering upon his duties as a member of the Board of Directors he shall certify under oath that he has complied with this requirement and such certification shall be filed with the secretary of the Board of Directors.

Recommendation

This statute should be amended to provide that in case of the inability of the Comptroller of the Currency to act, through illness or otherwise, the Acting Comptroller of the Currency shall be a member of the Board of Directors in the place and stead of the Comptroller.

Reasons

While the statute now provides that the Acting Comptroller of the Currency shall serve as a member of the Board of Directors of the Federal Deposit Insurance Corporation in the event of a vacancy in the office of the Comptroller of the Currency and during the absence of the Comptroller from Washington, it says nothing about the Acting Comptroller of the Currency serving as such director in the event of the illness of the Comptroller. While it would be assumed that the Acting Comptroller of the Currency should serve as a director of a corporation during the illness of the Comptroller, the matter should be made statutory in order that any doubt on that score may be eliminated.

42. Mergers or Consolidations by Insured Banks

Existing law

Title 12, U. S. C., sec. 1828 (c).—Without prior written consent by the Corporation, no insured bank shall (1) merge or consolidate with any noninsured bank or institution or convert into a noninsured bank or institution or (2) assume liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution or (3) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured bank. No insured bank shall convert into an insured State bank if its capital stock, or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholders' meeting approving such conversion, without prior written consent by the Comptroller of the Currency if the resulting bank is to be a District bank, or by the Board of Governors of the Federal Reserve System if the resulting bank is to be

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a State member bank (except a District bank), or by the Corporation if the resulting bank is to be a State nonmember insured bank (except a District bank). No insured bank shall (i) merge or consolidate with an insured State bank under the charter of a State bank or (ii) assume liability to pay any deposits made in another insured bank, if the capital stock or surplus of the resulting or assuming bank will be less than the aggregate captial stock or aggregate surplus, respectively, of all the merging or consolidating banks or of all the parties to the assumption of liabilities, at the time of the shareholders' meetings which authorized the merger or consolidation or at the time of the assumption of liabilities, unless the Comptroller of the Currency shall give prior written consent if the assuming bank is to be a national bank or the assuming or resulting bank is to be a District bank; or unless the Board of Governors of the Federal Reserve System gives prior written consent if the assuming or resulting bank is to be a State member bank (except a District bank); or unless the Corporation gives prior written consent if the assuming or resulting bank is to be a nonmember insured bank (except a District bank). No insured State nonmember bank (except a District bank) shall, without prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.

Recommendation

It is recommended that this statute be amended to provide that no insured bank shall merge or consolidate with any other insured bank or acquire the assets of, or assume liability to pay any deposits made in, any other insured bank without the prior written consent of the appropriate Federal authority. It should also provide that in granting or withholding its consent the approving authority must consider the factors enumerated in section 6 of the Federal Deposit Insurance Act and also must take into consideration whether the effect of the transaction may be to lessen competition unduly or tend unduly to create a monopoly. In the interests of uniform standards, the approving authority should be required to first seek the views of each of the other two bankinng agencies, and should also be authorized to request the opinion of the Attorney General of the United States.

Reasons

A variety of causes have resulted in an increased number of bank consolidations or mergers since the end of World War II, and particularly during the last 5 years. This has given rise to some apprehension that desirable levels of competition in banking might not be maintained unless steps were taken to enact legislation requiring that full consideration be given to the competitive aspects of such transactions prior to being approved by the Government official having jurisdiction. The Federal bank supervisory agencies are not now required by statute to consider the competitive or monopolistic aspects of merger transactions requiring their approval and bank-asset acquisitions are not now subject to section 7 of the Clayton Act. It is believed that in exercising their authority over bank mergers and consolidations the Federal banking authorities should be required to consider, in addition to banking factors, whether the result thereof might be to lessen competition unduly or to tend unduly to create a monopoly. This authority should be vested in the bank supervisory agencies, as banking is a supervised and regulated industry, and important banking factors must be weighed in conjunction with purely competitive factors in arriving at sound decisions.

Since there will be three banking agencies making decisions in respect to this matter, the legislation should require that, in the interests of achieving uniform standards, the Federal bank supervisory agency having jurisdiction in a particular case shall seek the views of each of the other two supervisory agencies on the competitive and monopolistic aspects of such asset acquisitions. The approving authority should be authorized to request the opinion of the Attorney General of the United States in order that the knowledge of the Antitrust Division of the Department of Justice would be available to it. Final authority should, however, be placed in the hands of the Federal banking supervisory agencies whose officials are intimately familiar with banking in all its phases throughout the United States.

The views of this Department with respect to this matter were presented to the Senate Committee on Banking and Currency in great detail during the 2d session of the 84th Congress with respect to S. 3911. This recommendation was incorporated in S. 3911, which was passed by the Senate, but not by the House of Representatives, during the 84th Congress.

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43. Use of Certain Words as Part of Business Name

Existing law

Title 18, U. S. C., sec. 709 (Crimes and Criminal Procedure).—Whoever, except as permitted by the laws of the United States, uses the words "national," "Federal," "United States," "reserve," or "Deposit Insurance" as part of the business or firm name of a person, corporation, partnership, business trust, association, or other business entity engaged in the banking, loan, building and loan, brokerage, factorage, insurance, indemnity, savings, or trust business; or

Whoever falsely advertises or represents, or publishes or displays any sign, symbol, or advertisement reasonably calculated to convey the impression that a nonmember bank, banking association, firm, or partnership is a member of the Federal reserve system; or

Whoever, except as expressly authorized by Federal law, uses the words "Federal Deposit", "Federal Deposit Insurance", or "Federal Deposit Insurance Corporation" or a combination of any three of these words, as the name or a part thereof under which he or it does business, or advertises or otherwise represents falsely by any device whatsoever that his or its deposit liabilities, obligations, certificates, or shares are insured or guaranteed by the Federal Deposit Insurance Corporation, or by the United States or by any instrumentality thereof, or whoever advertises that his or its deposits, shares, or accounts are federally insured, or falsely advertises or otherwise represents by any device whatoever the extent to which or the manner in which the deposit liabilities of an insured bank or banks are insured by the Federal Deposit Insurance Corporation; or

Whoever, not being organized under chapter 7 of title 12, advertises or represents that it makes Federal Farm loans or advertises or offers for sale as Federal Farm loan bonds any bond not issued under chapter 7 of Title 12, or uses the word "Federal" or the words "United States" or any other words implying Government ownership, obligation or supervision in advertising or offering for sale any bond, note, mortgage, or other security not issued by the Government of the United States under the provisions of said chapter 7 or some other Act of Congress; or

Whoever uses the words "Federal Home Loan Bank" or any combination or variation of these words alone or with other words as a business name or part of a business name, or falsely publishes, advertises or represents by any device or symbol or other means reasonably calculated to convey the impression that he or it is a Federal Home Loan Bank or member of or subscriber for the Stock of a Federal Home Loan Bank; or

Whoever uses the words "National Agricultural Credit Corporation" as part of the business or firm name of a person, corporation, partnership, business trust, association, or other business entity not organized under the laws of the United States as a National Agricultural Credit Corporation; or

Whoever uses the word "Federal intermediate credit bank" as part of the business or firm name for any person, corporation, partnership, business trust, association or other business entity not organized as an intermediate credit bank under the laws of the United States; or

Whoever uses as a firm or business name the words "Housing and Home Finance Agency," "Federal Housing Administration," "Federal National Mortgage Association," or "Public Housing Administration," or the letters "FHA" or any combination or variation of those words or the letters "FHA" alone or with other words or letters reasonably calculated to convey the false impression that such name or business has some connection with, or authorization from, the Housing and Home Finance Agency, the Federal Housing Administration, the Federal National Mortgage Association, the Public Housing Administration, the Government of the United States or any agency thereof, which does not in fact exist, or falsely claims that any repair, improvement, or alteration of any existing structure is required or recommended by the Housing and Home Finance Agency, the Federal Housing Administration, the Federal National Mortgage Association, the Public Housing Administration, the Government of the United States or any agency thereof, for the purpose of inducing any person to enter into a contract for the making of such repairs, alterations, or improvements, or falsely advertises or falsely represents by any device whatsoever that any housing unit, project, business, or product has been in any way endorsed, authorized, inspected, appraised, or approved by the Housing and Home Finance Agency, the Federal Housing Administration, the Federal National Mortgage Association, the Public Housing Administration, the Government of the United States, or any agency thereof; or

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Whoever, except with the written permission of the Director of the Federal Bureau of Investigation, knowingly uses the words "Federal Bureau of Investigation" or the initials "F. B. I.," or any colorable imitation of such words or initials, in connection with any advertisement, circular, book, pamphlet or other publication, play, motion picture, broadcast, telecast, or other production, in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet or other publication, play, motion picture, broadcast, telecast, or other production, is approved, endorsed, or authorized by the Federal Bureau of Investigation; or

Whoever uses as a firm or business name the words "Reconstruction Finance Corporation" or any combination or variation of these words—

Shall be punished as follows: a corporation, partnership, business trust, association, or other business entity, by a fine of not more than $1,000; an officer or member thereof participating or knowingly acquiescing in such violation or any individual violating this section, by a fine of not more than $1,000 or imprisonment for not more than one year or both.

This section shall not make unlawful the use of any name or title which was lawful on the date of enactment of this title.

This section shall not make unlawful the use of the word "national" as part of the name of any business or firm engaged in the insurance or indemnity business, whether such firm was engaged in the insurance or indemnity business prior or subsequent to the date of enactment of this paragraph.

A violation of this section may be enjoined at the suit of the United States attorney, upon complaint by any duly authorized representative of any department or agency of the United States.

Recommendation

It is recommended that this statute be amended to expressly permit the use of the word "national" in the title of all national banks. It is also recommended that the use of the letters "U. S." as part of the business or firm name of persons, corporations, etc., engaged in the banking, loan, building and loan, brokerage, factorage, savings, or trust business be prohibited. It is also recommended that no corporation other than a national bank should be permitted to use the words "national bank" in its corporate title.

Reasons

At the time of the codification of the criminal statutes in 1948 there was eliminated the statute which expressly permitted national banks to use the word "national" in their corporate titles. There is now no statute of the United States which expressly permits national banks to thus use the word "national" but the Comptroller of the Currency has continued to require all national banks to do so. Their rights in this respect should be made statutory.

The use of the letters "U. S." should be prohibited to corporations engaged in the types of business specified in order that the public will not be misled into believing that the corporation using these letters is a Government agency or is connected with a Government agency or that its business or that the deposit liabilities, obligations, certificates, or shares thereof, are insured or guaranteed by the United States or any instrumentality thereof. Legislation which would accomplish this purpose was passed by the Senate but not by the House of Repsentatives during the 84th Congress. See S. 2891 of the 84th Congress. Need for this legislation was highlighted by the bankruptcy of the U. S. Trust & Guaranty Co. of Waco, Tex., a corporation accepting deposits which was not regulated or examined by any supervisory authority.

There is now in existence a corporation which has recently adopted a corporate title including the words "national bank." This corporation is not a bank but is a corporation engaged in holding the stock of national banks. We do not believe that any corporation other than a national bank should be able to combine the words "national bank" in its corporate title thus implying to the public that it is a national bank supervised and regulated by the Comptroller of the Currency. Legislation which would prohibit this should apply to corporations in existence at the time the legislation is enacted as well as those incorporated later.

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44. National Bank Examination Reports Privileged Against Disclosure

Existing law

None.

Recommendation

It is recommended that there be enacted a statute which would provide that reports of examinations of national banks made by national bank examiners and related correspondence and papers should be deemed to be confidential documents privileged against disclosure to unauthorized persons except with the consent of the Comptroller of the Currency.

Reasons

From time to time outside persons, usually persons engaged in litigation with national banks, will attempt to subpena from the Comptroller of the Currency or from the national bank involved copies of reports of examination of a national bank and related correspondence and papers. In these cases it is the practice of the Treasury Department to resist the subpena by claiming that such documents are confidential documents of the Treasury Department privileged against disclosure under well-known doctrines of governmental privilege.

Reports of examination of financial institutions under the jurisdiction of the Comptroller and other information obtained by him in the exercise of his visitatorial powers over such institutions are classified as confidential because such information is obtained by or submitted to him in confidence, its revelation might adversely affect such institutions, the affairs of their customers, or others dealing with them or with the Comptroller of the Currency, and would be inimical to the public interest. The courts have recognized that the National Bank Act, in deference to the delicate and sensitive interests involved, contemplates exclusive supervision of banks by the Comptroller of the Currency and the confidential treatment by him of the matters developed as to their internal affairs.

Consequently, claims of privilege are ordinarily upheld. Recently, however, a United States district court refused to uphold such a claim of privilege by the Secretary of the Treasury and ordered the production in evidence of reports of examination of a national bank. This decision was reversed by the court of appeals which held that the subpena was too broadly drawn.

It is believed that this is a matter of such importance that the confidential and privileged nature of reports of examination and related documents should be made statutory in order that future problems of disclosure may be avoided. In practically all cases in which litigants seek to subpena reports of examination any information which they need and to which they are entitled is available from the books of the bank, which are, of course, the best evidence of the transactions involved, and which are subject to subpena. Uusually, in seeking reports of examination the litigants are desirous of determining whether the bank was criticized by the bank examiners with a view toward using such information in their controversy with the bank.

45. Merged or Consolidated Bank as Branch Office

Existing law

None.

Recommendations

It is recommended that legislation be enacted to provide that any national bank located within the same county may, with the approval of the Comptroller of the Currency, acquire by consolidation, merger, or purchase of assets, and assumption of liabilities another national bank which is found by the Comptroller of the Currency to be in a precarious financial condition *and permit the acquiring bank to continue the office or offices of the absorbed bank* as branch offices, even though State laws do not permit the establishment of such branches.

Reasons

Situations have arisen in the past where communities in States the laws of which either prohibit branch banking or provide for limited branch banking have been deprived of needed banking services through the discontinuance of a national bank because of insolvency. Other nearby banks could and would have provided those communities with all necessary banking serices through takeovers of the discontinuing banks and the establishment of branches at the locations of such banks if the branch-banking laws had not prohibited their doing so. This would

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have substantially eased the problem of the bank supervisory authorities and been to the best advantage of all concerned. Similar stituations are almost certain to arise in the future. It would appear to be essential that a method of dealing with such problems and permitting the continuance of necessary banking services in such situations be provided through the recommended legislation.

45A. Administration of Pension, Profit-Sharing, and Employee Welfare or Benefit Funds of Employees of National Banks

Existing law

None dealing with supervision or governing administration.

Recommendation

It is recommended that a statute be enacted to govern specifically certain important phases of the administration of pension, profit-sharing, and employee welfare or benefit accounts of national banks, as follows:

(1) Such accounts into which profits of the bank are contributed should have the approval of the stockholders who own a majority of the capital stock of the bank.

(2) Borrowing by such accounts should be prohibited, except for temporary needs to meet required disbursements.

(3) Investment of funds of such accounts in any real estate, equipment, enterprise, obligation, interest or stock, the principal purpose of which is to serve the interest of the bank or any director, officer, or employee thereof, should be prohibited.

(4) Ownership of more than 5 percent of the shares of the capital stock of any bank or trust company or the investment of more than 10 percent of the corpus of the pension, profit-sharing, and employee welfare or benefit fund or trust in shares of any bank or trust company, whichever is the lesser based upon cost price at the time of purchase, should be prohibited.

(5) The Comptroller of the Currency should be authorized by law to examine, in the course of the examination of each national bank, the affairs of any pension, profit-sharing, and employee welfare or benefit accounts which it established for its directors, officers, or employees, except when such accounts are administered by an independent corporate trustee.

Reasons

In the investment of trust funds of pension, profit-sharing, and employee welfare or benefit arrangements, abuses have occurred which could have been prevented had suitable statutory restrictions existed governing the administration of such trust funds. The most outstanding abuses which have come to the attention of this office are:

(1) The failure to obtain approval of the shareholders of the employer bank. This could result in litigation. In the case of *Heinz* v. *National Bank of Commerce in St. Louis* (237 Fed. 942), the United States Circuit Court of Appeals held that the creation of a pension fund was within the incidental powers of a national bank. In that case the directors had established the plan pursuant to a resolution of the shareholders. Such approval by the shareholders is believed to be wise procedure in order that the shareholders may be fully informed, and their specific approval may remove the possibility of later criticism. Furthermore, the shareholders are entitled to know the extent to which the future earnings of their bank are committed for such a purpose.

(2) There have been cases where pension funds created by banks have borrowed substantial sums of money to purchase the controlling interest in other banks. Control held in such a manner permits the employer-bank to dominate the policies and operations of the bank concerned. We do not believe that such funds should be used for this purpose.

(3) Also, trust funds of employee benefit accounts have been invested in banking houses, equipment, automobile parking facilities, insurance agency, and an automobile dealership on the verge of bankruptcy. Such investments are not suitable to the type of trust funds being invested and are indicative of self-interest.

(4) There is divided opinion as to whether stock of an employer bank is a proper investment of trust funds held for its employees. We believe it would be advisable to restrict the ownership of such stock to a reasonable amount with respect to the corpus of the trust as well as to the proportion of the capital stock of the employer bank. Furthermore, the limitations recommended are the same

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as those provided by section 17 (c) (5) of regulation F of the Board of Governors of the Federal Reserve System which sets forth miscellaneous limitations on investment of common trust funds. Fundamentally, it is contrary to sound fiduciary practice to engage in self-dealing, particularly where the trustor and trustee are essentially the same. We also regard it to be inappropriate for an employee's pension to be substantially dependent upon the continued success of his employer. In any case where it is necessary for a bank to increase its capital stock by means of a sale of new shares, ownership of a major portion of the existing capital stock by an employees' trust fund, which may not be in a position to purchase more stock, could impede if not prevent an increase in capital which might be necessary for the continued welfare of the bank and the protection of the interests of its depositors. Furthermore, if the bank is sole trustee, it is prohibited by title 12, United States Code, section 61 (U. S. R. S., sec. 5144), from voting such shares held in trust in the election of directors, except under certain circumstances. If these circumstances are met and a substantial portion of the stock of the bank is held in trust, it may become possible for the management of the bank to perpetuate itself in office. This perpetuation of management could also occur through the influence of directors and officers upon employees, if they, instead of the bank, are trustees of the fund.

(5) Statutory authority exists under which the Comptroller of the Currency may examine trust departments of national banks and in any case where such a department is acting as trustees of an employees' pension, profit-sharing, welfare or benefit trust, the administration of such trust funds may be examined. However, when the bank is not trustee and such funds are under a trusteeship composed of directors, officers, employees, or others, statutory authority does not exist which would permit examination into the administration of such trusts. Even though under these circumstances the administration of the trust is not a direct responsibility of the bank, because of the fact that its trustees (other than an independent corporate trustee) are closely connected with the bank and in a position to be influenced by those who formulate and administer its policies, the bank might be held liable for any loss which may occur in such a trust fund by reason of unsound acts of its directors, officers, or employees who also serve as trustees and whose interest is divided between the bank and the trusteeship. The probability or likelihood that under adverse circumstances the trustees may be charged with self-dealing and the bank held liable make it advisable that statutory authority be provided under which the affairs of such trust may be supervised.

Senator ROBERTSON. The Chair is glad to recognize his distinguished colleague from Maryland, Mr. Beall, if he wishes to ask any questions.

Senator BEALL. Thank you, Mr. Chairman. There are a couple of questions I would like to ask Mr. Gidney.

First, have any of the State bank supervisors objected to your recommendation No. 5, which would prohibit State banking authorities from examining and licensing national banks?

Mr. GIDNEY. Mr. Beall, I think no one has sent any objection to us. As noted in my remarks the superintendent of banks of New York wrote us a letter saying he had recognized it would not be necessary to license a national bank in New York State for this purpose. We have the question under discussion with another State superintendent. I think up to now the State bank supervisor has not been willing to accept our assurances that we would do an adequate job of examination, and to withdraw his request to have his people go in. We have not up to now indicated we would consent to having his people go in. That is at issue.

Mr. JENNINGS. I might point out that the matter has arisen in the following States: New York State, Pennsylvania, Kansas, Indiana, Michigan, Wisconsin, New Mexico, Nebraska, and Iowa. In a majority of such cases our national banks have paid the license fee. In only one instance are we faced with at least the possibility of the State insisting its examiners be permitted to go into the national banks to examine that particular phase of the national banks' activities.

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Senator BEALL. Thank you. This is a question that might not be unusual, particularly at this time of the year. Could the language of recommendation No. 6 be interpreted to permit use of bank funds for contributions to political organizations?

Mr. GIDNEY. Mr. Chairman, I have never known it to happen. Probably I should refer that to counsel, but there is a specific prohibition in the National Bank Act against national banks making contributions for political purposes, and I do not believe that this could be interpreted to authorize such contributions.

Senator BEALL. Do you feel that section 610 of title 18 should be made more restrictive?

Mr. GIDNEY. This would make it less restrictive.

Senator BEALL. Less restrictive?

Mr. GIDNEY. Yes. I am particularly hopeful we could have the amendment for the educational institutions. As you know, corporations have awakened to their responsibilities in that field, and have made generous contributions and are doing so. I think the banks ought to be or ought to keep abreast of the other corporations in that matter.

Mr. ROGERS. Mr. Gidney, I think you inadvertently made a misstatement. Your recommendation does not amend section 610. Section 610 is the general section against political contributions by national banks.

Mr. GIDNEY. That is right. Mr. Jennings says it does not.

Mr. ROGERS. The question was whether section 610 should be made more restrictive.

Mr. GIDNEY. Oh, I did not get that. No, I do not think that it needs to be any more restrictive. Judging from some things I have heard recently maybe there should be corresponding restrictions on State institutions, but I think the provision on national banks is clear.

Senator BEALL. Are State banks prohibited from doing it?

Mr. GIDNEY. I do not know.

Senator BEALL. I never heard of any.

Will you explain the relationship between the provisions regarding bank mergers contained in recommendation No. 8 with recommendation No. 42, which also deals with bank mergers? Is there any conflict between the language of the two recommendations?

Mr. GIDNEY. I think not. No. 8 deals with the technical provisions. No. 42 has to do with the competitive or antitrust aspects.

Senator BEALL. There is no conflict.

Mr. GIDNEY. I should say that is right. No. 8 provides improvement and uniformity in the technical provisions, and that is all we are asking for there, is it not?

Mr. JENNINGS. That is correct, Mr. Gidney. It deals with things like the appraisal procedure. The sale of the shares that have been turned in by dissenters; preemptive rights, and matters like that. They are all technical and the two statutes would not conflict.

Senator BEALL. In regard to the second part of recommendation 17, has there been any occasion where the right of shareholders to inspect shareholders' lists has been abused since banks became subject to regulation in the public interest? Do you know who all of the stockholders are?

Mr. GIDNEY. Yes. I think there have been cases. I could not give you a full citation of them but I could illustrate by recent contacts with

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certain very good and quite large banks, where I believe a certain gentleman bought 1 share of each and demanded the list. They asked him why he wanted the list and he said he wanted to arrange the sale of the bank. They put in a lot of time in one of the banks permitting him access to the records and making up his list.

Senator BEALL. They did give it to him?

Mr. GIDNEY. Well, they did not stop him. The list was so big that I do not think he ever got it completely. I think the other bank managed to persuade him not to go through with it. I would say that that was clearly an improper desire to use the list. He was less than a real stockholder. I guess he is a real stockholder as soon as he gets one share, but I do not think he was a stockholder of such standing that he should have been able to obtain the list.

Now, he might have had quite a few more shares than that and the request still would have been improper because his purpose, as he explained it, was to arrange the sale of the bank. Neither bank was for sale and neither bank needed to be or should be sold. It was a completely unreal explanation of his wish to examine the records and to have the list. What other reason he may have had, no one knows.

Senator BEALL. Mr. Chairman, that is all for the moment. Thank you.

Senator ROBERTSON. Mr. Gidney, with respect to your recommendation No. 17, would you object to a provision requiring the banks to notify you when there is a change in the ownership of a substantial amount of stock, or a change in the control of the bank?

Mr. GIDNEY. A change in the control would be practical. I think a change of an important amount might be practical. All changes would be of so large a volume that there is no way in the world that we could use it effectively. We do, Senator, acquire knowledge of those things in the course of our examinations.

Unhappily, when changes are in the wrong direction we do learn of them all too soon—all too soon for comfort, not all too soon for practical purposes.

Senator ROBERTSON. Do you believe that your recommendation No. 28 should be amended to include recommendation No. 58 of the Federal Reserve Board, so that the reporting requirements of the Comptroller and the Federal Reserve Board would be uniform?

Mr. GIDNEY. That is No. 28. I would have to go—I do not know. Do we have a discussion on that?

Mr. JENNINGS. That is the change from 5 to 10 days for all reports of condition.

Mr. GIDNEY. We did not put that in the ones I discussed. I think the recommendation referred——

Mr. JENNINGS. I can say this: We do not believe that No. 28 would be in conflict with the suggestion made by the Board of Governors of the Federal Reserve System. This is merely a matter that provides the national banks of the country 10 days in which to submit their call reports of conditions to the Comptroller, rather than 5 days. We do not believe there is anything in the Board of Governors' suggestion that would conflict with it.

Mr. GIDNEY. Yes, sir. No. 28 has simply deleted the word "five" and substituted the word "ten." You recognize that in present-day times with Saturdays, holidays, and all that kind of thing, they need 10 days.

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Senator ROBERTSON. The Chair will let the counsel ask a question.

Mr. ROGERS. Mr. Gidney, Senator Robertson's point there is that recommendation 58 provides for a new standardization of forms for different classes of banks.

Mr. GIDNEY. Yes, sir.

Mr. ROGERS. So that you would not require the same type of a report for a large city bank as for a rural bank?

Mr. GIDNEY. I do not think it is our recommendation.

Mr. ROGERS. No, it is not. Your recommendation is simply on the call report.

Mr. GIDNEY. And No. 29 is on the report of dividends and net earnings.

Mr. ROGERS. Yes, but what we want to know is whether we should make your report uniform with the report required from the Federal Reserve State member banks.

Mr. JENNINGS. We have always been able to work out on a uniform basis, in cooperation with the Board of Governors, reports that satisfy us and satisfy them. We would not anticipate any problem on that score.

Mr. ROGERS. You would have no objection then to the Federal Reserve's recommendation?

Mr. JENNINGS. We would want to have a very definite part in the picture in deciding the form. We would not want them to be in complete charge of it, but I do not believe that would ever arise.

Mr. GIDNEY. We have been able to coordinate and to come out with a uniform call report. I think our examination reports are practically uniform, but we would not like to be under their absolute domination on that, because sometimes we have ideas a little different.

Mr. ROGERS. Your recommendation is to provide for 10 days. The Federal Reserve Board has no time limit. It is purely in their discretion. Would that be more satisfactory?

Mr. JENNINGS. Not in my opinion. We believe that the 10-day rule serves a definite purpose. We need the reports after the call date—very soon after the call date—and if no date was set and the number of days not established, some of them would be dragging in for possibly weeks and months.

Mr. ROGERS. If you had discretion within 10 days or 15 days, without having it written in the statute as the Federal Reserve Board has it, is what I mean.

Mr. JENNING. I think that would be satisfactory.

Mr. ROGERS. What I want to point out is, all through this we are attempting to make the regulations of the various agencies, the three agencies, as uniform as possible on similar points.

Mr. JENNINGS. Yes.

Mr. GIDNEY. I think that would be better, in fact. This 5-day rule is a pretty cramping limitation and we know perfectly well in many cases the banks cannot prepare the reports in 5 days. So that would be a good change.

Senator ROBERTSON. Mr. Gidney, would you prefer a change in the law so a deputy could serve for you on the Federal Deposit Insurance Corporation Board, when you are out of town, or a change in the law to have just a one-man FDIC?

Mr. GIDNEY. Could you give me notice of that question?

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Senator ROBERTSON. I think as we used to do in the House, you can extend your remarks on the record, I am quite sure, if it is embarrassing to you.

As to the technical drafting of a banking code, would you prefer all of the national banking laws to be taken out of the Federal Reserve Act, and all of the Federal Reserve laws taken out of the Banking Act, and have a separate Banking Act and a separate Federal Reserve Act? It would be a part of the Banking Code?

Mr. JENNINGS. Yes.

Mr. GIDNEY. I think I would prefer that, but I recognize it as a considerable additional task, I assume. Mr. Rogers would know better than I. Of course, we, in working up our material, have gone along the line of amending the existing statutes and not trying to change their location. We have grown used to existing references and know where to find them, and for a time we might be less happy with the codified job than we are at present, but in principle I think it would be desirable.

Senator ROBERTSON. You are, of course, aware of the fact that in selecting an advisory committee I limited the committee to commercial banks and those closely related agencies like the Federal home loan banks and the credit unions. I did not select any representative of investment bankers. They thought I had overlooked them because they anticipated that sooner or later a proposal would be made to insure that we include in the new code a provision for banks to underwrite general revenue bonds.

Do you wish to make any comment on that? You did not make that recommendation. A number of the Federal agencies made that recommendation, but I see some investment bankers in the audience and I think they are listening very intently to see what you have in mind on that subject.

Mr. GIDNEY. Mr. Chairman, I would not feel that I could make a recommendation on that unless and until the Treasury Department had gone over it and adopted a Treasury Department position. It has been considered a great deal. We have set down the considerations which are favorable to the proposal and the considerations which are advanced against it. We think the factors are rather closely in balance and we have not up to now been able to persuade our colleagues in the Treasury Department to take a position on it.

If the committee should wish it, I think we could endeavor to come to a conclusion, but I think I should not take a position at this time.

Senator ROBERTSON. The Chair is glad to recognize our distinguished colleague from Illinois, Senator Douglas.

Senator DOUGLAS. Section 610 of the National Banking Act, Mr. Gidney, prohibits political contributions by national banks.

Mr. GIDNEY. I believe so. Yes, sir.

Senator DOUGLAS. Do your examiners examine the national banks to see whether or not this provision is being violated?

Mr. GIDNEY. Their examination should.

Senator DOUGLAS. Have they found any instances of where it is being violated?

Mr. GIDNEY. We have found some contributions in small amounts to so-called welfare funds which are questionable.

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Senator DOUGLAS. That is not quite responsive to my question. I wanted to know whether your examiners have found any contributions by national banks to political parties or political committees?

Mr. GIDNEY. Not that could be—not that appear as such. None that appear as such.

Senator DOUGLAS. You are willing to make this statement solemnly?

Mr. GIDNEY. Yes, sir. That is correct; is it not, Mr. Jennings?

Mr. JENNINGS. That is correct. I believe if we go back through the cases we have reported to the United States attorney for the last 10 years, we will find we have reported a case or 2, and possibly 3, to the United States attorney, involving situations where it would appear that a contribution had been made in violation of that section. I do not believe, however, that there have been any prosecutions in connection with those cases.

Senator DOUGLAS. Would you be willing to submit to the committee on a confidential basis the lists of the banks which you believe had made political contributions?

Mr. GIDNEY. Senator, I believe that we have not any—that they would be among thousands of banks.

Senator DOUGLAS. You said there were three cases.

Mr. GIDNEY. In this recent matter. Yes; we would.

Senator DOUGLAS. Would you submit that?

Mr. GIDNEY. Yes; we would.

Senator DOUGLAS. Would you submit those names on a confidential basis?

Mr. GIDNEY. We would.

Senator DOUGLAS. Would you state the names of the Federal attorneys to whom the cases were submitted?

Mr. JENNINGS. Now, Mr. Gidney is mentioning some recent cases which I do not believe have been submitted to the United States attorney.

Senator DOUGLAS. Oh, there have been recent cases that have not been submitted to the United States attorney?

Mr. JENNINGS. No. Let me put it this way: There were some recent cases that we will consider rather deeply to determine whether or not a violation might be involved. That determination has not been made. We question very much that a violation exists.

Senator DOUGLAS. Would you submit the full facts as to the names of these banks, and the full circumstances, to the committee on a confidential basis?

Mr. GIDNEY. Yes. We will certainly do that. We believe——

Senator DOUGLAS. You have not yet submitted those to the United States attorneys?

Mr. GIDNEY. We have submitted the facts to the Chief Counsel of the Treasury, and I have been away and do not know what further developments have occurred, but we understand——

Senator DOUGLAS. Would you make a report to us as to what action, if any, was taken?

Mr. GIDNEY. It is a pleasure.

Senator DOUGLAS. How many of these cases have there been?

Mr. GIDNEY. I knew of three.

Senator DOUGLAS. When did they occur?

Mr. GIDNEY. Over 2 or 3 years.

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Mr. JENNINGS. Yes. Over a period of 3 or 4 or 5 years, possibly—in minor amounts.

Mr. GIDNEY. A few hundred dollars.

Mr. JENNINGS. And it is questionable in our view at the moment whether they represent political contributions. The cases I refer to go back over prior years where it was also questionable.

Senator DOUGLAS. Would you submit the full list for the last 10 years?

Mr. JENNINGS. Of any cases we have submitted to the United States attorney?

Senator DOUGLAS. But do not delay the current report.

Mr. GIDNEY. That is right.

Senator DOUGLAS. Do not delay it in order to pick up the cases prior to 1953.

Mr. GIDNEY. I am not at all sure we can find those old ones.

Senator DOUGLAS. You will find as many as you can, but you certainly have a record of the current cases.

Mr. GIDNEY. Yes.

Senator DOUGLAS. Give a description of each case on the understanding this is on a confidential basis.

Mr. GIDNEY. That is right. They are contributions to a so-called welfare fund. I do not know whether it is political or not.

Senator DOUGLAS. I think we have heard of those funds.

Mr. GIDNEY. I think you have, and there have been hearings by State district attorneys, and by Federal, so they have had attention.

Senator DOUGLAS. It would be very interesting. May I ask another question? In a case which developed in St. Louis some years ago, the officials of a large concern paid large fees to lawyers, and these lawyers in turn used these funds for political contributions. There were certain indictments, and certain men were asked to appear before grand juries, some of whom appeared and some of whom did not.

Have you ever gone into the question as to whether national banks pay large sums to attorneys or officers who then, out of these funds, are expected to make political contributions?

Mr. GIDNEY. I do not know too much about the fees that banks pay to their attorneys. Where we find a fee that seems excessive we criticize the bank and tell them they must not pay it.

Senator DOUGLAS. They must not pay it?

Mr. GIDNEY. Yes.

Senator DOUGLAS. Yes; but do you probe to see whether the intent of section 610 is violated by payments of fees to attorneys——

Mr. GIDNEY. I do not see——

Senator DOUGLAS. Just a minute. Do you probe to see whether the intent of section 610 is violated by the payment of fees or bonuses to officials or to attorneys which then are later used in whole or in part as political contributions?

Mr. GIDNEY. We have not found such cases.

Senator DOUGLAS. You have not found such cases?

Mr. GIDNEY. We have not.

Senator DOUGLAS. Do you think that would be a good thing to look for?

Mr. GIDNEY. I think if they are found they should be reported.

Senator DOUGLAS. Do you think it is a good thing to hunt and see if you can find them?

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Mr. GIDNEY. I think the examiners ought to be on the alert for that kind of thing.

Senator DOUGLAS. Will you promise to alert your examiners on that point?

Mr. GIDNEY. I may say it was not very long ago that an attorney's fee or an attorney's bill was rendered for a large amount and we told the bank they just plain could not pay it, and they did not pay it.

Senator DOUGLAS. Will you see that your examiners are on the alert on this question?

Mr. GIDNEY. We will put out a suggestion that they keep their eye open for that kind of thing.

Senator DOUGLAS. Thank you very much.

Mr. GIDNEY. I think you appreciate, Senator, that they cannot put their full time on that.

Senator DOUGLAS. I understand. They have other things to do but this might be one of the things.

Mr. GIDNEY. Yes, and we do not have as many examiners as we should have either.

Senator DOUGLAS. I would be willing to have you get an extra appro-riation for examiners designated for this special purpose. I would be very glad to assist you.

Mr. GIDNEY. We have adequate funds but it is not easy to get qualified men in these times, as you know.

Senator DOUGLAS. I understand. There was one question which is really a serious question, and I will try to make it as concise as I can. You take a position against cumulative voting and therefore against articulate minorities having representation on the board of directors. Also you take a position against the list of shareholders being made available to stockholders.

Mr. GIDNEY. Unless for proper purposes.

Senator DOUGLAS. Is not a bank really a quasi-public institution, and are you not in effect proposing to put down a venetian blind curtain—not an iron curtain or a bamboo curtain, but a venetian blind curtain—between the operations of the bank and the shareholders of that bank?

Mr. GIDNEY. I do not think we are doing that. I do not mean to do that. I think the list of shareholders should be available for a proper purpose.

Senator DOUGLAS. Who is to determine what the proper purpose is?

Mr. GIDNEY. If necessary it can go into a court. That would be the recourse.

Senator DOUGLAS. What is the objection to having the shareholders know?

Mr. GIDNEY. There is not any to the real shareholder who is a real functionary and who you know is in there as a serious shareholder. But if I go into a bank and buy a share, or 5 or 10 shares, and demand the list of shareholders and then use it as a mailing list for stock sales, or miscellaneous sales for this or that, that is not a proper purpose in my book. If I take the list and go around and try to make myeslf a quick dollar by trying to turn it over to somebody, I do not believe that is a proper purpose.

Senator DOUGLAS. May I ask this: Have you ever had any feeling that some stockholders in national banks were not the real owners

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or controllers of the stock which they purportedly owned? We have had cases in Illinois, as you will recollect, of which you are apparently aware, of people owning stock who were fronts for other groups. It is quite possible we have revealed only a portion of what has been going on. We know that the Swiss have almost complete secrecy in these matters. If you can figure out who owns Swiss industry, you are a greater expert than even the assemblage of experts around this table. Can that not create an unhealthy situation? What is the harm in sunlight?

Mr. GIDNEY. In what?

Senator DOUGLAS. In sunlight.

Mr. GIDNEY. I would not say there was harm in sunlight.

Senator DOUGLAS. But you are proposing to draw down a venetian blind curtain between the operations of the bank and the stockholders of the bank.

Mr. GIDNEY. I do not agree we are trying to draw down a curtain. We are just trying to permit access for suitable and proper purposes, and avoid the use of the statute by people who want to use it for wrong purposes. You say who is to decide. Certainly a stockholder has a right to go to court on that as it stands now.

Senator DOUGLAS. But court litigation is very expensive and very long delayed.

Mr. GIDNEY. It is not very long——

Senator DOUGLAS. With appeals it is. There is the right of judicial review, which can be very time consuming.

Mr. GIDNEY. Of course, cases involving the desire to see the list for proper purposes are not numerous. Fortunately cases involving the desire to see it for improper purposes are not numerous either.

Senator DOUGLAS. Let us move from the question of stockholders lists to the question of cumulative voting. Do you not think minorities should have representation on the board of directors?

Mr. GIDNEY. I think it can be handled better in the election of directors by the majority. The people who have substantial holdings and are suitable material will be appointed and elected to the board.

Senator DOUGLAS. In other words, the majority should have the right of complete control?

Mr. GIDNEY. I think so.

Senator DOUGLAS. The minority should have not even representation?

Mr. GIDNEY. I think the minority shareholders will get representation if they are the kind of people who ought to have a hand in it.

Senator DOUGLAS. But only if they are in the opinion of the majority?

Mr. GIDNEY. Yes; I think it would have to be that way. I agree to that.

Senator DOUGLAS. Of course in Illinois we require cumulative voting.

Mr. GIDNEY. That is true.

Senator DOUGLAS. On the whole it has been a very healthy influence, I think. It has prodded one giant company into a somewhat more expansive frame of mind, with results beneficial to the company and to the stockholders. That is all, Mr. Chairman.

Senator ROBERTSON. Last Sunday I heard a sermon on the contribution of the early Jewish people to our concept of private property. The preacher illustrated it by telling about the efforts of King Ahab

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to get Naboth's property. But Naboth did not want to sell, and the record says Jezebel said to Ahab, "Are you not the King of Israel?" The record is not fully clear as to what Ahab said, but it was evidently something to the effect that "Look here, Jezebel; you are a Phoenician, and you do not understand. There are certain property rights which even the King of Israel has to recognize, and he cannot just go out and without any excuse whatever take the property of another man, no matter how small it is, or how close it is to the royal vineyards."

We know that the statement of Thomas Jefferson in the Declaration of Independence that the pursuit of happiness is an inalienable right has never been successfully challenged. He helped to give us the system of private enterprise, and everybody is generally agreed that one of the essential ingredients of the pursuit of happiness is the acquisition, the ownership, and the use of property.

During the past 24 years I have attended a lot of hearings in Washington, and I do not remember any hearing in which as much concentrated wealth was represented as we have here this morning. For instance, the bankers alone represent over $250 billion of liquid assets. It necessarily follows that a lot of people in this country ought to be interested in their views on how to make their money safer or how to make it more plentiful, or how to let those that have not got it and think they ought to have it, get it.

I am going to turn the questioning over to the chairman of our advisory committee, Mr. Ken Cravens, and he, in turn, can call on his subchairmen to ask the questions they think would illuminate our understanding of what is involved. Mr. Cravens.

Mr. CRAVENS. Thank you, Senator. I think first I would like to call on our subcommittee chairmen for any questions they might have. Appropriately, I will call on Mr. Reese, because he is chairman of the subcommittee on legislation affecting the Comptroller of the Currency. Mr. Reese, do you have any questions?

Mr. REESE. Senator Robertson and Mr. Cravens, thank you for this opportunity. As I understand it, the idea is that the chairmen of the subcommittees would ask questions on their particular sections. There was one question asked as to whether it might be advisable to separate the Comptroller's end of this regulation from the Federal Reserve. I think there is merit in the long-range standpoint of separating and simplifying the laws relating to the Comptroller's Office and the Federal Reserve.

I think as a suggestion that study should be given to eliminating the issuance of all circulating notes and really getting the banking laws of the country down in a simplified manner so that people who have anything to do with them can look them up and find out very easily just what is applicable in any particular situation. I just make that as a comment here.

It may be that the subject of circulating notes ought to be thrown into the pot in considering a revision of the banking laws so that a simple-minded country banker, such as I am, can look it up and find out in No. 3 just exactly what it is he would like to know and how it applies to him in a specific case rather than going through a great pile of things in order to find out the answer to a simple question.

On recommendation No. 2, Mr. Gidney, I might ask you, why put in the law a limitation as to the number of Deputy Comptrollers?

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Five years from now or 10 years from now you might need 10 Deputy Comptrollers. Why not have that in in a way so that it is not a matter of law, but a matter of regulation?

Mr. GIDNEY. That would be quite acceptable to the Comptroller, but I think the Congress would probably wish to keep it within bounds. We have an authorization of three at present. I assume if the need became greater we could come back and get it further expanded. Certainly it would be agreeable to us to have it unlimited, but I think it is a little too much for us to ask.

Mr. REESE. I am wondering whether it could be made more flexible and not so cumbersome so that you have to go to Congress to change the law to do something which is a matter of business organization.

Mr. GIDNEY. That certainly might be made "such additional as the Comptroller may consider necessary, but not more than—" and give some outside limitation, which would avoid its being carried too far.

Mr. REESE. Your recommendation No. 13 deals with the matter of paying dividends. Mr. Wooten, from Texas, says some banks are now paying monthly dividends. I am wondering how that can be done under the proposed restrictions.

Mr. JENNINGS. They can pay monthly dividends but we do not believe the national banks of the country would wish their directors to declare monthly dividends. If they were able to declare them quarterly, payable monthly, that would work out all right in our opinion.

Mr. REESE. On the broader aspects of this subject I think some restriction should be inserted so that if someone wants to deplete accumulated earnings of a bank he should be prevented. I do not know how many cases there are. I notice in your statement you say there are infrequent cases. I think we ought to be careful in the revision of banking laws so that we do not make or give rigidity to the laws just in order to prevent a few cases of abuse. This matter of restricting it so that you can only pay out of this year's earnings and last year's—I think there should be restrictions on it. But in the history of banking in this country, the payment of dividends has been on a conservative basis and I think we should be careful not to restrict too much because there is a great point in many banks of having a continuity of dividend policy. The earnings of a bank might fluctuate considerably and for various reasons they might not have earnings this year or last year, but have very large undivided profits. They might pay dividends with no thought at all of depleting accumulated earnings but just to maintain a consistent policy for payment of dividends.

I think careful thought should be given to just how you do this. Put restrictions in but do not be too restrictive so as to prevent legitimate use of the payment of dividends on earnings.

Mr. GIDNEY. Mr. Chairman and Mr. Reese, we would agree with that, and it might be possible to have that limitation in some form a little different than we have suggested it. I think your committee would be interested to know the reason why the recommendation was made. Not very long ago new interests bought a bank. The old interests had not been very generous in dividends and had built up a lot of capital funds which were needed. They sold the bank building at a fancy price, which was made possible or based on giving a lease which created very high obligations on the bank. I think the sale gave them a profit of $400,000 and they declared dividends of $1

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million whereas the normal dividends of the bank previously had been $30,000. I agree that $30,000 was probably very low. Maybe it should have been $50,000 or $60,000, or something like that. This was just what we call—the mild phrase is "milking a bank," and the more accurately descriptive phrase is "looting a bank."

Then we have Senator Douglas' thinking about the board of directors. We do have the possibility that people will have a bank running along all right today and someone comes in and buys it and does things with it which are out of order. You had some of that when the Discount Corp. in Dallas bought a bank up at Chicago. We had a case recently where an individual bought a bank in Texas and paid for it out of the bank's funds by kiting checks. He not only took enough money out by kiting checks to pay for the bank but several hundred thousand dollars more. That bank is now among the has-beens and is being paid off.

We are not dogmatic about the form of this particular recommendation. We would like to have something which prevents directors from coming in and paying out the whole thing at once. Happily we do not have many of those cases. The banking profession is an honorable profession and we do not have many of those cases, but one is too many.

Mr. Reese. Yes, sir. I think just commonsense can be written into it in a way so as not to harm most of the banks because of a few bank practices.

Mr. Gidney. I think possibly a limitation on the maximum cash dividend with relation to capital funds to be paid can do it.

Mr. Reese. Did you want me to go this far?

Mr. Cravens. If you have any particular questions we would be delighted to have you ask them.

Mr. Reese. Do you want me to take this much time? Senator Robertson, do you agree to that?

Senator Robertson. We are recessing for lunch at 12:30. It might be advisable to give the other members of the Advisory Committee an opportunity. Then we will resume our session and come back to it. The chairman would like to make this comment in connection with Mr. Reese's questions. The chairman was criticized by Mr. Harry Arthur, of South Carolina, because he did not put a representative of a nonmember bank on the committee. He replied that it did not occur to him that that was a test of the expertness of a man, and that we were trying to get the best qualified men we could. We have at least four members of the Advisory Committee who represent small banks, and Mr. Reese is one. Mr. Arthur can be assured he would not take the position that what was good for Chase of Manhattan would be good for all of the country banks. I want to repeat that this is a study of the welfare of all banks and not just of the big city banks.

Mr. Gidney. Mr. Chairman, I would like to make an observation that we are just as much interested in the welfare of the smallest bank as the largest. I have always taken care of small banks and always will.

Mr. Cravens. We will come back to you in just a minute, Mr. Reese. I would like to ask Mr. McCloy if he has any questions.

Mr. McCloy. Before I say anything I think I ought to suggest that I do not want to get into any unfortunate slogans which may

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be used politically against me in terms of what is good for the Chase-Manhattan Bank may be good for others. I do not recognize that there is any inconsistency between our interests and theirs.

As you know, Mr. Chairman, I am chairman of a subcommittee dealing with the Federal Reserve Act rather than the National Banking Act. There are one or two thoughts that have occurred to me as I have heard Mr. Gidney speak this morning. One of the members of my subcommittee wrote me a letter in which he raised some question as to the advisability of broadening the authority of the national banks in respect to contributions. This was not with respect of the political aspect that the Senator from Illinois referred to but it was the thought that perhaps the national banks might be subjected to local pressures to an undue degree if there was specific authority, such as you suggest, given to them.

I wondered whether you would care to comment on that. I do not mean to infer I have any criticism of it but I want to get before you all of the points of view of my committee.

Mr. GIDNEY. I would be very glad to comment. One of the members of your committee talked to me on the telephone about it and thought it might not be desirable. On the educational contributions I am as firm as I know how to be. I have taken a great interest in that for many years and I believe corporations must take their part in the contribution for educational work, otherwise we will not have the educational facilities and training which we have to have to carry on our business as it is now done and will be done.

On the other side we have certain of these matters referred to us from time to time and have to tell the banks they cannot do it. We strongly suspect they are very glad to be told that. I would say we would be perfectly willing to let your commitee make a proposal on this question. We can take it either way. I think some banks like that little wall as protection against these requests, but they come down with a straight face and ask, "can we do this."

So I think you can see how I feel about that.

Mr. JENNINGS. Might I add, we also have more than a few cases, Mr. Gidney, where a bank wants to make that type of contribution. They claim it will be harmful to their business if they do not, and they look upon it in some cases as a necessary business expense. Honestly I have not been able to differ with them too much. So there has been strong pressure on that side, too.

Mr. MCCLOY. As I say, we are not taking any position in respect to that but I did want to have that consideration put forward.

Mr. GIDNEY. We would be glad to have you decide that one for us.

Mr. MCCLOY. Personally I am inclined the way you are thinking. I believe in the educational field we are entering into a new era which industry has recognized. Even though I am quite clear it would mean a lot of headaches so far as my bank is concerned. Let us say all have some particular educational institution to which they would like contributions made; I believe this is a sign of the times.

As to the local development corporations, this is another matter which seems to be also a mark of the times and I would think you would feel that national banks, merely because they are national banks, are not divorced from the community and the economic development of the community from which they get their sustenance and which they serve.

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Mr. GIDNEY. Yes, sir.

Mr. McCLOY. I also noticed that you suggested some sharing, I think as you put it, of the costs of examinations as between the State banks and National banks.

Mr. GIDNEY. Yes, sir.

Mr. McCLOY. I am not sure I got the full import of that suggestion. As you know, Mr. Gidney, I was once in the national banking system and left it with great reluctance. I have no animus whatsoever against the national banking system, as I see you have not against State institutions, may I say, in connection with this recommendation that you made in regard to the deposits from institutions outside of the country.

Mr. GIDNEY. I had hoped you would note that, Mr. McCloy.

Mr. McCLOY. I picked that up because we suggested it at the time we had to change from the national banking system.

Mr. GIDNEY. Yes.

Mr. McCLOY. We have to pay the expenses of the State examiners.

Mr. GIDNEY. Yes.

Mr. McCLOY. We also can be called upon by the Federal Reserve Board to pay the cost of the Federal examinations. Would not your suggestion result in State banks, or at least the State banks of the larger States where the larger institutions are located, paying more than the national banks would, after all of the bills were in, for all of the examinations which take place?

Mr. GIDNEY. The proposals we have it on this would not add any expense to the State banks. The situation is such that while we have a dual banking system we are subsidizing the State side of it to the degree of this approximately 7 or 8 million dollars by having Federal examinations made for which State banks do not pay. This inequality could be corrected by having the State banks pay, in which case they would be paying more, or by having the FDIC and the Board turn over to us some funds to cover a portion of ours—roughly half—and then we would be on an even footing.

Mr. Jennings has some extensive figures on different States, and they vary so that it would be pretty difficult to cover them at this time in a short time.

Many years ago when I was in New York I looked into it and at that time the national banks, of which Chase was one, were paying a sum of probably 6 or 7 times as great as the State banks for their examination. But that has nothing to do with this case. This is a situation where the Federal Reserve and FDIC are in effect subsidizing State membership as against national. That ought to be straightened out by an appropriate method, whether it be by making the FDIC and Federal Reserve charge State banks for this examination or doing it as we suggest, which might be a better way.

Mr. McCLOY. Might it not result, if the FDIC had a share in the payment of those expenses, that that would reduce the FDIC assessment refund that might be coming back to the banks.

Mr. GIDNEY. Not to a degree that would be particularly——

Mr. McCLOY. Again I do not want to take a stand at this time on this but I would like to reserve the opportunity to look at the figures to see what the effects would be.

Mr. GIDNEY. Yes; I am glad to bring it out because it is an important subject, and one which Mr. Jennings and I have been talking

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about ever since I have been down in Washington. We would not bring it up as a special piece of legislation, but having this opportunity we thought we should speak out and call attention to this inequity.

Mr. JENNINGS. Might I add just one other point. I checked with the State superintendents of the various States a year or so ago as to costs. In New York State, for example, we did not go beyond a $3 billion bank, but at that time a $3 billion bank paid annually for its examination $73,000. A $3 billion national bank would pay $195,000. So there is a great difference, not only in New York State for the charges on the larger banks, but in many other States.

I will not take the time of the committee to go into the figures of other States unless it is desired, but in New York State alone there is a vast difference.

Mr. McCLOY. Mr. Chairman, I think I have no more questions at this time. I would like to reserve the right to consult with the members of my subcommittee so that I can be sure that they are fully represented on the questions they would like to ask. If I do have anything further perhaps after the recess we can pick it up.

Mr. CRAVENS. You will be most welcome then.

Mr. Harris, do you have any questions?

Mr. HARRIS. No, sir.

Mr. CRAVENS. Have Mr. Pratt or Mr. Bubb any questions?

Mr. PRATT. No, sir.

Mr. BUBB. No questions.

Mr. CRAVENS. Mr. Gidney, going back to your recommendations 23 and 24, with respect to the discounting or purchase of installment paper, you suggest that that be limited to 25 percent of the bank's capital and surplus. I assume that would be only in the case of a full-recourse endorsement?

Mr. GIDNEY. I think Mr. Jennings is a better authority on that than I am, but you are correct insofar as reliance on the discounter is concerned.

Mr. CRAVENS. That is what I want to get.

Mr. GIDNEY. I will ask Mr. Jennings to explain it to you. His idea is, if a bank wishes to go beyond the 25-percent limit, it could take some of the notes without recourse or have the guaranty apply up to a specific dollar amount and then be careful in their scrutiny of the paper. After all, there is no use in getting a fellow's liability for an amount more than he could perform on. I think I would like to ask Mr. Jennings to speak on that. He is a better exponent on it than I am.

Mr. JENNINGS. We rather strongly believe that the amount a bank should rely on for any one dealer or discounter should not exceed 25 percent of the bank's capital and surplus. We run into far too many instances under the present statutes where a bank will have a discount line to an automobile dealer, or some other type of dealer, on the basis of a full-recourse endorsement, and the paper being negotiable there is no limit on the line under the rulings we have made under exception 2 to section 5200. We find too many instances where we honestly believe too much reliance is placed on that discounter.

All of us know, apart from the unusual dealer with a large financial strength, that if any amount of the paper starts to go bad the dis-

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counter normally is not in a position to take care of it. We honestly believe up to 25 percent of the capital and surplus is enough for 1 bank to rely on 1 discounter. Of course, the bank can take additional paper without full-recourse endorsement, but then they are taking it after checking into the worth of each obligor.

A procedure has grown up in the East, particularly, even under existing law, where the banks will not take negotiable paper, as they prefer nonnegotiable paper because of certain protective covenants in the contracts. They will take a repurchase agreement from the dealer, and under our present statutes that repurchase agreement may not exceed 10 percent of the bank's capital and surplus, with respect to all of the paper of that dealer which has been discounted, but if the bank has to rely on the discounter by turning back paper to him to the extent of 10 percent, that is the full extent to which they can go.

Actually, this particular statute would enable the bank to rely on the discounter not to the extent of 10 percent, but 25 percent on nonnegotiable paper. So actually it liberalizes that phase of it, but tightens up on the negotiable full-recourse paper, which is now without any limitation based on capital and surplus.

I think it is justified to keep the amount of reliance on the discounter to a reasonable figure.

Mr. CRAVENS. I do not think there is any question about it if they were relying solely on the seller for the paper being good. But could this not possibly force a bank into a nonrecourse arrangement and actually have less protection than they had before?

Mr. GIDNEY. We would like to have your views on it. We had a situation where it was not a dealer, but a finance company for whom the bank was discounting paper on an unlimited basis, and this particular bank had about $2 million of paper from that outfit. A bank had a heavy loss in a similar thing not too long before, and that was a complete misuse of the thing in my book—a very great hazard to that bank. The bank happily has left our jurisdiction and we have not had to worry about it, but I am not sure just how this should be.

We have had a letter from one banker, at least, saying this would shut him off. We will be glad to look into it as we go along and get the help of you folks. In fact, this would be one case where we ought to have that, but we think we have come to the conclusion that we should make a liberalization to cover nonnegotiable paper, because that type of paper appears to protect the banks equally well or better. We also think it is just as well not to have this exception run up to a dangerous level. Whether 25 percent is just where it ought to be I do not know.

Mr. CRAVENS. Would this cover repurchase? Is this intended to cover paper purchased under repurchase agreement?

Mr. JENNINGS. It would effectively deal with it under the repurchase agreement. The amount of paper that could be turned back to the dealer under the repurchase agreement could not exceed 25 percent of a bank's capital and surplus.

Mr. GIDNEY. That probably would be as much as you could rely on the dealer.

Mr. CRAVENS. What about paper purchased where the repurchase agreement covers the collateral rather than the paper itself? For instance, in automobile paper most of it is purchased under repurchase where they can deliver any repossessed car back to the seller.

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Mr. JENNINGS. This would not interfere with that.

Mr. CRAVENS. It would not?

Mr. JENNINGS. No; it would not, Mr. Cravens.

Mr. CRAVENS. Would it be feasible to add to this a condition that it be limited to 25 percent where they were relying on the endorsement, or would something like that be feasible, Mr. Jennings?

Mr. JENNINGS. That takes us into the credit field. One of the reasons why we believe negotiable paper with full-recourse endorsement should be limited to a certain extent, is because we believe in too many cases too much reliance is placed on the discounter. We think that banks ought to look more carefully into the worth of the discounter and limit the amount of the reliance on the discounter to 25 percent of capital and surplus. We all know that would be beyond the ability of the discounter to perform in many cases anyway. We think the 25-percent limit should cover most of the cases, and in view of the repurchase-method agreement that is available, we do not believe it would be too tight.

We have all kinds of instances now where they use the repurchase agreement with only 10 percent recourse on the discounter based on capital and surplus, and they have no trouble with it and like it better than the other method.

Mr. CRAVENS. There are 1 or 2 other questions I would like to ask. In several cases you have made suggestions such as the establishment of a bank in a military facility or taking over a bank if it is in trouble, or in regard to school-savings branches, we will call them. Take those three as good examples. Aren't you concerned that that is the first breakthrough to upset the balance of the dual system of banking? In other words, giving a national bank a right that a State bank cannot have. I understand that it is probably justifiable, what you are trying to do, but it is worth it to upset this delicate balance that we have?

Mr. GIDNEY. Well, let's take those one at a time. The school savings thing, I think, is being done, and it is just a twilight zone as to whether that is allowable or not. It is not sufficiently clear that it is violative of anything; that I am going to stop them from going around and collecting school savings. And the State institutions are doing that, too—I am sure they are. We don't want any advantage there. And I do not believe that anybody would say that school savings would constitute a branch in any man's language. The teacher gathers the money together, but somebody comes around and gets it.

Mr. CRAVENS. That has been held so in Illinois by the court.

Mr. GIDNEY. It has? Well, there is a difference. I think that would not be a general view.

Mr. LIVINGSTON. State banks in Illinois do it all the time. I was not aware it is held illegal. I am sure the banks are not aware, either, but they do it.

Mr. GIDNEY. We like to make them honest in that particular. And we certainly do not want to interfere in that particular function.

Now, the military posts—the Attorney General and the Treasury are certain that they have the authority now and are doing it. They have been threatened with suits in one State to declare it cannot be done, and I think Treasury counsel have indicated that they are confident of their position, and suits may be pursued, if they wish. We

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think that it is just as well to have it actually in our law. Mr. Jennings tells me there are 181 national-bank facilities and 73 State-bank facilities. Now, those are not regarded as branches in those States, are they?

Mr. JENNINGS. In those particular States they are not. But there are certain States that have refused to permit State banks to establish a military facility.

Mr. GIDNEY. And they may be litigated. But we think it may be well to have that clear.

Now, the next one, No. 45, is really quite a provocative proposition. We recognize that. It is a rescue operation we are talking about here. We are not asking to go out and start branches contrary to State laws, other than in a rescue situation. Now, the Congress may, as it wishes, adopt that suggestion or not. But I believe that it is my obligation, having charge, at least having responsibility, for seeing to the welfare of the national-bank system. The national-bank system was put into effect originally to supply a strong system. The then existing banking affairs were not all they should be, and it had to go ahead in many respects notwithstanding State laws.

Now, we have, I think, 35 States that have some branch banking. We are not taking a position for or against branch banking. We work with the States as we find them; get along very well. We have lots of complications; get in the courts sometimes, but we get along fine.

But as I look around, as I view the things that have taken place, and some of the charters we have given, which are needed to take care of the situation, I think there may be building up a situation where we are likely to have banks that will get into trouble, and that we have not, in those non-branch-banking States, the facilities for taking care of them that we have in the branch-bank States. We may have some real trouble on that front if we don't have some way of coping with it. We made our recommendation, and the Congress may do as it wishes with it. It is not going to break my heart if it does not adopt it. I am perfectly aware that folks will say I am a terrible man for even mentioning such a thing. But I think it has to be considered.

Mr. CRAVENS. But in all of these areas you are asking the Congress to do something traditionally it has refused to do, to give a national bank a preferred position over a State bank.

Mr. GIDNEY. Of course there were many long years in which we had no branch banking in this country, so that there was a long policy of no recognition of branches. Now, in a relatively few years, there has been a recognition of branches, and they have grown to quite a degree.

There are areas—and I don't want to specify them, I don't want to name situations, because I don't want to throw aspersions on any bank anywhere, that isn't our job. Our job is to maintain their integrity. But I am apprehensive, and I believe I should speak out, and bring attention to that fact of life.

Mr. JENNINGS. Might I add that we honestly believe that the enactment of this particular statute might very well enable the non-branch-bank States to continue as non-branch-bank States over an indefinite period of time. It is our belief that if a period comes along when some banks get in trouble, we will be able to deal with them to better advantage in the branch-bank States, because there will be other-

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banks that can step in, possibly with the aid of an FDIC loan, and continue such banking units in operation. When the non-branch-bank States see how much better the matter can be handled in a branch-bank State than in a non-branch-bank State, I would think that some of them would decide they better have branch banking.

I have discussed this matter with a number of bankers in the non-branch-bank States. I have not discussed it with anyone who has not thought it was a good idea. If this recommendation were to be enacted, I have little doubt some of the non-branch-bank States would enact similar legislation to take care of rescue operations. I believe that would enable the continuance of those States as non-branch-bank States for an indefinite period of time, States where there never has been any real agitation to have branch banking come into being. I think it would be a definite step forward toward that end.

Senator DOUGLAS. I am somewhat startled, Mr. Comptroller, by your statement that you thought the situation was building up to where apparently there would be a certain number of failures of national banks requiring rescue operations. Would you amplify that, because that is really a very startling statement.

Mr. GIDNEY. I don't want to specify and name banks, but we have had to give charters, and in many cases those banks grow rapidly, and they are not willing to increase their capital to keep pace with it. And we do have exposures which give me some worry.

Senator DOUGLAS. Is this on any appreciable scale?

Mr. GIDNEY. That is pretty hard to say.

Senator DOUGLAS. More than one?

Mr. GIDNEY. Oh, I have no particular bank in mind.

Senator DOUGLAS. It is a number of banks?

Mr. GIDNEY. Oh, I think it would be different areas, where the exposure could become troublesome. I am not picking on one particularly.

Senator DOUGLAS. But apparently you think this is a real possibility for a considerable number of banks.

Mr. GIDNEY. Yes, we have been going along in a prosperous period. It has been said it took a very skillful man to make a bad loan. I don't think that is quite true. But it has been a period in which experience has been favorable. There used to be a saying about such-and-such a banker, "He hasn't seen the wind blow yet." And if the wind blows, I think we would have trouble.

Senator DOUGLAS. This is a very frank statement. I only hope you will not be denounced as a prophet of gloom and doom.

Mr. GIDNEY. I hope not. I hope that most devoutedly. And also that it would not occur in my incumbency.

Mr. CRAVENS. I want to go back to one more question, Mr. Jennings. Wouldn't it be just as logical to ask Congress to approve the establishment of a branch in a State prohibiting branch banking if, we will say, in your good judgment a community did not have adequate banking service?

Mr. JENNINGS. No, I would not agree with that, Mr. Cravens. After all, our statement pointed out that this power would only be used where we found a bank that was ready to fail. And even then we would not just rely on the judgment of the then Comptroller of the Currency. We would get the FDIC into the picture, because the bank

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was ready to fail, and it would have a definite interest. If in the judgment of the two agencies it was in the public interest to permit another bank to take over and continue the banking operations of that poor bank, as a branch, then it could be done.

There isn't a single one of our suggestions that I think has more merit than this one over the long run for the best interests of the public and banking. I think many of the States would come along with the same type of legislation.

Mr. CRAVENS. If the States did come along, then the national banks would automatically have the right; wouldn't they?

Mr. GIDNEY. I think so.

Mr. JENNINGS. I suppose they would, yes.

Mr. CRAVENS. So isn't that a proper approach to it?

Mr. JENNINGS. After all, we think that possibly in this field we should lead, because it is something that is very necessary. Who is going to take the lead in any one of the 48 States to do it? If we take the lead, possibly they will come along.

Mr. GIDNEY. Certain States have constitutional obstructions.

Mr. CRAVENS. I had 1 or 2 technical questions I wanted to ask. If you transferred, properly so, the authority to establish a trust business in a national bank from the Federal Reserve to yourself, would that necessitate a change in the Revenue Code, do you think?

Mr. JENNINGS. No, I do not believe it would. I think the Federal Reserve does have the responsibility now in connection with common trust funds.

Mr. CRAVENS. Right.

Mr. JENNINGS. I believe that we would be very happy to leave that responsibility there, because it not only pertains to national banks, but also to State banks. And I think it should be left there. I don't think there would be any real conflict.

Mr. CRAVENS. You did not comment on your No. 7 this morning, and there has been some question. What is the puopose of that? I was not quite clear.

Mr. JENNINGS. That would give the Comptroller the authority to approve changes of locations of the head office of a bank within the city or town wherein it is located. At the present time we do not have that authority. Occasionally, and possibly in many cases, that authority should be vested in the Comptroller's hands.

Mr. CRAVENS. Is that because you think they might bypass you and change their head office from time to time?

Mr. JENNINGS. No. But we have the authority now to approve the change of location of a branch office. Now, let's take as an example a bank in the outlying section of a large city that really is not able to go downtown in the financial district and compete. Sometimes the directors of such banks feel that they can. I think that the Comptroller should have the authority to say "Yes" or "No" on such a change.

Mr. CRAVENS. I was not thinking that you should not. I was just wondering what was behind it.

Mr. GIDNEY. Well, there isn't too much behind it. We haven't too much in point. I remember a case many years ago where a bank in New York City moved without permission of the Comptroller and tied itself up in a lot and building. This is not a thing that is a very pressing matter with us. But it seems right.

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Mr. CRAVENS. Mr. McCloy, do you have any more questions?

Mr. McCLOY. I have 1 question, or 1 or 2 questions, and I would like to make an observation, as a result of my consulting with some of the members of our committee.

In the first place, in respect to the recommendation you have made, Mr. Gidney, in regard to depriving an officer who has been removed of his ability to vote his stock——

Mr. GIDNEY. Yes, sir.

Mr. McCLOY. I suppose that what you mean by removal in that case would be a removal as a result of some action which he took which was in violation of the law or some fraud, rather than, let us say, sheer inefficiency.

Mr. GIDNEY. Maybe we should have specified, and I think possibly the actual language does, removal under section 30 of the Banking Act of 1933. I don't think the removal by moral suasion, or that kind——

Mr. McCLOY. I just wanted to be sure that the word "removal" had a limited sense.

Mr. GIDNEY. We mean removal under the law.

Mr. McCLOY. Even so, there may be a legal question involved there.

Mr. GIDNEY. There may be.

Mr. McCLOY. There may be a constitutional question involved.

Mr. GIDNEY. Section 30 has not been used very many times. It is not very practical. And, of course, there have been cases where people have been removed by persuasion or demand. And there you could wish to have this. But I do believe it would be practical to ask for it in such cases. I think we must tie it to the removal under the removal section. That would be my view.

Mr. McCLOY. I think I also should say that the recommendation which you made in respect of recommendation 45, which is what we were just talking about, Mr. Cravens was just talking about, the rather provocative character of that and the deep implications of that have occurred to other members of my subcommittee, and I don't want any silence on my part to indicate acquiescence. Indeed, in regard to that particular recommendation, as I understand it, Mr. Chairman, this is merely by way of exposition this morning, and no one on the Advisory Committee is precluded from any observations or suggestions they want to make in connection with the recommendation, either pro or con.

I think that having said that, Mr. Cravens, and Senator Robertson, that is all I have to say at the moment.

Mr. CRAVENS. Mr. Gidney, how does your office feel about the matter of stock options? Business generally is attracting its top executives through stock options. And banking, of course, has not been permitted to do that. How does your office view that situation?

Mr. GIDNEY. Well, I think we have never really gotten down to a real good study of it. It has been proposed to me informally by 1 of 2 friends, and I have told them that, as a quick sidewalk opinion, and that is all this is, I am afraid of it for banks. I do not believe banks can let themselves be exposed to the possibilities of misunderstanding that would come from that type of proposal. It has not seemed to me up to this time that it would be a safe thing to put into the banking field. Now, I could be wrong on that, very easily. I have not studied it deeply. But that is my quick impression.

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Mr. CRAVENS. You agree that we are in dire need of good manpower in banking; don't you?

Mr. GIDNEY. I agree with that doubled and redoubled.

Mr. JENNINGS. Mr. Cravens, there is one point that has bothered us a great deal in connection with such stock-option plans. I believe under the Internal Revenue Code the option cannot be given to an officer or director of a bank to buy the stock at a price that would be, let's say, less than 90 percent of market value.

Mr. CRAVENS. Ninety or ninety-five.

Mr. JENNINGS. Ninety or ninety-five.

Mr. CRAVENS. Ninety-five, I think.

Mr. JENNINGS. That poses a very definite problem. Certainly, the larger banks of the country have stocks that are actively traded in, and everyone knows the market value. But there are literally thousands of banks whose stock is not traded in regularly. It will be very, very difficult, in any study of this problem, to determine the market value of bank A in a small town, because very few shares change hands. So that is at least one point that we have never been able to get by in considering the overall problem.

Mr. CRAVENS. That would not be an inherent danger in it. Do you see any basic dangers to the banking system if some system were devised for it?

Mr. GIDNEY. Well, I am just apprehensive of what overgenerous provisions might be set up for the man or men who are dominating the bank. Those are rather general fears. They may not be real.

Mr. CRAVENS. They would be adding capital to the bank, which is probably needed.

Mr. GIDNEY. I am wondering whether profit-sharing funds may not give some help in the matter of inducements to officers. I recently visited a bank which has such a plan. They say it is doing very well for their people.

Mr. CRAVENS. I wanted to ask you about your recommendation on profit sharing. If a bank has a profit-sharing plan, isn't the purpose of that to increase employee participation and do a better job in the bank? Why, then, do you recommend limitations on the stock that that profit-sharing plan can have in the institution?

Mr. GIDNEY. Well, that is one of the things where I expressed openmindedness, because I do not know just where that limitation should go. We put in 10 percent. I know a bank that has one, they have 12 percent, and they say they would be happy to go along with that. And 12 percent would not bother me as against 10—12½ percent, maybe 15. But you expect the ownership of the bank to control it through the election of directors, which we have spoken of before. The stock in a profit-sharing plan is voted by the trustees, the management group. The management thus has a self-perpetuating proposition within the bank. I would think that it is just as well if that did not grow to an amount that was embarrassing.

Now, it is not an open-and-shut question. Take in some of these profit-sharing plans, as between one large merchandising concern which, I believe, runs its fund entirely with its own stock, and which has done wonderfully well, and a great outfit like the telephone company which, I believe, keeps clear entirely of its own stock and perhaps of its own obligations—I am sure of that. You have the

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two. And we think the banks ought to stay middle-of-the-road on these things.

Mr. CRAVENS. Couldn't you agree to require the shares to be voted, not by management, but by the employees?

Mr. GIDNEY. By the beneficial owners?

Mr. CRAVENS. Yes.

Mr. GIDNEY. I think that would be a help.

Mr. CRAVENS. Would you say it was wrong if the employees owned the bank entirely?

Mr. GIDNEY. No; that would be very nice.

Mr. JENNINGS. I might point out we have one bank that has in excess of 50 percent of its capital stock in such a plan. The bank might very well have some additional capital. But there is not enough stock spread around the community to provide any interest, and the profit-sharing plan does not have any funds to exercise its rights. There are various things that can go wrong if a bank goes too high in the amount of its stock in a pension or profit-sharing plan, in our opinion. We have seen several instances of it, and we think it should be held to a conservative figure.

Mr. CRAVENS. You would think that some ceiling should be in there, even though you provided for the beneficial owners to exercise the voting right?

Mr. JENNINGS. I think I would, because we know very well that the employees are not going to exercise as disinterested a viewpoint as shareholders who are not tied in with the bank directly, as employees or officers.

Mr. GIDNEY. I'm afraid that the independence of the group would not be all that would be desired.

Mr. CRAVENS. I have one more question. Going to your No. 22, I believe you did not comment on it this morning. Why did you omit the elimination of item 1, notes of circulation; isn't that obsolete?

Mr. GIDNEY. What is the number of that?

Mr. JENNINGS. We did not comment on it, Mr. Gidney.

Mr. GIDNEY. No, but we want to look at it now. What is the number?

Mr. CRAVENS. No. 22.

Mr. GIDNEY. Well, that is a question that might have come in another form. That is, we did not undertake to say anything about the circulation privilege. I said to the American Bankers Association, the national bank division—

> We are not suggesting elimination of the dormant provisions for issuance of national bank notes, even though this provision is inoperative, because of the lack of United States bonds bearing the circulation privilege. This provision of law is a distinctive feature of national bank history, and I do not wish to be in the position of recommending that it be taken away. We do not know what emergency or change of conditions might come which would make it again useful.

That would come out, I take it, fittingly, if the whole provision came out, or would stay in if you did not take it out. We are not militant on that. But I do not want to be the one to say to the national banks this traditional thing they have——

Mr. CRAVENS. Would you object to it if it started somewhere else?

Mr. GIDNEY. Not violently. But I wonder if we should not give some attention to tradition in this country. In certain countries across

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the seas they pay so much attention to it that they carry a mace or one of those things that goes way back. In one city I visited in England they have a cow's horn that they have blown every night for 1,300 years. They are on the fourth one. And I thought that was a wonderful illustration of unyielding carrying on of tradition. Now, I don't know how the national banks would feel. If they feel they do not want it, it is all right.

Mr. CRAVENS. You think they would be sentimental about it?

Mr. GIDNEY. I don't know. I think they might. That is one little distinctive character of a national bank as against another, and happily, perhaps, or at least unprofitably for them, they cannot use it now. Possibly that is well for our whole banking system. I would throw in a gratuitous suggestion. If you are eliminating that, it might be a good time to pay off the United States notes and eliminate that. I ask Senator Douglas if he would think I was entirely out of order if I mentioned that.

Mr. CRAVENS. I just wanted to find out whether or not it was an omission or if you purposely did not ask for it.

Mr. GIDNEY. Well, I did not notice——

Mr. JENNINGS. No; we have not taken out any of the other references to circulation. We purposely didn't take it up.

Mr. CRAVENS. Do you have any questions, Mr. Harris?

Mr. HARRIS. Yes, Mr. Cravens. I would like to ask about your recommendation 36, which you have not commented on before. You recommend that unless State law regulates the receiving of deposits, that the receipt of deposits be prohibited. I fully appreciate what you are trying to accomplish there. I think it is a very worthwhile objective. But I might direct one question on it to this, the desirability in theory of doing that. Suppose that State subjected the receipt of deposits to its laws, to its banking laws, and you were not satisfied that they had done it adequately. Could you then go on and say if they will do it in such and such a way, then this law is nonapplicable?

Mr. JENNINGS. No; I don't think that is the point involved. If the State has the authority to stop such an abuse, and does not do it, that it the State's affair. But if the State says "No; we do not have authority," as occurred within the last year, "We cannot do anything about it," and the outfit continues to accept deposits by advertising that it will pay 5 percent interest, and the Federal Government is unable to step in and stop the abuse, and then the outfit goes into receivership, that is the type of thing we want to be able to stop—when the State has no authority in its own statutes to do anything about it. Then we think the Federal Government should be able to step in and stop some unauthorized campany or firm from accepting deposits.

Mr. HARRIS. But the lack of statutory authority in that State might be an entirely deliberate policy on its part.

Mr. JENNINGS. I do not believe that will occur.

Mr. HARRIS. Of course, it should not. But what I am getting at is that if this type of legislation were adopted, it tends to produce a congressional effect upon State legislatures which they might not like.

Mr. JENNINGS. I don't believe it would. This is not an item, as I understand it, that the Comptroller's Office has great or deep interest in. This abuse did occur by virtue of a minor omission in the Federal statutes. We thought it might be well to correct it. It may never

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again be necessary to use it. I don't think it would cause any trouble between the State and Federal Governments.

Mr. GIDNEY. Well, we would be glad to have this adjusted in such manner that it would not or should not continue. This arises out of that case in Texas where there was a United States something-or-other that took deposits. The State bank department had no control. They called themselves an insurance company. The insurance company department said, "We have control only over this insurance functions." And they did get a lot of money, and it cost the people a lot.

We would be perfectly willing to have this adjusted in the right way.

Mr. HARRIS. There is no doubt it is a case where there ought to be a law. I raise the question of who should pass it.

Mr. JENNINGS. Certainly it is a black eye to the banking industry, State and National, when such a thing occurs. If the State cannot take care of it, we think the Federal Government ought to in the best interests of banking.

Mr. CRAVENS. You could cure that just by putting the word "banking" in front of "laws" in the statute.

Mr. JENNINGS. Possibly so. I could not swear to that now.

Mr. MCCLOY. I was going to reserve this until this afternoon when Mr. Robertson will be testifying from the Federal Reserve Board in respect of the recommendation which has been made for the transfer from the Federal Reserve to the Comptroller of the function of determining whether or not a national bank should exercise trust powers. I think it is well to get the pros and cons of that because, after all, this is a rather substantial subject. I just wondered, now that we have a little time before adjournment, on such an important subject, if you could develop a little further your reasons for feeling that it was desirable to switch that very important power to the Comptroller from the Federal Reserve.

Mr. GIDNEY. Well, we have not prepared anything very elaborate on that. I was with the Federal Reserve bank through many years when we granted those powers. I think experience would say they could have been handled by the Comptroller's Office just as well. I think that we are under the impression that the Federal Reserve people are not unwilling to have this done, although they will have to speak for themselves. Maybe that will not prove to be true.

It just seems to us a tidying-up piece of legislation.

Certainly the trust powers granted in the respective States are given by the respective bank supervisors. It is true that the Federal Deposit Insurance Corporation undertakes to also approve them in connection with the insurance. But fundamentally they are given by the State supervisors, and it just seems that it ought to be over in our jurisdiction rather than the Board's.

Mr. MCCLOY. I just wondered whether that was a matter of logic or design, or whether there was any particular situations that arose.

Mr. GIDNEY. No; we have no problems. It wouldn't hurt us at all if it went on. Now, speaking of the State people, it reminds me that the State member banks, for example, have trust powers, and those are given by the respective superintendents, and the Board has no authority over that that I know of. So that to be logical, the Board probably ought to have an extension of power to those if they are to control ours. It shouldn't be——

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Mr. McCloy. I see the logic. I just wondered whether in the course of operations——

Mr. Gidney. I think this is an exercise of logic.

Mr. Jennings. I might add, too, from an administrative standpoint at times it slows down our operations. We examine and supervise the trust departments, we have the specific problem, we decide what the answer should be. But if it is a really important issue, we will wait until we have asked the Board of Governors. It just tends to slow down, and we do not believe it is necessary.

Mr. Gidney. I think that would be a matter in which the opinion of the national banks would be of some interest also, because they might feel that they would rather do all their dealing with one supervisory agency.

Senator Robertson. Mr. Gidney, fears have been expressed to me by my friend Mr. Harry Arthur of South Carolina that before these procedings are over an effort will be made to force nonmember banks to become members of the Federal Reserve System. Would you wish to comment on those fears.

Mr. Gidney. Well, I don't know what they are founded on. The Fedral Reserve System has been going since 1914, and there has been no effort to make them become members. There was a law passed in 1935 which said that a bank of over a million dollars deposits must become a member by 1941, but that was repealed, as I recall, about 1939, and I know of no effort to compel them to become members.

Senator Robertson. You have made no such recommendations.

Mr. Gidney. I have made no such recommendations.

Senator Robertson. You know of none that have been made or will be made by the Federal Reserve Board.

Mr. Gidney. I know of none. I would express the opinion that they ought to be members.

Senator Robertson. They ought to be members.

Mr. Gidney. Yes, but I should not say we should compel them to be members.

Senator Robertson. But you also agree with me that there are more of them than there are of you, and it may be a little difficult to bring them in line.

Mr. Gidney. I don't advocate compulsive methods in that.

Senator Robertson. I had a telegram this morning from a group of Minnesota bankers. They are nonpar bankers. They said "Please let us alone." You know that the Federal Reserve Board says that there ought to be equality from a competitive standpoint—either all of them do as they please, or none of them could absorb exchange. Will you comment on that.

Mr. Gidney. Well, of course the Board's recommendation, as I understand it, is that there be uniformity on the provisions regarding absorption of exchange. I do not understand they have made any recommendation as to a change in the law as to charging of exchange. Absorption of exchange——

Senator Robertson. But there is a difference in ruling in the Federal Reserve Board interpretation of the statute against payment of interest on checking accounts one way and the FDIC another way.

Mr. Gidney. The Board's suggestion is that they should be uniform. I strongly agree with that.

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Senator ROBERTSON. Of course, you are familiar with the Supreme Court ruling that held that whenever a bank voluntarily became an insured bank it submitted itself to Federal jurisdiction.

Mr. GIDNEY. I didn't know the ruling, but I believe that is true.

Senator ROBERTSON. I am still of the opinion that Carter Glass was in 1913 that that should be optional. The provision of compulsion that was part of the 1912 Burton-Aldrich Federal Reserve bill caused its defeat in the Senate, and Senator Glass left it out the next year in his House bill.

There are 1 or 2 other questions to amplify your testimony. In addition to your examination, should the Comptroller's Office be required to make an annual audit of each national bank, or should each national bank be required to have an annual independent audit?

Mr. GIDNEY. Well, I would think that—I don't believe that would be a good provision.

Senator ROBERTSON. Should recommendation No. 60 be extended to permit national banks to hold temporarily the stock of another bank as one step in the process of absorbing such bank?

Mr. GIDNEY. We do not believe that is at all necessary. It is not a customary step, and we do not believe it is at all necessary.

Senator ROBERTSON. Do you favor recommendation No. 94 by the FDIC requiring all national banks to be insured?

Mr. GIDNEY. I think not.

Senator ROBERTSON. Should officers or directors of a national bank be permitted to serve as officers or directors of a savings and loan association or vice versa?

Mr. GIDNEY. I would not be in favor of disqualifying them in that manner.

Senator ROBERTSON. Before we recess for lunch, the Chair wishes to submit for the record, if there is no objection, a statement by Senator Sparkman, expressing his regret that he could not be here, but indicating a study of the savings and loan phase of our work; a statement of the American Bankers Association; a statement by the Association of Reserve City Bankers; a statement of the United States Savings and Loan League; a statement by the Credit Union National Association; a letter from Mr. Lewis D. Gilbert, of New York City; a statement by Mr. Maurice S. Brody, of Denver, Colo.; a statement by Mr. Fred Walker, of Arlington, Va.; a statement by Mr. Lewis D. Reynolds, of San Francisco, Calif; a statement by Mr. Stanley E. Shirk, of New York City, a member of a firm of accountants; a letter from Mr. Stanley Ferguson, of Colby, Kans.; and a letter from the American Association of Credit Unions.

(The statements and letters referred to follow:)

STATEMENT OF JOHN SPARKMAN, A UNITED STATES SENATOR FROM THE STATE OF ALABAMA

I am pleased and honored to have this opportunity to submit a brief statement of my views in connection with the study of banking laws presently being conducted by the Banking and Currency Committee under the able leadership of Senator Robertson.

With the permission of the acting chairman, I should like the record to show that he has written to invite me, not only to attend these hearings, but also to submit any suggestions or recommendations which I might care to make. In keeping with the traditional courtesy which we have all found to be so pleasant a part of his character, the Senator from Virginia has also taken the time to discuss the scope and import of these hearings with me on more than one occasion.

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It is particularly important, for three reasons, to make as clear as I can my views of what the scope of these hearings should be. First, as a member of the Banking and Currency Committee which is conducting this hearing and study, I have a firm and continuing interest in the banking laws. Second, as chairman of the Housing Subcommittee, I feel that our subcommittee is charged with initial responsibility for recommending housing legislation and any amendments thereto. Third, and this concern is shared with Senator Robertson, I wish to avoid any unnecessary duplication and overlapping which may occur by reason of other studies currently underway.

In both conversations and correspondence I have had with the acting chairman, I have noted his anxiety to define the scope of his study so as to avoid encroachment on "the field of credit and monetary policies," or any "fundamental changes in the law with respect to the structure of the supervisory agencies or of other lending and guaranty agencies or the scope of their authority, or other questions of that character."

Senator Robertson does propose to compile and clarify the Federal statutes governing financing institutions. In so doing, he hopes to eliminate obsolete provisions and add such new provisions as may seem desirable in order to modernize the banking laws. He has stated his intention to restrict his study to matters of a technical and noncontroversial nature, relating primarily to the administrative functions of the banking agencies.

The definition of the scope of this present study, as presented by the acting chairman, and that portion of his statement indicating the areas which the study will not cover are certainly satisfactory to me. I hope further agreement may be reached as to which matters are of a technical and noncontroversial nature and which matters properly fall within the jurisdiction of the regularly established subcommittees.

We are all mindful of the fact that on May 17 last, the President of the United States submitted to the Congress Reorganization Plan No. 2, which proposed to separate the Federal Savings and Loan Insurance Corporation from the Federal Home Loan Bank Board and make it an independent agency. That reorganization plan was defeated by the House and would probably have been defeated by the Senate if time had permitted. As a result of this plan, there was a strong expression of opinion by both Houses of Congress that such controversial subjects as that contained in plan 2 should be considered by the appropriate legislative committees. During the Senate hearings, I, as chairman of the Housing Subcommittee, was asked by the chairman of the Subcommittee on Reorganization to undertake a study of the FHLBB and the FSLIC and the effects of the proposed separation. This I agreed to do.

That study is currently going forward and I can assure you it embraces most, if not all, of the operations of the FHLBB and the FSLIC. We shall, in time, be prepared to make appropriate recommendations to the Banking and Currency Committee and to the Congress with respect to the functions of these agencies, both of which I have always considered as coming within the jurisdiction of the Housing Subcommittee and the Senate Banking and Currency Committee. I feel quite sure that Senator Robertson does not propose that his study of the banking laws duplicate that which the Housing Subcommittee is making.

If another reorganization plan is forwarded to the Congres by the next administration, it will probably parallel plan No. 2 of 1956. In my opinion, Reorganization Plan 2, or any similar plan, does not meet the requirements of the Reorganization Act of 1949. This act, which originally authorized the President to submit reorganization plans to the Congress, indicates that such submission shall be made if the President determines that changes are necessary to (1) promote the better execution of the laws, the more effective management of the executive branch, and the expeditious administration of public business; (2) reduce expenditures and promote economy consistent with efficient operation; (3) increase the efficiency of Government operations; (4) group agencies and functions of the Government according to major purposes; (5) reduce the number of agencies by consolidation; and (6) eliminate overlapping and duplication of effort. Reorganization Plan No. 2 would accomplish none of these purposes.

Such a plan would again, I think, be defeated as a reorganization plan, but could very properly be introduced as proposed legislation. If this is done, hearings should be held to supplement the study which the Housing Subcommittee is currently undertaking. It is my present intention to hold such hearings at the earliest practicable time, and thereafter submit recommendations for proposed changes to the Senate Banking and Currency Committee.

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There are, as the acting chairman is aware, three laws which govern the establishment and operation of the Federal Home Loan Bank Board, the Federal Home Loan Bank System, local savings and loan associations, and the Federal Savings and Loan Insurance Corporation. These three laws are the Federal Home Loan Bank Act, the Home Owners' Loan Act of 1933, and title IV of the National Housing Act. Constituents and other private persons, who are aware of the acting chairman's study of the banking laws, have expressed some concern over the effect which consolidation of, or amendments to, these acts might have.

It has been suggested, for example, that title IV of the National Housing Act, which provides for the creation of the Federal Savings and Loan Insurance Corporation and the insurance accounts in local institutions, might be consolidated with other banking laws. On the surface this may appear to be a simple consolidation, but it has already raised in some minds the question of future jurisdiction and may result in considerable controversy. The Housing Subcommittee is, of course, concerned with the production or lack of production of housing. It has become increasingly evident in recent years that mortgage-credit facilities are the most vital part of the housing program. The Home Loan Bank Board, the Home Loan Bank System, and the local associations were created to provide a separate system of mortgage credit. The Federal Savings and Loan Insurance Corporation was created to implement the Home Loan Bank System by attracting savings to these local institutions. Without insurance of accounts, local associations could not possibly play the important role they now perform in the housing industry. Under these circumstances, I could not agree that the FSLIC was not an integral part of the Home Loan Bank System, or that jurisdiction over the FSLIC should be vested in any subcommittee other than the Housing Subcommittee.

The present study may encompass other proposals affecting the three acts I have referred to above. It is difficult at this moment to say what the effect of such proposals will be, but I would not wish to see the committee, during its present study, consider proposals which properly fall within the jurisdiction of established subcommittees.

While I am not completely familiar with the work of other subcommittees, I do know that the Housing Subcommittee has been working hard in the savings and loan field. During the current adjournment, the staff has been busy preparing a report which will deal with controversial subjects. Following publication of this report and subsequent hearings, I shall be in a position to make certain recommendations to the full committee. I know that the acting chairman has no desire to upset these plans by acting upon proposals already under consideration.

THE AMERICAN BANKERS ASSOCIATION

Office of the President

THE FULTON NATIONAL BANK,
Atlanta, Ga., November 7, 1956.

Hon. A. WILLIS ROBERTSON,
Senate Banking and Currency Committee,
Senate Office Building, Washington, D. C.

DEAR SIR: The American Bankers Association appreciates the invitation to submit its views to the Senate Banking and Currency Committee in regard to the subjects to be considered in the committee's study of Federal laws governing financial institutions and credit. We are pleased by your decision to undertake the study. We are confident that your work will produce thoroughly constructive results.

In outlining the purpose and pattern of this study on September 17, you stated:

"The study of existing statutes of necessity will be a technical one rather than a broad inquiry into financial and economic theories. The major objective will be to formulate a new banking code with obsolete provisions eliminated and new authority added in areas where the need is clearly demonstrated."

The observations and recommendations contained in the statement accompanying this letter, which I am privileged to present on behalf of the American Bankers Association, have been prepared accordingly. We desire to cooperate fully and precisely with the stated purpose of your study.

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You will note in our presentation occasional reference to matters which perhaps are not within the jurisdiction of your committee. These are included to call attention to related matters which merit the consideration of the Congress as a whole because of their importance to the maintenance of a sound banking structure. It is believed, that as a result of your study, you will refer these matters to the appropriate congressional committees for their early consideration.

All of the recommendations cover subjects on which the American Bankers Association has an officially sanctioned position. They are submitted with the hope that they will assist the committee in carrying on its study. The shortness of time made it impossible for the appropriate committees of the American Bankers Association to review carefully each of the recommendations made by the several Federal supervisory agencies. These recommendations, and such other matters as might be developed at the hearings on November 9 and 10, will have our further study. After such hearings, we assume that we will have the privilege of filing a supplemental statement in relation to any additional matters affecting banking which your committee might consider.

Our association looks forward to the opportunity of appearing before your committee at any hearings and presenting our views.

We sincerely appreciate the committee's courtesy in receiving our recommendations.

Sincerely yours,

ERLE COCKE, *President*.

(The following statement is attached to the above letter:)

STATEMENT OF RECOMMENDATIONS BY AMERICAN BANKERS ASSOCIATION ON STUDY OF FEDERAL LAWS ON BANKING AND CREDIT SUBMITTED TO SENATE COMMITTEE ON BANKING AND CURRENCY

1. BANK MERGERS

Amend section 1828 (c), title 12, United States Code, as provided in the Fulbright bill, S. 3911, 84th Congress, to require prior written consent of the appropriate Federal bank supervisory agency to any proposed merger, consolidation, or assumption transactions between insured banks.

Reason

This proposal, by placing the final responsibility for approval or disapproval of bank mergers in the appropriate bank supervisory agencies, keeps this responsibility where it belongs, since these agencies which are intimately familiar, by reason of historical background and long experience with banking in all its aspects, including the competitive aspect, are best qualified to weigh all factors entering into each merger transaction and reach decisions which are in the best interests of banking and the public.

2. SAVINGS AND LOAN BRANCHES

It is proposed that Federal savings and loan associations should not be permitted to establish branches unless in conformity with the laws and practices of the States governing the establishment of branch offices of State-chartered savings and loan associations and should be prohibited from establishing branches across State lines.

Reason

This would preserve the dual relationship between State and Federal savings and loan associations on a parity basis, similar to the relationship now existing between national banks and State-chartered banks in the establishment of branches. It also would preserve State rights by permitting the several States to determine whether or not or to what extent savings and loan associations shall be permitted to establish branches.

3. INCREASE IN FDIC ASSESSMENT CREDIT TO INSURED BANKS AND SIMPLIFICATION OF PROCEDURES FOR CALCULATING ASSESSMENTS

Amend section 1817 (d), title 12, United States Code so as to increase the amount of the net assessment income of the FDIC required to be credited to insured banks from the present 60 percent to 80 percent of such "net assessment income."

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Reason

The deposit insurance fund as of June 30, 1956, was $1,690,818,394, whereas, according to the 1955 Annual Report of the FDIC, its net loss of funds from the beginning of deposit insurance through 1955 is estimated at $19.7 million. In the light of these figures an increase in the assessment credit to insured banks is warranted. An increased credit will leave the banks with more earnings available to build up their capital accounts which in turn serve as a buffer to absorb losses before deposit insurance fund of the Corporation would be called upon. Furthermore, since the assessment credit is treated as taxable income, an increase in such credit would tend to offset the reduction in taxable income resulting from additions to bad debt reserves. We recommend a revised assessment base that will result in simplification and reduction in the amount of work of both the insured banks and the FDIC and which will reduce the administrative problems inherent in the present plan.

4. RESERVE FOR BAD DEBTS

Banks are permitted to make pretax deductions for a reserve for bad debts under two alternative formulas authorized by the Treasury Department. The reserves permitted by these formulas are neither adequate nor satisfactory in application. They are clearly inadequate to absorb the losses of a depression period because they are based upon the banks' loss experience in an average year. They are unsatisfactory because they are too complicated for use by many of the smaller banks. A survey made in 1955 showed that only 55 percent of the banks were on the reserve method at the end of 1954.

In 1953 a proposal was made to the Treasury Department for permission for banks to use an industrywide percentage loss deduction instead of one based on the individual bank's own loss experience. The Treasury Department has taken the position that it does not have the authority under the Internal Revenue Code to authorize the use by banks of such a formula. If an industrywide percentage deduction is to be made available to banks, it would have to be authorized by the Congress.

It is proposed, therefore, that the Internal Revenue Code be amended to adopt an industrywide basis for reserves for bad debts under which a percentage of total loans outstanding would be permitted as a current deduction from income each year until the accumulated reserve reaches a limit also calculated as a percentage of total loans outstanding. The maximum amount so allowed should be adequate to absorb the losses that past experience demonstrates may be sustained in a period of economic recession.

Reason

Provision for adequate reserves out of current earnings to meet future loan losses would contribute to the safety of depositors and the availability of credit so necessary to provide employment and business activity in periods of economic recession. For these reasons all banks should be encouraged to establish and maintain such reserves. The proposal should not result in any ultimate loss of tax revenue as it amounts to a deferment of tax since all bad-debt losses on loans must be charged to the reserve.

5. CUMULATIVE VOTING

Amend section 5144 of United States Revised Statutes to permit shareholders to utilize the cumulative voting procedure for election of directors of national banks only if provided for in the articles of association.

Reason

It eliminates the absolute right now contained in the statutes which in some cases has resulted in discord and dissension on bank boards and in upsetting public confidence.

6. CONSTRUCTION LOANS

Amend section 24 of the Federal Reserve Act to permit national banks to make construction loans on industrial and commercial buildings with maturities not to exceed 18 months, provided that there is a valid takeout agreement from a financially responsible concern.

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Reason

National banks now have no such authority and consequently construction loans are subject to the restrictions on loans secured by real estate. This legislation would place national banks on a competitive basis with State-chartered banks which have such authority.

7. INCREASE OF AGGREGATE OF CONSTRUCTION LOAN OUTSTANDINGS

Amend section 24 of the Federal Reserve Act to increase the aggregate amount of construction loans which a national bank can hold from 50 percent of its capital to 50 percent of its combined capital and surplus.

Reason

Recently the maximum maturity on construction loans on residential and agricultural buildings was extended from 6 to 9 months. This has resulted in increasing the outstandings of construction loans held by national banks. The proposed legislation to authorize construction loans on industrial and commercial buildings for 18 months, if enacted into law, will have the effect of still further increasing such outstandings on all construction loans. Therefore, the proposed increase of the aggregate amount of construction loans which a national bank can hold is necessary and fully justified.

8. DEFINITION OF LEASEHOLD AS SECURITY FOR REAL ESTATE LOANS

Amend section 24 of the Federal Reserve Act so that a leasehold pledged as security for a real-estate loan shall be defined as one having a maturity or a renewable provision for a period of not less than 10 years beyond the final maturity of the real-estate loan.

Reason

The present definition is too severe as to the length of time a leasehold has to run. The proposed change is more realistic and is related properly to the maturity date of the loan, allowing sufficient time for full liquidation of the loan even in the event of a default.

9. PROHIBITED PRACTICES

Amend section 21 (a) of the Banking Act of 1933, as amended by section 303 (b) of the Banking Act of 1935 (title 12, U. S. C., sec. 378), by adding a new paragraph at the end thereof to make it unlawful for any institution organized under the laws of the United States to represent in any manner that it is a banking institution, or to use a business or corporate name which purports to be or suggests that it is a banking institution, or to use terms in advertisements or other mediums of communication to the public which are calculated to convey the impression that it is a banking institution, unless the law under which such institution is organized expressly authorizes it to engage in the business of receiving deposits or, if not authorized to engage in such business, expressly authorizes the use of the word "bank" in its corporate or business name.

Reason

Institutions which are not designated as banks and are not authorized to engage in the business of receiving deposits should not be permitted to mislead the public by holding themselves out to be, or by conveying the impression that they are banking institutions or authorized to engage in the banking business.

10. LIQUIDATION OF POSTAL SAVINGS SYSTEM

It is proposed that the postal savings system be liquidated in an orderly fashion at an early date.

Reason

This has been recommended by the Comptroller General of the United States. The system has long outserved its original purpose and now is a burden on the taxpayers.

11. COMMERCIAL LOANS—REAL ESTATE SECURITY

Amend section 24 of the Federal Reserve Act to add a new paragraph which would permit national banks to make loans to industrial or commercial busi-

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nesses, with payments expected from the operations of such businesses and with maturities of not more than 10 years, whether or not secured by a mortgage or similar lien on real estate owned by the borrower, without such loans being considered as loans secured by real estate within the meaning of such section 24. Such loans would be classified as commercial loans.

Reason

At the present time national banks are at a competitive disadvantage with many State-chartered banks, which can take a blanket mortgage on real estate as security for a commercial loan without the loan being subjected to the strict limitation of real-estate loans.

12. AGGREGATE ON REAL-ESTATE LOAN OUTSTANDINGS

Amend paragraph 1, section 24, of the Federal Reserve Act, so that the present aggregate limitation on real-estate loans of the total of capital and surplus of the bank, or 60 percent of its time and savings deposits, whichever is the greater, be changed to the total of the capital and surplus, or 60 percent of its time and savings deposits, or 20 percent of all deposits, whichever is greatest.

Reason

In certain areas savings and time deposits of some banks because of competition are considerably below the national average. The proposed legislation would allow these national banks more leeway in making real-estate loans and increase the amount of available credit for real-estate loans in the community.

13. REPORTS—DIVIDENDS

Repeal section 5212 of United States Revised Statutes to eliminate the requirement that national banks report declaration of dividends to the Comptroller of the Currency.

Reason

This would eliminate some paperwork of banks and the Comptroller's Office. This information is available to Comptroller from other sources.

14. REPORTS—CALL

Amend section 5211 of United States Revised Statutes to allow national banks 10 days instead of 5 days to make call reports.

Reason

This would coincide with time prescribed by FDIC for making reports. In some cases 5 days have proved to be too short a time, especially if holidays and weekends intervene.

15. AUTHORITY TO UNDERWRITE REVENUE BONDS

Amend section 5136 of United States Revised Statutes to broaden the authority of national banks to deal in and underwrite obligations issued by a State or political subdivision, or agency of the State or political subdivision, by adding the authority to deal in and underwrite revenue bonds with the exception of those payable solely from the proceeds of special-benefit assessments. It is proposed that national banks could hold the obligations of any one issuer as a result of such underwriting, dealing in, or purchasing up to but not exceeding 10 percent of its capital and surplus.

If this proposed legislation becomes law, State member banks of the Federal Reserve System, unless otherwise restricted by State law, would have the same privilege by virtue of section 9, paragraph 19, of the Federal Reserve Act.

Reason

It is believed that this legislation would result in the widening of the market for such revenue bonds, lower financing costs, and permit banks to underwrite directly such bonds for their own investment within, however, the 10-percent limitation.

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ASSOCIATION OF RESERVE CITY BANKERS,
Chicago, Ill., November 2, 1956.

Hon. A. WILLIS ROBERTSON,
Acting Chairman for Study of Federal Statutes Governing Fnancial Institutions and Credit, Senate Banking and Currency Committee, United States Senate, Wsahington, D. C.

MY DEAR SENATOR ROBERTSON: In response to your invitation, I am, on behalf of the board of directors of the Association of Reserve City Bankers, transmitting herewith such recommendations for amendments of or additions to the Federal statutes governing financial institutions as the board—in the time available for analyzing the problem and in view of existing credit conditions—deems appropriate.

In developing its recommendations, the board has endeavored to focus its attention on matters of broader import, and for the most part has omitted any mention of purely technical operational matters. The fact that the board has done so does not, however, negate the importance of such technical operational matters, nor is it meant to imply that the board has taken any position regarding legislation recommended with respect thereto.

We should like to express our appreciation for this opportunity of communicating to you certain of our ideas concerning legislation pertaining to financial institutions, and to commend you and your committee for undertaking this broad-scale study of American financial institutions and credit mechanisms.

Very truly yours,

JAMES D. ROBINSON, Jr., *President.*

REPORT OF BOARD OF DIRECTORS OF ASSOCIATION OF RESERVE CITY BANKERS TO HON. A. WILLIS ROBERTSON, ACTING CHAIRMAN FOR STUDY OF FEDERAL STATUTES GOVERNING INSTITUTIONS AND CREDIT

1. ABSORPTION OF EXCHANGE AS CONSTITUTING PAYMENT OF INTEREST ON DEMAND DEPOSITS

Existing law

Under existing law and regulations, all banks which are members of the Federal Reserve System are subject to the rule that the absorption of exchange constitutes the unlawful payment of interest on demand deposits. See: Title 12, United States Code Annotated, sections 371a, 371b, and 461 and Regulation Q of the Board of Governors of the Federal Reserve System. On the other hand, nonmember banks, the deposits of which are insured by FDIC, are subject to the contrary rule as promulgated by the FDIC. See: Title 12, United States Code Annotated, section 1828 (g) and footnote 6 to section 329.2 of FDIC Regulations.

Recommendations

As it appears that there is no possibility of a reconcilement of the conflicting rules absent action by the Congress, we recommend that changes in the FDIC Act and the Federal Reserve Act be made in whatever manner required in order:

1. That all member banks and all nonmember insured banks will be subject to the same rule in regard to what does or does not constitute the unlawful payment of interest on demand deposits.
2. That the rulemaking power in this regard applicable to both classes of banks be lodged with the Board of Governors of the Federal Reserve System.
3. That the absorption of exchange will be unlawful for both classes of banks.

Reasons

There is no valid reason for the existence of different views at the Federal level as a result of which one class of banks (nonmember insured banks) is by statutory or regulatory sanction granted a competive advantage over another class of banks (member banks of the Federal Reserve System) particularly when the latter class—the one discriminated against—is just as much a part of the FDIC picture as is the other class. There can be no question but that the nonmember bank does have a competitive advantage in this regard over a member bank—an advantage which we are constrained to feel that the Congress really never intended.

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2. REMITTANCE AT PAR BY DRAWEE BANK

Existing law

1. Under existing law the Federal Reserve banks are required to exercise the functions of a clearinghouse for member banks and are permitted to receive deposits from any nonmember bank solely for the purposes of exchange or collection, provided the nonmember bank depositor maintains a balance sufficient to offset the items in transit held for its account. See: Title 12 United States Code Annotated, sections 360 and 342 and Regulation J of the Board of Governors of the Federal Reserve System.

2. Federal Reserve banks will accept from both member and nonmember banks only items which are collectible at par in funds acceptable to the Federal Reserve bank. See: Section 3 of Regulation J of the Board of Governors of the Federal Reserve System.

3. There are statutes in a number of States (perhaps as many as 10, and the custom prevails in others) which permit a drawee bank to remit to a collecting bank less than the face amount of the item presented to the drawee for payment. See: Volume II, Paton's Digest (142), page 1356 and *Farmers and Merchants Bank* v. *Federal Reserve Bank* (262 U. S. 649 (1923) 67 L. Ed 1157).

Recommendation

The problem involved here is the so-called par-no-par controversy. As it appears that it cannot be resolved at the State level consistent with the policy of the Federal Congress as exemplified by the provisions of the Federal Reserve Act above referred to, we recommend that changes in the Federal laws be made in whatever manner required in order:

1. That all banks, the deposits of which are insured by the FDIC, shall be required to remit at par for all checks drawn against them which are presented for payment by any Federal Reserve bank, anything in the law of the State of the domicile of the particular drawee bank to the contrary notwithstanding.

2. That the penalty for failure to observe the mandate of the par-remittance statute be the forfeiture of FDIC insurance.

Reasons

1. The modern concept of banking and the use of checks in the flow of domestic (both intrastate and interstate) and foreign commerce demands that banks pay checks drawn on them at par even when presented for payment by mail rather than over the counter.

2. The cost of the transaction, e. g., the payment by the drawer giving his check to the payee rather than cash, should in all fairness fall upon the drawer rather than upon either the payee, his collecting agent, or the drawee.

3. Present law and regulation on the one hand requires the Federal Reserve banks to act as clearinghouses and on the other prevents such banks from accepting for collection any item which cannot be collected at par. A number of drawee banks accepting the shield of a State statute (and in some cases accepting only local custom) refuse to remit at par. As a result the free flow of checks as a medium of exchange is retarded and the complete fulfillment of one of the primary functions which Congress has imposed by law upon the Federal Reserve banks is thwarted.

3. ACQUISITION OF BANK STOCK

Existing law

Under existing law national banks and State member banks are prohibited from purchasing and holding stocks, including bank stocks, except in certain limited cases. The exceptions do not include the case where the bank stock is to be acquired and held only temporarily pending disposition through merger, absorption or otherwise See: Title 12 United States Code Annotated, sections 24 (seventh) and 335 and Public Law No. 511 of the 84th Congress approved May 9, 1956 (the Bank Holding Company Act of 1956).

Recommendations

It is recommended that a new section be enacted reading as follows:

"The provisions of title 12 United States Code, sections 24 and 335 and of the Bank Holding Company Act of 1956 shall not be deemed to prohibit the acquisition and temporary holding by any national banking associations or by any State member bank of the Federal Reserve System of all or any part of the capital stock of any national bank or of any State bank or trust company of, approved by the Board of Governors of the Federal Reserve System, or to have prohibited the

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acquisition and temporary holding by any such bank of any such bank stock if disposition thereof occurred prior to November 9, 1956."

Reasons

In the past the Board of Governors of the Federal Reserve System has looked with disfavor upon acquisition of bank stocks by member banks even when the acquisition was for only a temporary purpose and the bank stock was to be disposed of promptly. We feel that the present prohibition should be relaxed to the extent indicated in the foregoing recommendation and that the Congress should set the record straight as to any such acquisitions which were disposed of prior to a given date, which date we suggest should not be later than November 9, 1956, and might be as far back as January 1, 1956.

4. ESTABLISHMENT OF RESERVES FOR BAD DEBTS

Existing law

Permission was granted the banks in 1947 to establish reserves for bad debts. Although tax revenues of the Government are deferred by the reserve method, no eventual loss of revenue results therefrom.

The majority of the larger banks adopted the reserve method of providing for future losses, and have thereby added materially to the strength and stability of the banking system and to the system's usefulness to the public. The complicated formula, however, has deterred most smaller banks from adopting the reserve method.

Recommendation

It is urged that appropriate revisions be made in the Internal Revenue Code to simplify and liberalize the formula for the establishment of reserves for bad debts.

Reasons

The capital of the banking system is primarily a buffer of safety for the benefit of depositors. The amount of an individual bank's capital is not directly related to profit potentials, as is the case in most other types of business, and there is a natural reluctance on the part of an individual bank to expand its capital beyond the minimum requirements.

The recent resurgence of demand for bank loans, the likelihood that loan risks are high, and the reduced liquidity of the banking system point to the need for enlarging bank capital beyond the accretions from retained earnings and the relatively moderate additions which are obtainable through the sale of additional stock.

Reserves for bad debts, which in a practical sense may be considered to be a part of bank capital, would be expanded rapidly and substantially if the formula for the establishment of such reserves were simplified and liberalized. The benefits of expanded bank capital would thereby be obtained.

5. UNDERWRITING OF REVENUE BONDS

Existing law

Banks, which are a major and indispensable factor in the underwriting and distribution of State and municipal bonds, are restricted in these operations to full faith and credit, general obligation bonds.

Recommendation

The differentiation which exists as between general obligation bonds and revenue bonds with respect to underwriting by banks should be removed.

Reasons

In recent years so-called revenue bonds and dedicated-tax bonds have become increasingly popular with issuing bodies. Such bonds of acceptable investment quality are customarily purchased and held by banks in their investment portfolios, and the restriction against bank underwriting of such bonds is unrealistic and unnecessary.

A wider interest in the underwriting of revenue bonds and increased competition to purchase them will result in lower borrowing costs for issuers.

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6. REAL-ESTATE LOANS BY NATIONAL BANKS UNDER SECTION 24 OF THE FEDERAL RESERVE ACT

Existing law

Under the present statutory provision (12 U. S. C. 371) national banks are authorized to "make real-estate loans secured by first liens upon improved real estate" and no such loan may exceed 66⅔ percent of the appraised value of the real-estate security.

Recommendation

It is desirable that a clarification be made in the statute so that loans which are based primarily on the credit of the borrower are separated from those which are based primarily on the security afforded by the real estate itself and that the former be expressly freed from the present statutory provision.

Reason

Whenever a loan is made to a business corporation and a mortgage on its plant is taken as security, if the amount of the loan exceeds that limited by the statute, a question is presented whether this may not constitute a violation of the statute, notwithstanding the fact that the loan is predicated primarily on the ability of the borrower, demonstrated by its financial condition and past performance, to repay the loan out of earnings or the proceeds of assets other than real estate. In such cases the appraised-value requirements has no real significance and the mortgage is taken merely out of abundance of caution on the part of the bank. However, if, in order to avoid the possibility that the propriety of the loan may be subjected to question because of the existence of the mortgage, the bank makes the loan without the mortgage security or splits the loan so that only a portion of it is secured by the mortgage, it thereby gives up the added protection which it might otherwise require.

It seems evident that this statutory limitation on loans secured by mortgages on real estate was designed to be applicable only to those situations where the real estate itself is considered the primary source of payment of the loan.

7. CONTRIBUTIONS

Existing law

Under the present statutory provision (12 U. S. C. 24), contributions by national banks are authorized "to community funds, or to charitable, philanthropic, or benevolent instrumentalities conducive to public welfare" and no such contributions may be made by a national bank located in a State whose laws expressly prohibit State banking institutions from making such contributions.

Recommendations

It would seem that the statutory authorization governing contributions should be broadened and, at the same time, that the restriction regarding the provisions of State laws should be eliminated.

Reasons

The scope of contributions presently authorized seems unduly limited. Not only are educational institutions excluded but also other organizations which benefit banks as well as other corporations and individuals in the community.

8. CUMULATIVE VOTING

Existing law

Under the present statutory provision (12 U. S. C. 61), shareholders of national banks may vote their shares cumulatively in the election of directors.

Recommendation

We recommend the elimination of the present statutory requirement of cumulative voting and the substitution of a provision authorizing such voting if required by the articles of association of the individual bank.

Reasons

The prime purpose of cumulative voting is to enable a shareholder or group of shareholders to assure themselves of representation on the board of directors so that their personal interests as shareholders may be protected and advanced. Provision for cumulative voting may therefore not be objectionable in the case of business corporations where the interests involved are primarily those of the shareholders.

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However, in the case of financial institutions which involve the interests of depositors and the general public as well as those of the shareholders, a different treatment seems appropriate. In the interests of public confidence, a method of electing the members of the boards of directors of banks which will most likely assure a unified approach by them would seem desirable, particularly in view of the fact that banks are subject to governmental supervision.

9. STOCK OPTIONS FOR BANK-MANAGEMENT PERSONNEL

While time has not permitted an exhaustive study of how the problem might be approached, it would seem desirable for the committee to develop a method whereby management personnel could acquire the stock of their banks under an option plan. Such an incentive would greatly facilitate the recruitment and retention of qualified management personnel in competition with companies in other industries which have such plans.

10. BANK MERGERS

Existing law

No express statutory provision exists requiring the regulatory agencies, in approving a bank merger, to consider the competitive effect of that merger.

Recommendation

The appropriate Federal regulatory agency having the responsibility for approving a bank merger should be expressly required to take into consideration and weigh all the various financial and economic features of the merger, including whether it will unduly affect competition. (The enactment of the Fulbright bill, S. 3911, 84th Cong., would accomplish this purpose.)

Reasons

The various legislative measures recently proposed indicate that some express statutory provision is regarded as necessary in the public interest in order to avoid undesirable effects on competition which may result from bank mergers. Some of these measures would subject such mergers to provisions similar to those contained in the Clayton Act, with respect to other business corporations, prohibiting those mergers the effect of which may be substantially to lessen competition or tend to create a monopoly and, at the same time, subjecting them to regulation by agencies other than those which now supervise banks.

Through long experience the Federal regulatory agencies, which now supervise banks, have acquired a familiarity with their affairs, the functions which they perform in their respective communities, and the problems which are peculiar to them as financial institutions operating in such communities. There is no indication that these agencies are not qualified to discharge the responsibility for determining the propriety of bank mergers. Other agencies charged with administration of the antitrust laws have no such qualifications. Furthermore, the standards which may be applicable in determining the propriety of mergers of other business corporations are not necessarily those which should be applied to bank mergers, and the approach customarily taken by such other agencies might well be inappropriate. There is, therefore, no conceivable reason to inject such other agencies into mergers involving financial institutions.

11. STANDARDS OF CONDUCT

Existing law

Over the years, out of experience certain traditions become established in the banking business serving to protect bank depositors and stockholders, as well as the general public, from improper or unethical conduct on the part of banks and their officers and directors.

Voluntary adherence to these traditions could not, however, always be counted on to be sufficiently protective; many of them, therefore, were enacted into law, often with the aid and approval of bankers. Among prohibitions of this kind, which have been incorporated into the Federal statutes, are the following:

1. No bank belonging to the Federal Reserve System may purchase from any of its directors or affiliates any securities or other property without being subject to making full disclosure to the Federal Reserve Board of commissions and other considerations paid.
2. No person may serve as an officer or director of two banks in the same community.

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3. Banks belonging to the Federal Reserve System are strictly limited in the amount they may lend to any of their officers.
4. Banks belonging to the Federal Reserve System may not pay a greater rate of interest on deposits to their directors, officers, or employees than is paid to the general public.
5. With certain exceptions, national banks may not have as officers or directors brokers or dealers in securities.
6. Directors of banks who violate certain key banking laws (or who condone such violation) may be held personally liable for such action.
7. It is a criminal offense for an officer or director of a bank to give or lend money to any public employee who is involved in making examinations of banks, and for such a public employee to accept such a gift or loan.
8. It is a criminal offense for an officer or director of a bank to accept a fee, commission, or gift for procuring a loan from that bank.

As stated above, rules of this type were enacted in an attempt to control the standards of business conduct in the banking business and for the protection of the general public.

Recommendations and reasons

In recent years, there has been a rapid growth in savings-and-loan associations and in credit unions, both Federal and State chartered. Anything which might discredit the activities of these institutions could have unfortunate repercussions on the banking system and the entire economy.

There are no specific statutory provisions applying to these organizations corresponding to those above enumerated regarding banks. The general public is entitled to assurance by means of Federal statute that the standards of conduct of the officers and directors of savings-and-loan associations and credit unions will be on the same plane as applies to their counterparts in banks.

EXHIBIT A

(Supporting American Bankers Association recommendation No. 4)

1. RESERVE FOR BAD DEBTS

A. The necessity of reviewing the adequacy of existing reserves for bad debts

It is apparent that any broad inquiry of banking legislation should include an examination of our banking system and an appraisal of the ability of the system and its individual component elements to serve its two most important functions—that is:

(i) to protect the safety of depositors' funds; and
(ii) to provide necessary individual and business credit.

Based upon the reports of supervisory officials as well as our own appraisal, we are convinced that there is no question of the safety of our banking structure in the face of today's conditions. We likewise find that the banks presently have adequate resources to meet the legitimate credit demands of the Nation within the framework of the sound money policies now in effect. American bankers are fully discharging their responsibilities in both respects at present.

However, we are equally convinced that it is precisely in a time of prosperity, such as the present, that we should appraise our probable ability to provide depositor safety and adequate credit in any possible future depression.

In approaching this duty we must acknowledge that the strength of the banks affects the lives of all of our people, the great majority of whom maintain bank accounts[1] and virtually all of whom depend, directly or indirectly, upon the availability of credit to provide business activity and employment.

We also must recall that in the last depression we fell short on both counts. In 4 years over 9,000 banks closed and failed to reopen,[2] and our citizens lost

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[1] A Study of Consumer Banking Harbits, prepared by J. Walter Thompson Co. in November of 1955 reported that 96.3 percent of all families in the United States use one or more banking services. It is probable, however, that this survey did not adequately cover the very lowest income groups.

[2] Historical Statistics of the United States, 1789–1945, U. S. Department of Commerce, Bureau of the Cen[illegible] 273.

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over a billion dollars[3] at a time when, for many, such losses were absolute disaster. That must not happen again.

It is because of the great public interest in the safety of, and credit extension by, our commercial banks that such banks are subject to such careful regulation, supervision, and examination. It is for the same reasons that the Congress should be prepared to take whatever action may be necessary in order to enable the banks adequately to prepare themselves to offer both safety and credit in any future period of economic disaster.

B. Only by provision of adequate bad debt reserves can the banks properly discharge their responsibilities in a depression

The principal means of avoiding these two inadequacies (inadequate safety and inadequate credit) are: first, prevent future severe depression and second, strengthen the banks in order that they may withstand substantial losses without impairing their safety or without reducing their ability (or courage) to provide the credit so necessary to reduce, and ultimately overcome, the stagnation of a depression.

Both of these protective steps require the cooperative efforts of the Government and the banks. However, just as the first (the avoidance of future depressions) is primarily the responsibility of the Government, so is the second (the strengthening of the bank) primarily the responsibility of the individual bank.

The Congress by the passage of the Employment Act of 1946[4] and similar legislation has declared the promotion, to the extent possible, of full employment to be the responsibility of the Government. Administrative and legislative action taken early in 1954 demonstrated the effectiveness of such action to ease a temporary decline. We now have many more accurate and earlier indexes of consumer and busines income and expenditures. We are better informed and more wary than we were 30 years ago. Yet there are few so courageous as to believe that "it cannot happen again." We are all prayerful that it will not—just as we are prayerful that there will never be aonther war. But, until we are much more certain on both counts, we must proceed on the basis that either may happen.

(i) Each bank's own responsibility

It is the banker's responsibility to prepare his bank for any eventuality—even another depression. The provision of FDIC insurance was intended to make the bank's responsibility somewhat easier through the increase in public confidence, but it was never intended, nor is it wise or practical, to build the insurance fund up to a point where it would substitute for adequate bank capital and reserves.

The adequacy of bank capital and bank reserves remains the primary responsibility of the management of each individual bank. The Nation's bankers have responded very well to their responsibility in respect of capital funds. Such funds[5] have been increased dramatically from $6,834 millions in 1940 to $17,015 millions at the end of 1955,[6] nearly a threefold increase.

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[3] Federal Deposit Insurance Corporation, annual report, 1940, p. 66, provides the following additional information on depositor losses:

Bank closings and depositor losses, 1930–33

Year	Number of banks closed	Deposits in closed banks	Losses to depositors in closed banks	Percent losses to deposits
		Millions	*Millions*	
1930	1,352	$837	$237	28.3
1931	2,294	1,690	391	23.1
1932	1,456	706	168	23.8
1933	4,004	3,597	540	15.0
Total	9,106	6,830	1,336	19.56

[4] 15 U. S. C. A. 1021.
[5] Capital surplus and undivided profits of all insured banks.
[6] FDIC, annual report, 1940, p. 140, and FDIC, annual report, 1955, p. 124.

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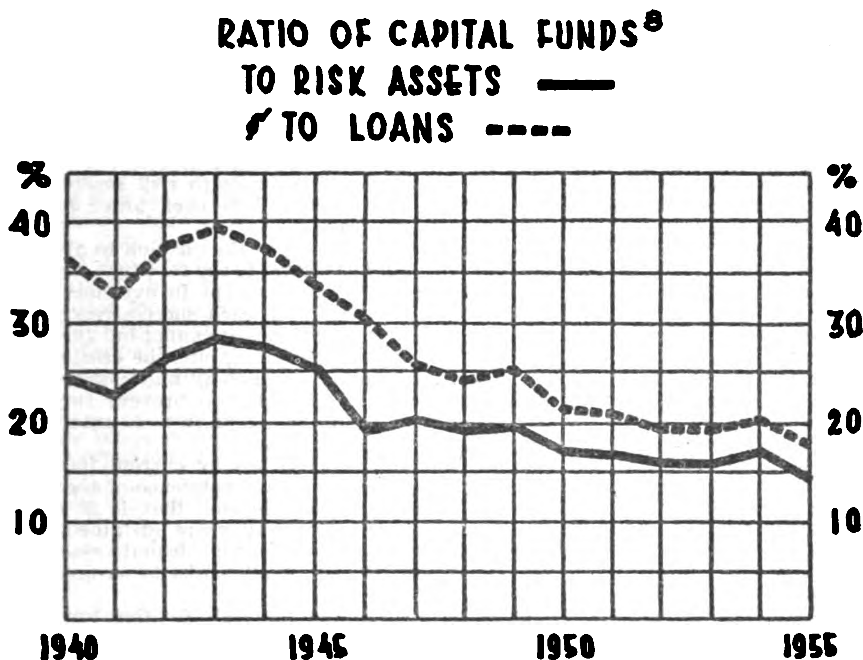
However, this increase, remarkable as it is, has not kept up with the increased need for such funds. The relationship of such capital to both so-called risk assets [7] and to loans, far from increasing, has actually declined during this period, as may be seen from the following chart:



The cause for the decline of bank capital in relation to risk has been due to two causes:

First, the unprecedented growth in loans over the past 15-year period (from $18,394 million in 1940 to $82,081 million in 1955),[9] and

Second, the difficulty in building up capital funds.

The difficulty in building adequate capital lies in the insufficiency of bank earnings, after taxes, to pay even a modest dividend and yet provide sufficient additions to capital funds.

Bank earnings are moderate. For the past 15 years a period of unparalleled profit for American business, the after-tax earnings of all insured banks have averaged a return on net worth (capital accounts) of only 8.2 percent.[10] Last

[7] "Risk assets" is used by the Comptroller of the Currency to refer to total assets minus cash and U. S. Government bonds.

[8] Based on capital, risk assets, and loan figures in the FDIC annual reports for the period from 1940 to 1955.

[9] Ibid.

[10] Based on bank earnings and capital accounts at the end of the year as shown in successive annual reports of the FDIC, 1940–55.

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year, an outstanding year for our economy generally, earnings of all insured banks amounted to only 7.9 percent.[11] Earnings for the first 6 months of 1956 are at a comparable level.[12] Clearly bank earnings are lower than the earnings of most other industries.[13]

(ii) Capital growth cannot be the solution

Of its 15-year average earnings of 8.0 percent, the banks paid less than half of this (42 percent) in dividends—an average return to the stockholder of less than 3.4 percent. The balance of the banks' earnings were added to capital funds. Yet such earnings were not adequate to increase capital funds at a rate comparable with the increased demand for credit.[14]

Thus, we face the disturbing conclusion that, despite the fact that our country has enjoyed a period of unprecedented prosperity, our banking system has not only been unable to use this period to build up its capital funds in relation to the risk of loss, but, on the contrary, its ratio of capital funds to risk assets has actually declined. It is lower today than in 1940.[15] It is even lower today than it was in 1929.[16]

It is apparent that capital funds alone cannot serve as the cushion to absorb future losses. Perhaps less apparent, but no less certain, is the fact that capital funds should not be called upon to absorb any losses except in extremis. If during the depths of a depression a bank must show in each successively published statement further impairment in its capital accounts, it cannot but further disrupt depositor confidence. Indeed, the losses themselves, plus the erosion of deposits as a result of depositor fear, may impair the ability and courage of the bank management to provide the credit so necessary to prevent further retrenchment in business activity and resultant unemployment. Loan losses should be absorbed by something other than capital accounts.

It might be thought that loan losses could be absorbed by current income, and, indeed, they can be in a normal year. However, the experience of the last depression demonstrated that losses so far exceeded income that it is most unwise to postpone providing against losses until after they are sustained. It is for this reason that public policy require some provision for adequate reserves which will be sufficiently simple and useful to induce all banks to so prepare themselves for the future.

Loan losses should be absorbed by reserves set up precisely for that purpose and so designated. This was recognized by a few bankers as early as the 1920's,[17] but very few banks had such reserve in the 1930's. It was this fact that caused the failure of so many banks and further deepened the trough of the depression.

Following the depression bankers and supervisors alike realized the importance of some adequate provision for reserves for such losses. It is not important to single out any individual or group to credit with the "discovery," but it is worthwhile to pay tribute to the many men, both on the tax committee of the American Bankers Association, in the Treasury Department, and in State associations, who have worked toward the end of adequate reserves for bad debts. They have accomplished much. Yet only about one-half of the banks have any reserves for bad debts, and the total of all reserves for bad debts of all insured commercial banks amount to only 1.67 percent of loans.[18]

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[11] Taking classes of banks, earnings on average capital for national banks were 8.1 perment; for nonmember banks, 8 percent; for all member banks, 7.9 percent; for member State banks, 7.5 percent (FDIC, annual report, 1955, pp. 136–141); Federal Reserve Bulletin, May 1956, p. 436. These figures reflect, only to a very slight extent, the tremendous decline in the market price of Government bonds which composed so large a portion of bank assets.

[12] The Board of Governors of the Federal Reserve System has reported in August that the earnings of all member banks for the first 6 months of 1956 were 8.4 percent of capital accounts as compared to 7.9 percent for the same period in 1955. See American Banker for August 13, 1956.

[13] Of industries ranked according to return on shareholder equity, banking was in the bottom quarter. Quarterly Financial Report for Manufacturing Corporation published by Federal Trade Commission and Security Exchange Commission for fourth quarter, 1955, pp. 4–17.

[14] The poor earnings and dividend records also make it difficult for a bank to increase capital through the sale of additional stock except on terms most disadvantageous to existing stockholders.

[15] FDIC, annual report, 1940, pp. 144, 147.

[16] Banking and Monetary Statistics, Board of Governors of the Federal Reserve System, 1943, pp. 72–73. Data for all member banks.

[17] The reserve method was first officially recognized by the enactment of sec. 234 (a) (5) of the Revenue Act of 1921.

[18] According to FDIC, annual report, 1955, p. 42, total reserves for bad debts amounted to 1.67 percent of total loans.

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2. THE PRESENT LAW AND REGULATIONS

A. *The absence of any statutory provision*

Our comments which follow concerning the level of present reserves are not intended to reflect on the ability or industry of those who have so long labored to achieve reasonable reserves through administrative action—but, on the contrary, demonstrate the necessity for legislative provision.

There is nowhere in any Federal statute any specific provision for reserves for bad debts of commercial banks. There are such provisions in respect of mutual savings banks, there are such provisions in respect of savings and loan associations—but there are not any such provisions in respect of commercial banks.

The only statutory authority for any deductible additions to bad debt reserves for commercial banks is the provision in section 166 (c) of the Tax Code of 1954 which was enacted primarily to accommodate merchants.

Disregarding the needs peculiar to banking, it provides for all alike;

"Sec. 166. * * *

"(c) *Reserve for bad debts.*—In lieu of any deduction under subsection (a), there shall be allowed (in the discretion of the Secretary or his delegate) a deduction for a reasonable addition to a reserve for bad debts." [19]

The Congress in effect passed to the Secretary of the Treasury the responsibility for determining what additions to reserves for bad debts were "reasonable." The Secretary and his delegates have recognized, at least since 1947,[20] that past

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[19] This is substantially sec. 23 (k) (1) of the 1939 code.

[20] On December 8, 1947, the Commissioner of Internal Revenue issued mimeograph 6209, which provided that a bank could use a consecutive 20-year period ending with the current year to determine both its maximum annual addition to a reserve for bad debts and the maximum reserve which could be established. This reads:

SECTION 29.23 (k)-5: Reserve for bad debt 1947-25-12717
Mim. 6200

Reserve method of accounting for bad debts in the case of banks

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 8, 1947.

Collectors of Internal Revenue, Internal Revenue Agents in Charge, Technical Staff, and Others Concerned:

1. The Bureau has given careful and extended consideration to the situation of banks in general with respect to the use of reserves for bad debts, the proper measure of such reserves, and amounts to be allowed as deductions.

2. In determining a reasonable annual addition to a reserve for bad debts by a bank it is believed to be fair and sufficiently accurate to resort to the average annual bad-debt loss of the bank over a period of 20 years, to include the taxable year, as constituting a representative period in the bank's history and to accept the equivalent percentage of presently outstanding loans as indicative of the probable annual accruing loss. The Tax Court has held that the "use of the reserve for bad debts is not inherently inconsistent with a cash basis where, as here, the reserve is against loss of capital only * * * and contains no element of income which has never been reported. * * * Such a reserve for loss of capital does not differ materially from a reserve for depreciation which is set up on a percentage basis rather than on the basis of actual depreciation suffered." (See *Estate of Maurice S. Saltstein* v. *Commissioner*, 46 B. T. A., 774, 777, acquiescence, C. B. 1942-1, 14.) However, such reserve cannot be permitted to accumulate indefinitely simply because of the possibility that at some future date large losses may be concentrated within a relatively short period of time and operate to absorb the greatest probable reserve. To permit this would sanction the deduction of a mere contingency reserve for losses, which is not an allowable deduction for income or excess profits tax purposes. This latter rule makes imperative the imposition of some reasonable ceiling on the accumulation of the reserve other than such indefinite limitation as might eventually prevail under a moving average method.

3. The Bureau has accordingly approved the use by banks of a moving average experience factor for the determination of the ratio of losses to outstanding loans for taxable years beginning after December 31, 1946. Such a moving average is to be determined on a basis of 20 years, including the taxable year, as representing a sufficiently long period of a bank's experience to constitute a reasonable cycle of good and bad years. The percentage so obtained, applied to loans outstanding at the close of the taxable year, determines the amount of permissible reserve in the case of a bank changing to the reserve method in such year (see first year in following computation) and the minimum reserve which the taxpayer will be entitled to maintain in future years (see second year in following computation). A bank, following a change to the reserve method of accounting for bad debts, may continue to take deductions from taxable income equal to the current moving average percentage of actual bad debts times the outstanding loans at the close of the year, or an amount sufficient to bring the reserve at the close of the year to the minimum mentioned above, whichever is greater. Such continued deductions will be allowed only in such amounts as will bring the accumulated total at the close of any taxable year to a total not

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losses embracing a period of depression should serve as the basis for determining the adequacy or reasonableness of such reserves. But, as might be expected, the Government official primarily responsible for balancing the budget has been at least, or perhaps more, concerned with that responsibility than he has with the less personal responsibility for protecting bank depositors, or providing a source of revitalizing credit in the next depression.

B. The regulation

The Secretary's regulations presently in force permit a commercial bank to make annual deductions from taxable income as additions to reserves for bad debts but subject this privilege to two limitations which, somewhat simplified, may be expressed as follows:

(*a*) The aggregate amount of such reserves which can be built up over a period of years is limited to 3 times the individual bank's average loss experience factor in its worst 20 years subsequent to 1927, times the amount of its loans outstanding at the end of the taxable year.

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exceeding three times the moving average loss rate applied to outstanding loans (see fifth year in following computation).

Example of the application of the foregoing with amount of outstanding loans remaining unchanged at $1,000,000.

Year	Moving average percentage	Actual bad debts for year	Deduction	Reserve at end of year	Ceiling
1	1.0	$2,000	$12,000	$10,000	$30,000
2	.8	11,500	9,500	8,000	21,000
3	.7	1,000	7,000	14,000	21,000
4	.8	1,000	8,000	21,000	24,000
5	1.0	500	9,500	30,000	30,000

4. In computing the moving average percentage of actual bad debt losses to loans, the average should be computed on loans comparable in their nature and risk involved to those outstanding at the close of the current taxable year involved. Government insured loans should be eliminated from prior year accounts in computing percentages of past losses, also from the current year loans in computing allowable deductions for additions to the reserve. Losses not in the nature of bad debts resulting from the ordinary conduct of the present business should also be eliminated in computing percentages of prior losses.

5. A newly organized bank or a bank without sufficient years' experience for computing an average as provided for above will be permitted to set up a reserve commensurate with the average experience of other similar banks with respect to the same type of loans, preferably in the same locality, subject to adjustment after a period of years when the bank's own experience is established.

6. Bad debt losses sustained are to be charged to the reserve, and recoveries made of specific debts which have been previously charged against the reserve by a bank on the reserve method of treating bad debts should be credited to the reserve.

7. Where a bank making its return on the basis of the calendar year 1947 wishes to avail itself of the provisions of this mimeograph and to change from the specific charge-off to the reserve method of accounting for bad debts, the time for making application for such change under section 29.23 (k)-1, Regulations 111 has been extended to March 15, 1948 (T. D. 5594, approved December 8, 1947 [page 25, this Bulletin]). If such bank files its return on or before March 15, 1948, on the reserve method, and the return is accompanied by a written statement setting forth the election to use such method and explaining in detail the computations of the bad debt deduction shown in the return, such return will be accepted as a timely application.

8. The term "banks" as used herein means banks or trust companies incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia), of any State, or of any Territory, a substantial part of the business of which consists of receiving deposits and making loans and discounts.

9. Correspondence in regard to this mimeograph should refer to the number and to the symbols IT : ELM.

Geo. J. Schoeneman,
Commissioner.

Approved December 8, 1947.
A. L. M. Wiggins,
Acting Secretary of the Treasury.

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(b) The amount which can be deducted from taxable income in any 1 year cannot exceed one-third of the aggregate reserve in the first year, one half of the remainder in the second year or all of the remainder in the third year.[22]

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[22] Mimeograph 2609 (set out in footnote 20) was supplemented by the provisions of Revenue Ruling 54–148 originally, promulgated as I. R. Mimeograph 54–55 on April 8, 1954. These read:

REGULATIONS 118, SECTION 39.23 (k)–5: Reserve for bad debts. Rev. Rul. 54–148 *

A bank, in computing a reasonable addition to its reserve for bad debts, may use an average experience factor based on any 20 consecutive years of experience after 1927, in lieu of a moving average experience factor determined on a basis of 20 years including the taxable year.

Com.-Mimeograph Coll. No. 6209, C. B. 1947–2, 26, supplemented.

SECTION 1. PURPOSE.

The purpose of this Revenue Ruling is to supplement Com.-Mimeograph Coll. No. 6209 dated December 8, 1947 (C. B. 1947–2, 26), which authorizes, in the case of banks, a special method for computing a reasonable addition to the reserve for bad debts under section 23 (k) (1) of the Internal Revenue Code and the regulations promulgated thereunder.

SEC. 2. BACKGROUND.

The Service has carefully reexamined the provisions of Mimeograph 6209, *supra*, in the light of experience developed thereunder and, as a result of such reexamination, has approved an alternative method for the use of banks in computing the annual addition to the reserve for bad debts and the maximum amount permitted to be accumulated in such reserve, as set forth in section 4 hereunder.

SEC. 3. DEFINITION OF TERMS.

The term "banks" as used herein means banks or trust companies incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia), of any State, or of any Territory, a substantial part of the business of which consists of receiving deposits and making loans and discounts. Such term as used in Mimeograph 6209 and herein does not include mutual savings banks not having capital stock represented by shares, domestic building and loan associations, or cooperative banks without capital stock organized and operated for mutual purposes and without profit.

SEC. 4. ALTERNATIVE METHOD.

.01 In lieu of the moving average experience factor provided in paragraph 3 of Mimeograph 6209, which is determined on a basis of 20 years including the taxable year, a bank may use an average experience factor based on any 20 consecutive years of its own experience after the year 1927. Such average experience factor, representing the percentage of bad debt losses to loans for the period selected, applied to loans outstanding at the close of the taxable year, determines the maximum permissible addition to the reserve for the year.

.02 The amounts permitted to be added in each taxable year to the bad debt reserve under (.01) above may not exceed an amount which will bring the accumulated total in the bad debt reserve at the close of the taxable year to a ceiling equal to three times the average experience factor applied to outstanding loans: Provided,

1. That for the first taxable year beginning after December 31, 1953, the amount of the addition therein to the reserve computed under (.01) above may not exceed one-third of the difference between the ceiling so computed and the accumulated total in the reserve at the close of the year before the addition; and

2. That for the second taxable year beginning after December 31, 1953, the amount of the addition therein to the reserve computed under (.01) above may not exceed one-half of the difference between the ceiling so computed and the accumulated total in the reserve at the close of the year before the addition.

.03 Consistent with the provisions of Mimeograph 6209 which permit newly organized banks and banks without sufficient years' experience of their own to set up a reserve commensurate with the average experience of other similar banks with respect to the same type of loans, preferably in the same locality, banks which select a 20-year period under (.01) above which extends back into years for which they have no experience of their own will be permitted to fill in such years with similar comparable data.

.04 The provisions of paragraph 6 of Mimeograph 6209 relating to the treatment of specific bad debt losses and recoveries, and all other rules utilized in the application of Mimeograph 6209 shall, to the extent not inconsistent, be applicable to the alternative method.

SEC. 5. EFFECT ON OTHER DOCUMENTS.

This Revenue Ruling merely supplements Mimeograph 6209 by providing an additional or alternative method for computing the annual addition to a reserve for bad debts and the maximum amount permitted to be accumulated in such reserve. Banks which are now using the moving average method provided in Mimeograph 6209 may continue to use that method if they so desire, and such method is still available to any other banks using or changing to the reserve method of accounting for bad debts.

SEC. 6. BANKS ON SPECIFIC CHARGE-OFF METHOD.

Where a bank on the specific charge-off method of accounting for bad debts desires to avail itself of the provisions of this Revenue Ruling and change to the reserve method, application to make such change must be made in the manner prescribed by section 39.23 (k)–1, Regulations 118.

SEC. 7. EFFECTIVE DATE.

The provisions of this Revenue Ruling are applicable only for taxable years beginning after December 31, 1953.

Approved by M. B. Folsom, Acting Secretary of the Treasury, April 8, 1954.

*Originally issued as I. R. Mimeograph No. 54–55, dated April 8, 1954.

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Thus the essence of the present regulation is that each commercial bank which uses the reserve method—

(i) determines that 20-year consecutive period (subsequent to 1927) in which it had the largest average loan loss experience;

(ii) calculates what its average loss was for that 20-year period in terms of a percentage of loans; and

(iii) multiplies that average loss experience percentage by three.

Then it applies that percentage to its volume of loans outstanding at the end of the year and thus arrives at its maximum aggregate reserve. It can, however, deduct from taxable income only one-third of that aggregate amount in the first year, one-half of the remainder in the second year, and all of the remainder in the third year.

Let us consider how this works out in practice.

C. *This results in an average maximum reserve of 2.4 percent of loans and an average maximum deduction of eight-tenths of 1 percent of loans in each of 3 years*

The maximum reserve and the annual deduction for each bank is based on its own experience, hence each bank must make these calculations for itself. As a consequence, there is undoubtedly some variation in the choice of years and a wide variation in the loss ratio. However, for the purpose of our analysis, we are limited to the general or average experience.

According to the figures compiled annually by the Board of Governors of the Federal Reserve System, the ratio of losses to loans of all member banks since 1927 have been as follows:

Ratio of net losses or recoveries to loans [1] by years 1928–55

Year:	*Ratio of losses (or recoveries) to loans*	Year:	*Ratio of losses (or recoveries) to loans*
1928	0.4	1942	0.1
1929	.4	1943	[2].1
1930	.7	1944	[2].1
1931	1.4	1945	([3])
1932	2.5	1946	([3])
1933	3.1	1947	.1
1934	3.4	1948	.1
1935	1.5	1949	.1
1936	.8	1950	([3])
1937	.2	1951	.1
1938	.6	1952	([3])
1939	.4	1953	([3])
1940	.2	1954	([3])
1941	.1	1955	([3])

[1] 1928–41, Banking and Monetary Statistics; 1942–55, Board of Governors of the Federal Reserve System, annual reports.
[2] Recovery.
[3] Less than 0.05.

On the average the worst consecutive 20-year period subsequent to 1927 was the period 1928 through 1947.

The average loss for that worst 20-year period was sixty-eight one-hundredths of 1 percent but the average of the percentages was eight-tenths of 1 percent, and the Treasury Department has approved the use of either the average loss or the average of the percentages.[22] As the more advantageous from the banks' point of view is the larger of the two, the average loss experience in the worst 20-year period was eight-tenths of 1 percent.

Three times eight-tenths of 1 percent is 2.4 percent.

Thus the average maximum aggregate reserve for bad debts which can be built up over a period of years is 2.4 percent of loans.[23]

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[22] Rev. Rul. 54–597, I. R. B. CB, 1954, –2, p. 90.

[23] As the total of all member banks had 48.4 percent of their deposits in loans (as of June 27, 1956), this maximum aggregate reserve of 2.4 percent of loans was equal to 1.2 percent of deposits.

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The average maximum amount that can be deducted in any one year is approximately one-third [24] of that percentage or eight-tenths of 1 percent of loans.

This review of the existing provision for reserves for bad debts demonstrates that the provision is valuable as a recognition on the part of the Treasury that reserves for bad debts are necessary and desirable. It is of value as a recognition of the premise that in estimating possible future losses we should be guided by past experience. It is of further value in that it has encouraged over half of the banks to make a start toward the building of reserves for bad debts. It has both represented a great triumph in cooperative negotiation between the bankers and Treasury officials, and served a most useful purpose. It represents a great accomplishment within the limitations of administrative regulation.

Our question is, however, is it sufficient to serve the purpose of insuring both safety and adequate credit should we face another depression as severe as that of the thirties?

3. IS THE PRESENT PROVISION FOR RESERVES FOR BAD DEBTS SATISFACTORY?

A. Is its rationale defensible?

The present formula is based on three concepts, viz, (i) an average year's loss (over a 20-year period), (ii) of the individual bank, (iii) multiplied by 3. Let us look at each of these factors.

(*i*) *The average year's loss*

A bank is allowed to build a reserve equal to three times its average annual loss. This is virtually without value because the net losses in an average year, even the average of its worst 20 years, is not at all representative of the losses of a depression period.

Catastrophe is not an average experience.[25]

We would immediately recognize the absurdity of a homeowner buying fire insurance in an amount equal to the fire loss he suffered in an "average" year.

Certainly we would be distressed if our Government built up its military defense only to a point where it would be adequate to meet the exigencies of an average year.

It is equally improvident to limit bad-debt reserves to the extent of losses suffered in an average year.

Protection, whether against fire, war, or depression, must be adequate to preserve the public against the worst (and hence unaverage) experience that we consider possible.

Reserves intended to afford protection against the twin evils of depositor loss and lack of credit should be adequate to meet the emergency conditions in which those evils may occur. Such conditions are not an average experience and cannot be based on an average year.

Thus this concept—of an average year's loss—is invalid.

(*ii*) *Of the individual bank*

The concept of basing the formula on the individual bank's actual experience is also questionable. The genesis of this concept is clear and understandable. So long as the bad-debt formula is to be provided solely by administrative action, it may be wise, perhaps even necessary, to base the formula on the individual bank's own experience.[26] However, if remedial action is to come from the legislature, this concept of past experience of the particular bank should be abandoned. As the Comptroller of the Currency has stated:

"There is a need for a bad debt reserve formula, not limited to the loss history of the individual bank or group of banks, but based upon the sound premise that a normal proportion of loss must be expected in the business of lending, and such losses should be regarded as a banking hazard against which a reasonable initially tax-free reserve should be established." [27]

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[24] It would be precisely one-third if the bank elected to deduct the maximum amount in each year—and the volume of loans remained static for the 3-year period. In most instances, fluctuations in year-end loan totals result in slight deviations from precisely one-third in each year.

[25] In the 91-year period, from 1865 through 1955, losses on assets of commercial banks in the United States amounted to about $15 billion. However, approximately one-half of the total loss during the entire 91 years was incurred in 4 periods totaling only 12 years, while the remaining half was spread over the other 79 years. Of those losses suffered by depositors, two-thirds were suffered in the 12-year period and the other one-third was spread over the other 79 years.

[26] The Treasury has, however, accepted an industrywide experience factor for banks organized since the depression years.

[27] Comptroller of the Currency, annual report, 1955, p. 9.

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The peculiarities that influenced a bank 30 years ago do not necessarily influence it today, for after 30 years it is no longer the same bank. Certainly there may be exceptions, but a review of a large number of banks would disclose that the change in ownership, the change in directorate, the change in officers, and the change in the character of its loans negate the assumption that the peculiar risks or lack of risks which characterized its loans 30 years ago continued to characterize them today, or will at the time of the next depression.

Another consideration militating against using the experience of a particular bank is the substantial amount of work its computation involves. Many of the smaller banks throughout the country do not have any bad loan reserve simply because of the administrative burden the present formula system imposes. A report of the committee on Federal legislation of our association, a group which has long wrestled with the problem of bad-debt reserves, speaking of the mimeograph 6209 formula, said: "It was too complicated for use by many of the smaller banks. A survey made in 1955 showed that only 55 percent of the banks were on the reserve method at the end of 1954." [28]

Most unfortunately it is often the smaller banks, which do not have adequately trained staffs to develop the figures and compute the formula, that most seriously need reserves.

Thus this second factor, the relationship of reserves for future losses to the prior experience of the individual banks is both invalid in concept and too difficult of application.

(*iii*) *Multiplied by three*

The multiplication by three does nothing to legitimize this formula. We can neither support the factor 3 on the basis that the worst probable loss would be 3 times the loss of an average year, nor on the basis that the worst foreseeable depression might present us with 3 years of average losses.

The function of the multiplier 3 is merely a recognition that the first 2 concepts of the formula (i. e., the average loss of the individual bank) are so inadequate that multiplying the formula by some factor will make it somewhat less inadequate. For the average bank, however, it would take a multiplier of between 10 and 15 to achieve a reserve equal to even the average losses experiencd in the last depression and even such a factor would result in inequities in the case of the many banks which deviate from the average.

Thus this third fatcor is likewise without validity.

The formula as originated in mimeograph 6209 and revised in revenue ruling 54–148 was the result of the many compromises which developed in a difficult and prolonged series of negotiations. It has served a useful purpose in accomplishing the most important first step toward so important a goal. But, as is so often the case of a compromise, it is without defensible rationale.

B. Does it provide adequate reserves?

A mere statement of this question raises certain other questions. What are adequate reserves? In our approach to this problem we have in effect defined these as reserves adequate to absorb all loan losses which may be experienced in some future period of disaster—in order that the banks may retain their capital funds unimpaired and hence provide the depositors with safety and the community with the individual and business loans so necessary to prevent further disaster and start the economy uphill again.

Yet again we may ask, "How severe a disaster should we prepare for?" No one can know what lies in the future. We do have some idea as to what has happened in the past and, hopeful as we may be that it will not recur, we would consider ourselves derelict in our duty to the public interest if we did not work toward providing protection against the possibility of the recurrence of similar loan losses.

What then were the loan losses experienced in the last depression? Unfortunately we do not have any complete information on this most important subject.

We do not know the losses suffered by nonmember banks.

We do not know the losses suffered by the member banks which closed—which they postponed taking until after they closed.

We do not know the volume of losses on loans which were taken over by directors or stockholders of even those member banks which survived.

[28] American Bankers Association, Banking Legislation in the 84th Congress, a Report, September 1956.

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In short, all we know is the amount of losses actually suffered directly by member banks while they remained open.[29]

Yet while this is but the most fortunate sample, the losses actually incurred were staggering.

All member banks in the United States[1]*—Loans, losses, and recoveries on loans, and ratio of net losses or recoveries to loans, by years, 1927–46*

[In thousands]

Year	Total loans, end of year	Losses and chargeoffs	Recoveries	Net losses	Ratio of net losses to loans
					Percent
1927	$23,886,000	$123,745	$26,010	$97,735	0.4
1928	25,155,000	119,290	26,502	92,788	.4
1929	26,150,000	139,588	25,204	114,384	.4
1930	23,870,000	194,725	23,402	171,323	.7
1931	19,261,000	295,241	28,000	267,241	1.4
1932	15,204,000	403,272	24,584	378,688	2.5
1933	12,833,000	425,442	28,815	396,627	3.1
1934	12,028,000	451,782	44,389	407,393	3.4
1935	12,175,000	252,374	71,901	180,473	1.5
1936	13,360,000	206,548	94,247	112,301	.8
Total		2,612,007		2,218,956	

[1] New York State Bankers Association, A Report of the Committee on Risk Asset Ratio Study, March 1952, p. 11 (table furnished by J. E. Horbett, Assistant Director, Division of Bank Operations, Board of Governors of the Federal Reserve System, Washington, D. C.).

What is the significance of these figures? What do they tell us as to the extent of reserves needed if we are ever to face a similiar experience?

Dollar amounts mean relatively little as we now have so much greater a volume of loans outstanding. We can learn most by relating losses to loans outstanding. But losses in how long a period and in relation to loans outstanding at what date?

We might look first at the total volume of losses over the 10-year period in relation to the volume of loans outstanding at the beginning of the period ($22,652 million as of December 31, 1926). The figure is frightening by any standards and particularly so to bankers allowed only an average of 2.4 percent as a reserve.

The losses and chargeoffs experienced in the 10-year period were 11.53 percent of the amount of loans outstanding at the beginning of the period.

After recoveries the net loss was 9.8 percent.

We can, of course, apply losses for longer or shorter periods to loans outstanding at various dates and develop a variety of loss ratios,[30] but the incontrovertible fact remains that the net losses suffered in that 10-year period amounted to 11.53 percent of the loans outstanding when the unanticipated (and unaverage) depression began. And this figure is for the member banks whose fatality rate was substantially lower than nonmember banks.[31]

And that is the loss ration suffered only by member banks while they remained open. If we knew the extent of losses postponed until after member banks were closed, if we knew the extent of losses of the many small nonmember banks which failed, if we knew the volume of losses on loans taken over by directors and stockholders, we would arrive unquestionably at a net loss ratio much greater than 10 percent of the loans outstanding at the beginning of the loss period.

[29] Even this figure is subject to errors, as some banks, because of the gravity of the times, may have charged off loans out of an excess of caution while others out of fear postponed chargeoffs.

[30] Thus if we confine our consideration to the 5 years of most intensive loss, we see that losses and chargeoffs suffered in the 5-year period of 1931 through 1935 amounted to 12.8 percent of the average volume of loans outstanding during that period and after recoveries amounted to net losses of 11.4 percent.

[31] Of the 8,052 member banks at the start of 1931, 2,310 or 29 percent had closed by the end of 1934. During the same period, of the 14,120 nonmember banks, 6,796 or 48 percent had closed.

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In view of that actual experience our question as to whether a 2.4-percent reserve is adequate becomes rhetorical. It does not pretend to be adequate.[32] It is not half adequate. It is not a quarter adequate.

No reserve of less than 10 percent of loans will be adequate.

4. THE ALLOWANCE OF A RESERVE OF 10 PERCENT OF LOANS WOULD BE MORE IN LINE WITH RESERVES ALLOWED COMPETING LENDERS

We have seen that the bad debt loss reserves allowed the banks are woefully inadequate. A strong buttress to this conclusion is found in the reserve allowed to the commercial banks' principal competitors, namely savings and loan associations and mutual savings banks.

The provision[33] regarding reserves for such organizations reads:

"SEC. 593. In the case of a taxpayer described in the preceding sentence (principally savings and loan associations and mutual banks) the reasonable addition to a reserve for bad debts for any taxable year shall in no case be less than the amount determined by the taxpayer as the reasonable addition for such year; except that the amount determined by the taxpayer under this sentence shall not be greater than the lesser of—

"(1) the amount of its taxable income for the taxable year, computed without regard to this section, or

"(2) the amount by which 12 percent of the total deposits or withdrawable accounts of its depositors at the close of such year exceeds the sum of its surplus, undivided profits, and reserves at the beginning of the taxable year."

Thus, until its reserves reach 12 percent of deposits (or share accounts) a mutual bank (or savings and loan association) can deduct all of its net income from taxable income—hence, it does not need to pay any Federal income tax.

Contrast the figure of 12 percent of deposits in the case of a mutual bank or savings and loan association with the 2.4 percent of loans allowed commercial banks. Actually, even this comparison, extreme though it be, does not wholly reflect the disparity. Since banks are allowed 2.4 percent of loans and loans as of June 27, 1956, amounted to 48.4 percent[34] of deposits, the banks are allowed something less than 1.2 percent of their deposits as against 12 percent of deposits for mutual banks and the savings and loan associations. This obviously puts the banks at a great disadvantage.

No argument has, to our knowledge, ever been advanced in support of such a discrimination—the allowance of reserves to mutual banks 10 times as great (in relation to deposits) as those allowed commercial banks. Congress reviewed the needs of mutual savings banks and savings and loan associations and apparently concluded they needed substantial reserves. If Congress is to review the needs of commercial banks it can hardly avoid the conclusion that they too need substantial reserves.

This is not to say that they need be identical. Whatsoever the rationale of relating reserves to deposits in the case of the mutuals and to share accounts in the case of savings and loan associations, it would seem wiser to relate commercial bank reserves to loans rather than deposits. A 12-percent reserve (even in relation to loans) might be higher than absolutely necessary for commercial banks. Absolute equality may not be necessary or advisable but the present disparity is entirely unjustifiable.

There are some differences in the types of loans which characterize the different institutions. The commercial banks have more business, industrial, and consumer loans whereas the mutual savings banks and savings and loan associations have more real-estate loans—but if the latter involve more risk for this purpose, the difference in degree is not markedly significant.[35]

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[32] Par. 2 of mimeograph 6209 specifically states that "such reserve cannot be permitted to accumulate indefinitely simply because of the possibility that at some future date larger losses may be concentrated within a relatively short period of time and operate to absorb the greatest possible reserve." See footnote 20.

[33] Sec. 593 of Tax Code of 1954.

[34] Federal Reserve Bulletin, September 1956, p. 953.

[35] See the U. S. Senate Finance Committee report on the proposed Revenue Act of 1951 wherein the committee observed that: "Mutual savings banks, of course, have a larger portion of their loans in real estate than do commercial banks, but this can be attributed to the fact that since the deposits of mutual savings banks are almost exclusively time deposits, it is possible for them to invest a substantial portion of their funds in nonliquid assets. On the other hand, the majority of the deposits of commercial banks are demand

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The alternative congressional course of reducing reserves allowed mutual savings banks and savings and loan associations would not appear to be in the public interest as the reserve ratios, at least in relation to loans, would not appear excessive in relation to possible losses in any future depression.

The allowance of a 10-percent reserve to commercial banks would not only serve the public interest directly, it would also eliminate the cause of much of the acrimony which has developed in the relationships between the various groups within our financial fraternity as a result of the present unjustified discrimination.

5. CONCLUSION

A. Recommendation

On the basis of our analysis of the public interest, the extent of possible future losses, and the reserves allowed by congressional action to other financial institutions, this Advisory Committee recommends the adoption of legislation which would allow the commercial banks to build maximum aggregate reserves equal to 10 percent of loans.[26] We further recommend that the maximum amount that may be deducted from taxable income and set aside as an addition to reserves for bad debt in any one year be limited to 1 percent of loans.

B. Possible objections

In making these recommendations we are not unmindful of three objections which might be raised: (i) that such a provision would reduce the Federal income tax revenue, (ii) that it would represent a departure from the relation of reserves to the experience of the individual banks, and (iii) that the allowance of such reserves would constitute an unwarranted advantage to the banks. In passing we will note our answers to each of these three possible objections.

(i) The loss of revenue

Any increase in allowable deductions as additions to reserves for bad debts will, at least temporarily, reduce revenue. The amount of the annual reduction which will result from the adoption of our recommendation is not precisely calculable. We cannot accurately estimate the number of additional banks that will adopt the reserve method or the extent to which they will avail themselves of the opportunity to deduct the full amount each year. However, despite the loss of revenue, in our opinion, it is in the public interest to encourage as many banks as possible to adopt the reserve method and to build up their reserves as rapidly as they may be permitted to do so.

While the loss of annual revenue may be substantial, the maximum annual deduction cannot exceed by more than one-quarter the amount which might be deducted under the present formula. We have seen the present regulation permits an average annual deduction of eight-tenths of 1 percent of loans. Our proposal is merely to increase that annual deduction to an even 1 percent. This is an increase of only two-tenths of 1 percent or an increase of only 25 percent in the amount of the present maximum deduction.

Our proposal would also continue the maximum deduction beyond the present period of 3 years to an extended period of 10 years. However, if the increase in reserves achieves its purpose of reducing the severity of future depressions, the total Federal revenue will be saved far more than the small reduction resulting from the requested reserves.

Committed as our country is to a high level of annual expenditures, no reduction in Federal revenue should be made without good cause. But there are few causes better than the prevention of a recurrence of the national paralysis which resulted from depositor losses and the unavailability of credit in the last de-

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deposits requiring greater liquidity in their investments. In any case, the investment of funds in real estate today is not a sign of insecurity in view of the fact that an important segment of such loans are backed by the Federal Government. Table 9 indicates, in the case of federally insured mutual savings banks for which statistics are available, that, as of June 30, 1950, about 33 percent of the real-estate loans held by these banks were either insured by the Federal Housing Administration, or guaranteed by the Veterans' Administration. Moreover, even the other real-estate loans are more secure than formerly was the case because of the present general use of 'declining balance' loans in lieu of the older 'fixed amount' loans." U. S. Code Congressional and Administrative Service, 82d Cong., 1st sess., 1951, vol. 2, p. 1991.

[26] Excluding, as the present regulation excludes, those loans subject to 100 percent U. S. Government insurance.

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pression. The avoidance of a recurrence of such evils more than justifies the modest increase in maximum deductible additions to reserves of two-tenths of 1 percent of loans and the continuation of such deductions over the extended period.

(ii) The adoption of an industrywide formula for commercial banks

While fully recognizing the Treasury's hesitation to depart administratively from the individual experience formula, we see no valid reason for continuing to relate reserves to the prior experience of an individual bank in any new legislative provision.

Congress has rejected this prior-experience concept in favor of an industrywide formula in authorizing reserves for mutual savings banks.

Congress has rejected this prior-experience concept in favor of an industrywide formula in authorizing reserves for savings and loan associations.

It is clear that Congress should similarly reject the unrealistic prior-experience concept in favor of an industrywide formula in authorizing adequate reserves for commercial banks.

(iii) An advantage to the commercial banks

A bank could not divert (without first paying the deferred tax) to its stockholders any part of its reserve for bad debts. It could, however, "use" those funds, for the funds set aside as a reserve become a part of the general assets and are held in cash, Government securities, and loans in the same proportion as other assets. Thus the bank does get some interim benefit from such funds. That, however, is not objectionable. The same is just as true of reserves set aside under the present formula as it would be under the provision we propose. It is just as true of the reserves allowed mutual savings banks, savings and loan associations, or the myriad business concerns that set aside reserves for credit losses of one kind or another.

In short it is not a valid objection.

C. Conclusion

We have analyzed the problem here discussed in considerable detail. We have come to the conclusion that it is imperative that present administrative provisions for reserves for bad debts be superseded by a legislative enactment providing the means by which the commercial banks may set aside reserves roughly four times as great as the average amount permitted at present.

This recommendation has not been captiously made but is advanced with great respect for what has been accomplished administratively in the past, but with even greater respect for the first responsibility which faces our banking system and those who work in it, or legislate for it. That responsibility is to protect the public interest by enabling the commercial banks to build up reserves for bad debts in an amount sufficient to absorb all of the losses which may be experienced—without impairing the safety or availability of the citizens' deposits or the availability of that credit which is our first line of defense against economic disaster.

(The above was also submitted by the Association of Reserve City Bankers.)

Statement of the United States Savings and Loan League

The United States Savings and Loan League, comprised of 4,200 savings-and-loan associations, building-and-loan associations, and cooperative banks throughout the country, expresses its appreciation to the Senate Banking Committee for the committee's deep interest in sound financial legislation, as evidenced by the current study and proposed recodification of all banking laws. The three basic savings-and-loan statutes have not been completely rewritten since enactment during the early 1930's, and it is appropriate and timely to undertake a thorough study and review with a view toward strengthening and modernizing the statutes.

On the basis of legislative positions and policies previously adopted, the league can now submit comments on the major proposals by the Federal Home Loan Bank Board as well as certain additional recommendations regarding savings-and-loan legislation. The league's annual convention is November 12 to 16, in Philadelphia, at which time the league will adopt specific positions on each of the 60 recommendations of the Board.

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I. THE REMOVAL OF OBSOLETE PROVISIONS FROM SAVINGS-AND-LOAN LAW

The Federal Home Loan Bank Board's submitted recommendations include a substantial number of amendments which are clearly dictated as necessary to remove obsolete and outdated provisions. It appears that the Board has carefully and painstakingly reviewed the present law, and the United States League supports all of the Board recommendations which deal solely with the removal of obsolete material. The elimination of this material would simplify the reading and understanding of the law, and thus is a very desirable objective.

II. TECHNICAL REVISIONS AND CLARIFICATIONS

The Federal Home Loan Bank Board has submitted a series of technical and clarifying amendments which, in general, have the support of the United States League. However, it appears that some of the apparently technical changes do have substantive significance to which the league might take exception. This is particularly true in connection with the major rewriting of sections dealing with conservators and receivers which, while largely technical in nature, could have substantial effect on important phases of savings-and-loan operation. In addition to the matters submitted by the Board, the United States League has some additional suggestions for technical approval that are included later in this statement.

III. SUBSTANTIVE PROPOSALS BY THE FEDERAL HOME LOAN BANK BOARD

The Federal Home Loan Bank Board has, in addition to those technical revisions, submitted either in suggestion form or in actual draft form a number of substantive policy-type amendments. The more important of these substantive proposals by the Board are listed below, followed by the comment of the United States League.

1. Give the Board the power to define, examine, and require reports from affiliates of savings-and-loan associations.

The United States League feels that the relationships between officers and directors and the association are and should be governed by the principles of trusteeship. The request for additional authority by the Board appears unnecessary. The complexity of this question is underscored by the fact that the Board has submitted no specific language and has commented that "the specific form which such amendment might take is a matter which deserves careful and mature consideration." The league is agreeable to working with the Board to review this whole question, but is opposed to any broad new grant of power to the Board.

2. Give the Board the power to examine and regulate noninsured Federal Home Loan Bank member savings and loan associations. (There are approximately 850 institutions which are members of the Federal Home Loan Bank System but not members of the Federal Savings and Loan Insurance Corporation.)

The league is opposed to this recommendation which would bring about a change in the fundamental concept of the Federal Home Loan Bank System. The Bank System is a credit reservoir rather than a supervisory mechanism. Indicative of this is the fact that 25 savings banks and 2 insurance companies maintain membership in the Federal Home Loan Bank System although clearly it is not intended that these institutions be supervised by the Federal Home Loan Bank Board. This request appears to be an attempt to extend Federal power into what is appropriately a State function.

The league does recommend that the Board adopt suitable restrictions on the use of the Federal Home Loan Bank emblem and the Federal Home Loan Bank advertising legend, particularly in advertising not predominantly local, so as to avoid the possibility that the public may erroneously assume that such institutions have insurance of accounts.

3. Give the Board the power to remove an officer or director of a Federal savings and loan association.

The league is vigorously opposed to this extreme grant of power which would permit the Board to suspend and remove any officer or director of a Federal association upon grounds which are so broad as to be, in effect, completely at the discretion of the Board. No adequate protection is provided the accused, and no opportunity to cease or correct the alleged practice. This provision is far more drastic than any power now provided in any financial statute.

4. Express in the statute the authority for Federal associations to make loan charges to the same extent permitted local thrift and home-financing institutions.

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The United States League concurs in recommendation No. 4 to permit Federal associations to make charges on loans similar to those permitted local institutions. This is a technical change and is similar to the provision whereby national banks may charge rates permitted for State banks.

5. Amend the statutory liquidity requirement for Federal Home Loan Bank member savings and loan associations.

The league is opposed to this recommendation changing the statutory liquidity requirements for bank member institutions. The league favors increased liquidity for savings and loan associations, but has recommended that it be accomplished through credit policies of regional Federal Home Loan banks which would reward institutions maintaining adequate liquidity. No change in the law is needed to adopt the league's recommendation.

6. Remove the Federal Home Loan Bank Board and Federal Savings and Loan Insurance Corporation from congressional budgetary procedures.

The league supports this recommendation because it would permit the Board, which operates without any tax funds, the same flexibility in budget control which has previously been provided for the Federal Reserve and Federal Deposit Insurance Corporation.

7. Establish statutory powers of the Federal Savings and Loan Insurance Corporation over mergers.

The league believes that the Insurance Corporation has already assumed the power over mergers. The league recommends that the Corporation's authority over mergers, whether by law or regulation, be limited to those mergers which (*a*) involve an increase in assets of 25 percent or more, or (*b*) involve an increase in assets of 10 percent or more, or $1 million, whichever is lesser, and involve the extension of the surviving institution's lending area, or result in the establishment of an office beyond the association's previous lending area.

8. Establish statutory powers of the Federal Savings and Loan Insurance Corporation over pension plans.

The league believes that the Corporation's authority over pension plans should be limited to a provision that in the case of default of the institution involved, the Insurance Corporation's claims on the assets shall be superior to the claims under any pension plan or deferred compensation contract.

9. Revise and extend powers to appoint conservators and receivers for Federal associations.

The league believes that provisions regarding the appointment of conservators and receivers must clearly provide for intermediate actions under section (d) (1) of the law and recommends that the existing language be amended in this manner and that the Board recommendation not be adopted.

IV. ADDITIONAL LEGISLATIVE SUGGESTIONS

The current United States Savings and Loan League legislative program includes a number of proposals not covered by the Federal Home Loan Bank Board recommendations. This includes proposals both with respect to existing savings and loan law as well as subjects on which no current law exists.

The league recommends:

1. A broadening of investment powers for Federal associations to permit a limited right to invest in municipal securities and other securities approved by the Federal Home Loan Bank Board.

2. A limited right of Federal associations to invest in other insured savings and loan associations.

3. A clarification of lending authority of Federal associations, either by the law or regulations, to permit such associations to finance the preparation and improvement of home sites.

4. A clarifying amendment to title IV of the National Housing Act to make certain that married savers in certain community-property States are provided insurance coverage on an equal basis with savers in other States.

5. Increase from 20 to 25 percent the portion of the assets of Federal associations that may be invested in certain special classifications of loans (as now defined in the law and regulations).

In addition to these amendments to savings and loan law, the United States Savings and Loan League recommends:

1. Legislation restricting the establishment and operation of holding companies in the savings and loan business. In this connection the league has specifically endorsed H. R. 10811 introduced in the House of Representatives by

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Representative Brent Spence, chairman of the House Banking and Currency Committee.

2. An amendment to section 2410 of the Judicial Code to eliminate Federal redemption rights and to provide nonjudicial sales which affect the rights of the United States as provided by local law.

3. Legislation which would make the accounts issued by insured institutions, up to $10,000, lawful investments for all public funds of the United States, fiduciary and trust funds under the authority or control of the United States or any officer or officers thereof, and for funds of all corporations organized under laws of the United States.

4. An amendment to section 13 of the Federal Reserve Act to make short-term Federal home-loan bank obligations eligible for rediscount at Federal Reserve banks and eligible for purchase in the market by the Federal Reserve banks. The league further recommends that the Federal Savings and Loan Insurance Corporation be permitted to purchase obligations of the Federal home-loan banks.

5. Legislation directing the Federal Deposit Insurance Corporation to cease the practice of designating savings accounts in insured savings and loan associations as "defaulted securities" in its examination reports.

CREDIT UNION NATIONAL ASSOCIATION, INC.,
Madison, Wis., November 5, 1956.

Mr. DONALD L. ROGERS,
Counsel, Committee on Banking and Currency,
United States Senate, Washington, D. C.

DEAR MR. ROGERS: Thank you for your letter of September 12, 1956, and for the copy of the press release announcing the appointment of the Advisory Committee for the study by the Senate Banking Committee of Federal statutes governing financial institutions and credit.

Subsequently we received a copy of the recommendations made by the Bureau of Federal Credit Unions with respect to possible amendments to the Federal Credit Union Act.

In response to your suggestion, our organization is submitting herewith a statement relative to the proposals made by the Bureau of Federal Credit Unions.

Also, we should like to submit another statement containing recommendations offered by the credit-union people for amendments to the Federal Credit Union Act. The executive committee of the Credit Union National Association is meeting this week and as soon as it can review and complete approval of these proposals they will be forwarded to you. We shall have them to you not later than Saturday.

Sincerely yours,

HUBERT M. RHODES,
Manager, Washington Office.

COMMENTS ON RECOMMENDATIONS OF AGENCY

167.[1] REMOVAL OF OBSOLETE DATE IN SECTION 8

"SEC. 8, bylaws." We concur with the proposed deletion of "on June 26, 1934."

168. MEMBERSHIP OF SUPERVISORY COMMITTEE

"SEC. 11, Management.—(a) Generally." We do not concur with the proposal to eliimnate the overlap of supervisory committee membership with the board of directors or credit committee. However, we are of the opinion that the section should be modified to provide that the treasurer may not serve on the supervisory committee.

Reason

We believe that there are many cases where it is advantageous to have directors serve as members of the credit and supervisory committee in credit unions having a small potential membership. Also, a member of the board on this com-

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[1] Numbers correspond to those contained in the committee print of legislative recommendations of the Federal supervisory agencies to the Committee on Banking and Currency of the United States Senate, dated October 12, 1956, and entitled "Study of Banking Laws."

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mittee provides an additional stimulus for effective performance. Further, there appears to be little evidence that the present procedure has resulted in any weakening in performance or effectiveness of the committee, except where the treasurer may have been a member of the supervisory committee.

169. CHANGES IN SECTION 11 (B) OF ACT

"Sec. 11 (b), Officers." We concur with the proposal to—

A. Provide for more than one vice president.

B. Change "clerk" to "secretary."

C. Provide that among the elected officers the treasurer only may be compensated.

170. CLERICAL AND AUDITING ASSISTANCE FOR SUPERVISORY COMMITTEE

"Sec. 11 (c), Directors." We concur with the proposed modification to provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee, such compensation to be authorized by the board of directors.

171. MAXIMUM SIZE OF LOANS, UNSECURED LOAN LIMIT, AND LOAD OFFICER

"Sec. 11 (d), Credit Committee."

A. We do not concur with the recommendation that specific authority be given the Director of the Bureau of Federal Credit Unions to impose maximum loan limits by regulation.

Reason

The law at present establishes reasonable maximum loan limits which provide a credit union with an opportunity to serve the credit needs of its membership. In general, as the credit union assets increases full use of the maximum limit is exercised to a lesser degree. There is little evidence to indicate a need for any change in the present maximum limits or to warrant a change from limitation by law to regulatory limitation.

B. We agree that the recommendation to increase the signature loan limit from $400 to $500 is a step in the right direction, but are of the opinion that the proposed increase should be greater in order to more adequately satisfy the consumer credit needs of the expanding credit union membership. The experience of the credit union as to the character and financial responsibility of its members and the rising cost of commodities and services warrant a higher signature loan limit.

C. We concur with the proposed change to authorize the credit committee to delegate to a loan officer, or officers, powers to approve loans under specified conditions.

We further suggest that this provision require that the loan officer furnish the credit committee with a record of loans approved, and loan applications which were not approved, within 7 days of such action.

172. SECTION 19 OF ACT

"Sec. 19, Appropriation for Administration." We concur with the proposal to eliminate this obsolete section covering the initial appropriation authorized in 1934.

173. ALLOTMENT OF SPACE IN FEDERAL BUILDINGS

"Sec. 21. Allotment of Space in Federal Buildings." We concur with the proposal to change "exclusively" to "primarily."

174. ROBBERY OF A FEDERAL CREDIT UNION

We concur with the proposal to amend title 18, section 3224 United States Code (g) to cover crimes covered by section 2113 involving Federal credit unions.

175. CHANGE REFERENCES IN ACT

We concur with the proposal to remove obsolete phrases in the Federal Credit Union Act to reflect present functions as effected by reorganization plans and statutes passed since the Federal Credit Union Act was originally enacted.

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RECOMMENDATIONS BY THE CREDIT UNION NATIONAL ASSOCIATION FOR AMENDMENTS TO THE FEDERAL CREDIT UNION ACT

1. BROADER DEFINITIONS

Existing law

"SEC. 2. *Definitions.*—A Federal credit union is defined as a cooperative association organized in accordance with the provisions of this chapter for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes. When used in this chapter the term "Bureau" means Bureau of Federal Credit Unions, and the term "Director" means the Director thereof."

Recommendation

To further define a Federal credit union to include Federal central credit unions with membership composed of Federal credit unions, State credit unions, and directors and committee members of such credit unions. Also, that sections 3, 7 9, 10, and 11 (a), be amended to provide clarifying clauses to support the formation of Federal central credit unions.

Reasons

To provide a source of credit for directors and committee members, and for the purchase of shares and the obtaining of loans by Federal credit unions and State credit unions in and from Federal and State central credit unions.

2. EXTEND LOAN MATURITIES

Existing law

"SEC. 7 (5). *Powers.*—To make loans with maturities not exceeding three years to its members for provident or productive purposes upon such terms and conditions as this chapter and the bylaws provide and as the credit committee may approve at rates of interest not exceeding 1 per centum per month on unpaid balances (inclusive of all charges incident to making the loan): *Provided,* That no loans to director, officer, or member of a committee shall exceed the amount of his holdings in the Federal credit union as represented by shares thereof. No director, officer, or committee member shall endorse for borrowers. A borrower may repay his loan, prior to maturity, in whole or in part on any business day. The taking, receiving, reserving, or charging a rate of interest greater than is allowed by this subsection, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid the person by whom it has been paid, or his legal representatives, may recover back in an action in the nature of an action of debt, the entire amount of interest thus paid from the credit union taking or receiving the same: *Provided,* That such action is commenced within two years from the time the usurious transaction occurred."

Recommendation

To provide for loan maturities up to 5 years.

Reasons

To adequately assist persons of small means by providing them with terms more consistent with their ability to repay.

3. SUPERVISORY COMMITTEE

Existing law

"SEC. 11. *Management.*—(a) Generally: the business affairs of a Federal credit union shall be managed by a board or not less than five directors, a credit committee or not less than three members, and a supervisory committee of three members (a majority of whom shall not be directors) all to be elected by the members (and from their number) at the annual meeting, and to hold office for such terms, respectively, as the bylaws may provide. A record of the names and addresses of the members of the board and committees and officers shall be filed with the Bureau within ten days after their election. No member of the board or of either committee shall, as such, be compensated."

Recommendation

That the provision be preserved requiring that the majority of the members of the credit committee or supervisory committee shall not be directors, with the

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additional reservation that the treasurer shall not be a member of the supervisory committee.

It is also suggested that consideration be given to the advisability of amending this section to provide that the supervisory committee shall be appointed by the president promptly following the annual meeting, subject to ratification by the board at its next meeting and that at least one director, other than the treasurer, may be a member of the committee.

It is further suggested that section 11 (d) provide that the supervisory committee shall make, or cause to be made, a report of its quarterly examination to the board of directors and shall make, or cause to be made, an annual audit, a report of which shall be submitted to the members at the next annual meeting. Also, upon recommendation, the president may remove for cause any or all members of the supervisory committee with the aproval of the board of directors, or by the board of directors subject to the approval of the membership.

Reasons

The board of directors have the responsibility for the general direction and control of the affairs of the credit union. The present law limits the ability of the board of directors to properly discharge this responsibility in instances where an elected supervisory committee has not been functioning in an effective manner and in accordance with prescribed procedure. The suggested changes would provide for the appointment of qualified persons to the committee by the board and would charge the board with more direct responsibility for supervisory committee performance.

4. UNSECURED LOAN LIMIT

Existing law

"SEC. 11. *Management.*—(d) Credit Committee: * * * No loan shall be made to any member which shall cause such member to become indebted to the Federal credit union in the aggregate, upon loans made to such member, in excess of $200 or 10 per centum of the Federal credit union's paid-in unimpaired capital and surplus, whichever is greater, or in excess of $400 unless such excess over $400 is adequately secured * * *."

Recommendation

That the unsecured loan limit be increased from $400 to $1,000.

Reasons

The suggested increase in the signature loan limit is warranted in order to keep pace with the increased cost of goods and services which has resulted in a diminution of actual dollar value. Further, the familiarity of the credit union with the character and financial responsibility of its members decreases the risk involved in the granting of signature loans.

5. DECLARATION OF DIVIDENDS

Existing law

"SEC. 13. *Dividends.*—At the annual meeting a dividend may be declared from the remaining net earnings on recommendation of the board of directors, which dividend shall be paid on all paid-up shares outstanding at the end of the preceding fiscal year. Shares which become fully paid up during such year shall be entitled to a proportional part of said dividend calculated from the first day of the month following such payment in full."

Recommendation

That the dividend be declared by the directors rather than by the membership.

Reasons

The board of directors is responsible for the management and sound operation of the credit union and is in a better position to determine the size of the dividend which should be distributed based upon their intimate knowledge of the organization's affairs and its current and future needs. The declaration of dividends by the directors would eliminate the condition presently existing whereby the members can declare a dividend in excess of that which the credit union can safely and prudently afford to pay.

Recommendation

That a semiannual dividend may be declared and paid if so provided in the bylaws.

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Reasons

The current requirement that dividends be paid annually often penalizes members who are forced to withdraw shareholdings prior to the year end. A semiannual dividend would alleviate this inequity. Adoption of the proposed alternate dividend plan would be optional with each currently operating credit union and would require an appropriate amendment to the bylaws.

Recommendation

That dividend credit for the month be accrued on share payments made during the first 3 days of that month.

Reasons

Many members do not receive their compensation until the last day of a month or the first day of the subsequent month, and it is not practical for them to make share payments before the second or third day of the month.

Under current requirements, dividend credit for such payments do not commence until the following month. The proposed modification would eliminate this inequity and serve as an added incentive for saving.

6. UNITED STATES TERRITORIES

Existing laws

"SEC. 22. *Extension of chapter to Panama Canal Zone and Virgin Islands.*—The provisions of this chapter shall be extended to and include the Panama Canal Zone and the Virgin Islands."

Recommendation

To provide for the inclusion of all United States Territories and possessions now existing or hereafter created.

Reasons

To eliminate need for future amendments to this section and to provide for the establishment of Federal credit unions in such territories and possessions.

7. CONVERSION

Existing law

None. New section proposed.

Recommendation

That a new section be added to the act to provide for conversion of a Federal credit union to a State credit union in the State in which it is located and to provide for conversion of a State credit union to a Federal credit union.

Reasons

Under certain circumstances, conversion of a charter may be deemed advisable by the credit union and acceptable to the supervisory agencies involved. The Federal Credit Union Act currently does not make provisions for such conversion. Special authority appears warranted which would facilitate the procedure of converting a credit union from a Federal to a State charter or vice versa without dissipation of reserves, or undue disruption of normal credit union operations.

PALERMO, ITALY, *October 16, 1956.*

Mr. DONALD ROGERS,
Senate Banking and Currency Committee,
United States Senate, Washington, D. C.

DEAR MR. ROGERS: It is my understanding that the Senate Banking Committee expects to hold public hearings on the national-banking laws sometime in January.

As a bank stockholder, and on behalf of many other independent public-banking stockholders whose views I represent, I ask to be heard at that time on the need for (*a*) maintenance of the present provisions for mandatory cumulative voting and (*b*) on the need for proper supervision of proxy voting at all banks, making them similar to the protection afforded investors in corporations by the Securities and Exchange Commission.

I have no strong feelings as to whether the agency should be SEC or the Comptroller of the Currency—provided the same kind of protection we do not now have is afforded bank stockholders.

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I also desire to be on the mailing list for progress reports, etc., and I ask that my comments be noted on the record at the November 9 and 10 hearings, as stated above.

Sincerely yours,

LEWIS D. GILBERT,
New York, N. Y.

STATEMENT BY MAURICE S. BRODY, DIRECTOR, DENVER NATIONAL BANK

In both the 83d and 84th Congresses two unsuccessful attempts have been made to eliminate the principle of mandatory cumulative voting in the election of national-bank directors. This attempted legislation was not accompanied by any objective unbiased study as to the merits of this principle from the standpoint of the public interest. On the contrary, the attempt to change the present law carried all the earmarks of a special-interest group trying to put through legislation designed to serve its own purpose.

Accordingly, it becomes imperative for the Senate Banking and Currency Committee, in making a study of our banking laws, to fully explore the present method of voting in our national banks with a view of ascertaining in a careful, objective, and unbiased fashion whether the interests of the public, the bank's customers, the management, and the bank's public stockholders are all properly protected and safeguarded.

The elimination of mandatory cumulative voting in the election of our national-bank directors would uproot a basic concept of Federal corporate law deeply imbedded in the public interest. In this process, the present property rights of more than a half million persons would be stripped from them, as they would be denied their present right to elect representatives on the directorates of national banks. Probably hundreds of independent bank directors throughout the country now acting as watchdogs in the national interest would consequently be liquidated.

But more important than the disenfranchisement and destruction of the property rights of the above persons, a basic crack will have been made in our fundamental corporate bill of rights which is the essence of cumulative voting. The hundred-year struggle to secure minority representation in the conduct of our corporations will have been struck a mortal blow. The reaction in the individual States will seize upon to repeal the corporate bill of rights (mandatory cumulative voting) presently effective in 16 States of the Union.

Furthermore, the loss of our corporate bill of rights by removing the present legal barrier will once more open wide the door to discrimination. The law will no longer be a protection. The group in control of each national bank can exclude stockholders from becoming directors for any reason, including race, color, or religion. It is contrary to our present national conception of justice, and certainly is not in keeping with the spirit of the times. It is a throwback to the days that we had hoped we had left behind forever.

Finally, the present tight control of our national banks will be further extended to the point of monopoly control, with very little prospect of bringing about a change of management should the necessity arise. In the case of the Bank of America National Trust and Savings Association, the practical aspect is that the 1 percent of the stock owned by the management will completely control. The public, owning 99 percent of the stock, will be locked out, as they will not be able to name a single director.

This, in effect monopoly control of our national banks, will further extend to other corporations, since many trusts set up in the trust departments of these national banks hand over the voting control of nonbank corporations to these monopoly-controlled national banks.

The above reasons cited are deeply imbedded in our American national interest, and certainly are by no means offset by the desire of special interests who, already being strongly entrenched in the management of our national banks, are calling for monopoly control power at a time when the public interest clearly is in the direction of granting these vested interests less power rather than more.

National banks, being by their nature semipublic institutions that gather together the liquid funds of the public for the purpose of safely lending and investing these funds for productive purposes, must of necessity be carefully regulated and supervised.

It is my purpose in this statement to demonstrate to the committee that the "checks and balance" philosophy underlying our present national banking laws,

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which has served America so well during the last 23 years, rests squarely on the existence of independent national bank directors. And that these independent bank directors can exist only when public-stock holders can avail themselves of the principle of mandatory cumulative voting in order to elect representative directors.

Our national banking law revision in 1933 set up a supervisory system for our national banks, built on the cornerstone of independent vigilant directors who are distinct and apart from the officers and management of the bank. This supervision setup can only be effective just so long as there are present on the board of directors of the bank, directors who are independent of the officers who run the bank.

The supervision extends in three directions:

1. Supervision by directors internally on an all-year-round basis.
2. Supervision by an annual examination of the bank by a committee of directors totally separate from the officers of the bank.
3. Supervision by an annual or semiannual examination made by the national bank examiner.

It is obvious that unless the relationship between the directors and the officers is conducted on an arm's-length basis that likelihood of effective supervision of the acts of officers of the bank by the directors is rather remote. Directors in effect chosen by the management officers are not likely to exercise any degree of restraint or supervision over the activities of the officers. Supervision by directors internally on an all-year-round basis thereby becomes weak and ineffective.

The required annual examination by law of the bank by a committee of directors separate from the officers of the bank soon flounders on the same basic defect. Directors closely tied in with the management due to the fact that they are directors, not as a result of their stockholdings but just by virtue of the fact that the officers invited them to become directors, are unlikely to subject the bank to anything but a routine cursory examination prescribed by an officer.

Finally, let us look at the examination by the national bank examiner. He comes once or possibly twice a year and spends a few days examining the bank. Unless he finds real flagrant violations he will content himself with indicating that certain loans are substandard while other loans will be criticized for one reason or another in the hope that when he returns a year later he will find that considerable improvement in these loans has taken place. Here is where the independent director tends to make effective the national bank examiner's criticism, for in the interval of 1 year the independent bank director can follow through where the bank examiner left off. Unless there are independent watchdog directors present to act in the interval, the national bank examiner will most likely return a year later to find the same old mistakes, aggravated by time, still on the books.

Mandatory cumulative voting, by permitting the public stockholders to directly elect directors who are independent of the officers, provides the backbone of our present system of supervision. Their mere presence keeps officers on their toes and in line with sound banking practices. Their arm's length relationship with the management makes effective the present three-prong method of supervision of our national banks. Without independent directors the effective supervision of our national banks falls away like a house of cards.

In view of the effective supervisory function played by the independent director elected by the public stockholders because mandatory cumulative voting is an integral part of our national banking laws, it is understandable why the managements of our national banks are straining every nerve and fiber to eliminate mandatory cumulative voting in the election of national bank directors. If management succeeds in destroying mandatory cumulative voting, they will in one fell swoop rid themselves of effective supervision and thereby place themselves once again back in the saddle that they occupied in the 1920's and the early 1930's.

The above analysis should make clear why the banking management fraternity apart from the public stockholders of our national banks is putting up such a desperate fight to rid themselves of mandatory cumulative voting. Their pretext is that cumulative voting has lent itself to certain isolated cases of abuse. To this the answer is definite and specific. If the Federal Reserve Board does not presently have sufficient power to deal with these cases of abuse, its power should be broadened to permit the Board to handle this phase of banking. The Federal Reserve Board, being independent and nonpartisan, is well suited to regulate in the public interest.

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It is sheer folly to burn down the house of mandatory cumulative voting, which permits the election of independent watchdog directors who clearly serve in the public interest, just because there happen to be a couple of mice in the basement.

STATEMENT OF FRED WALKER, DIRECTOR OF FIRST NATIONAL BANK OF ARLINGTON, ARLINGTON, VA.

I am a merchant of Arlington, Va. I was one of the founders of First National Bank of Arlington, Arlington, Va., having represented the bank's organizing committee officially as its correspondent during its organization. I am now a director and have been so, continuously since this bank was founded in 1951. I am one of its largest stockholders. I have been one of its largest stockholders from its inception.

I appeal to this committee in respectful opposition to a proposal to eliminate cumulative voting of shares of stock in the election of directors of national banking associations, unless provided for in the articles of association. In the light of my careful study, observation and experience, I oppose this proposal for the following reasons:

1. A national bank no less than any other corporation is the property of all its stockholder owners—a 49 percent minority ownership is justly entitled to a voice in the management of their investment by the same token as the 51 percent majority ownership.

2. The voice of this 49 percent ownership on the board of directors of this bank is demanded by simple justice, equity, and fair play. Furthermore, it is wise and prudent (*a*) to exercise scrutiny and firsthand knowledge through representation on the board, of how their money and that of the depositors is being used, and (*b*) in order to provide an exchange of ideas through a friendly discussion forum for each to weigh and consider, and out of which to forge a wiser policy than would a board all of one mind.

3. Minority representation acts as a check and balance and does not permit complete one-man dictatorship of a board of directors.

4. Enactment of this proposal or recommendation removing or repealing the existing and widely used cumulative voting provision, which has proven its merit for almost a quarter century, and denying minority ownership a voice in the control of their investment, would be a throwback to the horse and buggy era and would cause more discord, not less, as has been inferred by some proponents of this bill. It would cause more discord in the form of widespread, all-out proxy fights for complete control, because if this proposal or recommendation is enacted a 49 percent minority could have no voice whatsoever in the management, protection and safeguarding of its investment without an all-out proxy fight. Such a proxy fight would itself tend to create far more discord or force the minority to resort to possibly harmful litigation in order to protect this investment because enactment of such a proposal would remove the minority's only other alternative.

5. Moreover, the arguments advanced by some proponents of this proposal that minority representation on the board of directors will obstruct the orderly conduct of the business of the bank, is as invalid and unsound as to argue that the greatest and best legislative body on earth—the Congress of the United States—should contain no minority party Members whatsoever lest there be discord and obstruction of its orderly processes. A one-party system monopoly can only result in one-man dictatorship on a bank board of directors as well as in a great legislative body.

6. A minority-elected director, contrary to what has been inferred, is no more likely to improperly disclose confidential information that might tend to be imprudent or detrimental to the best interests of the bank than would a majority-elected direction. In fact less so, because for one very important reason he would, by so doing, be doing injury to his own investment to a much greater degree than does the majority director elected by management to do its bidding and dependent for election and reelection solely to management.

Let us take for a quick hypothetical illustration of the point, a five director national bank having a $1 million capital structure of 20,000 shares selling at $50 per share.

Under the present cumulative voting dispensation, in order for a minority-elected director to be elected he must either own or be the personally chosen representative of and be held accountable for his good management stewardship

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to the owners of $199,000 worth of stock in such a bank, in addition to the $1,000 stock ownership required of a director.

It is hardly likely that such a minority-elected director, owning or held personally accountable to ownership of such an investment would disclose confidential information that might tend to be imprudent or detrimental to the best interests of the bank.

Whereas in contrast, the management-elected puppet director need be personally accountable only to management who elected him, plus to a mere $1,000 of stock ownership required of a director.

The former is owner-chosen and elected and responsible to such owners, whereas the latter would be management-chosen and elected and responsible solely to management.

7. Enactment of the aforesaid proposal or recommendation eliminating mandatory cumulative voting would make possible the self-perpetuation of entrenched management and their monopoly control, even though exercise of this control may no longer be serving the best interests of the bank, its stockholders or the public. A dictatorship-controlled, "rubber-stamp" board of directors is a board that does not properly fulfill a director's oath nor does it fulfill its responsibilities as directors. This self-perpetuation of control by the majority may be accomplished in the following ways: By management bought share proxies.

This is done by management's utilizing the bank officers and other salaried personnal, on the bank's time, day after day to solicit proxies for management's state by phone, letter, and personal contact, even pressuring of borrower stockholders who are indebted to the bank, as well as bringing to bear the weight of the bank's power, prestige, and influence.

By the hiring of proxy solicitation firms, law firms, and public relations firms to wage intensive proxy solicitation campaigns at the expense of the bank and therefore, let it be noted, at the expense of minority ownership, and moreover all proxies so gathered to be cast, not for the two director candidate slates but rather for the management slate exclusively.

It is the duty of management to send notices of annual meetings and even with blank proxy forms attached for the shareowner to vote for his choice, but instead he is sent an already filled out proxy form with no blank for voting for other than management's proxy. In fact only management's proxy caster's name is printed as an integral printed part of the management's own proxy form with no blank space left for any other. In the overwhelming majority of cases the stockholder returns management's already filled out proxy, largely because he is not usually conversant with such matters and obediently and unquestioningly signs the proxy from where the "X" appears as directed by the bank president and returns it. Whereupon it is then cast for the reelection exclusively of majority management's directors. Moreover, unless the stockowner should happen to be sufficiently informed regarding the proper procedure and his rights in such matters—a large percentage of otherwise intelligent shareholders are not so informed—or if he lives in a distant city or finds it impossible to attend in person to cast his shares, he then has the choice of the following alternatives; namely, (1) not to vote his shares at all, which would redound to management's advantage, or (2) to go to the time, trouble, and expense to have printed or otherwise prepare another proxy form properly worded lest it be thrown out. Otherwise, he must endeavor to search out and find some other shareholder who must own stock in the same bank and who is going to attend in person, who is not an officer nor employee of said bank, and who will agree to nominate and/or cast the proxy for a minority candidate of his own choosing who is properly qualified to become a director.

These are only a few examples of the advantages accruing to such majority in power and further illustrates how difficult it is for management to be replaced or even strengthened, no matter how justified or desirable it may be in the best interests of the bank.

Thus, management combats any efforts minority stockholders may make to replace any or all of an entrenched inefficient, moribund or incompetent board of directors or those who may be found to have become inactive or who may not have sufficient vested interest of their own to have the bank's welfare sufficiently at heart. Often they have exhausted their credit at other banks and desire to be on the board in order to use the bank as an instrument to further their own selfish personal financial gain, by borrowing further for highly speculative investments and enterprises for which other banks have refused to extend them credit; rather than to use it as an instrumentality or institution to serve

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the public banking convenience and necessity and as a trustee of the public's money and to contribute to the sound, wise, and prudent stewardship as fiduciary of the investment of the bank's stockholders and of depositor's money on deposit.

In many instances these entrenched directors may have only the minimum $1,000 investment in stock required of a director and be solely concerned with the power and prestige of a national bank directorship.

8. Enactment of this proposal or recommendation would discourage investment in national bank stock by eliminating the minority director or directors from a multitude of national bank boards from coast to coast. It would furthermore, deprive the bank of the benefits of a vigilant minority that would act as a most effective check and balance and prevent majority board management, for example, from adopting a supercilious and contemptuous attitude toward conventional tried and proven sound loan policies; policies which are based upon a wealth of cumulative loan experienme gained over the years by the banking business in this country. Thus, eschewing experience and substituting so-called progressive liberalized and unsound loan policies instead.

Lester A. Pratt, an eminent and nationally recognized authority in the examining of State and National banks for 33 years, and author of Bank Frauds, Their Detection and Prevention, among other books, has frequently addressed State banking associations on the subject of bank frauds. During the past 3 or 4 years he has conducted the surveys of all the banks in the States of Iowa and Pennsylvania; the results of both these surveys were distributed to all insured banks by the FDIC.

This eminent authority wrote an article appearing in a banking publication, United States Investor, on April 3, 1954, entitled "Bankers Never Die—They Just Lose Interest," from which I quote in part as follows:

"Recently there has been a suggestion made that there should be a rotation of directors as well as a rotation in the executive management. We rotate maturities in investments—why not in management? It is conceivable that a board, the individual members of which are not changed over a period of years, might avail themselves of their 'oneness' and in the event of things going wrong withhold that fact from the stockholders; whereas a periodic change in the membership of the board would render this form of reticence less probable. * * *

"* * * Unhappily, there have been some instances in the course of the past few years in which directors of banks have been guilty of conduct which would be difficult to denounce in language of sufficient emphasis. * * * A board which never changes except by death or by voluntary retirement becomes self-elective, with a tendency to intellectual stagnation and impairment of business vigor.

"If a director becomes incompetent or ineligible by reason of age or infirmity, or any other cause, it is not only the right but the duty of shareholders to replace him. * * *

"Where the board has become moribund, the result is usually the creation of a one-man bank. In such a situation the principal active officer, either president or cashier, steps into the picture to dominate the situation. In other instances it may be a director who owns a controlling stock interest.

"Now, one-man banks are particularly susceptible to fatal consequences as past experience has demonstrated. By reason of having uncontrolled authority and indadequate supervision by the directors, a dishonest official has uncontrolled disposition of the banks' assets over such long periods of time that the abstractions attain considerable size before they are discovered.

"But it should not be inferred from this that these dominating officials are dishonest as a class. As a rule, they have rendered years of conscientious and faithful service in acquiring their position of control. But experience has shown that the most reliable of men, when exposed to the coincidence of extreme temptation and unopposed opportunity to misapply funds, may go astray, without any intention of ultimately defrauding the bank. The first step may be merely an unwise speculation with bank funds, with the object of ultimate profit to the bank rather than to the individual. Because of the risk element, the transaction is concealed from the directors. Possibly the board is so supine that no active concealment is necessary—until the speculation fails. But now there is a loss to be concealed, until restitution can be made from another 'honest' speculation. Also the bank examiner must be deceived. False entries are made. Our normally honest official has become a criminal. To the moralist there will be some difficulty in determining whether the burden of guilt rests more heavily on the officer or on his careless board of directors.

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"In many instances, the chief executive officer has attempted to inject new blood into the veins of the board members to revive the dying energy with new ideas; such efforts while very laudable, are not usually successful for as the Good Book states 'You cannot fill old bottles with new wine.' As a result, there is stagnation on the part of both the administrative and executive management, which eventually results in a merger, voluntary liquidation, or disaster of the worst consequence from dishonest acts. There are many cases where the directors have left everything in the hands of the chief executive and have awakened one morning to find their bank wrecked. But it does not usually end there. As a result of their negligence they may be charged with losses which may wipe out not only their stockholding but their personal fortunes."

Enactment of the aforementioned recommendation or proposal would remove cumulative voting for directors which is the only method of voting that assures minority stockholder ownership any representation whatsoever on boards of directors, nor anyone representing their ownership to exercise scrutiny and first-hand knowledge of how their money and that of depositors is being used. Cumulative voting is necessary in order to protect economic democracy within the banking business structure of our Nation. Economic democracy no less than political democracy is the sound and wholesome American way, with its checks and balances and giving minority stockholders in American banking a voice and representation in that which is their own, no less than political stockholders must have a voice in the political government which governs them and their property. In the absence of economic democracy, dictatorship is certain to fill the vacuum just as in government where political democracy no longer prevails. This inevitably leads to revolt bringing in its wake turbulent dire consequences as certain as night follows day.

Senator Lehman speaking as a former bank director as well as a legislator, presented a forceful argument against abolishment of and conversely for mandatory cumulative voting when he said, and I quote, "Today bank boards are picked by the bank management, who select those whom the management knows will be in complete accord with, and under the direction of, the management. The management will not put on a bank board anyone whom it fears might differ with the philosophy or policies of the management."

As has been pointed out the proviso clause "unless provided for in the articles of association" is completely hollow and of no real significance, inasmuch as minority ownership could not be represented on the board of directors in the management of their investment without consent of the majority management because it is self-evident that if this inequitable and unjust proposal or recommendation should be enacted into law, then the majority management and majority alone, by reason of the fact that they are majority management, would have the sole power to exercise or not to exercise this option at their own pleasure. (I have pointed out elsewhere herein how this may be done.) Thus, entrenched majority would under this recommendation, if enacted, have the means at their disposal to perpetuate themselves in a monopoly dictatorship control. In control, let it be noted, not only of minority stock investment but of moneys and other assets deposited in national banks by the public.

There is, moreover, a rather widespread misconception that the supervision properly exercised by Federal authorities over national banks through examinations made periodically by the Federal authorities alone is a sufficient safeguard that the bank will be prudently managed and safely and soundly operated. This is not so. Though it is wise and essential, so far as it goes, it does not and in fact cannot operate the bank or take the place of sound and prudent management and, of course, does not undertake to do so, under existing law.

Lester Pratt, the eminent bank auditing authority, in the April 3, 1954, issue of the banking and investment publication entitled "United States Investor," says:

"Government examination of banks has for its principal purpose the appraisal of certain assets and to see whether they are complying with the law under which they operate. Consequently, the major emphasis is placed upon determining the financial condition of banks and not upon prevention of defalcations. This is evidenced by the ability of some embezzlers to cover shortages over fairly long periods, during which time several examinations may have been made, including those by directors. Often examinations by bank examiners cause shortages to be discovered, but discovery seldom occurs in the early stages of embezzlement. Most frequently, discovery by bank examiners results because the shortage has reached such proportions that the embezzler can control it no longer."

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To cite briefly just one other example: National bank examiners evaluate the soundness of a loan risk on the basis of documentary evidence of the borrower's claimed assets submitted and does not under existing law undertake to investigate to ascertain whether or not such assets claimed by the borrower applicant do in fact exist. That is the sole responsibility of bank management to make such an adequate audit. Thus it may be seen that such supervision as that properly exercised by Federal authorities alone is no assurance to a 49 percent minority stockholder ownership that its investment would be adequately safeguarded by a majority management in which this minority had no representation and no voice. Such would be the case if the proposal or recommendation to abolish existing mandatory cumulative voting should be enacted into law.

It has been proposed, Item No. 17.—Shareholders lists quoting recommendation No. (2): "This statute should be amended by qualifying the right of the shareholders to inspect the shareholders list by providing that they may inspect the shareholders list only for a proper purpose not inimical to the best interests of the public for the following reasons:

"1. The foregoing recommendation, if enacted into law, would tend to make it impossible for the owners to consult together regarding the best interests of the bank, its owners' property rights and the best interests of the public served by the bank, even if this occasionally should entail the dismissal or replacement of one or more of the shareholder-owner's employees (i. e., one or more directors), as, if, and when the bank's owners should decide such is in the best interests of the bank and of the public served by the bank."

Such instances, for example, as that of an undesirable person who may have been, or who management wishes to elect to the board through use of this same list of shareholders and yet which it is proposed to deny to the bank's owners (except at pleasure of management), and at the same time to be freely available to elect management-dominated "puppet" directors by use of bank management "bought" proxies; elected as directors, solely because such candidates for directors happen to be either a close personal friend, a business associate or partner, or an employee of management's own private business (the writer has personal knowledge of at least one or more of each of the above-enumerated examples).

Such management-elected candidates for directors sometimes are undesirable for one or more of a number of reasons and often not possessing the desirable and requisite attributes or qualifications for a director and who would not be an asset to the bank if elected or even be detrimental to the bank.

"2. Should access to the list of shareholders be denied to these same shareholder-owners for the purpose of pooling their shares to remove or replace their own employees (who constitute management), in those instances in which these owners deem wise and prudent to do so, in the bank's or in the public's best interests, for any of a number of good and sufficient reasons as any other employer would do? While on the other hand, should these same employees (constituting management) have access to and use of these same shareholder lists to use in the process of soliciting, or to be more accurate "buying", proxies with the bank's and therefore with the shareholder-owners' money. This money expended to, on the bank's time, solicit proxies intensively and to require the bank's other employees to do so at the bank's expense, by phone, by mail, and in person, including pressuring the stockholder-borrowers of the bank's funds, hiring law firms to wage proxy fights with the bank's money and therefore with the stockholders' money; all for the perpetuation of entrenched managements' selfish, personal interest in their own job perpetuation."

Both management and ownership have at stake selfish interests that could conceivably influence their decision regarding what is "for a proper purpose not inimical to the interests of the bank." Management's selfish interest is to perpetuate his job and control of the bank on the one hand, versus ownership's interest in doing what is best for their investment, which is the bank itself.

In many cases management owns only a fraction of 1 percent of the bank's stock ownership, therefore 99 percent plus of ownership's interests are far more likely to coincide with the bank's best interests than that of management, whose selfish interest is primarily in the size of his salary and perpetuating themselves in entrenched power and control.

Management accomplishes this by the use of bank "bought" proxies, used solely to elect and reelect himself and subservient "puppet" directors of his own choosing who will do his will, including frequent and unmerited increases in salary for himself and those under him, in order to keep the undying loyalty, backing, and cooperation of these subordinates, permitting management to force

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even their stock voted for management, keep their mouths shut, and "see nothing, hear nothing, and speak nothing" on pain of not only missing frequently unmerited salary raises but actually losing their jobs.

I wish to take strong exception and to respectfully protest most vigorously to the change that has been recommended in existing banking law as proposed under item No. 21 entitled "Removed director or officer voting stock."

Any director or officer properly removed for wrongdoing should, of course, be properly punished by imprisonment, if justified, for his crime or wrongdoing in accordance with the crime committed, but he should be the one punished as in the case of any other crime, but his innocent wife and/or children should not be punished for a crime that they had no part in committing by taking away their property rights, thus, to an investment in bank stock in which they have usually helped to earn the money with which said stock was purchased.

The reasons given for the recommendation are completely invalid. Furthermore, the mythical example cited by the proponent of the foregoing recommendation of such a hypothetical person owning more than 50 percent of the stock of the bank being able to manage the bank through those he might theoretically be able to elect to the directorate.

Such a mythical and hypothetical instance seems so utterly unrealistic as to raise the question concerning the number of such instances anyone has ever known to occur, if indeed any.

The writer, in addition to his having a number of years' experience as a majority-elected national bank director, has read a large number of books, monographs, and periodicals on banking, but has never heard of a single such instance as the hypothetical one cited.

In any event, furthermore, if no more valid reason for changing existing law in this matter than that put forth above exists, why was such a confiscation of property rights of stockholders as that recommended by this proponent not limited solely to such a shareholder owning more than 50 percent of a bank's outstanding shares of stock ownership, because certainly it is axiomatic that nothing less than a 51-percent vote of total shares can control a bank.

No. The proponent of this recommended change in our banking law has not made a valid case for changing existing law in this respect and such a recommended change, if it should be enacted, would be an unjust and wholly unwarranted confiscation of the already too few vested property rights of the innocent wives and children of such a hypothetical criminal.

To illustrate with an analogous figure of speech, why burn down a barn filled with priceless thoroughbred livestock on the mere hypothesis that a field mouse might conceivably exist somewhere in the cavernous reaches of the barn.

A criminal should pay by imprisonment for any wrongdoing justifying such imprisonment but his innocent wife and children should not be punished for someone else's crime.

Subject: The crying need for adequate compulsory internal audits for insured banks and the need for follow through and enforcement by Federal authorities.

The recent Illinois bank scandals, the New Jersey bank scandal, a number of very recent ones in small Maryland towns and numbers of others coast to coast have pinpointed such a need in order that the shareholding publics' investment and the banking publics' interests may be provided reasonable safeguards that such losses not become more and more widespread.

(1) There should be more stringent requirements in banking law to this end, whereby the Federal supervisory agencies, especially in the case of natioanl banks, have not only the power but the stringent responsibility placed upon them to insure that their examiners' instructions and recommendations are more often complied with instead of simply ignored or accorded a contemptuous and supercilious disregard by management and with impunity.

This is done not only in the matter of classified (that is, unsound or improvident loans) but in other matters pertaining to bank operations as well.

Instead of bank examiners relisting over and over, examination after examination, and year after year, the same old classified or improvident loans and the same old infractions in all too many cases, not corrected nor complied with by management, in addition to new ones.

In short, there should be more stringent requirements in the law for follow through by the Federal examiners to insure that bank management complies and does so with reasonable promptness.

(2) There should be not less than two compulsory internal audits of all FDIC-insured banks in each 12-month period. These internal audits should not be, as

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they now are, in all too many cases, merely routine, cursory, and superficial, much too limited in scope and looked upon my management as a petty annoyance to be performed by managements' hand-picked committee of management-elected and management-dominated directors, only to meet the minimum letter of the law as it presently is.

There should be provisions in the banking law setting forth, not only that there shall be not less than two internal audits per year, but the detailed scope of the audit should be prescribed uniformly, such, for example, as set forth by the National Association of Bank Auditors and Comptrollers as the result of an exhaustive 1955 project of the research committee of this association with headquarters at 38 South Dearborn Street, Chicago.

I have appended a copy of same herewith.

It should be further set forth in banking law that if the foregoing provisions are not complied with by management in such an adequate internal audit, then the law should have provisions for requiring the examiners of the supervisory agency to have such an adequate audit made and bill the bank for same. Only in this way is provided an adequate deterrent to careless, extravagant, or fraudulent tendencies on the part of bank personnel or management.

It is no adequate answer to take the attitude, as so many bank officials do, that losses resulting from such carelessness and laxity, that the bank is insured and that thereby such losses will be recouped by the insurance underwriting agency.

It is axiomatic that the rest of the banking industry must ultimately pay for such carelessness, laxity, and indifference in the form of increased insurance rates.

Those banks and their owners which may be operated consistent with sound banking practices, prudence, and care should not be penalized indirectly, thus, by those which are not so operated.

Government authorities' examination or FDIC-insured banks has for its principal purpose merely the appraisal of certain presumed or ostensible assets found in the banks' files by the governmental supervisory agencies' examiners and to ascertain whether the law, as it exists today, and under which the bank presently operates, is being complied with.

Consequently, the major emphasis is placed upon determining the solvency or financial condition of the banks and not, for example, upon the prevention of defalcations. This is evidenced by the ability of some embezzlers to cover up shortages over fairly long periods during which time several examinations may have been made, by both the governmental authorities and also by the directors. The latter, all too often, is done by a management-handpicked and management-elected committee of director "puppets" who are too often disinterested and dominated by bank management on whom these "puppet" directors are solely dependent for election and reelection year after year with management-"bought" proxies—"bought," let it be noted, at the bank's expense and therefore at the shareholder-owning public's expense.

A so-called audit by such a management-dominated committee is usually not worthy of the designation of an "audit." It is usually cursory, superficial, and far too limited and inadequate in scope and barely such as to meet the minimum requirements of the letter of the inadequate provisions in this respect, of the banking law as it exists on the statute books today.

"Although often examinations by bank examiners cause shortages to be discovered, but discovery seldom occurs in the early stages of embezzlement," says Lester A. Pratee, one of this country's most eminent bank-auditing authorities, who goes on to say, "Most frequently, discovery by bank examiners results only because the shortage has reached such proportions that the embezzler can control it no longer."

Apropos also are the following pertinent comments on the aforementioned inadequate internal audits of insured banks as excerpted from May 2, 1955, issue of American Banker. This publication is in turn quoting an address entitled "Who Audits the Auditor?", delivered by Herbert A. Wood, comptroller of the Mechanics National Bank of Worcester, Mass., at the 1955 eastern regional conference of the National Association of Bank Auditors and Comptrollers held at Scranton, Pa.

This authority had the following to say on this subject, in part:

"One of the most difficult problems facing bank directors' examining committees, particularly if no outside examination is made except those performed by the supervisory authorities, is that the development of the audit program is delegated to the auditing committee with little followup to see that this program is sufficient and that it is properly carried out.

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"How many times have you heard the remark, 'The auditor is only as good as the president of the bank wants him to be' or 'No one knows just what I do.'

"This should not be so. All other departments of the bank are examined and their systems tested to see that their operations are properly carried out.

"How often is a review made with the auditor to determine (1) whether or not he is keeping up his schedules; (2) are his methods along proper audit channels; (3) could the auditor, by having so much control, be the very one to cause embarrassment to the bank?

"In other words, who audits the auditor?

"This responsibility is further delegated to the audit committee, whose duty it is to see that the audit functions are properly carried out."

Appendix

Source: From library of Board of Governors, Federal Reserve Bank, HG 1707 N32. Audit Program for the Smaller Bank. Project of the research committee, the National Association of Bank Auditors and Comptrollers, 38 South Dearborn Street, Chicago 3. Ill., copyright 1950. Ch. III, pp. 53 through 60, of the foregoing opus, is entitled "Examination By Directors."

The annual or semiannual bank examinations made by examining committees, or by certified public accountants at the instance of the board of directors, should cover the following sugestions:

CASH AND CASH ITEMS

The cash should be counted and the total compared with the books of the bank. Cash items should be scrutinized. Any improper items such as unposted checks held for the purpose of not showing overdrafts, and other items that cannot be readily converted into cash, should be reported.

BONDS AND OTHER SECURITIES

The bonds and other securities of the bank should be examined, and in every instance those not on hand should be traced. The market value and the amount at which carried on the books in the aggregate should be shown. Any stocks held by the bank should be listed, with a statement which shows the reason the securities were taken by the bank.

NOTES

The notes should be checked and their total should be compared with the general ledger. It is advisable that there be direct verification of loans mailed to borrowers together with a stamped, self-addressed envelope to be returned to the chairman of the board. The validity, value, and security of each note, and of any collateral thereto, should be determined. Any loss ascertained or probable, in the judgment of the committee, should be noted. The liabilities of each of the larger borrowers, and loans to affiliated interests, should be aggregated and considered.

The report should also show the general character of the loans, whether well distributed as to occupation of borrower and type of security so that any unfavorable conditions in one institution do not distress the bank; the general character of the collaterals; whether corporations, in which officers or directors are interested, borrow to an undue extent; and any large liabilities of the officers or directors. It should be shown whether all the paper claimed by the bank is its own property, including collaterals, is properly endorsed or assigned to it, and all mortgages recorded. Any loans exceeding the legal limit of the capital and surplus of the bank should be reported. (Look out for "colorable" loans.)

The total lines should be checked against the minute book for proper authorization. The signatures of all note makers and endorsers should be scrutinized; any erasures and alterations or any indications of manipulation should be investigated and reported to the entire board. All overdue paper should be listed and instructions given as to definite action to be taken.

CERTIFICATES OF DEPOSIT

The certificates of deposit and the cashier's checks should be verified by totaling those outstanding as shown by the register and by comparing with the general ledgers; also by comparing the canceled certificates and checks with the register and checking them against the stubs. Sequence of numbers of unissued items should be closely scrutinized.

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REPORT OF CONDITIONS (LAST CALL)

The copy of the report of condition made to the supervisory authority at the last call should be compared with the bank's books at that date, particularly with reference to any excessive loans and directors' and officers' liabilities reported.

RECONCILEMENT OF BANK ACCOUNTS

The bank's latest reconcilements of accounts with correspondent banks should be compared with the bank's books, and a transcript of the bank's account from the date of the latest reconcilement to the date of the examination should be sent to the correspondent banks with a request for verification. Balances with nonmember banks in excess of the legal limit should be reported.

INDIVIDUAL LEDGERS

Individual ledger balances should be verified in such manner as the directors may deem advisable, by sending out reconcilements of certain accounts selected by the directors, or in some other suitable way. A trial balance of the ledger should be taken by some member of the committee, or at least by some person other than the clerk engaged on the ledger.

The examining committee should inquire into the arrangement for the working affairs of the bank and ascertain whether any employee who keeps the individual ledger also receives deposits or balances passbooks; and whether the employees are properly bonded, and in whose custody the bonds are lodged; also whether employees are rotated from time to time.

OVERDRAFTS

Overdrafts should be totaled and considered; the report should show any estimated losses.

PROFIT-AND-LOSS ACCOUNTS

The committee should consider the "profit and loss" and "expense" accounts, with a view of determining whether the charges against those accounts are proper; whether the earnings of the bank warrant the expense charges; and whether the bank is making a legitimate profit.

BORROWED MONEY

Any liability of the bank for borrowed money should be shown on the balance sheet, and the proper authority and the necessity for such borrowing ascertained. The total amount of the present liabilities of that nature should be reported to the board; the amount should include money borrowed from other banks on certificates of deposit, if any.

SECURITIES IN SAFEKEEPING

The board of directors should include in their annual examination, the verification of "securities left for safekeeping," by direct correspondence with the customers. Since verification can be made only if there is a proper record, it is essential that adequate records of safekeeping securities be kept.

SAVINGS ACCOUNTS

Verification during a directors' examination of savings account balances, either completely or by random selection of a representative number of accounts, is recommended preferably should be by direct correspondence with the depositors.

DIRECTORS' REPORT (IN GENERAL)

The report of the directors or the examining committee should show that these points have been covered, and should recite any deficiencies discovered. The report should contain a complete statement of the total assets and liabilities of the bank with any additions or deductions that, in the judgment of the directors, should be made as a result of their investigation. A detailed statement of the loans which the directors estimate as worthless, doubtful, or insufficiently secured, should be included as should the reasons therefor, and, as nearly as possible,

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the real value. Carrying values of all assets should be discussed, with resultant recommendations.

A statement of any matters which, in the opinion of the committee, affect in any way the bank's solvency, stability, or prosperity should be made.

A thorough, complete examination at least once a year, by a committee of the directors cannot fail to be of great benefit. The directors owe such examinations to the shareholders who have placed them in positions of trust.

A complete report of each examination should be preserved in the files of the bank and should be made available to the bank examiner.

GENERAL OUTLINE OF REPORT

(Examining Committee, Banking Department)

1. Letter of transmittal to board of directors.
2. Ownership and management schedule by name:
(*a*) Stockholders.
(*b*) Directors.
(*c*) Committees of the board.
(*d*) Officers.
3. Statement of condition (condensed and comparative).
4. Statement of condition (general ledger controls as of date of examination).
5. Comments on resources (in order of general ledger accounts).
6. Schedules:
(*a*) Attorneys accounts.
(*b*) Claim accounts.
(*c*) Direct and indirect liability of officers, directors, employees, and/or members of their families, and/or firms in which any of the foregoing have a vested interest.
(*d*) Past due loans.
(*e*) Overdrafts.
(*f*) Investment securities (par, book, market).
(*g*) Cash due from banks.
(*h*) Cash items.
(*i*) Furniture and fixtures (classification).
(*j*) Suspense account.
(*k*) Other resources.
7. Cash and cash items (schedule by tellers, by kinds of money held).
8. Comments on liabilities (in order of general ledger accounts).
9. Statement of current earnings and expense (comparative).
10. Branch office (schedule of resources and liabilities serviced).
11. Schedules:
(*a*) Investment securities.
(*b*) Public funds.
(*c*) Due to banks.
12. Examination of minute books; stock ledger and certificates.

STATEMENT OF LEWIS B. REYNOLDS, SAN FRANCISCO, CALIF.

I am at the present time a stockholder in several national banks. The shares of each of these banks have a general market, and private investors can and do invest in the shares of each of said banks. I am also the publisher of Walker's Manual of Pacific Coast Securities, which since 1909 has generally been regarded as the leading source of information on publicly financed corporations of the Far West, including banks whose shares are available for purchase and sale by the general public.

The views expressed in this statement are based upon many years experience as a financial publisher, and also as an investor and stockholder in national banks.

1. The undersigned is convinced that the present provisions of law requiring mandatory cumulative voting in the election of directors should be retained.

It is my considered judgment that cumulative voting is the prime reason why, in an era of many proxy fights in other types of corporations, national banks have been singularly free from such public contests. The reason is that, with cumulative voting, shareholders owning or representing substantial amounts of stock have always been able to get serious consideration by management of independent thought, and it has usually been possible for differences of opinion to be amicably

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reconciled or compromised by quiet, nonpublic discussion and negotiation, rather than through submission of disputed issues to a public fight for proxies.

Anyone interested in affairs of investor-owned banks would have to be very naive and uninformed, or willing to get and judge the facts on their merits, to believe that these many cases of differing viewpoints between bank managements and nonmanagement stockholders could ever have been settled without a public contest for proxies had it not been that in each case bank management knew that the investor-stockholders had the power, as a matter of legal right, to name representatives of their own choosing as directors, to express their own point of view directly in board meetings and as part of the bank's permanent records.

Bank managements are human beings, and like other human beings, they are not omniscient, and their judgments are not infallible. It is understandable that bank managers would frequently prefer not to have to answer questions from directors whom they have not selected, particularly when the answers, if truthful, could be embarrassing or reflect upon the judgment or personal interests of management. Nevertheless, the critical eyes, ears, and tongue of a nonmanagement director, from an objective standpoint, are often absolutely essential if both depositors and stockholders are to be protected.

Voltaire is reported to have said, in substance, "I do not agree with a word you say, but I will defend to the last your right to say it." It is just as important that the real owners of our national banks, the investor-stockholders, have the inalienable right, conferred upon them through cumulative voting as a matter of law, to say what they wish about the management of their own property through directors of their own choosing and not be reduced to serfs, to whom the right to speak out effectively can be granted or withdrawn at any time, purely as an act of grace, by bank managements who are actually the employees of the stockholder.

2. It is also the conviction of the undersigned that the present law, requiring that the list of stockholders, with their addresses and number of shares owned, be made available at any reasonable time during banking hours to any stockholder, should also be retained.

If nonmanagement shareholders are to have any effective voice in the management of their own property, it is obvious that they must be able to communicate with other stockholders, either selectively or as a whole, to consult and take action about matters of common interest. This right of inspection of the shareholder list is essential to effective use of the right to cumulative votes in the election of directors.

The phraseology of the recommended denial of this right of inspection, "not inimical to the interests of the bank" is moreover a wide-open invitation to litigation. Who is to decide what is "not inimical"? Bank management should automatically be disqualified, since giving them this power of decision would frequently, in effect, give the potential defendants the right to act, prima facie, as judge and jury, and never give the plaintiffs a chance to get their charges before the court of other stockholders, who at least are entitled to know about them. The Comptroller of the Currency, both as a political appointee in the first instance, and secondly, as an outright advocate of the recommended change, certainly should not have anything to say about it if such wording were adopted. Only a completely unbiased, competent neutral could decide what is or is not inimical, and even his decisions would probably be more productive of litigation than otherwise.

3. Investor-stockholders in our major national banks are, without any question, the most neglected stepchildren of today in the whole family of American investment securities.

The Office of the Comptroller of the Currency is notorious among investors and security dealers generally for its scandalously indifferent attitude toward protection of elementary rights and interest of public investors in national bank shares. The Comptroller has, so far as I know, done nothing whatever to either accord or recommend according to national bank shareholders protective rights similar to those other corporate shareholder enjoy either via the Securities and Exchange Commission, the New York, or other national stock exchanges, or through orders and regulations issued on its own initiative, as have the Interstate Commerce Commission and other Federal and State regulatory authorities.

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Investor-shareholders in national banks have suffered substantial financial loss, approaching in some cases outright victimization, because the law has not spelled out for national-bank shareholders the same rights as now apply in practice to most other types of major publicly owned corporations, and the Comptroller has failed to take action himself. A typical example is the publication, without any corrective action by the Comptroller, of misleading financial statements which fail to disclose the existence or amount of large amounts of hidden proprietary reserves.

It is the conviction of the undersigned that Congress should require that, with respect to stockholder rights and protection, national banks be subject to the jurisdiction of the Securities and Exchange Commission on exactly the same basis as corporations listed on any national securities exchange. As a matter of administration, such jurisdiction might not include banks with a net worth of less than $300,000 or with less than 300 shareholders, but otherwise it should be a requirement of law that:

(*a*) Shareholders be provided with exactly the same type of proxy information as by corporations listed upon an exchange.

(*b*) Be provided, individually by mail, with the complete text of any agreements which shareholders are asked to base a vote upon. The present provisions, that such agreements be open for inspection at the bank's principal office, is utterly archaic and ridiculous in this day and age, when a single national bank has more than 200,000 owners of record, living in every State of the Union.

(*c*) That banks report to their shareholders and the SEC on bases no less searching than corporations listed on national exchanges, and in particular, that detailed reports be published at least annually, with income account, surplus account, balance sheet, and reserve figures all subject to audit, and publicly certified by certified public accountants elected by the shareholders.

(*d*) That banks be required to observe such other rules and regulations as may be required by the SEC in the interest of the shareholders.

4. This writer is amazed to learn, that in its appointment of an advisory group of 25 persons to assist in the revision of the national banking laws, that no specific representation whatever was accorded to either the real owners (the shareholders) of the Nation's major national banks, or to security dealers or others who might be considered representatives of the owners. I assume that this was an oversight, but if so, it should be corrected both promptly and publicly. Study of revisions in the national banking laws could hardly be termed "impartial" or "complete" that did not invite, and in fact aggressively seek out, the views of public investor-shareholders, and other competent witnesses who can inform the committee on this phase of banking.

I would particularly recommend that the Senate Banking and Currency Committee, or a subcommittee, request recommendations from the following, among other:

The Securities and Exchange Commission.
The National Association of Securities Dealers, Inc. (Washington, D. C.).
The Investment Bankers Association of America (Washington, D. C.).
National Security Traders Association.
Security Traders Association of New York, and similar associations in Boston, Chicago, San Francisco, and Los Angeles, where there are active over-the-counter markets in bank stocks.
The National Federation of Financial Analysts Societies.

All of the above are recognized official, quasi-official or industry groups whose opinions should not only be of great value to the committee, but should be actively sought without delay, so that each organization will have adequate time to consult among its membership and prepare well-considered recommendations.

I think it would also be proper, and highly desirable from the standpoint of information that could be developed, to ask each of the Nation's 10 or 12 largest national banks to send their president or a high-ranking deputy to testify.

All of the foregoing should, of course, be invited to testify and make recommendations with respect to cumulative voting and shareholder inspection of shareholder lists, as well as on the suggestions enumerated above with respect to bringing national bank shareholder rights up to at least the equal of those accorded shareholders in corporations listed on national stock exchanges.

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PEAT, MARWICK, MITCHELL & CO.,
CERTIFIED PUBLIC ACCOUNTANTS,
New York, N. Y., November 2, 1956.

Hon. A. WILLIS ROBERTSON,
Committee on Banking and Currency,
United States Senate, Washington, D. C.

DEAR SENATOR ROBERTSON: In connection with the current study being made by your subcommittee of the Federal statutes governing financial institutions and credit, we respectfully submit for the consideration of the members of your committee, as well as the members of the advisory committee, certain suggestions for revision of the statutes as they relate to national banks. The suggestions submitted deal primarily with examination requirements imposed on the Comptroller of the Currency by the current statutes, together with certain procedures which we feel should be adopted for the most efficient and economical operations of the examination force of the Comptroller of the Currency.

Under existing law, the Comptroller of the Currency, through the medium of the national bank examiners, must examine every national bank twice in each calendar year, but may waive, in the exercise of his discretion, one such examination in any 2-year period. The existing law also requires that, in the case of national banks exercising trust powers, a committee of the board of directors must make, or cause to have made by auditors responsible only to the board of directors, annual audits of the trust department. Although the law does not specifically require that an examination be made of the banking department by a committee of the board of directors, such examinations are provided for in the general form of bylaws suggested by the Comptroller of the Currency for use by national banks; such bylaws provide for semiannual examinations by a committee of the board of directors with the provisio that, in lieu thereof, the committee may engage a qualified firm of certified public accountants to make an annual audit.

The present philosophy of the Comptroller of the Currency is that field examinations are a necessary part of the supervisory function. We believe that the supervisory objectives could be achieved without the agency itself making the examinations. We know that the respective examining staffs have been faced with a continuing critical problem in recruiting high-caliber examiners. It appears that this condition will continue for some time. For the benefit of the general public, the banking industry and the regulatory authorities, in our opinion the activities of the examining staff of the Comptroller of the Currency should be limited to (*a*) a critical review of all reports submitted by the banks to the Comptroller of the Currency, and (*b*) field examinations of those banks where the reports submitted disclose serious deficiencies.

The primary concern of the supervisory authorities is the determination of solvency of the bank and compliance with the applicable laws under which it operates. The supervisory authorities have always stated that they do not make audits as such, but yet in some cases they have discovered defalcations sometimes as a result of doing more than is required to meet the objectives of solvency and statute compliance. As we see it, this puts the supervisory authorities in somewhat of an awkward position. A practical solution of the examination problem would be to set up a program which would consist of the following:

1. Inclusion of specific provisions in the statutes for a directors' examination to be conducted annually by each bank.

2. The establishment of a minimum scope of such examination which would be set forth in the statute.

3. Permitting and encouraging the bank to employ independent certified public accountants to make such annual directors' examination.

4. Developing a tailor-made questionnaire to meet the needs of the supervisory authorities in the areas of solvency and statute compliance.

5. Waiver of supervisory examination in the case of those banks which have the directors' examination performed by the use of outside assistance, namely, qualified independent certified public accountants, and which examination has met the minimum scope as evidenced by the reports thereon required to be rendered to the supervisory authorities, together with the completed tailor-made questionnaire.

A program such as the one described would undoubtedly eliminate the necessity for field examinations of many of the banks, particularly those which are well run, as would be evidenced by the reports on examination and the questionnaires submitted to the supervisory authorities. There is no suggestion here that the examination privilege be taken away from the supervisory agencies.

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Obviously, they must be free at any time to examine any bank over which they have jurisdiction. But there is a big difference between the existing mandatory examination requirement and the suggested discretionary requirement.

The prescribing of a minimum set of examination requirements is essential to the success of a program of the type described; it would be the measuring stick by which the supervisory authorities could assure themselves that a proper examination had been made.

The questionnaire procedure and the program outlined are similar to that presently followed by the New York Stock Exchange and other stock exchanges with satisfactory results for in excess of the past 20 years. For your information, a sample of the New York Stock Exchange questionnaire is attached. In developing a questionnaire of this type for the use of bank supervisory agencies, questions directed toward solvency, adequacy of loss reserves, statute compliance, adequacy of the system of internal check and control, and adequacy of the internal auditing program would be included.

For your convenience in discussing this suggestion with the other members of your committee. should you so desire, we enclose 35 extra copies of this letter and the enclosure.

We shall be pleased to discuss the contents of this letter with the members of your committee or the advisory committee.

Very truly yours,

STANLEY E. SHIRK,
Partner, Bank Department.

NEW YORK STOCK EXCHANGE

DEPARTMENT OF MEMBER FIRMS

DIVISION OF CONDUCT AND FINANCE

11 Wall Street, New York

GENTLEMEN: The Department of Member Firms has received notification that the independent public accountant selected by you has commenced an audit of your affairs as of . Therefore, in accordance with Rule 531 of the Board of Governors of the New York Stock Exchange, we are sending you herewith a financial questionnaire to be answered as of that date.

Enclosed with this questionnaire are instructions with respect to the preparation and submission of the answers thereto, regulations to be followed in conducting the audit, copies of the relevant Capital Requirements Rule and of pertinent paragraphs of Rule 550 (Margins) of the Board of Governors, and an attestation form.

Not later than , *your independent public accountant is to forward in a sealed envelope to the New York Stock Exchange, Department of Member Firms, Chief Examiner*, your answer to this questionnaire, accompanied by the attestation form signed by at least two members or allied members of your firm and by the independent public accountant.

Very truly yours,

——— ———,
Director.

NEW YORK STOCK EXCHANGE[1]

FINANCIAL QUESTIONNAIRE

(General Instructions, Part I, and Part II are identical in content with Form X–17A–5 of the Securities and Exchange Commission)

Answer To Be Prepared by Independent Public Accountant Making the Coincident Audit

GENERAL INSTRUCTIONS

Information Required of Certain Brokers and Dealers

Important

A. A Broker or Dealer who does not carry margin accounts for customers or does not extend credit on partial payment or instalment accounts in se-

[1] See Part III for Special Instructions of the New York Stock Exchange.

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curities need not supply valuations of securities in response to Questions 1 to 7 inclusive.

B. A Broker or Dealer who carries customers' accounts on margin or extends credit on partial payment or instalment accounts in securities must supply valuations of securities where called for.

C. The information furnished in response to questions contained herein should result in a statement of financial condition. Use a separate column for: ledger debit balances; ledger credit balances; long, security valuations; short security valuations; long spot commodity valuations; net losses in future commodity contracts; net gains in future commodity contracts. All columns must be totaled. The totals of debits must equal the totals of credits. The total of long securities must equal the total of short securities, (except where instruction A, above, applies). The total losses and the total gains in future commodity contracts must be in agreement after consideration of "commodities difference accounts."

D. The response to Question 13 should not be included in the totals.

1. Place name of respondent on each sheet of the answer and schedules submitted. If no response is made to a question or subdivision thereof it will be construed that respondent has nothing to report.

2. Security valuations, losses and gains in future commodity contracts and spot commodity valuations must be based upon current market prices. Fractions and accrued interest may be disregarded.

3. Material facts in regard to substantial amounts of securities which are not readily marketable, should be stated in the answer or in a separate schedule.

4. For the purpose of this questionnaire the term "customer" shall not include general partners, officers or directors.

5. The valuations of customers' securities in segregation (not required as margin) or safekeeping need not be included in the answers.

6. Each joint account carried by respondent in which respondent has an interest must be so stated, separately, as a customer's account in the proper classification in answer to Questions 6 and 7, giving the status of the respondent's interest therein. Any funds provided by the respondent as margin in these accounts must be clearly indicated in the answer to Question 12.

7. All accounts (other than regulated commodity accounts) of any one customer may be combined.

8. Customers' accounts related by bona fide written guarantees may be combined.

9. Foreign currency may be expressed in terms of United States dollars at the current rate of exchange and where carried in conjunction with the United States dollar balances for the same customer may be consolidated with such United States dollar balances and the gross or net position reported in its proper classification, provided the foreign currency is not subject to any restrictions as to conversion. If the foreign currency position so treated is substantial, some indication of its size should be given.

Part I. Financial Questionnaire

Question 1—Bank balances and other deposits.

State separately total of each kind of deposit with adequate description. These will include cash on hand; cash in banks representing general funds subject to immediate withdrawal; cash in banks subject to withdrawal restrictions; funds segregated pursuant to regulations of any agency of the Federal Government, any State, any National Securities Exchange or National Securities Association; contributions to clearing organizations incident to membership; deposits with clearing organizations in connection with commitments; guaranty and margin deposits; good faith deposits; drafts with securities attached deposited for collection.

Question 2—Money borrowed, and accounts carried for respondent by other banking or brokerage houses, secured by or containing customers' collateral.

State separately totals of net ledger debit balances; net ledger credit balances; long security valuations; short security valuations; spot (cash) commodity valuations; and net losses and net gains in future commodity contracts in the following accounts:

(a) Money borrowed:

(1) From banks, trust companies and other financial institutions

(2) From others.

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(b) Accounts carried by other banking or brokerage houses—(omnibus accounts):
- (1) Securities Accounts
  - A. Accounts with net debit balances
  - B. Accounts with net credit balances.
- (2) Commodities Accounts
  - A. Regulated commodities accounts
    - (i) Accounts liquidating to an equity
    - (ii) Accounts liquidating to a deficit.
  - B. Nonregulated commodities accounts
    - (i) Accounts liquidating to an equity
    - (ii) Accounts liquidating to a deficit.

NOTE: Money borrowings and accounts collateralized entirely by securities exempted from registration under the Security Exchange Act of 1934, otherwise than by action of the Securities and Exchange Commission, must be stated separately.

Question 3—Money borrowed, and accounts carried for respondent by other banking and brokerage houses, unsecured, or secured entirely by collateral owned by respondent and its partners or officers and directors.

State separately totals of net ledger debit balances; net ledger credit balances; long security valuations; short security valuations; spot (cash) commodity valuations; and net losses and net gains in future commodity contracts in the following accounts:

(a) Money borrowed:
- (1) From banks, trust companies and other financial institutions
- (2) From officers and directors
- (3) From others.

(b) Accounts carried by other banking and brokerage houses—(omnibus accounts):
- (1) Securities Accounts
  - A. Accounts with net debit balances
  - B. Accounts with net credit balances.
- (2) Commodities Accounts
  - A. Regulated commodities accounts
    - (i) Accounts liquidating to an equity
    - (ii) Accounts liquidating to a deficit.
  - B. Nonregulated commodities accounts
    - (i) Accounts liquidating to an equity
    - (ii) Accounts liquidating to a deficit.

NOTE: Unsecured borrowings, borrowings not adequately collateralized and borrowings collateralized by securities owned by officers and directors must be stated separately.

Question 4—Other accounts and open items with brokers and dealers.

State separately totals of ledger debit balances; ledger credit balances; long security valuation; and short security valuations in the following accounts:

(a) Securities borrowed—(i. e., amount to be received from others upon return to them of securities borrowed by you.)

(b) Securities failed to deliver—(i. e., amount to be received from brokers and dealers for securities sold by you to them but not delivered by you.)

(c) Securities loaned—(i. e., amount to be paid to others by you upon return to you of securities loaned to them.)
- (1) Customers' securities
- (2) Officers' and directors' securities
- (3) Respondent's or general partners' securities.

(d) Securities failed to receive—(i. e., amount to be paid to brokers and dealers for securities purchased by you but not received from them.)
- (1) On account of customers' transactions
- (2) On account of officers' and directors' transactions
- (3) On account of respondent's or general partners' transactions.

NOTE TO QUESTIONS 4 (c) AND 4 (d): Where it is impractical or unduly expensive to allocate all securities loaned and all securities failed to receive to each category in (c) and (d) proper allocation shall be made to the extent feasible and all other securities shall be classified as customers' securities.

Question 5—Valuations of securities and spot (cash) commodities in box, transfer and transit.

State separately total valuation of:

(a) Negotiable securities in box and in transfer

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(b) Negotiable securities in transit between offices of respondent

(c) Spot (cash) commodities represented by warehouse receipts or bills of lading in box or in transit between offices of respondent.

Question 6—Customers' security accounts.

State separately totals of ledger debit balances; ledger credit balances; long security valuations; and short security valuations in customers' accounts, classified as follows:

(a) Cash accounts—(i. e., Accounts containing transactions which are expected to be cleared up within the time prescribed by Regulation T of the Board of Governors of the Federal Reserve System.)

(b) Secured accounts

(c) Partly secured accounts

(d) Unsecured accounts

(e) Accounts with credit balances having open contractual commitments

(f) Accounts with free credit balances.

NOTE: State only as a footnote the total of:

1. Deficits in accounts of each customer reported in the answers to (b) and (c) after application of net losses in open contractual commitments in securities carried for each such customer; and

2. Net losses in open contractual commitments in securities carried for each customer whose account is reported in the answers to (c) and (d).

In computing net losses, gains at market and profits on the sales of contractual commitments may be applied against losses at market and losses on the sale of contractual commitments only in the same security in each customer's account.

The term "open contractual commitments" includes when issued contracts, delayed delivery items and puts and calls sold and endorsed by the firm but does not include uncleared regular way trades.

Capital Requirements for Member Firms and Individual Members

RULE 415. No member or member firm doing any business with others than members, member firms or member corporations or doing a general business with the public, except a member or member firm subject to supervision by State or Federal banking authorities, shall permit, in the ordinary course of business as a broker, his or its aggregate indebtedness to all other persons to exceed 2000 per centum of his or its Net Capital, which Net Capital shall be not less than $50,000 in the case of a member firm carrying any accounts for customers and shall be not less than $25,000 in the case of any other member or member firm subject to this rule, unless a specific temporary exception is made by the Exchange in the case of a particular member or member firm due to unusual circumstances.

The Exchange may at any time or from time to time in the case of a particular member or member firm prescribe a requirement greater than the foregoing.

Each member and member firm shall promptly notify the Exchange if the Net Capital of the member or member firm does not equal or exceed the minimum required by this rule.

For the purpose of this rule, the aggregate indebtedness shall be the total of the following items:

(a) Money borrowed other than borrowings adequately collateralized by securities or "spot" commodities owned by the member, member firm or general partner thereof;

(b) Money borrowed in omnibus accounts with correspondents other than borrowings adequately collateralized by securities or "spot" commodities owned by the member, member firm or general partner thereof;

(c) Money payable against securities in "stock loaned" account other than securities owned by the member, member firm or general partner thereof;

(d) Money payable against securities "failed to receive" other than for the account of the member, member firm or general partner thereof;

(e) Customers' free credit balances;

(f) Credit balances in customers' accounts having any "short" securities position;

(g) Credit balances in customers' accounts having open contractual commitments in securities;

(h) Equities in customers' commodity accounts in excess of any funds segregated under the Commodity Exchange Act;

(i) Market value of securities borrowed (other than for delivery against customers' sales) for which no equivalent value is paid or credited; and

(j) All other money liabilities.

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Provided, however, that there may be excluded from aggregate indebtedness the following:

1—Any liabilities subordinated to claims of general creditors pursuant to a separate agreement filed with, and satisfactory to, the Exchange;

2—Money borrowings adequately collateralized by securities exempted from registration under the Securities Exchange Act of 1934 otherwise than by action of the Securities and Exchange Commission;

3—Liabilities on open contractual items;

4—Rentals not due;

5—"Fixed" liabilities secured by any asset which is not included in the computation of Net Capital under this rule; and

6—Any liability specifically excepted from aggregate indebtedness by clauses (a) to (i) inclusive.

For the purpose of this Rule, the Net Capital shall be the current or liquid net worth of the member or member firm, plus the equity in the individual accounts carried by the firm for those general partners who have agreed (in form approved by the Exchange) in the partnership articles or some supplemental agreement that such equity shall be included as partnership property in computing the net capital of the firm, any cash, securities or equities in subordinated accounts covered by an agreement (filed with and in form approved by the Exchange) subordinating the claims of the owner of the account to the claims of all other creditors of the firm and any cash and securities loaned to the firm on a subordinated basis under an agreement (filed with and in form approved by the Exchange) subordinating the claim of the lender to the claims of all other creditors of the firm (with security values adjusted as indicated below) i. e., the difference between the below listed "credit" and "debit" items. (See Footnote (c).)

CREDIT ITEMS

Balances in capital accounts of general and special partners.

Credit balances in firm's and general partners' accounts and in customers' accounts in deficit. (See Footnotes (b) and (d).)

70% of the market value of securities and "spot" commodities long in firm's and general partners' accounts and in customers' accounts in deficit (90% of the market value of "spot" commodities if they are hedged). (See Footnotes (a), (b) and (d).)

Net profits in future commodity contracts, realizable in cash, carried for the firm and its general partners, and for customers' accounts in deficit. (See Footnotes (b) and (d).)

Credit balances in any other accounts rightly to be comprehended in the computation of the net worth of the firm and 70% of the market value of any securities "long" and any net profits, realizable in cash, in future commodity contracts carried for such accounts. (See Footnotes (a) and (d).)

DEBIT ITEMS

Debit balances in firm's and general partners' accounts and in customers' unsecured accounts and accounts in deficit. (See Footnotes (b) and (d).)

Market value of securities "short" in firm's and in general partners' accounts, and in customers' accounts in deficit. (See Footnotes (b) and (d).)

The amount determined on the excess of the market value of short positions in securities over the market value of long positions in firm's and partners' accounts and subordinated accounts which are included as partnership property. The excess of the market value of short positions shall be determined separately for each percentage group set forth in this rule and in Footnote (a) thereof, except that bonds and stocks shall be considered separately. The amount of this debit item shall be 30% of the excess market value of short positions or the lesser percentage indicated in Footnote (a) i. e., the difference between 100% and the percentage which may be included in the case of long securities. (See Footnote (c).)

Net losses in future commodity contracts carried for the firm and its general partners and for customers' accounts in deficit. (See Footnotes (b) and (d).)

Debit balances in accounts for memberships, furniture and fixtures, and other fixed assets.

See footnotes on pages 142–143.

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Debit balances in any other accounts rightly to be comprehended in the computation of the net worth of the firm and the market value of any securities "short" and any net losses in future commodity contracts carried for such accounts. (See Footnote (d).)

30% of the market value of all "long" and all "short" future commodity contracts (other than those contracts representing spreads or straddles in the same commodity and those contracts offsetting or hedging any "spot" commodity positions) carried for the firm and its general partners. (See Footnote (d).)

Total of credit lines granted on open commodity contracts in *bona fide* "trade" accounts with net "long" positions or in "trade" accounts with net "short" positions, whichever is greater, plus any credit lines granted on open commodity contracts in "trade" accounts with no net "long" or net "short" position. (In computing the credit line granted in the case of each account, deduct the amount of the equity or the amount of the deficit therein, provided such amount is not in excess of the credit line granted, and the deficit, if any, is comprehended in other "Debit Items" and "Credit Items.") (See Footnotes (b) and (e).)

½ of 1% of the market values of the total "long" or total "short" future contracts in each commodity, whichever is greater, carried for all customers. Contracts in each customer's account representing purchases and sales of a like

FOOTNOTES

(a) In the case of securities which have no ready market, no value may be included. In the case of direct obligations of:

(i) the United States and obligations guaranteed as to principal or interest by it or any agency thereof;

(ii) a State, territory or possession of the United States or any political subdivision thereof and obligations guaranteed as to principal or interest by such State, territory or political sub-division thereof which obligations have less than five years to maturity; and

(iii) any authority, commission or agency of a State, territory or possession of the United States or any political sub-division thereof which are payable as to principal and interest solely from specified revenues and which have less than three years to maturity:

the entire market value thereof may be included, provided, however, that the Exchange may require the deduction therefrom of such percentages of market value as it may deem necessary or appropriate.

In the case of all other obligations of a State, territory or possession of the United States or any political sub-division thereof, and obligations of any authority, commission or agency thereof which are covered by ratings by any of the nationally known statistical services, the following percentages of market value may be included: first and second ratings 97½%, third rating 95%, other ratings or not rated 90%.

In the case of obligations or preferred stock which the issuer has officially declared will be redeemed within ninety days, the full market value or the cash redemption value, whichever is lower, may be included.

In the case of preferred stocks on the "exempt" list shown in the Directory and Guide and senior non-convertible preferred stocks of issuers whose interest bearing obligations are covered by the first three ratings by any of the nationally known statistical services, 80% of the market value may be included.

In the case of interest bearing obligations which do not have a conversion or exchange feature, covered by the first four ratings by any of the nationally known statistical services, the following percentage of market value may be included: First rating—95%; Second and third ratings—90%; Fourth rating—85%.

In the case of interest bearing obligations having five years or less to maturity and which do not have a conversion or exchange feature, covered by the first three ratings by any of the nationally known statistical services, the following percentages of market value may be included: Maturity one year or less—99%, two years—98%, three years—97%, four years—96% and five years—95%.

Interest bearing obligations which have a conversion or exchange feature and which are covered by the first four ratings by any of the nationally known statistical services, may be included at the lower of 100% of the principal amount or the applicable percentage of the market value designated for bonds which do not have a conversion or exchange feature.

In the case of securities which are exchangeable or convertible, a security sold may be considered as a sale of a security held, after adjustment of the cost or proceeds of such securities for any money to be paid or received in connection with such exchange or conversion provided the security held is, without restriction other than the payment of money, exchangeable or convertible into the security sold within a period not exceeding thirty days. With respect to a case involving a longer period of time, the Department of Member Firms will consider a written application for permission to include a percentage of the proceeds of sale (in lieu of 70% or some other percentage of the market value of the security held).

In the case of securities coming within the scope of the following clauses the Department of Member Firms will consider a written application for permission to treat such securities on a better basis than the percentage of the market value heretofore provided:

(i) interest bearing obligations and serial equipment trust certificates which are to be the subject of a primary distribution but for which a published rating is not yet available;

(ii) non-exempt interest bearing obligations having two years or less to run to maturity;

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amount of the same commodity in the same market may be eliminated. (See Footnote (d).)

Cash required to provide proper margin in customers' undermargined accounts in accordance with Rule 530. (See Footnotes (b), (d), and (f).)

Cash required to provide margin equal to:

(1) The pertinent commodity exchange maintenance margin requirements on all future commodity contracts in each customer's account. (See Footnotes (b), (d) and (f).)

(2) 20% of the market value in each customer's account in equity containing "spot" commodity positions not hedged by future contracts in the same commodity; and (See Footnotes (b) and (d).)

(3) 10% of the market value in each customer's combined account in equity when such account contains "spot" commodity positions hedged by future contracts in the same commodity. (See Footnotes (b) and (d).)

Capital Requirements for Member Corporations

RULE 416. The initial Net Capital of each member corporation shall be at least 120% of the Net Capital required to be maintained by this rule.

No member corporation doing any business with others than members, member firms or member corporations, or doing a general business with the public, except a member corporation subject to supervision by State or Federal banking authorities, shall permit, in the ordinary course of business as a broker, its aggregate indebtedness to all other persons to exceed 2000 per centum of its Net Capital, which Net Capital shall be not less than $50,000 in the case of a member corporation carrying any accounts for customers and shall be not less than $25,000 in the case of any other member corporation subject to this rule, unless a specific temporary exception is made by the Exchange in the case of a particular member corporation due to unusual circumstances.

The Exchange may at any time or from time to time in the case of a particular member corporation prescribe a requirement greater than the foregoing.

Each member corporation shall promptly notify the Exchange if the Net Capital of the member corporation does not equal or exceed the minimum required by this rule.

FOOTNOTES—Continued

(iii) obligations of a State, territory or possession of the United States or any political sub-division thereof or any authority, commission or agency thereof which are not rated by any of the nationally known statistical services.

(b) Exclusive of *bona fide* cash transactions in issued securities and after application of current outstanding calls for margin, marks or other deposits.

(c) The above debit and credit items should be adjusted for open contractual commitments which will include delayed delivery, underwriting and "when issued" contracts, endorsements of puts and calls, and commitments in foreign currencies and in spot (cash) commodity contracts but will not include open commodity future contracts and uncleared regular way purchases and sales of securities, by applying the amounts due thereon and any valuation of securities involved as though such amounts and valuations were actual, except that this treatment of any individual commitment shall not operate to increase net capital. A series of contracts of purchase, or a series of contracts of sale, of a stated amount of the same security conditioned, if at all, only upon issuance may be treated as an individual commitment.

(d) The above debit and credit items should be inclusive of (1) the securities and balances of partners, provided such securities and balances are in accounts, the securities and equities in which under provisions (in form approved by the Exchange) in the partnership articles or supplemental agreement are to be included as partnership property in computing the net capital of the firm; (2) the securities and balances in partners' accounts which are in deficit; (3) any cash, securities, or equities in subordinated accounts covered by an agreement (filed with and in form approved by the Exchange) subordinating the claims of the owner of the account to the claims of all other creditors of the firm; and (4) any cash and securities loaned to the firm on a subordinated basis under an agreement (filed with and in form approved by the Exchange) subordinating the claim of the lender to the claims of all other creditors in the firm.

All other accounts of a general partner of the firm shall be considered as a customer's account.

(e) For the purpose of this rule, a *bona fide* "trade" account is defined as (1) the account of a customer who is engaged in raising, merchandising, or processing the commodity, its product or by-product; or (2) the omnibus account of a non-member broker-dealer which contains only positions of "trade" customers as defined in (1) hereof, provided the broker-dealer files with the member firm a written statement to that effect; or (3) the account of a member firm or member corporation subject to the capital requirements of the Exchange.

(f) The amount of cash required should be exclusive of liquidating deficits in the accounts.

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For the purpose of this rule, the aggregate indebtedness shall be the total of the following items:

(a) Money borrowed other than borrowings adequately collateralized by securities or "spot" commodities owned by the member corporation;

(b) Money borrowed in omnibus accounts with correspondents other than borrowing accounts adequately collateralized by securities or "spot" commodities owned by the member corporation;

(c) Money payable against securities in "stock loaned" account other than securities owned by the member corporation;

(d) Money payable against securities "failed to receive" other than for the account of the member corporation;

(e) Customers' free credit balances;

(f) Credit balances in customers' accounts having any "short" securities position;

(g) Credit balances in customers' accounts having open contractual commitments in securities;

(h) Equities in customers' commodity accounts in excess of any funds segregated under the Commodity Exchange Act;

(i) Market value of securities borrowed (other than for delivery against customers' sales) for which no equivalent value is paid or credited;

(j) Amounts appropriated for distribution from surplus and undivided profits; and

(k) All other money liabilities.

Provided, however, that there may be excluded from aggregate indebtedness the following:

1—Any liabilities subordinated to claims of general creditors pursuant to a separate agreement filed with, and satisfactory to, the Exchange;

2—Money borrowings adequately collateralized by securities exempted from registration under the Securities Exchange Act of 1934 otherwise than by action of the Securities and Exchange Commission;

3—Liabilities on open contractual items;

4—Rentals not due;

5—"Fixed" liabilities secured by any asset which is not included in the computation of Net Capital under this rule; and

6—Any liability specifically excepted from aggregate indebtedness by clauses (a) to (i) inclusive.

For the purpose of this Rule, the Net Capital shall be the current or liquid net worth of the member corporation plus any cash, securities or equities in subordinated accounts covered by an agreement (filed with and in form approved by the Exchange) subordinating the claims of the owner of the account to the claims of all other creditors of the member corporation and any cash and securities loaned to the member corporation on a subordinated basis under an agreement (filed with and in form approved by the Exchange) subordinating the claim of the lender to the claims of all other creditors of the member corporation (with security values adjusted as indicated below) i. e., the difference between the below listed "credit" and "debit" items. (See Footnote (c).)

CREDIT ITEMS

Net credit balance in accounts for capital stock, surplus and undivided profits (after provision for current dividends declared and unpaid).

Credit balances in investment and trading accounts of the member corporation and in customers' accounts in deficit. (See Footnotes (b) and (d).)

70% of the market value of securities and "spot" commodities long in investment and trading accounts of the member corporation and in customers' accounts in deficit (90% of the market value of "spot" commodities if they are hedged). (See Footnotes (a), (b) and (d).)

Net profits in future commodity contracts, realizable in cash, carried for the member corporation and for customers' accounts in deficit. (See Footnotes (b) and (d).)

Credit balances in any other accounts rightly to be comprehended in the computation of the net worth of the member corporation and 70% of the market value of any securities long and any net profits, realizable in cash, in future commodity contracts carried for such accounts. (See Footnotes (a) and (d).)

See footnotes on pages 145–146.

DEBIT ITEMS

Debit balances in investment and trading accounts of the member corporation and in customers' unsecured accounts and accounts in deficit. (See Footnotes (b) and (d).)

Market value of securities short in investment and trading accounts of the member corporation and in customers' accounts in deficit. (See Footnotes (b) and (d).)

The amount determined on the excess of the market value of short positions in securities over the market value of long positions in investment and trading accounts of the member corporation and subordinated accounts which are included as property of the corporation. The excess of the market value of short positions shall be determined separately for each percentage group set forth in this rule and in Footnote (a) thereof, except that bonds and stocks shall be considered separately. The amount of this debit item shall be 30% of the excess market value of short positions or the lesser percentage indicated in Footnote (a) i. e., the difference between 100% and the percentage which may be included in the case of long securities. (See Footnote (c).)

Net losses in future commodity contracts carried for the member corporation and for customers' accounts in deficit. (See Footnotes (b) and (d).)

Debit balances in accounts for memberships, furniture and fixtures, and other fixed assets.

Debit balances in any other accounts rightly to be comprehended in the computation of the net worth of the member corporation and the market value of any securities short and any net losses in future commodity contracts carried for such accounts. (See Footnote (d).)

30% of the market value of all "long" and all "short" future commodity contracts (other than those contracts representing spreads or straddles in the same commodity and those contracts offsetting or hedging any spot commodity positions) carried for the member corporation. (See Footnote (d).)

Total of credit lines granted on open commodity contracts in *bona fide* "trade" accounts with net "long" positions or in "trade" accounts with net "short" positions, whichever is greater, plus any credit lines granted on open commodity contracts in "trade" accounts with no net "long" or net "short" position. (In computing the credit line granted in the case of each account, deduct the amount of the equity or the amount of the deficit therein, provided such amount is not in excess of the credit line granted, and the deficit, if any, is comprehended in other "Debit Items" and "Credit Items." (See Footnotes (b) and (e).)

½ of 1% of the market values of the total "long" or total "short" future contracts in each commodity, whichever is greater, carried for all customers. Con-

FOOTNOTES

(a) In the case of securities which have no ready market, no value may be included.

In the case of direct obligations of:

(i) the United States and obligations guaranteed as to principal or interest by it or any agency thereof;

(ii) a State, territory or possession of the United States or any political sub-division thereof and obligations guaranteed as to principal or interest by such State, territory or political sub-division thereof which obligations have less than five years to maturity; and

(iii) any authority, commission or agency of a State, territory or possession of the United States or any political sub-division thereof which are payable as to principal and interest solely from specified revenues and which have less than three years to maturity;

the entire market value thereof may be included, provided, however, that the Exchange may require the deduction therefrom of such percentages of market value as it may deem necessary or appropriate.

In the case of all other obligations of a State, territory or possession of the United States or any political sub-division thereof, and obligations of any authority, commission or agency thereof which are covered by ratings by any of the nationally known statistical services, the following percentages of market value may be included: first and second ratings 97½%, third rating 95%, other ratings or not rated 90%.

In the case of obligations or preferred stock which the issuer has officially declared will be redeemed within ninety days, the full market value or the cash redemption value, whichever is lower, may be included.

In the case of preferred stocks on the "exempt" list shown in the Directory and Guide and senior non-convertible preferred stocks of issuers whose interest bearing obligations are covered by the first three ratings by any of the nationally known statistical services, 80% of the market value may be included.

In the case of interest bearing obligations which do not have a conversion or exchange feature, covered by tthe first four ratings by any of the nationally known statistical services, the following percentage of market value may be included: First rating—95%; Second and Third ratings—90%: Fourth rating—85%.

In the case of interest bearing obligations having five years or less to maturity and which do not have a conversion or exchange feature, covered by the first three ratings by

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tracts in each customer's account representing purchases and sales of a like amount of the same commodity in the same market may be eliminated. (See Footnote (d).)

Cash required to provide proper margin in customers' undermargined accounts in accordance with Rule 550. (See Footnotes (b) and (f).)

Cash required to provide margin equal to:

(1) The pertinent commodity exchange maintenance margin requirements on all future commodity contracts in each customer's account. (See Footnotes (b), (d) and (f).)

(2) 20% of the market value in each customer's account in equity containing "spot" commodity positions not hedged by future contracts in the same commodity; and (See Footnote (b).)

(3) 10% of the market value in each customer's combined account in equity when such account contains "spot" commodity positions hedged by future contracts in the same commodity. (See Footnote (b).)

PART II. SUPPLEMENTARY INFORMATION

Submit the following information:

(a) Separate schedules giving full description including quantity, price, and valuation of each security and commodity position supporting each total valuation reported in answer to the following:

FOOTNOTES—Continued

any of the nationally known statistical services, the following percentages of market value may be included: Maturity one year or less—99%, two years—98%, three years—97%, four years—96% and five years—95%.

Interest bearing obligations which have a conversion or exchange feature and which are covered by the first four ratings by any of the nationally known statistical services, may be included at the lower of 100% of the principal amount of the applicable percentage of the market value designated for bonds which do not have a conversion or exchange feature.

In the case of securities which are exchangeable or convertible, a security sold may be considered as a sale of a security held, after adjustment of the cost or proceeds of such version provided the security held is, without restriction other than the payment of money, securities for any money to be paid or received in connection with such exchange or conversion provided the security held is, without restriction other than the payment of money, exchangeable or convertible into the security sold within a period not exceeding thirty days. With respect to a case involving a longer period of time, the Department of Member Firms will consider a written application for permission to include a percentage of the proceeds of sale (in lieu of 70% or some other percentage of the market value of the security held).

In the case of securities coming within the scope of the following clauses the Department of Member Firms will consider a written application for permission to treat such securities on a better basis than the percentage of the market value heretofore provided:

(i) interest bearing obligations and serial equipment trust certificates which are to be the subject of a primary distribution but for which a published rating is not yet available:

(ii) non-exempt interest bearing obligations having two years or less to run to maturity;

(iii) obligations of a State, territory or possession of the United States or any political sub-division thereof or any authority, commission or agency thereof which are not rated by any of the nationally known statistical services.

(b) Exclusive of *bona fide* cash transactions in issued securities and after application of current outstanding calls for market, marks or other deposits.

(c) The above debit and credit items should be adjusted for open contractual commitments which will include delayed delivery, underwriting and "when issued" contracts, endorsements of puts and calls, and commitments in foreign currencies and in spot (cash) commodity contracts but will not include open commodity future contracts and uncleared regular way purchases and sales of securities, by applying the amounts due thereon and any valuation of securities involved as though such amounts and valuations were actual, except that this treatment of any individual commitment shall not operate to increase net capital. A series of contracts of purchase, or a series of contracts of sale, of a stated amount of the same security conditioned, if at all, only upon issuance may be treated as an individual commitment.

(d) The above debit and credit items should be inclusive of any cash, securities or equities in subordinated accounts covered by an agreement (filed with and in form approved by the Exchange) subordinating the claims of the owner of the account to the claims of all other creditors of the member corporation and any cash and securities loaned to the member corporation on a subordinated basis under an agreement (filed with and in form approved by the Exchange) subordinating the claim of the lender to the claims of all other creditors of the member corporation.

(e) For the purpose of this rule, a *bona fide* "trade" account is defined as (1) the account of a customer who is engaged in raising, merchandising, or processing the commodity, its product, or by-product; or (2) the omnibus account of a non-member broker-dealer which contains only positions of "trade" customers as defined in (1) hereof, provided the broker-dealer files with the member corporation a written statement to that effect; or (3) the account of a member firm or member corporation subject to the capital requirements of the Exchange.

(f) The amount of cash required should be exclusive of liquidating deficits in the accounts.

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Questions 6 (c), 7 (c) (1) B, and 7 (c) (2) B—Customers' partly secured accounts.

Question 8—Partly secured accounts of officers and directors.

Question 9 (a)—Individual accounts of general partners who have signed agreements that cash, securities, and equities recorded in these accounts are to be included as partnership property.

Question 10—Trading and investment accounts of respondent.

Question 11—Capital accounts.

Question 13 (a)—Contractual commitments not recorded in a ledger account for money for respondent, general partners, and officers and directors. Where contractual commitments are related to positions in issued securities in answers to Questions 8, 9, 10, and 11, they should be clearly indicated. (This information may be given in a separate schedule or included in the answer to Question 13 (a).)

Question 13 (c)—Joint accounts carried by others.

(b) A schedule showing in detail ledger balances, valuations of long and short securities and spot (cash) commodities, and net losses and net gains in future commodities contracts and other open contractual commitments (other than those reported in the answers to Part I of this form) in any *accounts carried by other brokerage houses*, in which any sole proprietor or any general partner of the respondent has an interest. (Accounts containing only free securities or free credit balances need not be reported.)

(c) A schedule showing any borrowings or claims reflected in the answers to Part I which are unconditionally subordinated to all claims of general creditors pursuant to a written agreement, and the details thereof.

(d) If the respondent is a corporation, and if the surplus or undivided profits items include any amounts appropriated for distribution or required to be distributed within the next six months, furnish the details.

(e) If respondent is a sole proprietor, give details of any liabilities which are not reflected in the answers to Part I of this form, if such liabilities would materially affect net worth as reported.

PART III. SUPPLEMENTARY INFORMATION REQUIRED BY NEW YORK STOCK EXCHANGE FOR COMPUTATION OF NET CAPITAL UNDER RULE 415 OR 416 (CAPITAL REQUIREMENTS)

(A) If the application of current outstanding margin calls would affect any accounts in deficit reported in answers to Questions 6 and 7, *exclusive of bona fide cash accounts and joint accounts in which the respondent has an interest*, submit a schedule showing revised amounts (including those reportable under footnotes 1 and 2 of Question 6) in such customers' accounts which are in deficit after application of such margin calls.

With regard to all such customers' accounts in deficit:

Give full description, including quantity, price, and valuation of each security and spot (cash) commodity position supporting each total valuation reported above unless this information is identical with that reported in answer to Part II (a). (Specify any spot (cash) commodity positions which are hedged.)

Give, with respect to each account, the net cost or net proceeds of each net position resulting from open contractual commitments in securities and full description, including quantity, price, and valuation of each such net position, unless such net positions have been included in the details submitted in accordance with the previous paragraph because the transactions have been recorded in a ledger account for money.

(B) State separately the total of cash required after application of current outstanding calls for margin or other deposits:

(1) To provide margin in customers' security accounts in accordance with the maintenance requirements of Rule 550 (Margins) after application of "when issued" and other open contractual commitments, *exclusive of bona fide cash accounts, joint accounts in which the respondent has an interest, and accounts in deficit.*

(2) To provide deposits, in accordance with paragraph (d) 3.b of Rule 550, on any net positions resulting from contracts for when issued securities in customers' bona fide cash accounts, *exclusive of accounts of member firms, member corporations, non-member brokers or dealers, banks, trust companies, insurance companies, investment trusts, and charitable or non-profit educational institutions.*

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(3) To mark to the market, in accordance with paragraph (d) 3.b of Rule 550, any net positions resulting from contracts for when issued securities:

(a) *For or with* non-member brokers or dealers,

(b) *For* member firms or member corporations, and

(c) *For or with* banks, trust companies, insurance companies, investment trusts, and charitable or non-profit educational institutions.

(4) To provide margin in customers' commodity accounts equal to the standards set in Rule 415 or 416 (Capital Requirements). *This amount should be exclusive of liquidating deficits.*

(5) To provide, in accordance with Rule 415 or 416, an amount equal to the total of credit lines granted on open commodity contracts in *bona fide* "trade" accounts.

(C) With respect to accounts of officers and directors reported in answer to Question 8 and accounts of general partners reported in answer to Question 9 (b), submit details in accordance with the instructions of (A) and (B) above.

(D) State separtely the balances and valuations in each partner's accounts reported in answer to Question 9 (a), if such accounts are covered by agreements *not in form approved by and filed with the New York Stock Exchange.*

(E) Submit a separate schedule showing full description, including qauntity, market price, and market valuation of the long and short future commodity exchange contracts carried for accounts reported in answers to Questions 9 (a), 10, and 11. Specify the contracts which are hedges of spot (cash) positions.

(F) Submit a seperate schedule showing market valuations of the total long and total short future contracts in each commodity carried for customers, including bona fide "trade" accounts, giving sufficient information to permit computation of the requirement of ½ of 1% provided in Rule 415 or 416 (Capital Requirements). Include contracts carried for accounts of general partners of a member firm which are reported in answer to Question 9 (b) and for accounts of officers, directors and stockholders of a member corporation. Do not include contracts carried for any accounts covered by subordination agreements approved by the Exchange.

(G) Submit a separate schedule giving full description, including quantity, market price, and market valuation of each security and commodity position in each joint account *carried by the respondent* in which the respondent has an interest.

(H) If a debit balance is included in the amount reported in answer to Question 3 (b) (1) A, which is not required to be maintained in connection with any positions or commitments of the respondent with the carrying member firm or member corporation and a credit balance with the same member firm or member corporation is reported in answer to Question 2 (b) (1) B, give the amount of each such debit and credit balance.

(I) If any account of a customer has been combined with the account of another customer in the answers to Part I by reason of a bona fide written guarantee, but such guarantee does not meet the conditions outlined in paragraph (d) 4. of Rule 550 (Margin), furnish details of ledger balances, valuations of long and short securities, etc., in the guaranteed and guarantor's accounts.

Question 7—Customers' commodity accounts

State separately totals of ledger debit balances; ledger credit balances; long spot (cash) commodity valuations; and net losses and net gains in future commodity contracts in customers' accounts, classified as follows:

- (a) Accounts with open future commitments liquidating to an equity:
  - (1) Regulated commodities
  - (2) Nonregulated commodities.
- (b) Accounts with open future commitments liquidating to a deficit:
  - (1) Regulated commodities
  - (2) Nonregulated commodities.
- (c) Accounts with spot (cash) commodities positions:
  - (1) Hedged
    - A. Secured
    - B. Partly secured
  - (2) Not hedged
    - A. Secured
    - B. Partly secured
- (d) Unsecured debit balances
- (e) Accounts with free credit balances:
  - (1) Regulated
  - (2) Nonregulated.

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Question 8—Accounts of officers and directors.

State separately, in accordance with the classification and instructions of Questions 6 and 7, totals of ledger debit balances; ledger credit balances; long security and spot (cash) commodity valuations; short security valuations; and net losses and net gains in future commodity contracts in the accounts of:

(a) Officers

(b) Directors.

NOTE: If an individual is both a director and an officer, classify such balances under 8 (a).

Question 9—General partners' individual accounts.

State separately, totals of ledger debit balances; ledger credit balances; long security and spot (cash) commodity valuations; short security valuations; and net losses and net gains in future commodity contracts in the following accounts:

(a) Individual accounts of general partners who have signed agreements that cash, securities and equities recorded in these accounts are to be included as partnership property

(b) All other individual accounts of general partners. (These accounts must be stated as partners' accounts but in accordance with the classifications and instructions of Questions 6 and 7.)

NOTE TO QUESTION 9 (a): Total valuations of securities exempted from registration under the Securities Exchange Act of 1934, otherwise than by action of the Securities and Exchange Commission, must be stated separately.

Question 10—Trading and investment accounts of respondent.

State separately totals of ledger debit balances; ledger credit balances; long security and spot (cash) commodity valuations; short security valuations; and net losses and gains in future commodity contracts. (Do not include Treasury Stock where respondent is a corporation.)

NOTE: Total valuations of securities exempted from registration under the Securities Exchange Act of 1934, otherwise than by action of the Securities and Exchange Commission, must be stated separately.

Question 11—Capital accounts.

State separately totals of ledger debit balances; ledger credit balances; and long security valuations in the following accounts:

(a) Sole proprietorship:

(1) Capital account

(2) Undistributed profit and loss accounts, including balances remaining in income and expense accounts. (This question may be answered by giving one net amount.)

(b) Partnership capital:

(1) Capital accounts of general and special or limited partners

(2) Undistributed profit and loss accounts, including balances remaining in income and expense accounts. (This question may be answered by giving one net amount.)

(c) Corporation capital:

(1) Capital stock (detail by class of stock showing number of shares and par value)

A. Authorized (state parenthetically)

B. Outstanding

C. Treasury stock

(2) Capital surplus

(3) Earned surplus or deficit, including balances remaining in income and expense accounts.

(d) Reserves (State nature and distinction between liability, valuation and capital reserve and state amount of each such reserve.)

NOTE: Total valuations of securities exempted from registration under the Securities Exchange Act of 1934, otherwise than by action of the Securities and Exchange Commission, must be stated separately.

Question 12—Other accounts, etc.

State details (ledger balances; valuations of securities and spot (cash) commodities; status of future commodity positions; and any other relevant information) of any accounts which have not been included in one of the answers to the above questions. These will include accounts for Exchange Memberships; Furniture; Fixtures and other fixed assets; Funds provided or deposited by the respondent as margin in joint accounts; Revenue Stamps; Dividends Receivable, Payable, and Unclaimed; Floor Brokerage Receivable and Payable; Commission

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Receivable and Payable: Advances to Salesmen and other Employees; Commodity Difference Account; Good Will; Organization Expense; Prepaid Rent and Insurance and other deferred assets; and other accounts not specifically mentioned herein; and market value of securities borrowed (other than for delivery against customers' sales) to the extent to which no equivalent value is paid or credited.

Question 13—Contractual commitments that are not recorded in a letdger account for money.

(a) State separately for each security, commodity, etc., total cost; total proceeds; valuation of net long or short position, classified as follows:

Commitments for accounts, grouped as to:

(1) Respondent

(2) General partners who have signed agreements that cash, securities, and equities recorded in these accounts are to be included as partnership property.

(3) Officers and directors.

(b) State separately details of open contractual commitments carried for customers if such commitments are substantial in view of the capital of the respondent

(c) State separately any participations of the respondent in joint accounts carried by others setting forth the status of each account as well as the respondent's interest therein. Any related deposits reported under Question 12 must be clearly indicated.

NOTE TO QUESTIONS 13 (a) AND 13 (b): Contractual commitments will include delayed delivery, underwriting and when issued contracts, endorsements of puts and calls, and commitments in foreign currencies and in spot (cash) commodity contracts, but will not include uncleared regular way purchases and sales of securities. A series of contracts of purchase or a series of contracts of sale of the same security conditioned, if at all, only upon issuance may be treated as an individual commitment.

Question 14—Contingent items.

Submit a separate schedule containing a description of any contingent assets, liabilities and accountabilities of the respondent which are not included n a ledger account, the realization of which would affect net worth. Items of this nature may include lawsuits pending against the respondent, accommodation endorsements, rediscounted notes, and guarantees of accounts of others.

Rule 550 (Margins) of The New York Stock Exchange

(Exclusive of Paragraphs Not Required When Preparing Answers to Financial Questionnaires)

(b) *Maintenance Margin:*

The margin which must be maintained in margin accounts of customers, whether members, allied members, member firms, member corporations or nonmembers, shall be as follows:

1. 25% of the market value of all securities "long" in the account; plus

2. $2.50 per share or 100% of the market value, in cash, whichever amount is greater, of each stock "short" in the account selling at less than $5.00 per share; plus

3. $5.00 per share or 30% of the market value, in cash, whichever amount is greater, of each stock "short" in the account selling at less than $5.00 per or above; plus

4. 5% of the principal amount or 30% of the market value, in cash, whichever amount is greater, of each bond "short" in the account.

(c) *Exceptions:*

The foregoing requirements of this Rule are subject to the following exceptions:

1. *"Long" and "Short" Positions in Exchangeable or Convertible Securities.* When a security carried in a "long" position is exchangeable or convertible within a reasonable time, without restriction other than the payment of money, into a security carried in a "short" position for the same customer, the minimum margin on such positions shall be 10% of the market value of the "long" securities. In determining such margin requirement "short" positions shall be marked to the market.

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2. *Exempted Securities.*

a. Positions in United States Government Obligations.

The minimum margin on any positions in obligations issued or unconditionally guaranteed as to principal or interest by the United States Government shall be 5% of the principal amount of such obligations.

b. Positions in "Exempted Securities" Other Than Obligations of the United States Government.

The minimum margin on any positions in such obligations shall be 15% of the principal amount of such obligations or 25% of the market value, whichever amount is lower, unless the Exchange, upon written application to the Department of Member Firms, grants a lower requirement in the case of a particular issue.

(The term "exempted securities" has the meaning given it in section 2 (e) of Regulation T of the Board of Governors of the Federal Reserve System.)

4. *Offsetting "Long" and "Short" Positions in the Same Security.* No margin shall be required on either position if delivery has been made by the use of the "long" securities. Otherwise the minimum margin shall be 10% of the market value of the "long" securities. In determining such margin requirement "short" positions shall be marked to the market.

5. *International Arbitrage Accounts.* International arbitrage accounts for non-member foreign correspondents who are registered with and approved by the Exchange shall not be subject to this Rule. In computing, under the Exchange's Capital Requirements, the Net Capital of any member firm or member corporation carrying such an account which is not margined in accordance with the maintenance requirements hereof, the Exchange will consider as a debit item any difference between the minimum amount of margin computed in accordance with those requirements and the margin in such account.

7. *Specialists' Accounts.*

a. The account of a member in which are effected only transactions in securities in which he is registered and acts as a specialist may be carried upon a margin basis which is satisfactory to the specialist and the member firm or member corporation. The amount of any deficiency between the margin deposited by the specialist and the margin required by the other provisions of this Rule shall be considered as a debit item in the computation of the Net Capital of the member firm or member corporation under the Exchange's Capital Requirements.

b. In the case of joint accounts carried by member firms or member corporations for specialists, in which the member firms or member corporations participate, the margin deposited by the other participants may be in any amount which is mutually satisfactory. The amount of any deficiency between the amount deposited by the other participant, or participants, based upon their proportionate share of the margin required by the other provisions of this Rule, shall be considered as a debit item in the computation of the Net Capital of the member firm or member corporation under the Exchange's Caiptal Requirements.

(d) Other Provisions:

1. *Determination of Value for Margin Purposes.* Active securities dealt in on a recognized exchange shall, for margin purposes, be valued at current market prices. Other securities shall be valued conservatively in the light of current market prices and the amount which might be realized upon liquidation. Substantial additional margin must be required in all cases where the securities carried are subject to unusually rapid or violent changes in value, or do not have an active market on a recognized exchange, or where the amount carried is such that it cannot be liquidated promptly.

2. *Puts, Calls and Other Options.* No put or call carried for a customer shall be considered of any value for the purpose of computing the margin required in the account of such customer.

The issuance or guarantee for a customer of a put or a call shall be considered as a security transaction subject to paragraph (a) of this Rule.

For the purpose of paragraph (b) of this Rule such puts and calls shall be considered as if they were exercised.

Each such put or call shall be margined separately and any difference between the market price and the price of a put or call shall be considered to be of value only in providing the amount of margin required on that particular put or call.

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If both a put and a call for the same number of shares of the same security are issued or guaranted for a customer, the amount of margin required shall be the margin on the put or call whichever is greater.

Where a call is issued or guaranteed against an existing "long" position or a put is issued or guaranteed against an existing "short" position, no margin ned be required on the call or put, provided such "long" or "short" position is adequately margined in accordance with this Rule. In computing margin on such existing stock position carried against a put or call, the current market price to be used shall not be greater than the call price in the case of a call or less than the put price in the case of a put.

When a member, member firm or member corporation issues or guarantees an option to receive or deliver securities for a customer, such option shall be margined as if it were a put or call.

3. *"When Issued" and "When Distributed" Securities.*

a. Margin Accounts

The minimum amount of margin on any transaction or net position in each "when issued" security shall be the same as if such security were issued.

Each position in a "when issued" security shall be margined separately and any unrealized profit shall be of value only in providing the amount of margin required on that particular position.

When an account has a "short" position in a "when issued" security and there are held in the account securities in respect of which the "when issued" security may be issued, such "short" position shall be marked to the market and the balance in the account shall for the purpose of this rule be adjusted for any unrealized loss in such "short" position.

b. Cash Accounts

In connection with any transaction or net position resulting from contracts for a "when issued" security in an account other than that of a

member firm or member corporation
non-member broker or dealer
bank
trust company
insurance company
investment trust
charitable or non-profit educational institution

deposits shall be required equal to the margin required were such transaction or position in a margin account.

In connection with any net position resulting from contracts for a "when issued" security made for or with a non-member broker or dealer, no margin need be required, but such net position must be marked to the market.

In connection with any net position resulting from contracts for a "when issued" security made for a member firm or member corporation or for or with a

bank
trust company
insurance company
investment trust
charitable or non-profit educational institution

no margin need be required and such net position need not be marked to the market. However, where such net position is not marked to the market, an amount equal to the loss at the market in such position shall be considered as cash required to provide margin in the computation of the Net Capital of the member firm or member corporation under the Exchange's Capital Requirements.

The provisions of this sub-paragraph shall not apply to any position resulting from contracts on a "when issued" basis in a security

(i) which is the subject of a primary distribution in connection with a *bona fide* offering by the issuer to the general public for "cash," or

(ii) which is exempt by the Exchange as involving a primary distribution.

The term "when issued" as used herein also means "when distributed."

4. *Guaranteed Accounts.* Any account guaranteed by another account may be consolidated with such other account and the required margin may be determined on the net position of both accounts, provided the guarantee is in writing and permits the member firm or member corporation carrying the account, without restriction, to use the money and securities in the guaranteeing account to carry the guaranteed account or to pay any deficit therein; and provided further that such guaranteeing account is not owned directly or indirectly by (a) a partner of the firm or a stockholder in the corporation carrying such account or (b) a member, member firm or partner thereof or member corporation or stockholder therein having a definite arrangement for participating in the commissions earned on the guaranteed account. However, the guarantee of a limited partner,

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if based upon his resources other than his capital contribution to a member firm or the guarantee of a holder of non-voting stock if based upon his resources other than his interest in a member corporation, is not affected by the foregoing prohibition, and such a guarantee may be taken into consideration in computing margin in the guaranteed account.

5. *Consolidation of Accounts.* When two or more accounts are carried for any person or entity, the required margin may be determined on the net position of said accounts, provided the customer has consented that the money and securities in each of such accounts may be used to carry, or pay any deficit in, all such accounts.

(J) Supply the following information as to any borrowings or claims reported in Part II (c):

1. The answer in Part I in which such borrowings or claims are reflected.
2. Details of any such borrowings or claims covered by written agreements *not approved by and filed with the New York Stock Exchange.*
3. Unless this information has been furnished in answer to Part II (c), with respect to borrowings or claims covered by agreements *approved by and filed with the New York Stock Exchange,* furnish:
   (a) Name of each subordinated account, ledger balance, date of expiration of any note or agreement in connection therewith, quantity, price, valuation, and description of each security and each commodity position carried for these accounts; and
   (b) Name of lender, amount borrowed, quantity, price, valuation, and description of each security borrowed, and the date of expiration of any note or agreement in connection therewith.

(K) Financial obligations of members, partners of member firms and stockholders of member corporations:

State separately:

1. Any borrowings of cash or securities, included in amounts and valuations reported in answers to Questions 9 (a), 10 and 11 (including borrowings for the purchase of capital stock), showing names of borrower and lender, amount of money, details of securities borrowed and the valuations thereof, and date of expiration of any note or agreement in connection therewith, as well as the total valuation of any collateral pledged thereagainst.
2. Any borrowing of $2,500 or more (exclusive of any borrowing on real estate and any borrowing on life insurance policies which is not more than the cash surrender value of such policies) by an individual member, a general partner of your firm, or a holder of voting stock of your corporation from a bank, trust company, moneyed corporation or fiduciary not reported in (1) above.
   (Only amount of each borrowing and total valuation of collateral pledged thereagainst need be reported.)
3. Details of any accounts carried by you (reported in answers to Questions 6 and 7) in which any general partner of your firm or any holder of voting stock of your corporation has an interest.
4. Ledger balances, valuations of long and short securities and spot (cash) commodities, and net losses and net gain in future commodities contracts and other open contractual commitments (other than those reported in the answers to Part I of this form) in any *accounts carried by other brokerage houses,* in which any holder of voting stock of the respondent has an interest.
   (Accounts containing only free securities or free credit balances need not be reported.)
5. Details of any material liabilities of general partners of your firm or holders of voting stock of your corporation in connection with unsatisfied judgment or endorsements or guarantees of any nature.

(L) If it is desired that, in accordance with Footnote (a) of Rule 415 or 416 (Capital Requirements), certain securities be treated on a better basis than 70% of the market value thereof, the answers should contain sufficient information relative thereto.

(M) State the amount required on the excess of the market value of short positions over the market value of long positions in firm's and partners' accounts and subordinated accounts or in investment and trading accounts of the corporation and subordinated accounts, in accordance with Rule 415 or 416.

(N) State any amounts borrowed on securities of officers and directors which are included in answers to Question 3 (a) and 3 (b) (1) B.

NOTE: Rules mentioned IN PART III are Rules of the Board of Governors of the New York Stock Exchange.

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SPECIAL INSTRUCTIONS OF THE NEW YORK STOCK EXCHANGE

Any condition disclosed by the audit that would cause the capital or net worth of the member, member firm or member corporation to be less than that prescribed by the Board of Governors shall be reported to the Department of Member Firms by the member, member firm or member corporation immediately upon the ascertainment of such facts.

A written report, addressed to you, shall be submitted by the independent public accountant in which he shall attest that THE REQUIREMENTS OF THE AUDIT REGULATIONS HAVE BEEN OBSERVED IN THE CONDUCT OF THE AUDIT, and specifically comment in such report:

1—That he has made a review of your methods of internal accounting control; and

2—That he has reviewed your procedures for safeguarding securities.

Not later than forty-five days after the date of audit, *the independent public accountant shall forward* a signed copy of such report in a sealed envelope addressed to

NEW YORK STOCK EXCHANGE
DEPARTMENT OF MEMBER FIRMS, CHIEF EXAMINER
11 WALL STREET, NEW YORK 5, N. Y.

Retain for at least three years a copy of the answer to this questionnaire and all working papers and memoranda covering the answer. (Working papers, etc., must be made available for audit and review by a representative of the New York Stock Exchange at the office of the respondent.)

REGULATIONS PRESCRIBED FOR AUDIT UNDER AUTHORITY OF RULE 532 OF THE BOARD OF GOVERNORS OF THE NEW YORK STOCK EXCHANGE

(Identical with those prescribed by the Securities and Exchange Commission pursuant to Rule X-17A-5)

The audit shall substantiate the stated assets and liabilities as of the date of the financial questionnaire and the scope and comprehensiveness thereof shall be such as would enable the independent public accountant to express an opinion as to the stated financial condition of the respondent as of that date.

The scope of the audit shall include at least the following:

(1) Comparison of ledger accounts with the trial balances obtained from the general and private ledgers and proofs of the aggregates of subsidiary ledgers with their respective controlling accounts.

(2) Physical examination and comparison with the books and records of all securities, currencies, tax stamps, warehouse receipts, and other such assets on hand, in vault, or in box, or otherwise in physical possession.

(3) Verification of securities in transit or in transfer.

(4) Balancing of positions in all securities and spot and future commodities as shown by the books and records.

(5) Obtaining of written confirmations with respect to the following: (See note.)

(a) bank balances; (In addition to the reconcilement and confirmation of bank balances as of the date of the audit, the independent public accountant shall, at a later date, after giving ample time for clearance of outstanding checks and transfers of funds, obtain from depositaries cancelled checks and statements of the bank accounts as of such date, and reconcile the balances shown thereon with the balances shown by the books of the respondent.)

(b) open contractual positions and deposits of funds with clearing corporations or associations;

(c) money borrowed and detail of collateral;

(d) accounts, commodities, securities, and commitments carried for the respondent by others;

(e) details of:

(i) securities borrowed
(ii) securities loaned
(iii) securities failed to deliver
(iv) securities failed to receive
(v) when issued contracts
(vi) delayed delivery and other similar open contracts
(vii) open commodity contracts with others

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(f) customers', partners', officers', directors' and respondent's accounts; (Confirmation of these accounts may be in the form of a written acknowledgement of the accuracy of the statement of balances, security positions, and open contractual commitments, other than uncleared regular way purchases and sales, accompanying the first request for confirmation mailed by the independent public accountant.)

(g) guarantees in cases where required to protect accounts guaranteed as of audit date;

(h) all other accounts which in the opinion of the independent public accountant should be confirmed.

(6) A written statement should be obtained from the proprietor, partner (if a partnership) or officer (if a corporation) as to the assets, liabilities, and accountabilities, contingent or otherwise, not recorded on the books of the respondent.

(7) The independent public accountant shall review the methods of internal accounting control of the respondent and its procedures for safeguarding securities.

NOTE TO ITEM (5): Compliance with requirements for obtaining written confirmation with respect to the above accounts shall be deemed to have been made if requests for confirmation have been mailed by the independent public accountant in an envelope bearing his own return address and second requests are similarly mailed to those not replying to the first requests.

THE THOMAS COUNTY NATIONAL BANK,
Colby, Kans., November 7, 1956.

Hon. A. WILLIS ROBERTSON,
Senate Office Building,
Washington, D. C.

DEAR SENATOR ROBERTSON: We understand that the Senate Banking Committee is currently engaged in a study of national banking laws for the first time in many years. Knowing that you are chairman of this committee, we are happy to see this congressional interest in recodifying the law in order to catch up with the times in this business. Here is a suggestion for your consideration.

Presently the Federal Statutes (U. S. Rev. Stat., sec. 5200) limit the amount of loans that a national bank may grant to any one borrower to 10 percent of the bank's capital and surplus accounts. State banks in Kansas may loan up to 15 percent of their capital and surplus under the same circumstances, and of course, this gives the State banks a distinct advantage in dealing with the principal customers of the smaller towns in Kansas. You will find that nearly all of the new banks chartered in Kansas during the past 10 years have taken State charters, and in the Nation generally, the trend has been toward merging into State charters and the formation of new State banks. This trend is strong in spite of the fact that bankers generally agree that a national charter carries more prestige, as it should, with the Comptroller of the Currency, furnishing a more consistent and higher quality examination than the various combinations of examiners (State, FDIC, and Federal Reserve) available to State banks. The Comptroller's office has managed to stay clear of politics better than other supervisory authorities as we have recently seen demonstrated in Illinois, and the Comptroller has more power to enforce the examiner's judgment than does any other examining authority. This discrimination against national banks that puts them at a disadvantage in financing large and solvent local customers must be one of the principal reasons for the trend against the national charters.

No doubt you are aware of the history of the dual banking system in this country that has traditionally sought to balance banking supervision and control evenly between the States and the National Government. We think that the system is sliding out of balance. Of course, I recognize the sound reasoning behind the Federal statute that thus limits the ability of one creditor to use a disproportionate amount of a bank's loanable funds, but times have changed since the 10 percent rule was written. You know that our farms are larger and fewer, and that a successful and solvent farmer now is quite likely to need a lot of credit if he needs any at all. The same is true in the successful small businesses. If they need seasonal credit, they very probably need much more than they did 20 years ago. At present we must either deny the credit because of size alone or else send the borrower hundreds of miles to a Reserve city bank to get the money and thus lose one of our best sources of earnings in the community. Presently our "risk assets" total just four times our capital accounts.

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Obviously the answer is not to increase capital in order to accommodate these larger borrowers.

I know of no association in the trade that represents rural national banks, and the American Bankers Association is strongly influenced by rural State banks, many of which are primarily interested in holding their present advantage. Thus, there may be no overwhelming support for this suggestion from the ABA. Nonetheless, we feel that the limit should be raised to 15 percent to protect the dual banking system and to enable the entire rural banking system to do a sound job of meeting more of their communities' legitimate credit needs.

Please feel free to use this letter or any part of it in committee hearings on the subject if you think that this would be advantageous.

Respectfully yours,

DAVID FERGUSON, *President.*

AMERICAN ASSOCIATION OF FEDERAL CREDIT UNIONS,
Camden, N. J., November 8, 1956.

Hon. A. WILLIS ROBERTSON,
Senate Office Building,
Washington, D. C.

DEAR SENATOR ROBERTSON: The members of our association who are located primarily in the Delaware Valley area in New Jersey and Pennsylvania, urge your consideration of the following matters.

We approve the recommendations made by the Bureau of Federal Credit Unions to the committee and in addition, we make the following recommendations:

1. That a system of deposit share insurance be established.
2. That the credit unions set up a central banking system of their own.
3. The field of investment shall be increased to that of legal investments and particularly Federal home loan bank debentures and intermediate credit bank debentures.
4. Credit unions be permitted to issue drafts, money orders, and travelers checks.
5. That check cashing be permitted for a reasonable fee.
6. That permission be granted to open special accounts such as: Christmas club, vacation club, and special purpose accounts and that a membership fee of 25 cents be permitted for these.
7. That Federal Credit Union employees should be covered by unemployment insurance.
8. That regular membership fee be changed to $1.

Very truly yours,

GEORGE MORHAUSER, *President.*

Senator ROBERTSON. The Chair wishes to say that as soon as the hearings have been completed and the testimony approved by the witnesses, we plan to have a thousand copies of this testimony printed and circulated, as far as the thousand copies will go. We found there was a very large demand for a compilation of these laws, and we only had a thousand copies, and we could not fill all the demands. We also had a big request for the recommendations. But in addition to the circulation of a thousand copies of the recommendations that have previously been made, we will have them again in the thousand copies of the committee hearings.

Senator DOUGLAS. Mr. Chairman, if it is appropriate, I would like to ask a further question of Mr. Gidney, if I may. Do the conflict-of-interest statutes apply to the Comptroller and members of the staff of the Comptroller of the Currency?

Mr. GIDNEY. Well, I don't know too much about those statutes. We have avoided the conflicts of interest in our functioning.

Senator DOUGLAS. You have no cases of national bank examiners who own stock in the banks which they examine?

Mr. GIDNEY. No, we would not permit that.

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Senator DOUGLAS. Do you know of any cases of national bank examiners taking positions in banks which they have previously examined?

Mr. GIDNEY. Many.

Senator DOUGLAS. As you know, this situation developed out in Chicago and presented some very interesting problems, as to how rigorous the examinations by the FDIC had been. I am not going to reproach you for any sins which the FDIC in examining may or may not have committed. But have you considered the possibility that an examiner should be disqualified for a period of 2 years, let us say, from taking a position in a bank which he has examined?

Mr. GIDNEY. We have a practice where we exact from our examiners—whether we should or not, I don't know—but we get an understanding from them, a statement that "you will not for a period of 2 years after you have ceased to hold the position of national bank examiner accept employment of any kind in any bank which you may have examined without first receiving permission in writing from the Comptroller of the Currency."

Senator DOUGLAS. Have you given many such permissions?

Mr. GIDNEY. Oh, yes.

Senator DOUGLAS. How many permissions have you given?

Mr. GIDNEY. Well, over the period—I don't know that I have given many. How many?

Mr. JENNINGS. It is difficult to state the number, but a majority of the people who leave our organization as examiners or assistant examiners do go with banks. We have to look into each situation to determine whether we think it would be unwise to permit it. In almost all cases we do permit it. In the last year we did not permit an examiner to go with a newly chartered bank. We draw the line on that. When we charter a new bank, a new national bank, we do not want our examiners to go into that new bank, because there could be an inference that possibly our granting a charter was influenced by the fact that an examiner was going with the bank.

Senator DOUGLAS. Would you submit for the record a list of the examiners who upon termination of their services for the Comptroller of the Currency have accepted positions in national banks?

Mr. JENNINGS. Which they examined, sir?

Senator DOUGLAS. Which they have examined.

Mr. GIDNEY. Over how long a period?

Senator DOUGLAS. Four years. If you wish to make it longer, you can do that. But merely for the sake of manageability, I suggest 4 years. If you wish to make it 24 years, that would be quite satisfactory to me.

Mr. GIDNEY. We might like to go back to the early times, so as to get in some of the very distinguished men who are heading banks.

Senator DOUGLAS. I am not trying to score any points off the administration, I just want to know the facts.

Mr. GIDNEY. Well, we have a pretty good record on that. But it is true that our men are taken into banks. I don't know where the banks could get their men if they did not take some of them.

Senator DOUGLAS. You don't think they could train their own?

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Mr. GIDNEY. Well, some of ours have done so well that the largest bank in the country is headed by a former national bank examiner, and many others. So there is quite a good record.

Senator DOUGLAS. You will furnish this list for the record?

Mr. GIDNEY. Now, this will be a list of those who have gone into a bank on resignation from us.

Mr. JENNINGS. A list of the national bank examiners. Now, do you care, Senator, for a list of the assistants? They have no policy-making power.

Senator DOUGLAS. It would be well to get the assistants, too. I might say parenthetically that it would seem to me, from a cursory study of the situation, there have been certain Federal agencies which were in part employment agencies rather than examining agencies.

(The information referred to follows:)

TREASURY DEPARTMENT,
COMPTROLLER OF THE CURRENCY,
Washington, November 14, 1956.

Hon. A. WILLIS ROBERTSON,
United States Senate, Washington, D. C.

MY DEAR SENATOR: In compliance with the request made by Senator Douglas at the hearings on Friday, November 9, 1956, there are attached hereto a list of district chief national bank examiners who retired and accepted employment with banks, and a list of national bank examiners who resigned to accept employment with banks which they had examined. There is also attached a list of assistant examiners who resigned to accept employment with banks located in the Federal Reserve districts in which they worked.

Sincerely yours,

RAY M. GIDNEY, *Comptroller.*

District chief national bank examiners who left the service from Nov. 1, 1952, through Oct. 31, 1956, and accepted positions with national banks

Name	Position	Bank
Sandlin, Walter A	Vice president	Republic National Bank of Dallas, Dallas, Tex.
Sedlacek, Louis H	do	First National Bank of McKeesport, Pa.
Wright, Irwin D	do	The Valley National Bank, Alhambra, Calif.

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Examiners who resigned from Nov. 1, 1952, through Oct. 31, 1956, and took positions with national banks which they had examined

Name	Position	Bank
Boudousquie, Charles E.	Vice president and comptroller.	First National Bank of Lafayette, La.
Cambridge, Edwin A.	Auditor	Fort Wayne National Bank, Fort Wayne, Ind.
Cinelli, Alfred G.	Vice president	Pacific National Bank of San Francisco, Calif.
Comstock, Lyndon D.	Assistant vice president	Hackley Union National Bank, Muskegon, Mich.
Conley, Raymond T.	Cashier	First National Bank, Petoskey, Mich.
Dye, Ralph E.	Vice president	Traders National Bank, Kansas City, Mo.
Estes, Frank O.	do	Western National Bank, Baltimore, Md.
Glover, Edgar M.	Trust officer	Riggs National Bank, Washington, D. C.
Green, Paul F.	Executive vice president	American National Bank, Hutchinson, Kans.
Hill, Harold W.	Assistant vice president and trust officer.	First National Bank in Wichita, Wichita, Kans.
Horton, Bryan E.	Vice president	Second National Bank, Houston, Tex.
Jensen, Milton E.	Credit department	First National Bank of Denver, Colo.
Kemper, Frederick W.	Vice president	Omaha National Bank, Omaha, Nebr.
Lyon, Cecil W.	do	First National Bank of Omaha, Nebr.
Mooney, Russell E.	do	City National Bank & Trust Co., Chicago, Ill.
Moylan, Edward F.	Senior vice president	Manufacturers National Bank of Troy, Troy, N. Y.
McElroy, Frank A., Jr.	Vice president	Wood County National Bank, Wisconsin Rapids Wis.
Newbern, Thomas H.	Executive vice president	Miners National Bank of Pottsville, Pa.
Northrop, George W.	Vice president	Bethel National Bank, Bethel, Conn.
O'Grady, Robert D.	Chief auditor	Mellon National Bank & Trust Co., of Pittsburgh, Pa.
Pearce, William E.	Vice president	Commercial National Bank of Charlotte, N. C.
Peterson, Manley G.	do	Millikin National Bank of Decatur, Ill.
Reitz, Harold A.	Executive vice president	First National Bank of Mount Vernon, Mount Vernon, N. Y.
Richards, Harry F.	Vice president	First National Bank, Champaign, Ill.
Scott, Howard O.	do	First National Bank, Port Angeles, Wash.
Seitz, Willibald	do	First National Bank, Pullman, Wash.
Smith, James W., Jr.	Vice president and cashier.	First National Bank, Paris, Tex.
Tomes, Howard C.	2d vice president	Manufacturers National Bank, Detroit, Mich.
Ward, Louis F.	Vice president	First National Bank of Nevada, Reno, Nev.
Weatherstone, Truman A.	do	First National Bank of Sioux Falls, S. Dak.
Wetzel, Adam	do	Security National Bank of Huntington, Huntington, N. Y.

Assistant examiners who resigned from Nov. 1, 1952, through Oct. 31, 1956, and took positions with national banks which they had assisted in examining

Name	Position	Bank
Abercrombie, Thomas E.	Not known	First National Bank, Live Oak, Fla.
Anderson, Rudyard O.	Vice president and cashier.	First National Bank, Stanton, Tex.
Armstrong, Thomas J.	Not known	First National Bank, Chester, Pa.
Aschbacher, Paul D.	Cashier	First National Bank, Brownsville, Tex.
Baker, Joseph N., Jr.	Not known	First National Bank, Boston, Mass.
Barnes, George W.	do	First National Bank, Mishawaka, Ind.
Bayer, Joseph F.	do	Long Island National Bank, Hicksville, N. Y.
Bell, Francis III	Cashier	Marion Nationa Bank, Marion, Va.
Bell, Howard E., Jr.	Auditor	Third National Bank of Rockford, Ill.
Belyea, Spencer B.	Assistant trust officer.	The Fall River National Bank, Fall River, Mass.
Berry, James M.	Assistant cashier	Liberty National Bank & Trust Co., Oklahoma City, Okla.
Black, Nelson D., Jr.	Not known	First National Bank, Longview, Tex.
Blair, Joe H.	do	First National Bank & Trust Co., Oklahoma City, Okla.
Brown, Arnold F.	Assistant cashier	The Livingston National Bank, Livingston, N. J.
Brown, Arthur G.	Not known	First National Bank of Lindenhurst, N. Y.
Bowersox, Kenneth L.	do	Exchange National Bank, Olean, N. Y.
Brown, Samuel W.	do	Boonton National Bank, Boonton, N. J.
Burke, Lawrence W.	Auditor	Old National Bank, Evansville, Ind.
Burnette, Edward L., Jr.	Not known	Flat Top National Bank of Bluefield, Bluefield, W. Va.
Carlile, Winford H.	Vice president	Lovington National Bank, Lovington, N. Mex.
Carter, Horace H.	Not known	First National Bank, Shelby, N. C.
Christy, Russell N.	Assistant cashier	The Citizens National Bank of Evans City, Pa.
Clark, Sherman E.	Manager, consumer credit department.	Peoples National Bank, Lawrenceburg, Ind.
Classen, Matthew H.	Not known	Southwest National Bank of Wichita, Kans.
Coleman, F. Herman	Cashier	National City Bank, Waco, Tex.
Dantes, Alvin R.	Not known	National Bank of Great Neck, Great Neck, N. Y.
Dark, Willie V.	do	Commercial National Bank, Shreveport, La.

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***Assistant examiners who resigned from Nov. 1, 1952, through Oct. 31, 1956, and took positions with national banks which they had assisted in examining*—Con.**

Name	Position	Bank
Davis, Howell N	Junior officer	Simmons National Bank of Pine Bluff, Ark.
Davis, Jack L	Not known	First National Bank, Evant, Tex.
Davison, Quentin E	do	Middlesex-County National Bank of Everett, Mass.
Denton, Jack D	do	First National Bank, Waco, Tex.
Deyerberg, Otto	do	Second National Bank of Orange, N. J.
Dodson, Delbert A	do	Lubbock National Bank, Lubbock, Tex.
Donahue, Arthur W	Assistant trust officer.	First National Bank of Northampton, Mass.
Doran, Thomas E	Vice president	First National Bank, La Crosse, Wis.
Drake, Calvin R	Not known	Glen National Bank, Watkins Glen, N. Y.
Durham, Douglas F	do	Citizens National Bank, Orlando, Fla.
Edgar, Wesley L	do	First National Bank, Bloomingdale, N. J.
Edwards, Gerald W	do	National City Bank, Waco, Tex.
Edwards, William C	do	National Bank of Commerce, Memphis, Tenn.
Evale, Lyndon D	Cashier	First National Bank of Central Square, Central Square, N. Y.
Ford, Albert P	Not known	First National Bank, Jackson, Miss.
Fowlkes, Doc F., Jr	do	Second National Bank, Jackson, Tenn.
Gabrielsen, Bernard L	do	Hamilton National Bank, Chattanooga, Tenn.
Geesey, Orin G	do	Idaho First National Bank, Boise, Idaho.
German, Dan	do	First National Bank, Porter, Okla.
Garrison, Raymond J	do	Citizens First National Bank & Trust Company of Ridgewood, N. J.
Gibson, Charles A	do	First National Bank of Cortland, Cortland, N. Y.
Gowen, George E	do	Seaboard Citizens National Bank of Norfolk, Va.
Griffin, Arthur B	do	Union Center National Bank, Union, N. J.
Guckes, William L	Comptroller	Merchants National Bank & Trust Company of Dayton, Ohio.
Haines, B. Dalton	Vice president	City National Bank, Mineral Wells, Tex.
Haner, Raymond J	Not known	Long Island National Bank of Hicksville, Hicksville, N. Y.
Hausmann, Frederick M	do	Waterbury National Bank, Waterbury, Conn.
Haworth, Charles M	Auditor	Second National Bank of Danville, Ill.
Heimerman, Mathias A	Vice president	The Toledo National Bank, Toledo, Iowa.
Helm, Lynn R	Not known	Republic National Bank of Dallas, Dallas, Tex.
Henry, Billy J	do	First National Bank, Houston, Tex.
Herttua, Olavi F	do	Hillside National Bank, Hillside, N. J.
Hilgendorf, Arthur W	do	Merchants National Bank, Watertown, Wis.
Hillin, J. Clyde, Jr	do	Citizens National Bank, Lubbock, Tex.
Hoffner, Randall N	do	First National Bank, Pasadena, Tex.
Hollis, Robert L	do	First National Bank, Kansas City, Mo.
Jarvis, Harold S	do	First National Bank of Atlanta, Ga.
Jernigan, O. Dewey	Assistant vice president.	Liberty National Bank & Trust Co., Oklahoma City, Okla.
Johnson, James L	Not known	United States National Bank of Portland, Portland, Oreg.
Kasap, Andre P	do	The Merchants National Bank of New Bedford, New Bedford, Mass.
Kegley, Wellington T	Vice president	First National Bank of Juneau, Alaska.
Kennelly, Edward J	Not known	First National Bank of Lake Geneva, Wis.
Kielmann, Carl H	Comptroller	Farmers National Bank & Trust Co., Ashtabula, Ohio.
Kuhn, Joseph F	Not known	First National Bank, Mount Vernon, N. Y.
Lacey, Robert H., Jr	do	American Security & Trust Co., Washington, D. C.
Leavitt, Robert A	Assistant cashier	National Bank of Monticello, Monticello, Ill.
Lovins, Robert H	Not known	Covina National Bank, Covina, Calif.
Macleod, John C	do	Casper National Bank, Casper, Wyo.
McClellan, James D	Cashier	First National Bank, Wellington, Tex.
McConville, James M	Assistant cashier	Ottawa National Bank, Ottawa, Ill.
McKean, George	Not known	First National Bank, Cortland, N. Y.
McKenna, Robert J	Comptroller	First National Bank of South River, N. J.
McPherson, Arthur	Assistant cashier	The Winchester National Bank, Winchester, Mass.
MacBeth, Eugene J	Not known	Merchants National Bank, Plattsburg, Plattsburg, N. Y.
Malone, Jack A	do	State National Bank, Robstown, Tex.
Marsh, Dana W	Cashier	First National Bank of Powhatan Point, Ohio.
Matheson, Frederick	Auditor	Somerville National Bank, Somerville, Mass.
Matthews, James D	Not known	First National Bank, Dumas, Tex.
May, Gerald S	Vice president and trust officer.	Lincoln County National Bank, Stanford, Ky.
Mead, Cyril M	Cashier	First National Bank, Cochranton, Pa.
Mehling, Lewis H	do	American National Bank, Sidney, Nebr.
Middleton, Robert E	Assistant trust officer.	Brockton National Bank, Brockton, Mass.
Mondadori, William F	Not known	Tappan Zee National Bank of Nyack, N. Y.
Murphy, Daniel L	do	First National Bank, Tampa, Fla.
Myers, R. Troy	do	First National Bank, Lubbock, Tex.
Noble, Kenneth L	Assistant vice president.	First National Bank of Cambridge, Ohio.
O'Donnell, James A	Assistant cashier	The Peoples National Bank of Somerset, Pa.
Oliver, Clayton B	Not known	Fourth National Bank, Tulsa, Okla.
O'Shea, Edward G	do	First National Bank & Trust Co. of Bridgeport, Conn.
Oxley, Frank O	do	First National Bank, Handley, Tex.

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***Assistant examiners who resigned from Nov. 1, 1952, through Oct. 31, 1956, and took positions with national banks which they had assisted in examining*—Con.**

Name	Position	Bank
Parker, Aaron M	Executive officer	Wolfeboro National Bank, Wolfeboro, N. H.
Parker, Thomas G	Not known	First-Taylor National Bank, Taylor, Tex.
Piel, Donald E	Assistant cashier	First National Bank of Smithton, Pa.
Plunkett, Thomas F., Jr.	Not known	Agricultural National Bank of Pittsfield, Mass.
Priske, Daniel G	do	First National Bank of Des Plaines, Ill.
Reynolds, William C	Vice president	First National Bank, La Porte, Tex.
Rice, Robert W	Auditor	First National Bank of Niles, Niles, Mich.
Riley, George B	Not known	Coral Gables First National Bank, Coral Gables, Fla.
Roach, Cameron F	do	Amarillo National Bank, Amarillo, Tex.
Schurig, Walter	do	First National Bank, Westwood, N. J.
Sharpe, William G	Cashier	Sussex & Merchants National Bank, Newton, N. J.
Shay, Louis H	Not known	Ferndale National Bank, Ferndale, Mich.
Shepard, Bruce C	do	The Old National Bank of Spokane, Spokane, Wash.
Smith, John A	do	LaSalle National Bank, Chicago, Ill.
Snook, C. Howard	do	First National Bank of Scranton, Pa.
Staffileno, H. Fred	do	The McDowell National Bank of Sharon, Pa.
Stetson, Warren L	Auditor	The Providence Union National Bank, Providence, R. I.
Strickland, James M	Not known	MacGregor Park National Bank, Houston, Tex.
Tarkington, Wendle H	do	The Anglo California National Bank of San Francisco, Calif.
Turell, Charles H	do	Second National Bank of Nashua, Nashua, N. H.
Watson, W. Warren, Jr.	do	First National Bank of Atlanta, Atlanta, Ga.
Watts, Woodrow F	do	Farmers & Merchants National Bank, Abilene, Tex.
White, Carl R	Cashier	Peoples National Bank, Wapakoneta, Ohio.
Wilson, Homer C	Assistant cashier	National Bank of Greenwood, Greenwood, Ind.
Wilson, John W	Not known	City National Bank, Mineral Wells, Tex.
Wise, C. H	do	Industrial National Bank of Dallas, Dallas, Tex.
Weaver, Jesse	Assistant cashier	Peoples National Bank of State College, Pa.
Wood, Royce B	Not known	Republic National Bank, Dallas, Tex.
Yoest, James E	do	National Bank of Washington, Tacoma, Wash.

Mr. GIDNEY. Well, we could not deny it for ourselves on that, because a great many do go, and we wish they would not. But we think it is a healthy thing, on the whole, just the same.

Mr. CRAVENS. I think Senator Douglas would like to know that on November 2 we received an additional recommendation from the FDIC on this very point. They are recommending a change in the statute, giving them power to prescribe restrictions with respect to that.

Senator DOUGLAS. I think that possibly the Senate Banking and Currency Committee furnished a stimulus to the FDIC.

Mr. REESE. Senator Robertson, will we have another opportunity to talk with Mr. Gidney?

Senator ROBERTSON. No; this will be the last, because at 2 o'clock, when we convene again, we will have to take up the $64 question, so to speak, of the Federal Reserve Board, and it will take us all afternoon.

The Chair recognizes Mr. Reese for another question.

Mr. REESE. In connection with section 5202, which is a limitation on the part of a national bank to borrow more than its capital, in some States this is a handicap for the national banks—that is, unless they borrow through the Federal Reserve. In some States this is a handicap to banks who want to borrow from correspondent banks. I think there is a factor in that that every encouragement ought to be given and the rights given to national banks, along with State banks, to use their correspondent banks in this function. I think that ought to be taken into consideration. I understand there have been some difficulties with that problem.

Mr. CRAVENS. Mr. Reese, are you referring, if I may ask for Mr. Gidney, to the obtaining of Federal funds or direct borrowings from correspondent banks?

Mr. REESE. Of Federal funds; yes, sir.

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Mr. JENNINGS. It all comes under the same statute.

Mr. CRAVENS. Yes; but I did not know what he was referring to.

Mr. REESE. I was referring to that, and also the borrowing—it also applies to the small banks that are attempting to get services from the correspondent banks, and they in turn serving them.

In connection with this limitation of 25 percent—that is recommendations 23 and 24—there is a statement at the end in which you say "insofar as reliance on the discounter is concerned." I don't know if that means to say whether legally there is reliance on it or whether they really are just feeling in their decision on the credit of relying on it. But we find there are a good many banks that are questioning their ability to compete with finance companies and to serve small business with that limitation, and I think consideration ought to be given to that. I know the danger. I mean a bank can go too far down one alley, with one borrower, and he may ignore the quality of the paper that he is taking, relying upon the endorser, and there are dangers, and there have been bad cases in the country. But I think we ought to be careful not to harm banks that are trying to serve and compete properly with finance companies.

Mr. GIDNEY. I think we would be glad to have the help of your committee on that. I think that you brought one case to our attention that has some relation to this particular recommendation. But I think that that can be arranged so that the legal obligation, the gross legal obligation of the borrower is the line.

Mr. REESE. Do you have any comment on section 5202? Do you have any objection to a change in that, of increasing?

Mr. GIDNEY. Oh, I would like to have a chance to think that over and discuss it with you. That has been thrown up at us through the years, and I have not been in favor of it. The national bank has an exception for borrowing from a Federal Reserve bank. Some new facts have been brought to my attention recently by one of our large banks, not represented here today, that it has hampered Federal fund operations, and I think that merits looking into. But I really have not thought it out enough to say that we would go along yet.

Mr. REESE. There are some other comments that come to me in connection with this matter of limitation of bank stock that can be owned by pension trusts and profit sharing. A few men can own a bank. If you restrict this too much, if they put their funds in their savings, which could be done on a tax-free basis, to the employees and officers, by restricting the amount they can hold, then you prevent them from owning a bank in the sense of all of the employees and officers. I am wondering whether you want to go too far in preventing a bank from being owned by its employees and officers.

You infer, in one of your conversations, that the bank ought to be owned by people in the community that have a viewpoint. There are many fine banks in the United States that are owned essentially by 1 man or 5 men or 10 men. I wonder whether you, as supervisory authorities, want to go so far as to say that a group in a bank, management and employees, cannot, within their own funds, own and control that bank. That is what you do in limiting this, because it is a matter of philosophy of what you are saying, and I don't know whether you should have the right to go that far, to limit the employees and officers of a bank from controlling and owning it.

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The thing about the one bank that is in distress being taken over, you get into a field, of course, which is basic philosophy, when it is in distress to be taken over and operated as a branch. You will have to limit that very definitely, because it is a back door, and certainly can be looked upon as a back door entrance to branch banking within a State where branch banking is not permitted. I think that is a very controversial subject. If you want to accomplish that one purpose, it might be done, but with great restrictions in it to prevent it from becoming a controversial issue.

Senator ROBERTSON. Gentlemen, as previously announced, lunch will be served in the family dining room, in the Senate Restaurant, at 12:30. Owing to the depressed price of broilers in the valley of Virginia, the chairman ordered chicken, but if any of our guests want to eat fish today, they can have that substituted.

The committee will stand in recess until 2 p. m.

(Whereupon, at 12:15 p. m. a recess was taken until 2 p. m. of the same day.)

AFTERNOON SESSION

Senator ROBERTSON. The committee will please come to order.

It gives the Chair pleasure to recognize at this time Hon. James Robertson, member of the Board of Governors of the Federal Reserve Board.

STATEMENT OF J. L. ROBERTSON, MEMBER, BOARD OF GOVERNORS, ACCOMPANIED BY GEORGE B. VEST, GENERAL COUNSEL, FEDERAL RESERVE BOARD

Mr. ROBERTSON. Mr. Chairman, I can proceed in any way you think appropriate. I do have a statement which represents the views——

Senator ROBERTSON. This morning we permitted the witness to present his prepared statement without interruption, and we believe that will save time.

Mr. ROBERTSON. I think that is right.

The Board of Governors welcomes this opportunity to express its views as to proposals for improvement of the banking laws.

In response to your committee's request, the Board submitted several weeks ago a number of recommendations for changes in the statutes relating to the Federal Reserve System. As indicated in the Board's letter of transmittal, these recommendations are not directed at fundamental policy matters or the structure or scope of authority of the banking agencies, except for two proposals recommended by the Board during the last session of Congress. The recommendations relate chiefly to the repeal of obsolete provisions and changes designed to improve the operational activities of the System.

The Board's suggestions are arranged according to the numerical sequence of the sections of the Federal Reserve Act to which they relate. For the sake of simple presentation, they are discussed under four broad categories: First, those which would repeal clearly obsolete provisions; second, those which would repeal provisions which appear to have no present significance or importance; third, those which are aimed at improving the operations of the Federal Reserve banks and the Board; and, fourth, those which are designed to clarify or make more workable provisions relating to the supervision of member banks of the Federal Reserve System. For identification, I shall refer to the

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Boards' suggestions by the numbers assigned to them in the committee's print of legislative recommendatitons.

REPEAL OF OBSOLETE PROVISIONS

Nearly half of the 40 recommendations submitted by the Board relate to the proposed repeal of provisions which for one reason or another are clearly obsolete and of no legal effect. Many of these provisions are no longer carried in the United States Code; and their repeal would make no changes in substance. Consequently, there appears to be no need to take the time to explain each of these recommendations.

By way of illustration, however, I may say that a number of provisions of the Federal Reserve Act relate to the original organization of the Federal Reserve banks. These provisions have all been fully executed and are obviously obsolete. Similarly, certain provisions of the law have a definite termination date which has long since expired. Again, some provisions refer to obligations of certain Government agencies that have been dissolved or are in process of liquidation.

In the same class with such obsolete provisions are a few provisions which contain references that are obviously incorrect, such as, for example, a reference to the "six" members of the Federal Reserve Board, and references to section 12B of the Federal Reserve Act, a section relating to deposit insurance which was withdrawn from the act some years ago and reenacted as the Federal Deposit Insurance Act.

Repeal of the obsolete provisions and correction of the inaccurate references mentioned in the Board's recommendations would, of course, be a part of any codification of the laws relating to the Federal Reserve System. In addition, such a codification might include a rearrangement of certain sections and of provisions within some sections in order that provisions on the same subject may be grouped together. The work involved in any codification would obviously be of a technical nature; and the Board's staff will be glad to furnish any assistance in this connection that may be desired by your committee.

PROVISIONS OF NO PRESENT SIGNIFICANCE

Certain provisions of the law are not legally obsolete, but as a practical matter do not, in the Board's opinion, have any present significance or importance and are obsolete for all intents and purposes.

Thus, recommendation No. 65 would repeal a section of the law which authorizes the Reserve banks to make advances to groups of member banks, subject to a number of rigid limitations. This authority was enacted in 1932 as an emergency means of providing credit under the conditions then existing. No advances have ever been made under this authority and it seems clear that it serves no useful purpose at present and should be repealed.

Again, there is a provision of the original Federal Reserve Act which imposes double liability with respect to stock held in the Federal Reserve banks. Since that time, the double-liability feature has been discarded as to national bank stock and as to many State banks. The Board feels that the provision of the law imposing double liability with respect to Federal Reserve bank stock is unnecessary and, in recommendation No. 48, suggests that this provision be repealed.

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Section 7 of the Federal Reserve Act contains a provision requiring that net earnings derived by the United States from the Federal Reserve banks shall, in the discretion of the Secretary of the Treasury, be used to supplement the gold reserve against United States notes or applied to the reduction of the bonded indebtedness of the United States. Any practical effect that this provision might have had on the use of funds by the Treasury appears to have been superseded by the general statute covering the administration of the public debt. This provision, therefore, would be repealed under recommendation No. 55.

A provision of present law, which was part of the original Federal Reserve Act, provides that, whenever any power vested by the act in the Board of Governors appears to conflict with the powers of the Secretary of the Treasury, such powers shall be exercised subject to the supervision and control of the Secretary. While not entirely clear, this provision presumably was meant to avoid any question as to the effect of the Federal Reserve Act on the supervision, management, and control of the Treasury Department. In any event, the removal of the Secretary and the Comptroller of the Currency from ex officio membership on the Board by the Banking Act of 1935 clearly indicated an intent that the Board should perform its functions according to its own best judgment. So far as is known, this provision has never had any significant effect on any of the operations or authority exercised by the Federal Reserve System or the Secretary of the Treasury, and recommendation No. 63 would repeal this provision as being in the category of provisions that have no present significance.

OPERATIONS OF THE FEDERAL RESERVE BANKS AND THE BOARD

The remaining 19 recommendations of a total of 40 of the Board relate to changes which are largely aimed at clarifying or improving the operations of the System. Eleven of them relate to the operational activities of the Federal Reserve banks and the Board.

Recommendation No. 51 would amend the law to provide that all directors of the Federal Reserve banks shall be residents of the Federal Reserve district of the Reserve bank on whose board they serve and shall continue to be residents during their term of office. Present law provides that class C directors appointed by the Board must have been residents of the district for at least 2 years; but there is no specific requirement that all directors shall be residents of the district or, even in the case of class C directors, that they shall cease to be directors if they should move out of the district.

Recommendation No. 52 would limit the service of Federal Reserve bank directors, other than the chairman, to 2 consecutive terms of 3 years each. Such a provision for rotation in the directorates of the Reserve banks seems desirable in order to obtain the advantages of broader representation and wider experience over a period of time. A similar suggestion with the same purpose in mind is made for rotation of service on the Federal Advisory Council.

Recommendation No. 53 would clarify the right of the Federal Reserve agent at each Federal Reserve bank to delegate his ministerial functions to assistants, in order that the agent, who is also chairman of the board of directors of the Reserve bank, may devote more attention to the policy matters involved in Reserve bank operations. It would be made clear also that an assistant Federal Reserve agent

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could act in lieu of the agent in the event of a vacancy in that office. The present requirement that both the agent and assistant agents be persons of "tested banking experience" would be eliminated as unnecessary, leaving to the Board's discretion the determination whether a person appointed is properly qualified for the position. When the Federal Reserve Act was passed, it was expected that the chairman would be a full-time officer of the bank. Such was the case until after the passage of the Banking Act of 1935, which provided that the president should be the chief executive officer of the bank. Following that, the chairmanship was made a nonsalaried position, and the nature of the duties does not call for "tested banking experience."

Recommendation No. 54 suggests specific authority for payment to the United States by the Federal Reserve banks of a percentage of their net earnings after expenses and dividends. Provision for a franchise tax existed prior to 1933, but was repealed when the Reserve banks were required to use half their surplus to subscribe to the initial capital stock of the Federal Deposit Insurance Corporation; and for some years thereafter the net earnings of the Reserve banks were relatively small. In 1947, however, their earnings had increased substantially; and at that time, after discussing the matter with the Banking and Currency Committees of the House and Senate, the Board acted under section 16 of the Federal Reserve Act to impose an interest charge on the amount of outstanding Federal Reserve notes of each Federal Reserve bank in excess of the amount of gold certificates held as collateral. In this way, approximately 90 percent of the net earnings of the Reserve banks was paid to the Treasury, and this has been done annually since that time. The Board believes, however, that it would be desirable for Congress to provide specifically for transfer to the Treasury of a part of the net earnings of the Federal Reserve banks without relation to the amount of outstanding Federal Reserve notes. This could be done by an amendment specifically authorizing the Board to require the Reserve banks to transfer annually to the United States Treasury such portion of their net earnings as the Board might deem appropriate, or in the alternative, if Congress prefers, by restoration of the provision for a franchise tax equal to 90 percent of the Reserve banks' net earnings after provision for expenses and dividends and such reserves for contingencies as may be necessary. We are submitting legislative language with respect to both methods so that the committee and Congress may consider which method is preferable.

Recommendation No. 56 relates to taxation of dividends on Federal Reserve bank stock. The Public Debt Act of 1942 removed a previous exemption of such dividends from taxation, but only with respect to stock issued after the date of that act. The proposed amendment would eliminate the exemption as to dividends on stock issued before that date, thereby placing member banks admitted to membership before 1942 on the same basis as those admitted after 1942.

Recommendation No. 64 would eliminate from the law the present dollar limitation on expenditures for buildings for branches of the Federal Reserve banks. Since that limitation was first placed in the law in 1922, it has been necessary in 1947 and again in 1953 for Congress to increase the statutory limitation in order to permit further branch construction and improvement necessary to keep pace with the

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increased volume of business and activities of the branches. No appropriations of Government funds are involved and the Board believes that a specific dollar limitation is unnecessary; but the existing requirement of the law for the Board's approval for all expenditures of this kind should be retained.

Turning to another aspect of Federal Reserve bank operations, the Board believes that the activities of the Reserve banks as fiscal agents of the United States and of various agencies of the Government should be made specifically subject to supervision and regulation by the Board. At present, certain governmental agencies are authorized by statute to utilize the Reserve banks as their fiscal agents, with no specific provision for overall coordination. Such activities have increased substantially in recent years and it is more important than ever before that they should be coordinated through supervision by the Board of Governors. Accordingly, it is desirable that the Board's authority to supervise and regulate this substantial segment of Reserve bank operations be specifically covered by the law. This would be accomplished by our recommendation No. 67.

In connection with their open-market operations, the Reserve banks for many years have utilized repurchase agreements as a convenient and flexible means of helping to smooth out temporary irregularities in the money market. The usual type of such an agreement is one by which a Reserve bank purchases Governments securities from a nonbank dealer in such securities under an agreement on the part of the dealer to repurchase the securities within a specified period of time at an agreed-upon price and rate of interest. While the agreement has some of the attributes of a loan, it has the legal form of a purchase and sale.

Under instructions of the Federal Open Market Committee, such agreements may be for periods of not more than 15 days and may cover only Government securities maturing within 15 months, and the interest rate may not be below whichever is the lower of the discount rate at the Federal Reserve bank or the average issuing rate on the latest Treasury bill. Generally, the discount rate is used. The authority is used sparingly as a means of providing the money market with temporary funds to avoid undue strains. Securities held under such agreements are reported on the weekly Federal Reserve bank statement and in the Board's annual report.

Repurchase agreements are especially adapted to the implementation of open-market policies in times of temporary market tightness when there is only a temporary need for reserves. The principal merit of this instrument is that the reserves provided are automatically withdrawn when the transaction reverses itself, without any affirmative action by the Federal Reserve.

Although repurchase operations are regulated by the Federal Open Market Committee, the law does not specifically refer to such transactions nor make them specifically subject to the direction of the Federal Open Market Committee. The Board believes, therefore, that the specific amendment suggested in its recommendation No. 72 would be desirable.

Recommendation No. 73 would make certain changes in the paragraph of the law relating to the so-called settlement fund maintained with the Treasurer of the United States by the Federal Reserve banks.

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The changes suggested would eliminate certain obsolete references and make some minor clarifying changes without modifying existing practices.

Under recommendation No. 74, the lengthy and complicated provisions of section 16 of the Federal Reserve Act, relating to the issue and redemption of Federal Reserve notes, would be simplified and clarified, but no material changes of substance would be made in these provisions.

With respect to the operations of the Board of Governors as distinguished from the Federal Reserve banks, one change is suggested. Several provisions of present law require that certain actions of the Board be taken only with the concurrence of a specified number of the members of the Board. Such actions include changes in reserve requirements, permission for member banks in outlying districts of Reserve and central Reserve cities to carry lower reserves, and permission for one Federal Reserve bank to discount paper for another Reserve bank. Yet these and other such actions requiring concurrence of a certain number of Board members are no more important than other actions taken by the Board where the general rule requiring only concurrence by a majority of a quorum is applicable. Recommendation No. 66 would make a simple majority necessary for all Board actions.

SUPERVISION OF MEMBER BANKS

The foregoing covers all but eight of the Board's recommendations. These relate to changes designed to improve and clarify provisions having to do with the System's supervision of member banks.

First, the Board believes it would be desirable to broaden and clarify provision relating to obtaining reports from State member banks so as to permit different types of reports for different groups of banks; to permit reports on a sample basis for statistical purposes; to authorize the Board to require publication of reports of earnings and dividends; and to remove the present mandatory requirement for publication of all reports of condition of State member banks. Thus, the Board could then call for relatively simple reports from the great majority of State member banks and obtain more detailed reports only from the larger banks; and could waive some of the present publication requirement of reports of condition, but could require publication of reports of earnings and dividends, if deemed appropriate. These clarifications of authority would be accomplished by recommendation No. 58.

Under present law, State member banks as well as national banks are prohibited from purchasing corporate stock. Occasionally, a member bank in the course of absorption of another bank finds it would be convenient to purchase and hold the stock of the other bank for a short period—perhaps momentarily—as one step in the takeover process, but, because of the statutory prohibition, member State banks have been deprived of this convenient means of effecting an otherwise unobjectionable absorption. Recommendation No. 60 would permit member banks to acquire stock in such limited and temporary circumstances, but only with the Board's approval.

Recommendation 69 would authorize the Board, on complaint by the Comptroller of the Currency, to revoke trust powers of national banks if those powers have been improperly exercised. At present, the

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Board is authorized to grant national banks permission to exercise trust powers and to issue regulations; but there is no specific provision authorizing the Board to revoke such permission if the powers are improperly exercised.

Member banks are prohibited from paying interest on demand deposits, directly or indirectly, by any device whasoever; and the law authorizes the Board to define "interest." The practical difficulty of determining whether various practices of member banks involve an indirect payment of interest has made administration and uniform application of the law extremely difficult and troublesome. The Board believes that the law would pose fewer problems for the banks and probably be more effective if the words "directly or indirectly, by any device whatsoever" were eliminated from the statute and if it were made clear that "interest" means only cash payments or credits made or given for the account or benefit of a depositor. Such a change would not, in the Board's opinion, defeat the basic purposes of the law.

In connection with this change, it would be important that the same limitations as to interest on deposits be made clearly applicable to both member banks and nonmember insured banks alike. It is apparently the intent of present law that this should be the case. However, on one point, there has not been uniformity for many years. The Board has taken the position that absorption of exchange charges by member banks involves a payment of interest, whereas the Federal Deposit Insurance Corporation has taken the opposite position. Consequently, member banks have been placed at a serious competitive disadvantage in some sections of the country. The Board believes that this lack of uniformity should be corrected, either by an express statement in the law that absorption of exchange is, or is not, to be considered a payment of interest for both member and nonmember insured banks, or by authorizing either the Board or the Federal Deposit Insurance Corporation to define "interest" for both classes of banks. These suggested changes in the provisions regarding interest on deposits are explained more fully in recommendation 77.

In 1933, Congress prohibited member banks from making loans to their executive officers. As an exception, however, loans up to $2,500 were permitted. Conditions have changed considerably since that time and the Board believes that it would be reasonable, as stated in recommendation 81, to increase the amount specified in that exception to at least $5,000.

The proposal made in recommendation 83 would authorize the Board by regulation to permit foreign branches of national banks to exercise such powers as may be usual in connection with the banking business in the countries in which they are located. Under present law, national banks must obtain the Board's approval before establishing foreign branches. The suggested amendment would enable such branches to operate more effectively than at present. A proposal of this kind was recommended to Congress by the Board in the last Congress and was incorporated in a bill introduced by Senator Robertson in May 1956.

Under section 30 of the Banking Act of 1933, relating to proceedings for the removal of directors or officers of member banks, it is now required that the Federal Reserve agent shall issue a warning when a State member bank appears to have violated the law or engaged in

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unsound banking practices. If the violation or unsound practice is repeated after such a warning, a hearing is held by the Board to determine whether the officer or director should be removed. In recommendation 84, the Board suggests that the warning in such a case be issued by the Board itself rather than by the Federal Reserve agent. This would be in accord with present practice under which the Federal Reserve agent, who is, of course, the Board's own agent, normally consults with the Board before issuing a warning in any such case.

Finally, the last of the Board's recommendations, No. 85, proposes an amendment to require every bank merger or consolidation involving insured banks to have the prior approval of the appropriate Federal bank supervisory agency, with a specific requirement that the supervisory agency—whether the Comptroller, the Board, or the Federal Deposit Insurance Corporation—shall take into consideration, not only the usual banking factors, but also the question whether the proposed transaction would lessen competition unduly or tend unduly to create a monopoly. The banking agency involved would be required to consult each of the other two banking agencies on the question of competition and would be authorized to request the opinion of the Attorney General with respect to that question. Such an amendment would fill a gap in present law and serve to insure consideration, on a substantially uniform basis, of the impact of bank mergers upon competition in the banking field. A bill incorporating this proposal was passed by the Senate in July 1956.

CONCLUSION

That, Mr. Chairman, concludes this summary of the Board's recommendations. As requested, I am submitting drafts of amendments to the law which would carry out each of the recommendations. We have received a letter from the Federal Advisory Council expressing its views as to certain of the Board's recommendations and that letter is being made available to the committee. As to any aspects of the committee's study, the Board stands ready at any time to be of all assistance possible.

Senator ROBERTSON. Without objection, we will make the letter from the Advisory Council part of the record; also the printed recommendations of the Board that were previously submitted to us.

(The material referred to follows:)

RECOMMENDATIONS OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

LETTER OF TRANSMITTAL

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
OFFICE OF THE CHAIRMAN,
Washington, September 28, 1956.

HON. A. WILLIS ROBERTSON,
Committee on Banking and Currency,
United States Senate, Washington, D.C.

DEAR SENATOR ROBERTSON: In response to your memorandum of July 20, 1956, there is submitted herewith a compilation of suggested amendments to the Federal banking laws affecting the Federal Reserve System for the consideration of your committee in connection with its current study of all Federal laws relating to financial institutions and credit.

In accordance with the Board's understanding of the scope of your committee's present study, the proposed amendments now being submitted by the Board

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relate in general to possible changes in the law with respect to operational activities and changes intended merely to eliminate obsolete provisions or to add such new provision as seem desirable in order to clarify the law or make it more workable.

The suggestions do not cover proposals relating to policy matters or the structure and scope of authority of the Federal bank agencies, except for certain legislative proposals which were recommended by the Board during the last Congress; nor does the list of suggestions now submitted include matters of codification, such as the arrangement without change in substance of existing statutory provisions. However, with respect to such matters of codification, as well as any other matters in connection with your committee's study the Board and its staff will be glad to render whatever assistance the committee may desire at any time.

Sincerely,

WM. McC. MARTIN, Jr.

46. RESERVE BANK ORGANIZATION COMMITTEE

Existing law

The first 2 paragraphs (partially incorporated in 12 U. C. C. 222, 223, and 225) and the 13th paragraph (12 U. S. C. 224 and 281) of section 2 of the Federal Reserve Act read as follows:

Paragraph 1: "SEC. 2. As soon as practicable, the Secretary of the Treasury, the Secretary of Agriculture, and the Comptroller of the Currency, acting as 'The Reserve Bank Organization Committee,' shall designate not less than eight nor more than twelve cities to be known as Federal reserve cities, and shall divide the continental United States, excuding Alaska, into districts, each district to contain only one of such Federal reserve cities. The determination of said organization committee shall not be subject to review except by the Board of Governors of the Federal Reserve System when organized: *Provided*, That the districts shall be apportioned with due regard to the convenience and customary course of business and shall not necessarily be coterminous with any State or States. The districts thus created may be readjusted and new districts may from time to time be created by the Board of Governors of the Federal Reserve System, not to exceed twelve in all. Such districts shall be known as Federal reserve districts and may be designated by number. A majority of the organization committee shall constitute a quorum with authority to act."

Paragraph 2: "Said organization committee shall be authorized to employ counsel and expert aid, to take testimony, to send for persons and papers, to administer oaths, and to make such investigation as may be deemed necessary by the said committee in determining the reserve districts and in designating the cities within such districts where such Federal reserve banks shall be severally located. The said committee shall supervise the organization in each of the cities designated of a Federal reserve bank, which shall include in its title the name of the city in which it is situated, as 'Federal Reserve Bank of Chicago.'"

* * * * * * *

Paragraph 13: "No Federal reserve bank shall commence business with a subscribed capital less than $4,000,000. The organization of reserve districts and Federal reserve cities shall not be construed as changing the present status of reserve cities and central reserve cities, except insofar as this Act changes the amount of reserves that may be carried with approved reserve agents located therein. The organization committee shall have power to appoint such "assistants and incur such expenses in carrying out the provisions of this Act as it shall deem necessary, and such expenses shall be payable by the Treasurer of the United States upon voucher approved by the Secretary of the Treasury, and the sum of $100,000, or so much thereof as may be necessary, is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, for the payment of such expenses."

Recommendation

Amendments to revise the first 2 paragraphs of section 2 of the Federal Reserve Act to eliminate references to the Reserve Bank Organization Committee and its functions and powers, and to repeal the 13th paragraph of such section.

Reasons

The Reserve Bank Organization Committee is now defunct, since its functions in connection with the original designation of Federal Reserve districts and

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cities and the organization of Federal Reserve banks were fully accomplished in the early days of the System. Consequently, all provisions relating to the Commitee, its functions and expenses, contained in the 1st, 2d, and 13th paragraphs of section 2 of the Federal Reserve Act are obsolete. In addition, the minimum capital required for the original organization of Federal Reserve banks, as contained in the 13th paragraph of that section is no longer of any significance. However, certain provisions of the first two paragraphs of this section, relating to readjustment and apportionment of Federal Reserve districts and to the location of Federal Reserve cities and titles of Federal Reserve banks are still of importance and should be retained in revised form if those paragraphs are amended to remove references to the Organization Committee.

47. Subscription by National Banks to Federal Reserve Bank Stock

Existing law

In section 2 of the Federal Reserve Act the third paragraph (partly in 12 U. S. C. 282), the fifth paragraph (not in United States Code), and the sixth and seventh paragraphs (12 U. S. C. 501a) read as follows:

Paragraph 3: "Under regulations to be prescribed by the organization committee, every national banking association in the United States is hereby required, and every eligible bank in the United States and every trust company within the District of Columbia, is hereby authorized to signify in writing, within sixty days after the passage of this Act, its acceptance of the terms and provisions hereof. When the organization committee shall have designated the cities in which Federal reserve banks are to be organized, and fixed the geographical limits of the Federal reserve districts, every national banking association within that district shall be required within thirty days after notice from the organization committee, to subscribe to the capital stock of such Federal reserve bank in a sum equal to six per centum of the paid-up capital stock and surplus of such bank, one-sixth of the subscription to be payable on call of the organization committee or of the Board of Governors of the Federal Reserve System, one-sixth within three months and one-sixth within six months thereafter, and the remainder of the subscription, or any part thereof, shall be subject to call when deemed necessary by the Board of Governors of the Federal Reserve System, said payments to be in gold or gold certificates."

* * * * * * *

Paragraph 5: "Any national bank failing to signify its acceptance of the terms of this Act within the sixty days aforesaid, shall cease to act as a reserve agent, upon thirty days' notice, to be given within the discretion of the said organization committee or of the Board of Governers of the Federal Reserve System."

Paragraph 6: "Should any national banking association in the United States now organized fail within one year after the passage of this Act to become a member bank or fail to comply with any of the provisions of this Act applicable thereto, all of the rights, privileges, and franchises of such association granted to it under the national-bank Act, or under the provisions of this Act, shall be thereby forfeited. Any noncompliance with or violation of this Act shall, however, be determined and adjudged by any court of the United States of competent jurisdiction in a suit brought for that purpose in the district or territory in which such bank is located, under direction of the Board of Governors of the Federal Reserve System, by the Comptroller of the Currency in his own name before the association shall be declared dissolved. In cases of such noncompliance or violation, other than the failure to become a member bank under the provisions of this Act, every director who participated in or assented to the same shall be held liable in his personal or individual capacity for all damages which said bank, its shareholders, or any other person shall have sustained in consequence of such violation."

Paragraph 7: "Such dissolution shall not take away or impair any remedy against such corporation, its stockholders or officers, for any liability of penalty which shall have been previously incurred."

Recommendation

An amendment repealing the third and fifth paragraph of section 2 of the Federal Reserve Act, and revising the sixth and seventh paragraphs of that section to eliminate obsolete provisions and to make it clear that national banks organized since the date of the Federal Reserve Act must be members of the Federal Reserve System.

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Reasons

The third and fifth paragraphs of section 2 of the Federal Reserve Act, requiring every national bank in the United States to signify its acceptance of that act "within 60 days after the passage of this act" and providing penalties for failure to do so, obviously relate only to national banks in existence at the time of the original Federal Reserve Act and have no applicability to banks organized since that time. They have therefore been fully executed and should be repealed as obsolete.

The provision in the sixth paragraph of section 2 for the forfeiture of the franchise of any national bank "now organized" which fails within 1 year after the passage of the act to become a member bank likewise is obviously obsolete; and it is questionable whether the remainder of the paragraph regarding violations of the act by national banks is technically applicable to national banks organized since the date of the act. Furthermore, this paragraph does not make clear the intent of the law that national banks organized since the date of the act must become members of the Federal Reserve System. The paragraph should be revised to make the provision regarding violations of law applicable to all national banks whenever organized and also to provide specifically that every national bank shall be a member of the System. If this paragraph were revised as suggested, it might incorporate the substance of the present seventh paragraph relating to the effect of dissoluation of a national bank.

48. Liability Incident to Ownership of Federal Reserve Bank Stock

Existing law

The fourth paragraph of section 2 of the Federal Reserve Act (12 U. S. C. 502) provides:

"The shareholders of every Federal Reserve bank shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of their subscriptions to such stock at the par value thereof in addition to the amount subscribed, whether such subscriptions have been paid up in whole or in part, under the provisions of this act."

Recommendation

An amendment which would repeal the provision of law quoted above and thereby relieve member banks of the so-called double liability incident to their ownership of Federal Reserve bank stock.

Reasons

The above provision of law imposing double liability with respect to the stock of the Federal Reserve banks, is a part of the Federal Reserve Act as originally enacted in 1913. At that time double liability was a common feature of bank stock. However, under the provisions of the Federal Reserve Act, member banks have never been required to pay more than one-half of the price of the total Federal Reserve bank stock to which they must subscribe under the law. While the remaining one-half is payable on call of the Board, the need for such a call has never arisen and none has been made. As a practical matter, therefore, Federal Reserve bank stock is subject to double liability quite aside from the provision of law quoted above. Accordingly, continuation of such provision clearly would seem to be unnecessary. It may be noted, in addition, that double liability has been terminated as to national bank stock and the stock of many State banks.

49. Subscription to Federal Reserve Bank Stock by the Public and the United States

Existing law

The 8th, 9th, 10th, 11th, and 12th paragraphs of section 2 of the Federal Reserve Act (12 U. S. C. 283, 284, 285, and 286) read as follows:

Paragraph 8: "Should the subscriptions by banks to the stock of said Federal reserve banks or any one or more of them be, in the judgment of the organization committee, insufficient to provide the amount of capital required therefor, then and in that event the said organization committee may, under conditions and regulations to be prescribed by it, offer to public subscription at par such an amount of stock in said Federal reserve banks, or any one or more of them, as said committee shall determine, subject to the same conditions as to payment and stock liability as provided for member banks."

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Paragraph 9: "No individual, copartnership, or corporation other than a member bank of its district shall be permitted to subscribe for or to hold at any time more than $25,000 par value of stock in any Federal reserve bank. Such stock shall be known as public stock and may be transferred on the books of the Federal reserve bank by the chairman of the board of directors of such bank."

Paragraph 10: "should the total subscriptions by banks and the public to the stock of said Federal reserve banks, or any one or more of them, be, in the judgment of the organization committee, insuficient to provide the amount of capital required therefor, then and in that event the said organization committee shall allot to the United States such an amount of said stock as said committee shall determine. Said United States stock shall be paid for at par out of any money in the Treasury not otherwise appropriated, and shall be held by the Secretary of the Treasury and disposed of for the benefit of the United States in such manner, at such times, and at such price, not less than par, as the Secretary of the Treasury shall determine."

Paragraph 11: "Stock not held by member banks shall not be entitled to voting power."

Paragraph 12: "The Board of Governors of the Federal Reserve System is hereby empowered to adopt and promulgate rules and regulations governing the transfers of said stock."

Recommendation

An amendment repealing all of the above-quoted paragraphs of section 2 of the Federal Reserve Act.

Reasons

All of the minimum capital required for the original organization of each Federal Reserve bank was fully subscribed to by banks; no Federal Reserve bank stock was offered to the public or allotted to the United States. Accordingly, the 8th, 9th, and 10th paragraphs of section 2, as quoted above, are now obsolete.

The 11th paragraph of the section, providing that stock not held by member banks shall not be entitled to voting power, has no significance, since all Federal Reserve bank stock is held by member banks.

The 12th paragraph of the section, authorizing the Board to promulgate regulations governing the transfer of "said stock," clearly relates only to stock held by the public or by the United States, since section 5 of the act expressly provides that stock held by member banks shall not be transferred. Consequently, since no Federal Reserve bank stock is held by the public or the United States, this paragraph has no significance.

50. Original Organization of Reserve Banks

Existing Law

In section 4 of the Federal Reserve Act, the first three paragraphs (not in U. S. Code), the introductory part of the fourth paragraph (12 U. S. C. 341), the ninth paragraph (12 U. S. C. 302), the twelfth paragraph (12 U. S. C. 302), part of the 20th paragraph (12 U. S. C. 305), and the 23rd and 24th paragraphs (12 U. S. C. 308), read as follows:

Paragraph 1: "Sec. 4. When the organization committee shall have established Federal reserve districts as provided in section two of this Act, a certificate shall be filed with the Comptroller of the Currency showing the geographical limits of such districts and the Federal reserve city designated in each of such districts. The Comptroller of the Currency shall thereupon cause to be forwarded to each national bank located in each district, and to such other banks declared to be eligible by the organization committee which may apply therefor, an application blank in form to be approved by the organization committee, which blank shall contain a resolution to be adopted by the board of directors of each bank executing such application, authorizing a subscription to the capital stock of the Federal reserve bank organizing in that district in accordance with the provisions of this Act."

Paragraph 2: "When the minimum amount of capital stock prescribed by this Act for the organization of any Federal reserve bank shall have been subscribed and allotted, the organization committee shall designate any five banks of those whose applications have been received, to execute a certificate of organization, and thereupon the banks so designated shall, under their seals, make an organization certificate which shall specifically state the name of such Federal reserve bank, the territorial extent of the district over which the operations of

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such Federal reserve bank are to be carried on, the city and State in which said bank is to be located, the amount of capital stock and the number of shares into which the same is divided, the name and place of doing business of each bank executing such certificate, and of all banks which have subscribed to the capital stock of such Federal reserve bank and the number of shares subscribed by each, and the fact that the certificate is made to enable those banks executing same, and all banks which have subscribed or may thereafter subscribe to the capital stock of such Federal reserve bank, to avail themselves of the advantages of this Act."

Paragraph 3: "The said organization certificate shall be acknowledged before a judge of some court of record or notary public; and shall be, together with the acknowledgment thereof, authenticated by the seal of such court, or notary, transmitted to the Comptroller of the Currency, who shall file, record and carefully preserve the same in his office."

Paragraph 4: "Upon the filing of such certificate with the Comptroller of the Currency as aforesaid, the said Federal reserve bank shall become a body corporate and as such, and in the name designated in such organization certificate, shall have power—* * *"

* * * * * * *

Paragraph 9: "Such board of directors shall be selected as hereinafter specified and shall consist of nine members, holding office for three years, and divided into three classes, designated as classes A, B, and C."

* * * * * * *

Paragraph 12: "Class C shall consist of three members who shall be designated by the Board of Governors of the Federal Reserve System. When the necessary subscriptions to the capital stock have been obtained for the organization of any Federal reserve bank, the Board of Governors of the Federal Reserve System shall appoint the class C directors and shall designate one of such directors as chairman of the board to be selected. Pending the designation of such chairman, the organization committee shall exercise the powers and duties appertaining to the office of chairman in the organization of such Federal reserve bank."

* * * * * * *

Paragraph 20: "Class C directors shall be appointed by the Board of Governors of the Federal Reserve System. They shall have been for at least two years residents of the district for which they are appointed, one of whom shall be designated by said board as chairman of the board of directors of the Federal reserve bank and as 'Federal reserve agent.' * * *"

* * * * * * *

Paragraph 23: "The Reserve Bank Organization Committee may, in organizing Federal reserve banks, call such meetings of bank directors in the several districts as may be necessary to carry out the purposes of this Act, and may exercise the functions herein conferred upon the chairman of the board of directors of each Federal reserve bank pending the complete organization of such bank."

Paragraph 24: "At the first meeting of the full board of directors of each Federal reserve bank, it shall be the duty of the directors of classes A, B, and C, respectively, to designate one of the members of each class whose term of office shall expire in one year from the first of January nearest to date of such meeting, one whose term of office shall expire at the end of two years from said date, and one whose terms of office shall expire at the end of three years from said date. Thereafter every director of a Federal reserve bank chosen as hereinbefore provided shall hold office for a term of three years. Vacancies that may occur in the several classes of directors of Federal reserve banks may be filled in the manner provided for the original selection of such directors, such appointees to hold office for the unexpired terms of their predecessors."

Recommendation

An amendment to repeal the first three paragraphs of section 4 of the Federal Reserve Act; to change the introductory part of the fourth paragraph of said section to read: "Each Federal Reserve bank now existing shall be a body corporate and, as such and in the name designated in its organization certificate, shall have power"; to revise the 9th paragraph of such section to include provision for filling vacancies in directors now contained in the 24th paragraph of section 4; to repeal the 2d and 3d sentences of the 12th paragraph of such section; to eliminate the 1st sentence of the 20th paragraph and change the word "They" at the beginning of the second sentence to read "Class C directors"; and to repeal the 23d and 24th paragraphs of such section.

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Reasons

The first three paragraphs of section 4 of the Federal Reserve Act provided for the organization of the Reserve banks under the supervision of the Reserve Bank Organization Committee. Since that committee has long been defunct and since no new Federal Reserve banks may be created, these paragraphs are of no significance and may be repealed as obsolete. Their repeal would necessitate a change in the language of the introductory part of the fourth paragraph of the section, as indicated in the recommendation.

The 2d and 3d sentences of the 12th paragraph of section 4, relating to the Reserve Bank Organization Committee, are now obsolete. The same is true of the 23d paragraph of the section.

The provision for appointment of class C directors in the first sentence of the 20th paragraph is a duplication of the provision in the first sentence of the 12th paragraph; the duplication would be eliminated by the recommended amendment.

The provisions of the 1st sentence of the 24th paragraph of section 4, relating to the terms of the original directors of the Federal Reserve banks, are of no present significance and should be eliminated. Provisions of the second sentence relating to the length of terms of directors are a duplication of provisions in the 9th paragraph and may also be eliminated. The 3d sentence regarding filling of vacancies on the board of directors should be transferred to the 9th paragraph. With these changes the 24th paragraph could be repealed.

51. Federal Reserve Bank Directors Residents of District

Existing law

Section 4 of the Federal Reserve Act (12 U. S. C. 302, 305) provides:

Paragraph 9: "Such board of directors shall be selected as hereinafter specified and shall consist of nine members, holding office for three years, and divided into three classes, designated as classes A, B, and C."

Paragraph 10: "Class A shall consist of three members, who shall be chosen by and be representative of the stock-holding banks."

Paragraph 11: "Class B shall consist of three members, who at the time of their election shall be actively engaged in their district in commerce, agriculture, or some other industrial pursuit."

Paragraph 12: "Class C shall consist of three members who shall be designated by the Board of Governors of the Federal Reserve System. * * *"

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Paragraph 20: "Class C directors shall be appointed by the Board of Governors of the Federal Reserve System. They shall have been for at least two years residents of the district for which they are appointed, one of whom shall be designated by said board as chairman of the board of directors of the Federal Reserve bank and as 'Federal Reserve agent.' * * *"

Recommendation

Amend section 4 to provide that every Federal Reserve bank director shall be a resident of the district of the Federal Reserve bank on whose Board he is serving, and that he shall cease to be a director when he ceases to be a resident of that district.

Reasons

Section 4 has provided, since the original enactment of the Federal Reserve Act, that class C directors "shall have been for at leas 2 years residents of the district for which they are appointed." but the act contains no similar requirement with respect to class A or class B direcctors.

Moreover, even as to class C directors, the act contains no requirement that they must continue to be residents during their terms of office.

Consequently, a person could not be appointed a class C director of the Federal Reserve Bank of New York, for example, unless he were a resident of the Second Federal Reserve District at the time of his appointment; but if he moved to California before the expiration of his term, he would not be disqualified thereby from continuing to serve as a directcor of the Federal Reserve Bank of New York.

Furthermore, although it is not likely that member banks would select a class A or class B director who was not a resident of their district, (1) there is nothing in the act to prevent their doing so, and (2) there is nothing in the act to prevent a class A or class B direcctor, once he has been elected, from moving to a distant part of the country without ceasing to be a director.

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It would seem appropriate that all directors be residents of the district of the Federal Reserve bank for which they are appointed, not only at the time of their appointment, but also throughout their term of office, because, as a class A directors the Federal Reserve Act provides that they "shall be chosen by and be representative of the stockholding banks." As to class B directors the act provides that "at the time of their election [they] shall be actively engaged in their district in commerce, agriculture, or some other industrial pursuit." As to class C directors the act provides not only that they "shall have been for at least 2 years residents of the district" but also that one of them shall act as chairman of the board of directors of the Federal Reserve bank (the other two to be representative of the stockholding banks." As to class B directors the act office of the Board of Governors, making regular reports to the Board of Governors and acting as its official repreesntative.

Obviously these various provisions of the act contemplate that the directors of all three classes shall be at the time of their elections, and should continue to be during their terms of office, residents of the district of the Federal Reserve bank on whose Board they are serving.

Duplication between provisions of the 12th and 20th paragraphs quoted above, regarding appointment of class C directeors would be eliminated by recommendation No. 5.

52. Service on Reserve Bank Boards or Federal Advisory Council

Existing law

The ninth paragraph of section 4 of the Federal Reserve Act (12 U. S. C. 302) provides as follows:

"Such board of directors shall be selected as hereinafter specified and shall consist of nine members, holding office for three years, and divided into three classes, designated as classes A, B, and C."

The first paragraph of section 12 of the Federal Reserve Act (12 U. S. C. 261) provides:

"Sec. 12. There is hereby created a Federal Advisory Council, which shall consist of as many members as there are Federal reserve districts. Each Federal reserve bank by its board of directors shall annually select from its own Federal reserve district one member of said council, who shall receive such compensation and allowances as may be fixed by his board of directors subject to the approval of the Board of Governors of the Federal Reserve System. The meetings of said advisory Council shall be held at Washington, District of Columbia, at least four times each year, and oftener if called by the Board of Governors of the Federal Reserve System. The council may in addition to the meetings above provided for hold such other meetings in Washington, District of Columbia, or elsewhere, as it may deem necessary, may select its own officers and adopt its own methods of procedure, and a majority of its members shall constitute a quorum for the transaction of business. Vacancies in the council shall be filled by the respective reserve banks, and members selected to fill vacancies shall serve for the unexpired term."

Recommendation

An amendment is proposed which would prohibit directors of Federal Reserve banks from serving more than 2 consecutive terms of 3 years each, other than the Chairman of the Board of Directors, and would prohibit members of the Federal Advisory Council from serving more than 6 consecutive terms of 1 year each.

Reasons

A certain degree of rotation in the directorates of the Reserve banks and the membership of the Federal Advisory Council is desirable in order to obtain the advantages of broader representation and wider experience over a period of time. Such rotation would help to bring a wider variety of experience into the councils of the Federal Reserve System and would also help to bring about a more widespread knowledge of System policies and problems. It would thus serve the public interest in both directions. At the same time, the length of service permitted under the proposed amendment would be adequate to assure for the System and the public interest the benefits of suitable continuity of policy and acquired experience.

In connection with the appointment of class C directors of the Federal Reserve banks, the Board as a matter of policy does not reappoint any such director who

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has served 2 full terms of 3 years each, except that the class C director who is designated by the Board as Chairman and Federal Reserve agent may serve for a total of not to exceed 3 full terms. The proposed amendment would limit the terms of service of all directors, class A and class B, as well as class C directors, but would continue to permit an exception as to the Chairman.

53. Federal Reserve Agents and Assistant Federal Reserve Agents

Existing law

Paragraphs 20 and 21 of section 4 of the Federal Reserve Act (12 U. S. C. 305 and 306) read as follows:

"Class C directors shall be appointed by the Board of Governors of the Federal Reserve System. They shall have been for at least two years residents of the district for which they are appointed, one of whom shall be designated by said board as chairman of the board of directors of the Federal Reserve bank and as 'Federal Reserve agent.' He shall be a person of tested banking experience, and in addition to his duties as chairman of the board of directors of the Federal Reserve bank he shall be required to maintain, under regulations to be established by the Board of Governors of the Federal Reserve System, a local office of said board on the premises of the Federal Reserve bank. He shall make regular reports to the Board of Governors of the Federal Reserve System as deputy chairman to exer-representative for the performance of the functions conferred upon it by this Act. He shall receive an annual compensation to be fixed by the Board of Governors of the Federal Reserve System and paid monthly by the Federal Reserve bank to which he is designated. One of the directors of class C shall be appointed by the Board of Governors of the Federal Reserve System as deputy chairman to exercise the powers of the chairman of the board when necessary. In case of the absence of the chairman and deputy chairman, the third class C director shall preside at meetings of the board.

"Subject to the approval of the Board of Governors of the Federal Reserve System, the Federal Reserve agent shall appoint one or more assistants. Such assistants, who shall be persons of tested banking experience, shall assist the Federal Reserve agent in the performance of his duties and shall also have power to act in his name and stead during his absence or disability. The Board of Governors of the Federal Reserve System shall require such bonds of the assistant Federal Reserve agents as it may deem necessary for the protection of the United States. Assistants to the Federal Reserve agent shall receive an annual compensation, to be fixed and paid in the same manner as that of the Federal Reserve agent."

Recommendation

An amendment providing for the delegation by a Federal Reserve agent to an assistant Federal Reserve agent of the agent's administrative functions; eliminating the requirement that the Federal Reserve agent and assistant Federal Reserve agent have "tested banking experience"; and providing that an assistant Federal Reserve agent may serve during a vacancy in the office of Federal Reserve agent as well as during his absence or disability.

Reasons

Under the provisions of existing law, the Federal Reserve Board is required to appoint 3 of the 9 directors of each Federal Reserve bank and to designate one of the directors appointed by it as Chairman and Federal Reserve agent. The person so designated is required to have "tested banking experience" but is forbidden to be a director, officer, employee or stockholder of any bank.

Under the law, the duties prescribed for the Chairman as such are to preside at meetings of the board of directors, to conduct elections of class A and class B directors, and to report to the board with his recommendations any undue use of bank credit by member banks.

As Federal Reserve agent, he is required to maintain a local office of the Board on the premises of the Federal Reserve bank, to act as the official representative of the Board for the performance of the functions conferred upon it by the Federal Reserve Act and to perform any statutory duties of a technical and supervisory nature, such as attending to the issuance and retirement of Federal Reserve notes, holding and releasing collateral therefor and instituting proceedings for the removal of officers and directors of member banks for violations of law or continuation of unsound practices.

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The duties of the Federal Reserve agent are thus largely of a ministerial character. There is no sound reason why these duties should necessarily be personally performed by the Federal Reserve agent who, as Chairman of the Board of Directors, must devote his attention to matters of policy involved in the operations of the Federal Reserve bank. As a matter of practice, the agent delegates many of his ministerial functions to assistants. It would seem desirable, however, to clarify the fact that the Federal Reserve agent has authority to delegate to an assistant Federal Reserve agent any of his duties which are of a ministerial character and also to authorize an assistant agent to act in lieu of the agent not only during the absence or disability of the agent but also during a vacancy in his office.

Moreover, under existing law, both the Federal Reserve agent and assistant Federal Reserve agents must be persons of "tested banking experience." However, their duties are not such as to require tested banking experience, and the requirement adds to the difficulty of finding qualified men to serve as chairmen of the boards of directors of Federal Reserve banks. Accordingly, it is believed that the provision for tested banking experience might be eliminated from the law, leaving to the discretion of the Board of Governors of the Federal Reserve System the determination of the question whether a person to be appointed is properly qualified for the position.

54. Payment of Reserve Bank Earnings to Treasury

Existing law

The first paragraph of section 7 of the Federal Reserve Act (12 U. S. C. 289) reads:

"Sec. 7. After all necessary expenses of a Federal reserve bank shall have been paid or provided for, the stockholders shall be entitled to receive an annual dividend of 6 per centum on the paid-in capital stock, which dividend shall be cumulative. After the aforesaid dividend claims have been fully met, the net earnings shall be paid into the surplus fund of the Federal reserve bank."

The second sentence of the fourth paragraph of section 16 of the Federal Reserve Act (12 U. S. C. 414) reads:

"* * * The Board shall have the right, acting through the Federal Reserve Agent, to grant in whole or in part, or to reject entirely the application of any Federal Reserve bank for Federal Reserve notes; but to the extent that such application may be granted the Board of Governors of the Federal Reserve System shall, through its local Federal Reserve agent, supply Federal Reserve notes to the banks so applying, and such bank shall be charged with the amount of the notes issued to it and shall pay such rate of interest as may be established by the Board of Governors of the Federal Reserve System on only that amount of such notes which equals the total amount of its outstanding Federal Reserve notes less the amount of gold certificates held by the Federal Reserve agent as collateral security. * * *"

Recommendation

An amendment to provide specific direction or authority for payment to the United States by the Federal Reserve banks of a percentage of their net earnings after expenses and dividends. This might be done through one of two methods: (1) An amendment specifically authorizing or directing the Board of Governors of the Federal Reserve System to require the Federal Reserve banks to transfer a portion of their net earnings annually to the United States, without regard to the volume of Federal Reserve notes outstanding, or (2) an amendment requiring the Federal Reserve banks to pay 90 percent of their net earnings after expenses and dividends to the United States as a franchise tax, after accumulation in the case of each bank of a surplus equal to subscribed capital. The Board of Governors expresses no opinion at this time as to which of these two methods is preferable.

Reasons

Prior to 1933 each Federal Reserve bank was required by the provisions of section 7 of the Federal Reserve Act to pay a franchise tax to the United States equal to 90 percent of its net earnings, after it had accumulated a surplus equal to its subscribed capital. Up until the end of 1932 Federal Reserve banks had paid franchise taxes to the United States Treasury amounting to $149 million and at that time the Federal Reserve banks had accumulated surplus accounts of $278 million as compared with subscribed capital aggregating $302 million.

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The Banking Act of 1933 providing for the establishment of the Federal Deposit Insurance Corporation required each Federal Reserve bank to pay an amount equal to one-half of its surplus on January 1, 1933, as a subscription to the capital stock of the Corporation. These subscriptions amounted to $139 million and reduced the surplus of the Federal Reserve banks to an equivalent figure, or considerably less than one-half of their subscribed capital. Congress, therefore, eliminated the franchise tax in order to permit the Federal Reserve banks to build up their surplus accounts from future earnings.

Net earnings for the next 10 years were relatively small and at the end of 1944 the combined surplus accounts of the Federal Reserve banks were less than 75 percent of their subscribed capital. During the next few years, however, net earnings increased substantially, due primarily to large holdings of Government securities. This made possible transfers to surplus accounts, which increased the combined surplus of the Federal Reserve banks to approximately $440 million at the end of 1946 as compared with subscribed capital of nearly $374 million.

In these circumstances, the Board concluded in 1947 that it would be appropriate for the Federal Reserve banks to pay to the Treasury the bulk of their net earnings after providing for necessary expenses and a statutory dividend on stock. For this purpose the Board invoked its authority under section 16 of the Federal Reserve Act, which provides that each Federal Reserve bank shall pay such rate of interest as may be established by the Board on the amount of its outstanding Federal Reserve notes less the amount of gold certificates held by the Federal Reserve agent as collateral security. The Board, accordingly, decided to establish such rates of interest as would make it possible to transmit to the Treasury approximately 90 percent of net earnings after dividends of each of the Federal Reserve banks for the year 1947, and this has been done annually since that time. By thus invoking its authority under section 16, the Board has been able to accomplish the same results as were accomplished by the payment of a franchise tax, i. e., the payment of excess earnings of the Federal Reserve banks to the Government.

In each annual report since that time the Board has informed Congress as to the amounts paid by the Federal Reserve banks to the Treasury as interest on Federal Reserve notes. The aggregate amount paid by the Federal Reserve banks to the United States under this authority for the years 1947 to 1955, inclusive, is $2,049,000,000, the payment for the year 1955 being over $251 million.

It will be recalled that the report of the Subcommittee on General Credit Control and Debt Management of the Joint Committee on the Economic Report in 1952 included a statement that while the subcommittee approves of the action of the Board by which earnings have been paid to the Treasury since 1947, it believes that it would be better if provision for such return were made by legislative action.

In view of the volume of earnings of the Federal Reserve banks in recent years and the present amount of their subscribed capital stock, $639,106,000, and the present amount of their combined surplus, $693,612,000, it is believed that a part of the earnings of the Reserve banks should annually be paid to the United States. This might be done in one of two ways:

By action of the Board of Governors.—The provisions of the Federal Reserve Act are specific in authorizing the Board of Governors to establish a rate of interest to be paid by a Federal Reserve bank on its outstanding Federal Reserve notes not covered by gold, and the discretion of the Board in this regard is unrestricted by the terms of the statute. Accordingly, it is the Board's opinion that it is clearly authorized to require the Federal Reserve banks to take the action it did in 1947 and annually since that time.

However, the authority to take this action has been questioned in some quarters and the procedure involved is somewhat complicated in the calculation of the amounts of the payments. To clarify this matter, the Board could be given a specific authority or direction to require the Federal Reserve banks to transfer annually to the United States such portion of their net earnings as the Board may deem appropriate in the circumstances, without the necessity for relating the requirement to outstanding Federal Reserve notes not covered by gold collateral. Such an amendment, if acceptable to Congress, would put at rest all questions in the matter and would simplify the mechanics of the operation.

By restoration of the franchise tax.—The other method of accomplishing the desired result would be to restore to the law a provisions requiring each Federal Reserve bank, whenever its surplus equals or exceeds the amount of its subscribed capital stock, to pay annually to the United States as a franchise tax

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90 percent of net earnings after provision for expenses and dividends and such reserves for contingencies as may be necessary. This would in effect restore the situation as it existed prior to 1933.

55. Use by Treasury of Funds Received From Federal Reserve Banks

Existing Law

The first sentence of the second paragraph of section 7 of the Federal Reserve Act (12 U. S. C. 290) reads:

"The net earnings derived by the United States from Federal Reserve banks shall, in the discretion of the Secretary, be used to supplement the gold reserve held against outstanding United States notes, or shall be applied to the reduction of the outstanding bonded indebtedness of the United States under regulations to be prescribed by the Secretary of the Treasury. * * *"

Recommendation

That this sentence be repealed.

Reasons

From the date of the original enactment of the Federal Reserve Act of 1913 until the passage of the Banking Act of 1933, the law provided that the Federal Reserve banks should pay a portion of their net earnings to the United States as a franchise tax. This provision for a franchise tax was included in section 7 of the Federal Reserve Act immediately prior to the sentence quoted above with reference to the use by the Secretary of the net earnings derived by the United States from Federal Reserve banks. In view of the fact that the payment of the franchise tax by the Federal Reserve banks to the United States has not been a part of the law since 1933, the first sentence of the second paragraph of section 7 is believed to be obsolete and might well be eliminated from the law.

It is understood that for many years the total amount of outstanding United States notes has been approximately $347 million, against which there is a reserve held in the Treasury of about $156 million, moreover, the use by the Secretary of earnings derived by the United States from Federal Reserve banks to reduce the outstanding indebtedness of the United States would not necessarily have any net effect upon the amount of the outstanding debt, since under other authority the debt could be increased within the limit permitted by recent statutes. Thus, any practical effect which this provision in section 7 might have had on the use of funds by the Treasury appears to have been superseded by the general statute governing the administration of the public debt, and this is another reason, in addition to the repeal of the franchise tax, why the provision might well be deleted as obsolete.

56. Taxation of Federal Reserve Bank Stock

Existing law

The third paragraph of section 7 of the Federal Reserve Act (12 U. S. C. 531) provides:

"Federal reserve banks, including the capital stock and surplus therein, and the income derived therefrom shall be exempt from Federal, State, and local taxation, except upon real estate."

Section 6 of the Public Debt Act of 1942 amended section 4 (a) of the Public Debt Act of 1941 to read as follows:

"Sec. 4. (a) Interest upon obligations, and dividends, earnings, or other income from shares, certificates, stock, or other evidences of ownership, and gain from the sale or other disposition of such obligations and evidences of ownership issued on or after the effective date of the Public Debt Act of 1942 by the United States or any agency or instrumentality thereof shall not have any exemption, as such, * * *."

Recommendation

An amendment to remove the exemption from taxation of dividends on Federal Reserve bank stock issued before the effective date of the Public Debt Act of 1942 so as to put such dividends on the same footing as dividends on stock issued after that date.

Reasons

The effect of the Public Debt Act of 1942 was to remove the exemption with respect to dividends on Federal Reserve bank stock issued after the effective date

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of that act, March 28, 1942, but to leave the exemption in effect with respect to dividends on such stock issued before that date. This results in a differentiation between banks admitted to membership after that date and those admitted previously. It also results in a differentiation between stock issued before, and stock issued after that date, to banks admitted before that date, for example, where a bank admitted to membership before that date increases its capitalization after that date and acquires additional Federal Reserve bank stock.

The differentiation results from considerations having no relation to the System on membership therein, but rather to the considerations which led to the enactment of the above provisions of the Public Debt Act of 1941 and the Public Debt Act of 1942.

The Subcommittee on General Credit Control and Debt Management of the Joint Committee on the Economic Report (Patman) recommended in 1952 that the exemption be removed entirely, saying:

"The subcommittee does not believe that the analogy between the contractual tax-exemption provisions of United States securities and the statutory tax exemption of dividends on stock of the Federal Reserve banks is well taken, and recommends that the appropriate legislative committees consider the subjection of all dividends on Federal Reserve bank stock to Federal income taxation, either by direct legislation or by provision for the recall and reissue of all outstanding stock of the Federal Reserve banks."

57. Capital Notes and Debentures Eligible for Purchase by Reconstruction Finance Corporation

Existing law

The first paragraph of section 9 of the Federal Reserve Act (12 U. S. C. 321), relating to applications by State banks for membership in the Federal Reserve System, provides in the third sentence thereof that:

"* * * For the purposes of membership of any such bank the terms 'capital' and 'capital stock' shall include the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation. * * *"

Section 345 of the Banking Act of 1935 (12 U. S. C. 51b–1), provides that if any part of the capital of a national bank, State member bank, or bank applying for membership in the System consists of preferred stock, the determination of whether or not its capital is impaired shall be based on the par value of its stock even though the amount which holders of the preferred stock are entitled to receive in the event of liquidation shall be in excess of the par value of such preferred stock. The section then further provides:

"* * * If any such bank or trust company shall have outstanding any capital notes or debentures of the type which the Reconstruction Finance Corporation is authorized to purchase pursuant to the provisions of section 304 of the Emergency Banking and Bank Conservation Act, approved March 9, 1933, as amended, the capital of such bank may be deemed to be unimpaired if the sound value of its assets is not less than its total liabilities, including capital stock, but excluding such capital notes or debentures and any obligations of the bank expressly subordinated thereto. * * *"

Recommendation

An amendment to repeal the sentences contained in the first paragraph of section 9 of the Federal Reserve Act and in section 345 of the Banking Act of 1935, as quoted above, which relate to capital notes and debentures of the kind authorized to be purchased by the Reconstruction Finance Corporation.

Reasons

The Reconstruction Finance Corporation is in liquidation and very few, if any, of the capital notes or debentures purchased by the Corporation are now outstanding. The reasons for which the purchase of such notes and debentures was authorized in the 1930's and for which they were allowed to be considered as part of a bank's capital have ceased to exist, and consequently the provisions of the statutes quoted above no longer have any real significance.

58. Reports From Member Banks

Existing law

The second sentence of the sixth paragraph of section 9 of the Federal Reserve Act (12 U. S. C. 324) provides that State banks admitted to Federal Reserve membership—

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"* * * shall be required to make reports of condition and of the payment of dividends to the Federal reserve bank of which they become a member. Not less than three of such reports shall be made annually on call of the Federal reserve bank on dates to be fixed by the Board of Governors of the Federal Reserve System. * * * Such reports of condition shall be in such form and shall contain such information as the Board of Governors of the Federal Reserve System may require and shall be published by the reporting banks in such manner and in accordance with such regulations as the said Board may prescribe."

Recommendation

An amendment broadening and clarifying the above-quoted authority of the Board of Governors so as to permit the reduction and simplification of the reporting requirements with respect to many banks and at the same time facilitate the collection of better statistical data.

Such an amendment would empower the Board to prescribe different forms for reports of condition and earnings and dividends for various groups of State member banks, such as reserve city banks and country banks, or large banks and small banks; to require such reports on a sample basis, instead of requiring that every State member bank report on every call; and to require or waive publication of such reports.

Reasons

The above-quoted provisions of law (like the corresponding provisions of the National Bank Act) have been interpreted as requiring the submission of reports by every State member bank on uniform report forms. There are wide differences in the nature and scope of operations of banks; some are small, serving primarily local needs, while others are large, conducting widely diversified banking operations. Some are single-office institutions and others operate branches in varying numbers. Consequently, a single, uniform report form that adequately reveals the condition and operations of a large bank may be too burdensome for hundreds of small banks.

If the Board had the broader power above suggested, it could call for relatively simple reports from the great majority of State member banks and obtain the more detailed reports only from the larger banks engaged in a variety of banking operations. It also could take advantage of the techniques that have been developed in recent years whereby the collection of reports from a relatively small number of banks on a sample basis might adequately reflect the banking situation as a whole.

Under the above-quoted provisions of existing law, every report of condition submitted by a State member bank must be published, regardless of whether the Board of Governors deems publication necessary or desirable and regardless of the fact that nearly all State authorities may require publication of reports by State banks, member and nonmember alike. There is no corresponding mandatory publication requirement applicable to similar condition reports required by the Federal Deposit Insurance Corporation from insured nonmember banks. There is, in fact, no requirement that the Corporation call for not less than three reports annually, and in practice it calls for reports semiannually. Removal of the mandatory requirements for publication would do away with overlapping in some instances between State and Federal requirements and would reduce the burden and cost to State member banks.

Existing law does not provide for publication of the reports of earnings, expenses, dividends, etc., which are made simiannually. Some banks, nevertheless, do publish such data, usually in annual reports to stockholders released to the press. The published data differ a good deal from bank to bank, and do not conform to the official reports of earnings and dividends required by the Board. If the Board were empowered to require publication of reports of earnings and dividends either by all State member banks or by groups of them, it undoubtedly would work toward more nearly uniform presentation of such data to the public by the banks themselves. Such a move would also be in harmony with the requirements of the Securities and Exchange Commission with respect to presentation of earnings, expenses, dividends, etc., by corporations whose securities are listed on the stock exchanges.

If the above proposals are given favorable consideration, presumably they will suggest consideration of corresponding provisions of law pertaining to national banks and insured nonmember banks, respectively.

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59. References to Section 12B of the Federal Reserve Act

Existing law

The 12th paragraph of section 9 of the Federal Reserve Act (12 U. S. C. 329a) provides:

"In order to facilitate the admission to membership in the Federal Reserve System of any State bank which is required under subsection (y) of section 12B of this Act to become a member of the Federal Reserve System in order to be an insured bank or continue to have any part of its deposits insured under such section 12B, the Board of Governors of the Federal Reserve System may waive in whole or in part the requirements of this section relating to the admission of such bank to membership: *Provided,* That, if such bank is admitted with a capital less than that required for the organization of a national bank in the same place and its capital and surplus are not, in the judgment of the Board of Governors of the Federal Reserve System, adequate in relation to its liabilities to depositors and other creditors, the said Board may, in its discretion, require such bank to increase its capital and surplus to such amount as the Board may deem necessary within such period prescribed by the Board as in its judgment shall be reasonable in view of all the circumstances: *Provided, however,* That no such bank shall be required to increase its capital to an amount in excess of that required for the organization of a national bank in the same place."

The 12th paragraph of section 19 of the Federal Reserve Act (12 U. S. C. 371a), refers in the 3d proviso to a savings bank "as defined in section 12B of this act."

The sixth paragraph of section 25 (b) of the Federal Reserve Act (12 U. S. C. 632) provides that the term "insured bank" shall have the meaning given it in "section 12B of this act."

Recommendation

An amendment to repeal the twelfth paragraph of section 9 authorizing the Board to waive membership requirements in order to facilitate membership of State banks formerly required by subsection (y) of section 12B of the Federal Reserve Act to become members of the System in order to have their deposits insured; together with amendments correcting references to section 12B of the Federal Reserve Act now contained in the 12th paragraph of section 19 and the 6th paragraph of section 25 (b) of the Federal Reserve Act.

Reasons

The 12th paragraph of section 9 provides that the Board of Governors may waive requirements for membership in the System with respect to any State bank required by subsection (y) of Section 12B of the Federal Reserve Act to become a member of the System in order to have its deposits insured. Subsection (y) of section 12B was repealed in 1939, and all of section 12B itself was withdrawn from the act and enacted as a separate Federal Deposit Insurance Act in 1950. Consequently, this paragraph is now of no significance and should be repealed.

The references to section 12B in the 12th paragraph of section 19 and the 6th paragraph of section 25 (b) of the Federal Reserve Act are now inaccurate for the reasons indicated above, and these references therefore should be to the Federal Deposit Insurance Act.

60. Stock Acquisitions in Connection With Absorptions

Existing law

Paragraph 20 of section 9 of the Federal Reserve Act (12 U. S. C. 335) provides:

"State member banks shall be subject to the same limitations and conditions with respect to the purchasing, selling, underwriting, and holding of investment securities and stock as are applicable in the case of national banks under paragraph 'Seventh' of section 5136 of the Revised Statutes, as amended."

The fifth sentence of paragraph "Seventh" of section 5136 of the Revised Statutes (12 U. S. C. 24) provides:

"* * * Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. * * * "

Recommendation

An amendment to paragraph 20 of section 9 of the Federal Reserve Act to provide that, with the approval of the Board of Governors of the Federal Reserve

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System, a member State bank may purchase and hold temporarily stock of another bank as one step in the process of absorbing such other bank through merger, consolidation, acquisition of assets, and assumption of liabilities, or otherwise.

Reasons

Section 5136 of the Revised Statutes contains a general prohibition against purchase by national banks, for their own accounts, of "any shares of stock of any corporation," and this prohibition is made applicable to member State banks by paragraph 20 of section 9 of the Federal Reserve Act.

In the course of the absorption of another bank, a member State bank occasionally finds that it would be convenient or otherwise beneficial to purchase the stock of such other bank and hold it for a short period, as one step in the take-over process. The statutory prohibition against member banks purchasing corporate stocks might be interpreted as not applying to such a temporary acquisition as one step in the process of absorption. However, the statutory prohibition is absolute in its language, and consequently the Board of Governors has felt obligated to look with disfavor upon any direct acquisition of stock by a member bank, even in the circumstances described above. As a result, member State banks have sometimes been deprived of this convenient means of effecting an otherwise unobjectionable absorption.

The proposed amendment would permit member State banks to utilize this convenient procedure, and the requirement of approval by the Board of Governors would prevent abuse of the privilege.

As indicated above, under existing law member State banks and national banks are in the same position in this respect. Consequently, the committee, if it favors this proposal, might wish to consider some similar amendment with respect to national banks.

61. Obsolete Provisions Regarding Federal Reserve Board Members

Existing law

The first and second paragraphs of section 10 of the Federal Reserve Act (12 U. S. C. 241) reads as follows:

"Sec. 10. The Board of Governors of the Federal Reserve System (hereinafter referred to as the 'Board') shall be composed of seven members, to be appointed by the President, by and with the advice and consent of the Senate, after the date of enactment of the Banking Act of 1935, for terms of fourteen years except as hereinafter provided, but each appointive member of the Federal Reserve Board in office on such date shall continue to serve as a member of the Board until February 1, 1936, and the Secretary of the Treasury and the Comptroller of the Currency shall continue to serve as members of the Board until February 1, 1936. In selecting the members of the Board, not more than one of whom shall be selected from any one Federal Reserve district, the President shall have due regard to a fair representation of the financial, agricultural, industrial, and commercial interests, and geographical divisions of the country. The members of the Board shall devote their entire time to the business of the Board and shall each receive an annual salary of $15,000, payable monthly, together with actual necessary traveling expenses.

"The members of the Board shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any member bank, except that this restriction shall not apply to a member who has served the full term for which he was appointed. Upon the expiration of the term of any appointive member of the Federal Reserve Board in office on the date of enactment of the Banking Act of 1935, the President shall fix the term of the successor to such member at not to exceed fourteen years, as designated by the President at the time of nomination, but in such manner as to provide for the expiration of the term of not more than one member in any two-year period, and thereafter each member shall hold office for a term of fourteen years from the expiration of the term of his predecessor, unless sooner removed for cause by the President. Of the persons thus appointed, one shall be designated by the President, as chairman and one as vice chairman of the Board, to serve as such for a term of four years. The chairman of the Board, subject to its supervision, shall be its active executive officer. Each member of the Board shall, within fifteen days after notice of appointment, make and subscribe to the oath of office. Upon the expiration of their terms of office, members of the Board shall continue to serve until their successors are appointed and have

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qualified. Any person appointed as a member of the Board after the date of enactment of the Banking Act of 1935 shall not be eligible for reappointment as such member after he shall have served a full term of fourteen years."

Recommendation

An amendment which would eliminate from the statute the provisions of these two paragraphs relating to the Banking Act of 1935 and the membership of the Secretary of the Treasury and the Comptroller of the Currency on the Board of Governors of the Federal Reserve System; and which would make the statement of the salary of the members of the Board conform to existing law or whatever substitute may be deemed appropriate by the committee or by Congress.

Reasons

The provisions in the two paragraphs of section 10 of the Federal Reserve Act which are quoted above relating to the Banking Act of 1935 and to the Secretary of the Treasury and the Comptroller of the Currency were placed in the statute by the provisions of the Banking Act of 1935, which provided certain changes in the composition of the Federal Reserve Board. These provisions were necessary at the time in order to provide for the membership of the Board as newly constituted at that time, but their purpose has long since been served. The provisions are, therefore, obsolete and should be eliminated from the statute.

The last sentence of section 10 of the Federal Reserve Act as quoted above provides that the members of the Board of Governors of the Federal Reserve System shall each receive an annual salary of $15,000. However, under the provisions of the Federal Executive Pay Act of 1956, approved July 31, 1956, it is provided that the annual rate of basic compensation of the Chairman of the Board of Governors of the Federal Reserve System shall be $20,500 and of each of the other members of the Board of Governors shall be $20,000. In order that the provisions of the Federal Reserve Act may correctly reflect the actual situation in this regard, the reference to $15,000 in the last sentence of the first paragraph of section 10 should be changed to conform to existing law or whatever substitute may be considered appropriate by the committee or by Congress.

62. Reference to Number of Board Members

Existing law

The last sentence of the fourth paragraph of section 10 of the Federal Reserve Act (12 U. S. C. 244) reads:

"* * * Whenever a vacancy shall occur, other than by expiration of term, among the six members of the Board of Governors of the Federal Reserve System appointed by the President as above provided, a successor shall be appointed by the President, by and with the advice and consent of the Senate, to fill such vacancy, and when appointed he shall hold office for the unexpired term of his predecessor."

Recommendation

Amend the fourth paragraph of section 10 of the Federal Reserve Act to change a reference to the "six members" of the Board to refer to the "members" of the Board.

Reasons

Since the Board has 7 members, the present reference in the law to 6 members of the Board is obviously inaccurate and should be changed to refer merely to the "members" of the Board.

63. Reservation of Powers of Secretary of Treasury

Existing law

The sixth paragraph of section 10 of the Federal Reserve Act (12 U. S. C. 246) reads as follows:

"Nothing in this Act contained shall be construed as taking away any powers heretofore vested by law in the Secretary of the Treasury which relate to the supervision, management, and control of the Treasury Department and bureaus under such department, and wherever any power vested by this Act in the Board of Governors of the Federal Reserve System or the Federal reserve agent appears to conflict with the powers of the Secretary of the Treasury, such powers shall be exercised subject to the supervision and control of the Secretary."

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Recommendation

An amendment to repeal the last few lines of the above-quoted provision of law, specifically the language "and wherever any power vested by this act in the Board of Governors of the Federal Reserve System or the Federal reserve agent appears to conflict with the powers of the Secretary of the Treasury, such powers shall be exercised subject to the supervision and control of the Secretary."

Reasons

This provision was included in the original Federal Reserve Act in 1913, which provided for a Federal Reserve Board on which the Secretary of the Treasury and Comptroller of the Currency were members ex officio. The provision appears to reflect some uncertainty on the part of Congress in 1913 as to the possibility of overlapping authority between the Treasury and the Federal Reserve System. However, the meaning and intent of the language suggested for repeal are not at all clear. The language apparently refers only to powers of the Secretary relating to the supervision, management, and control of the Treasury Department and its bureaus, although it is possible to interpret it as applying to other powers vested by the original Federal Reserve Act in the Federal Reserve Board and the Federal Reserve agent. It is not believed that Congress intended that this provision should be more broadly interpreted and, in any event, the removal of the Secretary of the Treasury and the Comptroller of the Currency from membership on the Federal Reserve Board by the Banking Act of 1935 clearly indicated an intent that the Board should perform its functions according to its own best judgment. Moreover, so far as is known, this provision has never had any significant effect on any of the operations or authority exercised by the Federal Reserve System or of the Secretary of the Treasury. It is believed that it is in the category of obsolete or unnecessary provisions and should be repealed.

64. Federal Reserve Branch Buildings

Existing law

The ninth paragraph of section 10 of the Federal Reserve Act (12 U. S. C. 522) provides:

"No Federal reserve bank shall have authority hereafter to enter into any contract or contracts for the erection of any branch bank building of any kind or character, or to authorize the erection of any such building, if the cost of the building proper, exclusive of the cost of the vaults, permanent equipment, furnishings, and fixtures, is in excess of $250,000: *Provided*, That nothing herein shall apply to any building under construction prior to June 3, 1922: *Provided further*, That the cost as above specified shall not be so limited as long as the aggregate of such costs which are incurred by all Federal Reserve banks for branch bank buildings with the approval of the Board of Governors after the date of enactment of this proviso does not exceed $30,000,000."

Recommendation

An amendment which would remove entirely from the law quoted above the provisions thereof placing dollar limitations on expenditures for Federal Reserve bank branch buildings, but which would retain a provision requiring Board approval of expenditures for such buildings.

Reasons

The Federal Reserve banks use their own funds in the construction or improvement of their physical facilities, including their branch buildings and equipment. No appropriation of Government funds is involved. Federal Reserve bank buildings and branch buildings are capitalized—that is, carried as assets of the bank. Since a limitation on the expenditures for Federal Reserve bank branch buildings were first placed in the law in 1922, it has been necessary in 1947 and again in 1953 to amend the statutory limitation in order to provide for further branch construction and improvement that was found to be essential to increased activity of the branches. While most of the need for the next few years for physical expansion at the branches has been taken care of, it is probable that improvement and modernization will be necessary from time to time in the future, with the result that the dollar limitations in the law again would require change. However, even without the statutory dollar limitations recommended for repeal, the recommendation would require approval of the Board for any such expansion. This would mean that, as in the past, the Board would continue to consider and would have to approve the proposed construction or improvement in the light of the needs of the branch, the type of proposed construction, the reasonableness of

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the costs, and whether the construction was generally in keeping with the prevailing economic situation.

65. Advances to Groups of Member Banks

Existing law

Section 10 (a) of the Federal Reserve Act (12 U. S. C. 347a), provides as follows:

"Sec. 10. (a) Upon receiving the consent of not less than five members of the Board of Governors of the Federal Reserve System, any Federal reserve bank may make advances, in such amount as the board of directors of such Federal reserve banks may determine, to groups of five or more member banks within its district, a majority of them independently owned and controlled, upon their time or demand promissory notes, provided the bank or banks which receive the proceeds of such advances as herein provided have no adequate amounts of eligible and acceptable assets available to enable such bank or banks to obtain sufficient credit accommodations from the Federal reserve bank through rediscounts or advances other than as provided in section 10 (b). The liability of the individal banks in each group must be limited to such proportion of the total amount advanced to such group as the deposit liability of the respective banks bears to the aggregate deposit liability of all banks in such group, but such advances may be made to a lesser number of such member banks if the aggregate amount of their deposit liability constitutes at least 10 per centum of the entire deposit liability of the member banks within such district. Such banks shall be authorized to distribute the proceeds of such loans to such of their number and in such amount as they may agree upon, but before so doing they shall require such recipient banks to deposit with a suitable trustee, representing the entire group, their individual notes made in favor of the group protected by such collateral security as may be agreed upon. Any Federal reserve bank making such advance shall charge interest or discount thereon at a raate of not less than 1 per centum above its discount rate in effect at the time of making such advance. No such note upon which advances are made by a Federal reserve bank under this section shall be eligible under section 16 of this Act as collateral security for Federal reserve notes.

"No obligations of any foreign government, individual, partnership, association, or corporation organized under the laws thereof shall be eligible as collateral security for advances under this section.

"Member banks are authorized to obligate themselves in accordance with the provisions of this section."

Recommendation

An amendment to repeal section 10 (a) of the Federal Reserve Act authorizing advances by Federal reserve banks, under certain limited circumstances, to groups of five or more member banks.

Reasons

The authority conferred by section 10 (a) of the act was added by the Glass-Steagall Act of 1932, as an emergency means of providing credit to groups of member banks where one or more banks in the group were in a weakened condition and did not have sufficient "eligible paper" to obtain credit from the Reserve banks under other provisions of the act. The authority was made subject to very rigid restrictions, and advances under the section must bear interest at a late of at least 1 percent above the regular discount rate. As far as is known, no advances were ever made by the Reserve banks under this authority. One reason presumably was that the same time Congress enacted section 10 (b) of the Federal Reserve Act authorizing advances to any individual member bank on any "satisfactory security." In the circumstances it seems reasonably clear that the authority contained in section 10 (a) serves no useful purpose and should be repealed.

66. Simple Majority for All Board Actions

Existing law

The first paragraph of section 10 (a) of the Federal Reserve Act (12 U. S. C. 347a) provides in part:

"Sec. 10. (a) Upon receiving the consent of not less than five members of the Board of Governors of the Federal Reserve System, any Federal reserve bank may make advances, in such amount as the board of directors of such Federal

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reserve bank may determine, to groups of five or more member banks within its district, a majority of them independently owned and controlled, upon their time or demand promissory notes, provided the bank or banks which receive the proceeds of such advances as herein provided have no adequate amounts of eligible and acceptable assets available to enable such bank or banks to obtain sufficient credit accommodations from the Federal reserve bank through rediscounts or advances other than as provided in section 10 (b) * * *."

Paragraph (b) of section 11 of the Federal Reserve Act (12 U. S. C. 248 (b)) authorizes the Board of Governors:

"(b) To permit, or, on the affirmative vote of at least five members of the Board of Governors of the Federal Reserve System to require Federal reserve banks to rediscount the discounted paper of other Federal reserve banks at rates of interest to be fixed by the Board of Governors of the Federal Reserve System."

Paragraph (m) of section 11 of the Federal Reserve Act (12 U. S. C. 248 (m)) provides in part:

"(m) Upon the affirmative vote of not less than six of its members the Board of Governors of the Federal Reserve System shall have power to fix from time to time for each Federal reserve district the percentage of individual bank capital and surplus which may be represented by loans secured by stock or bond collateral made by member banks within such district, but no such loan shall be made by any such bank to any person in an amount in excess of 10 per centum of the unimpaired capital and surplus of such bank: *Provided*, That with respect to loans represented by obligations in the form of notes secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, certificates of indebtedness of the United States, Treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States, such limitation of 10 per centum on loans to any person shall not apply, but State member banks shall be subject to the same limitations and conditions as are applicable to the case of national banks under paragraph (8) of section 5200 of the Revised Statutes, as amended (U. S. C., Supp. VII, title 12, sec. 84) * * *"

The third paragraph of section 13 of the Federal Reserve Act (12 U. S. C. 343) provides:

"In unusual and exigent circumstances, the Board of Governors of the Federal Reserve System, by the affirmative vote of not less than five members, may authorize any Federal reserve bank, during such periods as the said board may determine, at rates established in accordance with the provisions of section 14, subdivision (d), of this Act, to discount for any individual, partnership, or corporation, notes, drafts, and bills of exchange of the kinds and maturities made eligible for discount for member banks under other provisions of this Act when such notes, drafts, and bills of exchange are indorsed or otherwise secured to the satisfaction of the Federal Reserve bank: *Provided*, That before discounting any such note, draft, or bill of exchange for an individual or a partnership or corporation the Federal reserve bank shall obtain evidence that such individual, partnership, or corporation is unable to secure adequate credit accommodations from other banking institutions. All such discounts for individuals, partnerships, or corporations shall be subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe."

Paragraphs (b) and (c) of section 19 of the Federal Reserve Act (12 U. S. C. 462) provide:

"(b) If in a reserve city, as now or hereafter defined, it shall hold and maintain with the Federal reserve bank of its district an actual net balance equal to not less than ten per centum of the aggregate amount of its demand deposits and three per centum of its time deposits: *Provided, however*, That if located in the outlying districts of a reserve city or in territory added to such a city by the extension of its corporate charter, it may, upon the affirmative vote of five members of the Board of Governors of the Federal Reserve System, hold and maintain the reserve balances specified in paragraph (a) hereof.

"(c) If in a central reserve city, as now or hereafter defined, it shall hold and maintain with the Federal reserve bank of its district an actual net balance equal to not less than thirteen per centum of the aggregate amount of its demand deposits and three per centum of its time deposits: *Provided, however*, That if located in the outlying districts of a central reserve city or in territory added to such city by the extension of its corporate charter, it may, upon the affirmative vote of five members of the Board of Governors of the Federal Reserve System,

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hold and maintain the reserve balances specified in paragraphs (a) and (b) thereof."

The sixth paragraph of section 19 of the Federal Reserve Act (12 U. S. C. 462b) provides:

"Nothwithstanding the other provisions of this section, the Board of Governors of the Federal Reserve System, upon the affirmative vote of not less than four of its members, in order to prevent injurious credit expansion or contraction, may by regulation change the requirements as to reserves to be maintained against demand or time deposits or both (1) by member banks in central reserve cities or (2) by member banks in reserve cities or (3) by member banks not in reserve or central reserve cities or (4) by all member banks; but the amount of the reserves required to be maintained by any such member bank as a result of any such change shall not be less than the amount of the reserves required by law to be maintained by such bank on the date of enactment of the Banking Act of 1935 nor more than twice such amount."

Recommendation

An amendment to each of the provisions of law quoted above, eliminating the requirement that the Board action authorized by each such provision be taken only upon the concurrence of a specified number of the members of the Board. It might be regarded as appropriate to accompany these changes with a suitable amendment to the fourth paragraph of section 10 of the Federal Reserve Act (12 U. S. C. 244) which would provide that any action which the Board is authorized to take may be taken by the affirmative vote of a majority of the members present at any meeting, assuming there is a quorum present.

Reasons

The several provisions of law quoted above require that the particular Board action authorized by each such provision be taken only upon the concurrence of a specific number of the members of the Board. In each case concurrence by more than a majority of a quorum is required. However, the Board actions authorized by such provisions would seem to be no more important than other actions which the Board is authorized to take and with respect to which there is no specific statutory requirement for a concurrence of a specified number of the members of the Board. In these latter situations, the general rule of law requiring concurrence by a majority of a quorum is applicable. No reason is known why this rule should not be applicable to all actions of the Board.

67. Fiscal Agency Operations of Reserve Banks

Existing law

Sections 11 (a), 11 (j), and 15 of the Federal Reserve Act (12 U. S. C. 248 (a), 248 (j), and 391) provide in part as follows:

"Sec. 11. The Board of Governors of the Federal Reserve System shall be authorized and empowered:

"(a) To examine at its discretion the accounts, books, and affairs of each Federal reserve bank * * * and to require such statements and reports as it may deem necessary * * *

* * * * * * *

"(j) To exercise general supervision over said Federal reserve banks."

* * * * * * *

"Sec. 15. * * * Federal reserve banks, * * * when required by the Secretary of the Treasury, shall act as fiscal agents of the United States; * * *"

In addition the laws creating a number of different Government agencies authorize or direct the Reserve banks to act as fiscal agent for such agencies.

Recommendation

An amendment to the Federal Reserve Act providing that, notwithstanding any other provision of law, the operations of a Federal Reserve bank pursuant to authority of law as fiscal agent, depository, or custodian of the United States or any instrumentality thereof or of any other organization shall be subject to the supervision and regulation of the Board of Governors of the Federal Reserve System.

Reasons

The report of the House Banking and Currency Committee on the original Federal Reserve Act stated that the Federal Reserve Board was "intrusted with

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the power to overlook and direct the general functions" of the Federal Reserve banks and that an important purpose of the Board was that of *"regulating relationships between Federal reserve banks and between them and the Government itself * * *"* [Emphasis supplied.]

Fiscal agency activities of the Reserve banks have increased substantially in recent years and consume a large amount of the time of the managements of the Reserve banks and can have important effects not only on the Reserve banks themselves, but also on System monetary and credit policies. Questions have arisen as to whether the present law is sufficiently specific with respect to the Board's authority regarding this function which the Reserve banks perform as agents for the various Government agencies. Since the Board's responsibility for general supervision of the Federal Reserve banks cannot be effectively discharged without adequate authority to supervise and regulate this important part of Reserve bank operations, it is important that the point be covered specifically in the law to avoid any uncertainty in the matter.

The importance of Reserve bank relations with foreign banks led the Congress in 1933 to deal specifically with that problem by adding to the Federal Reserve Act section 14 (g), which directs the Board to exercise special supervision over those relationships. Similarly, the magnitude and importance of Reserve bank fiscal agency operations, including their extensive monetary and credit consequences, make it desirable to write into the law a specific provision on this subject.

68. Incorrect Reference to Section 20 of the Federal Reserve Act

Existing law

Subsection (e) of section 11 of the Federal Reserve Act (12 U. S. C. 248 (e)) authorizes the Board of Governors of the Federal Reserve System—

"(e) To add to the number of cities classified as reserve and central reserve cities under existing law in which national banking associations are subject to the reserve requirements set forth in section twenty of this Act; or to reclassify existing reserve and central reserve cities or to terminate their designation as such."

Recommendation

Amend section 11 (e) of the Federal Reserve Act to make the inaccurate reference to section 20 of the act refer to section 19, and to change "national banking associations" to "member banks."

Reasons

The reference in this provision of present law to the reserve requirements set forth in section 20 of the Federal Reserve Act obviously should refer to section 19 of that act. The proposed amendment would correct this reference. In addition, the amendment would change the words "national banking associations" to "member banks," in view of the fact that section 19 actually prescribes reserves with respect to all member banks rather than merely national banks.

69. Revocation of Trust Powers of National Banks

Existing law

The last sentence of the last paragraph of section 11 (k) of the Federal Reserve Act (12 U. S. C. 248 (k)) provides:

"The Board of Governors of the Federal Reserve System is authorized and empowered to promulgate such regulations as it may deem necessary to enforce compliance with the provisions of this subsection and the proper exercise of the powers granted therein."

Recommendation

An amendment to authorize the Board of Governors, on complaint by the Comptroller of the Currency, to revoke trust powers of national banks if it is determined, after hearing, that such powers are being unlawfully or improperly exercised.

Reasons

Although the Board is authorized to promulgate regulations to enforce the proper exercise of trust powers, there is no practical means to enforce compliance with these regulations. The supervisory authorities may request correction but they cannot demand correction. The only action that may be taken is forfeiture

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of the bank's charter or removal of officers for unsafe or unsound banking practices. As the Board issues a "special permit" to the national bank, which is in the nature of a license, the Board should have authority to revoke such permit if the powers are not being properly exercised. This extreme action would, of course, seldom be necessary as the possibility of such action would be sufficient in most instances to obtain the correction.

70. References to Bonds Issued Under Home Owners' Loan Act and Bonds of Federal Farm Mortgage Corporation

Existing law

The eighth paragraph of section 13 of the Federal Reserve Act (12 U. S. C. 347) provides that any Federal Reserve bank may make advances for periods not exceeding 15 days to its member banks on their promissory notes secured by various types of collateral including:

"* * * the deposit or pledge of Federal Farm Mortgage Corporation bonds issued under the Federal Farm Mortgage Act, or by the deposit or pledge of bonds issued under the provisions of subsection (c) of section 4 of the Home Owners' Loan Act of 1933, as amended * * *"

Section 14 (b) of the Federal Reserve Act (12 U. S. C. 355) authorizes each Federal Reserve Bank to buy and sell certain types of obligations including—

"* * * bonds of the Federal Farm Mortgage Corporation having maturities from date of purchase of not exceeding six months, bonds issued under the provisions of subsection (c) of section 4 of the Home Owners' Loan Act of 1933, as amended * * *"

The second paragraph of section 23A of the Federal Reserve Act (12 U. S. C. 371c) provides that the provisions of that paragraph regarding security for loans to affiliates of member banks shall not apply to loans on extensions of credit secured by certain types of obligations including:

"* * * obligations of * * * the Home Owners' Loan Corporation * * *"

The third paragraph of section 23A of the Federal Reserve Act (12 U. S. C. 371c) exempts from the provisions of that section any affiliate engaged solely in holding certain types of obligations including—

"* * * obligations of * * * the Home Owners' Loan Corporation * * *"

Recommendation

An amendment to eliminate reference to bonds and obligations of the Federal Farm Mortgage Corporation and the Home Owners' Loan Corporation and bonds issued under the Home Owners' Loan Act, as now contained in the provisions of law referred to above.

Reasons

The Home Owners' Loan Corporation was dissolved by order of the Secretary of the Home Loan Bank Board, effective February 3, 1954, pursuant to act of June 30, 1953; and no bonds of the Corporation are outstanding. The Federal Farm Mortgage Corporation has been in process of liquidation since 1947, most of its assets have been transferred to the Federal land banks, and only a relatively insignificant amount of obligations of that Corporation are now outstanding. Consequently, references in the Federal Reserve Act quoted above to obligations of these two Corporations no longer have any significance and should be repealed as obsolete.

71. References to National Agricultural Credit Corporations

Existing law

The third paragraph of section 13a of the Federal Reserve Act (12 U. S. C. 350) authorizes any Federal Reserve bank to buy and sell debentures and other such obligations issued by "a national agricultural credit corporation."

Section 14 (f) of the Federal Reserve Act (12 U. S. C. 359) authorizes any Federal Reserve bank to purchase and sell in the open market acceptances "of national agricultural credit corporations."

The third paragraph of section 15 of the Federal Reserve Act (12 U. S. C. 393) authorizes the Federal Reserve banks to act as depositories and fiscal agents for "any national agricultural credit corporation."

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Recommendation

An amendment to repeal references to the national agricultural credit corporations contained in the provisions of law referred to above.

Reasons

Section 77 of the act of June 16, 1933 (12 U. S. C. 1151a), provides that after the date of that act "no national agricultural credit corporation shall be formed under the provisions of this chapter." No such corporations are now in operation. Consequently, references to these corporations in the provisions of the Federal Reserve Act above referred to are obsolete and should be repealed.

72. Repurchase Agreements of Federal Reserve Banks

Recommendation

An amendment specifically stating, and thus making it clear, that Federal Reserve banks are authorized to make repurchase agreements with respect to Government securities and that such activities of the Reserve banks are subject to the direction of the Federal Open Market Committee.

Reasons

For many years the Federal Reserve banks have utilized repurchase agreements as a convenient and flexible means of helping to smooth out temporary irregularities in the money market, and these activities of the Reserve banks have conformed to directions of the Federal Open Market Committee. However, the Federal Reserve Act does not specifically state that these transactions shall be subject to the direction of the Federal Open Market Committee and does not even specifically state that they are authorized for the Federal Reserve banks, although there is specific authority for purchases and sales of Government securities as well as for loans on such securities.

Repurchase agreements have some of the attributes of loans. However, as actually used in practice by the Reserve banks, they not only have the legal form of purchases and sales but they also have more of the practical attributes of open market operations than of loans. This is because they usually proceed on the initiative of the Reserve bank whereas loans usually proceed on the initiative of the other party to the transaction. In fact, this characteristic of repurchase agreements is an important reason for their flexibility and usefulness in helping to iron out temporary irregularities in the money market—it enables the System to use them readily for that purpose without having to wait for a member bank to borrow.

The absence of a specific provision on this matter has not produced operating difficulties but has at times been the subject of some discussion and uncertainty within the System. An amendment specifically covering the subject would clarify the matter.

73. Settlement Fund

Existing law

Paragraph 16 of section 16 of the Federal Reserve Act (12 U. S. C. 467), relating to the gold-certificate fund (settlement fund) held on deposit with the Treasurer of the United States to the credit of the Board of Governors of the Federal Reserve System, reads as follows:

"The Secretary of the Treasury is hereby authorized and directed to receive deposits of gold or of gold certificates with the Treasurer or any Assistant Treasurer of the United States when tendered by any Federal Reserve bank or Federal Reserve agent for credit to its or his account with the Board of Governors of the Federal Reserve System. The Secretary shall prescribe by regulation the form of receipt to be issued by the Treasurer or Assistant Treasurer to the Federal Reserve bank or Federal Reserve agent making the deposit, and a duplicate of such receipt shall be delivered to the Board of Governors of the Federal Reserve System by the Treasurer at Washington upon proper advices from any Assistant Treasurer that such deposit has been made. Deposits so made shall be held subject to the orders of the Board of Governors of the Federal Reserve System and shall be payable in gold certificates on the order of the Board of Governors of the Federal Reserve System to any Federal Reserve bank or Federal Reserve agent at the Treasury or at the Subtreasury of the United States nearest the place of business of such Federal Reserve bank or such Federal Reserve agent. The order used by the Board of Governors of the Federal Reserve System in making such payments shall be signed by the chairman or vice chairman, or such

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other officers or members as the Board may by regulation prescribe. The form of such order shall be approved by the Secretary of the Treasury."

Recommendation

An amendment to (1) eliminate obsolete provisions, i. e., references to the Assistant Treasurer of the United States and to the Subtreasuries of the United States; (2) provide specifically that deposits in the fund may include deposits by the Treasurer of the United States for the credit of any Federal Reserve bank and that withdrawals from the deposit may be made in the form of payment to the Treasurer of the United States as well as to a Federal Reserve bank or a Federal Reserve agent; and (3) provide that the term "gold certificate" shall include credits payable in gold certificates.

Reasons

The references in the present statute to the Assistant Treasurer and the Subtreasuries are no longer applicable since the discontinuance of the Subtreasuries around 1921. Deposits into the account are made not only by Federal Reserve banks and Federal Reserve agents, but also by the Treasurer of the United States who from time to time make such deposits for credit to his account at one or more of the Federal Reserve banks. Likewise, withdrawals from the account are made not only by delivery of gold certificates to a Federal Reserve bank or Federal Reserve agent, but through release of gold certificates to the Treasurer of the United States upon reduction of his deposit balance with a Federal Reserve bank. The proposed provision that gold certificates shall include credits payable in gold certificates would be in conformity with provisions of the Gold Reserve Act of 1934 which allow the reserve against Federal Reserve notes to be maintained with the Treasurer not only in gold certificates themselves but also in credits payable in gold certificates.

74. Federal Reserve Notes

Existing law

Paragraphs 1 through 13, inclusive, of section 16 of the Federal Reserve Act (12 U. S. C. 411–422) read as follows:

"Sec. 16. Federal Reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal Reserve banks through the Federal Reserve agents as hereinafter set forth and for no other purpose, are hereby authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal Reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank.

"Any Federal Reserve bank may make application to the local Federal Reserve agent for such amount of the Federal Reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal Reserve Agent of collateral in amount equal to the sum of the Federal Reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes, drafts, bills of exchange, or acceptances acquired under the provisions of section 13 of this Act, or bills of exchange endorsed by a member bank of any Federal Reserve district and purchased under the provisions of section 14 of this Act, or bankers' acceptances purchased under the provisions of said section 14, or gold certificates, or direct obligations of the United States. In no event shall such collateral security be less than the amount of Federal Reserve notes applied for. The Federal Reserve agent shall each day notify the Board of Governors of the Federal Reserve System of all issues and withdrawals of Federal Reserve notes to and by the Federal Reserve bank to which he is accredited. The said Board of Governors of the Federal Reserve System may at any time call upon a Federal Reserve bank for additional security to protect the Federal Reserve notes issued to it.

"Every Federal Reserve bank shall maintain reserves in gold certificates of not less than 25 per centum against its deposits and reserves in gold certificates of not less than 25 per centum against its Federal Reserve notes in actual circulation: *Provided, however,* That when the Federal Reserve agent holds gold certificates as collateral for Federal Reserve notes issued to the bank such gold certificates shall be counted as part of the reserve which such bank is required to maintain against its Federal Reserve notes in actual circulation. Notes so paid out shall bear upon their faces a distinctive letter and serial number which shall be assigned by the

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Board of Governors of the Feedral Reesrve System to each Federal Reserve bank. Notes presented for redemption at the Treasury of the United States shall be paid out of the redemption fund and returned to the Federal Reserve banks through which they were originally issued, and thereupon such Federal Reserve bank shall, upon demand of the Secretary of the Treasury, reimburse such redemption fund in lawful money or, if such Federal Reserve notes have been redeemed by the Treasurer in gold certificates, then such funds shall be reimbursed to the extent deemed necessary by the Secretary of the Treasury in gold certificates, and such Federal Reserve bank shall, so long as any of its Federal Reserve notes remain outstanding, maintain with the Treasurer in gold certificates an amount sufficient in the judgment of the Secretary to provide for all redemptions to be made by the Treasurer. Federal Reserve notes received by the Treasurer otherwise than for redemption may be exchanged for gold certificates out of the redemption fund hereinafter provided and returned to the Reserve bank through which they were originally issued, or they may be returned to such bank for the credit of the United States. Federal Reserve notes unfit for circulation shall be returned by the Federal Reserve agents to the Comptroller of the Currency for cancellation and destruction.

"The Board of Governors of the Federal Reserve System shall require each Federal Reserve bank to maintain on deposit in the Treasury of the United States a sum in gold certificates sufficient in the judgment of the Secretary of the Treasury for the redemption of the Federal Reserve notes issued to such bank, but in no event less than 5 per centum of the total amount of notes issued less the amount of gold certificates held by the Federal Reserve agent as collateral security; but such deposit of gold certificates shall be counted and included as part of the 25 per centum reserve hereinbefore required to be maintained against Federal Reserve notes in actual circulation. The Board shall have the right, acting through the Federal Reserve agent, to grant in whole or in part, or to reject entirely, the application of any Federal Reserve bank for Federal Reserve notes: but to the extent that such application may be granted the Board of Governors of the Federal Reserve System shall, through its local Federal Reserve agent, supply Federal Reserve notes to the banks so applying, and such bank shall be charged with the amount of the notes issued to it and shall pay such rate of interest as may be established by the Board of Governors of the Federal Reserve System on only that amount of such notes which equals the total amount of its outstanding Federal Reserve notes less the amount of gold certificates held by the Federal Reserve agent as collateral security. Federal Reserve notes issued to any such bank shall, upon delivery, together with such notes of such Federal Reserve bank as may be issued under section 18 of this Act, upon security of United States 2 per centum Government bonds, become a first and paramount lien on all the assets of such bank.

"Any Federal Reserve bank may at any time reduce its liability for outstanding Federal Reserve notes by depositing with the Federal Reserve agent its Federal Reserve notes, gold certificates, or lawful money of the United States. Federal Reserve notes so deposited shall not be reissued, except upon compliance with the conditions of an original issue.

"The Federal Reserve agent shall hold such gold certificates or lawful money available exclusively for exchange for the outstanding Federal Reserve notes when offered by the Reserve bank of which he is a director. Upon the request of the Secretary of the Treasury the Board of Governors of the Federal Reserve System shall require the Federal Reserve agent to transmit to the Treasurer of the United States so much of the gold certificates held by him as collateral security for Federal Reserve notes as may be required for the exclusive purpose of the redemption of such Federal Reserve notes, but such gold certificates when deposited with the Treasurer shall be counted and considered as if collateral security on deposit with the Federal Reserve agent.

"Any Federal reserve bank may at its discretion withdraw collateral deposited with the local Federal reserve agent for the protection of its Federal reserve notes issued to it and shall at the same time substitute therefor other collateral of equal amount with the approval of the Federal reserve agent under regulations to be prescribed by the Board of Governors of the Federal Reserve System. Any Federal reserve bank may retire any of its Federal reserve notes by depositing them with the Federal reserve agent or with the Treasurer of the United States, and such Federal reserve bank shall thereupon be entitled to receive back the collateral deposited with the Federal reserve agent for the security of such notes. Federal reserve banks shall not be required to maintain the

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reserve or the redemption fund heretofore provided for against Federal reserve notes which have been retired. Federal reserve notes so deposited shall not be reissued except upon compliance with the conditions of an original issue.

"All Federal Reserve notes and all gold certificates and lawful money issued to or deposited with any Federal Reserve agent under the provisions of the Federal Reserve Act shall hereafter be held for such agent, under such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe, in the joint custody of himself and the Federal Reserve bank to which he is accredited. Such agent and such Federal Reserve bank shall be jointly liable for the safekeeping of such Rederal Reserve notes, gold certificates, and lawful money. Nothing herein contained, however, shall be construed to prohibit a Federal Reserve agent from depositing gold certificates with the Board of Governors of the Federal Reserve System, to be held by such Board subject to his order, or with the Treasurer of the United States for the purposes authorized by law.

"In order to furnish suitable notes for circulation as Federal reserve notes, the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury, cause plates and dies to be engraved in the best manner to guard against counterfeits and fraudulent alterations, and shall have printed therefrom and numbered such quantities of such notes of the denominations of $5, $10, $20, $50, $100, $500, $1,000, $5,000, $10,000 as may be required to supply the Federal reserve banks. Such notes shall be in form and tenor as directed by the Secretary of the Treasury under the provisions of this Act and shall bear the distinctive numbers of the several Federal reserve banks through which they are issued.

"When such notes have been prepared, they shall be deposited in the Treasury, or in the subtreasury or mint of the United States nearest the place of business of each Federal reserve bank and shall be held for the use of such bank subject to the order of the Comptroller of the Currency for their delivery, as provided by this Act.

"The plates and dies to be procured by the Comptroller of the Currency for the printing of such circulating notes shall remain under his control and direction, and the expenses necessarily incurred in executing the laws relating to the procuring of such notes, and all other expenses incidental to their issue and retirement, shall be paid by the Federal reserve banks, and the Board of Governors of the Federal Reserve System shall include in its estimate of expenses levied against the Federal reserve banks a sufficient amount to cover the expenses herein provided for.

"The examination of plates, dies, bed pieces, and so forth, and regulations relating to such examination of plates, dies, and so forth, of national-bank notes provided for in section fifty-one hundred and seventy-four Revised Statutes, is hereby extended to include notes herein provided for.

"Any appropriation heretofore made out of the general funds of the Treasury for engraving plates and dies, the purchase of distinctive paper, or to cover any other expense in connection with the printing of national-bank notes or notes provided for by the Act of May thirtieth, nineteen hundred and eight, and any distinctive paper that may be on hand at the time of the passage of this Act may be used in the discretion of the Secretary for the purposes of this Act, and should the appropriations heretofore made be insufficient to meet the requirements of this Act in addition to circulating notes provided for by existing law, the Secretary is hereby authorized to use so much of any funds in the Treasury not otherwise appropriated for the purpose of furnishing the notes aforesaid: *Provided, however*, That nothing in this section contained shall be construed as exempting national banks or Federal reserve banks from their liability to reimburse the United States for any expenses incurred in printing and issuing circulating notes."

Recommendations

1. An amendment to repeal various provisions relating to the "redemption" of Federal Reserve notes and the maintenance in the Treasury of a redemption fund in gold certificates for that purpose.

2. An amendment to provide that unfit Federal Reserve notes shall be returned to the Treasury of the United States for destruction under regulations prescribed by the Secretary of the Treasury, in lieu of the existing provision that unfit notes "shall be returned by the Federal Reserve agents to the Comptroller of the Currency for cancellation and destruction."

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3. A number of amendments to eliminate obsolete and redundant provisions, to simplify and clarify certain provisions, to bring other provisions into line with existing terminology and practice, and to rearrange sentences and paragraphs to make the entire section more logical.

Reasons

1. The lengthy provisions of section 16 relating to "redemption" of Federal Reserve notes and the maintenance in the Treasury of a redemption fund in gold certificates have served no real purpose for over 20 years, since redemption in gold certificates is no longer legally permissible. Furthermore, Federal Reserve notes have been legal tender for all purposes since 1933 (31 U. S. C. 462).

2. The actual practice with respect to unfit Federal Reserve notes is that such notes are forwarded by the Federal Reserve banks to the Treasurer of the United States who then under powers of attorney from the Federal Reserve agents turns the notes over to the Comptroller of the Currency, and the verification and destruction functions are divided among the Treasurer of the United States, the Comptroller of the Currency, and the Bureau of the Public Debt. The suggested amendment would simplify the procedure by clarifying and broadening the authority of the Secretary of the Treasury to allocate and discharge these duties in an effective manner.

3. Much of section 16 has remained unchanged since the original enactment of the Federal Reserve Act in 1913. Some of its provisions followed the analogy of the statutes relating to national bank notes, others were designed to assure the acceptance of Federal Reserve notes as a part of the currency. In a few respects the terminology of section 16 is inconsistent, or unclear, or repetitious. Without any material changes of substances, such defects could be corrected and the section thereby clarified. In addition, the sequence of various sentences and paragraphs of the section could be improved from the point of view of logical arrangement.

75. Federal Reserve Bank Notes

Existing law

Section 18 of the Federal Reserve Act (12 U. S. C. 441–448) provides:

"Sec. 18. After two years from the passage of this Act, and at any time during a period of twenty years thereafter, any member bank desiring to retire the whole or any part of its circulating notes, may file with the Treasurer of the United States an application to sell for its account, at par and accrued interest, United States bonds securing circulation to be retired.

"The Treasurer shall, at the end of each quarterly period, furnish the Board of Governors of the Federal Reserve System with a list of such applications, and the Board of Governors of the Federal Reserve System may, in its discretion, require the Federal reserve banks to purchase such bonds from the banks whose applications have been filed with the Treasurer at least ten days before the end of any quarterly period at which the Board of Governors of the Federal Reserve System may direct the purchase to be made: *Provided*, That Federal reserve banks shall not be permitted to purchase an amount to exceed $25,000,000 of such bonds in any one year, and which amount shall include bonds acquired under section four of this Act by the Federal reserve bank.

"*Provided further*, That the Board of Governors of the Federal Reserve System shall allot to each Federal reserve bank such proportion of such bonds as the capital and surplus of such bank shall bear to the aggregate capital and surplus of all the Federal reserve banks.

"Upon notice from the Treasurer of the amount of bonds so sold for its account, each member bank shall duly assign and transfer, in writing, such bonds to the Federal reserve bank purchasing the same, and such Federal reserve bank shall, thereupon, deposit lawful money with the Treasurer of the United States for the purchase price of such bonds, and the Treasurer shall pay to the member bank selling such bonds any balance due after deducting a sufficient sum to redeem its outstanding notes secured by such bonds, which notes shall be canceled and permanently retired when redeemed.

"The Federal reserve banks purchasing such bonds shall be permitted to take out an amount of circulating notes equal to the par value of such bonds.

"Upon the deposit with the Treasurer of the United States, (a) of any direct obligations of the United States or (b) of any notes, drafts, bills of exchange, or bankers' acceptances acquired under the provisions of this Act, any Federal reserve bank making such deposit in the manner prescribed by the Secretary of

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the Treasury shall be entitled to receive from the Comptroller of the Currency circulating notes in blank, duly registered and countersigned. When such circulating notes are issued against the security of obligations of the United States, the amount of such circulating notes shall be equal to the face value of the direct obligations of the United States so deposited as security; and, when issued against the security of notes, drafts, bills of exchange and bankers' acceptances acquired under the provisions of this Act, the amount thereof shall be equal to not more than 90 percent of the estimated value of such notes, drafts, bills of exchange, and bankers' acceptances so deposited as security. Such notes shall be the obligations of the Federal reserve bank procuring the same, shall be in form prescribed by the Secretary of the Treasury, shall be receivable at par in all parts of the United States for the same purposes as are national bank notes, and shall be redeemable in lawful money of the United States on presentation at the United States Treasury or at the bank of issue. The Secretary of the Treasury is authorized and empowered to prescribe regulations governing the issuance, redemption, replacement, retirement, and destruction of such circulating notes and the release and substitution of security therefor. Such circulating notes shall be subject to the same tax as is provided by law for the circulating notes of national banks secured by 2 percent bonds of the United States. No such circulating notes shall be issued under this paragraph after the President has declared by proclamation that the emergency recognized by the President by proclamation of March 6, 1933, has terminated, unless such circulating notes are secured by deposits of bonds of the United States bearing the circulation privilege. When required to do so by the Secretary of the Treasury, each Federal reserve agent shall act as agent of the Treasurer of the United States or of the Comptroller of the Currency, or both, for the performance of any of the functions which the Treasurer or the Comptroller may be called upon to perform in carrying out the provisions of this paragraph. Appropriations available for distinctive paper and printing United States currency or national bank currency are hereby made available for the production of the circulating notes of Federal reserve banks herein provided; but the United States shall be reimbursed by the Federal reserve bank to which such notes are issued for all expenses necessarily incurred in connection with the procuring of such notes and all other expenses incidental to their issue, redemption, replacement, retirement, and destruction.

"Upon application of any Federal reserve bank, approved by the Board of Governors of the Federal Reserve System, the Secretary of the Treasury may issue, in exchange for United States two per centum gold bonds bearing the circulation privilege, but against which no circulation is outstanding, one-year gold notes of the United States without the circulation privilege, to an amount not to exceed one-half of the two per centum bonds so tendered for exchange, and thirty-year three per centum gold bonds without the circulation privilege for the remainder of the two per centum bonds so tendered: Provided, That at the time of such exchange the Federal reserve bank obtaining such one-year gold notes shall enter into an obligation with the Secretary of the Treasury binding itself to purchase from the United States for gold at the maturity of such one-year notes, an amount equal to those delivered in exchange for such bonds, if so requested by the Secretary, and at each maturity of one-year notes so purchased by such Federal reserve bank, to purchase from the United States such an amount of one-year notes as the Secretary may tender to such bank, not to exceed the amount issued to such bank in the first instance, in exchange for the two per centum United States gold bonds; said obligation to purchase at maturity such notes shall continue in force for a period not to exceed thirty years.

"For the purpose of making the exchange herein provided for, the Secretary of the Treasury is authorized to issue at par Treasury notes in coupon or registered form as he may prescribe in denominations of one hundred dollars, or any multiple thereof, bearing interest at the rate of three per centum per annum, payable quarterly, such Treasury notes to be payable not more than one year from the date of their issue in gold coin of the present standard value, and to be exempt as to principal and interest from the payment of all taxes and duties of the United States except as provided by this Act, as well as from taxes in any form by or under State, municipal, or local authorities. And for the same purpose, the Secretary is authorized and empowered to issue United States gold bonds at par, bearing three per centum interest payable thirty years from date of issue, such bonds to be of the same general tenor and effect and to be issued under the same general terms and conditions as the United States three per centum bonds without the circulation privilege now issued and outstanding.

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"Upon application of any Federal reserve bank, approved by the Board of Governors of the Federal Reserve System, the Secretary may issue at par such three per centum bonds in exchange for the one-year gold notes herein provided for."

The fourth paragraph of section 4 of the Federal Reserve Act (12 U. S. C. 341) provides that each Federal Reserve bank shall have power—

"Eighth. Upon deposit with the Treasurer of the United States of any bonds of the United States in the manner provided by existing law relating to national banks, to receive from the Comptroller of the Currency circulating notes in blank, registered and countersigned as provided by law, equal in amount to the par value of the bonds so deposited, such notes to be issued under the same conditions and provisions of law as relate to the issue of circulating notes of national banks secured by bonds of the United States bearing the circulating privilege, except that the issue of such notes shall not be limited to the capital stock of such Federal reserve bank."

Recommendation

An amendment to repeal subparagraph "Eighth" of the fourth paragraph of section 4 of the Federal Reserve Act and all of section 18 of the Federal Reserve Act, relating to the issuance of Federal Reserve banknotes and exchanges of United States bonds bearing the "circulation privilege."

Reasons

All of the provisions of section 18 of the Federal Reserve Act are now obsolete. The first 4 paragraphs, by reason of the time limitation contained in the first paragraph, expired by their terms on December 23, 1935.

The fifth paragraph of the section authorizing Federal Reserve banks to issue circulating notes (Federal Reserve banknotes) against the bonds purchased by them pursuant to this section has likewise become obsolete because of expiration of the authority to purchase such bonds.

All authority contained in the sixth paragraph of section 18, as amended in 1933, with respect to the issuance of Federal Reserve banknotes against obligations of the United States and certain other types of paper was repealed by act of June 12, 1945.

The seventh, eighth, and ninth paragraphs of section 18 provide for the exchange of United States 2-percent gold bonds bearing the circulation privilege for either 1-year gold notes, or 30-year 3-percent gold bonds, and for the exchange of 1-year notes, for 3-percent bonds. However, in 1935, the Secretary of the Treasury called for redemption all bonds bearing the circulation privilege of the kinds mentioned in this section; and consequently the provisions of these paragraphs appear to be no longer of any significance.

The authorization for the issuance of notes against United States bonds in the fourth paragraph of section 4 of the act is likewise of no present significance and should be repealed.

76. Obsolete Provision Regarding Reserve Requirements

Existing law

By act of Congress approved August 16, 1948 (62 Stat. 1291; not in U. S. Code), the following paragraph was inserted in section 19 of the Federal Reserve Act after the sixth paragraph thereof:

"Notwithstanding any other provision of law, the Board of Governors of the Federal Reserve System, in order to prevent injurious credit expansion, may by regulation change the requirements as to reserves to be maintained pursuant to this section against demand or time deposits, or both, (1) by members banks in central reserve cities, or (2) by member banks in reserve cities, or (3) by member banks not in reserve or central reserve cities, or (4) by all members banks; but no such change shall have the effect of requiring any such member bank to maintain a reserve balance against its time deposits in an amount equal to more than 7½ per centum thereof, or a reserve balance against its demand deposits in an amount equal to more than 30 per centum thereof if such bank is in a central reserve city, 24 per centum thereof if in a reserve city, or 18 per centum thereof if not in a reserve or central reserve city. No change in reserve requirements made under authority of this paragraph shall continue in effect after June 30, 1949."

Recommendation

An amendment to repeal this provision of law.

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Reasons

This paragraph is obsolete as the statute expressly provides that any change in reserve requirements made under authority of this statute shall not continue in effect after June 30, 1949. As this date has passed, the statute has no current or future effect. The permanent authority for changes in reserve requirements by the Board, subject to certain limitations, which is contained in the sixth paragraph of section 19 (12 U. S. C. 462b), would not be affected by this recommendation.

77. Payment of Interest on Deposits

Existing law

The 12th paragraph of section 19 of the Federal Reserve Act (12 U. S. C. 371a), with certain exceptions, provides that—

"No member bank shall, directly or indirectly, by any device whatsoever, pay any interest on any deposit which is payable on demand."

The 13th paragraph of section 19 of the Federal Reserve Act (12 U. S. C. 371b) provides in part that—

"The Board of Governors of the Federal Reserve System shall from time to time limit by regulation the rate of interest which may be paid by member banks on time and savings deposits * * *."

The first paragraph of section 19 of the Federal Reserve Act (12 U. S. C. 461) provides in part that—

"The Board of Governors of the Federal Reserve System is authorized for the purposes of this section * * * to determine what shall be deemed to be a payment of interest, and to prescribe such rules and regulations as it may deem necessary to effectuate the purposes of this section and prevent evasions thereof * * *"

Section 18 (g) of the Federal Deposit Insurance Act (12 U. S. C. 1828 (g)) provides in part—

"The Board of Directors shall by regulation prohibit the payment of interest on demand deposits in insured nonmember banks and for such purpose it may define the term 'demand deposits'; but such exceptions from this prohibition shall be made as are now or may hereafter be prescribed with respect to deposits payable on demand in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the Board of Governors of the Federal Reserve System. The Board of Directors shall from time to time limit by regulation the rates of interest or dividends which may be paid by insured nonmember banks on time and savings deposits, * * *"

Recommendation

Amendments to section 19 of the Federal Reserve Act to eliminate the words "directly or indirectly by any device whatsoever" from the language prohibiting interest on demand deposits and to make it clear that the term "interest" shall include only cash payments made, or credits given, by a bank for the account or benefit of a depositor; together with an appropriate amendment to make certain that the same limitations as to payment of interest shall apply to both member and nonmember insured banks, either by an explicit statement in the law as to both types of banks as to whether absorption of exchange charges shall be deemed a payment of interest, or by a provision authorizing either the Board of Governors or the Federal Deposit Insurance Corporation to define the term "interest" for both classes of banks.

Reasons

In its administration of the provisions of law regarding payment of interest on deposits by member banks, the Board of Governors has found that the difficulty of determining whether various practices of member banks involve an "indirect" payment of interest has made the law extremely difficult to apply as a practical matter. The problem arises chiefly in determining whether the giving of free services to customers (such as the use of armored trucks, free parking space, specially printed checks, etc.) constitutes an indirect payment of interest on demand deposits; but the problem also arises in determining whether "giveaways" designed to attract savings deposits should be considered payments of interest in determining whether the maximum permissible rate on savings deposits is being exceeded.

This problem would be avoided if the law were changed to eliminate reference to indirect payments of interest and to include only cash payments or credits for the benefit of depositors. Such a change would not, in the Board's opinion, serve to defeat the basic purpose of these provisions of the law.

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A special and particularly troublesome problem in this connection has arisen from the fact that the Board of Governors has taken the position that absorption of exchange charges by member banks involves a payment of interest, whereas the Federal Deposit Insurance Corporation has taken the position that the absorption of such charges by insured nonmember banks does not constitute a payment of interest. As a result, member banks have been placed at a serious competitive disadvantage in some sections of the country. Yet it seems obvious that the intent of Congress was to put member and nonmember insured banks on the same basis insofar as payment of interest on deposits is concerned.

It is believed that this special problem should be squarely met and solved by an amendment to the law which would explicitly state whether or not absorption of exchange charges shall be deemed to be a payment of interest and which would make it clear that the same principle should apply to both member and nonmember banks. Since the absorption of exchange on a check deposited by a customer with his bank results in the giving of credit to the depositor in an amount greater than the amount collected by his bank, the Board believes that such absorption constitutes a direct crediting of interest. In any event, the matter should be clarified so that competing member and insured nonmember banks may operate on an equal basis. This might be done either by an explicit identical statement on the point in both the Federal Reserve Act and the Deposit Insurance Act or by authorizing 1 of the 2 agencies to define "interest" for both classes of banks.

78. Interest on Demand Deposits of Savings Banks and of Public Funds

Existing law

The 12th paragraph of section 19 of the Federal Reserve Act (12 U. S. C. 371a), which relates to the payment of interest on demand deposits by member banks, provides as follows:

"* * * That until the expiration of two years after the date of enactment of the Banking Act of 1953 this paragraph shall not apply (1) to any deposit made by a savings bank as defined in section 12B of this Act, as amended, or by a mutual savings bank, or (2) to any deposit of public funds made by or on behalf of any State, county, school district, or other subdivision or municipality, or to any deposit of trust funds if the payment of interest with respect to such deposit of public funds or of trust funds is required by State law.* * *"

Recommendation

An amendment to eliminate this provision of law.

Reasons

This part of the statute is obsolete as it is provided in the statute that this exception which permits the payment of interest on demand deposits of savings banks and of public funds shall be effective until 2 years after the date of enactment of the Banking Act of 1935. The Banking Act of 1935 was enacted August 23, 1935, and the exception expired by limitation August 23, 1937. Therefore, the provision is of no current or future effect.

79. Reserves Against Deposits of Public Moneys

Existing law

The 14th paragraph of section 19 of the Federal Reserve Act (12 U. S. C. 462a-1) provides—

"Notwithstanding the provisions of the First Liberty Bond Act, as amended, the Second Liberty Bond Act, as amended, and the Third Liberty Bond Act, as amended, member banks shall be required to maintain the same reserves against deposits of public moneys by the United States as they are required by this section to maintain against other deposits: *Provided*, That until six months after the cessation of hostilities in the present war as determined by proclamation of the President or concurrent resolution of the Congress no deposit payable to the United States by any member bank arising solely as the result of subscriptions made by or through such member bank for United States Government securities issued under authority of the Second Liberty Bond Act, as amended, shall be subject to the reserve requirements of this section."

Section 7 of the First Liberty Bond Act of April 24, 1917 (31 U. S. C. 755a), and section 8 of the Second Liberty Bond Act of September 24, 1917 (31 U. S. C.

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771), contain identical provisions stating that the provisions of section 5191 of the Revised Statutes, as amended by the Federal Reserve Act, with reference to the reserves required to be kept by national banks and other member banks of the Federal Reserve System "shall not apply to deposits of public moneys by the United States in designated depositaries."

Recommendation

An amendment repealing the provisions of the First and Second Liberty Bond Acts referred to above which state that reserves need not be maintained against deposits of public moneys, and also revising the 14th paragraph of section 9 of the Federal Reserve Act to state simply that member banks shall be required to maintain the same reserves against deposits of public moneys by the United States as they are required to maintain against other deposits.

Reasons

Prior to 1935, the provisions of the Liberty Bond Act relieving member banks from reserve requirements with respect to deposits of public moneys were fully effective. However, the Banking Act of 1935 added a provision to section 19 of the Federal Reserve Act expressly requiring reserves to be maintained against deposits of public moneys notwithstanding the Liberty Bond Acts. That requirement was suspended during World War II by the addition of the proviso relieving member banks from reserve requirements as to public moneys until 6 months after cessation of hostilities; but that provision terminated on December 31, 1946, when cessation of hostilities was proclaimed by the President.

Consequently it would be desirable to eliminate the inconsistency between the various provisions mentioned above, to eliminate also the obsolete proviso relieving member banks from reserve requirements as to public deposits during the war, and to provide simply that reserves shall be maintained against such deposits as against all other deposits.

80. Obsolete Provision as to Loans to Executive Officers of Member Banks

Existing law

Under section 22 (g) of the Federal Reserve Act (12 U. S. C. 375a), it is provided:

"* * * That loans made to any such officer prior to June 16, 1933, may be renewed or extended for periods expiring not more than five years from June 16, 1939, where the board of directors of the member bank shall have satisfied themselves that such extension or renewal is in the best interest of the bank, and that the officer indebted has made reasonable effort to reduce his obligation, these findings to be evidenced by resolution of the board of directors spread upon the minute book of the bank: * * *"

Recommendation

An amendment eliminating this provision of law.

Reasons

As the time within which a member bank may renew or extend loans made to its executive officers prior to June 16, 1933, was limited to June 16, 1944 (5 years from June 16, 1939), this provision of law is obsolete and should be eliminated.

81. Loans to Executive Officers—Dollar Exemption

Existing law

Section 22 (g) of the Federal Reserve Act (12 U. S. C. 375a) provides:

"(g) No executive officer of any member bank shall borrow from or otherwise become indebted to any member bank of which he is an executive officer, and no member bank shall make any loan or extend credit in any other manner to any of its own executive officers: *Provided*, That loans made to any such officer prior to June 16, 1933, may be renewed or extended for periods expiring not more than five years from June 16, 1939, where the board of directors of the member bank shall have satisfied themselves that such extension or renewal is in the best interest of the bank, and that the officer indebted has made reasonable effort to reduce his obligation, these findings to be evidenced by resolution of the board of directors spread upon the minute book of the bank: *Provided further*, That with the prior approval of a majority of the entire board of directors, any member bank may extend credit to any executive officer thereof, and such officer may become indebted thereto, in an amount not exceeding $2,500. If any executive officer of

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any member bank borrow from or if he be or become indebted to any bank other than a member bank of which he is an executive officer, he shall make a written report to the board of directors of the member bank of which he is an executive officer, stating the date and amount of such loan or indebtedness, the security therefor, and the purpose for which the proceeds have been or are to be used. Borrowing by, or loaning to, a partnership in which one or more executive officers of a member bank are partners having either individually or together a majority interest in said partnership, shall be considered within the prohibition of this subsection. Nothing contained in this subsection shall prohibit any executive officer of a member bank from endorsing or guaranteeing for the protection of such bank any loan or other asset which shall have been previously acquired by such bank in good faith or from incurring any indebtedness to such bank for the purpose of protecting such bank against loss or giving financial assistance to it. The Board of Governors of the Federal Reserve System is authorized to define the term 'executive officer', to determine what shall be deemed to be a borrowing, indebtedness, loan, or extension of credit, for the purposes of this subsection, and to prescribe such rules and regulations as it may deem necessary to effectuate the provisions of this subsection in accordance with its purposes and to prevent evasions of such provisions. Any exeecutive officer of a member bank accepting a loan or extension of credit which is in violation of the provisions of this subsection shall be subject to removal from office in the manner prescribed in section 30 of the Banking Act of 1933: *Provided*, That for each day that a loan or extension of credit made in violation of this subsection exists, it shall be deemed to be a continuation of such violation within the meaning of said section 30."

Recommendation

An amendment to section 22 (g) to increase the present $2,500 exemption from the prohibition on loans by member banks to executive officers to $5,000.

Reasons

When the prohibition against loans by member banks to their executive officers was incorporated in the law by the Banking Act of 1933, it was considered appropriate to exempt loans not exceeding $2,500. Since 1933, economic conditions have changed very considerably; and it would seem reasonable to increase the exemption to at least $5,000. It is believed that such an increase would not be inconsistent with the purposes of the basic prohibition.

82. Investment by National Banks in Foreign Financing Corporations

Existing law

The fourth paragraph of section 25 of the Federal Reserve Act (12 U. S. C. 601), provides:

"Until January 1, 1921, any national banking association, without regard to the amount of its capital and surplus, may file application with the Board of Governors of the Federal Reserve System for permission, upon such conditions and under such regulations as may be prescribed by said board, to invest an amount not exceeding in the aggregate 5 per centum of its paid-in capital and surplus in the stock of one or more corporations chartered or incorporated under the laws of the United States or of any State thereof and, regardless of its location, principally engaged in such phases of international or foreign financial operations as may be necessary to facilitate the export of goods, wares, or merchandise from the United States or any of its dependencies or insular possessions to any foreign country: *Provided, however*, That in no event shall the total investments authorized by this section by any one national bank exceed 10 per centum of its capital and surplus."

Recommendation

An amendment to repeal the fourth paragraph of section 25 of the Federal Reserve Act.

Reasons

The authority conferred by this paragraph, which was added to the law in 1919, expired by its terms on January 1, 1921, and is therefore obsolete.

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83. Powers of Foreign Branches of National Banks

Recommendation

An amendment adding a new provision to section 25 of the Federal Reserve Act (12 U. S. C. 601–604) which would authorize the Board, by regulation, to permit foreign branches of national banks to exercise such further powers as may be usual in connection with the business of banking in the place where the foreign branch is located, subject to suitable safeguards to assure that such foreign branches would not engage in such business as investment banking or manufacturing. Such new provision would be added to the last paragraph of section 25 (12 U. S. C. 604).

Reasons

Foreign branches of national banks, which may be established for the furtherance of the foreign commerce of the United States with the approval of the Board, are subject abroad to most of the laws and regulations that apply to national banks in the United States. However, business methods and operating conditions in foreign countries often differ considerably from those in this country, and banks in foreign countries are often subject to few if any of the rules that apply to national banks in this country. Under the recommended addition to the law, foreign branches of national banks could operate more effectively in the foreign countries where they do business, as it would permit the powers of such branches to be adjusted more realistically to the conditions existing in the places where they are located. At the same time, suitable safeguards would be provided by law to assure that such foreign branches would not engage in such business as investment banking or manufacturing.

Proposed legislation to effectuate the foregoing was recommended to the Congress by the Board in May 1956, and was contained in the bill S. 3922 which was introduced by Senator Robertson on May 24, 1956.

84. Procedure for Removal of Directors and Officers

Existing law

Section 30 of the Banking Act of 1933 (12 U. S. C. 77) provides:

"Sec. 30. Whether, in the opinion of the Comptroller of the Currency, any director or officer of a national bank, or of a bank or trust company doing business in the District of Columbia, or whenever, in the opinion of a Federal reserve agent, any director or officer of a State member bank in his district shall have continued to violate any law relating to such bank or trust company or shall have continued unsafe or unsound practices in conducting the business of such bank or trust company, after having been warned by the Comptroller of the Currency or the Federal reserve agent, as the case may be, to discontinue such violations of law or such unsafe or unsound practices, the Comptroller of the Currency or the Federal reserve agent, as the case may be, may certify the facts to the Board of Governors of the Federal Reserve System. In any such case the Board of Governors of the Federal Reserve System may cause notice to be served upon such director or officer to appear before such Board to show cause why he should not be removed from office. A copy of such order shall be sent to each director of the bank affected, by registered mail. If after granting the accused director or officer a reasonable opportunity to be heard, the Board of Governors of the Federal Reserve System finds that he has continued to violate any law relating to such bank or trust company or has continued unsafe or unsound practices in conducting the business of such bank or trust company after having been warned by the Comptroller of the Currency or the Federal reserve agent to discontinue such violation of law or such unsafe or unsound practices, the Board of Governors of the Federal Reserve System, in its discretion, may order that such director or officer be removed from office. A copy of such order shall be served upon such director or officer. A copy of such order shall also be served upon the bank of which he is a director or officer, whereupon such director or officer shall cease to be a director or officer of such bank: *Provided*, That such order and the findings of fact upon which it is based shall not be made public or disclosed to anyone except the director or officer involved and the directors of the bank involved, otherwise than in connection with proceedings for a violation of this section. Any such director or officer removed from office as herein provided who thereafter participates in any manner in the management of such bank shall be fined not more than $5,000, or imprisoned for not more than five years, or both, in the discretion of the court."

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Recommendation

An amendment to section 30 of the Banking Act of 1933 relating to removal of directors or officers of member banks, to eliminate the participation in the proceeding by the Federal Reserve agent. With such a change the Board of Governors of the Federal Reserve System, rather than the Federal Reserve agent, would issue the warning when a State member bank appears to have violated the law or engaged in unsafe or unsound practices. In the event the violation of law or unsafe or unsound practice was repeated after the warning, a hearing by the Board to determine whether to remove the officer or director could be instituted without the formality of a certification by the Federal Reserve agent which is now required.

Reasons

Shortly after the enactment of the Banking Act of 1935 the duties of the Federal Reserve agent, other than those specified by statute, were transferred to the Federal Reserve bank, thus placing the Chairman of the Board of Directors of the Reserve bank (who is the same person as the Federal Reserve agent) on a part-time basis and devoting his attention to major matters of policy rather than detailed administration. Consequently, in situations where section 30 might be invoked, the Federal Reserve agent is not now in a position to be familiar with the facts or to form a first-hand opinion as to the desirability of issuing the warning and later instituting a proceeding for removal.

The 1933 provision for the Federal Reserve agent to issue the warning and certify to a later violation of the warning was apparently an effort to separate the function of prosecution from that of adjudication. However, that separation was only partial and largely ineffective, since the Federal Reserve agent, as his name implies, is an agent of the Board. It is unsound and unrealistic to charge him with detailed statutory responsibilities which may conflict with his duties as such an agent. The Administrative Procedure Act, passed in 1946, has since prescribed carefully worked out rules for the separation of functions that apply in all administrative proceedings. Those rules are both more flexible and more effective than the rigid assignment of functions to the Federal Reserve agent in section 30 of the Banking Act of 1933, and that assignment of functions should now be repealed.

85. Bank Mergers

Existing law

Section 18 (c) of the Federal Deposit Insurance Act (12 U. S. C. 1827 (c)) provides:

"(c) Without prior written consent by the Corporation, no insured bank shall (1) merge or consolidate with any noninsured bank or institution or convert into a noninsured bank or institution or (2) assume liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution, or (3) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured bank. No insured bank shall convert into an insured State bank if its capital stock, or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholders' meeting approving such conversion, without prior written consent by the Comptroller of the Currency if the resulting bank is to be a District bank, or by the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank (except a District bank), or by the Corporation if the resulting bank is to be a State nonmember insured bank (except a District bank). No insured bank shall (i) merge or consolidate with an insured State bank under the charter of a State bank or (ii) assume liability to pay any deposits made in another insured bank, if the capital stock or surplus of the resulting or assuming bank will be less than the aggregate capital stock or aggregate surplus, respectively, of all the merging or consolidating banks or of all the parties to the assumption of liabilities, at the time of the shareholders' meetings which authorize the merger or consolidation or at the time of the assumption of liabilities, unless the Comptroller of the Currency shall give prior written consent if the assuming bank is to be a national bank or the assuming or resulting bank is to be a District bank; or unless the Board of Governors of the Federal Reserve System gives prior written consent if the assuming or resulting bank is to be a State member bank (except a District bank); or unless the Corporation gives prior written consent if the assuming or resulting bank is to be a nonmember insured bank (except a District bank). No insured State nonmember bank (except a District bank) shall, without the

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prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures."

Recommendation

An amendment to section 18 (c) of the Federal Deposit Insurance Act to require the prior approval of the appropriate Federal bank supervisory agency in the case of any bank merger or consolidation, whether or not such merger or consolidation results in a diminution of capital or surplus; together with an express requirement that the appropriate banking agency shall take into consideration the usual banking factors and also whether the proposed transaction would tend to lessen competition unduly or tend unduly to create a monopoly, with a provision requiring the agency to seek the views of each of the other two banking agencies with respect to the question of competition and authorizing such agency to request the opinion of the Attorney General with respect to such question.

Reasons

Under section 18 (c) of the Federal Deposit Insurance Act, a bank merger or consolidation must now have the prior approval of the appropriate Federal bank supervisory agency, but only if the capital stock or surplus of the resulting bank will be less than the aggregate capital stock or aggregate surplus of the merging or consolidating institutions. Because of the limited scope of the statute, many mergers involving State banks do not now have to be approved in advance by any Federal agency. The proposed amendment would fill this gap by requiring prior approval in all cases, irrespective of diminution of capital stock or surplus, by the Comptroller of the Currency if the resulting bank would be a national bank, by the Board of Governors if the resulting bank would be a State member bank, and by the FDIC if the resulting bank would be a nonmember insured bank.

The provisions of the present statute do not expressly require consideration of the competitive effects of a proposed merger or consolidation. It is desirable, as contemplated by the proposed amendment, that the appropriate agency be specifically required to consider, not only the usual banking factors (financial condition, adequacy of capital, character of management, and needs of the community), but also whether the proposed transaction would tend unduly to lessen competition or create a monopoly. In order to promote a substantially uniform approach to the problem of competition, it is also desirable to require the appropriate banking agency to seek the views of each of the other two banking agencies with respect to the impact of the proposed transaction upon competition or monopoly; and, as suggested by the proposal, the appropriate agency would also be authorized to ascertain the attitude of the Department of Justice regarding the competitive or monopolistic aspects of the proposed transaction.

Certain bills introduced in the last Congress would have sought to meet the problem presented by bank mergers through an amendment to section 7 of the Clayton Antitrust Act by expanding that section to cover acquisitions of assets of banks as well as acquisitions of bank stock. Under those bills, advance notice of a proposed merger would have been required to be given to the appropriate banking agency and to the Attorney General; but they would not have required prior approval by the appropriate banking agency. Moreover, those bills would have applied only the test now contained in the Clayton Act; i. e., "substantial" lessening of competition. Because of the nature of banking, it is essential that the soundness of the banks involved, the adequacy of banking facilities and needs of the community, and other such banking factors be given consideration, as well as the effect of the proposed transaction upon competition. It is desirable, therefore, as contemplated by the proposed amendment, that the test should be whether the proposed transaction would "unduly" lessen competition and that the competitive factor be weighed against other factors of a banking nature.

Bills in the last Congress, subjecting bank mergers to the Clayton Act, would have made the Board of Governors responsible for passing upon the question whether every bank merger would violate the provisions of that act, since, under the Clayton Act, the enforcement of its provisions is vested in the Board insofar as they are applicable to banks. It is believed, however, that enforcement of the Clayton Act in the case of bank mergers is a function which should not be vested in the Board of Governors, in view of the essentially different nature of the Board's principal functions in the field of monetary and credit policy and bank supervision. It would be preferable, as contemplated by the proposed amend-

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ment, if bank mergers were made subject to the advance approval of the appropriate Federal bank supervisory agency in the manner suggested.

A bill, S. 3911, which was in accordance with the views of the Board of Governors and with the amendment here suggested, passed the Senate on July 25, 1956.

FEDERAL ADVISORY COUNCIL,
FEDERAL RESERVE SYSTEM,
November 5, 1956.

Mr. WILLIAM McC. MARTIN, Jr.,
Chairman, Board of Governors of the Federal Reserve System, Washington, D. C.

DEAR CHAIRMAN MARTIN: In response to Mr. Carpenter's letter of October 1, and as noted in my reply of October 10, the Executive Committee of the Federal Advisory Council met on October 31, this being the earliest possible date in view of the convention of the American Bankers Association held in Los Angeles.

In addition to the Executive Committee, all members of the Federal Advisory Council were invited to attend the meeting. If they were unable to attend, they were asked to submit their comments in writing to me. In this manner all members were given the opportunity to express their views.

At the meeting the Executive Committee of the Council reviewed, page by page, the memorandum which the Board submitted to Senator Robertson in response to his request for suggestions regarding possible changes in the Federal Reserve Act and other related statutes to be considered by the Senate Banking and Currency Committee.

The views of the Federal Advisory Council on certain of the recommendations contained in the Board's memorandum are submitted for consideration:

(Numbering of recommendations and pages follows the numbering and pagination used in the document issued by the Senate Banking and Currency Committee entitled "Study of Banking Laws," dated October 12, 1956.)

Recommendation 51, page 72

RESIDENCE OF FEDERAL RESERVE BANK DIRECTORS

The Board's recommendation in general has merit, but the Council believes the suggested requirement that every Federal Reserve director be a resident of the district of the Federal Reserve bank for which he is appointed is too restrictive. Such a requirement might work a hardship in some situations, especially in the Second District. The Council is of the opinion that the situs within the district of an individual's principal place of business, rather than his residence, ought to be controlling.

Recommendation 52, page 74

TIME LIMIT ON TERMS OF RESERVE BANK DIRECTORS AND FEDERAL ADVISORY COUNCIL MEMBERS

The Council is of the opinion that the terms of service of Federal Reserve bank directors and members of the Federal Advisory Council should be determined by each Federal Reserve bank in order to preserve and promote the autonomy of each bank. The present system, which places a high value on experience, has worked well in the past.

Recommendation 54, page 77

PAYMENT OF RESERVE BANK EARNINGS TO THE TREASURY

Of the two alternatives presented, the Council supports the Board's recommendation for an amendment requiring the Federal Reserve banks to pay 90 percent of their net earnings, after expenses, dividends, and such reserves for contingencies as may be necessary, to the United States as a franchise tax, after accumulation in the case of each bank of a surplus equal to subscribed capital.

Recommendation 56, page 80

TAXATION OF FEDERAL RESERVE BANK STOCK

The Council is opposed to the Board's recommendation to tax the dividends on pre-1942 Federal Reserve bank stock on the following grounds:

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(*a*) The recommendation relates to a question of taxation which is a revenue measure and appears to be outside the jurisdiction of the Senate Banking and Currency Committee.

(*b*) Operation of section 6 of the Public Debt Act of 1942 does not and was not intended to depend on whether the exemption removed was founded on contract or on statute. Operation of the provision turned simply on the question of whether the issuer was the United States or one of its agencies or instrumentalities. No sound reason appears why withdrawal of the exemption on pre-1942 Federal Reserve bank stock should as a matter of policy turn on the question of whether the exemption was founded on contract or on statute.

(*c*) The exemption was founded on contract, at least by implication, inasmuch as membership in the System was offered and stock purchased by a bank on the basis of the provisions of the Federal Reserve Act at the time membership was taken, including the exemption provision.

(*d*) The Board's recommendation will not affirmatively benefit any bank, and would result in substantial additional taxation to many banks.

(*e*) While the Joint Committee on the Economic Report did recommend in 1952 that the present exemption be revoked, in the intervening years none of the committees of the House or Senate has taken action to implement this recommendation.

(*f*) There is no known indication that banks admitted to membership after the effective date of the 1942 amendment to the Public Debt Act object to the exemption on pre-1942 Federal Reserve bank stock.

(*g*) The differentiation in one member bank resulting from the fact that it holds pre-1942 and post-1942 stock poses no problem for the member bank.

(*h*) Since 90 percent of the Reserve bank earnings are taxed into the revenue stream, no reason appears why member banks should not be entitled to the "dividends received credit" provided for in section 243 of the Internal Revenue Code of 1954.

Recommendation 58, page 82

REPORTS FROM MEMBER BANKS

The Council supports the Board's recommendation for simplifying and reducing the number of forms required of member banks, as this could be helpful to the smaller banks. The Council, however, is opposed to the publication of earnings and dividend reports as this is a confidential matter between the supervisory authorities and the individual banks. In addition, because of the difference in accounting procedures the earnings reports are often not comparable. The suggestion of requiring reports on a sample basis has given the Council some concern. In the Council's judgment, it is important that the Board continue the collection and publication of statistical information on a uniform basis so that the data are historically comparable.

Recommendation 60, page 84

STOCK ACQUISITIONS IN CONNECTION WITH ABSORPTIONS

On the assumption that the Board's recommendation refers to all the stock of a member bank which is being purchased by another member bank, with the Board's permission, the Council would favor the Board's recommendation. If the Board's proposal is favorably considered, section 5136 of the National Bank Act should be amended appropriately.

Recommendation 66, page 90

SIMPLE MAJORITY FOR ALL BOARD ACTIONS

The Council is in favor of this recommendation of the Board with the following exception, viz, that the law specifically require the affirmative vote of four members of the Board to change reserve requirements.

Recommendation 69, page 94

REVOCATION OF TRUST POWERS OF NATIONAL BANKS

If the authority to issue permits to national banks to exercise trust powers is to be continued to be vested in the Board of Governors of the Federal Reserve System, the recommended amendment authorizing the Board on com-

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plaint of the Comptroller of the Currency to revoke these powers would fortify the position of the administering authority.

Recommendation 77, page 106

PAYMENT OF INTEREST ON DEPOSITS

The Council approves the Board's recommendation to eliminate from the present statutory language the words "directly or indirectly by any device whatsoever" and to make it clear that the term interest shall include only cash payments made or credits given by a bank for the account or benefit of a depositor. The absorption of exchange charges seems wrong in principle and its practice by nonmember banks puts member banks at a competitive disadvantage. The Council shares the Board's hope that an equitable solution can be found for this troublesome problem.

Recommendation 79, page 108

RESERVE AGAINST PUBLIC DEPOSITS

The Council is in favor of the Board's recommendation with the following exception, viz, that the Board be empowered to suspend reserves against public deposits in time of war or emergency.

Recommendation 81, page 109

LOANS TO OFFICERS OF MEMBER BANKS

The Council approves the Board's recommendation to increase to $5,000 the present $2,500 exemption from the prohibition on loans by member banks to officers. The Council also suggests an additional amendment which would eliminate the present statutory requirement of approval by a majority of the board of directors with respect to a loan which is exempt. The Council would favor that the borrowing officer simply advise his Board of Directors of the exempt loan in a manner similar to that now governing a loan by any member bank to an officer of another bank.

Recommendation 83, page 111

POWERS OF FOREIGN BRANCHES OF NATIONAL BANKS

This recommendation, in the form of a proposed amendment to section 25 was discussed by the Council at its joint meeting with the Board on February 21, 1956, and the Council at that time offered a number of suggestions. Subsequently, the Board proposed legislation to the Congress embodying the changes suggested by the Council. The Council, therefore, would support the Board's recommendation.

With respect to the other recommendations of the Board, the Council has no suggestions for changes or revisions.

The Council appreciates the opportunity of commenting on these recommendations and trusts that the Board will find them helpful.

Yours very sincerely,

ROBERT V. FLEMING, *President.*

Senator ROBERTSON. Governor, it is always a pleasure to me to have you appear before our committee because whether I agree with everything you say or not, I can always be assured that you know what you are talking about and won't use a plethora of words to conceal your ideas.

On recommendation 55, explain why the payment of earnings to the Treasury should not be used to reduce the national debt.

Mr. ROBERTSON. There would seem to be no reason to specify in the statute a particular kind of an allocation of funds because the general statutes would provide that the Treasury could issue any obligations at any time it saw fit, provided it didn't go above the ceiling of $278 million. So if these funds were used for the retirement of obligations

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the Treasury could immediately issue other obligations, and that seems to be perfectly ridiculous.

Senator ROBERTSON. Should not the question of taxation of dividends on Federal Reserve stock be referred to the Senate Finance Committee for consideration?

Mr. ROBERTSON. I think it might be very appropriate.

Senator ROBERTSON. On No. 58, do you agree the reporting requrements of the Comptroller, the FDIC, and the Federal Reserve should be uniform?

Mr. ROBERTSON. Absolutely. Without their uniformity, we would not want to press for that recommendation.

Senator ROBERTSON. Should also the reports from affiliates required in paragraphs 17, 18, and 19 of section 9 be included in this recommendation?

Mr. ROBERTSON. They would have to be made to conform. We didn't do that because we didn't know whether other agencies would accept this particular recommendation, but they must be made to conform.

Senator ROBERTSON. Should member banks be given 10 days on call reports as proposed by the Comptroller in recommendation 28?

Mr. ROBERTSON. I think so. It would be in accord with our present practice.

Senator ROBERTSON. On No. 61, should reference to salary of members of the Board be deleted as proposed in recommendation No. 1 for the Comptroller?

Mr. ROBERTSON. I would doubt it, as far as the Board is concerned, because it seems to me that the Board of Governors being a direct agent of the Congress should not be put in the same category with all other branches of the executive department of the Government. Although I don't think it is really important, I would think it would be appropriate to have a specific provision left in the Federal Reserve Act with respect to those matters.

Senator ROBERTSON. Is not recommendation 63 in accord with the policy of the Federal Reserve Board independence?

Mr. ROBERTSON. Very much so. If that provision means something other than what we construe it to mean, it definitely should be repealed; and if it does mean what we think it does, it is obsolete and, therefore, should be repealed.

Senator ROBERTSON. On No. 69, do you agree with Comptroller's recommendation No. 34 that the trust operations of national banks should be under the jurisdiction of the Comptroller?

Mr. ROBERTSON. Mr. Chairman, for 40 years now we have attempted to carry out the functions which have been imposed on the Board by Congress. We have exercised these trust functions, both the granting of trust powers and the issuance of regulations, to the best of our ability over these years. We certainly wouldn't make this same recommendation ourselves because it would look as though we were trying to get out of work, but when some other agency comes along and wants to take it, we are delighted. It would relieve us of a job which, if you were starting from scratch, ought to be placed in the chartering agency. But I would caution the committee against taking only part of those functions away from the Board.

Under, I think it is section 584 of the Internal Revenue Code, any bank in the country which operates a common trust fund in order to

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get the tax benefits must comply with the regulations of the Board of Governors. Now it would be very unfortunate, it seems to me, to leave the regulation of common trust funds in the Board when all of its experts are not longer there. If you transfer this general function to the Comptroller of the Currency, you ought to transfer the balance.

That may raise questions as between the national bank system and the State bank systems, but we wouldn't quarrel about that. All we would say is so far as we are concerned we would not object to the Comptroller taking on this function, not at all. We would be delighted, but they ought to take the whole function and not just part of it.

Senator ROBERTSON. In arriving at a uniform rule with respect to the absorption of exchange, do you wish to express a preference?

Mr. ROBERTSON. No, Mr. Chairman, I wouldn't. We are wholeheartedly for this proposal, but since it involves another governmental agency, we wouldn't care really how it is done. If there was a specific provision put in both statutes, that would do it, or if you gave to one agency the power to make a determination of interest, that would do it, too.

Speaking for the Board, I cannot express preference. Speaking for myself personally, I would express a preference for a specific statement in both statutes.

Senator ROBERTSON. On No. 79, would this recommendation affect the requirement for collateral securities for public deposits?

Mr. ROBERTSON. No. I don't see any connection between the two.

Senator ROBERTSON. On No. 84, should section 77 of title 12 be amended by substituting "engaged in unsafe and unsound practices" for "continued unsafe and unsound practices" as in recommendation No. 99 by FDIC?

Mr. ROBERTSON. I don't think so, Mr. Chairman. The word "continued" in the FDIC Act, as I read it, isn't necessary. But in our statute, it is essential because the continued practice in our statute is the equivalent to the period for taking corrective action in the FDIC statute, so that they are not comparable at all, and I would see no need for amending section 30. I would think it would be wrong to delete the word "continued" in that statute.

Senator ROBERTSON. Should the Comptroller be given authority to act on his own without reference to the Federal Reserve Board under section 77?

Mr. ROBERTSON. That would depend, Mr. Chairman, on whether or not you want to have a board as distinguished from a single individual pass upon matters as important as the removal of officers and directors. We wouldn't object, not at all, if the Congress saw fit to give that power to the Comptroller of the Currency and take it away from us. As an individual, I think it might not be the right thing to do.

Senator ROBERTSON. Are additional powers needed to correct unsafe and unsound practices?

Mr. ROBERTSON. That is a very broad question. I would rather answer it by stating that I don't think you can ever find statutes which are adequate to enable you to make it impossible for unsafe and unsound banking practices to develop in some area. I don't think legislation by itself can ever be the whole answer.

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I would think that any supervisory authority today could, as a general rule—and there will be some exceptions here and there—prevent the development of unsafe and unsound banking practices with the laws which are on the books today.

I wouldn't want that statement to be understood to mean that I would be opposed to any additional laws or any strengthening. I wouldn't be, but I would want to do it on the basis of a specific suggestion, not a general statement.

Senator ROBERTSON. When did the circulation of national bank notes end?

Mr. ROBERTSON. Well, since 1935, it has been impossible for any national bank notes to be issued, because there has been no issue of Government bonds which could be used as collateral for them.

Senator ROBERTSON. What about the statute relating to it, do we need to keep it on or should we let it go?

Mr. ROBERTSON. I would think that ought to be one of the first statutes you ought to repeal as being obsolete.

Senator ROBERTSON. Have you any objection to removing provisions dealing exclusively with national banks from the Federal Reserve Act and placing them in the national bank statutes?

Mr. ROBERTSON. Now that is a matter of codification. No, I would have no objection to that.

Senator ROBERTSON. Have you made any studies concerning what bank funds should be counted in the reserve requirement?

Mr. ROBERTSON. I assume that that question relates to vault cash; does it? It does relate to vault cash?

Senator ROBERTSON. Yes.

Mr. ROBERTSON. Yes, we have given a great deal of study to that problem. We have been studying it almost constantly now for several years.

Senator ROBERTSON. Would you amend it by regulation, or would you need——

Mr. ROBERTSON. No, we need statutory authority. We are all—that is, the members of the Board of Governors are all—unanimously in favor of permitting vault cash to be counted as reserves, but there are very great difficulties involved in that because all banks do not hold vault cash to the same extent. A country bank which isn't close to a Federal Reserve bank holds much more than a city bank which is right across the street from the Federal Reserve bank.

Furthermore, it would release a vast amount of reserves which shouldn't be released at this time. You ought to be in a position to offset those.

Consequently, I would say that although we are in favor of amending the statutes in order to count vault cash as a part of the reserves, we would like more time before we make a specific recommendation for statutory authority to do that and other things in relation to reserve requirements. The whole statute needs reworking.

Senator ROBERTSON. In the past, you have recommended deletion of section 13 (b) authorizing commercial industrial loans. Is there any necessity for retaining this section?

Mr. ROBERTSON. No; I think not. I think it very inappropriate for a reserve bank to be making extensions of credit to business, using reserve dollars as distinguished from ordinary dollars.

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The extent to which the Federal Reserve System puts new reserves into the stream should depend upon the needs and requirements of monetary policy and not the needs of someone for funds with which to conduct a business. Therefore, I think that I could speak for the entire Board, although this wasn't specifically considered in preparation for this hearing. I would say that the entire Board would be in favor of repealing section 13 (b).

Senator ROBERTSON. What about the annual audit of member banks?

Mr. ROBERTSON. The annual audit of member banks?

Senator ROBERTSON. Yes, member banks. Should you make it, or should the bank be required to make it, or should there be nothing on the subject?

Mr. ROBERTSON. Mr. Chairman, does this relate to the suggestion made by the Federal Deposit Insurance Corporation for authority to require outside audits of member banks?

Senator ROBERTSON. It is part of it, yes.

Mr. ROBERTSON. Well, I think it is very appropriate if a supervisory authority has question about the adequacy of the records of a bank that it should have the authority to require an audit by a qualified firm of accountants and that the cost of that should be paid by the bank, but I think that that requirement, that authority, should be in each of the Federal statutes and not just in one.

As the suggestion is made, it would vest that power in the FDIC, and I don't think it ought to have the power with respect to the other two groups, but I think it is very appropriate that it have the power and that the other Federal supervisory agencies likewise have that power.

Senator ROBERTSON. Should the power of the Federal Reserve Board to shorten the correction period for member banks be eliminated as proposed by FDIC in recommendation No. 99–D?

Mr. ROBERTSON. I would see no reason whatsoever for that change being made. I think it entirely proper to give to the State authorities the power to reduce the correction period, but I don't see any reason for taking it away also from the Federal Reserve System in the event it thinks the situation is sufficiently serious to call for a shorter period.

Senator ROBERTSON. Do you favor recommendation No. 37 providing for contributions to the Comptroller by the Board because of examination expenses?

Mr. ROBERTSON. No, Mr. Chairman, I do not.

Senator ROBERTSON. Should the Board be notified by member banks of any substantial change in stock ownership or change in control of the bank?

Mr. ROBERTSON. My answer would have to be "no," but I want to qualify it.

In large institutions where there are changes of stock ownership daily, I think it would be a practical impossibility for a Federal supervisory agency to get that information in every day and do anything with it.

Now it might very well be that the statute should be thus amended so that in the event of a change in the control of an institution the supervising authority ought to be notified with respect to that.

Senator ROBERTSON. I was interested in change of control.

Mr. ROBERTSON. If it is change of control, I think so.

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Now, as you know, certainly in the Federal Reserve System we require our examiners to check the stockholders' ledger every time they go into the bank, and from that they would ascertain the change, but it could be that a change during an interim would be important and, therefore, if it is a change of control, I would see no harm whatsoever and possible good in requiring the bank to so advise the supervisory authority.

Senator ROBERTSON. The next question is an optional one. You can pass, if you prefer.

If you were writing the law, would it be a 1-man FDIC or 3-member board?

Mr. ROBERTSON. I would pass as a representative of the Board. I would be glad to give my own personal view.

Senator ROBERTSON. I would like to have those because I have said I have a great regard for your views.

Mr. ROBERTSON. From my own personal point of view, I would think the Comptroller of the Currency should not be a member of the FDIC Board. I sat as First Deputy Comptroller of the Currency for many years. I know that the job of a director of the FDIC is a full-time job, and I doubt that anyone who has a full-time job as Comptroller of the Currency should be required to attempt to act as a director of the FDIC on the basis of a small portion of his time devoted to that activity. Consequently, I would think he should not be.

If you want pure efficiency, a one-man administrator is much better. But if what you want is the benefit of the best judgment you can get, I would select a board rather than a single administrator.

Senator ROBERTSON. But the Comptroller would not be an ex officio member?

Mr. ROBERTSON. I don't think he should, and I don't think the Chairman of the Federal Reserve System should be either.

Senator ROBERTSON. Should member banks be permitted to underwrite and deal in State and local Government revenue bonds?

Mr. ROBERTSON. That is a very broad question, Mr. Senator.

Senator ROBERTSON. You can pass on that.

Mr. ROBERTSON. I would prefer to pass.

Senator ROBERTSON. Are you considering the increase of interest rates on time deposits above the present maximum of 2½ percent?

Mr. ROBERTSON. Yes. The Board is considering that and has been considering it for several weeks or months. A decision has not been reached.

Senator ROBERTSON. You have the power to act, I assume?

Mr. ROBERTSON. We do have the power.

Senator ROBERTSON. Should an officer or a director of a member bank be permitted to serve as an officer or director of a savings and loan association, or vice versa?

Mr. ROBERTSON. I don't see the harm in permitting an individual to serve as a director of both institutions, but by the same token, I think it is very harmful to have the two kinds of institutions operating under the same roof.

Senator ROBERTSON. Do we need any more statutory authority than we now have to prohibit banks from making political contributions?

Mr. ROBERTSON. I don't know. I don't have an affirmative suggestion to make along that line, Mr. Senator.

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Senator ROBERTSON. Should the Board be notified of any substantial change in stock control of its member banks?

Mr. ROBERTSON. I answered that before.

Senator ROBERTSON. Yes, to that effect.

Should a specific conflict-of-interest-type statute be made applicable to employees of the Board?

Mr. ROBERTSON. I doubt the need for it.

Senator ROBERTSON. Do you have any regulations on the subject?

Mr. ROBERTSON. We do not have any regulations on the subject and have not felt the need for it. We lose very few examiners from Federal Reserve banks to member banks, but we are in a little different position from some other supervisory authorities, certainly different from the Comptroller of the Currency, because an institution would not seek one of our people, that is, an examiner of a Federal Reserve bank, with the view of getting on the good side of the supervising authority because that bank also would be subject to the State supervisory authority and the one man could hardly get the bank in good with both sides.

The Comptroller's Office also, I think, loses more examiners to banks than we do, probably because in the Federal Reserve System there is room for development and progress up within the institution—in a system as large as ours, much more so than in the Comptroller's Office.

Senator ROBERTSON. The next question is optional: Why are there more nonmember banks than there are member banks?

Mr. ROBERTSON. I pass.

Senator ROBERTSON. The Senator from Illinois.

Senator DOUGLAS. Mr. Robertson, I recently read a speech delivered by Elliott Bell before the American Bankers Association which has been reprinted as a pamphlet entitled, I believe, "Who Should Manage Our Currency?" in which Mr. Bell said that there should be a financial council or committee composed of representatives of the executive departments and the Federal Reserve Board and that the Federal Reserve Board should more or less be bound by the decisions and advice of this financial council.

In view of the fact that Mr. Bell was a very important member of Governor Dewey's cabinet, and in view of the fact that he is the publisher of a very large financial paper, business paper, and that I believe he is not unacquainted with the precincts of 1600 Pennsylvania Avenue, this speech of Mr. Bell's has been regarded as a trial balloon on the part of the administration to determine the credit policies of the Federal Reserve System.

I would like to ask you whether you would favor the creation of such a council and what power should it have over the Federal Reserve Board?

Mr. ROBERTSON. I would not favor such a council. I think it would be one of the easiest ways to take away from the Federal Reserve System the independence which it has, and I think it would be very difficult, almost impossible, to formulate decisions on an impartial basis and on the basis of economic facts as we see them without regard to political influences if that sort of a proposal were adopted.

Being against the formation of such a committee, I wouldn't want to express any views with repect to what powers it should have if they took the other position.

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Senator DOUGLAS. I may say I was somewhat amused at this suggestion in view of the fact that when the same proposal was made 7 years ago in a preceding administration, I was then a freshman here in the Senate as chairman of a committee which considered that question. I found that many of the groups which are now advocating this plan were then opposed to it. Can you offer any surmise as to why there should be this shift of position between 1949 and 1956?

Mr. ROBERTSON. I would prefer not to surmise.

Senator DOUGLAS. Do you have any ideas about it?

Mr. ROBERTSON. No.

Senator DOUGLAS. In other words, is it possible that people would be opposed to the Truman administration and the Democrats having control over the Federal Reserve Board but would favor it if you had a Republican in the White House and a Republican administration? Is that a possibility?

Mr. ROBERTSON. I suppose that is a possibility, but I would prefer not to——

Senator DOUGLAS. I see. You are a very cautious man, Mr. Robertson.

In the morning edition of the Washington Post I found on page 37 an AP dispatch from New York saying that the First National City Bank of New York and the County Trust Co. of Suburban White Plains are combining to form a bank holding company which would be the second largest banking institution in the country. It goes on to state that if this is approved by the Federal Reserve Board and the Comptroller of the Currency the holding company would control resources of about $7 billion compared with $7,350,000,000 of the Chase Manhattan Bank, currently the second largest.

Is that case before you now?

Mr. ROBERTSON. Yes. That case is before us.

Senator DOUGLAS. I have never believed in legislators trying to high pressure quasi-judicial board to give decisions one way or the other, but as a matter of public policy without regard to this particular instance, do you think there is a danger of bank mergers and bank holding companies developing to the point where there is an undue concentration of lending power and banking resources in the country?

Mr. ROBERTSON. Well, I think that is the very basis upon which the holding company statute itself was passed, Senator. Certainly there is that possibility.

Senator DOUGLAS. Do you think it is an actuality?

Mr. ROBERTSON. No, I do not think that it is an actuality as of today. I do not think that the holding——

Senator DOUGLAS. As of today, there is nothing to be worried about?

Mr. ROBERTSON. I think not.

Senator DOUGLAS. Things, therefore, by inference would have to go much further before you would regard the present degree of concentration as dangerous. Since there is nothing today, since you start from zero danger, you would have to go quite a way.

Mr. ROBERTSON. No, I wouldn't say that. Nor would I want to be tied down to just how far up the scale you go before you reach the danger point.

Senator DOUGLAS. You said there was no danger today?

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Mr. ROBERTSON. I said as the situation is today I am not concerned about it. I think there is competition all the way through, but I think it is possible that holding companies or institutions through mergers could grow to the point where there would be a danger of stifling competition. I happen to think that competition is one of the real safeguards in the banking industry and in the Nation itself, but just where you reach that point where you say that growth has become dangerous, where bigness becomes too big, I am not in a position to say.

I think you have to deal with this on the basis of individual cases, and I doubt seriously that you can fix any general rule. I don't think you can pick a figure out of the air and say that when you reach that percentage of the deposits in a given area, for example, you have reached the limits.

Senator DOUGLAS. Of course, if you don't have a general philosophy and if you don't have any individual benchmarks for decision, what you are likely to do is say this case is all right. That is the easiest thing to do.

Mr. ROBERTSON. That is the easiest thing, but that is not the way in which any Government agency should operate.

Senator DOUGLAS. Have you ever refused a request for merger of banks?

Mr. ROBERTSON. I have seen many mergers turned down and I have participated in turning them down before they ever got to the stage of a formal application.

Senator DOUGLAS. Would you submit to this committee a record of the requests for mergers that you have approved and those that you have disapproved, that is, speaking of the Federal Reserve Board as such?

Mr. ROBERTSON. Yes. Be very glad to.

We have, as a matter of fact, already submitted that information to the committee.

Senator DOUGLAS. Was that published?

Mr. ROBERTSON. In your hearings here, I believe, on the merger.

Senator DOUGLAS. I never saw the list, but if that is published——

Mr. ROBERTSON. You will find in all of those——

Senator DOUGLAS. Since you have submitted that, can you give a rough judgment as to the proportion which you approved and the proportion you disapproved?

(The list referred to follows:)

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Mergers, consolidations and absorptions by State member banks

	Number of mergers and consolidations	Number of absorptions (purchase of assets)	Total	Size of banks taken over				Number of cases requiring Federal Reserve Board approval	Number of cases not requiring approval	Number of banks converted to branches	Existing branches acquired in takeover
				Assets under $5,000,000	Assets $5,000,000 to $10,000,000	Assets $10,000,000 to $50,000,000	Assets over $50,000,000				
1950	9	16	25	12	5	5	3	11	14	20	33
1951	18	12	30	10	8	6	6	12	18	24	28
1952	16	11	27	12	10	4	1	15	12	24	13
1953	22	7	29	8	10	11		12	17	25	10
1954	15	12	27	12	6	6	3	18	9	26	96
1955	55	13	68	26	16	19	7	38	30	61	102
1956 (4 months)	18	3	21	9	7	5		15	6	21	4
Total	153	74	227	89	62	56	20	121	106	201	286

List of 20 banks with assets over $50 million which were merged into or absorbed by State member banks

[In thousands]

Date	Banks taken over	Assets	By—	Assets	Comment
Oct. 16, 1950	Brooklyn Trust Co., Brooklyn, N. Y.	$244,070	Manufacturers Trust Co., New York, N. Y.	$2,271,811	Approved by board.
Sept. 18, 1950	Lawyers Trust Co., New York, N. Y.	79,896	Bankers Trust Co., New York, N. Y.	1,499,329	Do.
Aug. 7, 1950	Title Guarantee & Trust Co., New York, N. Y.	65,248	do	1,499,329	Approval not required.
Mar. 19, 1951	National Safety Bank & Trust Co., New York, N. Y.	109,127	Chemical Bank & Trust Co., New York, N. Y.	1,716,202	Approved by board.
Apr. 23, 1951	Power City Trust Co., Niagara Falls, N. Y.	81,832	Marine Trust Co., Buffalo, N. Y.	386,722	Approval not required.
May 28, 1951	Commercial National Bank & Trust Co., New York, N. Y.	213,683	Bankers Trust Co., New York, N. Y.	1,663,150	Approved by board.
June 18, 1951	Corn Exchange National Bank & Trust Co., Philadelphia, Pa.	302,878	Girard Trust Co., Philadelphia, Pa.	237,122	Approval not required.
Sept. 4, 1951	Mississippi Valley Trust Co., St. Louis, Mo.	250,582	Mercantile Commerce Bank & Trust, St. Louis, Mo.	413,144	Do.
Nov. 1, 1951	Rhode Island Hospital National Bank, Providence, R. I.	156,330	Rhode Island Hospital Trust Co., Providence, R. I.	88,582	Approved by board.
Nov. 3, 1952	Equitable Trust Co., Wilmington, Del.	54,630	Security Trust Co., Wilmington, Del.	47,340	Do.
July 1, 1954	Phoenix State Bank & Trust Co., Hartford, Conn.	121,585	Connecticut Bank & Trust Co., Hartford, Conn.	202,085	Approval not required.
Aug. 9, 1954	Colonial Trust Co., Pittsburgh, Pa.	140,424	Fidelity Trust Co., Pittsburgh, Pa.	87,908	Do.
Oct. 18, 1954	Corn Exchange Bank & Trust Co., New York, N. Y.	832,296	Chemical Bank & Trust Co., New York, N. Y.	1,949,724	Do.
Jan. 3, 1955	Monterey County Trust & Savings Bank, Salinas, Calif.	65,526	American Trust Co., San Francisco, Calif.	1,328,321	Do.
Feb. 21, 1955	Second National Bank, Boston, Mass.	180,081	State Street Trust Co., Boston, Mass.	215,232	Do.
Mar. 21, 1955	Bronx County Trust Co., New York, N. Y.	75,614	Bank of Manhattan Co., New York, N. Y.	1,628,893	Approved by board.
Apr. 1, 1955	Chase National Bank, New York, N. Y.	5,669,059	do	1,704,507	Approval not required.
Apr. 11, 1955	Public National Bank & Trust Co., New York, N. Y.	562,497	Bankers Trust Co., New York, N. Y.	2,207,022	Approved by board.
Oct. 3, 1955	First National Bank, Philadelphia, Pa.	219,691	Pennsylvania Company for Banking & Trusts, Philadelphia, Pa.	816,680	Approval not required.
Dec. 31, 1955	Market Street National Bank, Philadelphia, Pa.	65,855	Tradesmans Bank & Trust Co., Philadelphia, Pa.	222,790	Do.

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Mr. ROBERTSON. I would say that you would find the number that were specifically—I have no recollection of the exact figures, but I would think that you would find that the number disapproved on any list furnished you by any supervisory authority, whether it is by Federal Reserve or the Comptroller of the Currency or FDIC, would be practically nil because those are turned down before they ever reach the application stage.

Senator DOUGLAS. That is, the formal refusal of permission, you think, would be almost nil?

Mr. ROBERTSON. That is right.

Senator DOUGLAS. It would only be the informal disapproval, that is, any disapproval would have been informal?

Mr. ROBERTSON. You can call it disapproval or discouragement, either one you wish, but that is the status.

Senator DOUGLAS. But so far as the cases formally passed on, consent has been virtually always given?

Mr. ROBERTSON. When it reaches the stage of a formal application, everybody knows pretty well whether it is going to be approved or disapproved.

Senator DOUGLAS. Do you follow the theory of Greek tragedy that all action should take place off the stage then?

Mr. ROBERTSON. No; I don't follow any such rule as that.

Senator DOUGLAS. That seems to be what you have done.

Mr. ROBERTSON. Not at all. Not at all. Two institutions are very unlikely to ever attempt to merge unless they have discussed that matter with the supervisory authority beforehand.

Senator DOUGLAS. I don't want to make matters very embarrassing for my very dear friend John McCloy, whom I regard as one of the great citizens of this country, and I mean that most sincerely.

Did you discuss informally the question of the merger of the Chase National Bank and the Bank of Manhattan?

Mr. ROBERTSON. No, Senator; I would prefer not to do that just for the very simple reason I have not looked at the facts of the case for months and months and months.

Senator DOUGLAS. No. I simply said did you have informal——

Mr. ROBERTSON. Oh, very much so.

Senator DOUGLAS. Then you gave assurances that it was correct to proceed?

Mr. ROBERTSON. Well, let me make this record clear right now, that in that particular case we did not have the power to approve that merger. That was done by the State supervisory authorities. We would decide whether or not they could have branches.

Senator DOUGLAS. I see. If it had become a national bank, you would have had the authority?

Mr. ROBERTSON. If it had become a national bank, it would have been the Comptroller of the Currency.

Senator DOUGLAS. Comptroller of the Currency; yes.

Well then, what function do you play in this at all?

Mr. ROBERTSON. There are very few instances in which we have to approve the merger as such. There are some cases in——

Senator DOUGLAS. What cases would you pass on?

Mr. ROBERTSON. Where the capital of the two institutions merging isn't equal to the combination of the capital and surplus of the two

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institutions. If part of the capital is being eliminated through the merger, then we would have to approve it. Otherwise, we would not.

Senator DOUGLAS. I am afraid I am very stupid. Would you say that over again because I can't quite follow you?

Mr. ROBERTSON. Well, one of the big gaps in the law today with respect to Federal approval of mergers is that they don't have to be approved by the Federal Government, leaving aside now the national bank cases where you have to have approval in every case, unless there is some diminution of capital. If there is a diminution of capital or surplus, then we would have to approve, but we wouldn't otherwise. In that case, there was no diminution. So only the State authorities would have to approve, but they couldn't get the branch permits without our approval after that. But we could hardly come along after the approval of the merger and say because there happened to be 3 branches out of a hundred or 200, whatever they are, that happen to overlap, we wouldn't——

Senator DOUGLAS. So, in effect, you have virtually no control over the question of mergers?

Mr. ROBERTSON. I think that is true in that case you are speaking of.

Senator DOUGLAS. And your power over bank holding companies really comes from this last act; isn't that true?

Mr. ROBERTSON. Not at all; not at all. There has been holding company legislation for a long time. It just wasn't adequate. It was not adequate, and that was the reason that the existing legislation was passed.

Senator DOUGLAS. Did you notice the extraordinary activity of Transamerica in buying up banks while the bill was under debate in the Senate?

Mr. ROBERTSON. I could hardly miss it.

Senator DOUGLAS. Pardon?

Mr. ROBERTSON. I could hardly miss it.

Senator DOUGLAS. Would you be willing to make a general statement as to the process of purchasing banks in the Mountain State area by Transamerica during that period?

Mr. ROBERTSON. No. But I would be glad to answer any questions you have on it.

You say a general statement? No, I would not.

Senator DOUGLAS. Would you submit a memorandum on the banks and their capitalization and deposits which were acquired by the Bank of America during the period that it——

Mr. ROBERTSON. Oh, very gladly.

Senator DOUGLAS. Went pretty far, didn't it?

Mr. ROBERTSON. They acquired a number of institutions during the last few days, the last weeks, let me say, before the legislation was passed.

I would be very glad to give you that. That, too, has been furnished before.

Senator DOUGLAS. I wish you would submit that for the record.

Thank you very much.

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(The information referred to follows:)

Acquisition of controlling stock of banks by Transamerica Corp., Jan. 1 to May 9, 1956

[In thousands]

Date	State	Banks	June 30, 1956	
			Capital accounts	Deposits
Jan. 13	Idaho	Continental State Bank, Boise	$1,467	$15,245
13	do	First National Bank, Caldwell	1,107	13,215
23	New Mexico	Bank of New Mexico, Albuquerque	2,646	21,430
Feb. 14	Utah	Walker Bank & Trust Co., Salt Lake City	7,309	121,578
Mar. 2	Idaho	Bank of Eastern Idaho, Idaho Falls	307	10,382
27	Montana	Montana Bank, Great Falls	1,199	19,253
27	Utah	Cache Valley Banking Co., Logan	588	8,760
27	do	Sandy City Bank, Sandy	472	8,739
Apr.—[1]	Colorado	American National Bank, Denver	3,895	53,504
—[1]	do	Englewood State Bank, Englewood	378	12,083
—[1]	do	First National Bank, Fort Collins	735	10,162
—[1]	Montana	Conrad National Bank, Kalispell	915	16,361
—[1]	New Mexico	First State Bank, Gallup	446	8,101
—[1]	do	Roswell State Bank, Roswell	323	6,385
—[1]	Wyoming	Casper National Bank, Casper	1,955	33,590
—[1]	do	First National Bank, Laramie	1,186	15,129
—[1]	do	First National Bank, Riverton	434	6,255
May 4	New Mexico	Lea County State Bank, Hobbs	1,189	17,083
5	Montana	Bank of Glacier County, Cut Bank	409	6,761
7	New Mexico	Santa Fe National Bank, Santa Fe	961	40,503
		Total	27,921	444,519

[1] Information as to day of the month not available.

Senator ROBERTSON. The Chair recognizes Mr. Cravens.

Mr. CRAVENS. I think I should explain for your benefit, Mr. Robertson, that the work of the Advisory Committee has been broken down into subcommittees, one of which deals with the recommendations with respect to changes in legislation affecting the Federal Reserve System and one with the Comptroller of the Currency, and so forth.

Mr. McCloy is chairman of the subcommittee dealing with legislation affecting the Federal Reserve System.

I will call on Mr. McCloy first for any questions he has.

Mr. McCLOY. Mr. Cravens, Senator Robertson has asked a good many of the questions that I had in mind asking. There is one general question I would like to ask.

This morning Mr. Gidney and this afternoon you, Mr. Robertson, have pointed out that the scope of your recommendations is somewhat limited, that you haven't gone into fundamental questions, questions of fundamental policy or fundamental operations. That prompts me to ask this question: In your judgment, considering all the developments that have occurred in the United States since the last comprehensive study was made of the banking and monetary system, do you feel at this time it would be wise to look into the fundamental policy of the country in respect to its monetary, credit, and banking situation? Would you feel that such a study might be productive in view of the changes—economic changes—that have occurred in the country over these decades since the last study was made? Would you feel that such a study would be productive?

Mr. ROBERTSON. In response, I would say that I am very much in favor of such a study. I think it would be very productive. I think it would not only be educational on the part of the Congress and the

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public at large but would result in enabling a lot of us to see the way in which the financing industry in this country has grown up like Topsy. We have overlapping on the part of financing institutions and also discriminations as between them, taxwise and otherwise. Some are subject to severe supervision and others almost no supervision. Some have tax benefits that are great, and some have tax benefits that are small. There are distinctions and differences with respect to the extent to which given institutions can finence business, industry, and agriculture, and I doubt seriously that there should be that differential.

It seems to me that we have started out in the right path in each instance, whether on the cooperative side or the mutual side or the commercial enterprise side, but we have permitted these various institutions to grow into something that might be very different from what was contemplated at the outset.

Consequently, I would think there should be such a study as has been suggested and I have advocated it many times in the past. Even within such limited fields as the Federal Reserve System there are areas which are deserving of real careful thought, but it is going to take a long time to do it.

Take the question of reserve requirements alone. That is sufficient for a very broad study. You don't find the answer just overnight. It takes real thought, and I think we ought to have the kind of a study which you have suggested and bring to bear on the problems which exist the best minds we have. Whether it is a congressional committee or whether it is the kind of a committee that you would think of as a commission, monetary commission, with representatives of Congress and representatives of the public, I have no view to express other than to hope that the people who would constitute that committee or commission would be in a position to devote full time to the job for a sufficiently long period of time to do the job well.

Mr. McCloy. This may not quite bear on the point, but I thoroughly agree with that statement. I am a novice, a freshman, as the Senator speaks of it, in the banking profession, but it does seem to me from such knowledge as I have of economics and the history of finance of the country that such a study as that may be appropriate at this time. This present study that we are making preparatory to legislation in the coming Congress scarcely affords time to go into any such a thorough consideration of the problems as you indicate may be advisable.

How long would you think such a study should take?

Mr. Robertson. I tried to make a list of the things just within my own limited field which should be studied and then tried to wonder how long it would take to do that sort of a job, and I couldn't come out with anything less than 2 years.

Senator Robertson. Would you mind asking him what it would cost?

Mr. McCloy. On behalf of the Senator from Virginia, I will ask you how much it would cost.

Mr. Robertson. And I would reply that I haven't the slightest idea.

Mr. McCloy. It seems to me it would take at least 2 years before a comprehensive study could be completed. I don't know that it would be so terrifically expensive, however. That is another question.

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If I could pass to 1 or 2 questions which I believe have not been covered in respect of your recommendations—I refer to recommendation 51, I believe it is, that every class A, B, and C director must be a resident of the district for which he is appointed and must cease to be a director if he moves out of the district.

I would like to raise a question as to why that recommendation is made and why you put such a heavy dependence upon residence rather than the principal place of business.

I come, as you know, from the metropolitan area where a great many people have their residence in the outlying contiguous counties or districts but come into New York for their business, and there are other areas of the same character throughout the country. I am just wondering if you would care to clarify that or comment upon that.

Mr. ROBERTSON. Yes, I would be very glad to.

We recognize that there are some inequities and some undesirable features in using a residence requirement. On the other hand, you have to find some sort of a guide to use, and in thinking about this question we couldn't think of a better one than residence, although we are perfectly amenable to any change which would take care of particular kinds of situations such as you refer to in New York. We realize that it does exist there, but we do think that it would be inappropriate to have a statute which would authorize someone whose principal business is in New York but who lives in Florida to be a director of a Federal Reserve bank, for example, in New York City because he couldn't be there often enough.

If some better means than residence can be devised as a guide, we would be in favor of it.

Mr. McCLOY. Perhaps our committee may be able to give thought to this and make some suggestions in respect of drafting, and there are some other elements of drafting in respect of that provision, but I won't take the time to talk about them.

Mr. ROBERTSON. I would be amenable to anything which would accomplish the purposes of the act.

Mr. McCLOY. The question about what constitutes a quorum—I think that was recommendation No. 66—on the part of the Board of Governors dealing with specific subjects.

As I read that recommendation, it would simply require a simple majority of a quorum of the board to deal with any subject that may come before the Board.

Mr. ROBERTSON. That is right.

Mr. McCLOY. You referred to the fact that there were some very substantial questions which now came before the Board which would only require a bare majority and not a particular number of members of the Board. Couldn't the argument be used as well the other way? Why not increase the number of members of the Board that are necessary to pass on serious and substantial questions, perhaps such as the open market policies?

Why would you feel that you have to reduce the number to deal with serious subjects rather than increase it?

Mr. ROBERTSON. Well, No. 1, it would seem to us a little ridiculous to require that a majority of seven members of the Board should be obliged to pass upon certain phases when just a majority of the quorum would be adequate for other purposes equally as important.

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If it was decided by the Congress that there should be five in any event who should pass upon these matters before they are changed, then I would agree with you that even those that are now subject to a majority of the quorum ought to be put in that same category.

But that would mean that you are deviating from the general rule with respect to majorities and quorums and requiring in the event we had only 5 members—and for a long period of time we had only 5 members of the Board—every single one of them to be there at every single meeting, which seems to me to be a little unfortunate because there are occasions when members of the Board ought to be out in Federal Reserve banks, for example, and are necessarily away from the city.

Even take the matter of illness. If we had only 5 members and 1 was away ill, you couldn't do any of these things. Well, that we think would be unfortunate.

Furthermore, we dont' quite see the need for the safeguard, if that is what it is called, of having a requirement that there be a majority of all the members of the Board instead of a simple majority of a quorum.

Mr. McCloy. I think that question is posed whether or not there are such elemental, fundamental matters as would affect the country that perhaps ought to be passed on by more than 3 men rather than to reduce the requirement in respect to all subjects to 3.

Mr. Robertson. It is a matter on which there can be very different opinions.

Mr. McCloy. In respect of the recommendations that you made with regard to the requirement of the Federal Reserve banks to pay and transfer a portion of their net earnings into the United States Treasury and the question of the exemption of dividends from taxation—recommendations 54 and 56—the Federal Reserve stock was purchased, as, of course, you know, by some of the banks prior to the Public Debt Act of 1942, and dividends on that stock, as you have indicated, are tax free. There would be a constitutional question presumably as to whether they would be taxable at this stage as well as a question of policy. But assuming that it should be determined that the dividends on the Federal Reserve bank stock issued prior to 1942 should be taxable, shouldn't the stockholders be entitled to the intercorporate dividend deduction which I understand they are not now entitled to inasmuch as it is not considered that the franchise tax is an income tax?

Mr. Robertson. Mr. McCloy, I am not an expert on taxation, and I couldn't answer that question. The basis on which we made our recommendation was that we couldn't come to a conclusion that there was justification for a difference as to dividend tax as between banks which came into the system prior to 1942 and those which came in after 1942 insofar as the Federal Reserve stock was concerned, and that is all.

Now we don't care anything about this taxation except we think it should be equitable as between banks, and that is our whole basis. If there is a reason for a different view on the basis of some other tax laws, I don't know.

Mr. McCoy. It may be on the basis of the Constitution.

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Mr. ROBERTSON. We have studied it from the basis of the Constitution, and we came to the conclusion that a constitutional question was probably not involved, but there again there would be different views.

Mr. McCLOY. In regard to your recommendation, I believe it is No. 58, with respect to this matter of reports, you suggest that the authority of the Federal Reserve Board in this respect be broadened and clarified so that particularly it can prescribe different types of reports for different banks and different situations. I believe you also suggest you be given the authority to publish, which you may not have at the moment, and also to take some sampling reports.

I have heard some of the members of my committee are somewhat disturbed about that provision. They are somewhat fearful that if you have a sort of a heterogeneous type of reporting, one, that you would perhaps have room for discrimination, if not a deliberate discrimination one which might result in being an inequitable discrimination as between reporting for various banks; secondly, that there are a number of economists and research students who are dependent upon the continuity of method in terms of reporting of bank statistics and the concept of a sampling or the concept of varied types of reporting subject to the will or the whim of the Federal Reserve Board from time to time would destroy a very valuable economic source. I just wondered whether that was taken into consideration by you in connection with this recommendation.

Mr. ROBERTSON. Oh, yes. We are quite aware of all of those points. Our feeling about it is this: No. 1, let me say we would not want this statute changed unless the statutes relating to the national banks were also changed because it would be very unfair for us to act in this manner with respect to State member banks if the Comptroller acted differently with respect to national banks.

But assuming it were made applicable to all the banks, these were the things which we had in mind: As of today, we are obliged to have three calls for reports of condition per year. There are occasions when we think that is unnecessary. We would always want to have two. And if this proposal were amended to provide that there shall be a year-end and a midyear call report, we would agree with that completely because we would expect to have it.

We want to maintain the kind of statistics which people use, experts use, with respect to the banking system as a whole over a long, continued period of time. It would only be the spring and fall call reports that we might wish to omit.

Now with respect to those, if we call for a report today, we have to call for it from all the banks. Well, that isn't necessary on a spring and fall report. All you need to do is to get a trend. You can get that from those banks for which submitting the information is not really a burden, but in order to do it we have to get it from the banks where it is a burden. We would like to reduce that burden. We would like the power to weigh the requirement of publication on those special occasions simply because we don't think there is any need for those banks to have to publish that information on those spring and fall reports.

We also ask—and one which members of your committee will probably fuss with the most—for the power to require publication of earnings and dividends reports. There you will find a very great disparity of opinion between banks. The vast majority would probably say

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that it would be unwise to require publication of earnings and dividend reports, and I suspect most agencies of the Government would take the same position.

We take the position that today in order really to understand a report of condition of a bank, you must have information with respect to its earnings and dividends just as you have to have in the case of an outside corporation, a nonbanking corporation.

Therefore, our judgment leads us to conclude that this recommendation with respect to the publishing of earnings and dividend reports is a sound one, though we can see the defects on the other side.

We think on balance the better judgment is that which we espouse with respect to the waiver of publication and with respect to the power to get sampling reports from a few of the banks without having to go to all the banks in order to get them.

Mr. McCloy. There may be some counterconsiderations that I'm sure could be adduced in this connection, but I don't believe at this point it's desirable to bring them out or necessary to bring them out.

Mr. Robertson. Yes, sir.

Mr. McCloy. I was anxious to see whether these thoughts had come to you and whether you had given them full consideration.

Mr. Robertson. Yes.

Mr. McCloy. In respect to recommendation 69, that the Board of Governors be authorized on the complaint of the Comptroller to revoke the trust powers of national banks if it's determined after a hearing that such powers are being unlawfully or improperly exercised, there were some members of my committee that were concerned about this, and the question raised is: Is not the grant of permission to national banks to exercise such trust powers really an extension of power of such banks and not merely a revocable license? In respect to some of these banks it's a very important, perhaps the major aspect of their business. To have the subject treated as if it were a revocable license—to be sure after a hearing—is such a drastic step that it would perhaps seem a little too harsh and that it ought to be treated as revocation or nullification of one of their fundamental powers with all of the procedures which protect an institution against such a revocation.

Mr. Robertson. I would agree with you that it's very drastic. And in the case of a large institution where the trust functions are really significant, the better way to do it would be to take the appropriate measures to forfeit the charter of the institution itself.

But we are thinking in terms not of that sort of a situation but of one where you have an otherwise sound institution which has been granted trust powers but is too small to really employ the kind of people who ought to operate a trust department. In that sort of a situation it seems to me that there should be ways and means of terminating the trust activities of that institution without jeopardizing the institution as a whole.

How you go about it I don't care. I'm willing to have any safeguards that are desirable, but I think the power ought to exist in someone, either in the Federal Reserve System or, if these powers are transferred to the Comptroller, in the Comptroller to see to it that a bank is actually able to carry on these trust functions even though at the time the powers were granted it was able to do that—if the people who then were in the picture are now gone and the people the bank

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has now are not competent to carry on that trust business. The institution should not have any irrevocable license to continue.

Mr. McCLOY. You would not object per se then to some suggestions that might perhaps throw a greater protection around the maintenance of this power?

Mr. ROBERTSON. None whatsoever.

Mr. McCLOY. I won't go any further into recommendation No. 77, this rather controversial issue of par and no par. I was hoping that you would express your preference one way or another on that. But, as I understand, on that you plead for uniformity no matter what it may be? I'm talking about the absorption of exchange and interest and so forth.

Mr. ROBERTSON. Well, but I think I did express my preference for a specific prohibition.

Mr. McCLOY. A specific prohibition? I didn't understand that.

Mr. ROBERTSON. In each statute.

Mr. McCLOY. I didn't understand that.

Mr. ROBERTSON. I think that's much more desirable than giving to the Board the power to define interest or giving the FDIC power to define interest.

Mr. McCLOY. I see.

I think I understood you to say that you were quite prepared to see the abolition of section 13 (b)?

Mr. ROBERTSON. Yes; I did.

Mr. McCLOY. In regard to this matter of officers' loans, you suggest you would recommend an increase from $2,500, as I understand, to $5,000?

Mr. ROBERTSON. We have no pride in that figure. It just seems to us that——

Mr. McCLOY. This is a subject which I've been rather interested in and one with which we have been dealing in the State of New York to some degree. I believe the New York Clearing House Committee is considering a rather broad treatment of this whole subject, and they are not disposed to make a particularly rigid rule in terms of a specific amount for all banks but to vary it in accordance with the size of the bank and perhaps other considerations that may be involved, particularly the type of loan.

For example, a loan which involves the construction of a home or a mortgage or improvements on a home might very well go beyond $5,000, the thought generally being that probably it's good public policy to have the officers of a bank able to borrow money so that they don't get into a situation by outside borrowing which might compromise them financially.

Do you have a really strong feeling that the amount should not exceed $5,000? Or would you be prepared to look with some sympathy upon a wider treatment of this subject?

Mr. ROBERTSON. I would be prepared to look with sympathy on a wider treatment of this subject, but I would want to warn you in advance that I believe that very little difficulty has been encountered throughout the banking industry by virtue of the rigid limitation which exists there today.

As you know, the officers of banks today are prohibited from borrowing from their own institutions, which I think is a fairly sound rule. The $2,500 that's in the statute today is sort of an exception.

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Mr. McCLOY. Yes.

Mr. ROBERTSON. It is a good rule—that those bank employees go to other banks to borrow. Now, that can be a little embarrassing at times, I'm free to admit, and there may be ways in which to do this better than those which have been provided for by statute now.

But, by and large, I think it is unwise for banks to be in a position to lend to their own officers without limit, because they are on the inside, and especially in the vast majority of banks today where you have a very few lending officers.

Mr. McCLOY. Wouldn't you say it would be reasonable perhaps to increase this figure in cases of, let's say, the purchase of a home?

Mr. ROBERTSON. That may very well be.

Mr. McCLOY. Maybe $10,000?

Mr. ROBERTSON. There may be some areas in which you could go above this figure with safety and without impairing it as a real——

Mr. McCLOY. May I ask this question: What in your mind is the definition of an executive officer? Just how far down does that go? How important an animal must he be before——

Mr. ROBERTSON. We have defined that term.

Mr. McCLOY. You may have defined it. Does it cover division heads or only chief executive officers or what is it?

Mr. ROBERTSON. I would think of it as being anyone with the power to exercise his own initiative with respect to the lending of bank funds.

Mr. McCLOY. Pardon me just a moment. Let me check up with the committee here.

Mr. CRAVENS. While he's doing that, Mr. Robertson, in connection with this officer borrowing, the requirement of reporting loans from officers of other banks to the boards of their own banks is becoming rather burdensome due to installment buying. Sometimes even a contract with a dealer ends up in a bank's hands. Are you sympathetic to finding some relief to that?

Mr. ROBERTSON. Very much so. I wish I knew the exact answer to that. I don't. But I'm sympathetic.

Mr. CRAVENS. I was going to ask you how you suggest it be cured.

Mr. ROBERTSON. It requires a great deal more thought than I've given to it to come up with even a suggestion. But it's becoming a problem and a big problem.

Mr. CRAVENS. Going back, while Mr. McCloy is checking there, with respect to vault cash, would you be willing to have the power—not required to use it but have the statute changed to permit you to count vault cash in the reserve?

Mr. ROBERTSON. Absolutely. We're in favor of that.

Mr. CRAVENS. If that was all that was done, if you just had the authority to do it?

Mr. ROBERTSON. We wouldn't want it on any other basis, because you have to dribble this out over a long period of time in order not to put too much reserve——

Mr. CRAVENS. But you would not object to that authority?

Mr. ROBERTSON. Oh, not at all. We're at the moment very much in favor of that. But we would like to be in a position to see our way clear on how to work it out, how to implement it, before we come up with specific language.

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Mr. CRAVENS. It has been suggested publicly, Mr. Robertson, that the General Accounting Office conduct an audit of the Federal Reserve banks. What is your reaction to that suggestion?

Mr. ROBERTSON. Well, Mr. Cravens, let me answer that this way, forgetting completely or leaving aside for the moment anything that was done or not done in the Federal Reseve System prior to the time I went on the Board of Governors, as I can only speak of the time subsequent to that from my own personal knowledge. During that period we in the Board of Governors have looked upon audits and complete audits of both the Board and the Federal Reserve banks probably as harshly as anyone possibly could, because we believe completely in having impartial people audit those institutions.

Now, we've done our best to try to make those as good as we can. I have had some experience in this field of examination, and I have attempted to devise every way that I can think of to make the audits of the Federal Reserve banks the best possible audits.

We have a crew of men who devote their entire time to this job, and the head of that group is a CPA himself. We have gone over the procedures they use and the operations they engage in very carefully. But we haven't been satisfied with that. In order to make it as good as possible, we have employed an outside firm of certified public accountants to go with those examiners into one Federal Reserve bank each year, not for the purpose of making the audit, but for the purpose of overlooking that crew to see whether or not they are doing their job as they should, whether the procedures they use are appropriate, whether anything can be devised to make it a better examination. And at the end of that particular examination—they vary it each year, a different Federal Reserve bank each year—they send to us their views as to improvements which they think could be made.

And we consider those carefully, and we make those improvements, so that we think we do a pretty good job in that field.

With respect to the Board itself, in 1952 we engaged in the practice which we think should be mandatory of having outside firms of qualified public accountants go over the books and records of the Board with no strings whatsoever attached. They have complete freedom to make whatever audit they think is appropriate. And they do. And we've benefited highly from that.

We think that's the way in which it should be done.

Now, we have sent copies of the reports of examination of the Federal Reserve banks to the Senate and House Banking and Currency Committees upon request. We have sent to the same committees the certificates of the certified public accountants each year that we have referred to, either in our annual report or by special submission.

We have reached the point now where we think, in view of all the talk that goes on about auditing in the Federal Reserve System, that Congress should take it upon itself to make mandatory the use of a firm of certified public accountants to audit the Federal Reserve Board, and that we should be required to submit those audits to the committees of Congress and that the auditors should be obliged to come before the committees of Congress and explain any defects, and that we, the Board, ought to be obliged to submit reports with respect to every criticized item in that report.

And we also should be compelled by legislation to submit to those committees the reports of examination of the Federal Reserve banks

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themselves. We would hope that they would be treated confidentially by the Congress, but that's up to Congress to decide.

Now, that's where we stand at the moment.

Mr. CRAVENS. You wouldn't want the statute to provide for a certified public accountant with respect to each bank, would you? Or wouldn't you continue your own audit?

Mr. ROBERTSON. We would want to continue our own, but I think it might be very appropriate for the statute to say that in order to make those examinations of the Federal Reserve banks the best possible we ought to have the authority, or, at least, the statute ought to indicate that's what we are doing and compel us, if you desire, to utilize the services of an outside firm, and not the same firm for more than 3 years. It ought to be rotated so we can get a fresh look at it once in a while. The firm should overlook the operations, see whether or not we're doing a good job, and, if not, tell us how to do it better. And that should be submitted to the committees.

Mr. CRAVENS. Do you think that's preferable to the General Accounting Office?

Mr. ROBERTSON. I do. Just a pure audit by General Accounting Office isn't of great importance by itself as far as I see it. It's just another agency making an audit. And I have no reason to think they are not just as honest as anyone else, but from my point of view I think that it is just a wedge, a foot in the door toward destroying the independence of the Federal Reserve System. There are many people who disagree with this, but this is the way I feel about it.

There are two agencies here which are agents of Congress itself. One is the General Accounting Office, and one is the Federal Reserve System. Now, you could say, "Well, this is Congress making the audit itself if it uses its agent." My answer to that is that then what you're doing is setting between one independent agency and Congress another agency so that that agency reports to Congress really through an intermediary that's another agent.

You might just as well ask the question: "Well, who's going to audit the auditor?"

And my contention is that you have confidence in our agency and require outside audit—I'm all in favor of that—but don't require us to go through another agency. If you do that, the next step is to go beyond an agent of Congress and take the Bureau of the Budget or some agency of the political administration that happens to be in power at the moment, whichever one it is.

You gradually might break down the independence of the Federal Reserve System, and I think that's undesirable.

Senator DOUGLAS. May I?

Mr. CRAVENS. Yes.

Senator DOUGLAS. When you speak of the independence of the Federal Reserve System, you have already said the Federal Reserve System is a creature of Congress. Do you mean to say the Federal Reserve System should be superior to the rules which Congress may lay down?

Mr. ROBERTSON. Now, you know I don't say any such thing as that, Senator.

Senator DOUGLAS. I wanted to make that clear.

Mr. ROBERTSON. That's right. We will do exactly what Congress says. Congress at the moment has not provided for the Comptroller

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General to audit the Federal Reserve System. If it does, you can be sure we will cooperate to the fullest extent. We don't think that that is the wise policy.

Senator DOUGLAS. We ask the General Accounting Office to audit the books of Government agencies and of quasi-independent bodies and commissions whose status is somewhat uncertain as to whether they are the creatures of the Congress or the Executive. Why should we make an exception with you?

Mr. ROBERTSON. Only for the reasons which I have stated, Senator. I think it's a matter on which you can have different views, and maybe you're right. Maybe it wouldn't tend to break down the independence of the Federal Reserve System. If it did, I think it would be very unfortunate. If it didn't, fine.

Senator DOUGLAS. It would not be an audit by the Executive.

Mr. ROBERTSON. No.

Senator DOUGLAS. It would be an audit by an agent of the Congress.

Mr. ROBERTSON. Yes.

Senator DOUGLAS. You have already said that Congress has powers over the Federal Reserve System.

Mr. ROBERTSON. That is right; and my only statement is that I think it's a foot in the door. If you go that far with respect to another agent of the Congress, the next step might be to go to some agency which is not an agent of Congress.

Senator DOUGLAS. Why be afraid to take one step which is proper because it may enable another step which is improper? I assure you Congress would be quite jealous of its authority and will not wish to have the Executive take over the direction of the Federal Reserve.

Mr. ROBERTSON. I think that's right. I wouldn't hesitate to take that step if I thought it were a necessary or desirable step. I don't happen to think so. I think if you rotate the firm of outside certified public accountants who make the audit and submit that audit to the Banking and Currency Committees which have the power to call either the auditors or the Federal Reserve System to account, that is desirable.

Senator DOUGLAS. Mr. Robertson, there was one statement that you made that somewhat surprised me. I wonder if you're accurate about it. Have you submitted reports of these audits to the Senate Banking and Currency Committee?

Mr. ROBERTSON. Yes. I'm correct I'm told.

Senator DOUGLAS. When did you do so?

Mr. ROBERTSON. Let me get clear now which ones we are talking about. Of the Board or of the Federal Reserve banks, Senator?

Senator DOUGLAS. Let us start with (*a*) the Board.

Mr. ROBERTSON. With the Board, they have come with the annual reports of the Board which are submitted to Congress each year.

Senator DOUGLAS. And (*b*) of the banks?

Mr. ROBERTSON. Say it again?

Senator DOUGLAS. And (*b*) of the member banks and their branches?

Mr. ROBERTSON. Not of the Federal Reserve banks. I'm now talking about the Board.

Senator DOUGLAS. I beg your pardon. Strike that from the record. Of the audits of the 12 Federal Reserve banks. Have those been submitted to the Senate?

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Mr. ROBERTSON. Let me make very sure about that. Bob Leonard, can you tell me?

Mr. LEONARD. We sent them to the House Banking and Currency Committee 2 years ago.

Mr. ROBERTSON. I want to know about the Senate.

Senator DOUGLAS. I just checked with the staff. They have been submitted. They were sent to the staff but returned.

I am now going to call to the attention of the chairman the fact that I don't think these reports should be returned. I think they should be kept and that the members of the committee should be notified. The members of the committee should be notified, and they should have a chance to look them over.

I'm sure the staff moved in good faith, and I don't want to reprimand the staff, but I think it's—I'll not say an "improper" procedure, but if Congress is to exercise its authority the Members of Congress should know that the reports that have been submitted are available and should have a chance to look at them. Having them submitted, and members of the committee never notified, and then having the reports yanked away again, is to my mind improper.

Mr. ROBERTSON. We would not object, Senator, to have it a regular matter for all of those reports to be submitted to the committees.

Senator DOUGLAS. I think that would be very helpful, and I request that I be notified when the next reports come in.

Mr. CRAVENS. Mr. Robertson, just a couple of technical questions I wanted to ask you with respect to some of your suggestions.

Do I understand in your answering Senator Robertson, if the Congress adopts the franchise-tax method with respect to getting the earnings in the Treasury, would you still recommend the repeal of section 7 which requires it to be paid to the debt?

Mr. ROBERTSON. Oh, yes; either way. It doesn't make any difference how it goes in. I don't think the Secretary of the Treasury ought to be obliged to apply it in one way or the other if all that means is that he issues and sells some other securities in order to get an equivalent amount of money for some other purpose.

Mr. CRAVENS. I presume we should query him on that point.

Mr. ROBERTSON. Yes; it's his responsibility, not ours. We have really no interest.

Mr. CRAVENS. The question came up with respect to your No. 79. That has to do with the repeal of the statute with respect to reserves on public deposits. Why do you recommend that? If you repeal these statutes—period—wouldn't then those deposits be considered as any other deposits? Why do you recommend or provide specifically that such reserves shall be maintained against them? Is that just——

Mr. ROBERTSON. Well, they should be treated as any other deposits.

Mr. CRAVENS. They would be, wouldn't they, if you just don't refer to them at all?

Mr. ROBERTSON. I think so.

Mr. CRAVENS. In other words, it creates a peculiar situation.

Mr. ROBERTSON. This is merely a cleanup job. All we're trying to do is clean up the statutes. We're not trying to change it.

Mr. CRAVENS. Wouldn't it be better if you just repealed—period?

Mr. ROBERTSON. That's right.

Mr. CRAVENS. Is that right, Mr. Vest?

Mr. VEST. That would be all right.

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Mr. CRAVENS. Another question that comes up with FDIC, too, is the question of audits with banks. If a bank, you feel, is getting into trouble or you're a little bit concerned about it, what can outside auditors do that your own examiners can't do?

Mr. ROBERTSON. In 99 cases out of 100 if a bank gets in that spot you take supervisory action and you clean it up.

Mr. CRAVENS. That's right.

Mr. ROBERTSON. But there may be situations in which a bank is a borderline case and doesn't have a good internal audit system. You think it ought to have a better internal audit. If it doesn't want to put in that sort of an internal audit system, then the supervisory authority ought to have the right to say: "You get an outside auditing firm to come in and audit these books. At least we want you to look at what your situation is; we also want to."

Mr. CRAVENS. What can they do that you can't do?

Mr. ROBERTSON. We can do the same thing if we had the time to devote to each one of these cases. But the number of men necessary to do an auditing job would be greater than any present Federal supervisory agency has.

Mr. CRAVENS. But you're only talking about banks that you think are in a precarious position.

Mr. ROBERTSON. Not "precarious"; no. I wouldn't want to use that word. I would not want to limit this to the situations which you think are really dangerous. If it's dangerous, you ought to stay in the bank. You shouldn't go out and tell them to get a CPA.

These are cases where you don't think it's dangerous but you do think they ought to know more than they do about their own institution.

Mr. CRAVENS. Where do you come in as a general protector to the stockholders or the management? You're looking after the depositors.

Mr. ROBERTSON. We're looking after the depositor, but also in doing that it seems to me that one of our responsibilities is to see that the bank is managed properly. And if that bank is not managed by people who are willing to really audit their own books and see that they have an internal auditing system that is good, then they ought to be compelled to have outside auditors do it. And I don't know anyone else who could do it except either the State or the Federal Government.

Now, I would want to make very clear that perhaps it would be desirable to have safeguards around this power, because it is a real power—safeguards which would indicate clearly that this was not to be used by a supervisory authority in instances where banks did have good internal auditing systems, that this is to be used as an extra supervisory power in cases of need. There would be few cases like that.

Mr. CRAVENS. I would think so. But it's a dangerous power, it seems to me, just to be able to have——

Mr. ROBERTSON. Therefore, perhaps it ought to be safeguarded by appropriate language.

Mr. CRAVENS. Mr. McCloy, did you have some other questions?

Mr. MCCLOY. There is one other question I might ask. In recommendation No. 52 the directors of the Federal Reserve banks other than the chairman are to be limited to 2 consecutive terms of 3 years each and the members of the advisory council limited to 6 consecutive

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terms of 1 year each. I wonder whether that is necessary or indeed desirable, particularly bearing in mind the desirability of autonomy of the Federal Reserve banks. Why don't you let them decide for themselves what the terms of their directors should be or the terms of service of the Federal Advisory Council members? It may vary in the different communities. Why do you have a prescription from the Board in respect to that?

Mr. ROBERTSON. There are many very weighty arguments on that side of the picture. In making any comments on this, I would want to point out that men have served for long periods of time on the Federal Advisory Council and on the directorates of the Federal Reserve banks in a very wonderful way. They have made real contributions to the bank and to the Federal Advisory Council, and we wouldn't have been without it for anything.

But when you weigh the benefits on that side and the benefits you get on the other side from a rotation on a fairly reasonably lengthy period, getting more and more people to know about the Federal Reserve System and to understand it and to spread their influence out through the rest of the country, we think that the balance is on the side of shortening the terms and requiring new blood to come in every once in a while and to spread out the number of people who really know about the Federal Reserve System. We think the scales balance on that side; therefore this recommendation.

Mr. MCCLOY. What has been the practice to date in the districts in respect to rotation? Have they been following a rotation policy or have they not been, generally?

Mr. ROBERTSON. It will vary with Federal Reserve districts. Some do follow a rotation policy. Most do not follow a rotation policy with the exception of the individuals that we appoint as class C directors of the Federal Reserve banks. There we do require rotation on this same formula.

This recommendation would put into effect throughout the Federal Reserve System and on the Federal Advisory Council the same formula which we follow ourselves with respect to class C directors when we appoint them.

Mr. MCCLOY. Do you feel that the experience in respect of class C directors has been fortunate?

Mr. ROBERTSON. We think it has been.

Mr. MCCLOY. That's all.

Mr. CRAVENS. Mr. Harris, you have a couple of questions I believe.

Mr. HARRIS. Yes; I do.

You stated, Mr. Robertson, that if you want efficiency in an agency you will probably have a single executive and if you want judgment you will have a board. What would you think of an agency that was headed by a single executive with a statutory advisory board acting something like a board of directors?

Mr. ROBERTSON. I think it would serve very well if the members of that statutory executive board really devote time to the job.

Mr. HARRIS. You mean "advisory" board rather than "executive"?

Mr. ROBERTSON. Advisory; yes. If they treat it as something more than just an honor or some prestige-gainer. If they really go at the job, I think they can perform a real service.

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Mr. HARRIS. On an entirely different subject, I find in the Federal Reserve Act a provision with respect to mutual savings banks. Has that ever had any significance?

Mr. ROBERTSON. Can I ask Mr. Vest?

Mr. VEST. You refer to the provision that authorizes mutual savings banks to become members of the System?

Mr. HARRIS. Yes.

Mr. VEST. There have been a very few members that were mutual savings banks, but I don't believe we have any at this time. Certainly not more than 1 or 2.

Mr. ROBERTSON. We have three, I understand from Mr. Leonard.

Mr. LEONARD. We have three I believe, very, very small banks, that have been there for a long time.

Mr. HARRIS. Could I ask this question: Considering that the operation of mutual savings banks is in the mortgage field and that one of the purposes of the Reserve bank is to provide it with liquidity in times of stress, do you think that the operation for mutual savings bank membership is particularly sensible?

Mr. ROBERTSON. I knew there would be some questions here today that I wouldn't be prepared for, and this is one of them. My offhand reaction would be that the mutual savings banks are in a very limited lending field. They do not have the same liquidity requirements as commercial banks, nor do they maintain the same liquidity standards as commercial banks. And I would doubt that they ought to be in the same position with respect to the discount window, for example, of a Federal Reserve bank as a commercial bank.

Mr. HARRIS. Or that they need to be?

Mr. HARRIS. That's right.

Mr. HARRIS. But of course they——

Mr. ROBERTSON. But there may be situations when they desire to be. Of course, we know that—when they'd like to have access to more funds in order that they can make the loans.

Mr. HARRIS. Sure.

Mr. ROBERTSON. But they are in a little different position with respect to monetary policy, for example, and the creating of new deposits than a commercial bank.

Mr. HARRIS. So that you would leave a question whether that provision in the Reserve Act does make any particular sense today?

Mr. ROBERTSON. I would have question as to whether it does make sense.

Mr. HARRIS. Thank you very much.

Mr. CRAVENS. Mr. Bubb, do you have a question?

Mr. BUBB. Mr. Robertson, I hate to put you on the spot, particularly after you brilliant testimony today, but you stated a little while ago that the Federal Reserve Board was giving consideration to raising the interest ceiling on savings. Does that mean that you feel that the higher cost of money is here to stay?

Mr. ROBERTSON. Not at all. This question is presented to us by banks that are in a position where they may lose some of their deposits, foreign deposits for example, that are on a time basis unless those rates are raised. Because the depositor instead of leaving his deposits there will invest in Government bonds. That's the way the question comes up. But when it does come up, we then must consider the whole field of time and savings deposits.

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I say it's being considered, but only because the question has been raised, not because of any feeling.

Mr. Bubb. It isn't because of higher cost of money?

Mr. Robertson. Not at all.

Mr. Bubb. That's all I have.

Mr. Cravens. Mr. Reese, do you have any questions?

Mr. Reese. Thank you. There was just this one question raised: In light of the completely changed conditions, are the rediscount facilities of the Federal Reserve adequate to meet the new conditions today? Are they broad enough? Do you have enough powers to take care of all the needs of the banks?

Mr. Robertson. We have enough powers today in the Federal Reserve Act to take care of the needs of all the commercial banks.

Mr. Reese. That is, the flexibility. Not in dollars and cents, but the flexibility I understand is the question.

Mr. Robertson. That's right. The powers are adequate.

Mr. Reese. The powers are adequate?

Mr. Robertson. Yes.

Mr. Reese. They are broad enough? And the eligible paper——

Mr. Robertson. I suppose I should hedge and say I think so.

Mr. Reese. Yes.

Mr. Wooten. The question was changes in eligibility of rediscounted paper. In light of the change of banking conditions have there been any changes in the last few years in the requirements of eligibility?

Mr. Robertson. You'll have to restate that. I didn't quite get it from here.

Mr. Reese. Mr. Wooten, you had better come over here and state it exactly so there will be no misunderstanding as to what the question is.

Mr. Wooten. Thinking in terms of the eligibility of paper, the conditions that paper has to meet in order to be eligible, in light of the fact that banks have many acceptance company and automobile paper and many different kinds of paper that we didn't have a few years ago, have the rules of eligibility on paper been changed sufficiently to mesh into the type of business that commercial banks are doing now?

Mr. Robertson. In my opinion, Mr. Wooten, the powers with respect to eligibility and discounting tied together are adequate. The only problem is one of penalty rate. Today you can use any assets in your institution for discount purposes, but you have to pay a penalty rate if they're——

Mr. Wooten. That is bills payable, amount of rediscount, isn't it?

Mr. Robertson. Not necessarily. I don't care whether you use it as a rediscount or whether you use it as a bills payable. You have access to the funds. Now, it may be that you would prefer to use one-half of the window instead of the other half of the window. But from my point of view of making funds available I think we have the power.

Mr. Wooten. Oh, I know you have the power. The question is: Have you modernized your rules for eligibility, rediscount now? Not a 15-day note. Have you modified your rules of eligibility in keeping with the change in banking in the last few years of the type of paper that goes in now?

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Mr. ROBERTSON. We think so. As you probably know, we revised regulation A just last year in which we attempted to do that very thing. It could be that we ought to have another review of it in order to determine whether there is something more that can be done.

And I would say if you have any specific ideas on how we could do it better and would let us have the benefit of them, we would thoroughly consider it.

Mr. WOOTEN. Thank you.

Senator ROBERTSON. Senator Douglas wishes to ask a question.

Senator DOUGLAS. I want to refresh my memory, Mr. Robertson. Did you say the request of the First National City Bank of New York and the County Trust Co. of White Plains to form a bank-holding company has been formally submitted to your board and is now under consideration by you?

Mr. ROBERTSON. Yes; I did say that.

Senator DOUGLAS. Did you also say that you never allowed a formal application to be made unless informal approval had been previously given?

Mr. ROBERTSON. No; I didn't. I was talking——

Senator DOUGLAS. I understood you to say that.

Mr. ROBERTSON. Well, that's the reason I'd like to clear it. In the one case we were talking about mergers, and in the other case we are talking about holding-company applications. This application would come under the new Holding Company Act concerning which there has been no experience up to this date, so that the only thing I could have said with respect to the subject before was with respect to mergers.

Senator DOUGLAS. Well, then, I'll have to ask the question directly: Have you had informal conversations with the First National City Bank and the County Trust Co. of White Plains about their formation of a joint bank-holding company?

Mr. ROBERTSON. We have.

Senator DOUGLAS. Have you given informal approval?

Mr. ROBERTSON. We have not and would not under any circumstances. There is a very real difference, Senator, and I want to understand——

Senator DOUGLAS. You have a different procedure, then, in the case of mergers? You settle things offstage? But in the case of holding companies you only settle after formal application?

Mr. ROBERTSON. I trust your question is based on just a misunderstanding.

Senator DOUGLAS. Oh, I see.

Mr. ROBERTSON. Because under the Holding Company Act you must have a formal hearing in certain circumstances, and in other circumstances you can compel a formal hearing. Now, in that sort of case you certainly would not either discourage or encourage an application if it were going to be made the subject of a formal hearing.

Senator ROBERTSON. May I interrupt to say under the Bank Holding Act there is an appeal to the courts.

Mr. ROBERTSON. Very much so.

Senator DOUGLAS. I'm glad to have the record clear on that point.

There is one other matter that I think should be historically cleared up, and that is the submission of audits of the 12 Federal Reserve banks to Congress. I raised this question in connection with the

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hearings on the confirmation of William McChesney Martin, on pages 44 and 45 of those hearings.

It was developed that prior to this period, January 20, 1956, that the Board had submitted the audits to the House Banking and Currency Committee, but had not submitted them to the Senate Banking and Currency Committee. I made a request at that time that the audits be sent to the Senate committee as well. Apparently that was done, but I was never notified that they had been received, and the audit was returned without my being notified, and so far as I know, other members of the committee were not notified. I hope that in the future the members of the committee are notified.

I'm very glad that we have now established a principle that the Senate Banking and Currency Committee is of equal importance with the House committee.

Senator ROBERTSON. Governor, on behalf of the committee I wish to thank you for your clear and informative testimony. We will perhaps be consulting with you some more later.

Mr. ROBERTSON. Thank you very much.

Senator ROBERTSON. I want to repeat what the Chair said this morning. Today and tomorrow are the only public hearings we are going to have. The Advisory Committee will submit to us, certainly I hope by the middle of December, and possibly earlier, its recommendations. That means that unless the other members of the Banking and Currency Committee will take the time to read this testimony—because they weren't here to hear it—and will come to Washington to help frame a tentative bill, the chairman of this group will have the unpleasant task of saying what will be the basis for public hearings. That means he'll be forced to put a good many things into that bill that might be controversial, some of which he may not have any clear and definite views himself about. But unless we have public hearings on any issue, it would be most unwise for us then to try to report to the Senate a provision that hasn't been fully presented to all who might be interested in it.

So I repeat that the bill the chairman proposes with the help of his staff to prepare, a tentative bill for public hearings, will of necessity have things in it that might cause criticism of the chairman, but he wants it understood that they are there for full hearing and discussion. Then on the basis of the work of this splendid Advisory Committee and the public testimony and on the advice of each member gotten from his own bankers, we will try to agree on a bill that we can report and we hope to pass in the Senate.

The next witnesses are the Board members of the FDIC.

We are glad to have with us the Chairman, Mr. Cook, and his associate, Mr. Maple T. Harl. I understand that Mr. Cook has not prepared a formal written statement. If they will please come up to the witness stand. If it is his wish that his Chief Counsel, Mr. Coburn, will orally present the views of the Board with two members of the Board sitting beside him to correct any inadvertent errors on his part, you may proceed in that way.

We are glad to have you, Mr. Cook.

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STATEMENT OF H. E. COOK, CHAIRMAN, ACCOMPANIED BY MAPLE T. HARL, MEMBER; ROYAL L. COBURN, GENERAL COUNSEL; AND WILLIAM G. LOEFFLER, CONTROLLER, FEDERAL DEPOSIT INSURANCE CORPORATION

Mr. COOK. Thank you, Mr. Chairman.

Senator ROBERTSON. You may present your case as you may see fit.

Mr. COOK. We have, as you stated, no formal statement to present. This we felt was the time for the informal discussion of any points that you and your committee or others of the advisory committee would want to propound.

Mr. Royal Coburn, our General Counsel, is prepared to answer these in the order that you may require.

Senator ROBERTSON. Do you want to ask something, Senator Douglas?

You may proceed, sir.

Mr. COBURN. Mr. Chairman, it was my thought that we would go over each of the——

Senator ROBERTSON. Pull that microphone closer to you so everybody can hear.

Mr. COBURN. It was our thought we would go over each of the recommendations we have made, merely supplementing the statement that accompanied the recommendations.

Senator ROBERTSON. Without objection, your full printed recommendations will be inserted in the record.

(The recommendations referred to follow:)

RECOMMENDATIONS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

LETTER OF TRANSMITTAL

FEDERAL DEPOSIT INSURANCE CORPORATION,
OFFICE OF THE CHAIRMAN,
Washington, October 2, 1956.

Hon. A. WILLIS ROBERTSON,
Committee on Banking and Currency,
United States Senate, Washington, D. C.

DEAR SENATOR ROBERTSON: In accordance with your request, we are submitting the enclosed recommendations for the amendment of the Federal Deposit Insurance Act, and related laws, in connection with the current study by the Senate Banking and Currency Committee of the Federal laws governing financial institutions and credit.

Time has not permitted ascertaining the relation of these proposals to the program of the President. When we have been advised by the Bureau of the Budget of the relation of these recommendations to the program of the President, we will inform your committee.

We are studying certain other amendments of the Federal Deposit Insurance Act and will submit our recommendations thereon as soon as possible.

With personal regards, I am

Sincerely yours,

H. E. COOK, *Chairman.*

86. TERM OF OFFICE OF APPOINTIVE DIRECTORS

Existing law

The third sentence of section 2 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1812):

"Each such appointive member shall hold office for a term of six years."

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Recommendation

This sentence should be amended to provide (1) that at the expiration of the present terms of the appointive directors, the President shall fix the term of the successor of one appointive director at 4 years, and (2) that each appointive director shall serve until his successor is appointed and has qualified.

Reason

The terms of office of the 2 appointive members now on the Board of Directors are for 6 years from September 6, 1951 (97 Congressional Record, p. 13141). The other member of the Board of Directors is the Comptroller of the Currency, who holds his office for a term of 5 years (12 U. S. C. 2). His term of office is not affected by this amendment. This proposed staggering of the terms of office of the appointive members will assure better continuity in the management of the Corporation by voiding the simultaneous expiration of the terms of the two experienced appointive members. The amendment providing for the service of the appointive directors until their successors have been appointed and qualified will assure a quorum for action by the Board of Directors until the successor of one of them has been appointed and qualified. Comparable provision for the staggering of terms of office and for continuance in office is provided for the Board of Governors of the Federal Reserve System (12 U. S. C. 242). For several years the Comptroller General, in his audit reports, has recommended legislation providing for the staggering of the terms of the appointive members.

87. Comptroller of the Currency as a Member of the Board

Existing law

The fourth, fifth, and last sentence of section 2 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1812):

"In the event of a vacancy in the office of the Comptroller of the Currency, and pending the appointment of his successor, or during the absence of the Comptroller from Washington, the Acting Comptroller of the Currency shall be a member of the Board of Directors in the place and stead of the Comptroller.

"In the event of a vacancy in the office of the Chairman of the Board of Directors, and pending the appointment of his successor, the Comptroller of the Currency shall act as Chairman.

"No member of the Board of Directors shall be an officer or director of any insured bank or Federal Reserve bank or hold stock in any insured bank; and before entering upon his duties as a member of the Board of Directors he shall certify under oath that he has complied with this requirement and such certification shall be filed with the secretary of the Board of Directors."

Recommendation

(*a*) The fourth sentence of section 2 should be amended to authorize the Acting Comptroller to serve as a member of the Board of Directors in the absence of the Comptroller, whether he is in Washington or not.

(*b*) The fifth sentence of section 2 should be amended to permit the Acting Comptroller to act as Chairman when there is a vacancy in that office until the election, rather than the appointment of his successor.

(*c*) The last sentence of section 2 should be amended to provide that each member of the Board of Directors shall certify under oath that he is not an officer or director of any insured bank or Federal Reserve bank and does not hold stock in any insured bank.

Reason

(*a*) This amendment would permit the Acting Comptroller of the Currency to serve as a member of the Board of Directors whenever the Comptroller of the Currency is unable to be present at the meeting of the Board of Directors, as when he may be absent on account of illness, whereas under the existing provision the Acting Comptroller may only serve when the Comptroller of the Currency is absent from Washington. Provision is made for the exercise of the powers and duties of the Comptroller of the Currency by his Deputy Comptroller and Assistant Deputy Comptrollers "during a vacancy in the office or during the absence or inability" of the Comptroller or the Deputy Comptroller (12 U. S. C. 4, 5).

(*b*) This amendment would conform this sentence to the other provisions of the same section. The successor to the Chairman of the Board of Directors

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would be appointed as a Director of the Corporation and would then be elected Chairman of the Board of Directors. There is no provision in the act for appointment of the Chairman of the Board of Directors. Further, we recommend that the Chairman be elected by the Board of Directors rather than appointed by the President, so that the Chairman may be of the same political party as that of the administration. Not more than two members of the Board of Directors may be members of the same political party. The Comptroller of the Currency represents the balance of power and this we deem to be in the interest of good administration.

(c) This amendment would provide a more precise statement of the contents of the Director's certificate.

88. Definitions

Existing law

Subsections (f) and (g) of section 3 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1813 (f) and (g)):

"(f) The term 'mutual savings bank' means a bank without capital stock transacting a savings bank business, the net earnings of which inure wholly to the benefit of its depositors after payment of obligations for any advances by its organizers.

"(g) The term 'savings bank' means a bank (other than 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: *Provided*, That the bank maintains, until maturity date or until withdrawn, all deposits made with it (other than funds held by it in a fiduciary capacity) as time savings deposits of the specific term type or of the type where the right is reserved to the bank to require written notice before permitting withdrawal: *Provided further*, That such bank to be considered a savings bank must elect to become subject to regulations of the Corporation with respect to the redeposit of maturing deposits and prohibiting withdrawal of deposits by checking except in cases where such withdrawal was permitted by law on August 23, 1935, from specifically designated deposit accounts totaling not more than 15 per centum of the bank's total deposits."

Recommendation

These subsections should be deleted.

Reason

There is no need or purpose for continuing theses provisions. The definition of the term "State bank" in subsection (a) of section 3 includes any savings bank. The definition of mutual savings banks in subsection (f) of section 3 was necessary before the 1950 amendments of the act repealed the provision permitting a separate fund for mutuals for the benefit of mutual savings banks and depositors therein. The requirements in subsection (g) of section 3 as to notice of withdrawal of savings deposits, redeposit of maturing time deposits, and withdrawal of savings deposits by checking are provided in regulations of the Corporation relating to the payment of deposits and interest thereon (12 C. F. R. pt. 328), which are uniformly applicable to insured State nonmember commercial and savings banks other than mutual savings banks and savings banks in New Hampshire operating substantially as mutual savings banks. The Board of Governors' regulation Q (12 C. F. R. pt. 217) makes similar provision for national and State member banks.

89. Trust Funds in a Noninsured Bank

Existing law

Subsection (1) of section 3 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1813 (1)):

"The term 'deposit' means the unpaid balance of money or its equivalent received by a bank in the usual course of business and for which it has given or is obligated to give credit to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, and trust funds held by such bank whether retained or deposited in any department of such bank or deposited in another bank, together with such other obligations of a bank as the Board of Directors shall find and shall prescribe by its regulations to be deposit liabilities by general usage: * * *"

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The first sentence of subsection (i) of section 7 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1817 (i)):

"Trust funds held by an insured bank in a fiduciary capacity whether held in its trust or deposited in any other department or in another bank shall be insured in an amount not to exceed $10,000 for each trust estate, and when deposited by the fiduciary bank in another insured bank such trust funds shall be similarly insured to the fiduciary bank according to the trust estates represented."

Recommendation

The provisions set forth above should be amended to change the words "another bank" to read "another insured bank" in order that trust funds received by an insured bank as fiduciary would not be insured and assessable when deposited by the fiduciary insured bank in a noninsured bank.

Reason

Trust funds received by an insured bank in a fiduciary capacity and deposited by the fiduciary insured bank in another insured bank or in a noninsured bank are assessable and insured up to $10,000 for each trust estate. However, provision is made in the Federal Deposit Insurance Act for the payment of insured deposits only at the time an insured bank is closed on account of inability to meet the demands of its depositors. If the noninsured bank, in which such trust funds are deposited by an insured bank as fiduciary, closes and pays out only a portion of the deposited trust funds, the insured bank, as fiduciary, may or may not be liable for the loss in the trust funds, depending on whether such a deposit of trust funds in a noninsured bank was proper or legal. In any event, the questions may arise whether the Corporation is liable for insurance on the loss of such trust funds deposited in a noninsured bank which has closed when the insured bank, as fiduciary, is or is not liable for the loss and, if the Corporation is liable, whether the Corporation must pay the amount of such loss at the time of the closing of the noninsured bank, or whenever the fiduciary insured bank is closed on account of inability to meet the demands of its depositors. The ambiguity in the above provisions of the law presents two undesirable alternatives. One is the insurance by the Corporation of funds in a noninsured bank over which the Corporation has no supervision. The other is the indefinite postponement of the payment of insurance on a loss, incurred in a noninsured bank, on a deposit of trust funds by a fiduciary insured bank on which deposit assessments have been paid. The amendments recommended herein would resolve this problem by providing that trust funds received by an insured bank as fiduciary would not be insured and assessable when deposited by the fiduciary insured bank in a noninsured bank. When such trust funds are retained by the fiduciary insured bank or when they are deposited by the fiduciary insured bank in another insured bank, they would be insured and assessable as under present law.

90. Exclusion From Deposit Insurance of Deposits of Branches in Alaska, Hawaii, or the Virgin Islands

Existing law

The second and third provisos of subsection (1) of section 3 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1813 (1)):

"*Provided further*, That any insured bank having its principal place of business in any of the States of the United States or in the District of Columbia which maintains a branch in any Territory of the United States, or the Virgin Islands may elect to exclude from insurance under this Act its deposit obligations which are payable only at such branch, and upon so electing the insured bank with respect to such branch shall comply with the provisions of this Act applicable to the termination of insurance by nonmember banks: *Provided further*, That the bank may elect to restore the insurance to such deposits at any time its capital stock is unimpaired."

Recommendation

These provisos should be repealed to terminate the right of any mainland bank to exclude from deposit insurance the deposit obligations of any of its branches in any Territory of the United States or the Virgin Islands.

Reason

There are no mainland insured banks operating branches in Alaska, Hawaii, or the Virgin Islands. In 1952 the right of mainland banks to exclude from insur-

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ance the deposits of their branches in Puerto Rico was removed from the second proviso of subsection (1) of section 3 (66 Stat. 605). Insured banks should not be permitted to exclude from deposit insurance any deposit obligations in places where the statute provides for the insurance of deposits, which are the States of the United States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam, and the Virgin Islands.

91. Insurance of Interest on Deposits

Existing law

The first sentence of subsection (m) of section 3 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1813 (m)):

"The term 'insured deposit' means the net amount due to any depositor for deposits in an insured bank (after deducting offsets) less any part thereof which is in excess of $10,000."

Recommendation

A provision should be added after this sentence to include in the net amount of deposits in determining insured deposits any interest accruing up to the date of the closing of an insured bank.

Reason

Interest which has been credited to a deposit account is considered a deposit. Interest which has accrued but which has not been credited to a deposit account is not considered a deposit and is not included in determining insured deposits. Interest is generally paid or credited semiannually and quarterly. We believe that depositors should receive this protection and the paperwork involved in any receivership for small interest claims should be eliminated with resulting economies. This change would involve a relatively small increase in insured deposits.

92. Transferred Deposit as Payment of Insured Deposit in a Closed Bank

Existing law

Subsection (n) of section 3 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1813 (n)):

"The term 'transferred deposit' means a deposit in a new bank or other insured bank made available to a depositor by the Corporation as payment of the insured deposit of such depositor in a closed bank, and assumed by such new bank or other insured bank."

Subsection (f) of section 11 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1821 (f)):

"Whenever an insured bank shall have been closed on account of inability to meet the demands of its depositors, payment of the insured deposits in such bank shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g) of this section either (1) by cash or (2) by making available to each depositor a transferred deposit in a new bank in the same community or in another insured bank in an amount equal to the insured deposit of such depositor: *Provided*, That the Corporation, in its discretion, may require proof of claims to be filed before paying the insured deposits, and that in any case where the Corporation is not satisfied as to the validity of a claim for an insured deposit, it may require the final determination of a court of competent jurisdiction before paying such claim."

Recommendation

These subsections should be amended to expressly provide that a transferred deposit is payable on demand.

Reason

A transferred deposit made available to a depositor as payment of his insured deposit in a closed bank is a demand deposit. It was expressly provided in the Federal Deposit Insurance Act before the amendments of 1950 (12 U. S. C. 264 (l) (6)) that a transferred deposit was "subject to withdrawal on demand." The rules and regulations of the Corporation provide that a transferred deposit is a demand deposit (12 C. F. R. 305.1). The reassurance of depositors on this important matter makes it desirable that the statute again expressly provide that a transferred deposit is payable on demand.

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93. Definition of Branch

Existing law

Subsection (o) of section 3 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1813 (o)):

"The term 'branch' includes any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, or the Virgin Islands at which deposits are received or checks paid or money lent."

Recommendation

This subsection should be amended to change the definition of the word "branch" to include a branch anywhere rather than a branch in the places named in the present definition.

Reason

An insured State nonmember bank must obtain the consent of the Corporation to establish or move a branch (12 U. S. C. 1828 (d)). The definition of the word "branch" in subsection (o) of section 3 is limited to one located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, or the Virgin Islands which are the places where deposits are insured. The establishment of branches by national banks and by State member banks in other places must be approved by the Board of Governors of the Federal Reserve System (12 U. S. C. 321, 601). Because of the risks involved to the capital funds of an insured State nonmember bank in establishing a branch anywhere, the consent of the Corporation should be required to the establishment of such a branch anywhere.

94. Insurance of Deposits in National Banks

Existing law

The first sentence of subsection (b) of section 4 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1814 (b)):

"Every national member bank which is authorized to commence or resume the business of banking, and which is engaged in the business of receiving deposits other than trust funds as herein defined, and every such national nonmember bank which becomes a member of the Federal Reserve System, and every State bank which is converted into a national member bank or which becomes a member of the Federal Reserve System, and which is engaged in the business of receiving deposits, other than trust funds as herein defined, shall be an insured bank from the time it is authorized to commence or resume business or becomes a member of the Federal Reserve System."

The first sentence of section 5 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1815):

"Subject to the provisions of this Act, any national nonmember bank which is engaged in the business of receiving deposits, other than trust funds as herein defined, upon application by the bank and certification by the Comptroller of the Currency in the manner prescribed in subsection (b) of section 4 and any State nonmember bank, upon application to and examination by the Corporation and approval by the Board of Directors, may become an insured bank."

Recommendation

These provisions should be amended to require any national bank to be an insured bank.

Reason

All national banks in the States of the United States and the District of Columbia are required to be members of the Federal Reserve System (12 U. S. C. 282 and 222) and to be insured banks. A national bank in Alaska, Hawaii, Puerto Rico, Guam, or the Virgin Islands may become an insured bank. The Bishop National Bank of Hawaii is now the only national bank that is not insured. For the purpose of uniformity no national bank should be able to deny Federal deposit insurance to its depositors.

95. Change of Term "Thorough Examination" to "Examination"

Existing law

The second sentence of section 5 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1815):

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"Before approving the application of any such State nonmember bank, the Board of Directors shall give consideration to the factors enumerated in section 6 and shall determine, upon the basis of a thorough examination of such bank, that its assets in excess of its capital requirements are adequate to enable it to meet all of its liabilities to depositors and other creditors as shown by the books of the bank."

Recommendation

This sentence should be amended to change the words "a thorough examination" to the words "an examination."

Reason

Reference is made in the act in several places to examination without the use of "thorough." This is an editorial change to conform this section with the general usage of the act.

96. Maintenance of Assessment Records

Existing law

The fourth sentence of subsection (a) of section 7 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1817 (a)):

"Each insured bank, as a condition to the right to make any such deduction or exclusion in determining its assessment base, shall maintain such records as will readily permit verification of the correctness thereof."

Recommendation

This sentence should be amended to provide that the bank shall be required to maintain such records only for a period of 5 years.

Reason

It is an unnecessary burden upon the insured banks to require them to maintain such records indefinitely. Subsection (g) of section 7 provides a 5-year statute of limitation on actions brought for the recovery of any assessment due to the Corporation or for the recovery of any amount paid to the Corporation in excess of the amount due, except where the bank has filed a false or fraudulent certified statement with intent to evade the payment of assessment, in which case the claim shall not be deemed to have accrued until the discovery by the Corporation that the certified statement was false or fraudulent. The effect of the proposed amendment would be that, in an action for assessments brought by the Corporation beyond the 5-year period in connection with an allegedly false or fraudulent certified statement, the failure of the bank to retain such records or the destruction thereof would not prejudice the bank's defense.

97. Assessment Credits

Existing law

Subsection (d) of section 7 of the Federal Deposit Insurance Act (12 U. S. C. 1817 (d)):

"As of December 31, 1950, and as of December 31, of each calendar year thereafter, the Corporation shall transfer 40 per centum of its net assessment income to its capital account and the balance of the net assessment income shall be credited pro rata to the insured banks based upon the assessments of each bank becoming due during said calendar year. Each year such credit shall be applied by the Corporation toward the payment of the total assessment becoming due for the semiannual assessment period beginning the next ensuing July 1 and any excess credit shall be applied upon the assessment next becoming due. The term "net assessment income" as used herein means the total assessments which become due during the calendar year less (1) the operating costs and expenses of the Corporation for the calendar year; (2) additions to reserve to provide for insurance losses during the calendar year, except that any adjustments to reserve which result in a reduction of such reserve shall be added; and (3) the insurance losses sustained in said calendar year plus losses from any preceding years in excess of such reserves. If the above deductions exceed in amount the total assessments which become due during the calendar year, the amount of such excess shall be restored by deduction from total assessments becoming due in subsequent years."

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Recommendation

(*a*) In the first sentence the words "As of December 31, 1950" and "thereafter" should be deleted.

(*b*) The second sentence should be changed to specifically authorize the application of the credit to any assessments due which are not in dispute; and to expressly authorize the refund of the assessment credit to an insured bank in liquidation or to its nominee.

(*c*) The third sentence should be amended to permit the inclusion in "total assessments", i. e., the gross assessment income, any overpayments for previous years which are discovered during the calendar year and, the converse, to permit the deduction of overpayments made in prior years which are discovered during the calendar year.

(*d*) Item (1) in the third sentence should be amended to read "the administrative and operating costs of the Corporation".

(*e*) Items (2) and (3) in the third sentence should be amended to authorize the Corporation in computing the "net assessment income" to include reserves for potential losses other than insurance losses.

Reasons

(*a*) Such words are obsolete and therefore should be deleted.

(*b*) Frequently office audits of certified statements show that a bank has erroneously computed its assessment. It would facilitate the handling of the such underpayments, both for the bank and this Corporation, if the Corporation were permitted to apply the credit to such underpayments. There should also be an express authorization in the law to refund assessment credits to a bank going out of business. As the statute now reads the credit "shall be applied" on assessments which become due in the future.

(*c*) The Corporation is required to compute the assessment credit at the end of each calendar year and to credit the same pro rata to the insured banks. When underpayments or overpayments of assessments are later discovered, through audits or otherwise, it is impractical to recompute such credit formula and to readjust the pro rata credit given to the insured banks for that calendar year to include such underpayments or overpayments, as the case may be. Their effect on the credit formula would, of course, be infinitesimal. There should be express authorization permitting such underpayments or overpayments to be allocated to the calendar year in which they are paid or refunded, and thus be subject to the credit ratio applicable for that year.

(*d*) The substitution of the words "administrative and operating costs" for "operating costs and expenses" is merely a technical change to conform the statutory language to accounting terms. To limit such costs to those "for the calendar year" is to restrictive and should be enlarged to permit the inclusion of any such costs which for any reason were incurred and not paid in previous years.

(*e*) As potential losses may include losses which are not technically insurance losses, the reserves should not be limited to those established for insurance purposes.

98. Limitation on Actions for Assessment Payments

Existing law

Subsection (g) of section 7 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1817 (g)):

"The Corporation, in a suit brought at law or in equity in any court of competent jurisdiction, shall be entitled to recover from any insured bank the amount of any unpaid assessment lawfully payable by such insured bank to the Corporation, whether or not such bank shall have filed any such certified statement and whether or not suit shall have been brought to compel the bank to file any such statement. No action or proceeding shall be brought for the recovery of any assessment due to the Corporation, or for the recovery of any amount paid to the Corporation in excess of the amount due to it, unless such action or proceeding shall have been brought within five years after the right accrued for which the claim is made, except where the insured bank has made or filed with the Corporation a false or fraudulent certified statement with the intent to evade, in whole or in part, the payment of assessment, in which case the claim shall not be deemed to have accrued until the discovery by the Corporation that the certified statement is false or fraudulent: *Provided, however,* That where a cause of action has already accrued, and the period herein prescribed within which an action may be brought has expired, or will expire within one year from the date

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this amendment becomes effective, an action may be brought on such cause of action within one year from the effective date of this amendment: *And provided further*, That no action or proceeding shall be brought for the recovery of any assessment on deposits alleged to have been omitted from the assessment base of any insured bank for any year prior to 1945 except that any claim of the Corporation for the payment of any assessment may be offset by it against any claim of the bank for the overpayment of any assessment."

Recommendation

The first proviso of subsection (d) of section 7 should be deleted.

Reason

The first proviso of subsection (d) of section 7 is obsolete.

99. Procedure for Termination of Insured Status

Existing law

The first five sentences of subsection (a) of section 8 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1818 (a)):

"Any insured bank (except a national member bank or State member bank) may, upon nost less than ninety days' written notice to the Corporation, and to the Reconstruction Finance Corporation if it owns or holds as pledges any preferred stock, capital notes, or debentures of such bank, terminate its status as an insured bank. Whenever the Board of Directors shall find that an insured bank or its directors or trustees have continued unsafe or unsound practices in conducting the business of such bank, or have knowingly or negligently permitted any of its officers or agents to violate any provision of any law or regulation to which the insured bank is subject, the Board of Directors shall first give to the Comptroller of the Currency in the case of a national bank or a District bank, to the authority having supervision of the bank in the case of a State bank, or to the Board of Governors of the Federal Reserve System in the case of a State member bank, a statement with respect to such practices or violations for the purpose of securing the correction thereof and shall give a copy thereof to the bank. Unless such correction shall be made within one hundred and twenty days or such shorter period of time as the Comptroller of the Currency, the State authority, or Board of Governors of the Federal Reserve System, as the case may be, shall require, the Board of Directors, if it shall determine to proceed further, shall give to the bank not less than thirty days written notice of intention to terminate the status of the bank as an insured bank, and shall fix a time and place for a hearing before the Board of Directors or before a person designated by it to conduct such hearing, at which evidence may be produced, and upon such evidence the Board of Directors shall make written findings which shall be conclusive. Unless the bank shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured bank. If the Board of Directors shall find that any unsafe or unsound practice or violation specified in such notice has been established and has not been corrected within the time above prescribed in which to make such corrections, the Board of Directors may order that the insured status of the bank be terminated on a date subsequent to such findings and to the expiration of the time specified in such notice of intention."

Recommendation

(*a*) The second sentence should be amended by deleting the word "continued" and substituting in lieu thereof the words "engaged in."

(*b*) The second sentence should be further amended by deleting the word "or" immediately following the words "State bank" and substituting in lieu thereof the word "and."

(*c*) The third sentence should be amended to provide for an alternative and shortened statutory period of 20 days in those cases where the Board of Directors of the Corporation in its discretion has determined that the insurance risk of the Corporation is unduly jeopardized.

(*d*) The third sentence should be further amended to provide that the State authority shall have the power to shorten the correction period in those cases involving State banks whether member or nonmember banks and that the Board of Governors of the Federal Reserve System shall no longer have such power.

(*e*) The position of the fourth and fifth sentences should be transposed, with the additional words "upon such evidence" being inserted after the word "if"

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in the existing fifth sentence and the word "notice" deleted with the word "statement" substituted in lieu thereof.

(*f*) The existing fourth sentence which will now appear fifth should be amended to provide that in the event the bank does not appear at the hearing termination of insured status may thereupon be ordered provided that in any case where the Board of Directors has designated a person to conduct the hearing, he shall duly certify that the bank did not appear.

Reason

(*a*) The basic purpose for the power now given the Board of Directors of the Corporation to institute involuntary termination proceedings is to enable it to protect and control the insurance risk when persuasive supervisory efforts have failed. The second sentence of the existing statute provides that the Board of Directors may institute such proceedings where they determine that the insured bank or its directors or trustees "have continued unsafe and unsound practices." The use of the word "continued" raises a question as to how long a time such practices must have been pursued before the Board of Directors would be justified in instituting involuntary termination proceedings. Inasmuch as a bank, simply by engaging in unsafe and unsound practices, may in a very brief interval substantially increase the Corporation's risk, the change in terminology is recommended. The crux of the matter, at the time the Board of Directors is considering the institution of involuntary termination proceedings is that the bank has "engaged in" unsafe and unsound practices that remain uncorrected and which adversely affect the insurance risk, and not that such practices have been employed for a continuing period of time.

(*b*) It is recommended that the word "and" be substituted for the word "or" following the words "State bank" in the second sentence inasmuch as the implication in the existing statute is that the Board of Directors need not give the State authority a copy of the statement detailing the practices or violations, in the event the State bank involved happens to be a State member bank. It is preferable that the State authority receive a copy of such statement where the State bank involved is either a member or a nonmember bank in order to allow the State authority in every case involving a State bank to exercise the power to further shorten the correction period as he may deem proper and as the facts and circumstances in the particular case may warrant, inasmuch as the State authority has primary supervision over all State banks.

(*c*) Although the present statutory correction period of 120 days subject to shortening by the appropriate supervising authority has worked well in most cases, it is desirable and preferable that an alternative 20-day statutory correction period be provided, but with its application being limited to those cases where the Board of Directors of the Corporation in its discretion has determined that the insurance risk of the Corporation is unduly jeopardized. An obvious example of such a situation would be where the capital structure of the particular bank is so depleted that a deposit exposure exists, or a situation where only a small amount of sound capital remains. In such emergency situations, where the bank continues operation in an unsafe and unsound condition, the insurance risk is markedly increased. It is desirable that the alternative 20-day correction period be specified in the statute rather than to place reliance on the exercise of discretion by the appropriate supervisory authority in shortening the present 120-day period in such emergencies.

(*d*) It is preferable that the appropriate State supervisory authority be given the power to shorten the correction period in all cases involving State banks and not limited to State nonmember banks, as in the present statute. This change is desirable in the case of State member banks because they are subject to the primary supervision of the State supervisory authority. Another Federal agency should not be empowered to shorten the time in such cases.

(*e*) and (*f*) It is recommended that the existing fifth sentence be transposed in order that the statute may flow in logical sequence and that the additional words "upon such evidence" be added after the beginning word "If" as this sentence provides for involuntary termination by the Board of Directors following a contested hearing upon the Board making findings that any of the unsafe and unsound practices or violations specified in its original statement instituting the proceedings have been established and not corrected within the prescribed correction period. It is recommended that the existing fourth sentence in the statute become a new fifth sentence for the reason that it makes provision for the situation where the bank does not appear at the hearing by a duly authorized representative. As the statute reads at present, there is doubt whether or not

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it is necessary, where the bank does not appear at the hearing, for Corporation counsel to present sufficient evidence upon which the Board of Directors may subsequently make findings as a result of such ex parte proceedings prior to its order of involuntary termination of insured status. It is, therefore, proposed to amend this sentence by providing that termination of insured status thereupon may be ordered, to make it crystal clear that no evidence whatsoever need be submitted to the Board of Directors or the person designated to conduct the hearing, as the case may be, in those cases where a time and place for hearing have been set as prescribed and the bank does not put in an appearance. The existing statute provides that the bank is deemed to have consented to termination and this change would simply make it clear that no further proof is necessary, and that, if a person is designated by the Board of Directors to conduct the hearing, he shall certify that the bank did not appear.

100. Section 9 of the Federal Deposit Insurance Act

Existing law

Section 9 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1819):

"Upon the date of enactment of the Banking Act of 1933, the Corporation shall become a body corporate and as such shall have power—

"First. To adopt and use a corporate seal.

"Second. To have succession until dissolved by an Act of Congress.

"Third. To make contracts.

"Fourth. To sue and be sued, complain and defend, in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States: *Provided*, That any such suit to which the Corporation is a party in its capacity as receiver of a State bank and which involves only the rights or obligations of depositors, creditors, stockholders, and such State bank under State law shall not be deemed to arise under the laws of the United States. No attachment or execution shall be issued against the corporation or its property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court. The Board of Directors shall designate an agent upon whom service of process may be made in any State, Territory, or jurisdiction in which any insured bank is located.

"Fifth. To appoint by its Board of Directors such officers and employees as are not otherwise provided for in this Act, to define their duties, fix their compensation, require bonds of them and fix the penalty thereof, and to dismiss at pleasure such officers or employees. Nothing in this or any other Act shall be construed to prevent the appointment and compensation as an officer or employee of the Corporation of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof.

"Sixth. To prescribe, by its Board of Directors, bylaws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed.

"Seventh. To exercise by its Board of Directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this Act, and such incidental powers as shall be necessary to carry out the powers so granted.

"Eighth. To make examinations of and to require information and reports from banks, as provided in this Act.

"Ninth. To act as receiver.

"Tenth. To prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of this Act."

Recommendation

The provisions of section 9 designated "First" to "Tenth" should be redesignated "(a)" to "(j)", respectively.

Reason

This redesignation should be made to conform the subdivisions of section 9 to the designations used in all other sections of the act.

101. Employment, Statement, and Compensation

Existing law

The first sentence of section 9 fifth of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1819 fifth):

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"To appoint by its Board of Directors such officers and employees as are not otherwise provided for in this Act, to define their duties, fix their compensation, require bonds of them and fix the penalty thereof, and to dismiss at pleasure such officers or employees."

Recommendation

This sentence should be amended to expressly provide that the Corporation shall have the power without regard to the provisions of any laws relating to the employment, separation, or compensation of officers or employees of the United States, to appoint by its Board of Directors officers, employees, attorneys, and agents, to dismiss at pleasure any officer, employee, attorney, or agent, to define their duties, fix their compensation, require bonds of them and fix the penalty thereof.

Reason

Inasmuch as the existing statute at the time of its enactment was patterned after the authority of each of the 12 Federal Reserve banks by the use of identical language, the Corporation has maintained in view of the reenactment of this identical language in 1950 that appointments and dismissals are not now subject to the civil-service laws and regulations. This amendment is proposed to remove any doubt as to the Corporation's authority in this respect.

102. Application by Corporation for Subpena

Existing law

The first and second sentences of subsection (c) of section 10 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1820 (c)):

"For the purpose of any hearing under this Act, the Board of Directors, any member thereof or any person designated by the Board of Directors to conduct any such hearing, is empowered to administer oaths and affirmations, subpena any officer or employee of the insured bank, compel his attendance, take evidence, take depositions, and require the production of any books, records, or other papers of the insured bank which are relevant or material to the inquiry. For the purpose of any hearing, examination, or investigation under this Act, the Board of Directors may apply to any judge or clerk of any court of the United States within the jurisdiction of which such hearing, examination, or investigation is carried on, or where such person resides or carries on business, to issue a subpena commanding each person to whom it is directed to attend and give testimony or for the taking of his deposition and to produce books, records, or other papers relevant or material to such hearing, examination, or investigation at a time and place and before a person therein specified."

Recommendation

The second sentence of subsection (c), relating to the application for assistance from courts of the United States in compelling witnesses to testify and produce books and records in connection with any hearing, examination, or investigation under the Federal Deposit Insurance Act, should be amended by substituting the word "Corporation" for the words "Board of Directors."

Reason

This amendment would eliminate any requirement that the Board of Directors must itself act in seeking the aid of United States courts and would permit officers or employees of the Corporation actually on the scene of the hearing to apply directly to these courts for such assistance. Obviously it would be impractical and unnecessary to require the Board of Directors to formally act in these matters. The necessity for compulsory testimony or production of evidence might occur suddenly and unexpectedly and under circumstances where the assistance of the court, unless immediately available, would be of little value.

103. Immunity From Prosecution

Existing law

The last sentence of subsection (d) of section 10 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1820 (d)):

"No person shall be excused from attending and testifying or from producing books, records, or other papers in obedience to a subpena issued under the authority of this Act on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no individual shall be prosecuted or subject to any

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penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying."

Recommendation

The last sentence of subsection (d) of section 10 which grants immunity from prosecution to persons compelled to testify or produce documentary evidence should be deleted.

Reason

It is believed that the slight benefits resulting from requiring persons to testify or to produce records in connection with hearings under the act, do not warrant a grant of immunity from Federal prosecution to such persons who might otherwise, in the best interest of the public, be prosecuted for their criminal acts. With the removal of the immunity from prosecution now contained in this section the witness is entitled to resort to the consitutional safeguards against compulsory self-incriminating testimony. Nevertheless, he may be tried for criminal acts where the prosecution is based upon evidence discovered elsewhere.

104. Certification of Records

Existing law

Subsection (g) of section 10 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1820 (g)):

"The Corporation may cause any and all records, papers, or documents kept by it or in its possession or custody to be photographed or microphotographed or otherwise reproduced upon film, which photographic film shall comply with the minimum standards of quality approved for permanent photographic records by the National Bureau of Standards. Such photographs, microphotographs, or photographic film or copies thereof shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies and shall be admissible to prove any act, transaction, occurrence, or event therein recorded. Such photographs, microphotographs, or reproductions shall be preserved in such manner as the Board of Directors of the Corporation shall prescribe and the original records, papers, or documents may be destroyed or otherwise disposed of as the Board shall direct."

Recommendation

Subsection (g) of section 10 should be amended by adding a provision that copies of original records, papers, or documents kept by the Corporation or in its possession or custody, may be introduced in evidence upon certification by the Secretary of the Corporation, over the Corporation's seal, that the copies are true and correct copies of the originals.

Reason

This change would do away with the burdensome task presently required to authenticate copies of records for introduction in evidence under rule 44 of the Federal Rules of Civil Procedure. This rule, in addition to requiring attestation by the officer having the legal custody of the record, requires that such attestation be accompanied by a certificate made by one of the specified public officers having a seal to the effect that the attesting officer has custody of the record. Under this amendment, copies of the Corporation's records would be admissible in evidence simply upon cerification by the Secretary of the Corporation that they are true and correct copies of the originals. The amendment would not be in conflict with rule 44, which provides in paragraph (c) thereof that the rule does not prevent the proof of official records by any method authorized by any applicable statute. This amendment would also clarify the present subsection 10 (g), which makes such copies admissible in evidence, but fails to prescribe the manner for authenticating copies of such records by the Secretary of the Corporation.

105. Deposit Insurance Fund

Existing law

Subsection (a) of section 11 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1821 (a)):

"The Temporary Federal Deposit Insurance Fund and the Fund for Mutuals heretofore created pursuant to the provisions of section 12B of the Federal

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Reserve Act, as amended, are hereby consolidated into a Permanent Insurance Fund for insuring deposits, and the assets therein shall be held by the Corporation for the uses and purposes of the Corporation: *Provided*, That the obligations to and rights of the Corporation, depositors, banks, and other persons arising out of any event or transaction prior to the effective date of this amendment shall remain unimpaired. On and after August 23, 1935, the Corporation shall insure the deposits of all insured banks as provided in this Act: *Provided further*, That the insurance shall apply only to deposits of insured banks which have been made available since March 10, 1933, for withdrawal in the usual course of the banking business: *Provided further*, That if any insured bank shall, without the consent of the Corporation, release or modify restrictions on or deferments of deposits which had not been made available for withdrawal in the usual course of the banking business on or before August 23, 1935, such deposits shall not be insured. The maximum amount of the insured deposit of any depositor shall be $10,000: *And provided further*, That in the case of banks closing prior to the effective date of this amendment, the maximum amount of the insured deposit of any depositor shall be $5,000."

Recommendation

Subsection (a) of section 11 should be amended to provide only that the assets of the Corporation shall be held in a deposit insurance fund for insuring deposits and for other uses and purposes of the Corporation, and that the maximum amount of the insured deposit of any depositor shall be $10,000.

Reason

The provisions of this subsection other than those relating to the insurance fund and the maximum amount of the insured deposit of any depositor are obsolete. The words "permanent insurance fund" were used in the 1935 amendments of the act presumably to distinguish the fund from the temporary Federal deposit insurance fund existing before such amendments. The recommended "deposit insurance fund" is considered more appropriate.

106. Liability of Corporation for Insured Deposits

Existing law

Subsections (b) and (f) of section 11 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1821 (b) and (f)):

"(b) For the purposes of this Act an insured bank shall be deemed to have been closed on account of inability to meet the demands of its depositors in any case in which it has been closed for the purpose of liquidation without adequate provision being made for payment of its depositors.

"(f) Whenever an insured bank shall have been closed on account of inability to meet the demands of its depositors, payment of the insured deposits in such bank shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g) of this section either (1) by cash or (2) by making available to each depositor a transferred deposit in a new bank in the same community or in another insured bank in an amount equal to the insured deposit of such depositor: *Provided*, That the Corporation, in its discretion, may require proof of claims to be filed before paying the insured deposits, and that in any case where the Corporation is not satisfied as to the validity of a claim for an insured deposit, it may require the final determination by a court of competent jurisdiction before paying such claim."

Recommendation

Subsection (b) of section 11 should be amended to provide that an insured bank shall be deemed to have been closed on account of inability to meet the demands of its depositors in any case in which it has been closed without adequate provision being made for the payment of insured deposits.

Subsection (f) of section 11 should be amended by deleting the proviso clause therefrom and transferring it to a new subsection (h).

A new subsection (g) should be added to section 11 to provide that in the event that pursuant to State of Federal law the control of any insured bank is assumed by a receiver, conservator, or other statutory authority without adequate provision being made for the payment of the insured deposits, thereupon the Corporation shall promptly pay to depositors their insured deposits as herein provided, and upon such payment the Corporation shall be subrogated, in accordance with the provision of subsection (i) (subsection (g) of existing law), to the rights of such depositors to the extent of such payment.

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A new subsection (h) should be added to section 11 to include the present proviso clause of subsection (f) of section 11 and a provision that for the purpose of discharging its insurance obligation the Corporation shall have access to all books and records of the insured bank.

Subsection (g) of section 11 should be redesignated subsection (i).

Reason

The existing law matures the Corporation's liability for payment of insured deposits when an insured bank has been closed for liquidation without adequate provision being made for payment of its depositors. The recommended amendment would assure depositors of the payment of their insured deposits whenever an insured bank has been closed for any reason, or, while open, has been placed under the control of a receiver, conservator, or other statutory authority, without adequate provision being made for the payment of its insured deposits. This will prevent the postponement of the payment of insured deposits by action of a bank supervisory authority in closing an insured bank or placing it in conservatorship for indefinite periods for purposes other than liquidation. Access by the Corporation to the books and records of an insured bank is essential for the purpose of discharging the insurance obligation of the Corporation.

107. Additional Liability of National Bank Stockholders

Existing law

Subsection (d) of section 11 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1821 (d)):

"Notwithstanding any other provision of law, it shall be the duty of the Corporation as such receiver to cause notice to be given, by advertisement in such newspapers as it may direct, to all persons having claims against such closed bank pursuant to section 5235 of the Revised Statutes (U. S. C. title 12, sec. 193); to realize upon the assets of such closed bank, having due regard to the condition of credit in the locality; to enforce the individual liability of the stockholders and directors thereof; and to wind up the affairs of such closed bank in conformity with the provisions of law relating to the liquidation of closed national banks, except as herein otherwise provided. The Corporation as such receiver shall pay to itself for its own account such portion of the amounts realized from such liquidation as it shall be entitled to receive on account of its subrogation to the claims of depositors, and it shall pay to depositors and other creditors the net amounts available for distribution to them. The Corporation as such receiver, however, may, in its discretion, pay dividends on proved claims at any time after the expiration of the period of advertisement made pursuant to the aforesaid section of the Revised Statutes, and no liability shall attach to the Corporation itself or as such receiver by reason of any such payment for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment. With respect to any such closed bank, the Corporation as such receivar shall have all the rights, powers, and privileges now possessed by or hereafter granted by law to a receiver of a national bank or District bank and notwithstanding any other provision of law in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of the Secretary of the Treasury or the Comptroller of the Currency."

Recommendation

The first sentence of subsection (d) of section 11 should be amended to delete the reference to individual liability of stockholders of national banks.

Reason

The additional liability of stockholders of national banks has been terminated.

108. New National Bank Organized to Assume Deposits

Existing law

Subsections (h) to (l), inclusive, of section 11 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1821 (h) to (l)):

"As soon as possible after the closing of an insured bank, the Corporation, if it finds that it is advisable and in the interest of the depositors of the closed bank or the public, shall organize a new national bank to assume the insured deposits of such closed bank and otherwise to perform temporarily the func-

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tions hereinafter provided for. The new bank shall have its place of business in the same community as the closed bank.

"The articles of association and the organization certificate of the new bank shall be executed by representatives designated by the Corporation. No capital stock need be paid in by the Corporation. The new bank shall not have a board of directors, but shall be managed by an executive officer appointed by the Board of Directors of the Corporation who shall be subject to its directions. In all other respects the new bank shall be organized in accordance with the then existing provisions of law relating to the organization of national banking associations. The new bank may, with the approval of the Corporation, accept new deposits which shall be subject to withdrawal on demand and which, except where the new bank is the only bank in the community, shall not exceed $10,000 for any depositor. The new bank, without application to or approval by the Corporation, shall be an insured bank and shall maintain on deposit with the Federal Reserve bank of its district reserves in the amount required by law for member banks, but it shall not be required to subscribe for stock of the Federal Reserve bank. Funds of the new bank shall be kept on hand in cash, invested in obligations of the United States, or in obligations guaranteed as to principal and interest by the United States, or deposited with the Corporation, with a Federal Reserve bank, or, to the extent of the insurance coverage thereon, with an insured bank. The new bank, unless otherwise authorized by the Comptroller of the Currency, shall transact no business except that authorized by this Act and as may be incidental to its organization. Notwithstanding any other provision of law the new bank, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

"Upon the organization of a new bank, the Corporation shall promptly make available to it an amount equal to the estimated insured deposits of such closed bank plus the estimated amount of the expenses of operating the new bank, and shall determine as soon as possible the amount due each depositor for his insured deposit in the closed bank, and the total expenses of operation of the new bank. Upon such determination, the amounts so estimated and made available shall be adjusted to conform to the amounts so determined. Earnings of the new bank shall be paid over or credited to the Corporation in such adjustment. If any new bank, during the period it continues its status as such, sustains any losses with respect to which it is not effectively protected except by reason of being an insured bank, the Corporation shall furnish to it additional funds in the amount of such losses. The new bank shall assume as transferred deposits the payment of the insured deposits of such closed bank to each of its depositors. Of the amounts so made available, the Corporation shall transfer to the new bank, in cash, such sums as may be necessary to enable it to meet its expenses of operation and immediate cash demands on such transferred deposits, and the remainder of such amounts shall be subject to withdrawal by the new bank on demand.

"Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of the new bank to be offered for sale on such terms and conditions as the Board of Directors shall deem advisable in an amount sufficient, in the opinion of the Board of Directors, to make possible the conduct of the business of the new bank on a sound basis, but in no event less than that required by section 5138 of the Revised Statutes, as amended (U. S. C., title 12, sec. 51), for the organization of a national bank in the place where such new bank is located. The stockholders of the closed insured bank shall be given the first opportunity to purchase any shares of common stock so offered. Upon proof that an adequate amount of capital stock in the new bank has been subscribed and paid for in cash, the Comptroller of the Currency shall require the articles of association and the organization certificate to be amended to conform to the requirements for the organization of a national bank, and thereafter, when the requirements of law with respect to the organization of a national bank have been complied with, he shall issue to the bank a certificate of authority to commence business, and thereupon the bank shall cease to have the status of a new bank, shall be managed by directors elected by its own shareholders and may exercise all the powers granted by law, and it shall be subject to all the provisions of law relating to national banks. Such bank shall thereafter be an insured national bank, without certification to or approval by the Corporation.

"If the capital stock of the new bank is not offered for sale, or if an adequate amount of capital for such new bank is not subscribed and paid for, the Board

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of Directors may offer to transfer its business to any insured bank in the same community which will take over its assets, assume its liabilities, and pay to the Corporation for such business such amount as the Board of Directors may deem adequate; or the Board of Directors in its discretion may change the location of the new bank to the office of the Corporation or to some other place or may at any time wind up its affairs as herein provided. Unless the capital stock of the new bank is sold or its assets are taken over and its liabilities are assumed by an insured bank as above provided within two years from the date of its organization, the Corporation shall wind up the affairs of such bank, after giving such notice, if any, as the Comptroller of the Currency may require, and shall certify to the Comptroller of the Currency the termination of the new bank. Thereafter the Corporation shall be liable for the obligations of such bank and shall be the owner of its assets. The provisions of sections 5220 and 5221 of the Revised Statutes (U. S. C., title 12, secs. 191 and 182) shall not apply to such new banks."

Recommendation

(*a*) The seventh sentence of subsection (i) of section 11 should be amended to provide that a new bank shall transact no business except that authorized by the Federal Deposit Insurance Act and as may be incidental to its organization, provided however that the Comptroller of the Currency, in his discretion, may authorize the bank to transact such other business as a national bank may transact.

(*b*) The second sentence of subsection (l) of section 11 should be amended by adding a provision that the Corporation may extend the 2-year limitation on the operation of such a new national bank for periods of 6 months, but not in excess of 2 additional years, when the Board of Directors determines that the continuance of the new bank is necessary to meet the needs and convenience of the community.

Reason

(*a*) This amendment would clarify the seventh sentence of subsection (i) to expressly state what it now implies.

(*b*) This amendment of the second sentence of subsection (l) would enable the Corporation to continue the operation of the new national bank to meet the needs and conveniences of the community.

Both amendments would better enable the new bank to serve the community in emergency situations.

109. Receiver of an Insured Bank

Existing law

Subsection (a) of section 12 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1822 (a)):

"Notwithstanding any other provision of law, the Corporation as receiver of a closed national bank or District bank shall not be required to furnish bond and shall have the right to appoint an agent or agents to assist it in its duties as such receiver, and all fees, compensation, and expenses of liquidation and administration thereof shall be fixed by the Corporation, and may be paid by it out of funds coming into its possession as such receiver."

Recommendation

The provision in subsection (a) of section 12 should be transferred to subsection (d) of section 11, which relates to the powers and duties of the Corporation as received of insured national and district banks. A new provision should be substituted in subsection (a) of section 12 to provide that persons employed by the Corporation, acting as receiver of any insured State, national, or district bank, to assist the Corporation in a particular receivership shall be considered employees of the receivership estate and shall not be deemed for any purpose to be employees of the Corporation.

Reason

This will make clear that temporary employees employed for a particular receivership of a closed insured bank are not employees of the Corporation, so that such employees will be eligible for the same benefits of workmen's compensation laws and social security and unemployment laws, as employees of the bank were. There is now a substantial degree of confusion and conflict in these areas on the part of both State and Federal agencies with respect to the status

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of temporary receivership employees. The amendment will remove this confusion and conflict and clearly fix the status of such employees.

110. Liability of Depositor as Stockholder of Closed Bank

Existing law

Subsection (d) of section 12 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1822 (d)):

"The Corporation may withhold payment of such portion of the insured deposit of any depositor in a closed bank as may be required to provide for the payment of any liability of such depositor as a stockholder of the closed bank, or of any liability of such depositor to the closed bank or its receiver, which is not offset against a claim due from such bank, pending the determination and payment of such liability by such depositor or any other person liable therefor."

Recommendation

Subsection (d) of section 12 should be amended to delete the reference therein to any liability of the depositor as a stockholder of the closed bank.

Reason

The additional liability of stockholders of national banks and of all insured State banks, except those in Arizona, has been terminated. The Corporation's interest in any recoveries of such additional liability of stockholders has been waived in favor of the stockholders by subsection (g) of section 11. Any liability of a stockholder for unpaid subscriptions for capital stock would be included in the words "any liability of such depositor to the closed bank or its receiver."

111. Loans To and Asset Purchases From Receivers or Liquidators

Existing law

Subsection (d) of section 13 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1823 (d)):

"Receivers or liquidators of insured banks closed on account of inability to meet the demands of their depositors shall be entitled to offer the assets of such banks for sale to the Corporation or as security for loans from the Corporation, upon receiving permission from the appropriate State authority in accordance with express provisions of State law in the case of insured State banks. The proceeds of every such sale or loan shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such banks. In any case where prior to the effective date of this amendment, the Comptroller of the Currency has appointed a receiver of a closed national bank other than the Corporation, he may, in his discretion, pay dividends on proved claims at any time after the expiration of the period of advertisement made pursuant to section 5235 of the Revised Statutes (U. S. C., Title 12, sec. 193), and no liability shall attach to the Comptroller of the Currency or to the receiver of any such national bank by reason of any such payment for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment. The Corporation, in its discretion, may make loans on the security of or may purchase and liquidate or sell any part of the assets of an insured bank which is now or may hereafter be closed on account of inability to meet the demands of its depositors, but in any case in which the Corporation is acting as receiver of a closed insured bank, no such loan or purchase shall be made without the approval of a court of competent jurisdiction."

Recommendation

The last clause of the first sentence which pertains to the requisite permission of State authorities to the sale of assets to or borrowing from the Corporation by receivers of State banks should be amended. The statute now requires that such permission be in accordance with "express provisions of State law" in the case of insured State banks. Such permission should be in accordance with "applicable State law."

The third sentence of this subsection should be deleted.

Reason

The change from "express provisions of State law" to "applicable State law" would extend this clause so as to cover cases where the State law does not expressly authorize receivers to sell assets or borrow money, but the courts or the Attorney General may hold that receivers of banks of that State nonetheless have

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that power. The third sentence of subsection (d) of section 13 should be deleted because it is obsolete.

112. Civil-Service Retirement and Disability Benefits and Employees' Compensation Benefits

Existing law

The first three sentences of subsection (a) of section 4 of the Civil Service Retirement Act of May 29, 1930, as amended by Public Law 854, 84th Congress, approved July 31, 1956:

"From and after the first day of the first pay period which begins on or after the effective date of the Civil Service Retirement Act Amendments of 1956, there shall be deducted and withheld from each employee's basic salary an amount equal to 6½ per centum of such basic salary and from each Member's basic salary an amount equal to 7½ per centum of such basic salary. From and after the first day of the first pay period which begins after June 30, 1957, an equal sum shall also be contributed from the respective appropriation or fund which is used for payment of his salary, pay, or compensation, or in the case of an elected official, from such appropriation or fund as may be available for payment of other salaries of the same office or establishment. The amounts so deducted and withheld by each department or agency, together with the amounts so contributed, shall, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, be deposited by the department or agency in the Treasury of the United States to the credit of the fund."

Subsection (b) of section 40 of the Federal Employees Compensation Act, as amended (5 U. S. C. 790):

"The term 'employee' includes (1) all civil officers and employees of all branches of the Government of the United States (including officers and employees of instrumentalities of the United States wholly owned by the United States); * * *"

Subsection (a) of section 1501 of the Social Security Act (42 U. S. C. 1361):

"The term "Federal service' means any service performed after 1952 in the employ of the United States or any instrumentality thereof which is wholly owned by the United States, * * *"

Recommendation

The Federal Deposit Insurance Act should be amended to provide (*a*) for the payment by the Corporation of the Government's share of the cost of civil-service retirement and disability benefits from the creation of the Corporation to the first day of the first pay period beginning after June 30, 1957, when agency contributions of 6½ percent of salaries are required to be paid to the Treasury under section 4 (a) of the Civil Service Retirement Act of May 29, 1930, as amended, (*b*) for the payment into the employees' compensation fund of the amount of the benefit payments made from such fund on account of the Corporation's officers and employees prior to January 1, 1957, and thereafter annually the amount of such benefit payments made on the account of the Corporation's officers and employees, and (*c*) extend the benefits of the Federal Employees Compensation Act (5 U. S. C. 751–791 and 793) and the Federal employees' unemployment compensation benefits of title XV of the Social Security Act (42 U. S. C. 1361–1370) to the officers and employees of the Corporation.

Reason

(*a*) and (*b*) The Federal Deposit Insurance Corporation operates without any appropriated funds; its income is derived from assessments paid to it by insured banks. The Corporation has refunded, with interest, the original investment of $289 million in its capital stock made by the United States Treasury and the Federal Reserve banks and it has accumulated a reserve insurance fund in excess of $1.6 billion, while caring for operating costs and losses. By the amendments here offered the Corporation proposes to remove all vestige of Government subsidy from its operations and to repay to the Government all sums heretofore advanced by it on account of benefits that have accrued to the Corporation's employees by reason of the subsidies mentioned in the amendments.

The amendments authorize the Corporation to pay the Government's share of the cost of civil-service retirement and disability benefits which have heretofore accrued and, in the future, to make current payments of such costs as they mature. Further, the Corporation desires to compensate the Government for benefits that have heretofore accrued on account of the benefits under the workmen's compen-

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sation laws and, in the future, to pay its fair share of the costs of workmen's compensation as they mature.

For several years the Comptroller General in his audit reports has recommended the enactment of legislation which would direct the action proposed herein in reference to retirement, disability and workmen's compensation benefits. In the 1953 audit report it was estimated that benefits theretofore received by the Corporation's personnel on account of these laws would amount to approximately $2.5 million and that the annual carrying charges therefor would be approximately $300,000. The current estimates fix the backlog obligation at approximately $3.5 million. The Corporation now proposes to relieve the Treasury of these burdens, and to assume full responsibility not only for the future costs thereof but to refund to the Government those costs which have been borne by the Government in the past.

There is no provision for any payment to the Secretary of Labor for the unemployment compensation benefits to persons by reason of their employment by the Corporation. Because the number of employees of the Corporation is relatively small, disbursements for unemployment benefits would undoubtedly also be small, possibly amounting to $1,000 to $1,500 annually. The proposal of such payment was met with the opinion that the increased overall cost of agency accounting and payment, as well as the compounding of administrative problems, militates strongly against any allocation of unemployment compensation costs of Federal employees to the individual agencies. It was pointed out that such an allocation would require additional records in every one of the 51 jurisdictions disbursing Federal employee benefits. It would pose the problem of devising some method of separating the overall costs of administering the Federal-State unemployment compensation program from the costs of administering that portion which relates to Federal benefits. It would also involve proration of costs between Federal agencies where employment with more than one agency is involved and State laws do not, in general, make such prorating possible. It appears that the cost of determining the amount of the benefits to former employees of this Corporation would exceed the amount of the benefits received by such employees.

(*c*) The Corporation desires to make certain the application of the workmen's compensation laws and Federal employees' unemployment compensation laws to its employees. There exists a difference of opinion between the Department of Labor and the Corporation as to the applicability of these laws to the Corporation. To eliminate this uncertainty, these laws should be expressly extended to the officers and employees of the Corporation.

113. Accounting and Auditing of the Corporation on Calendar Year Basis

Existing law

The first and second sentences of subsection (c) of section 17 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1827 (c)):

"A report of the audit for each fiscal year ending on June 30 shall be made by the Comptroller General to the Congress not later than January 15 following the close of such fiscal year. On or before December 15 following such fiscal year the Comptroller General shall furnish the Corporation a short form report showing the financial position of the Corporation at the close of the fiscal year."

The last sentence of subsection (b) of section 17 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1827 (b)):

"The audit shall begin with financial transactions occurring on and after August 31, 1948."

Recommendation

(*a*) The first and second sentences of subsection (c) of section 17 should be amended to make the calendar year the fiscal year of the Corporation, to provide for the audit of the Corporation by the Comptroller General on the calendar year basis rather than for each year ending on June 30 and to provide that the Comptroller General furnish the Corporation with a short form report of the financial position of the Corporation at the close of the calendar year, if possible, in time for inclusion of the report in the Corporation's annual report to Congress.

(*b*) The last sentence of subsection (b) of section 17 should be deleted.

Reason

(*a*) By statute, accounting by the Corporation and auditing by the General Accounting Office are on the basis of a fiscal year ending June 30. Also by statute, the Corporation is required to make an annual report to Congress on a

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calendar basis. Further, the calculation and determination of assessment credits which are provided in the act for the benefit of insured banks must be made on the basis of operations on a calendar year basis. The complication of requiring financial statements of operations and accountings to be made, for certain purposes, on a fiscal June 30 basis, and, for other purposes, on a calendar year basis, has been confusing and burdensome. It has resulted in unnecessary and duplicate work on the part of the financial and accounting personnel of the Corporation. The Comptroller General, on many occasions, has recommended that his audit report on the Corporation's operations be made on a calendar year basis. Under the proposed amendments the Corporation acounting and GAO auditing would be on the basis of a calendar year.

(*b*) The last sentence of subsection (b) of section 17 is obsolete and therefore should be deleted.

114. Regulation of Bank Mergers

Existing law

The present laws concerning bank mergers are summarized in the report of the Senate Committee on Banking and Currency (S. Rept. No. 2583, 84th Cong., pp. 2–4).

The first three sentences of subsection (c) of section 18 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1828 (c)) :

"Without prior written consent by the Corporation, no insured bank shall (1) merge or consolidate with any noninsured bank or institution or convert into a noninsured bank or institution or (2) assume liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution or (3) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured bank. No insured bank shall convert into an insured State bank if its capital stock, or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholders' meeting approving such conversion, without prior written consent by the Comptroller of the Currency if the resulting bank is to be a District bank, or by the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank (except a District bank), or by the Corporation if the resulting bank is to be a State nonmember insured bank (except a District bank). No insured bank shall (i) merge or consolidate with an insured State bank under the charter of a State bank or (ii) assume liability to pay any deposits made in another insured bank, if the capital stock or surplus of the resulting or assuming bank will be less than the aggregate capital stock or aggregate surplus, respectively, of all the merging or consolidating banks or of all the parties to the assumption of liabilities, at the time of the shareholders' meetings which authorized the merger or consolidation or at the time of the assumption of liabilities, unless the Comptroller of the Currency shall give prior written consent if the assuming bank is to be a national bank or the assuming or resulting bank is to be a District bank; or unless the Board of Governors of the Federal Reserve System gives prior written consent if the assuming or resulting bank is to be a State member bank (except a District bank); or unless the Corporation gives prior written consent if the assuming or resulting bank is to be a nonmember insured bank (except a District bank)."

Recommendation

The third sentence of subsection (c) of section 18 should be amended as provided in S. 3911, 84th Congress, which passed the Senate.

Reason

The proposed amendment provides full and adequate protection to the public for the screening of bank merger, consolidation, and acquisition transactions, and hence is in accord with the program of the President. The amendment is couched in language to assure safeguards for banking and the public alike, while at the same time it does not place the administering agencies in a straitjacket by positive prohibitions against transactions which may be in the public interest. Finally, it vests the responsibility of the administration of the authority granted in those agencies which, by experience and knowledge, are best qualified to make the determinations contemplated by the law. The proposal provides the most effective and efficient means of accomplishing the end result of serving both the interests of banking and of the public alike.

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115. Loans to Examiners of the Corporation

Existing law

Sections 217 and 218 of title 18 of the United States Code:

"Offer of loan or gratuity to bank examiner

"Whoever, being an officer, director, or employee of a bank which is a member of the Federal Reserve System or the deposits of which are insured by the Federal Deposit Insurance Corporation, or of any National Agricultural Credit Corporation, or of any land bank, national farm loan association or other institution subject to examination by a farm credit examiner, makes or grants any loan or gratuity, to any examiner or assistant examiner who examines or has authority to examine such bank, corporation, or institution, shall be fined not more than $5,000 or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given.

"The provisions of this section and section 218 of this title shall apply to all public examiners and assistant examiners who examine member banks of the Federal Reserve System or insured banks, or National Agricultural Credit Corporations, whether appointed by the Comptroller of the Currency, by the Board of Governors of the Federal Reserve System, by a Federal Reserve Agent, by a Federal Reserve bank, or by the Federal Deposit Insurance Corporation, or appointed or elected under the laws of any state; but shall not apply to private examiners or assistant examiners employed only by a clearinghouse association or by the directors of a bank.

"Acceptance of loan or gratuity by bank examiner

"Whoever, being an examiner or assistant examiner of member banks of the Federal Reserve System or banks the deposits of which are insured by the Federal Deposit Insurance Corporation, or a farm credit examiner or examiner of National Agricultural Credit Corporations, accepts a loan or gratuity from any bank, corporation, association or organization examined by him or from any person connected therewith, shall be fined not more than $5,000 or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given, and shall be disqualified from holding office as such examiner."

The first three sentences of subsection (b) of section 10 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1820 (b)):

"The Board of Directors shall appoint examiners who shall have power, on behalf of the Corporation, to examine any insured State nonmember bank (except a district bank), any State nonmember bank making application to become an insured bank, and any closed insured bank, whenever in the judgment of the Board of Directors an examination of the bank is necessary. In addition to the examinations provided for in the preceding sentence, such examiners shall have like power to make special examination of any State member bank and any national bank or District bank, whenever in the judgment of the Board of Directors such special examination is necessary to determine the condition of any such bank for insurance purposes. Each such examiner shall have power to make a thorough examination of all the affairs of the bank and in doing so he shall have power to administer oaths and to examine and take and preserve the testimony of any of the officers and agents thereof, and shall make a full and detailed report of the condition of the bank to the Corporation."

Recommendation

Section 217 should be amended to make sections 217 and 218 inapplicable to loans by national banks, district banks and State member banks to examiners and assistant examiners of the Federal Deposit Insurance Corporation when such loans are made in accordance with regulations prescribed by the Board of Directors of the Corporation.

Reason

Examiners of the Corporation regularly examine only insured State banks which are not members of the Federal Reserve System and may make a special examination of any State member bank, national bank or district bank, only when in the judgment of the Board of Directors such special examination is necessary to determine the condition of any such bank for insurance purposes.

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Examiners of the Corporation are now prohibited from borrowing from any insured bank, because of their authority to examine any insured bank. As a result they are denied reasonable bank credit facilities and must obtain funds for their needs elsewhere at higher rates. Other State and Federal examiners do not have authority to examine all insured banks and may borrow from banks which are not within their jurisdiction. With the proposed amendment, examiners of the Corporation would be able to obtain reasonable bank credit facilities. The Corporation by regulation could require notice of any borrowings by its examiners from national, district and State member banks. In the event of a special examination of such a bank, this information would enable the assignment of examiners who are not borrowers of the bank.

Senator ROBERTSON. Now you may highlight those as you see fit.

Mr. COBURN. The first recommendation, which is No. 86, contemplates the staggering of the term of the two directors of the Corporation. At the present time the two terms expire September 6, 1957. It's contemplated that currently, at the expiration of this present term, there will be an appointment of 1 member for 6 years and 1 for 4 years and thereafter each member will be appointed for a term of 6 years so the terms do not expire at the same time.

The second recommendation, No. 87, is really relatively unimportant. It refers to the Comptroller's position on our Board. At the present time he acts as a member of the Board except when he's out of Washington. We would like to amend the law so that the Deputy Comptroller may serve any time the Comptroller is not present at a meeting. It also refers in the vacancy of the Chairman of the Board. The Comptroller shall act until the appointment of the Chairman of our Board. The Chairman of our Board is not appointed at present but he's elected by the Board members. So we suggest the correct terminology would be "election" rather than "appointment."

And finally there is an affidavit to be filed. The terminology in the present affidavit is awkward, and it's proposed that it should now provide that the director be required to file an affidavit that he is not an officer or director of an insured bank or Federal Reserve bank or does not own any stock in any insured bank.

Recommendation 88 refers to the definition of mutual savings banks. Originally, at the creation of the Corporation, there was a separate fund that was authorized for mutual savings banks. It was never used, and the provision for it was deleted in 1950. And there is no reason now for this separate definition of mutual savings bank. Such banks come under the definition of State banks in the act.

The next provision is in reference to uninvested trust funds. Probably Mr. Harris could present this better than I because it comes from suggestions that he has made. The solution of the problem that has long troubled the Corporation and the Connecticut bankers is presented by this recommendation.

In his State the insured banks deposit uninvested trust funds in the mutual savings banks of that State. The mutual savings banks of Connecticut are members of the State insurance organization and are not members of our Corporation. The insured banks are obliged to pay assessments on the deposits, and it's not a full coverage that they get. By the elimination of two words we arrange so that they neither pay an assessment on the deposits, nor are they insured when they are deposited in an uninsured bank.

Recommendation 90 refers to the insurance of deposits to the date of closing. Under the present law, in time deposits and savings ac-

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counts, the interest that is calculated and posted is allowed as an insured claim. We think the insured claim should include all interest that's due up to the date of closing. It would increase the insurance coverage very slightly, but it would be in accordance, we think, with what is fair to the depositors.

By the way, I was referring to recommendation No. 91. I skipped No. 90.

No. 90: Under the present law, insured banks in the United States may exclude from deposit insurance deposits payable in branches established in Alaska, Hawaii, and the Virgin Islands. We think this provision should be eliminated so that in all Territories of the United States where deposit insurance is available, that insured banks maintaining branches in those sections should have their deposits insured.

Now, going to No. 92, it refers to deposits made available on demand to a depositor in transferred deposits. Let me get it here. In a case that there is an assumption transaction whereby the Corporation makes available a deposit in another insured bank, we propose to specifically provide that it is a demand deposit, a deposit that can be drawn out on demand. This provision and the other provisions are to assure the complete liquidity of deposits and their availability immediately upon the closing of any bank.

The next recommendation refers to the definition of a branch. The proposal would eliminate from the definition of branch a Territorial reference. It is our view that any State nonmember bank that establishes a branch, regardless of its location, should first obtain the approval of the Corporation. The establishment of foreign and Territorial branches by national and State member banks must be subject to the approval of the Comptroller or the Federal Reserve, and nonmember State banks should likewise be subject to the approval of the Corporation. That's the purpose of this recommendation.

Insurance of deposits in national banks. We suggest that all national banks be insured. There is only one national bank that presently is not insured. It's the Bishop National Bank in Hawaii. We think that the depositors in all national banks should have the benefit of deposit insurance.

No. 95 is what I call a housekeeping recommendation. It refers to the "thorough examination." It occurs in section 6. And also we find in going over it there is another reference to "thorough" in section 10 (b)—"thorough examination." We believe that there should not be any distinction in examinations. They all should be thorough. And we just for uniformity suggest that the word "thorough" be eliminated in both of those instances.

Senator DOUGLAS. Just a minute. May we clarify this point? The statute at present requires a thorough examination, does it not?

Mr. COBURN. Throughout our act there are a number of references to examination, and we make no distinction between one examination of a bank and another, and we think that all examinations should be thorough. Either they should all refer to a "thorough examination" or the term "examination" should be sufficient.

Senator DOUGLAS. Wouldn't it be better, instead of striking out "thorough examination" and substituting "an examination," to provide that the "examination shall be thorough in all instances"?

Mr. COBURN. We would have no objection to that.

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Senator DOUGLAS. I take it you don't object to thorough investigation?

Mr. COBURN. No, sir.

Senator DOUGLAS. I hope not.

Mr. COBURN. One reference refers to "thorough examination" and another reference doesn't, and we want them uniform. Just terminology of the bill.

The next provision is maintenance of assessment records. Under the present law the insured bank is required to maintain records to justify the correctness of deductions taken in determining assessment base. The law provides for a 5-year statute of limitations for the recovery of unpaid assessments except that the statute does not apply in the case of an intentional false or fraudulent certified statement.

We deem it unreasonable to expect banks to maintain records beyond a 5-year period, and for that reason we propose to add a proviso that no insured bank shall be required to maintain such records with respect to such deductions or exclusions for a period in excess of 5 years from the date of filing of any certified statement wherein such deduction or exclusion is claimed.

The next provision is a rather technical provision. It refers to assessments and deductions, and, therefore, I'm going to read with some care the recommendations. And, by the way, I would call attention to the fact that we are changing our recommendation made in the third paragraph.

For your information, the suggestions that we are making—we are now putting in—are in accord with the administrative practices that have been followed during the 5 years that this section has been applicable.

Starting out, the words "as of December 31, 1950," and "thereafter" are obviously obsolete.

In recommendation 105 we have recommended that the Corporation's insurance fund be referred to as the deposit insurance fund, and so the term "capital account" in that sentence should be changed to "deposit insurance fund."

Under the present law the Corporation is required to apply the assessment credit to the semiannual assessment becoming due the next ensuing July 1 and any excess credit on subsequent assessments as they become due. Frequently office audits of certified statements show that the bank has erroneously computed its own assessment and that it would facilitate the handling of such underpayments both for the bank and for the Corporation if the Corporation were permitted to apply the credit to such underpayments.

Furthermore, there should be an express authorization in the law to permit the Corporation to refund the assessment credits to a bank going out of business.

The third sentence. The existing law provides in computing the net assessment income the Corporation may deduct (1) the operating cost and expenses of the Corporation for the calendar year, (2) adjustments to reserves to provide for insurance losses during the calendar year, and (3) insurance losses sustained in said calendar year plus losses for any preceding year in excess of such reserve.

The recommendation is that item 1 be changed to read: "The administrative and operating costs of the Corporation," which is merely

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a technical change to conform the statutory language to accounting terms.

And the elimination of the words "for the calendar year" is to enable the Corporation to include such costs which for any reason were incurred and not paid in the previous year.

And in the third paragraph we originally recommended a further change in the third sentence. This recommendation was that the present law be amended to permit the inclusion of the gross assessment income of an underpayment for previous years which is discovered during the calendar year and, the converse, to permit the deduction of the overpayments made in prior years which are discovered during the calendar year. We have decided to change this recommendation to provide that when an insured bank has underpaid or overpaid its assessment for any year prior to the calendar year, the Corporation shall compute the respective credits for the funds received on the basis of the credits made during the year in which the underpayment or overpayment occurred, providing that the percentage representing the difference between the gross and the net assessment income for such year shall be charged or credited as the case may be pro rata to the insured banks based upon the assessment of each bank becoming due during the calendar year in which the adjustment is made.

Now, for the benefit of the staff and the committee, I have a draft here marked out, and it shows very graphically the changes that we are making here, and I'd like to leave that with you.

I would like to again emphasize the treatment that we are providing here is the treatment that we're presently giving administratively.

The next recommendation, 98, is the elimination of an obsolete provision. This section, which is a statute of limitations section, was put in the 1950 act——

Senator ROBERTSON. I suggest you just eliminate reference to the obsolete sections. All that will be printed in the record.

Mr. COBURN. All right, sir. We'll go on then.

We next come to the provisions of No. 99, which are what we call our section 8 (a) proceedings. This is the proceeding for the termination of insurance. The first recommendation that we have is the substitution of the words "engaged in" for "continued."

In our cases on this subject we find that in several instances at least banks have done 1 or 2 or 3 or 4 acts that constitute unsafe and unsound acts, but they could not be properly characterized as "continued." And we think that it will give us a better supervisory authority if we change the terminology.

The next provision is a change of the word "or" to "and" so it makes certain that a notice of the charge be given to the State banking authority.

We are also proposing an amendment that would give the authority to the board of directors to shorten the corrective period from 120 days, as is now provided, to 20 days in any case that the Board has determined that the insurance risk of the Corporation is unduly jeopardized.

We have found in a number of recent shortage cases where practices were being indulged in and the Corporation's insurance was in jeopardy that we couldn't act promptly. That is particularly true if we cannot get the cooperation of the State authority.

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The next amendment in this section is a change from the present law where there is a provision that either the State authority in reference to State nonmember banks, or the Federal Reserve Board in the case of State member banks, may shorten this corrective period. After some reflection on it, we determined that it would probably be better administrative policy to permit the State authority to have full jurisdiction on shortening the period, the correction period, due to the fact that the State authority is the primary supervisory authority.

Now I want to comment that Governor Robertson has indicated that the Board would not go along with us in this recommendation. Our relations with the Board have been very friendly. This recommendation is not deemed to be any reflection upon the Board. But we do think that it is fundamentally sound as we here recommend.

The next change is the transposition of sentences without change of substance.

And the final change is a change in terminology just to make clear that in any proceeding where the bank does not appear at the hearing—this is the "show cause" hearing before a hearing examiner—if the bank does not appear, it will not be necessary to put in any evidence in order to justify the termination of the insurance coverage.

In other words, the nonappearance would be, in effect, an admission of the charges.

Recommendation No. 100 refers to section 9 of the act. It's merely this: Presently the subdivisions of the section are numbered, and, for the sake of uniformity, as is true in all other sections of the act, we suggest they be lettered.

Recommendation No. 101: This is a recommendation that the sentence in paragraph 5 be amended so as to provide that the Corporation shall have the power without regard to any laws relating to employment, separation, or compensation of officers or employees of the United States. And in discussing this with the Budget, they suggested that we amend that recommendation to refer to any civil-service laws relating to employment. And we are perfectly willing to make that change in our recommendation.

At a meeting of our supervising examiners, which occurred in San Francisco about 2 weeks ago, all 12 of the examiners advised the Board that there had been in the last several years a general deterioration in the caliber of examiners that they were able to hire. And that came from the fact that they were trying to get the examiners from the colleges. The examiners, in recruiting men, would go to the colleges to try to interest the men in banking and in bank examination. They would have to tell interested men: "If you wait for 4 months or 6 months, there may be an examination; and then if you take the examination and pass it, we may be able to employ you."

As a result, the Corporation has not been able to compete with industry, and we have not been getting the caliber of men that otherwise would be available to us.

It is just one of the most essential things, we feel.

As a matter fo fact, several of our supervising examiners suggested that this was by far the most important proposal that we were making to this committee.

We also find that in certain sections of the country it's necessary to have wage and salary differentials, particularly in New York. We

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have lost a substantial number of our personnel to the New York department because they are paying higher salaries than we can pay under the schedules that we are presently using.

So, therefore, we would like to have it certain and definite that we do not have to use the civil-service processes in recruiting and in establishing our salary setups.

Mr. ROGERS. Mr. Coburn, I'd like to clarify your present situation. As it now stands, are you under the civil-service laws?

Mr. COBURN. Well, it's been a debatable matter. I think for many purposes we're not. Civil Service has accepted that we're not for some purposes, but has always insisted that we are for recruiting purposes. And for many years the Corporation has used the civil-service procedures in recruiting.

And so that there will be nothing uncertain about it, we think that it should be spelled out in the act, that Congress should specifically give us the proposed authority so that we can raise and maintain the caliber of personnel in our Examination Division. And it's primarily in the Examination Division that the problem arises.

Mr. ROGERS. Has the Civil Service Commission commented on this recommendation?

Mr. COBURN. I don't think they have. We have gotten a letter from Budget to clear it, but there was no inclusion of any communication from Civil Service.

Mr. ROGERS. I wonder, while you're discussing this one, if we could also discuss at the same time No. 112. I think they are both related subjects, and we might take care of it at one time.

Mr. COBURN. Well, what we're proposing in 112 refers generally to the civil-service retirement and disability benefits which were provided for, and agency contribution provided for in the amendment to the civil-service bill that was passed in the last session of Congress.

Now, the Corporation is quite desirous of being free from any subsidy, and it proposes in this recommendation to go back and pick up the costs, the Government costs, of benefits for prior years under civil-service retirement. And then, because of the unique character of the Corporation, we want to make certain that the Federal workmen's compensation laws and unemployment-compensation laws are applicable to its employees, and to compensate the Government for the benefits that have accrued in the past on account of benefits under the workmen's compensation law, and in future to pay its fair share for the costs as these occur.

Mr. ROGERS. Mr. Coburn, as I understood you, you want to be out of the civil-service system but you still want to be in the civil-service retirement fund? Is that correct?

Mr. COBURN. Yes; but pay for it.

Mr. ROGERS. Is that conflicting?

Mr. COBURN. There's nothing inconsistent about that. As a matter of fact, the General Accounting Office has for several years suggested in its report that the cost of civil-service retirements be borne by the Corporation. And we're going one step further and we're recommending that the law provide that we pay for all past benefits, the Government share of all past benefits received. It involves a payment of $3 million or $4 million.

Mr. ROGERS. Has the Civil Service Commission commented on this recommendation?

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Mr. COBURN. We submitted some proposals for the last session of Congress that involved these matters, and we didn't get full clearance from Budget on it, and they were not sent to the Hill.

Mr. ROGERS. Has this matter ever been discussed in the Post Office and Civil Service Committee?

Mr. COBURN. No. The General Accounting Office has recommended it, as I said, in the last several audit reports.

Mr. ROGERS. If you were out from under civil service as to your employees, you would still participate in civil-service retirement funds. Would there be any other connection with civil service?

Mr. COOK. We'd pay for it.

Mr. COBURN. No. No. And on your civil-service retirement we would pay our fair share of it.

Mr. ROGERS. Is that your understanding of the present setup of the Federal Reserve Board employees?

Mr. COBURN. Well, the Federal Reserve has its own retirement plan, and I think an employee with them has an option either to take their plan or the civil-service plan. I think the employee has an option.

Mr. ROGERS. Thank you.

Mr. COBURN. We got it just a little out of order.

Mr. ROGERS. Yes. I think we can go back to No. 102.

Mr. COBURN. The next provision, No. 102, is application for a subpena. There is a provision that an application for subpena shall be made by the Board of Directors. We suggest it be amended so that the application may be made by the Corporation. Many times it's a matter of importance that you have direct action when it isn't practical to call a meeting of the Board of Directors on it. It may involve a hearing where you are removed from Washington.

The next proposal refers to a provision that personally I do not think should have ever been in our law. It has never been exercised. It's a provision that permits us to give immunity to witnesses who testify in reference to our examinations. It's an authority that Congress has given to the Attorney General in certain cases, but we don't think that it's necessary for us.

It's a very dangerous provision, and we think it should be deleted from our act.

Mr. ROGERS. You say that immunity has never been granted?

Mr. COBURN. No; it's never been used. This authority has never been exercised.

This next proposal is a provision that clarifies the manner in which the Corporation can issue certified records. We are frequently called upon, particularly in criminal cases, to give certified records as to the grant of insurance to a bank in criminal actions covered by Federal statute. And there is no statutory provision presently available. The proposal provides that the Secretary under seal of the Corporation may issue certified records.

Rule 44 of Federal Civil Procedure contemplates a statutory provision of this kind, and it's in compliance with that rule that this proposal is made.

Section 105 provides in effect a name for our deposit insurance fund. We have in our literature and other matters used several terminologies, but this time we here provide that it shall be referred to as the "deposit insurance fund." There are certain obsolete provisions in the paragraph referred to there that will be stricken.

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The next provision, No. 106, is another one of the very important recommendations that we're making. At the present time the law provides as follows:

For the purposes of this Act an insured bank shall be deemed to have been closed on account of inability to meet the demands of its depositors in any case in which it has been closed for the purpose of liquidation. * * *

"For the purpose of liquidation." Now, it was that terminology that prevented us from taking appropriate action in the Chicago banks some 3 years ago. The banks there, as you will recall, were closed under a statute that authorized the State auditor to close them for "investigation and audit," and by reason of this provision in the statute we were not able to discharge our insurance functions for some 7 weeks.

We now wish to provide that whenever a bank is closed without adequate provision being made for the payment of its insured deposits that our insurance coverage matures, and we shall be charged with the obligation of immediately paying off the depositors. As I say, we think this is one of the more important recommendations that we're making.

Mr. ROGERS. I agree with you, Mr. Coburn, it's an important one, and you do say that it will take care of any possible situations you can envision, such as in the Elmwood Bank?

Mr. COBURN. Yes. This is particularly directed at that situation.

The next section refers to the deletion of an obsolete section because it refers to the individual liabilities of stockholders of national banks, and those laws have been rescinded.

No. 108. This refers to powers of a new national bank organized by the Corporation. We provide in this that subject to the approval of the Comptroller the newly organized bank can transact any business that a national bank can. Presently authority is given to establish a new bank for 2 years. Such bank would not have any authority to lend money, and we think that that would probably be one of the emergency powers that would be needed if such a bank should be established.

And so we provide that subject to the approval of the Comptroller, that the bank would have such powers as a national bank could have. And we also provide that a duration of the bank should be extended for an additional 2 years, subject to extensions by the Board at intervals of 6 months. It still remains a temporary bank.

Mr. ROGERS. Mr. Coburn, has that provision been used extensively?

Mr. COBURN. It hasn't been used in the last 10 years. It was used in some 3 or 4 instances in the late 1930's and early 1940's. And we still think it's a desirable provision to have in the act.

The next, No. 109, refers to temporary employees acting as a receiver of an insured bank. We find that in reference to temporary employees employed in the receivership of a closed bank, there is great confusion and conflict in the areas as to benefits of workmen's compensation and social security and other like provisions. And we would like to provide specifically by law that those employees are the employees of the receivership.

Ordinarily it refers to clerical and stenographic help, and it's ordinarily the employees of the closed bank. We think that they should be subject to State law.

Recommendation No. 110, liability of depositor as stockholder in a closed bank. Here is another obsolete reference to the liability of stockholders, and can be passed over as suggested by the chairman.

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In No. 111, we refer to loans to and assets purchased from receivers or liquidators of closed banks. There is, I guess we'll call it, a typographical error. It now provides that receivers can make transactions that are in accordance with express provisions of State law. We would like to broaden that out to make such permission be in accordance with applicable State law, whether it be by decision law or opinion law, as well as by express provisions of the statute.

And then there is likewise a sentence in there that refers to receivers other than the Corporation appointed by the Comptroller, which now becomes obsolete due to the fact that the Corporation is always the receiver of a national bank.

No. 112 has already been discussed.

No. 113 recommends that the auditing and accounting of the Corporation be put on a calendar-year basis. And this is another recommendation that we are making that comes from General Accounting Office. For the last several years they have recommended that the Corporation operate upon a calendar-year basis.

The next recommendation, No. 114, refers to bank mergers. This is the Fulbright merger amendment. It's been recommended by the other agencies, and I think it has been fully discussed here. It is identical with that passed by the Senate during the last session, so we'll pass over that.

The next provision is a provision in reference to loans to examiners of the Federal Deposit Insurance Corporation. At the present time the examiners of the Corporation cannot borrow money from any bank, any insured bank. We believe that there should be proper restrictions on loans by any bank that they regularly examine. We do have the extraordinary power to examine Federal Reserve and national banks. It's used very, very seldom. Therefore, we see no reason why the examiners of the Corporation should be restricted from borrowing from a Federal member or a national bank subject to rules and regulations of the Corporation.

Now, in addition to the recommendations that we formerly presented to the committee, there are five additional recommendations that we have submitted which we think should be considered.

Senator ROBERTSON. They will be placed in the record.

(The additional recommendations referred to follow:)

FEDERAL DEPOSIT INSURANCE CORPORATION,
OFFICE OF THE CHAIRMAN,
Washington, D. C., November 2, 1956.

Hon. A. WILLIS ROBERTSON,
Committee on Banking and Currency,
United States Senate, Washington, D. C.

MY DEAR SENATOR: The Corporation has heretofore submitted to you for consideration by your subcommittee proposals of the Corporation to amend or otherwise modify the Federal Deposit Insurance Act.

As a result of the hearings and the suggestions of the Senate Banking and Currency Committee arising therefrom, together with the consideration given by the Corporation to proposals made by other agencies, we deem it desirable to submit five additional proposals; namely:

1. Power to require audits of insured banks;
2. Authority to prescribe by regulation employments that may involve conflict of interest;
3. Redefine "branch banks" to exclude school savings funds;
4. Amend time for filing claims against receivers;
5. Prohibition of disclosure of examination reports.

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These proposals are being submitted to the Bureau of the Budget but we have not received advice from the Bureau that the proposals are in accord with the policies of the administration. Upon receiving advices from the Bureau of the Budget you will be advised.

I trust that these proposals are submitted in sufficient time so that you and your committee may give them full consideration.

With personal regards, I am,

Sincerely yours,

H. E. Cook, *Chairman.*

Power To Require Audits of Insured Banks

Existing law

None.

Recommendations

It is recommended that legislation be enacted to provide authority for the board of directors to require an audit of an insured bank by a certified public accountant in any case where it determines, in its discretion, that the affairs of the bank are in such state that its books and records may not reveal its true condition and that the costs of the audit and report be added to the assessment otherwise payable by the bank in those instances where the bank refuses to have such an audit and it is necessary for the Corporation to cause one to be made.

Reasons

Based on the Corporation's experience, it is desirable that it have such additional statutory power to further protect its insurance risk. Such audits would normally disclose embezzlements, falsification of records, the wrongful conversion or misuse of bank assets, and other irregularities which may not be detected in a bank examination as they are primarily designed for appraisal of the bank's assets and not for verification thereof.

Power To Prescribe by Regulation Employments That May Involve Conflict of Interest

Existing law

None.

Recommendations

It is recommended that the Corporation be expressly authorized to issue appropriate regulations to prescribe restrictions on the employment of any State or Federal bank examiner or former employees of the Corporation in substance as follows:

REGULATION

(*a*) No insured bank shall employ or negotiate to employ any bank examiner during the course of an examination of the bank pursuant to the authority of any bank supervisory authority.

(*b*) No insured bank shall employ or negotiate to employ any employee of the Corporation or any former employee of the Corporation within a period of 1 year from the date of the severance of his employment from the Corporation, if the bank at the time of said negotiations or employment has pending before the Corporation any matter requiring the action or approval of the Board of Directors of the Corporation.

The Board of Directors, upon application of either the bank or the prospective employee, may waive the requirement of this regulation.

The violation of this regulation by any insured bank may be the basis for unfavorable action on the matter pending before the Board of Directors constituting the basis for the violation, and it may also constitute the basis for a proceeding to terminate the insured status of the bank.

Reasons

This proposal arises from the suggestions made by Senator Fulbright at a hearing before the Senate Committee on Banking and Currency in its investigation of the Illinois banking situation. Its purpose is to prevent an examiner or former employee of the Corporation from being placed in the position of having a conflict of interest. As the loyalty of an examiner is to his employer, any suggestions in respect to employment by the bank examined may place him in an embarrassing position and affect his recommendations to his employer. The

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purpose of recommending that these restrictions be placed in regulation in place of statutory form is to provide more flexibility, and its enforcement should be such as to not prohibit such employment where there is no evidence of conflict of interest. One of the inducements in recruiting competent personnel as bank examiners is that they may eventually obtain employment in banks. This inducement should not be discouraged as bank examiners usually become excellent bankers.

Exclusion of School Savings Plans From Definition of Branch

Existing statute

Subsection (o) of section 3 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1813 (o)):

"The term 'branch' includes any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, or the Virgin Islands at which deposits are received or checks paid or money lent."

Recommendation

Subsection (o) of section 3 should be amended by adding at the end thereof a proviso to the effect that the acceptance of deposits as part of a school thrift or savings plan at the school by officers, employees, or agents of a bank shall not be construed as the operation of a branch.

Reason

The acceptance of deposits at a place other than the bank's office is considered to be branch banking. In order to encourage savings on the part of school children it is believed that the statute should be amended to remove any doubt that a bank can engage in such activities.

Prescribing Time for Filing Claims Against Receiver of an Insured State Bank

Existing statute

Subsection (e) of section 12 of the Federal Deposit Insurance Act, as amended (12 U. S. C. 1822 (e)):

"If, after the Corporation shall have given at least three months' notice to the depositor by mailing a copy thereof to his last-known address appearing on the records of the closed bank, any depositor in the closed bank shall fail to claim his insured deposit from the Corporation within eighteen months after the appointment of the receiver for the closed bank or shall fail within such period to claim or arrange to continue the transferred deposit with the new bank or with the other insured bank which assumes liability therefor, all rights of the depositor against the Corporation with respect to the insured deposit, and against the new bank and such other insured bank with respect to the transferred deposit, shall be barred, and all rights of the depositor against the closed bank and its shareholders, or the receivership estate to which the Corporation may have become subrogated, shall thereupon revert to the depositor. The amount of any transferred deposits not claimed within such eighteen months' period, shall be refunded to the Corporation."

Recommendation

The provisions of subsection (e) of section 12 should be amended to provide that claims against a receiver of a closed insured bank must be filed within the period fixed by State law where such period is less than that fixed by subsection (e) for the filing of claims against the Corporation for insured deposits.

Reason

When the Corporation pays the claim of depositor in a closed insured bank placed in receivership it becomes subrogated to the depositor's claim against the bank. Such depositors have 18 months within which to file claims for their insured deposits. When a State law prescribes a lesser time for filing claims against the receiver of a closed State bank, the Corporation may be required to pay claims for insured deposits and be barred from filing its subrogated claims against the receiver.

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FEDERAL DEPOSIT INSURANCE CORPORATION EXAMINATION REPORTS, PRIVILEGED AGAINST DISCLOSURE

Existing statute

None.

Recommendation

Subsection (f) of section 10 of the Federal Deposit Insurance Act should be amended to add a provision that reports of examinations of insured banks made by examiners of the Corporation and related correspondence and papers and their contents should be deemed to be confidential documents and information privileged against disclosure except with the consent of the Corporation.

Reasons

Parties to litigation involving banks, from time to time, seek to obtain, by subpena, copies of reports of examination of such banks made by examiners of the Corporation and correspondence or other documents relating thereto. The Corporation has taken the position that the information in such reports and related documents, having often been obtained in confidence, should not be disclosed except with the consent of the Corporation where the public interest warrants such disclosure. While refusal to disclose this type of information or to make available reports or other documents is generally upheld by the courts, it is believed that this matter is of such importance that the authority of the Corporation to restrict the disclosure of such information should be the subject of satutory enactment. Litigants would not be harmed by such an enactment since the information sought from the examination reports or related documents is readily available from the books and records of the bank, which are, of course, the best evidence of the transaction or event sought to be proved.

Mr. COBURN. One of these has been discussed this afternoon with Governor Robertson.

We have recommended that in those instances where the Corporation finds that it cannot determine the asset condition of the bank, it be given the authority to order an audit of the bank by a certified public accountant chosen by the bank, and upon their failure to have the audit made, or to file a report of the audit with the Corporation, that the Corporation be authorized to engage a certified public accountant.

May I say that this authority would find appropriate use in shortage cases where the extent of the loss cannot be known, and it will give the Corporation an opportunity to take corrective measures and other actions that are not presently available to us.

It was such authority as this that was recommended by Senator Fulbright at the hearings with the Corporation a couple of weeks ago.

The next provision. Senator Fulbright also requested that we submit appropriate proposals for authority involving conflict of interest, and we have suggested that our act be amended to provide for authority to the Board of Directors to enact appropriate regulations on the subject of conflict of interest.

We have submitted with our recommendation the proposed regulations on this subject.

In talking to Mr. Gidney, yesterday at Board meeting, he told me that he thought that our first regulation in reference to the bank examiners was too restrictive. This recommendation was made by the staff. We do not believe it is too restrictive, but I think that there will be some opposition to it.

The next provision refers to the definition of a branch, and we are copying one of the recommendations, I think, made by the Comptroller. There are a number of instances I think particularly in Maryland and perhaps in Virginia where schools are sponsoring savings

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and thrift programs among the schoolchildren. They involve transactions that border on being banks. We think that these transactions should not be considered branch operations and therefore there should be a specific exclusion such as recommended.

We are recommending an amendment to the provision prescribing time for filing claims against the receiver of an insured bank. Under our existing Federal law, creditors are given 18 months to file claims against the Corporation for insured deposits. In some States the statute of limitations is 12 months. And it could work out where we could not effect a loss of our subrogation rights, in the event we were receiver in a State that had a 12-month statute and the creditors did not file their claim until after the expiration of the 12-month period.

So we recommend that the law provide that the State law shall be applicable in filing claims on insured deposits.

And the final recommendation is again adopting one of the Comptroller to the effect that reports of examination shall be deemed confidential and a prohibition against the disclosure of their contents.

Mr. ROGERS. Mr. Coburn, on that one, is your idea of this that it would not prevent a congressional committee from examining the reports, would it?

Mr. COBURN. Well, Mr. Rogers, we think under certain circumstances the examination reports of an open bank should not be available to the congressional committee at an open session.

Mr. ROGERS. But I mean in executive session, handling on a confidential basis as we did a few weeks ago.

Mr. COBURN. Well, we've gotten along all right so far. But we do think that if we're going to be able to get the confidential information that is proper and necessary for proper bank examination, the bankers must be assured that the reports will not be disclosed publicly.

And it's with a desire that we do continue to keep the confidentiality—and it has been maintained through the years—that we make this recommendation along with the Comptroller.

Mr. ROGERS. I agree that we want to keep them confidential, but I want to make sure that if the committee should agree to this that we understand what we're doing and it would in no way affect the committee's right to examine these reports in executive session.

Mr. COBURN. Well, now, I think you'd better ask Mr. Cook or Mr. Harl.

Mr. ROGERS. I'd be glad to have their opinion.

Mr. COOK. I might say, Mr. Chairman and Mr. Rogers, that it's my personal view—and I don't know whether Mr. Harl would concur in this or not—but we're very jealous of the confidentiality of examination reports, because so long as they are handled in executive session and not a matter of public record that's one thing, but if it's made a matter of public record it could hurt a bank tremendously. The confidentiality would be destroyed and people's reputations, people's individual affairs might be very much disrupted by having this a matter of public record.

When it comes to executive session without a public record, that's another question.

I'd like to have Mr. Harl express his view.

Mr. HARL. Frankly, I think in reference to an open bank, that the report should be inviolate. They're not subject to subpena by the

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courts, as I understand it. And I think there can be a lot of damage done if the bankers of the country thought for 1 minute that their reports could be seen by others than the directors of the bank and/or the examining authorities.

Mr. ROGERS. I appreciate having your frank statement on it. I think that would probably influence the committee's decision on the point.

Senator ROBERTSON. Does that complete your statement?

Mr. COBURN. That completes it.

Senator ROBERTSON. The Chair recognizes the Senator from Illinois.

Senator DOUGLAS. When the Senate Banking and Currency Committee proceeded to consider the so-called Hodge scandals in Illinois, I immediately disqualified myself from the proceedings on the ground that there was an election pending in Illinois and that the matters connected with the so-called Hodge scandal and the relationship of banks and bankers to them might affect the election. Although I was not a candidate for office, I had a more than platonic interest in the results and therefore felt I should not take part in proceedings which might adversely affect the opposing political party.

I held religiously to that. In one case, when there was no Senator about and one witness refused to produce documents except under subpena and it was necessary that the witness be sworn and only a Senator could swear the witness, I consented to swear the witness, but thereafter took no part in the case.

But now that the election is over and the unfortunate results have occurred, I think that it is proper for me to ask some questions.

I'd like to begin by asking this question: Did the members of the Board of FIDC know that Mr. Hodge was a secret stockholder in the Elmwood Park Bank? He had closed the previous bank. The new bank was created with the aid of the attorneys and the FDIC, which gave its blessing. Did they know that the auditor of Illinois, who had closed the preceding bank, was a secret stockholder in the new bank?

Mr. COOK. We did not.

Mr. COBURN. The answer is "No."

Senator DOUGLAS. Did Mr. Russell know about this? Mr. Russell was the attorney the FDIC sent out to go into this matter. He resigned from the staff of the Federal Deposit Insurance Corporation and became first a leading official in the new bank and then after a period of a few months the president. Did Mr. Russell know about it?

Mr. COBURN. Mr. Senator, Mr. Russell's testimony was taken in complete detail on that and on all matters pertaining to it. It is my recollection that his testimony was that he didn't know.

Senator DOUGLAS. Did not know about it?

Mr. COBURN. Did not know about it until shortly before Mr. Wirtz bought the big block of stock from Hodge.

Senator DOUGLAS. In other words, he was a leading official of a bank largely controlled by a State official with whom he was in close contact and did not know that this State official had any financial interest in the bank itself?

Mr. COBURN. Well, that's my recollection of what Mr.——

Senator DOUGLAS. Do you accept that statement?

Mr. COBURN. Yes, I accept it.

Senator DOUGLAS. Do you think there should be a prohibition that no bank should be insured under the Federal Deposit Insurance

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Corporation in which a State or Federal examining authority owns or controls stock in that bank?

Mr. COBURN. At the hearings we pointed out to the Senators that there are several of the State authorities that do own stock in banks at the present time.

Senator DOUGLAS. Let us put it this way: Do you think that a bank insured under the FDIC should permit either State or Federal examiners or those in charge of examiners to own stock in those banks?

Mr. COBURN. Well, none of the Corporation examiners may own stock in any bank, and our Board members——

Senator DOUGLAS. What about lawyers attached——

Mr. COBURN. Well, we have no——

Senator DOUGLAS. Mr. Russell as I remember it was not an examiner but a lawyer.

Mr. COBURN. He was a lawyer, yes, sir, and he owned no stock in the bank at the time he was in the Corporation.

Senator DOUGLAS. No, but Mr. Hodge owned stock, and he was the auditor of Illinois, who was in charge of the supervision and examination of State banks.

Mr. COBURN. That's right.

Senator DOUGLAS. Do you think that that constitutes a serious enough breach of good banking to justify the FDIC withdrawing the insurance rights from that bank?

Mr. COOK. I might say, Senator, there are a number of States that have no prohibition against——

Senator DOUGLAS. I know States may not have the prohibition, but what should be the policy of the FDIC? Are you limited to merely covering those provisions which the State has, or do you have the power to impose regulations of your own?

Mr. COBURN. We have no power presently to——

Senator DOUGLAS. No, but do you recommend such power?

Mr. COBURN. Well, due to the fact that you have presently in several States some supervisory authorities that openly own stock in banks, we do not feel that it is our right to disqualify them or try to disqualify them from acting as State officers.

Senator DOUGLAS. Suppose the State simply makes no provision on this subject, the State statutes are silent. Do you then say that the FDIC should not impose this as a requirement?

Mr. COBURN. It probably would be desirable—it might be desirable to have a disclosure of the ownership. I think of a superintendent of banks in one of the Southern States, one of the leading citizens of the State. He's a good public official. And it is well known that he owns stock in a bank.

Senator DOUGLAS. Do the State statutes specifically permit him to do this, or is he merely doing it in the absence of a prohibition?

Mr. COBURN. Well, I haven't examined it, but I assume it's absence of any prohibition.

Senator DOUGLAS. Now then, are you taking the position (*a*) that where this is permitted by State statutes the FDIC should not act, and (*b*) where it is not prohibited by State statutes the FDIC should not act?

Mr. COBURN. I see nothing dangerous about the fact——

Senator DOUGLAS. You saw nothing dangerous in the Elmwood Park situation?

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Mr. COOK. That's the first time in the history of American banking that occurred.

Senator DOUGLAS. It's the first time in the history of American banking it's been disclosed. There may be quite a difference between those two statements.

Mr. COOK. In the Western States the State bank supervising authorities are owners of banks and they are most efficient and capable gentlemen and we have every confidence in them.

Senator DOUGLAS. Don't you think there can be such a thing as conflict of interests? One of the first principles of legal ethics is that a lawyer shall not serve both parties to the case, shall not serve the plaintiff and the defendant at the same time. He can serve one or the other but not both. Isn't a man's examination likely to be clouded and his judgment affected if he is himself an appreciable stockholder in a bank whose affairs he is supervising?

Mr. COBURN. There's no doubt the State examination of those banks would be subject to such charge.

Senator DOUGLAS. Shouldn't the FDIC do something about it?

Mr. COBURN. We can examine those banks and make a valid and proper examination of them without reference to his interest in them and do.

Senator DOUGLAS. Therefore you decline to act in this matter, decline to recommend?

Mr. COBURN. I'm not sure I understand what you mean.

Senator DOUGLAS. What you are saying is in effect: "We make no recommendations for those cases where a State examining authority is financially interested in the bank which he examines."

Mr. COBURN. We have made no recommendations on it.

Senator DOUGLAS. And you are not making any recommendation now?

Mr. COBURN. We——

Senator DOUGLAS. You don't regard it as an evil which should be dealt with?

Mr. COBURN. We have made no recommendation on that.

Senator DOUGLAS. All right. That's clear.

Do you think there should be disclosure as to who owns or controls stock in these banks? You say that you didn't know, that Mr. Russell didn't know, that the auditor of the State of Illinois was a large stockholder in a bank which had been formed under his auspices. He had closed out the preceding bank and organized this bank with your help in which he was a large and secret stockholder. Do you think there should be any disclosure of this fact?

Mr. COBURN. May I correct your statement? The facts of the hearing I think show that initially he was only a small stockholder. He subsequently became a larger stockholder. That is the time that we had any transactions.

Senator DOUGLAS. That is not quite responsive to my question.

Mr. COBURN. I appreciate that.

Senator DOUGLAS. Do you think there should be disclosure of who owns stock or who controls stock so that the FDIC and its representatives could know with whom they are dealing?

Mr. COBURN. Well, may I suggest this: That when a new bank is started, is opened, we are charged with the responsibility as one of the factors in determining whether or not to grant insurance, deposit

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insurance, to determine the character of management, and management of a bank is determined in three phases—the stockholders, the directors, and the executive management. And we do look into that.

After the bank is started, we have no authority to control the ownership of the stock in a bank, and I doubt—I don't just quite see how we could enforce it if we did have the authority.

Senator DOUGLAS. In other words, you are not affected by the Hodge incident on the Elmwood Park Bank?

Mr. COBURN. I beg your pardon?

Senator DOUGLAS. You are not affected by the Hodge incident on the Elmwood Park Bank?

Mr. COBURN. Well, insofar as Elmwood Bank and Hodge's ownership of it, that is in the new bank. There's been no loss there. It's an open, operating bank today.

Senator DOUGLAS. Do you think it's good public practice for a man in charge of a State auditing agency to be a secret owner of stock in a bank which he has helped to set up?

Mr. COBURN. Under the circumstances of that, I think it was very bad. I think it was very bad under those circumstances.

Senator DOUGLAS. How can you be certain this won't happen again? Why is this unique? I feel ashamed at what has happened in Illinois, but I want to say I don't think the people or the politicians in Illinois are worse than they are in other States. We wash our dirty linen in public. But I don't think we're innately more depraved than elsewhere. In fact, I think if it happened in Illinois it's probably happening in other States.

Mr. LIVINGSTON. I agree with you, Senator.

Senator DOUGLAS. I'm glad to have my distinguished friend from Chicago say that.

I want to say I am ashamed of what happened, but I think we probably differ from other States only in that it's become a matter of public knowledge. Yet this doesn't seem to have affected you.

Mr. COOK. Naturally anything that affects the reputation of banking affects us.

Senator DOUGLAS. The reputation of banking has been very severely injured. The reputation of the FDIC, if I may say so, has been very seriously injured.

Mr. COOK. I don't see why the reputation of the FDIC should be injured for the reason we stood ready to pay those depositors the minute the bank was turned over to us, which it was not.

Senator DOUGLAS. Did you submit to the committee in Chicago or here a list of your employees, examiners and lawyers, who upon terminating their services with your organization took employment in banks which they had examined or over whose affairs they have exercised jurisdiction or vice versa?

Mr. COBURN. Yes, sir.

Senator DOUGLAS. I will ask that that be transferred, made a part of the public record at this hearing.

Senator ROBERTSON. Without objection, it is so ordered.

(The material referred to follows:)

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Employees who left the Corporation to accept positions with banks and/or supervising agencies—Jan. 1 through Dec. 31, 1951

Name	Grade	Salary	Position	Division	Effective date	Name of bank in which located
Allex, Melvin V	GS-7	$4,075	Bank examiner (assistant)	Examination district No. 2	Jan. 12, 1951	New Jersey Department of Banking and Insurance.
Wuench, Leslie C	GS-7	4,075	do	Examination district No. 6	Jan. 27, 1951	Missouri State Banking Department.
Brady, Joseph F	GS-9	4,600	Bank examiner (associate)	Examination district No. 2	Feb. 28, 1951	New York State Banking Department.
Hibbard, Albert L	GS-9	4,600	do	Examination district No. 5	Mar. 16, 1951	Fulton National Bank of Atlanta, Atlanta, Ga.
House, Eugene F	GS-7	3,950	Bank examiner (assistant)	Examination district No. 8	Apr. 27, 1951	Farmers Savings Bank, Princeton, Iowa.
McMennamin, John L	GS-11	5,600	Bank examiner	Examination district No. 1	May 12, 1951	First Auburn Trust Co., Auburn, Maine.
Kennedy, Joseph W., Jr	GS-2	2,950	Mail and file clerk	Examination district No. 2	June 1, 1951	National City Bank of New York.
Morris, Gordon W	GS-7	3,825	Bank examiner (assistant)	Examination district No. 1	June 9, 1951	Deputy Commissioner of Banking, State of Vermont.
Mixon, Eddie P	GS-7	3,825	do	Examination district No. 11	June 15, 1951	The Commercial State Bank, Sinton, Tex
Beal, Mahlon	GS-9	4,725	Bank examiner (associate)	Examination district No. 4	July 13, 1951	Bank of Dahlgren, Inc., Dahlgren, Va.
Neubert, Richard J	GS-7	3,950	Bank examiner (assistant)	Examination district No. 7	July 27, 1951	North Shore State Bank, Shorewood, Wis.
Osswald, Herman, Jr	GS-9	4,725	Bank examiner (associate)	Examination district No. 2	do	The Hudson City Savings Institution, Hudson, N. Y.
Jones, Humphrey L	GS-7	4,075	Bank examiner (assistant)	Examination district No. 3	Aug. 10, 1951	The First National & Farmers National Bank & Trust Co., of Montrose, Pa.
Hughes, Randolph	GS-13	8,000	Director of Personnel	Personnel, Washington, D. C.	Sept. 3, 1951	State Bank Commissioner, Dover, Del.
Jones, Robert L	GS-7	3,950	Bank examiner (assistant)	Examination district No. 7	Sept. 21, 1951	State Bank of Syracuse, Syracuse, Ind.
Groos, John J	GS-11	6,000	Bank examiner	Examination district No. 8	Sept. 28, 1951	Northwest Bancorporation, Minneapolis, Minn.
Perry, Melville W., Jr	GS-11	5,400	do	Examination district No. 10	Sept. 29, 1951	Union National Bank, Wichita, Kans.
Chamberlain, Horace F	GS-11	5,600	do	Examination district No. 9	Oct. 8, 1951	Bank of Galesville, Galesville, Wis.
Harper, H. Thomas	GS-5	3,535	Bank examiner (trust assistant)	Examination district No. 7	Nov. 23, 1951	Indiana National Bank, Indianapolis, Ind.
Hill, James F	GS-9	5,310	Bank examiner (associate)	Examination district No. 3	do	Savings Deposit Bank & Trust Co., of Elyria, Ohio.
Merrill, Lloyd W	GS-9	5,060	do	Examination district No. 1	Dec. 1, 1951	Federal Trust Co., Waterville, Maine.
Nielsen, Kenneth A	GS-11	6,140	Bank examiner	Examination district No. 9	Dec. 14, 1951	West Fargo State Bank, West Fargo, N. Dak.

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RECAPITULATION

Districts	GS-2	GS-5	GS-7	GS-9	GS-11	GS-12	GS-13	Total
No. 1			1	1	1			3
No. 2	1		1	2				4
No. 3			1	1				2
No. 4				1				1
No. 5				1				1
No. 6			1					1
No. 7		1	2					3
No. 8			1		1			2
No. 9					2			2
No. 10					1			1
No. 11			1					1
No. 12								
Personnel, Washington, D. C.							1	1
Total	1	1	8	6	5		1	22

Employees who left the Corporation to accept positions with banks and/or supervising agencies—Jan. 1 through Dec. 31, 1952

Name	Grade	Salary	Position	Division	Effective date	Name of bank in which located
Eggert, Louis S	GS-11	$5,940	Bank examiner	Examination No. 6	Jan. 25, 1952	Trust department of the Indiana Trust Co., Indianapolis, Ind.
Janes, Donald G	GS-9	5,185	Bank examiner (associate)	Examination No. 2	Jan. 11, 1952	Warwick Savings Bank, Warwick, N. Y.
Webb, Newton D	GS-7	4,580	Bank examiner (assistant)	Examination No. 3	Jan. 18, 1952	Avalon Bank, Avalon, Pa.
Nagel, Delmar C	GS-12	7,040	Bank examiner (senior)	Examination No. 7	Jan. 26, 1952	Michigan State Banking Department.
Nance, Walter, Jr	GS-5	3,535	Bank examiner (trust assistant)	Examination No. 6	Jan. 12, 1952	First National Bank, Sarcoxie, Mo.
Lindop, Edward F	GS-9	5,060	Bank examiner (associate)	Examination No. 7	Feb. 15, 1952	Bankers Trust Co. of Indianapolis.
Solly, Howard B	GS-9	5,185	do	Examination No. 3	do	Saving Fund Society of Germantown and Its Vicinity, Philadelphia, Pa.
Parker, Gene E	GS-13	8,760	Bank examiner (head)	Examination No. 6	Mar. 31, 1952	Peoples Bank, Hazard, Ky.
Walker, Harold E	GS-11	5,940	Bank examiner	Examination No. 5	Mar. 28, 1952	Brundidge Banking Co., Brundidge, Ala.
Ansel, Claude J	GS-7	4,205	Bank examiner (assistant)	Examination No. 10	Apr. 23, 1952	First National Bank, Manhattan, Kans.
Baker, Silas E., Jr	GS-7	4,580	do	Examination No. 6	Apr. 16, 1952	Gallatin County Deposit Bank, Warsaw, Ky.
Jernigan, Ralph W	GS-7	4,580	do	Examination No. 5	Apr. 25, 1952	First State Bank, Fitzgerald, Ga.
Klusmann, Emil F	GS-7	4,580	do	Examination No. 2	Apr. 11, 1952	New York State Banking Department.
Shafer, Almond F	GS-15	11,800	Supervising examiner	Examination No. 3	Apr. 30, 1952	First National Bank of Cincinnati.
Stubbs, James B	GS-7	4,455	Bank examiner (assistant)	Examination No. 5	Apr. 21, 1952	Bank of Thomas County, Thomasville, Ga.
Schlatter, Aulden O	GS-5	3,410	Bank examiner (trust assistant)	Examination No. 8	May 2, 1952	Grinnell State Bank, Grinnell, Iowa.
Bergman, Arthur K	GS-7	4,455	Bank examiner (assistant)	Examination No. 10	May 15, 1952	Farmers & Merchants State Bank, Virden, Ill.
Ridgeway, John W	GS-7	4,580	do	Examination No. 6	do	The Paducah Bank, Paducah, Ky.
Cumming, Robert D	GS-7	4,580	do	Examination No. 1	May 24, 1952	Vermont Banking Department, Vermont.
Stamford, Richard B., Jr	GS-7	4,330	do	Examination No. 11	June 5, 1952	Bellmead State Bank, Waco, Tex.
Spartley, Arthur E	GS-7	4,455	do	Examination No. 5	June 13, 1952	Gulf National Bank, Gulfport, Miss.
Clement, Willie O	GS-5	3,535	Bank examiner (trust assistant)	Examination No. 6	June 20, 1952	Peoples Bank of Ripley, Miss.
Bank, Myron J	GS-5	3,410	do	Examination No. 7	June 24, 1952	National Manufacturers Bank, Neenah, Wis.
Blanke, Darwin A	GS-7	4,455	Bank examiner (assistant)	Examination No. 7	July 5, 1952	Cudahy State Bank, Cudahy, Wis.
McBride, Charles W., Jr	GS-7	4,455	do	Examination No. 3	do	Ohio Bankers Association, Ohio.
Eberhardt, Eitel O	GS-7	4,455	do	Examination No. 7	July 18, 1952	Union State Bank, Buchanan, Mich.
Heaney, William J	GS-9	5,185	Bank examiner (associate)	Examination No. 2	July 30, 1952	New York State Banking Department, New York.
Pierce, Clarence V	GS-9	5,310	do	Examination No. 4	July 31, 1952	State Board of Bank Control, South Carolina.
Garfield, Charles	GS-9	5,060	do	Examination No. 2	Aug. 1, 1952	New York State Banking Department, New York.
Petterson, Harvey S	GS-11	6,340	Bank examiner	Examination No. 7	do	West Allis State Bank, West Allis, Wis.
Van Horne, John E	GS-7	4,205	Bank examiner (assistant)	Examination No. 10	do	Walnut Valley State Bank, El Dorado, Kans.
Wagner, Lyle K	GS-11	6,140	Bank examiner	Examination No. 3	Aug. 8, 1952	The Union Bank, Erie, Pa.
Kees, James R	GS-7	4,205	Bank examiner (assistant)	Examination No. 7	Aug. 29, 1952	Auburn State Bank, Auburn, Ind.
Radcliffe, Wesley A	GS-5	4,160	Bank examiner (trust assistant)	Examination No. 1	Sept. 5, 1952	Bridgeport-Peoples Savings Bank, Bridgeport, Conn.

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Yeadon, Fred W., Jr.	GS-7	4,580	Bank examiner (assistant)	Examination No. 8	do	Northwest Bank & Trust Co., Davenport, Iowa.
Leonhardt, Wilburn O.	GS-9	5,060	Bank examiner (associate)	Examination No. 5	Sept. 6, 1952	Lee County Bank, Fort Myers, Fla.
Chapman, Chevus M.	GS-7	4,205	Bank examiner (trust assistant)	Examination No. 11	Sept. 30, 1952	Highland Park State Bank, Dallas, Tex.
Tetrick, Cyril E.	GS-11	5,940	Bank examiner	Examination No. 7	Nov. 21, 1952	First National Bank, Kokomo, Ind.
Reisher, Roger L.	GS-7	4,205	Bank examiner (assistant)	Examination No. 10	Dec. 31, 1952	Home State Bank, Kansas City, Kans.
Shupe, Jasper A. D., Jr.	GS-11	5,940	Bank examiner	Examination No. 2	Dec. 12, 1952	New Brunswick Savings Institute, New Brunswick, N. C.
Baucom, Billy K.	GS-9	5,185	Bank examiner (associate)	Examination No. 4	Dec. 20, 1952	The Bank of French Broad, Marshall N. C.

RECAPITULATION

Districts	GS-5	GS-7	GS-9	GS-11	GS-12	GS-13	GS-15	Total
No. 1	1	1						2
No. 2		1	3	1				5
No. 3		3	1	1			1	6
No. 4			2					2
No. 5		3	1	1				5
No. 6	2	2				1		5
No. 7	1	2	1	2	1			7
No. 8	1	1		1				3
No. 9		1						1
No. 10		3						3
No. 11		2						2
No. 12								
Total	5	19	8	6	1	1	1	41

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Employees who left the Corporation to accept positions with banks and/or supervising agencies—Jan. 1 through Dec. 31, 1953

Name	Grade	Salary	Position	Division	Effective date	Name of bank in which located
Dinsmore, John N	Unal	$11,800	Assistant to Director	Executive, District of Columbia.	Jan. 7, 1953	First National Bank in Dallas, Dallas, Tex.
Milner, Joseph A	GS-11	5,940	Bank examiner	Examination No. 5	Jan. 10, 1953	Warrington Bank, Warrington, Fla.
Burkhart, Herman E., Jr	GS-7	4,205	Bank examiner (assistant)	Examination No. 7	Jan. 30, 1953	Gary National Bank, Gary, Ind.
Ambers, Maurice L	GS-11	6,140	Bank examiner	Examination No. 9	Feb. 20, 1953	Security State Bank, Askov, Minn.
Armstrong, Joseph R	GS-7	4,330	Bank examiner (assistant)	Examination No. 10	Feb. 21, 1953	First National Bank, Pueblo, Colo.
Nortridge, Vale E	GS-7	4,205	do	Examination No. 8	Feb. 27, 1953	German American State Bank, German Valley, Ill.
McClure, James E	GS-9	5,435	Bank examiner (associate)	Examination No. 4	Feb. 28, 1953	The State Bank, Lebanon, Mo.
Moomau, George B	GS-9	5,185	do	do	do	Grant County Bank, Petersburg, W. Va.
White, James B	GS-11	6,340	Bank examiner	do	do	Citizens Bank, Fountain Inn, S. C.
Miller, Louis A	GS-14	10,200	Revenue examiner (Chief)	Examination, District of Columbia.	Mar. 26, 1953	First State Bank, Louisville; Colorado and Lafayette Bank, Lafayette, Colo.
Brown, John M	GS-11	6,340	Bank examiner	Examination No. 12	Mar. 27, 1953	Douglas County State Bank, Roseburg, Oreg.
Klug, Henry E	GS-7	4,580	Bank examiner (assistant)	Examination No. 6	do	The Security Bank, Mount Carmel, Ill.
Schweppe, Oscar E	GS-7	4,205	do	Examination No. 9	do	State Bank of Wonewoc, Wonewoc, Wis.
Savage, Alvin R	GS-7	4,705	do	Examination No. 2	Apr. 3, 1953	The East New York Savings Bank, Brooklyn, N. Y.
Erusha, Donald M	GS-9	5,310	Bank examiner (associate)	Examination No. 8	Apr. 10, 1953	Chelsea Savings Bank, Chelsea, Iowa.
Jaeger, John J., Jr	GS-7	4,330	Bank examiner (assistant)	do	Apr. 24, 1953	First National Bank, West Point, Nebr.
Byrnes, George C	GS-9	5,310	Bank examiner (associate)	Examination No. 2	June 13, 1953	Banking Department, State of New York
McNamara, Lawrence	GS-9	5,310	do	do	do	Do.
Mure, Edward P	GS-7	4,580	Bank examiner (assistant)	do	do	Do.
Prindle, R. Winston	GS-9	5,310	Bank examiner (associate)	do	do	Do.
Schasberger, Howard F	GS-5	3,410	Bank examiner (trust assistant)	do	do	Do.
Johnson, Edward J	GS-11	5,940	Bank examiner	Examination No. 7	June 19, 1953	The First State & Savings Bank, Flushing, Mich.
Carlson, Frank A	GS-9	5,310	Bank examiner (associate)	Examination No. 2	June 20, 1953	Banking Department, State of New York.
Metzger, William J	GS-5	3,410	Bank examiner (trust associate)	do	do	Do.
Cone, Robert L	GS-7	4,455	Bank examiner (assistant)	Examination No. 11	June 26, 1953	Bossier Bank & Trust Co., Bossier City, La.
Race, Albert G	GS-7	4,330	do	Examination No. 8	do	Ottawa National Bank, Ottawa, Ill.
Breslau, Leo	GS-7	4,705	do	Examination No. 2	June 27, 1953	Banking Department, State of New York.
Cleveland, Robert C	GS-9	5,060	Bank examiner (associate)	Examination No. 4	June 30, 1953	South Carolina State Board of Bank Control.
Ludemann, Herbert H	GS-7	4,830	Bank examiner (assistant)	Examination No. 2	July 4, 1953	Banking Department, State of New York.
Meehan, John T	GS-9	5,185	Bank examiner (associate)	do	do	Peekskill Savings Bank, Peekskill, N. Y.
Biddle, Elgin M	GS-9	5,310	do	Examination No. 12	July 17, 1953	First National Bank, Port Angeles, Wash.
Hurley, Paul E	GS-7	4,455	Bank examiner (assistant)	Examination No. 2	July 31, 1953	Bank of Millbrook, Millbrook, N. Y.
Miller, Bernard D	GS-7	4,580	do	Examination No. 8	do	Drovers National Bank, Chicago, Ill.
Russell, John H	GS-14	10,400	Attorney (Chief of Section)	Legal, District of Columbia	do	Bank of Elmwood Park, Chicago, Ill.
Brockman, John D	GS-9	5,060	Bank examiner (associate)	Examination No. 8	Aug. 28, 1953	Mahaska State Bank, Oskaloosa, Iowa.

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McNulty, Richard V	GS-5	3,410	Bank examiner (trust assistant)	Examination No. 2	Sept. 15, 1953	Banking Department, State of New York.
McLaughlin, Harold V	GS-11	5,940	Bank examiner	Examination No. 12	Sept. 30, 1953	Ione State Bank, Ione, Wash.
Landis, Ward C	GS-7	4,205	Bank examiner (assistant)	Examination No. 7	Oct. 2, 1953	First National Bank of New Bremen, Ohio.
Trimble, Glenn W., Jr	GS-9	5,310	Bank examiner (associate)	Examination No. 10	Oct. 10, 1953	First State Bank, Walsenberg, Colo.
Hitchcock, Ned	GS-11	6,340	Bank examiner	Examination No. 3	Dec. 11, 1953	Second National Bank & Trust Co., Hamilton, Ohio.
Hamilton, William J	GS-13	8,360	Bank examiner (head)	Examination No. 2	Dec. 19, 1953	Amoskeag Savings Bank of Manchester, N. H.

SUMMARY—TURNOVER JAN. 1 THROUGH DEC. 31, 1953

Districts	Total turnover, all reasons								
	GS-5	GS-7	GS-9	GS-11	GS-12	GS-13	GS-14	GS-15	Total
No. 1		1							1
No. 2	4	8	6			1			19
No. 3	2	1		1					4
No. 4	1		3	2					6
No. 5	2	1		1					4
No. 6		1							1
No. 7	2	3	2	1					8
No. 8	1	5	2						8
No. 9	1	6		1					8
No. 10	2	2	1	1			1	1	8
No. 11	2	2						1	5
No. 12	2	1	1	2					6
Total	19	31	15	9	0	1	1	2	78
Departmental									
Total									

Districts	Total turnover to accept positions with banks, etc.									
	GS-5	GS-7	GS-9	GS-11	GS-12	GS-13	GS-14	GS-15	Unallocated	Total
No. 1										0
No. 2	3	5	5			1				14
No. 3				1						1
No. 4			3	1						4
No. 5				1						1
No. 6		1								1
No. 7		2		1						3
No. 8		4	2							6
No. 9		1		1						2
No. 10		1	1							2
No. 11		1								1
No. 12			1	2						3
Total	3	15	12	7	0	1	0	0	0	38
Departmental							2		1	3
Total	3	15	12	7	0	1	2	0	1	41

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Employees who left the Corporation to accept positions with banks and/or supervising agencies—Jan. 1 through Dec. 31, 1954

Name	Grade	Salary	Position	Division	Effective date	Name of bank in which located
Wagner, Donald R	GS-9	$5,185	Bank examiner (associate)	Examination No. 3	Jan. 2, 1954	Citizens National Bank of New Philadelphia, Ohio.
Goodenough, Frank B	GS-7	4,830	Bank examiner (assistant)	Examination No. 5	Jan. 15, 1954	West Pensacola Bank, West Pensacola Fla.
Bowman, Charles K	GS-9	5,435	Bank examiner (associate)	Examination No. 2	Jan. 16, 1954	Cortland Savings Bank, Cortland, N. Y.
Mellinger, Duane L	GS-7	4,205	Bank examiner (assistant)	Examination No. 7	Jan. 23, 1954	Bank of Livonia, Livonia, Mich.
Robey, Millard E	GS-7	4,830	do	Examination No. 4	Jan. 24, 1954	Citizens Bank of Maryland, Riverdale, Md.
Coleman, William P	GS-12	7,040	Bank examiner (senior)	Examination No. 1	Feb. 20, 1954	Citizens Trust Co., Providence, R. I.
Arroyo, Ralph C	GS-7	4,205	Bank examiner (assistant)	Examination No. 2	Feb. 27, 1954	New Jersey State Banking Department.
Benson, Edward A., Jr	GS-9	5,435	Bank examiner (associate)	do	do	Department of Banking and Insurance, State of New Jersey.
Carr, Joseph A	GS-9	5,435	do	do	Mar. 13, 1954	New York State Banking Department.
England, Dale R	GS-9	5,185	do	Examination No. 3	do	The First National Bank, Baltimore, Ohio.
Greene, Thomas J., Jr	GS-7	4,955	Bank examiner (assistant)	Examination No. 2	do	New York State Banking Department.
Marsac, David R., Jr	GS-7	4,705	do	do	do	Do.
Ayres, William E	GS-7	4,955	do	do	Mar. 27, 1954	Seamen's Bank for Savings, New York, N. Y.
Palmer, Vincent E	GS-9	5,435	Bank examiner (associate)	Examination No. 9	Apr. 3, 1954	First National Bank, Hudson, Wis.
Thompson, Eugene R., Jr	GS-11	5,940	Auditor	Audit	Apr. 10, 1954	Ypsilanti Savings Bank, Ypsilanti, Mich.
Hartshorn, James W	GS-7	4,205	Bank examiner (assistant)	Examination No. 10	Apr. 23, 1954	Dove Creek State Bank, Dove Creek, Colo.
Barrett, Michael James	GS-7	4,205	do	Examination No. 12	Apr. 30, 1954	Bank of America, San Francisco, Calif.
Mullins, Nicholas A., Jr	GS-9	5,435	Bank examiner (associate)	Examination No. 2	May 15, 1954	West Side Savings Bank, New York, N. Y.
Burges, Richard C	GS-7	4,955	Bank examiner (assistant)	Examination No. 9	May 21, 1954	Security National Bank, Edgeley, N. Dak.
Lane, Robert E	GS-9	5,310	Bank examiner (associate)	Examination No. 2	June 12, 1954	The Trenton Savings Fund Society, Trenton, N. J.
Gavin, John M	GS-6	3,795	Bank examiner (trust assistant)	Examination No. 7	do	Belleville State Bank, Belleville, Wis.
Barber, Harvey C., Jr	GS-7	4,330	Bank examiner (assistant)	Examination No. 5	June 25, 1954	Tallahassee Bank & Trust Co., Tallahassee, Fla.
Barbour, William L., Jr	GS-11	6,140	Bank examiner	Examination No. 6	July 2, 1954	Merchants and Planters Bank, West Memphis, Ark.
Gilliland, Robert L	GS-7	4,330	Bank examiner (assistant)	Examination No. 3	July 16, 1954	The Peoples Bank of Unity, Unity, Pa.
Bauer, Frank W	GS-7	4,830	do	Examination No. 2	July 31, 1954	New York State Banking Department.
Wonus, Dwight L	GS-7	4,330	do	Examination No. 8	Sept. 3, 1954	Federal Reserve Bank of Chicago, Ill.
Paulson, Kermit S	GS-12	7,040	Bank examiner (senior)	do	Sept. 8, 1954	Northwood State Bank, Northwood, Iowa.
Gamache, Roy C	GS-6	3,795	Bank examiner (trust)	Examination No. 9	Oct. 20, 1954	Security State Bank, Warroad, Minn.
Crawshaw, Donald F	GS-7	4,455	Bank examiner (assistant)	Examination No. 7	Oct. 22, 1954	Second National Bank, Hamilton, Ohio.
McDonnell, Archie R	GS-9	5,060	Bank examiner (associate)	Examination No. 5	Dec. 10, 1954	Citizens Bank & Trust Co., Louisville, Miss.
Pitts, Morris	GS-7	4,205	Bank examiner (assistant)	Examination No. 10	Dec. 23, 1954	Bank of Crescent, Crescent, Okla.
Williams, Henry G., Jr	GS-11	5,940	Bank examiner	Examination No. 11	Dec. 31, 1954	Citizens State Bank, San Antonio, Tex.
Hasterok, Paul W	GS-7	4,955	Bank examiner (assistant)	Examination No. 6	do	The Trust Company of Kirkwood, Kirkwood, Mo.
Janson, Lynn D	GS-7	4,330	do	Examination No. 7	do	State Bank of Union Grove, Union Grove, Wis.

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Employees who left the Corporation to accept positions with banks and/or supervising agencies—Jan. 1 through Dec. 31, 1955

Name	Grade	Salary	Position	Division	Effective date	Name of bank in which located
Schmidt, Arthur J	GS-6	$3,795	Bank examiner (trust)	Examination No. 8	Jan. 28, 1955	Delhi Savings Bank, Delhi, Iowa.
Dotson, James I	GS-6	3,795	do	Examination No. 4	Feb. 11, 1955	Winchester Bank, Winchester, Ky.
Carroll, John F	GS-9	5,185	Bank examiner (associate)	Examination No. 10	Mar. 15, 1955	Cherry Creek Bank of Denver, Colorado.
Larson, Merle P	GS-7	4,330	Bank examiner (assistant)	Examination No. 9	Mar. 18, 1955	Peoples & Enderlin State Bank, Enderlin, N. Dak.
Burton, Charles C., Jr	GS-11	5,940	Bank examiner	Examination No. 5	Apr. 25, 1955	Wilton Manor National Bank, Fort Lauderdale, Fla.
Weeks, John T	GS-12	7,040	Bank examiner (senior)	Examination No 4	Apr. 30, 1955	Bank of Greenwood, South Carolina
Cutler, G. Thomas	GS-7	4,330	Bank examiner (assistant)	do	May 7, 1955	First National Bank of Baltimore, Maryland.
Van Valkenburg, John H	GS-6	3,795	Bank examiner (trust)	Examination No 5	May 13, 1955	State bank examiner, State of Florida, Miami, Fla
Hoffer, Harold L	GS-9	5,185	Bank examiner (associate)	Examination No. 7	May 27, 1955	Exchange State Bank, Wakarusa, Ind.
Gidley, Gerard P	GS-7	4,330	Bank examiner (assistant)	Examination No. 6	June 3, 1955	Bank of Bloomdale, Bloomdale, Mo.
Rife, Stanford H	GS-7	4,330	do	Examination No. 11	do	Lampasas Federal Savings & Loan Association, Lampasas, Tex.
Stuur, Richard E	GS-7	4,330	do	Examination No. 7	June 5, 1955	Michigan State Banking Department.
Timmins, Thomas F	GS-7	4,525	do	Examination No. 2	June 30, 1955	Banking Department of the State of New Jersey.
Wagner, Roger F	GS-7	4,795	do	do	do	Do.
Zalokar, Robert H	GS-9	5,440	Bank examiner (associate)	Examination No. 4	do	The Old Dominion Bank, Arlington, Va.
Lilleberg, Wayburne W	GS-7	4,930	Bank examiner (assistant)	Examination No. 9	July 1, 1955	Northwest Bancorporation, Minneapolis, Minn.
Brewer, Earl C	GS-7	4,795	do	Examination No. 7	July 8, 1955	Fort Washington State Bank, Fort Washington, Wis.
Mills, I. Robert	GS-7	4,660	do	Examination No. 5	July 22, 1955	St. Petersburg Bank, St. Petersburg, Fla.
Illari, Peter J	GS-6	4,080	Bank examiner (trust)	Examination No. 2	July 30, 1955	Federal Reserve Bank of New York.
Simpkins, Roger W	GS-9	5,575	Bank examiner (associate)	Examination No. 4	July 31, 1955	Chestertown Bank of Maryland, Chestertown, Md.
Krauspe, Harry F., Jr	GS-9	5,440	do	Examination No. 8	Aug. 19, 1955	Belmont National Bank, Chicago, Ill.
Angell, John F	GS-13	9,205	Bank examiner (head)	Examination No. 10	Aug. 27, 1955	First National Bank of Colorado Springs, Colo.
Wiseman, Odell H	GS-13	8,990	do	Examination No. 3	Sept. 2, 1955	Liberty Real Estate Bank & Trust Co., Philadelphia, Pa.
Caldwell, Douglas W	GS-11	6,605	Bank examiner	Examination No. 11	Sept. 9, 1955	First National Bank of Pueblo, Colo.
Schall, Herbert W., Jr	GS-7	4,795	Bank examiner (assistant)	Examination No. 3	Nov. 10, 1955	Union Bank & Trust Co., Bethlehem, Pa.
Belcher, George W	GS-12	7,785	Auditor (senior)	Audit	Nov. 15, 1955	Security National Bank of Reno, Reno, Nev.
Simmons, Harold C	GS-6	4,080	Bank examiner (trust)	Examination No. 11	Dec. 3, 1955	Iredell State Bank, Iredell, Tex.
Herndon, Francis H	GS-9	5,440	Bank examiner (associate)	Examination No. 4	Dec. 24, 1955	First National Bank of South Carolina.
Quinn, William R	GS-7	4,795	Bank examiner (assistant)	Examination No. 7	Dec. 30, 1955	Northwestern State Bank, Cumberland, Wis.
Harrison, George H	GS-9	6,250	Bank examiner (associate)	Examination No. 5	Dec. 31, 1955	Bank of Dade, Trenton, Ga.
LaPorte, Joseph, Jr	GS-7	4,795	Bank examiner (assistant)	Examination No. 6	Dec. 31, 1955	Fountain City Bank, Fountain City, Tenn.

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Employees who left the Corporation to accept positions with banks and/or supervising agencies—Jan. 1 through July 31, 1956

Name	Grade	Salary	Position	Division	Effective date	Name of bank in which located
Kariotis, Paul C	GS-7	4,525	Bank examiner (assistant)	Examination No. 12	Jan. 15, 1956	Federal Home Loan Bank Board.
Humphries, Calvin G	GS-6	4,080	Bank examiner (trust)	Examination No. 6	Feb. 3, 1956	Memphis Bank & Trust Co., Memphis Tenn.
Unger, Andrew F	GS-7	4,660	Bank examiner (assistant)	Examination No. 2	Feb. 18, 1956	New York State Banking Department.
McDonald, Thomas E	GS-7	4,660	do	do	do	Do.
Gassman, Bernard	GS-7	4,795	do	do	do	Do.
Collins, William E	GS-7	4,795	do	do	do	Do.
McCarthy, Daniel P	GS-7	4,795	do	Examination No. 1	Feb. 19, 1956	Federal Home Loan Bank Board.
Holt Gerald F	GS-9	5,440	Bank examiner (associate)	Examination No. 12	Feb. 26, 1956	Do.
Closson, Roy D	GS-7	4,660	Bank examiner (assistant)	do	do	Do.
Campbell, Keith W	GS-7	5,200	do	Examination No. 8	Mar. 9, 1956	La Salle National Bank, Chicago, Ill.
Thompson, Helen S. (Miss)	GS-7	5,065	Financial economist	Research and statistics	do	Federal Reserve Bank, Cleveland, Ohio.
Sells, Norris B	GS-7	4,660	Bank examiner (assistant)	Examination No. 12	Mar. 11, 1956	Federal Home Loan Bank Board.
Luse, Willard O	GS-7	4,525	do	Examination No. 11	Apr. 13, 1956	Lake Jackson State Bank, Lake Jackson Tex.
Poehlitz, Charles L	GS-11	6,390	Bank examiner	Examination No. 12	Apr. 14, 1956	First National Bank of Portland, Oreg.
Lovell, Frederick F., III	GS-11	6,390	Auditor	Audit	Apr. 20, 1956	California Bank of Los Angeles, Calif.
Brand, Newton G., Jr	GS-6	4,215	Bank examiner (trust)	Examination No. 11	May 4, 1956	Bank of the Southwest, Houston, Tex.
Bushong, Dorman F	GS-9	5,440	Bank examiner (associate)	Examination No. 6	June 1, 1956	Farmers and Merchants Bank, Rogers, Ark.
Mohan, John J	GS-7	4,660	Bank examiner (assistant)	Examination No. 3	June 10, 1956	Federal Home Loan Bank Board.
Capuano, Dominic M	GS-7	4,795	do	Examination No. 2	June 14, 1956	New York State Banking Department.
Ireland, Clare T	GS-14	10,535	Bank examiner (senior head)	Examination No. 8	July 13, 1956	Southmoor Bank & Trust Co., Chicago, Ill.
May, Donald L	GS-7	4,525	Bank examiner (assistant)	Examination No. 10	July 20, 1956	Citizens State Bank, Morland, Kans.

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Senator DOUGLAS. This is a comment that I wish to make. We have had the most extraordinary banking practices going on in another Chicago bank, the Southmoor Bank—fake warrants cashed, large sums of money running at least to a million-and-a-half and possibly more, handled out of a secret envelope. These transactions were taking place while the bank was under examination, and I think in some cases the fake warrants were being cashed, the transactions were going on at the very time when your examiners were in the bank, physically in the bank.

Mr. COBURN. Senator, may I——

Senator DOUGLAS. Just a moment. Do you think this may indicate the necessity for tightening up your examining procedures?

Mr. COBURN. Senator, anybody that is familiar with bank examination techniques can realize that what occurred there can happen in any instance and tightening up laws or requiring audits is not going to remedy that. An examination of a bank the size of the Southmoor Bank requires some 3 to 6 weeks. We had some 10 or 11 men in on the examination. They took the cash position of the bank at the opening of the examination. But they do not follow the teller transactions of the bank after that time. That is not part of the techniques of bank examination. Bank examination is the asset appraisal and management appraisal of the bank. And it would only be a mere happenstance to catch such a transaction. And I think it is unfair for you and for others to make some unfavorable reflection on the Corporation or the capacity of its personnel, or its techniques, because that happened.

Senator DOUGLAS. Is it not true that one of the chief bank examiners in your Chicago office assumed the office of president of the bank, of the Southmoor Bank?

Mr. COBURN. Yes, sir; that is true.

Senator DOUGLAS. Mr. Ireland—at a higher salary.

Mr. COBURN. Very small higher salary. And if we were to go into the circumstances of that, I think you would even agree that there was nothing improper or wrong about it. Shall we go into the circumstances of it?

Senator DOUGLAS. Certainly, I think you should have a chance to do that.

Mr. COBURN. Here is a bank which the two chief executive officers were under indictment. The bank had no executive management available to it. We had an examiner who was ready for retirement and planned to retire. The State banking authority recommended——

Senator DOUGLAS. The State banking authority was Mr. Hodge.

Mr. COBURN. Mr. Sorenson, Lyman Sorenson.

Senator DOUGLAS. But he worked under Mr. Hodge.

Mr. COBURN. He worked under Mr. Hodge—presently working under Mr. Morey. And he recommended to the board that they contact Mr. Ireland. They did. Mr. Ireland went in. And we think that saved the day for the bank. It gave some credit to the institution. He was a man with some banking experience. He stayed only about 2 weeks.

Senator DOUGLAS. He stayed only until the full disclosure of the cashing of the fake warrants was published.

Mr. COBURN. He knew about that.

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Senator DOUGLAS. He knew about the cashing of the fake warrants, and yet he went in as president of the bank?

Mr. COBURN. He knew that it happened before he went in. All of these transactions are transactions that occurred before Mr. Ireland assumed his post. But he assumed the post with the knowledge that the transactions had occurred.

Senator ROBERTSON. The Chair regrets that we cannot complete the examination of the FDIC witnesses this afternoon. We have reached the period when normally the committee is recessed. If it is agreeable, the Chair suggests that the committee stand in recess until 9:30, and these witnesses will return, and Senator Douglas will have the floor. He can also get the chief counsel for our committee, who participated in the hearings in Chicago, to ask some questions, if he wishes.

Senator DOUGLAS. Thank you very much.

Senator ROBERTSON. We will stand in recess until 9:30.

(Whereupon, at 5:05 p. m. the committee was recessed until 9:30 a. m., Saturday, November 10, 1956.)

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STUDY OF BANKING LAWS

SATURDAY, NOVEMBER 10, 1956

UNITED STATES SENATE,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D. C.

The committee met, pursuant to recess, in room 318, Senate Office Building, at 9:40 a. m., Senator A. Willis Robertson, acting chairman, presiding.

Present: Senators Robertson, Douglas, and Beall.

Also present: Donald L. Rogers, counsel; and Robert A. Wallace, staff director, Banking and Currency Committee.

Senator ROBERTSON. The committee will please come to order.

I anticipate that my colleague from Illinois will be here shortly because he indicated to me when we recessed on yesterday that he had a few more questions to propound. Until he comes the Chair will now recognize Mr. Cravens to inquire.

Mr. COBURN. May I interrupt just a minute, Mr. Cravens?

Mr. CRAVENS. Yes, sir.

STATEMENTS OF H. E. COOK, CHAIRMAN, FEDERAL DEPOSIT INSURANCE CORPORATION; ACCOMPANIED BY MAPLE T. HARL, MEMBER; ROYAL L. COBURN, GENERAL COUNSEL; NEIL G. GREENSIDES, ACTING ASSISTANT TO THE CHAIRMAN; AND WILLIAM G. LOEFFLER, CONTROLLER, FEDERAL DEPOSIT INSURANCE CORPORATION—Resumed

Mr. COBURN. We have overnight decided we would like to have the privilege of withdrawing our statement in reference to the first recommendation that was submitted as a supplement to those that were published, so that we may provide a more sound and valid reason for the recommendation. We have copies to submit.

Senator ROBERTSON. That request will be, of course, granted, but if your original recommendations are the subject of questions we could not take it completely out of the record. You can show you have amended it.

Mr. COBURN. The recommendation is still the same. The basis for it is primarily the purpose of the action.

(The recommendation referred to follows:)

POWER TO REQUIRE AUDITS OF INSURED BANKS

Existing law

None.

Recommendations

It is recommended that legislation be enacted to provide authority for the Board to require an audit of an insured bank by a certified public accountant in

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any case where it determines, in its discretion, that the affairs of the bank are in such state that its books and records may not reveal its true condition and that the costs of the audit and report be added to the assessment otherwise payable by the bank in those instances where the bank refuses to have such an audit, and it is necessary for the Corporation to cause one to be made.

Reasons

It is the responsibility of bank management to establish and maintain adequate bookkeeping procedures and to provide satisfactory internal controls. However, some banks do not meet this responsibility. Under such circumstances it is exceedingly difficult to conduct a satisfactory examination and arrive at a satisfactory appraisal of a bank's condition. It would be possible for the examining authorities to conduct appropriate audits, but to do so would constitute an assumption of the duties and responsibilities of bank management and ownership. To conduct such audits would impose unreasonable costs upon the Corporation and consequently to the other insured banks. Further, were the examing agencies to assume such responsibilities management and ownership would tend more and more to rely upon the examining authorities for the accuracy of their recordkeeping and the maintenance of their controls with resultant ill effect upon the banking system. The judicious exercise of the authority requested would facilitate the determination of the condition of dilatory banks, would have a salutary effect upon their managements, and, therefore, would be helpful to bank stockholders as well as be beneficial to the Corporation.

Mr. CRAVENS. I think the first question might be better directed to the members of the Board.

It has been suggested that possibly the Board should be replaced by a single Administrator. How do you feel about that?

Mr. COOK. I feel absolutely against it, Mr. Chairman. We feel that the 3-man Board has functioned satisfactorily ever since creation of the Corporation, and we do not subscribe to the idea of the 1-man Board.

Mr. CRAVENS. Should the Comptroller be on the Board? We have heard testimony he should not be.

Mr. COOK. My experience has been that I have served under two Comptrollers, both Mr. Delano and Mr. Gidney—it has worked out splendidly and there has been no conflict of interest.

Mr. CRAVENS. Should it be expanded to include possibly a Federal Reserve representative, or some State supervisors?

Mr. COOK. I do not think so. No, sir; I think the Board is functioning satisfactorily.

Mr. CRAVENS. The Comptroller of the Currency recommends that the Federal Deposit Insurance Corporation be appointed receiver of any insured national bank in receivership. Do you agree to that particular recommendation No. 32?

Mr. COOK. What is that, Mr. Coburn?

Mr. CRAVENS. That is No. 32, I believe.

Mr. COBURN. Yes; we have agreed to it.

Mr. CRAVENS. You do agree to it?

Mr. COBURN. Yes.

Mr. CRAVENS. I also refer you to the Comptroller of the Currency's recommendation 33, providing for the appointment of conservators. It is quite a lengthy recommendation. What is the attitude of the Federal Deposit Insurance Corporation with respect to that?

Mr. COBURN. So far as the original recommendation was concerned we were rather violently opposed to it because it would permit the Comptroller to hold a closed bank in status quo so that the insured deposits could not be paid off. Since the original suggestion I have

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worked with Mr. Jennings on a redraft of it and we have finally, I think, agreed on a redraft. I don't know what Mr. Gidney spoke about when he testified, but if it is in reference to the amended draft we are in accord in our thinking on it.

Mr. CRAVENS. Have we seen an amended draft?

Mr. ROGERS. It has been suggested. May I ask a question?

Mr. CRAVENS. Yes.

Mr. ROGERS. Mr. Coburn, do you think it is necessary to have this Bank Conservation Act, in view of the fact that we have the Federal Deposit Insurance Act to handle the same type of problem?

Mr. COBURN. It was our feeling, that it was not absolutely necessary. Mr. Jennings thought it should be sort of a standby authority. As he expressed it, "we probably won't use it more than once in a blue moon, but I would like to have it in the act." We are not proposing it, but just commenting in reference to it.

Mr. ROGERS. To your knowledge, has the Bank Conservation Act ever been used?

Mr. COBURN. Not recently. I do not think it has been used since the Corporation——

Mr. ROGERS. It was enacted before the FDIC Act.

Mr. COBURN. That is right.

Mr. ROGERS. I think that took care of the job really.

Mr. COBURN. Yes.

Mr. ROGERS. It was an emergency measure in 1932.

Mr. COBURN. As I understand it, the sole purpose of the recommendation is that in cases—it would probably happen only in shortage cases—it would give the Comptroller time to get information and enable the bank to reestablish itself, and would not just automatically wipe out the bank.

Mr. ROGERS. My only point is, why should we do this with national banks and not all others? Why not have a similar procedure for all others?

Mr. COBURN. It would be impossible for us, Mr. Rogers, to provide that for State banks, because they are subject to State law, and in some States they have some similar provisions there.

Mr REESE. Could I ask a question?

Mr. ROGERS. Yes.

Mr. REESE. It is rather confusing. Was it the intention of that to have the bank go along and do a normal business and accept deposits?

Mr. COBURN. No. As amended the draft contemplated it, the bank would be closed, in effect; that the payment on insured deposits would go forward just the same as any regular receivership.

Mr. REESE. That was not clear in the statement we had. We did not understand whether it was just trying to throw a bank up in the air and hold it in abeyance while you investigated it.

Mr. COBURN. The final draft contemplated it would not accept deposits or do any business.

Mr. REESE. Then it is purely a technical thing and you would like to have machinery whereby a study could be made and you will have some written understanding.

Mr. COBURN. That is right. So in the case a bank finds it necessary to close then Mr. Jennings or the Comptroller wanted authority to try

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to rehabilitate the bank if it could be done. If a receivership is appointed for liquidation, then it is too late.

Mr. Reese. Yes.

Mr. Cravens. I would like to refer you to the Comptroller's recommendation 37, which provides that the FDIC should pay, I think, up to 50 percent of the examination costs of the Comptroller. What is the position of the Federal Deposit Insurance Corporation with respect to this recommendation?

Mr. Coburn. I think the Board members can speak on that.

Mr. Cravens. We would like to have them do it.

Mr. McCloy. Is that the right interpretation of that statute? Is it 50 percent of the cost of the Comptroller's examination, or 50 percent of the cost of the examination that he wants to have?

Mr. Coburn. As I understand the proposal, it is 50 percent of the amount of money it costs us to make the examination of the State banks.

Mr. McCloy. That is what I understand.

Mr. Cook. Personally I would not concur in that suggestion, sir. The State banks under the State laws pay for their examinations. Having been on the national banking side most of my life, I know what it is to pay for national banking examinations. While the Federal Deposit Insurance Corporation makes no charge for its examinations, yet it has to review the reports of examinations of both national banks and State member banks, and for that reason we feel it would not be a fair arrangement for the State banks who contribute to the fund to pay a part of the costs of examination of national banks.

I would like to have Director Harl express his views on that.

Mr. Harl. I concur in that regard. And furthermore, it is wrong—you know, under the present formula after the deduction of operating costs underlying losses and reserve for losses, 60 percent of the residual goes back to the banks in the form of a dividend. Consequently it would not only materially cut the earnings of the Corporation which flow back to the banks, but likewise it is a discriminatory measure against State-chartered banks who are examined gratuitously, but do pay for the examinations made by the State bank commissioner. Therefore I concur with the Chairman in that regard.

Mr. Cravens. In the Federal Reserve's recommendation No. 77 they point out the inconsistencies in their interpretation of the law, and yours, with respect to what is considered payment of interest, primarily, I guess, directed to the absorption of exchange. They recommend on one basis or the other it be uniform. What is your opinion on that?

Mr. Coburn. Our view in the Corporation is this: It has been a long-time problem which is highly controversial. The Federal Reserve Board is given authority under their act to define interest. The Corporation was never given that authority. At the time of the creation of the Corporation the absorption of interest was not deemed to be the payment of interest. Therefore the Corporation has insisted that it should not be deemed interest.

The matter was presented to Congress some 10 years ago and it was our position then that if it was to be deemed to be the payment of interest, that is, the absorption of exchange, Congress should expressly so provide. We feel that Congress should so expressly provide. There

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is no doubt that there is unfairness when one bank can absorb it and another bank cannot, depending on whether or not it is a member of the Federal Reserve System. But we think that that is a matter which should be decided by Congress, and should not be done indirectly under present law.

Mr. CRAVENS. It would be acceptable to you then to have identical language with the Federal Reserve, whatever that may be?

Mr. COBURN. That is right. That is right.

Mr. CRAVENS. You believe that only in that way will you be able to rule the same as they do?

Mr. COBURN. That is right. I do suggest this: I think it would be bad—I think it would be bad for banking if the definition of interest not refer to the indirect benefits as it does now. We now provide payments "directly and indirectly." There are so many prize programs and giveaways and exchanges, and so forth, that are being indulged in, that I think it would make almost folly of our interest restrictions if we relaxed in any way. It had nothing to do, of course, with the absorption of exchange issue, but it is embodied in their recommendation. On that phase of it we think we should maintain status quo.

Mr. CRAVENS. Do I understand that answer to be that you do not favor their suggestion of limiting it to cash or credit?

Mr. COBURN. That is right.

Mr. CRAVENS. You do not agree to that?

Mr. COBURN. That is right.

Mr. CRAVENS. You want it to cover all types of payments, direct and indirect?

Mr. COBURN. That is right.

Mr. CRAVENS. That is right.

Mr. CRAVENS. How does the amount of assessments required by the Federal Savings and Loan Insurance Corporation compare with your assessments on the banking system of the Federal Deposit Insurance Corporation? From the standpoint of comparative costs?

Mr. COBURN. Mr. Cravens, really, we do not pay too much attention to the Savings and Loan. I think they have a formula that is a little less than ours, and it is presently recommended by GAO that it be increased, because the ratio between their surplus fund and their liability has a pretty big spread, and the spread is bigger than contemplated by the congressional enactment. But I really do not know too much about that.

Mr. CRAVENS. While we are on the Savings and Loan Insurance Corporation, do you feel that an officer or director of an insured bank should be permitted to be an officer or director of a savings and loan association, or vice versa?

Mr. COBURN. It is now an accepted procedure. A very substantial portion of the banks does have accounts of savings and loan associations, and there is an interplay with directors. So I do not see any great wrong or impropriety in it.

Mr. CRAVENS. How does the Federal Deposit Insurance Corporation feel about the proposal to permit banks to underwrite revenue bonds, Mr. Coburn?

Mr. COBURN. Well, we have expressed to the Bureau of the Budget at least mild exception to the proposed change. We feel that there was a divorce between banks and investment banking; that it takes

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different criteria in management and experience to properly engage in that sort of activity. The financing of it should not be with depositors' money, and any increased risk to the banks from that kind of activity we frown on at least. We do not violently oppose it, but we think at least you should enlarge those powers very reluctantly.

Mr. CRAVENS. How many banks are not members of the Federal Deposit Insurance Corporation? Roughly?

Mr. COBURN. Mr. Cravens, the group that are not members are the mutual banks in Massachusetts and those in Connecticut. There are about 500 in that category. I would say there are probably less than 500 other banks that are not members.

Mr. CRAVENS. The purpose of this question was to get into the record, eliminating that first group and taking the other 500, let us say, what is the main reason why they are not insured. Is there anything that you would like in the statute that would give you a better position to get them in?

Mr. COBURN. I do not think that there is anything in the statute that would enable us. For instance, until the last 2 years the banks out in Kansas were not generally members of the Corporation. They have had two failures out there of uninsured banks in the last 2 years, and we have had a considerable number of applications coming in from the State of Kansas.

I think the principal difficulty is that the public does not recognize that certain uninsured banks are not in fact insured, and from the mere fact that they operate as banks the public just assumes they are insured.

Mr. CRAVENS. What is the greatest deterrent to the bank itself wanting to be? I think that is the question we are trying to get to.

Mr. COBURN. Mr. Cravens, I do not know of any reason. I think that, of course, there is an assessment to pay, and there is a premium or cost involved, but I have never heard it suggested in any discussion of any group of bankers that the matter of assessment was a deterrent to membership in the Corporation. I would think, and I know in talking to the mutual bankers up in Massachusetts about making them eligible, that it was the strictness of our examination which was a more important factor than the assessment was a deterrent.

Senator ROBERTSON. Mr. Cravens, may I interrupt?

Mr. CRAVENS. Yes.

Senator ROBERTSON. Is it not possible that those banks that will not come under your control do not want to be examined by the Federal agencies?

Mr. COBURN. I think that is it, pretty largely. It is a matter of examination rather than assessments, but Mr. Harl or Mr. Cook might better answer that.

Mr. COOK. As Mr. Coburn has stated, we endeavor to make our examination meticulous for the soundness of the bank and the safety of the depositors, and in some cases there might be some objection to that by some of the banks. We have certain capital requirements and if you take undercapitalized banks that refuse to bring their capital up to what should be the proper proportion, of course they object to putting in the capital and naturally, we will not take them unless they are properly capitalized and properly managed.

Senator ROBERTSON. Do you not think if proper publicity were given to the difference between an insured bank with $10,000 of safety, no

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matter what happens to the bank, and the depositor does not lose up to that point, the difference between that and an uninsured bank, that there would be mighty few banks that could survive if they did not come in?

Mr. COOK. Senator, that is one of the reasons why in our act it is specified that in every bank that is insured each teller's window receiving deposits must have a sign to indicate that the deposits are insured. The public and some people are under the impression their banks are insured when they are not, but the public itself has not taken notice of that, that is, to a limited extent. By and large they have.

Senator ROBERTSON. That is all.

Mr. CRAVENS. Mr. Harris.

Mr. HARRIS. Has consideration been given to simplifying the assessment base such as the Maybank proposal?

Mr. COBURN. Yes. That has been discussed repeatedly to try to find a simpler formula, and we are ever looking for a simpler formula.

Mr. COOK. The 1950 act did substantially simplify the reporting work of the banks.

Mr. HARRIS. Could it not at least be tied in to the call reports?

Mr. COBURN. Mr. Harris, we have been working on that and that is really not just as simple as would appear at first blush, because presently there is no strict definition as to what goes into the call report on line 19, for instance. We would have to couch it in legal terms so that there would be a complete uniformity. I am informed by hearsay rather than my own personal knowledge that there is not a complete uniformity among the various banks of the Nation as to what goes into line 19, for instance, of the call report.

We are trying to, and I may say within NABAC, find a solution. Mr. Loeffler, our Controller, while we were out in Los Angeles and San Francisco, discussed it, and we had conferences with NABAC representatives on the subject. If we come up with a solution it will be helpful to us as well as to the banks.

Mr. CRAVENS. Do I understand you did not come up with a solution when you were together?

Mr. COBURN. No. We have not arrived at a solution. We may be on our way to one, but it is not worked out yet.

Mr. HARRIS. It would be highly desirable in this day of personnel shortages.

Mr. COBURN. It would probably be more helpful to us than any individual bank, I would say, but we are quite conscious of it, and we are trying to work out some formula, and will continue to do so, I assure you.

Mr. HARRIS. On your recommendation 92, we wonder whether the transferred deposits from a closed bank should not be of exactly the same kind as they were in the closed bank. In other words, should a time deposit become a demand deposit?

Mr. COBURN. Well, our position on that is that we are paying the assuming bank an outlay of cash or its equivalent, for assuming the deposit. On the other hand, we are requiring the depositor to do business with a new bank.

The depositor should have the option of doing business with the bank that he himself chooses. Therefore, we think it is desirable in all instances that a transferred deposit be payable to the depositor on demand in cash.

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Mr. HARRIS. But realizing that you are giving the depositor a little more than he had in the closing?

Mr. COBURN. That is right. I appreciate that, but we are also dealing with a bank that we picked out, that he did not pick out.

Mr. HARRIS. That explains it.

We have a little difficulty with your recommendation 91 on page 122. It does not seem to us that the recommendation and the reason are quite consistent.

Mr. COBURN. Let me explain that. On time and savings deposits the bank ordinarily accrues the interest either quarterly or semi-annually. Any account on which the interest has been accrued, the insured portion of the deposit includes the interest. But let us assume that a bank that accrues semianually closes and there is 5 months and 25 days' interest that has accumulated but it has not been posted. We think that these depositors should not lose that 5 months and 25 days of interest that has not been posted. That is all we propose; to make accrued but unposted interest insured.

Mr. HARRIS. So it just depends on whether the bank has actually done the work of calculating the interest and putting it in the book?

Mr. COBURN. In the ordinary course of events it would not be up to date because it only makes those postings periodically, and by doing this it makes all accumulated interest or earned interest payable. It would not have been ordinarily posted on the books.

Mr. HARRIS. It is a small point, but you say in your recommendation "any interest accruing up to the date of the closing of an insured bank" should be insured deposits. Then down below you say if it has not been actually calculated and put on the books you do not insure it.

Mr. COBURN. As of today we do not insure it. In other words, as of today if you have a savings account of $1,000 and the interest—the bank closes, let us say, under a status of when you have 5 months and 25 days' interest unposted. Your principal amount is an insured claim and your interest is a general claim, and we want to make the whole an insured claim. It is really not a great thing.

Mr. HARRIS. It is not.

Mr. COBURN. But I think it will be administratively more uniform for the depositors.

Mr. HARRIS. We would be interested in anything that you can offer us with respect to your thinking on the accumulation of reserves of the Federal Deposit Insurance Corporation, realizing that it is a very difficult subject. But have you had any discussions or efforts to come up with a recommendation for the probable maximum size of reserves related to deposit liability?

Mr. COBURN. We have made and are continuing studies on that all the time. We do feel that if there is any adjustment on the size of the reserve fund it should have or there should be a definite relationship of the fund to the insured risk. The insured risk, of course, would be the insured deposits. Our method of collecting information makes it somewhat difficult, if not impossible to get an exact figure on the insured deposits, we have information on total deposits. So I suggest that the ratio or relationship be in reference to total deposits as distinguished from insured deposits for that reason.

Now then, at the time the Corporation was organized it started with a capital contributed by the Federal Reserve banks and by the Treas-

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ury Department of $289 million. There was a ratio between insured deposits and the risk at that time which was approximately the same as it is now. In other words, our fund—even though the stock has been retired, our fund now bears substantially the same relationship to the total deposits in insured banks that it did back in the thirties. In other words, the deposit volumes of banks have increased about five times, just as our fund has.

Under the present formula the fund is increasing about at the same rate proportionately as the total deposits of insured banks. Therefore, as long as that continues we see no proper reason why the formula should be amended.

Senator ROBERTSON. Will the gentleman from Connecticut yield?

Mr. HARRIS. Yes.

Senator ROBERTSON. As I understand your position, you have a billion and a half dollars of reserves of your own, and you have the privilege of calling on the Treasury Department for another $3 billion?

Mr. COBURN. Yes, sir.

Senator ROBERTSON. You have potential liabilities of $200 billion if everybody failed at once.

Mr. COBURN. Yes.

Senator ROBERTSON. Unless somebody can tell you how many are going to fail at a given time and with what deposits, you could not make a mathematical estimate of how much you would need.

Mr. COBURN. That is right.

Mr. CRAVENS. What rhyme or reason is there to compare this to the total deposits when they are only insured up to $10,000?

Mr. COBURN. I just suggested that, Mr. Cravens. The reason why we are doing it is that there is not any accurate way we have at the present time of arriving at the insured deposits.

Mr. CRAVENS. Why haven't you? Is there not a way to get it? That is your liability.

Mr. COBURN. The banks object now to all of the information we ask them. Every 5 years we get information about the insured deposits. It is doubtful whether that is completely accurate, because there is no comparison made between the several kinds of accounts maintained in the same capacity to see whether or not the information is accurate. The relationship and the information concerning total deposits is available to us. If a bank fails all of the deposits are involved. So for the sake of having an easy and reasonable figure to use in calculations I do suggest that the relationship be fixed in reference to total deposits.

Mr. CRAVENS. It may be easy but it is meaningless. You do not suggest for a minute that there are 5 times as many $10,000 accounts as there were when you started it, do you?

Mr. COBURN. The ratio between insured and uninsured deposits remains substantially the same. Yes.

Mr. CRAVENS. But I mean the increased deposit liability of the banking system is probably more in larger accounts.

Mr. COBURN. The figures show that the relationship in the amount of insured deposits as compared to the whole of the deposit volume is substantially the same today. It has not varied through the years substantially.

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Mr. CRAVENS. Then you do have the figure of your insured liability then?

Mr. COBURN. Yes. We get figures on it. As I say, every 5 years, Mr. Cravens.

Senator DOUGLAS. What is that ratio of insured deposits to total deposits?

Mr. COBURN. At the present time the ratio as of December 1955 was 0.77 percent.

Senator DOUGLAS. What is that?

Mr. COBURN. 0.77 percent.

Senator DOUGLAS. You mean 77 percent of all deposits are under $10,000?

Mr. COBURN. No. The ratio of our reserve fund to the total deposit volume. We were probably not talking about the same thing. You wanted to know what portion of total deposits are insured?

Mr. CRAVENS. That is correct.

Mr. COBURN. If you will just give me a minute I will have it. It is in our annual statement. It is around 55 percent, but I would like to get the exact figure on it. It is 54.8 percent.

Senator DOUGLAS. Then above half of the total deposits are really deposits of over $10,000?

Mr. COBURN. That is right; yes, sir.

Mr. CRAVENS. Should we assume it is the view of the Board that the ratio of capital when the Corporation was established, to its then liability, is roughly the proper proportion of the reserves that it should maintain?

Mr. COBURN. There has never been anyone in Congress or anybody else that I can see—and I come as a newcomer in this field—I do not see that there has been any attempt to get a proper relationship. Whether it should be 75 percent, or 1 percent, or 2 percent, or 5 percent—nobody seems to have given that any serious consideration. Frankly, my own point of view just personally is it should be 1 percent and the present formula should be continued to operate until it does get to 1 percent, and then if it reaches that point, then I think Congress should take a look to see whether or not some adjustment should be made to maintain it at about that ratio.

Mr. CRAVENS. Should not the actual experience in losses be taken into account?

Mr. COBURN. Well, losses to some extent are a criterion, of course. But losses alone are only one factor. For instance, we were required just a few days ago to put up $5 million to pay depositors in a bank in Fort Worth that closed. There was a shortage there of almost $800,000. We are going to recover part of that, but we needed $5 million, or at least $800,000 to put into the bank. So that the amount of our loss is not the criterion to determine the size of the reserve fund. It is the working capital, if you please, that should be the criterion.

Mr. HARRIS. I think you have already answered one question I was going to ask and that is the actual dollar volume of the present insured deposits. You do not know exactly what that is?

Mr. COBURN. Yes. The figures in our annual report show $212 billion total; $116 billion insured.

Mr. HARRIS. Those are approximations?

Mr. COBURN. Well, those are taken from the figures that the Corporation collects.

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Mr. HARRIS. But have they figured it out to the penny or is it just general?

Mr. COBURN. It is to the penny on reports submitted by the banks.

Mr. HARRIS. What is the total of your present reserve fund?

Mr. COBURN. In round figures it is $1,700 million. Do you want it down to the penny?

Mr. HARRIS. No.

How many insured banks are there?

Mr. COBURN. There are 13,449.

Mr. HARRIS. Concerning the matter of examinations, are there State examinations which you think are equal in quality to those of the Federal Reserve or of the Comptroller?

Mr. COBURN. I think Mr. Greensides could probably answer that in reference to quality of examination better than I could.

Mr. GREENSIDES. Yes; I think so.

Mr. HARRIS. After all, could it not be that the Federal Deposit Insurance Corporation could substitute those examinations for its own in the same way that it does the Comptroller's and the Federal Reserve's examinations?

Mr. GREENSIDES. No; I do not believe so. It would put us in the position of evaluating the State supervisory conduct of examinations and procedures and it would create more confusion and difficulty and trouble than good.

Mr. HARRIS. The law does not require you to do that with respect to the Federal Reserve or Comptroller. In other words, you have evaluated them.

Mr. GREENSIDES. The reports of examination, the forms and schedules of the three examining agencies are almost identical. The procedures and the philosophy and techniques are very, very similar. The Federal laws run very closely together, and so we have a common or an almost common and identical procedure and system of evaluation; whereas under your State systems their examinations are geared to their State laws, and there is a variance of philosophy and approach. It would create more confusion to try to accept one and exclude another State and we would be in hot water all the time.

Mr. HARRIS. In other words, when you say they are equal in quality, they do not cover the same ground even then in that case?

Mr. GREENSIDES. The Federal Reserve——

Mr. HARRIS. No. Some of the States.

Mr. GREENSIDES. No. They do not cover the same ground.

Mr. HARRIS. In spite of the fact that they are high quality examinations?

Mr. GREENSIDES. That is right.

Mr. HARRIS. Would it not be desirable from the point of view of saving manpower and expense, however, to try to do something along this line?

Mr. GREENSIDES. I think it is a matter for the States themselves to determine what is adequate for their own banking laws.

Mr. HARRIS. Would it be worthwhile for the dual banking system if this statute were to provide that in the case of State examinations which covered the same ground and had the same philosophy and could be found to be such by the Federal Deposit Insurance Corporation, that the Federal Deposit Insurance Corporation could substitute them for its own examinations?

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Mr. GREENSIDES. I think we are meddling in States' affairs then and we would create more confusion and difficulty. As it is, there is a great deal of cooperation between the Federal agencies and State agencies, and we have achieved a great deal of uniformity. There occur now many consultations throughout the year between the State systems and the Federal systems, and there is a move toward promotion of common policies which result from that discussion.

I think a great deal has been accomplished over the past 20 years, and I think it should continue in an orderly process through discussion and cooperation, rather than try to legislate uniformity.

Mr. HARRIS. From your latter statement it would appear that you would think in time as that process goes on this duplication could be avoided?

Mr. GREENSIDES. I think over the years there will be a continuing improvement. Yes. A continuing cooperation and a betterment of the whole system. But I think if we are going to have a dual banking system, that the States should exercise their own powers and authorities independently and they should not be forced into federalization of examination systems.

Mr. HARRIS. That would be up to them, but it would seem there is an awful lot of duplication. If the State examinations actually cover the same ground as the Federal Deposit Insurance Corporation, and if they are equal to it in quality, there is a waste of manpower and money to try to cover them simply because you do not want to take the position of judging the quality.

Mr. GREENSIDES. As I say, they are primarily concerned with determining whether the State laws have been complied with. We are primarily concerned with the evaluation of the assets of the bank to determine whether our risk is jeopardized, or that of the depositors.

I do not think with 48 or 50 different banking systems that we should abandon the examinations and accept copy of the reports when there is a great dissimilarity in the forms and the procedures and the techniques.

Mr. HARRIS. I have before me the report of the Commission on Organization of the Executive Branch of the Government—the Hoover Commission task force—concerning FDIC, which states:

> The Corportion examiners do cooperate with the State bank examiners. In some States two such examiners make concurrent examinations and sign a joint report. In some they make concurrent examinations and sign two separate reports, but use each other's examination. In some the State laws require two examinations a year, and one is made by the State examiners and the other by the Corporation.

I assume again that is an effort by your organization to save the duplication that in involved in two sets of examinations.

Mr. GREENSIDES. Yes. The concurrent examination is an examination in which the State examiners and the Federal examiners go in at the same time. They prepare separate reports but there is an exchange of information like the counting of the cash, the reconciling of corresponding accounts, and so forth, which may be done by one or the other, or divided between them. The evaluation of assets is performed separately and each conducting examiner arrives at his judgment independently.

The joint examination produces a single report which is signed by both the State and Federal examiner and, of course, that requires an

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accommodation of judgment and modification. Oftentimes it is not as satisfactory as a concurrent report.

Mr. HARRIS. Is there any legislation that would help in that field? Is there any improvement in the statute that would help you in that direction?

Mr. GREENSIDES. I do not believe so. I think it is a matter of human relations and continuing cooperation in the solving of the affairs of federalization as against States rights. I think the more we work together the more progress we make.

Mr. HARRIS. Thank you. Would it not be sensible to include investment income in your reserves in calculating the assessment income? I know now that the statute defines your assessment income in such a way that the income from your reserves is not included. There is approximately $35 million of income which might well be included if you amended the statute.

Mr. COBURN. Yes. That is just another way to cut down the amount of money going into the surplus fund. As I say presently it is just about keeping pace. The increase in the surplus fund is just about keeping pace with the increase in the total deposit volume in the insured banks and we think that the formula should continue at least as long as they are about leveling off at the same pace.

Mr. CRAVENS. Mr. Herz has a question which we would like to have him ask if that is agreeable with the chairman.

Senator ROBERTSON. Surely.

Mr. HERZ. Mr. Coburn I would like to pursue a little further the question that Mr. Cravens raised with you. We understand that the suggestion has been made that the Federal Deposit Insurance Corporation should be headed by a single administrator rather than by a board and that matter is under consideration. Yesterday Governor Robertson addressed himself to the general proposition and gave it as his opinion that if efficiency is sought perhaps a single administrator might be the best form of organization whereas if there is to be a quest for combined judgments perhaps the Board of Directors would be the best form.

Chairman Cook gave it as his feeling this morning that the Federal Deposit Insurance Corporation should continue with a board of directors.

I should like to ask you a few questions on how the Board functions.

As I understand it and my information is based on the data which was assembled for the use of the Hoover Commission most of the operating decisions which the Board makes are based on recommendations of committees which exist in the corporate structure—a board of review, a liquidation committee, and the special committee.

Mr. COBURN. Yes. That is true. Ordinarily, for instance, let us take an issue like giving insurance to a new bank. There is a field report and it goes through with the recommendation of the supervising examiner and goes to the Examination Division and the Review Section. We have a Review Section divided so that each section has the work of the four supervisors, and it is reviewed there and a recommendation is made which is approved by the Head of the Examination Division. Then it goes to the committee. The committee is made up

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of the Division heads of the Corporation. It is reviewed there and then goes to the Board.

Mr. HERZ. So that on such matters through your Board of Review you do get the combined judgments of various people.

Mr. COBHRN. Of high-level staff people; yes, sir.

Mr. HERZ. This Board of Review, as I understand it, deals with applications for insurance?

Mr. COBURN. Well, substantially everything that goes to the Board is reviewed by committee.

Mr. HERZ. By the Review Committee?

Mr. COBURN. One of the committees. The committees have various names. The committee that handles matters from the Examination Division is a review committee. From the Liquidation Division it is the liquidation committee, and anything else is a third committee. But all of the committees are made up substantially of the top-level Division heads.

Mr. HERZ. These are men with considerable background and experience?

Mr. COBURN. Yes, sir.

Mr. HERZ. So that these matters which are placed before the Board had received the combined judgments of those people with experience?

Mr. COBURN. That is right.

Mr. HERZ. In recent years has the Board of Directors of Federal Deposit Insurance Corporation disagreed with the judgments of these committees on many occasions?

Mr. COBURN. Yes and no. Of course, ordinarily they will follow the recommendations coming from the staff that way, but it is not completely unusual for them not to follow the recommendations that have been made and to take independent action. In other words, it is not a rubberstamp board.

Mr. HERZ. When the Board takes such independent action how does the Board arrive at the judgment which it substitutes in the place of that which it would seek?

Mr. COBURN. Well, there is a general discussion. The memorandums that are submitted give the facts. If there are additional facts they obtain those that are available, and those are taken into consideration. The members of our Board are quite experienced. They know a lot about banking. Mr. Cook, Mr. Harl, and Mr. Gidney in many instances know, have a personal knowledge and information about the situation that is involved, or concerning the town. Maybe sometimes if it concerns a bank, some knowledge of the bank in its relation to other banks. They take all of those matters into consideration.

Mr. HERZ. So you do have cases in which the Board does not concur with its committees and overrules them?

Mr. COBURN. I would not like to say frequently. It is infrequent. They do like to rely on their staff, but it is in no sense a rubberstamp board, and they do take independent action.

Mr. HERZ. When you say it is infrequent, would you want to say how infrequent?

Mr. COBURN. Well, I would say—it would be awfully hard to give a relationship because there are so many matters that are of relative unimportance about which reasonable men could not have any disagreement, and if you averaged it out it would not be a fair criterion;

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but on close questions I have seen the Board disagree with the recommendations on several occasions.

Mr. HERZ. In your judgment, Mr. Coburn, and based on your experience with the Corporation, would there be any great hazard in a situation in which instead of a three-man board disagreeing with these committees, a single administrator should disagree with them?

Mr. COBURN. You have placed me in a very embarrassing position. Frankly, I am going to say I like a three-man board.

Mr. HERZ. Would you wish to place in the record, inasmuch as this question probably will be dealt with time and time again, a statement of the nature of the work which is done by the Board which is not first reviewed and placed before the Board by a committee of the Corporation?

Mr. COBURN. Yes; I will be glad to prepare it. For instance, let me give you just one instance that probably is a matter that would not be reviewed by committee. I think Governor Robertson was talking about this matter of interest regulations. Ordinarily that would be a matter that would not go to committee. We have considered it several times and it would not be a matter for committee. There are a number of matters of that kind which are pure policy matters, which might well not be submitted to committee before going to a board for discussion.

(The following was received with reference to the above:)

FEDERAL DEPOSIT INSURANCE CORPORATION,
OFFICE OF THE GENERAL COUNCIL,
Washington, November 16, 1956.

Hon. A. WILLIS ROBERTSON,
Committee on Banking and Currency,
United States Senate, Washington, D. C.

MY DEAR SENATOR: During the hearings, Mr. Herz of the Advisory Committee requested a memorandum discussing the nature of the work which is done by the Board of Directors of the Corporation which is not reviewed and placed before the Board by a committee.

This poses a difficult problem, but I shall endeavor to outline actions and functions of the Board falling in the general category mentioned in this inquiry, with an overall purpose of providing you with information that will permit an evaluation of the functions of a 3-man Board of Directors as compared with an Administrator.

During the last 3 years the Board has taken formal action on the following matters without having them submitted to a committee for prior screening.

1. All actions in reference to the maintenance of the deposit insurance fund, including the purchase and sale of securities.
2. Personnel actions, including appointments, promotions and resignations, and other actions relating to personnel policy.
3. Actions relating to the welfare of Corporation personnel, including hospitalization, group life insurance, charity fund, health activities, FDIC Club activities, etc.
4. Actions authorizing expenditures in connection with conferences and meetings of various types, some involving only Corporation personnel, and others involving representatives of State banking authorities, including actions concerned with the Corporation's educational program and the preparation, printing and distribution of informational material.
5. Actions affecting relations with State and Federal supervisory agencies, and particularly actions aimed at coordinating policies.
6. Actions on the manning table, including amendments thereof from time to time.
7. Actions relating to the Corporation's security and relocation programs.
8. Actions concerning the promulgation of rules and regulations and amendments thereto, and bylaws and amendments thereto.
9. Actions relating to the budget.

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10. Actions relating to the employment of counsel to represent the Corporation in legal matters.
11. Actions on leases and contracts.
12. Actions on vouchers and purchase orders.
13. Actions with respect to policy as to assessments.
14. Consideration and discussion of oral and written reports and memoranda from division chiefs, particularly memoranda concerning problem banks.

The foregoing catalog of Board actions does not truly reflect the discussions and deliberations of the Board informally in the formulation of policy which underlies certain specific actions. For example, the Board has rejected a branch application (submitted with favorable recommendation by the committee) for the underlying reason developed through its discussion that its policy should be opposed to mobile banking units or banking units located in privately owned stores or other places of private business. To elaborate further, our records show that during the last 10 months 373 memoranda were distributed to each of the Directors concerning the status of problem banks. In some instances the memoranda led to formal action by the Board. It is a customary procedure for division chiefs and other staff members to discuss problems and policies informally with members of the Board in order to formulate recommendations that are subsequently submitted for formal action by the Board.

For instance, for my own part I have frequent conferences with Mr. Cook and with Mr. Harl. Not infrequently I call Mr. Gidney on the phone or visit his office to discuss problems concerning the affairs of the Corporation. Other division chiefs, particularly the Chief of the Division of Examination, discuss problems with the members of the Board which lead to and affect recommendations made to the Board.

Giving some indication of the functions of the Corporation and its personnel is the further fact that in the last 10 months the Board took action on 524 formal applications submitted by banks. In many instances these applications and the problems presented thereby have been discussed informally with Board members prior to the preparation of the memoranda by the Division of Examination. Frequently proponents or bank representatives visit our offices and confer with members of the Board and the staff concerning their proposals or problems. By the normal, informal exchanges that result from these conferences, policies and actions are initiated and frequently determined.

I trust that the foregoing information will be of some assistance to you in your deliberations.

Sincerely yours,

Royal L. Coburn, *General Counsel.*

Mr. Herz. Do I understand you correctly that when the Board makes a decision as to how it shall interpret the provisions of law concerning interest, it does not seek the advice of the staff?

Mr. Coburn. No, I do not mean that at all. I mean it is discussed, but it is not screened in this process that I have outlined.

Mr. Herz. Is it screened in another process?

Mr. Coburn. Yes. For instance, at the Board meetings, except when it goes into executive sessions, which is most infrequent, the staff members are present and do participate in the meetings of the Board.

Mr. Herz. Are there any matters on which the Board acts in which it does not have the advice of its staff members in one form or another—in policy determinations, for example?

Mr. Coburn. I doubt if there are any matters that there is not some discussion with the staff about it. I doubt if there are any matters the Board acts upon without some discussion with the staff. None occur to me.

Mr. Herz. Would you not say, Mr. Coburn, so far as matters of policy are concerned, that for the most part with respect to those they are pretty well spelled out in the legislation in detail?

Mr. Coburn. No. There are a lot of policy decisions they will make such as the matter of interest. It happens to occur to me because it had

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been a matter of prior discussion. There are a lot of policy matters that require Board action.

Mr. HERZ. Thank you very much.

Senator ROBERTSON. In connection with policy questions just asked by Mr. Herz, the Federal Reserve Board reports directly to the Senate Banking and Currency Committee on audits of the Board and of the Federal Reserve banks. We brought out yesterday that we recently received one of those reports and it was filed. When you get the reports of National bank examiners and State bank examiners, are they filed or, if not, who examines them and when does the Board consider policy questions on them?

Mr. COBURN. I think somebody else than I had better answer that.

Mr. GREENSIDES. Senator, the reports of examinations from the Comptroller of the Currency which are sent to us are assigned to the Review Section which has charge of that particular State or area of the country. The report is reviewed. The statistical data is taken which we need. The report is analyzed, and the results are carried forward on our reporting process. Then the report of examination itself is returned to the Comptroller of the Currency, but we have the data and the information concerning the bank. If perchance there should be any significant developments within the bank which warrant more concern, then a memorandum is prepared and circulated to the Board. This latter procedure applies to all banks and not just the national banks.

Senator ROBERTSON. There are 5,000 reports twice a year and you have to examine them all?

Mr. GREENSIDES. The Comptroller of the Currency supplies only one report a year. We do not receive copies of both examinations, although we may. If we are particularly concerned with the bank we will ask for the second report.

Senator ROBERTSON. How many State banks, Mr. Greensides, have no insurance?

Mr. GREENSIDES. Approximately 850 banks, I believe.

Senator ROBERTSON. Will you submit for the record the names and addresses of those banks?

Mr. GREENSIDES. Of the uninsured banks?

Senator ROBERTSON. Yes.

Mr. GREENSIDES. Yes, we can.

Senator ROBERTSON. How many mutual banks have no insurance whatever?

Mr. GREENSIDES. That is included in the 800. There are 329, I believe.

Senator ROBERTSON. Then let us break it down. How many State banks and how many mutual banks?

Mr. GREENSIDES. There are State banks also.

Senator ROBERTSON. Can you divide them for us?

Mr. GREENSIDES. Yes.

Senator ROBERTSON. Will you say how many State banks?

Mr. GREENSIDES. If you include mutual savings banks——

Senator ROBERTSON. Commercial banks.

Mr. GREENSIDES. Commercial banks will be around 500, and there will be 300 and some mutual savings banks.

Senator ROBERTSON. That total of over 800 has no insurance from any source?

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Mr. GREENSIDES. The mutual savings banks in Massachusetts and Connecticut have their own insurance fund.

Senator ROBERTSON. But I asked you those that did not have any.

Mr. GREENSIDES. That did not have any insurance would be around 500.

Senator ROBERTSON. How many mutual banks have no insurance?

Mr. GREENSIDES. There would be a few in Maine, I believe. I would have to check that for you.

Senator ROBERTSON. Do the mutual banks that have State insurance have adequate insurance?

Mr. GREENSIDES. I would hardly be prepared to answer that question.

Senator ROBERTSON. When you put in the record the statement of the State banks that have no insurance, I would like you to list the mutual banks that have no insurance and then the mutual banks that you do not think have adequate insurance and explain why it is not adequate, so that we can see just where the situation stands.

(The following was received for the record. The list referred to will be found in the appendix, p. 428:)

FEDERAL DEPOSIT INSURANCE CORPORATION,
OFFICE OF THE CHAIRMAN,
Washington, November 13, 1956.

Hon. A. WILLIS ROBERTSON,
Committee on Banking and Currency,
United States Senate, Washington, D. C.

DEAR SENATOR ROBERTSON: At your request I am transmitting herewith a list of banks not insured by the Federal Deposit Insurance Corporation. This list was last compiled by our Division of Research and Statistics as of June 30, 1956, but changes which occurred during the following 4 months have been entered, thus making the list accurate as of October 31, 1956.

The banks and trust companies on this list are classified as follows:

	Number
Banks not insured by FDIC	775
Commercial banks and trust companies	470
Trust companies not engaged in deposit banking	60
Private banks	91
All other, including those operating under general banking laws	319
Mutual savings banks	305
Participating in State insurance systems	253
Not participating in State insurance systems	52

There are several features of the enclosed list which I should like to draw to your attention. All offices of operating noninsured banks are shown, rather than only the head offices. However, each branch office is clearly distinguished from the head office in the case of a bank operating one or more branches. The banks are grouped according to type: Commercial banks, mutual savings banks, and trust companies not engaged in deposit banking. Commercial banks are further described to distinguish those operating under general banking laws from other types of commercial banks, such as private banks. The list therefore contains at least two groups of banks which are not presently eligible for deposit insurance, namely, trust companies not engaged in deposit banking and private banks.

In several of the States, mutual savings banks not insured by this Corporation are nevertheless participants in other deposit insurance systems. This is true in Massachusetts, where all of the mutual savings banks not participating in Federal deposit insurance are participants in the Mutual Savings Central Fund, Inc., and in Connecticut, where all but one of these banks are members

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of the Savings Banks' Deposit Guaranty Fund of Connecticut, Inc. There are 5 mutual savings banks in Connecticut which are insured by this Corporation, and 1 in Massachusetts. I might note in connection with the single Massachusetts bank that its deposits are insured by this Corporation up to the insurance maximum for each depositor, and beyond that by the Massachusetts Fund.

I trust that this information will be of assistance and that you will not hesitate to call upon us if we can be of further help.

Sincerely yours,

H. E. COOK, *Chairman.*

Mr. GREENSIDES. I would like to add, Senator, that the Legislature of Massachusetts during the past year passed enabling legislation, and it does appear that several mutual banks of Massachusetts will be coming into the Federal Deposit Insurance Corporation fund during the course of next year.

Senator ROBERTSON. How about the big savings banks in New York?

Mr. GREENSIDES. They are all insured.

Senator ROBERTSON. All insured?

Mr. GREENSIDES. Yes.

Senator ROBERTSON. I understand we have 13,439 banks that are insured?

Mr. GREENSIDES. Yes, sir.

Senator ROBERTSON. And the Supreme Court has held whenever a bank voluntarily comes into your control program they submit to the jurisdiction of the Federal Government?

Mr. GREENSIDES. Yes, sir.

Senator ROBERTSON. And Congress has the right to legislate concerning them?

Mr. GREENSIDES. Yes, sir.

Mr. HARRIS. As a person from Connecticut with some knowledge of that situation, I would like to suggest if you desire information about the Connecticut mutual savings banks insurance it can be had from Hartford from the Mutual Savings Banks Deposit Guaranty Fund, and I will make it my business to have that organization supply this committee with information about its fund, if you desire it.

Senator ROBERTSON. Of course, we would like to have it. I would like to get this record printed, though, as soon as it can be, because it has to be distributed in your committee, which is going to meet early in December to formulate its recommendations, and we cannot hold this record up for additional things.

Mr. HARRIS. Something could be submitted within a week.

Senator ROBERTSON. If it gets to us in time to put it in. If not we cannot put it in the public hearings.

Mr. HARRIS. Yes.

(The information referred to follows:)

THE SAVINGS BANKS' DEPOSIT GUARANTY FUND OF CONNECTICUT, INC.,
Hartford, Conn., November 14, 1956.

Senator A. WILLIS ROBERTSON,
Acting Chairman, Senate Committee on Banking and Currency,
Senate Office Building, Washington, D. C.

DEAR SENATOR ROBERTSON: Mr. Reece H. Harris, Jr., member of the Advisory Committee, has discussed with me a statement regarding our Connecticut Guaranty Fund, which he made at a meeting of your committee on Friday, November 9, 1956.

He indicated that you might wish to make some reference to our Connecticut fund in the hearing record and has suggested therefore that I send you certain information regarding our fund's origin and operations. He felt that it would

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be helpful if a copy of this material was made available to each member of your committee, as well as his committee.

I am glad therefore to send to you under separate cover 40 copies of the material, comprising a booklet covering the years from 1933 through 1953 and an insert in summary form, which includes certain vital statistics revised to December 31, 1955.

Assuring you of my pleasure in providing this information, I am

Sincerely yours,

F. EARL WALLACE,
Executive Vice President.

THE SAVINGS BANKS' DEPOSIT GUARANTY FUND OF CONNECTICUT, INC.,
Hartford, Conn., January 1956.

To the member bank addressed:

At a recent meeting of the board of directors of the fund it was suggested that a summary be prepared covering a brief historical background of the fund, the way it operates, and the resources it has to meet the responsibilities it assumes. The purpose of this suggestion was to provide officials of member banks with this basic information so that they will have a ready reference for answering inquiries made to them regarding the fund.

A. BRIEF HISTORICAL BACKGROUND OF FUND

1. The fund was originally organized in 1933 as a liquidity fund under Connecticut law to lend such assistance as may be necessary to member banks, under the name of The Mutual Savings Central Fund, Inc.
2. While the original fund did not undertake to guarantee deposits, indirectly it accomplished this purpose effectively by making loans and advances to member banks where needed to assist such banks to carry on and fully recover their strength.
3. The liquidity fund was converted to a guaranty fund on August 16, 1943, through changes in the law, and from that date on all deposits of member banks have been guaranteed in full.
4. The law states that the corporation shall to the full extent of its resources guarantee and protect all of the deposits in member banks.
5. The fund has an unlimited life, is wholly owned by its 65 member banks, and is under the general supervision of the bank commissioner of the State of Connecticut.
6. The law provides that the fund shall be managed by a board of directors of not less than 9 nor more than 15, the number to be determined by the bylaws. The present bylaws provide for 11 directors, 9 to be elected by the 5 divisions of the Savings Banks Association of Connecticut, and 2 to be elected at large by the entire membership of the fund. Officers are elected and committees are appointed by the board of directors.

B. OPERATIONS

1. The operations of the fund are based upon two premises: (1) The advisory services rendered to management to help keep member banks strong and operating soundly, and (2) payment of depositors in full in the unlikely case of a liquidation.
2. The advisory services rendered by the fund to management represent the most important work done by the fund office and are the primary steps taken to protect the depositors of member banks by helping to keep the banks strong and operating soundly.
3. The fund receives under the law examination reports of all member banks from the bank commissioner. These reports are analyzed in such a way that the trends thus developed indicate in which direction each member bank is moving. The analysis of each report is reviewed by the advisory committee of the fund, which consists of six officials of member banks, any of whom may be directors. The president of the fund is ex officio a member of this committee.
4. If the trends are adverse, the advisory committee directs the fund office to discuss the causes of these trends with management, endeavor to correct them, and report back to the committee.
5. The analyses of member bank examination reports are condensed and recorded on what we call a statistical sheet, which covers the last five examination reports received.

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6. These sheets set forth in some detail the various phases of each member bank's operations and a copy of this sheet is sent to each member bank covering its own examination report, after it is reviewed by our advisory committee.

7. The board of directors may require any information it deems necessary to carry out its responsibilities and is expected to make, and does make, recommendations where necessary.

8. The board of directors has the power to expel a member bank if it refuses to respond to a request for information or to comply with recommendations made by the board.

C. HOW WELL IS THE GUARANTY FUND EQUIPPED TO MEET THE RESPONSIBILITIES IT ASSUMES?

1. The guaranty fund on December 31, 1955, had resources consisting of cash and Government bonds of approximately $21,494,943.

2. The ratio of guaranty fund assets of $21,615,445 to member bank deposit liabilities of about $1,714,650,000 on December 31, 1955 was approximately 1.261 percent.

3. The combined surpluses and reserves of member banks, together with the total assets of the guaranty fund as of December 31, 1955 were 35.6 percent of member bank deposits invested in risk assets, which are assets other than cash, Government bonds, guaranteed and insured loans.

4. The fund as of December 31, 1955 was over 10 times the total losses to depositors in Connecticut savings banks in the last 83 years, and more than 10 times the total advances made to member banks since its inception in 1933.

5. The surplus alone as of December 31, 1955 was nearly 4 times the total losses to depositors in Connecticut savings banks in the last 83 years, as well as the total advances made to member banks since its inception in 1933.

6. The strength of our guaranty fund is based primarily on the risk involved.

7. As of December 31, 1955, our member banks had book surplus accounts of 11.1 percent of deposits.

8. The average underwriting valuation for all member banks as of January 15, 1956 was 110.2 percent which means that after marking down member bank assets arbitrarily, these banks had on the average $110.20 for every $100 of deposit liability.

9. Each member bank pays to the fund a premium of one twenty-fifth of 1 percent of deposit liabilities as of September 30 each year.

10. All premiums paid to the fund are intact as all expenses, dividends and losses have been covered by earnings and profits on investments with $2,607,291 to spare on December 31, 1955.

(The booklet referred to will be found in the files of the committee.)

Senator ROBERTSON. Are there any more questions on your side, Mr. Cravens?

Mr. CRAVENS. No, sir.

Senator ROBERTSON. Senator Douglas.

Senator DOUGLAS. Mr. Cook, according to your testimony yesterday you stated, as I understood it, that both you individually and the Federal Deposit Insurance Corporation as an organization were without taint or blemish so far as the Hodge scandals in Illinois were concerned, in which two FDIC-insured banks were involved. That is substantially correct?

Mr. COOK. Substantially you are corerct, sir.

Senator DOUGLAS. At the conclusion of the session I was questioning you about the examination made by the Federal Deposit Insurance Corporation of the Southmoor Bank in Chicago. May I ask, was that a joint examination with the officials of State Auditor Hodge, a concurrent examination with the officials of State Auditor Hodge, or was this an examination exclusively conducted by the FDIC itself?

Mr. COOK. That was independent examination by our own examiner system.

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Senator DOUGLAS. I taxed you yesterday, or your examiners, with responsibility for failing to detect the 1½ to 2 million dollars false warrants and withdrawals from trust funds, but your defense was that an examiner could not be expected to detect this irregularity. Now may I ask this: Did you say that there were 10 to 11 examiners from the Federal Deposit Insurance Corporation in the bank at the time?

Mr. COOK. That was the approximate number that was in the bank at that time.

Senator DOUGLAS. That is, there were 10 to 11 of your examiners in the bank at the time, at the very time when some of these fake warrants were being cashed?

Mr. COOK. Our examiners would have no way of knowing whether they were genuine or fake warrants.

Senator DOUGLAS. That is not quite my question. I say, were they physically making the examination at a time when the fake warrants were being cashed?

Mr. COOK. They were making examination of the bank. Yes, sir.

Senator DOUGLAS. That is correct. In making examination of the bank, did they make an examination of the cash status of the bank?

Mr. COOK. They would count the cash, naturally, and check the corresponding bank accounts, and reconcile those.

Senator DOUGLAS. In other words, in order to get the figure of cash on hand they would naturally have to count the cash.

Mr. COOK. That is right.

Senator DOUGLAS. Where would they count the cash?

Mr. COOK. Right at the tellers' windows and the cash in the bank's vaults.

Senator DOUGLAS. In the tellers' cages?

Mr. COOK. And the bank's vaults.

Senator DOUGLAS. Did you know in one of these tellers' cages, the cage over which Mr. Ralph Schlitz presided, that the secret envelope was being kept from which the withdrawals were being made?

Mr. COOK. We would have no knowledge of that.

Senator DOUGLAS. No; but did you know that that envelope was in the cage of Ralph Schlitz, the teller?

Mr. COOK. I was not on the examining staff, but I would say for our examiner, he would have no way of knowing.

Senator DOUGLAS. Here was the envelope side by side with the cash account.

Mr. COOK. Do you know anything about that, Mr. Greensides?

Mr. GREENSIDES. I do not know.

Mr. COOK. We have no knowledge of that.

Senator DOUGLAS. I would like to call on the staff director of this committee, Mr. Wallace, who helped Senator Fulbright and Senator Sparkman conduct the hearings at Chicago on this matter, as to the physical location of the envelope from which or into which the warrants were placed, and from which the withdrawals were made.

Mr. Wallace, would you take over at this point?

Mr. WALLACE. The so-called envelope of the envelope account—Do you understand how that worked, Mr. Cook?

Mr. COOK. No; I do not.

Mr. WALLACE. I think I had better explain it very briefly. The way Mr. Hodge carried off his operation was to take these phony checks

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or State warrants and bring them in and cash them at the bank, and put the cash in an envelope. The envelope would be left in a teller's cage, Mr. Schlitz's cage, and whenever Mr. Hodge would write a check on the bank—he had no account at the bank—the check would be referred to Mr. Hintz, who was executive vice president of the bank. Mr. Hintz would take the check and take an equivalent amount of money out of the envelope and put it in the bank's cash. I think the question which Senator Douglas was driving at was this: When you take the cash or count the cash in a cage, do you merely take what the teller gives you, or do you look around for other cash, the point being if you counted all of the cash you did not count the envelope cash. How did they miss that?

Mr. COOK. As I say, I was not on the ground——

Mr. WALLACE. I understand.

Senator DOUGLAS. I think it would be well if you informed yourself of that.

Mr. COOK. If this teller had that secret envelope he might have had it in his desk or somewhere where our examiner would have no access to it.

Senator DOUGLAS. May I ask this question, Mr. Wallace: Was not the envelope kept in the cashbox?

Mr. WALLACE. It was kept in the cashbox right along with the other cash.

Incidentally, this is called a secret envelope. It was no secret envelope. He did not make any secret of it being there. It was with the other cash.

The question is, if you were counting the cash, why was not that cash counted?

Mr. GREENSIDES. Our examiner told me in Chicago that envelope was not with the teller's cash. The Hodge cash in the envelope was held separately.

Senator DOUGLAS. It was in a separate envelope, but where was the envelope?

Mr. GREENSIDES. It was not with the teller's cash. It might have been concealed in the teller's cage at the time the examiner was there counting the cash, or it might not have been——

Senator DOUGLAS. I believe the teller, Mr. Schlitz, testified it was with the cash.

Mr. GREENSIDES. I understand.

Senator DOUGLAS. We have the hearings.

Mr. GREENSIDES. But the envelope was not a part of the teller's cash.

Senator DOUGLAS. Certainly. It was in an envelope, but it was in the box with the cash.

Mr. GREENSIDES. It was not in the box with the cash. It was in the cage, reportedly.

Mr. WALLACE. It was in a box in the teller's cage.

Mr. GREENSIDES. But not with the cash.

Mr. WALLACE. But the point is, if you are counting all of the cash do you merely take that which is shown to you and no more, and take the teller's word for it and not look any further than that? Is that the substance of counting the cash in an examination?

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Mr. GREENSIDES. If that envelope was in the cage the examiner should have investigated it. I agreed to that.

Senator DOUGLAS. It was in the cage. There is no question about that and I will ask Mr. Wallace to put into the record at this point the testimony bearing on this point. It was the testimony, was it not, of Mr. Schlitz, the teller?

Mr. WALLACE. I would have to look it up, but it is here and I will put it in the record.

Senator DOUGLAS. Yes.

Mr. Cook, you did not know of this fact?

Mr. COOK. No.

Senator DOUGLAS. You did not listen to or have anyone report to you on the testimony of Mr. Schlitz?

Mr. COOK. I was not present at those hearings, Senator.

Senator DOUGLAS. You had no report made to you on Schlitz's testimony?

Mr. COOK. No.

Senator DOUGLAS. Although this involved the adequacy of the examination of the Federal Deposit Insurance Corporation?

Mr. COOK. Mr. Greensides, do you have any comment?

Mr. GREENSIDES. Yes. This has been discussed. Yes.

Senator DOUGLAS. But did you inform the two Directors, Mr. Cook and Mr. Harl?

Mr. GREENSIDES. It has been discussed with the Directors.

Senator DOUGLAS. Then you were apprised of it, Mr. Cook?

Mr. COOK. As I say, I was not present at those hearings.

Senator DOUGLAS. But did you get a report on the hearings?

Mr. COOK. I have had a report on the hearings but frankly, I have been away and have not had time——

Senator DOUGLAS. Although this was the biggest scandal involving your organization since it was started, you did not acquaint yourself with the facts of the situation?

Mr. COOK. I know the general situation and facts. Yes, sir.

Senator DOUGLAS. You apparently did not know that the envelope was in the cashbox.

Mr. COOK. I did not know.

Senator DOUGLAS. No; and it is a very crucial point, and it has a great deal to do with the adequacy of your examination procedures. I may say, and I am not trying to take a shot at one of my dear friends, but a similar scandal in the McKesson-Robbins case, where an accounting firm certified to the presence of inventory which did not exist, had a very salutary effect on accounting procedures. I hope that this may have a salutary effect on examination procedures.

Mr. Wallace, have you found the passage?

Mr. WALLACE. I have it.

Senator DOUGLAS. I would like to read the passage. It is cross-examination by Mr. Rogers of Mr. Sorensen from page 465 of the record. Will you please give them copies of this, Mr. Wallace?

Mr. Sorensen was the chief examiner of the banking department under Mr. Hodge, and this is found at page 465, part II, of the hearings on the Illinois banking situation:

Mr. ROGERS. Mr. Sorensen, do the examiners, when they come into the bank and go to the teller's cage, do they seize everything in the cage as of that moment and ask for an explanation as to why that is out of place?

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Mr. SORENSEN. No; they stand by until the teller gets his affairs in order and gets his own cash proved to his satisfaction. They stand by as observers until the teller proves his cash. Then they walk in and the teller watches him while they count the cash. We are very insistent the tellers do watch while they count the cash.

Mr. ROGERS. If there is a cashbox in the teller's cage, wouldn't they ask him what it was?

Mr. SORENSEN. Of course they would, any examiner would. He would inquire about anything looking like a strongbox in a cage and insist upon finding out what it is.

I do not think that the Illinois Banking Department under Mr. Hodge was noted for the severity of its examinations, and yet here you have him testifying that any competent examiner would look in a cash strongbox in a cage.

Mr. GREENSIDES. Why didn't they find it when they were in there?

Senator DOUGLAS. I am not asking about them. I am asking you why did you not find it?

Mr. WALLACE. I would like to read the testimony of Mr. Schlitz. The chairman asked Mr. Schlitz, who was a teller, as follows:

The CHAIRMAN. You mean an examiner very carefully avoids looking at anything you don't tell him to look at in the cage?

Mr. SCHLITZ. I don't know. In other words, they come in and ask you where is the cash, being specific on the note cage; they say, "Where is the cash, where is the collateral for your notes, and where are your notes?"

The CHAIRMAN. Are you very sure you did not take that box and put it under the table or off in a corner?

Mr. SCHLITZ. It sayed in the cage.

The CHAIRMAN. You never did remove it from the cage?

Mr. SCHLITZ. No. You wouldn't take it out of the cage. There would be no reason to take it out.

The CHAIRMAN. You would take it out to hide it?

Mr. SCHLITZ. I didn't do that.

The CHAIRMAN. You did not?

Mr. SCHLITZ. No, sir.

The CHAIRMAN. Nor did Mr. Hintz?

Mr. SCHLITZ. No.

The CHAIRMAN. He left it right in the cage at all times?

Mr. SCHLITZ. That is right.

The CHAIRMAN. To your knowledge, Mr. Hintz never made any attempt to hide that cashbox?

Mr. SCHLITZ. No; he wouldn't take the cashbox anyway. He would be interested in the brown envelope.

Senator DOUGLAS. Do you have anything to reply to this, Mr. Cook?

Mr. COOK. I have not; no.

Senator DOUGLAS. Do you now feel that your examining staff was not negligent in the examination of the bank?

Mr. COOK. I wouldn't say that they were negligent. I would simply say we were not present at the examination. As you say, the envelope was there. Possibly it was.

Senator DOUGLAS. It possibly was? It actually was. Why do you say it possibly was?

Mr. COOK. Take it for granted it was there. It is altogether possible that it could have been overlooked.

Senator DOUGLAS. Obviously it was not reported on, but the fact that it was not reported on or overlooked does not mean it was not there. Who were the examiners who made this examination?

Mr. COOK. I do not have a list of those names.

Senator DOUGLAS. Do you have a list of the examiners here?

Mr. GREENSIDES. Not here. Examiner Sarasfield conducted the examination.

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Senator DOUGLAS. How do you spell that?
Mr. GREENSIDES. S-a-r-a-s-f-i-e-l-d.
Senator DOUGLAS. Was he the examiner in charge?
Mr. GREENSIDES. Yes.
Senator DOUGLAS. Would you supply for the record the names of the other examiners and the examiner who went into the cage of Mr. Schlitz?
Mr. GREENSIDES. Yes, sir.
Senator DOUGLAS. Have you interviewed the examiners as to what happened?
Mr. COOK. They have not been interviewed, have they?
Mr. GREENSIDES. Our Acting Chief of the Division of Examination went out to Chicago and interviewed the examiner in charge; yes.
Senator DOUGLAS. Did he interview Mr. Sarasfield?
Mr. GREENSIDES. Yes.
Senator DOUGLAS. Did he interview the other examiners?
Mr. GREENSIDES. I do not know.
Senator DOUGLAS. Will you report on that and state the people who were interviewed?
Mr. GREENSIDES. Yes.
(The following was received with reference to the above:)

FEDERAL DEPOSIT INSURANCE CORPORATION,
OFFICE OF THE CHAIRMAN,
Washington, November 16, 1956.

Hon. A. WILLIS ROBERTSON,
Committee on Banking and Currency,
United States Senate, Washington, D. C.

MY DEAR SENATOR: At the hearings conducted last week by your subcommittee, Senator Douglas made the request that the Corporation provide the committee with the names of the examiners of the Corporation participating in the criticized examinations of the Southmoor Bank & Trust Co. We were also asked to provide information concerning the investigation made by the Corporation regarding the procedures of these examinations.

Since Senator Douglas' questions did not in each instance identify the particular examination concerning which his inquiries were addressed, we are submitting the names of the Corporation personnel who conducted the last four examinations of the bank:

1. Examination of February 23, 1954, which was concluded March 5, 1954.
2. Examination of March 28, 1955, which was concluded April 4, 1955.
3. Examination of November 21, 1955, which was concluded December 2, 1955.
4. Examination of March 26, 1956, which was concluded May 4, 1956.

The 2 examiners in charge of these 4 examinations are the top men in our Chicago office. The Corporation has every confidence in the ability, capacity, and sincerity of each of these examiners.

In the hearings particular emphasis was placed upon the procedures followed in the checkup of the note teller's cages in the examination. Committee Counsel Wallace read into the record certain excerpts of the testimony of Ralph K. Schlitz, formerly note teller of the bank, concerning these procedures. We believe that the full text of Mr. Schlitz' testimony before the committee provides a more accurate picture of the practices followed by the examiners than do the excerpts which were quoted. However, in accordance with the directions, we are noting herewith the names of the examiners who made the checkup examinations in the aforementioned examinations.

1. John P. O'Meara
2. Harry P. Krauspe
3. Arthur E. Konrad
4. John P. O'Meara

The checkup of a note teller's cage is made at the inception of the examination. Each of the examiners in question informs the Corporation that in the instance of each of the specific examinations, he verified the cash in the note

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teller's cage with the usual precautions being taken to insure that the cash therein balanced with the controls and subsequently with the general ledger of the bank. Neither of the examiners recalls any unusual incident or fact pertaining to this portion of the examination, and each is most positive that no information, data, or suggestion was made that would cause either of them to believe that he was overlooking the presence of any matter material to the bank or its affairs. It is appropriate here to comment that the envelope in question was marked "Personal property of E. A. Hintz," and that its contents did not constitute an asset of the bank.

At the hearings questions were directed at the Corporation personnel hypothecated on the fact that Mr. Schlitz testified that at the time of the so-called special examination (being the examination of March 1956), the metal box and brown envelope were in the teller's cage, and it was stated that its presence should have been noted by the examiners. This question overlooks the fact that at the time of the so-called special examination, Mr. Schlitz was not then the note teller, but that he had been transferred by the bank to another assignment, and the note cage was then in charge of another teller. Thus, Mr. Schlitz would not be able to testify with definiteness and certainty as to the presence or absence of the box and envelope in the cage, and even if present, as to its location therein at the time of this particular examination.

At the hearings great stress was laid on the special character of the March examination. It is true that this examination was made because of the continued retrogression of the asset condition of the bank, and that it was made for the general purpose of instituting a termination of insurance citation. However, in no other sense was it a special examination. In this connection it is to be noted that at the time of the start of this examination, and at the time that Mr. O'Meara made the checkup of the note cage for this examination, no frauds or criminal conduct of the bank personnel had then been discovered or even suspected. Prior supervisory criticism of the bank was centered upon Leon Marcus and his practices in reference to the loan policies of the bank. During the course of this examination Examiner Sarsfield discovered that Leon Marcus and his associates were fraudulently abstracting commissions arising from loans made by the bank, and that they had defrauded the bank of a sum in excess of $150,000. As a result of Mr. Sarsfield's findings, a criminal report of the conduct of Marcus and his associates was sent by the Corporation to the United States District Attorney. At the time this report was received the fraudulent actions of Vice Presiden E. A. Hintz had not as yet come to light. As a matter of fact, agents of the Federal Bureau of Investigation were in the bank investigating the facts originated in the Sarsfield criminal report at the time the news of the Hintz transactions with Hodge first appeared in the newspapers.

Our examiners inform us that the teller's cage, about which many questions have been asked, is a 3-window cage. Inside the cage there is a steel cabinet with a large number of drawers and compartments for notes, nonnegotiable types of collateral, notes and accounts receivable, warehouse receipts, etc., kept under seal until proven to the control records and finally the general ledger. This cabinet was wheeled from the vault to the cage and returned to the vault after each day's business was consummated. In addition to this cabinet the sides and walls of the cage were lined with approximately 30 steel and wooden cabinets and boxes with various drawers and compartments therein where records and other data of the bank and its personnel were filed. Mr. Sarsfield notes that upon current inspection of the cage, he found several dozen envelopes of various sizes and colors and various bank records and other data on the ledge or table used by the teller in this cage. This same disorderly condition existed at the time of each of the examinations. These facts are called to your attention so that it may be evident that the presence of a box or an envelope in a disorderly cage, such as obtained in this instance, would not be a matter likely to be noted. We also mention that there were many facilities available in these surroundings to secrete an envelope from the eyes of an examiner.

We deem it pertinent to this inquiry to call attention to the fact that not only was Mr. Schlitz not present in the cage during the last examination of the bank referred to in the questioning, but also that he testified that from time to time the brown envelope was in the custody and possession of Mr. Hintz and not in the note cage. He was unable to state with certainly that at any particular time the envelope was in the cage, as distinguished from being in Mr. Hintz's possession. On the basis of the testimony before the committee, we respectfully suggest that the testimony does not conclusively show that the envelope in question was in the cage on the occasion of any of the examinations of the bank made by the Corporation. While we do not wish to attempt to exonerate examiners for

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any carelessness or negligence with which they could properly be charged, we nevertheless sincerely maintain that the facts presented by the testimony given to the committee do not indicate that there was any laxity or carelessness on the par of the examiners.

With personal regards, I am,

Sincerely yours,

H. E. COOK, *Chairman.*

Federal Deposit Insurance Corporation examiners participating in the examination of Southmoor Bank & Trust Co., Chicago, Cook County, Ill.

W. HARLAN SARSFIELD, EXAMINER IN CHARGE, MAR. 26, 1956 (CLOSE OF BUSINESS)

	Working hours: In bank	Working hours: Outside bank
Examiners:		
Konrad, Arthur E., Jr.[1]	79	------
O'Meara, John P.	239	------
Sarsfield, W. Harlan [1] in charge	235	40
Assistant examiners:		
Beddow, William E.	39	------
Brown, Benjamin L.	79	------
Hoff, Elmer R.	159	------
Larson, Donald W.	39	------
Larson, Ronald D.[1]	23	------
Mutter, Fred C., Jr.[1]	55	------
Palen, Leo E.	63	------
Sarahan, Charles A.	239	------
Total	1,249	40
Examiners participating in trust department examinations:		
Konrad, Arthur E., Jr., in charge	40	------
Sarsfield, W. Harlan	4	------
Assistant examiners:		
Larson, Ronald D.	16	------
Mutter, Fred C., Jr.	64	------
Total	124	------

M. J. QUINLAN, EXAMINER IN CHARGE, NOV. 21, 1955 (CLOSE OF BUSINESS)

	Working hours: In bank	Working hours: Outside bank
Examiners:		
Konrad, Arthur E., Jr.[1]	54	------
Quinlan, M. J., in charge	70	40
Assistant examiners:		
Beddow, William E.[1]	70	4
Hoff, Elmer	30	------
Hopkins, Gerauld L.	70	10
King, Richard D.	30	------
McKeehan, George E., Jr.	70	------
Mutter, Fred J.[1]	54	------
Porter, Arthur	30	------
Roessler, John E.	70	------
Sak, Henry J.	70	------
Total	618	54
Examiners participating in trust department examination: Konrad, Arthur E., Jr., in charge	24	------
Assistant examiners:		
Beddow, William E.	4	------
Mutter, Fred J.	24	------
Total	52	------

M. J. QUINLAN, EXAMINER IN CHARGE, MAR. 28, 1955 (CLOSE OF BUSINESS)

	Working hours: In bank	Working hours: Outside bank
Examiners:		
Bergstrom, Carl E.	37	------
Bloxam, V. O.	3½	------
Konrad, Arthur E.	3½	------
Krauspe, Harry F., Jr.	37	------
Quinlan, M. J., in charge	45	32
Assistant examiners:		
Beddow, William E.	40½	------
Brown, Benjamin L.	37	------
Goheen, John J., Jr.[1]	37	------
Corley, Donald E.[1]	37	------
Grobel, John R.	40½	------
Hopkins, Gerauld L.	3½	------
King, Richard D.	40½	------
Lee, Herbert M.	37	------
Assistant examiners—Continued		
Mutter, Fred J.	3½	------
Sarahan, Charles A.	3½	------
Total	406	32
Examiners participating in trust department examination: Quinlan, M. J., in charge	0	------
Assistant examiners:		
Corley, Donald E.	24	------
Goheen, John J., Jr.	24	------
Total	48	------

M. J. QUINLAN, EXAMINER IN CHARGE, FEB. 23, 1954 (CLOSE OF BUSINESS)

	Working hours: In bank	Working hours: Outside bank
Examiners:		
Bergstrom, Carl E, deputy	68	------
Lamb, George S.[1]	38	------
O'Meara, John P.	68	------
Quinlan, M. J., in charge	68	6
Assistant examiners:		
Ambrose, Joseph J.	29	------
Corley, Donald E.[1]	48	------
Krauspe, Harry F., Jr.	65	------
Porter, Arthur K.	68	------
Assistant examiners—Continued		
Sarahan, Charles A.	68	------
Total	520	6
Examiners participating in trust department examination: Lamb, George S., in charge	24	------
Assistant examiner: Corley, Donald E.	20	------
Total	44	------

[1] Does not include hours spent in trust department.

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Senator DOUGLAS. What was Mr. Ireland's position prior to his resignation?
Mr. GREENSIDES. He was a review examiner in the district office in Chicago.
Senator DOUGLAS. As such he passed on the case of the Southmoor Bank?
Mr. GREENSIDES. He did not have anything to pass on, sir. He was review examiner, reviewing reports.
Senator DOUGLAS. Were not reports made on the Southmoor Bank?
Mr. GREENSIDES. Yes. The supervising examiner, however, made the decisions and the recommendations as to Southmoor.
Senator DOUGLAS. What did the reviewing examiner do?
Mr. GREENSIDES. He prepared the material and the basic analysis for the supervising examiner.
Mr. DOUGLAS. Then he did look over the accounts of the Southmoor Bank?
Mr. GREENSIDES. Whether he reviewed that report I would have to check on.
Senator DOUGLAS. Was that not part of his duties?
Mr. GREENSIDES. Not necessarily, because you have to have more than one man doing it, and that bank might not have been assigned to him. It might have been the assistant supervising examiner.
Senator DOUGLAS. Will you report on that as to whether Mr. Ireland saw the previous examinations of the Southmoor Bank?
Mr. GREENSIDES. Yes, sir.
(The information requested had not been received at time of publication.)
Senator DOUGLAS. Is it not a fact that serious errors and abuses of trust were disclosed by previous examinations of the accounts of the Southmoor Bank?
Mr. GREENSIDES. Weak practices were disclosed in previous reports. When that report disclosed the abuses of trust and the diversion of funds, then the Corporation acted on that.
Senator DOUGLAS. You mean it acted in June, after the Chicago Daily News reported the affair?
Mr. GREENSIDES. No, sir; that is not so.
Mr. COBURN. They acted long before that.
Senator DOUGLAS. What had you done?
Mr. COBURN. Filed section 8 (a) proceedings against them. The only thing I have to do.
Senator DOUGLAS. I am not an expert in the details. What are section 8 (a) proceedings?
Mr. COBURN. Termination proceedings.
Senator DOUGLAS. You mean terminating the insurance?
Mr. COBURN. Yes, sir.
Senator DOUGLAS. When did you do that?
Mr. COBURN. We did that some—it was started some 6 weeks or at least a month before——
Senator DOUGLAS. Had not the Chicago Daily News run a whole series of stories prior to that time?
Mr. COBURN. No, sir.
Senator DOUGLAS. On the affairs of Mr. Hodge?
Mr. COBURN. No, sir.

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Senator DOUGLAS. I read the Chicago Daily News, which is an excellent paper, although its choice of candidates is not always perfect. I must say I was reading articles in the Daily News about Mr. Hodge in May.

Mr. COBURN. Not about Southmoor, Senator. May I suggest that, and our proceedings are not in the Daily News for political scrutiny.

Senator DOUGLAS. Yet, in spite of all this, Mr. Ireland resigned from the Federal Deposit Insurance Corporation and took a position with the bank. He cast the mantle of his respectability over the bank.

Mr. COBURN. Yes, sir. He resigned, and I think his presence there was salutary in the interests of good banking and in the interests of depositors.

Senator DOUGLAS. It cast, as I say, the mantle of his respectability over some practices which were highly irregular.

Mr. COBURN. Those practices and the men involved in them were out of the bank at that time.

Senator DOUGLAS. Wait a minute. You say the men were out of the bank. They were out of the front of the bank, but very likely were in the back of the bank and there were telephones by which they could direct the bank.

Mr. COBURN. Yes, sir.

Mr. DOUGLAS. One of them still owned the control of the bank.

Mr. COBURN. Yes, sir. That was the subject matter of our negotiations to get that man out of control of the bank.

Senator DOUGLAS. I think you have been grossly negligent. I will not say criminally negligent, but I think you have been grossly negligent in your examination.

Mr. WALLACE. Could we continue on the procedural difficulties a little further?

Senator DOUGLAS. Yes. I wish you would, because you are more experienced in that.

Mr. WALLACE. I do not want to get into too much detail on it because we got into part of it, as you know, earlier in the Hodge case. I wanted to hit some of the high spots on these procedures because it bears on one of your recommendations, namely, your recommendation to have the power to require audits of insured banks.

On the procedural difficulties of the Southmoor Bank, in the first place your examiners apparently missed a great number of Hodge loans—loans to a State auditor—and to people who had been recommended by the State auditor, which would be questionable. In that respect we are not questioning the fact that he might not have made good loans, but the question is the propriety of a State bank supervisor making quite a few loans at favorable terms and recommending loans for other persons. We got into that. Senator Douglas discussed the cashing of warrants while examiners were present, and you were pointing out there it is not the examiner's responsibility to find out whether a check is phony or not.

Then a moment ago we went into the counting of the cash in the tellers' cages and the fact that the envelope was missed. The examiner didn't find it there, although it was not hidden. The Southmoor Bank had a history of difficulty, had it not?

Mr. COBURN. Yes.

Mr. WALLACE. Yes, it did. For example, you held examinations on February 23, 1954; March 28, 1955; and November 21, 1955. Here

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is one example of what was happening to the bank—the substandard loans of 1954 were $422,000; 1955, $778,000; and later in 1955 $3,432,000. That is just one indication of why you changed from the bank being an "other problem" to "a serious problem." Is that correct?

Mr. COBURN. We went over with you in the committee the history and the procedures that were adopted by the Corporation.

Mr. WALLACE. What I should like to ask you with respect to your recommendation on the power to require audits is this: What is the difference between an audit and what you are currently empowered to do, and I am reading from the rule:

> Each such examiner shall have power to make a thorough examination of all affairs of the bank, and in doing so he shall have the power to administer oaths and to examine and take and reserve the testimony of any of the officers thereof, and shall make a full and detailed report of the conditions of the bank to the Corporation.

Did any of your examiners take any testimony under oath?

Mr. COBURN. I doubt it. It is not an ordinary procedure.

Mr. WALLACE. They did not?

Mr. COBURN. Yes. Let me continue, Mr. Wallace. Do you want your question answered?

Mr. WALLACE. Yes.

Mr. COBURN. All right. There is a fundamental difference between an audit and a report of examination. An examination contemplates an asset appraisal; an appraisal of management. There is no verification.

An audit is an analysis with verifications. It is probably true if we had sufficient manpower we could make audits of banks, but we just do not have the manpower, and the auditing of banks and internal controls we think is a matter that primarily must remain with management. Management should and must provide audit controls. They involve matters of policy, and we would like to keep out of that phase of it.

There is that distinction. There is no account verification in examination.

Mr. WALLACE. Why did you make the recommendation to give you the power to require audits of insured banks?

Mr. COBURN. One of the reasons was that Senator Fulbright suggested we draft a proposal to that effect and, secondly, we think there are certain circumstances when it could be used to advantage.

Mr. WALLACE. Would it have helped in this Hodge situation?

Mr. COBURN. It might have helped, but in the first place, it would not have disclosed the cashing of the warrants, except by chance. Maybe it might have disclosed the shortage. I mean, the establishment of the funds in which the commissions were being taken out.

Mr. WALLACE. We are on this problem of the adequacy of your examining procedures. The point I wanted to make is this: There was a history of difficulty in the bank. Normally you cannot possibly examine all banks very thoroughly. How many banks are there in Illinois?

Mr. COBURN. Let Mr. Greensides take over. He can give you more information about examinations than I can.

Mr. WALLACE. There are about 950 banks in Illinois. You could not possibly examine them all very thoroughly, could you?

Mr. GREENSIDES. Yes.

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Mr. WALLACE. You could?

Mr. GREENSIDES. Yes.

Mr. WALLACE. Now you are getting into terminology, Mr. Greensides. I am talking about thoroughly enough to stop something like the Hodge affair. You are telling me the examination procedure is a cursory thing to test assets against liabilities and it is not very careful with respect to verification. Now you are saying you can make a thorough examination. I think what you mean by that is this cursory procedure. Is that correct?

Mr. GREENSIDES. No, it is not correct. I mean thorough examination. For one thing, the Hodge cashing of checks could occur anywhere and any time. Examination would not necessarily get that. The warrants were not fictitious. They were duly authorized, and authorized by an authorized official. They would go through any bank.

Senator DOUGLAS. What amout the endorsements—the typed endorsements instead of signed endorsements?

Mr. GREENSIDES. The fact that the warrants were issued fictitiously made it payable to bearer. There was no need for endorsements, but the endorsement by Mr. Hintz was, of course, irregular. But the endorsements not being on the Southmoor Bank the examiner would not have a chance to see those, excepting one which was presented at the teller's window at the moment——

Senator DOUGLAS. He would not have occasion to see the cash in the envelope in the cashbox?

Mr. GREENSIDES. The check would not be in there.

Senator DOUGLAS. No. The cash in the envelope, in the cashbox.

Mr. GREENSIDES. If the envelope had been picked up it should have been investigated.

Senator DOUGLAS. Should the envelope have been picked up?

Mr. GREENSIDES. Yes. Sure.

Senator DOUGLAS. Then you think there was a deficiency of examination procedures?

Mr. GREENSIDES. There may have been——

Senator DOUGLAS. There may have been, or was there?

Mr. GREENSIDES. There may have been an individual failure there.

Senator DOUGLAS. Was there?

Mr. GREENSIDES. I do not know.

Senator DOUGLAS. You have not investigated to find out?

Mr. GREENSIDES. We have had that matter under consideration with our Chicago office, but you are up against the situation of one man says the envelope was there.

Senator DOUGLAS. Who says what was there?

Mr. GREENSIDES. The teller says that the envelope was in the cage.

Senator DOUGLAS. That is right.

Mr. GREENSIDES. It may not be.

Senator DOUGLAS. Let me ask you this: Had not the private and secret account of Mr. Marcus been detected by an earlier examination?

Mr. GREENSIDES. I doubt that the account had been picked up on the earlier examination, as I recall it.

Senator DOUGLAS. You mean when the special examination was made during which the fake warrants were cashed, that you did not know anything about the Marcus private account in which funds had been diverted from the bank to the account of Mr. Marcus?

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Mr. GREENSIDES. The preceding examiner was dissatisfied and alerted the succeeding examiner to certain phases of examination.

Senator DOUGLAS. Should you no thave been especially careful in making your special examination? Granted that you cannot make completely thorough examinations of the full 900, nevertheless, here you had certainly been alerted to a very bad condition in the bank. Should you not have taken a special care?

Mr. GREENSIDES. The examiner thought he was, but he was concentrating, however, on the loan portfolio.

Senator DOUGLAS. Was anyone put under oath?

Mr. GREENSIDES. No, sir.

Senator DOUGLAS. Were they asked to produce any other documents?

Mr. GREENSIDES. They were asked to produce an audit of the Marcus accounts.

Senator DOUGLAS. But were they asked to produce other documents?

Mr. GREENSIDES. They would be asked to produce all documents relating to their assets.

Senator DOUGLAS. Cash would be an asset; would it not?

Mr. GREENSIDES. Yes, and that was given us.

Senator DOUGLAS. It was the testimony of Mr. Schlitz, I believe, subject to correction, that he had not been asked about this, and if he had been asked he would have told them about the envelope. May I ask Mr. Rogers if my information on that point is correct?

Mr. ROGERS. That is correct. Mr. Schlitz said if anyone ever asked him about whether there was anything suspicious going on in the bank he would have told them.

Senator DOUGLAS. Here is a bank which is under suspicion and you come in and put no one under oath, and ask no questions, and fail to detect an envelope with cash in the cashbox, and you still say you made a thorough examination and the Federal Deposit Insurance Corporation was not in the slightest degree guilty of negligence.

Mr. GREENSIDES. Yes, sir. I say that the examination was a thorough examination.

Senator DOUGLAS. Was a thorough examination?

Mr. GREENSIDES. It was a thorough examination. There was a human failure, perhaps, in that case, but basically the examination is an excellent examination.

Senator DOUGLAS. This shocked me yesterday—the present requirement is for a thorough examination and you came forward with a proposal yesterday that the word "thorough" be knocked out and it be merely an examination. I would think if there was any one organization in this country which should improve its examining procedures it should be the Federal Deposit Insurance Corporation, and here you come in and propose to soften it.

Mr. GREENSIDES. We do not propose to soften a thing.

Senator DOUGLAS. You propose to take out the word "thorough" from the definition of examination.

Mr. GREENSIDES. And have it uniform throughout the act. Either put it in all the other laws——

Senator DOUGLAS. Under questioning you admitted that. Under prodding from me you admitted you would be perfectly willing to have "thorough" added to the other sections. Why did you not propose to have "thorough" added to the other sections instead of taking out "thorough" and lowering this requirement to the other provisions?

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Mr. GREENSIDES. I do not think we are changing anything much.

Senator DOUGLAS. In other words, words do not mean anything?

Mr. GREENSIDES. Words mean plenty.

Senator DOUGLAS. Do you agree now that the word "thorough" should be inserted in all requirements?

Mr. GREENSIDES. If you wish to put it in we do not object to that.

Senator DOUGLAS. You do not advocate it?

Mr. GREENSIDES. It is not necessary.

Senator DOUGLAS. In other words, your examining procedures are so perfect that no further stiffening is needed? This is the height of bureaucratic self-satisfaction.

Mr. GREENSIDES. It is not. Our examination procedures are good procedures. There is a human failure here and there at times, but that does not bring into reflection the examination procedure itself. We will be very glad to have a representative of any certified public accountant association go over our procedures and techniques.

Senator DOUGLAS. We had exactly the same trouble when we were dealing with the RFC, and they were so self-satisfied with what they were doing that you could not criticize them. Any suggestion that they were making mistakes was treated as impertinent and irrelevant.

Mr. GREENSIDES. I have said that we had perhaps a human failure in this instance, but the examination is still a good examination.

Senator DOUGLAS. What you are saying is, your examination is perfect?

Mr. GREENSIDES. No, sir. I am saying that examination was a good examination.

Senator DOUGLAS. May the good Lord deliver us from a bad examination then.

Mr. WALLACE. Did you say that was a good examination?

Mr. GREENSIDES. Yes, sir.

Mr. WALLACE. Let us review that for a minute.

Mr. GREENSIDES. This bank has not been harmed excepting by publicity. This bank is still operating. There has been no loss to depositors and no loss to FDIC. We think that a bank which puts up the capital to cover the risks has a right to operate. We do not believe that just because we may not like the individual officers, and so forth, that we should be able to throw them out of insurance.

Mr. WALLACE. But you point out, Mr. Greensides, this bank is still operating. That is no justification for any and all practices.

Mr. GREENSIDES. It is no justification for the practices but there is no justification for us to take such drastic action that they would not have a chance to place themselves in a good position. We were getting rid of one management and we were going through the process of section 8 (a), so that they could rehabilitate themselves. We are still in that process.

Mr. WALLACE. I think the point which we on this side of the table have been trying to make is this: That the bank had a history of difficulties. It not only increased its general procedural difficulties, overrunning the position of too many real-estate loans, and so forth, but it went beyond that. What is a misapplication of funds or diversion of profits? Is that not theft?

Mr. GREENSIDES. That is what we reported to the district attorney.

Mr. WALLACE. You reported it to the district attorney and let it go at that. Why did you not use this as evidence for really making a

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thorough examination for the bank, and asking people questions under oath? Is that not an indication that you should make a thorough examination—and I mean a thorough examination?

Mr. GREENSIDES. That examination proceeded for several weeks. It concluded—I believe that it started in March and concluded in May. A great deal of questions and many hundreds of questions were asked, and a great deal of work was performed, and the report was made the basis for insisting upon corrective action. A criminal report was filed. We asked for an audit in order to get the Marcus accounts placed in satisfactory condition, so that the liability could be determined. We would like to have had an audit on the construction and loan accounts, too.

Mr. WALLACE. I think we have talked about it as much as we can.

Senator DOUGLAS. Do you want to take up the case of Mr. John H. Russell, Mr. Wallace?

Mr. WALLACE. I did want to get back to the proposition of the single Administrator for a moment, if I may. Mr. Herz was making a lot of points in that regard, and I want to follow up very briefly.

Why is it, for example, that the national banks and State banks can be regulated by a single Administrator, whereas your operation cannot?

Mr. GREENSIDES. We are not a primary supervisory authority and we are across the board between national banks and State nonmember banks and member banks. We are working across the board in a dual banking system. I believe with a single Administrator that we will have more difficulties with the banking system. I think the banking system will be much better satisfied with a bipartisan Board than it would be with a single Administrator. I think we have to take into consideration the structure of the banking system with regard to the operation of the Corporation by a Board or Administrator.

Mr. WALLACE. In our investigations, you know, we got into the closing of the old Elmwood Park Bank. In that regard, there were three main issues with respect to opening a new bank which arose between the State banking authority and the national banking authority position of FDIC. One was the amount of capital. Mr. Gover, of your Chicago office, had wanted $1 million capital originally and I think he later dropped it down to $800,000; whereas Mr. Hodge, the State banking authority, wanted $600,000 capital. The Federal Deposit Insurance Corporation was interested in a national bank and Mr. Hodge insisted on a State bank. The Federal Deposit Insurance Corporation would normally order a receivership, but Mr. Hodge insisted on an assumption transaction. On all three of these counts Mr. Hodge won.

What appears to occur with respect to a 3-man Board in this regard are 2 things which seem paradoxical, although they are not, and that relates to the operation of the staff of the agency.

On the one hand, if you do not have a clear-cut authority at the top, what does the staff do? In the case of Mr. Gover, he was weakened because the decision of the 3-man Board resulted in his position being undercut. On the other hand, Mr. Russell, who was working closely with Mr. Hodge, found himself strengthened because there was not enough strength at the top to keep him in line, and Hodge won on all three counts.

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So, although it seems paradoxical, it at once made the staff too strong and made the staff too weak.

Mr. GREENSIDES. No. That was——

Senator DOUGLAS. It made it too strong where private interests were involved and too weak where public interests were involved.

Mr. WALLACE. I think that is right.

Mr. GREENSIDES. The question of capital is one of judgment; $600,000 was what was agreed upon by the Board. I was not present in Washington at the time, but as I read the files I cannot help but think the major objective was to get cash into the hands of the depositors who had been held back 6 or 7 weeks. The new bank with $600,000 capital has served the public well and has not endangered the Federal Deposit Insurance Corporation, nor have the depositors been endangered. I do not think that that indicates there was a yielding to Hodge, necessarily. There could be an honest difference of opinion. We have them almost weekly with respect to new bank applications, and branches, and so forth. Someone has to make a dicision as to what the amount shall be. The fact that Mr. Gover recommended more is not an indication that he was undercut. It is an indication that there was a difference in viewpoint, and that the Board acted.

Mr. Russell had no great influence on the decision to transfer the deposits to a new bank. He was out there in the capacity of advisor to a chief liquidator—legal adviser to the chief liquidator—and he had no basic effect on the decision.

Mr. WALLACE. I am afraid, Mr. Chairman, we will have to let the facts speak for themselves in that regard. One of the points you raised was that you were under pressure because the bank was closed for 7 weeks and there was a great deal of pressure to pay off these depositors. Actually Mr. Hodge had you over a barrel in that regard; did he not? You could have gone ahead with a receiver, as I understand the Illinois law, but as it was there you could not move.

Mr. GREENSIDES. We could not move because the bank had not been placed in liquidation.

Mr. WALLACE. Have you made a recommendation for legislation which would prevent that type of situation from arising?

Mr. GREENSIDES. Yes; that is in this package.

Mr. WALLACE. Have you made a recommendation with respect to some sort of punitive action such as actual withdrawal of insurance, or publicizing the inadequacies?

Mr. GREENSIDES. In the package we have a recommendation permitting us, the Federal Deposit Insurance Corporation, to shorten the time from the 120 days——

Mr. WALLACE. I do not mean shorten the time. One of the problems which I believe the Federal Deposit Insurance Corporation testified to with respect to both Mr. Beutel and Mr. Marcus, was that you hated to go all out and take away the insurance, which would destroy the bank. Their practices were not that bad, although they were bad enough. So in the case of Mr. Marcus, he ignored your warnings and you could not act until you found actual evidence of thievery on his part. I seem to recall you thought it would be well to have something which would not go as far as taking away the insurance, but still be effective toward enforcing your decisions.

Mr. GREENSIDES. Let us say here that on at least two occasions Marcus' increase of the capital to the bank put in additional capital

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which tended to relieve the pressure. Until a bank becomes dangerous either to the Corporation's financial interest or depositors', we will work with it trying to restore it and rehabilitate it. We do not desire to take drastic action in the absence of a financial danger.

Mr. WALLACE. That is my whole point. Have you suggested legislation for something not as drastic as withdrawing insurance, but drastic enough to help you enforce your decisions? If you have not, it is all right, but I am just asking the question.

Mr. GREENSIDES. No; it has not been worked on. There is nothing like removal of officers, or anything like that.

Mr. WALLACE. Would you like the power to remove officers? Would that help you in your enforcement procedures? It would at least keep someone like Mr. Marcus from thumbing his nose at you; would it not?

Mr. GREENSIDES. It seems to me the power to remove officers would best be left in the hands of the primary supervisor. After all, we are a secondary supervisor and we do have the power to protect the funds in section 8 (a) if we can shorten that time somewhat. The time element. Under the present law with 120 days it could be that our risks would be materially increased. If we can shorten it to 20 days we can probably protect ourselves.

Mr. WALLACE. I am going to go very quickly into 2 or 3 other points here.

Mr. Beutel passed the ownership of those three banks to the Bankers Discount Corp. in 1953, without knowledge of the FDIC.

Mr. GREENSIDES. Yes, sir.

Mr. WALLACE. Was that illegal?

Mr. GREENSIDES. Not as far as we were concerned.

Mr. WALLACE. Should it be? Should you not know who actually owns the banks?

Mr. GREENSIDES. This question of disclosure of stock ownership we have been giving a lot of consideration to since you discussed it with us. We think it needs a great deal more discussion before legislation should be produced, because while if we phrase it in terms of Beutel, something could be worked out, and yet we can see also where very great damage could be done with respect to banks which have an active market for their stocks, and their stocks are traded on the exchange.

Mr. WALLACE. I can understand your point in this respect, but would it not be possible to make it mandatory to disclose ownership to the Federal Deposit Insurance Corporation without necessarily making it public?

Mr. GREENSIDES. I will have to refer you to Governor Robertson's testimony yesterday on that point. It would be very difficult to insure that the reporting would be made, and it certainly would give you a great administrative problem, and we do not know whether it could work to general advantage in the end result.

Mr. WALLACE. This is not necessarily in your bailiwick, but I could not see how the Bank Holding Company Act could possibly operate unless there is some way to compel disclosure of ownership of banks.

I would like to ask you one other thing which gets into this question of public deposits and political contributions. As I understand it, national banks are prohibited by law from making any political contributions; is that correct?

Mr. GREENSIDES. I understand so.

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Mr. WALLACE. Would you recommend the same thing be applied to any bank insured by the Federal Deposit Insurance Corporation?

Mr. GREENSIDES. I think it would raise higher the specter of Federal domination of State banks and raises the flag of States' rights again if such were the case. After all, it seems to me the States should control whether their State banks may contribute to State elections.

Were you limiting your suggestion to Federal elections?

Mr. WALLACE. No. I said the national banks are prohibited from making political contributions. However, State banks are prohibited from making contributions to national elections, but I was thinking about the possibility of near bribery in the case of making political contributions to officials who have power to allocate State deposits on a no-interest basis, or a low-interest basis. I think that the evidence developed by this committee in the Hodge case indicated very clearly that there is that danger.

Mr. GREENSIDES. We would like to study that result of your investigation.

Senator DOUGLAS. You have not given any thought to this subject before?

Mr. GREENSIDES. In the discussion with Mr. Wallace in committee.

Senator DOUGLAS. I would like to ask Mr. Cook: Have the Directors of the Corporation given any thought to a provision preventing officials or, rather, preventing State banks insured by the Federal Deposit Insurance Corporation from making political contributions?

Mr. COOK. We have not, but we feel that that is a matter for State responsibility.

Senator DOUGLAS. In other words, you do not intend to do anything about it as of this moment?

Mr. COOK. We will give it study.

Senator DOUGLAS. Yes; but as of this moment you have not?

Mr. COOK. No, sir.

Senator DOUGLAS. In other words, the Hodge affair has not affected you on this point, either?

Mr. COOK. Well, as Mr. Greensides has so well said, after all, some of these matters should be matters for the States themselves to decide how far they want to go. I don't know how far we could go in my State. But, as Mr. Greensides has said, if you superimpose too much Federal authority from Washington over State banks, you are going to create a tremendous amount of resentment, in our opinion, among the State banks, where they feel we are invading their prerogatives.

Senator DOUGLAS. There is an evil against which either State or Federal authorities should proceed; namely, the fact that the deposits of State and local governments tend to be either (*a*) interest free or (*b*) at an interest rate appreciably below the going rate on deposits. Therefore, the privilege of getting these deposits is eagerly sought after by many bankers, and contributions to treasurers and auditors who have the power of deposit may grease the way for deposit of public funds at low interest or no interest. Do you feel there is any problem connected with that?

Mr. COOK. There may be in some States, as it was in your own State, sir.

Senator DOUGLAS. You think Illinois is unique?

Mr. COOK. I do not say so. I would not point to Illinois just because of the one instance. It may occur in other States.

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Senator DOUGLAS. It may.

Mr. COOK. It may; I don't know.

Senator DOUGLAS. You have no knowledge. Do you think it would be a proper subject for you to inquire about?

Mr. COOK. Political contributions, you mean, by insured banks? Again, I give you my own personal opinion. I am not speaking for Mr. Harl. I would prefer him to give his opinion. But in my own opinion, those are rights that should be reserved to the States. I don't believe in too fine invasion of States rights and their prerogatives by the Federal Government.

Senator ROBERTSON. The Chair would just like to make a comment. The Chair appreciates the importance of knowing what happened out there in Chicago. The record, however, is this. The Banking and Currency Committee conducted hearings for 2 weeks; the FBI studied it; the State attorney for Cook County studied it; the State attorney for Sangamon County studied it; the attorney general of Illinois studied it; the United States district attorney studied it; and the State budgetary commission studied it.

It is important for us, when we have only one-half day left, to complete the record that we started to make on the recommendations of the Federal agencies, and the Home Loan Bank and the Credit Bureau are yet to be heard.

When we meet in January we won't be on any 2-day limitation.

Under these circumstances, I would appreciate it if we could bring to a close as soon as we can what happened with two banks in Chicago, and let us finish the record we set out to make. That is said in all due deference to the importance of the questions being asked and the public interest as to whether or not the FDIC fell down on the job out there.

Mr. WALLACE. I have one other point to make and I am through, Mr. Chairman. I think the evidence developed by our committee indicates that this power over public deposits was the tool or the lever by which Mr. Hodge was able to get the complicity of a banker to help him cash fraudulent checks. So that in terms of protecting depositors and protecting the public, this goes beyond merely the problem of who is going to control political contributions. It is not necessarily to be viewed as a means of controlling political contributions, as it is a means of protecting the soundness of banks.

This is the point I wanted to make. You said, I believe, that you would give consideration to this problem. I would like to mention one thing that you could add to your consideration, which is this. In some cases national banks are prohibited from making political contributions, but their officers or large stockholders can make contributions. So in your consideration of this problem, I wondered if you would think about the possibility of putting some form of restriction, at least reporting on contributions by, say, officers, directors, or 10-percent stockholders, which I believe is the requirement in the SEC law.

Thank you very much.

Mr. GREENSIDES. That is why I reserve my opinion, Mr. Wallace, at the time, because I wanted to consider the officer angle of it.

Senator ROBERTSON. Are there any other questions of these witnesses?

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Mr. Cook. I would like to raise this question. I referred to Mr. Harl a moment ago, as to whether he would have some further comment. Mr. Harl is my associate on the Board of Directors.

Mr. Harl. It was my impression that corporations could not make contributions to national campaigns as such, and a bank is a corporation. It seemed to me that they are restrained now from making contributions.

Senator Douglas. Not to State campaigns or to State officials.

Mr. Harl. Well, I am thoroughly cognizant of the fact that they can make them to State officials. In this case, the auditor—I think there are only two States in the country where the auditor is also ex officio bank commissioner. Most bank commissioners are separate from the disposal of public funds and have nothing to do with public funds. However, after the lesson we learned in this case as to contributions—and Illinois and Florida, I think, are the only two States where the comptroller elected official is also the ex officio bank commissioner.

Senator Douglas. There are State treasurers which have control over the deposit of public funds. There are local city treasurers and local city financial officers.

Mr. Harl. I think that point is very well taken. I can see very clearly where a banker, by making a contribution, could ingratiate himself for funds. I think your point is well taken. Now, we have another case in which the treasurer is supposed to invest in bills of the United States Government when they yield more than the rate—in that case it is mandatory upon him to invest his money where he gets more than he can from banks. And at the present time the bill rate is 3 percent, I believe, and the top rate in banks is 2½. In that case, the law is mandatory that they invest in bills rather than deposit the money in banks, which I think is a salutary effect, Mr. Chairman.

Senator Douglas. Congratulations, Mr. Harl, on that statement.

Senator Robertson. I can say to my distinguished friend from Illinois that we will look into this matter—but it is not necessary from the standpoint of bankers in Virginia. I was elected to a State office in 1915. I have held public office ever since. Ever since that time the Virginia bankers seem to think it is illegal to contribute.

Senator Beall. Mr. Chairman, I would like to second what you have said as it applies to Maryland. I don't know of any Maryland bankers that have been contributing to any political campaigns. I would like to know if there are any. I would look them up.

Senator Robertson. I believe Mr. McCloy has 1 or 2 more questions on the reserves that you are building up that he thinks are very important, and that is an important part of the record, because bankers, of course, are interested in how much they have to contribute, and whether the reserve is too big or not big enough. I think under the circumstances it would be helpful if the record would show this.

Mr. McCloy. Thank you very much, Mr. Chairman. I was troubled by your recommendation No. 97, where you provide that there should be an amendment of section 7 (d), so that the net assessment income should be interpreted to include reserves for potential losses other than insured losses. What kind of losses have you besides your insurance losses? What is that figure?

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Mr. COOK. I don't have that recommendation with me, Mr. McCloy. This gentleman is Mr. Loeffler, the comptroller of the Corporation, who is in charge of the fund and in charge of the figures.

Mr. LOEFFLER. Mr. McCloy, this is a provision that we propose for such things as possible reserves for losses on accounts other than insurance losses. It has not amounted to anything of any great proportion in the past, but we felt that in the clarification of the act and any amendments, that we might well provide for such a feature.

Mr. MCCLOY. Isn't that a very loose term—potential losses—and aren't you really set up in business to take care of these insured losses? That is not the whole objective of the FDIC, incorporated in its name. Inasmuch as the banks, in the last analysis, have to foot this bill, to have a vague term such as that, which might in effect extend your powers, wouldn't this be a rather radical requirement to ask for?

Mr. LOEFFLER. The term "potential losses" might perhaps be better stated—such as possible provisions for operating expenses. In other words, we would like to put ourselves in the position that, for instance, expenditures which are extraordinary or do not necessarily recur every year—that we might perhaps make a provision each year to take care of such things and try to level out our expenditure. For instance, a purchase of equipment and what would be known as capital expenditures—we charge those off to operations as the expenditures are incurred. It might be worthwhile to establish, for example, a reserve for replacement of equipment, and try to level out those expenditures.

Mr. MCCLOY. Or you might have losses resulting from inefficient management, too, might you not?

Mr. LOEFFLER. Well, I don't know just what that would——

Mr. MCCLOY. That is what I don't understand. I am anxious to preserve the assessment money for the purposes for which Congress created the FDIC, and I think we are getting into a rather indefinite ground if you include a word such as "potential losses." I just wondered what your thinking had been in connection with that, so that we in this committee could grapple with it and determine whether it was something we could go along with or not.

Mr. LOEFFLER. As I said, the word "potential" could probably be changed, and something more specific stated. But the matter of provision for capital expenditures, trying to level out the expenditures, year in and year out, is the main thing we had in mind.

Mr. MCCLOY. Perhaps I should ask you this, Mr. Cook. In respect of the reserves, which is naturally a tender subject with the banks, do I understand that either you or Mr. Coburn said that your personal opinion was that it ought to be something in the nature of 1 percent?

Mr. COOK. Mr. Coburn made that statement, sir.

Mr. MCCLOY. One percent of what?

Mr. COOK. One percent of total deposits. That was the concept he had in mind.

Mr. MCCLOY. Of total deposits—not 1 percent of the insured deposits?

Mr. COOK. His statement was 1 percent of total deposits, as a yardstick.

Mr. MCCLOY. Because you are now at 1 percent of your insured deposits, are you not?

Mr. COOK. Approximately so.

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Mr. LOEFFLER. I think it is approximately 1.41 percent.

Mr. COOK. The difficulty is this, Mr. McCloy. There is no actuarial basis upon which to compute our potential losses. A life insurance company, a fire insurance company may have had over a hundred years of experience. We have only had a little over 20 years. We have more banks express their opinion to us, they want us to build up that fund so it is impregnable, because they do not want us to ever have to use our call upon the Treasury.

Mr. McCLOY. I understand that. But it seems to me there is a field here which you could study. Every other insuring agency does have to look at experience. For example, do you know the figure of the losses on $10,000 accounts in the biggest depression we ever had? You must have that figure.

Mr. COOK. I think our Division of Research and Statistics has made a study of that and they have some figures on that. I do not have them with me.

Mr. McCLOY. I have a feeling that a study can be made of this on the basis of experience. It is high time that it should be made, because it isn't such an esotaric subject. You can get into it. Because I do not believe that you are designed or intended by Congress to take care of a major national disaster. Let's say that we have a pestilence or war, where your $116 billion of insured deposits cannot be paid. You are not going to ever have the reserves to take care of that, nor will you ever be called upon to take care of it. What you will be called upon to take care of is the good and bad times, if I may say so, the normal good and bad times. It is that experience that I think you could plumb.

Mr. COOK. That is what we are trying to do, Mr. McCloy, and we are giving that constant study. Let this be understood. We have no desire to build up a fund disproportionate to the amount of our potential liability. All we want to do is to keep the confidence of the banking public and the banking system of the United States.

Mr. McCLOY. Don't you think that you could perhaps get a little more concrete and definite and limited recommendation with respect to "potential losses," in addition to insured losses?

Mr. COOK. We will give that study.

Mr. McCLOY. In addition in your recommendation No. 112 you refer to the FDIC paying the Government's share of the cost of civil service retirement and disability benefits from the creation of FDIC to the beginning of the first pay period after June 30, 1957. That is at a cost, as I understand it, of about $3.5 million.

Mr. COOK. That is approximately correct.

Mr. McCLOY. Do you have a reserve set up for that now, or would that come out of the banks?

Mr. COOK. It would come out of our present fund.

Mr. McCLOY. It would diminish the assessment refund of the bank. Do you have no special reserve set up to provide for it?

Mr. COOK. That would come out of our present fund. And that is a recommendation of the General Accounting Office, Mr. McCloy.

Mr. McCLOY. But that raises the question again, does it not, whether or not this is partially a Government-financed agency, or whether it is entirely a matter for the banks to support? Would this recommendation tend to diminish the pay-back to the banks?

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Mr. LOEFFLER. To all practical purposes, Mr. McCloy, that is the only governmental subsidy that the Corporation has now.

Mr. McCLOY. We would wish that you would take care of that out of your existing funds, and we might from here on be prepared to share in it because it would be relatively de minimus. But to pay $3.5 million at one time out of current assessments is something fairly substantial.

I have also a question in respect of another recommendation of yours that I think may be of some significance. I am not going to talk about the ones that are merely technical. This is No. 109. That is where you say that persons employed by FDIC acting as the receiver of any insured bank to assist the FDIC in any receivership shall be employees of the receivership estate and shall not be deemed for any purpose to be employees of FDIC. I understand in the explanation yesterday in regard to that it was because you wanted to have some employees' benefits maintained for them. But if you say that they are not employees of the FDIC in such broad language as that, doesn't that absolve the Corporation from any liability for, let's say, any negligence which occurs in connection with the administration of that receivership estate?

Mr. COOK. I think that was pretty well studied by the General Counsel, Mr. Coburn, and I would ask Mr. Coburn to take that.

Mr. McCLOY. This is a legal matter. If all the individuals are free from liability, is the Corporation?

Mr. COBURN. No. It would be an employee of the receivership.

Mr. McCLOY. Yes, I understand. But you are the receiver.

Mr. COBURN. Yes, sir.

Mr. McCLOY. But if all your employees are exempt from liability because they are not employees, where is the liability of the Corporation?

Mr. COBURN. Well, for instance, an act of negligence would be against the receivership assets, but would not be against the Corporation.

Mr. McCLOY. If it was not your employee that was guilty of the negligence, would you be responsible as the receiver? I think this is a legal point. But if you say that all your employees are exempt from liability, doesn't that at the same time exempt the Corporation from liability for mismanagement? I don't think this was intended at all—but I thought that the language that you included here in your recommendation might very well go further than you intended in the way of liability.

Mr. COBURN. Well, Mr. McCloy, I don't think it does. But our purpose——

Mr. McCLOY. Don't you see my point? If all your employees can be exempt from liability, what basis is there left for the Corporation to be liable?

Mr. COBURN. Well, the recommendation was that the employees shall be employees of the receivership, and therefore the receivership, the Corporation as receiver, would be liable.

Mr. McCLOY. Your recommendation reads:

> Shall not be deemed in any purpose to be employees of the FDIC.

Well, the FDIC is the receiver. If they are employees with two hats on, so to speak——

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Mr. COBURN. We can probably clarify that.

Mr. McCLOY. That is something I think may be involved there.

Mr. COBURN. We will endeavor to clarify that and give our suggestions to you by Tuesday.

Mr. McCLOY. That is just my point. I don't think you intended to relieve FDIC from all liability. But I think this recommendation as written would.

Mr. COBURN. All right. I accept your criticism.

Mr. McCLOY. There is one other thing, and that is No. 37. I understand that is the one about the sharing of the expense of the examination. I understand you are opposed to that.

Mr. COBURN. Yes, sir.

Mr. McCLOY. It does seem to me that you should oppose that, the more I think about it, because you would not only have to pay for your own expense, but you would have to pay 50 percent in addition. In other words, it would cost you 150 percent, because you have to pay 50 percent over to the Federal. In turn that comes out of your assessment.

Mr. COOK. It would be a discrimination against the State banks.

Mr. McCLOY. I think it would be a heavy discrimination. I didn't quite realize it yesterday. But the more I examine that, the more clear I become. It doesn't have any relation to the examination by the Federal.

Mr. COBURN. No, sir; no relation at all.

Mr. McCLOY. In cases where banks have State examinations, which are adequate, presumably, and the banks pay for them, if in addition you have to pay 50 percent of the cost of the examination, which is not reimbursed to you, but is taken out of you, that come out of the banks also in the last analysis.

Mr. COBURN. That is right.

Mr. McCLOY. The rest of the things are technical, and I may talk to you afterward about them.

Mr. COBURN. We would be very happy to discuss any of them.

Senator ROBERTSON. I suggest the gentleman from New York can submit his questions and we will give the Corporation the privilege of submitting answers for the record.

Mr. McCLOY. It may not even be necessary to go to that step, but if it is, I will appreciate that privilege.

Senator ROBERTSON. Our time is limited and the next witness has a rather lengthy prepared statement to read. The Chair could not resist the desire of the distinguished banker to cross-examine a Federal agency witness. It is probably his first chance to do that, and it may be his last.

Mr. McCLOY. It is the first time I have ever been on this side of the table.

Senator ROBERTSON. I remember when he was Assistant Secretary of the Army and he was cross-examined a lot, but he could not cross-examine us.

This concludes the testimony on the banking laws. The chairman is gratified that we have made in a brief time a rather comprehensive record. The chairman was impressed with the suggestion made by Mr. McCloy yesterday, and the answers of Governor Robertson that there may be a real need for another national monetary commission, and if we succeed in this job, the chairman of this group would feel

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inclined to sponsor a larger study involving overall policy questions. But he is not unmindful of the fact that for 18 years Congress tried to get legislation on bank holding company laws, and only last year, when there was agreement between the American Bankers Association and the Independent Bankers Association did we get a bill through Congress.

There are over 14,000 bankers and nearly all of them except 500 are insured banks, nearly half of them members of the Federal Reserve System. If they can get together on a program, we can put it through the Congress. But if they cannot, just remember this. There are 2 Senators from each State, but only 15 on the Banking and Currency Committee. Unless the bankers of the home States show an interest in this program and ask our Senators to support it, the 15 members of the Banking and Currency Committee, even if they agree on everything—which is not too likely—cannot put any bill through.

We believe what we are trying to do is of great interest to all banks. As pointed out yesterday, this is not a program for any particular type of bank. We want to help the little country bank as well as the biggest city bank. We hope to have a program that will be fair and advance the interests of all bankers. But to put it through, we have got to have the help of the 17,000 members of the American Bankers Association, and of the Independent Bankers Association. We need them all.

I would be glad to recognize another Robertson to present the recommendations of his Board.

Senator DOUGLAS. Mr. Chairman, may I ask whether this peculiar predominance of the Robertsons in the affairs of this committee is purely coincidental, or whether it is due to the natural tendency of the Scotch to gravitate to positions where money is involved.

Senator ROBERTSON. A former colleague once told a story that he said he heard over in England. The Britisher told him this. He asked "I don't see how you all get along over there in the United States with about 57 different groups. We only have four groups over here." My friend said "What are they?" "Well," he said, "we have the Scotch and they won't wear rubber heels because they give. We have the Welsh who pray on their knees, and prey on everybody else. We have the Irish, who are always willing to fight, but don't know what to fight for. And we have the English, who are self-made and worship their creator."

You may proceed.

STATEMENT OF ALBERT J. ROBERTSON, CHAIRMAN; ACCOMPANIED BY IRA DIXON AND WILLIAM HALLAHAN, MEMBERS; THOMAS H. CREIGHTON, GENERAL COUNSEL; JOHN M. WYMAN, DIRECTOR, DIVISION OF SUPERVISION; VERNE C. BONESTEEL, DIRECTOR, DIVISION OF EXAMINATIONS; AND DR. WILLIAM H. HUSBAND, GENERAL MANAGER, FEDERAL SAVINGS AND LOAN OPERATIONS, FEDERAL HOME LOAN BANK BOARD

Mr. ROBERTSON. Thank you, Mr. Chairman, gentlemen of the committee—my name is Albert Robertson, and I am chairman of the Federal Home Loan Bank Board. As some of the members of the

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committee may know, I have been with the Board only a relatively short time. I have with me, however, Messrs. Ira Dixon and William Hallahan, who are the other two members of the Board; Thomas H. Creighton, General Counsel; John M. Wyman, Director of the Division of Supervisor; Verne C. Bonesteel, Director of the Division of Examinations; and Dr. William H. Husband, General Manager, Federal Savings and Loan Operations.

Senator ROBERTSON. Will the gentleman yield? You have a very interesting introduction in your written statement, but it is five pages long. Would you be willing to submit that for the record? All these gentlemen are going to read it. They have got to read all of it before they can recommend anything to us. Then we can get down to your recommendations.

Mr. ROBERTSON. Yes, sir.

Senator ROBERTSON. The record will include that, and also we will include in the record the original printed recommendations.

Mr. ROBERTSON. Before I go to the recommendations, I should like also to submit the specific language embodied in the recommendations which was requested by your office on October 4. That is embodied in this group of specific recommendations which has been delivered this morning.

(The material referred to follows:)

SPECIFIC LEGISLATIVE LANGUAGE EMBODYING RECOMMENDATIONS AND SUGGESTIONS IN SUBMISSION OF FEDERAL HOME LOAN BANK BOARD OF OCTOBER 1, 1956, FOR WHICH SPECIFIC LANGUAGE WAS NOT GIVEN IN SAID SUBMISSION

Pursuant to request in the letter of October 4, 1956, to the Chairman of the Federal Home Loan Bank Board from Donald L. Rogers, counsel, Committee on Banking and Currency, United States Senate, there is attached hereto specific legislative language embodying recommendations and suggestions in said Board's submission of October 1, 1956, for which specific language was not given in said submission. In the case of most of these recommendations and suggestions the specific language attached hereto represents only one of several possible ways in which the matter might be handled; however, pursuant to the request abovementioned, each recommendation and suggestion in the Board's submission of October 1, 1956, for which specific language was not given in said submission is included in the specific language attached hereto.

Relationships between savings and loan associations and affiliates

The Board's suggestion on this matter appears at page 148 of the committee's printed compilation of October 12, 1956. Specific language to implement this suggestion is included in amendment No. 1 attached hereto, in the form of a new subsection (d) of section 5 of the Federal Home Loan Bank Act.

Under this language, the Board would be expressly authorized to regulate the relationships between member or insured institutions and affiliates thereof, and business, financial, or other transactions between such institutions and their affiliates. The term "affiliate" would include officers, directors, and employees. It would also cover cases where there was direct or indirect ownership, holding with power to vote, or control (1) of more than 5 percent of the voting securities of the member or insured institution by the affiliate, (2) of more than that percentage of the voting securities of the affiliate by the member or insured institution, or (3) of more than 5 percent of the voting securities of the institution and more than 5 percent of the voting securities of the affiliate by a single corporation or other person.

In addition, the Board would be given power, under specified standards, to provide that other persons or classes of persons should be treated as affiliates and to exclude from the definition of "affiliate" any person or class as to which it determined that such exclusion was consistent with the protection of investors or borrowers and was necessary or appropriate in the public interest.

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The suggestion by the Board on this matter also included the question of examination of affiliates and the furnishing of reports and information by them to the Board. This part of the suggestion is treated next hereinbelow, under the heading "Strengthening of Examination Powers."

Strengthening of examination powers

The Board's suggestion on this matter likewise appears at page 148 of the committee's printed compilation.

This suggestion would be implemented by amendment No. 3 attached hereto, which would add to section 8 of the Federal Home Loan Bank Act a new subsection (b) which, if enacted, would give the Board ample power to examine, and to require reports and information from, any Federal home loan bank member which is a savings and loan, building and loan, or homestead association, or a cooperative bank, or which is an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation. At present, the Board would in general (in the absence of further legislation) have power to examine a member institution which was not so insured only where there was no State examination or where the Board might deem the State examination to be inadequate as set forth in section 8 of the Federal Home Loan Bank Act.

Also, the suggested new subsection would authorize the Board to examine, and to require reports and information from, affiliates of such member or insured institutions. The term "affiliate" would be defined in a manner similar to that suggested in the provisions discussed above under the heading "Relationships Between Savings and Loan Associations and Affiliates."

Regulation of Federal home loan bank members

The third recommendation or suggestion made in the Board's submission of October 1 which is not implemented by specific language is the suggestion (which appears at p. 149 of the committee's printed compilation) that serious consideration be given to the question whether uninsured members of the Federal Home Loan Bank System should not be subject to the same regulation with respect to advertising, sales plans and practices, and other operating practices as insured institutions. Language to implement this suggestion is contained in that portion of amendment No. 1 attached hereto which would add a new subsection (c) to section 5 of the Federal Home Loan Bank Act. It is believed that this language is self-explanatory.

Removal of officers or directors

The Board's suggestion on this matter appears at page 150 of the committee's printed compilation. It suggests that, in the consideration of that part of the Board's suggested amendment to subsection (d) of section 5 of the Home Owners' Loan Act of 1933 which would authorize the removal of directors of Federal associations for violation of law or regulation or other misconduct (this suggested amendment is item 144 beginning at p. 178 of the printed compilation), serious consideration be given to the question whether similar provision should not also be made with respect to directors and officers of member and insured institutions which are not federally chartered.

Language to implement this suggestion is contained in amendment No. 1 attached hereto, in the form of a new subsection (f) of section 5 of the Federal Home Loan Bank Act. The approach taken is similar to that suggested in item 144 with respect to directors and officers of Federal savings and loan associations; however, since there might be some question as to the power of the Federal Government to effect direct suspension or removal of a director or officer occupying a State-created corporate office of this nature, it is provided that the orders of suspension or removal shall be orders directing the director or officer to refrain from participating in the management of the institution or directing him to resign or otherwise cease to hold office, as distinguished from orders purporting to effect a direct suspension or removal.

Persons convicted of criminal offenses involving dishonesty or breach of trust

The Board's suggestion on this matter appears at page 150 of the committee's printed compilation. Language to implement this suggestion is embodied in that part of amendment No. 1 attached hereto which would add to section 5 of the Federal Home Loan Bank Act a new subsection (b). It is believed that this language is self-explanatory.

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Conversion of mutual savings and loan associations into stock companies

The Board's suggestion on this matter likewise appears at page 150 of the committee's printed compilation. It is there pointed out that the Board has under active consideration the adoption of regulations laying down procedures and standards for cases in which Federal savings and loan associations undertake to convert into State-chartered nonmutual institutions, variously known as stock companies, permanent-stock associations, and guaranty-stock associations. It is also pointed out that the same problem arises where the conversion is from a State-chartered mutual association into a State-chartered stock company.

Accordingly, the Board suggested that consideration be given to the question whether it should not be given power to impose comparable regulations where the institution which proposes to convert from mutual to stock-type operation is not a Federal savings and loan association but is a State-chartered institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation. Language to implement this suggestion is embodied in that part of amendment No. 4 attached hereto which would add to section 403 of the National Housing Act a new subsection (e).

In the analysis of this matter with a view to the drafting of legislative language it was concluded that in the conversion of a State-chartered mutual savings and loan association into a nonmutual institution the conversion might take place in any of the following principal ways: (1) By the issuance of a new class of securities, either (a) under a method by which the new securities would be the permanent, guaranty, or management stock; or (b) under a method by which the new securities would have a lesser participation in earnings and lesser voting rights than outstanding securities, in which case the securities of the class already outstanding would become in fact or in effect the management stock; (2) by modifying the relative participation and voting rights of securities already outstanding or which the institution was already authorized to issue; or (3) by entering into a management contract, agreement, or arrangement, or a contract, agreement, or arrangement for the rendering to the institution of management or similar services, under which fees or earnings would be siphoned out of the institution for the benefit of the managers.

Language to meet each of these situations has been included in amendment No. 4 attached hereto, in the form of a new subsection (e) of section 403 of the National Housing Act, which would provide that no insured institution shall, in violation of regulations of the Federal Savings and Loan Insurance Corporation, (1) issue any security (a) not having the same characteristics as a security currently outstanding, or (b) the issue of which is contrary to any agreement with or condition imposed by the Corporation; (2) take specified action or any other action for modiffcation of, or which has the effect of modifying, any of the characteristics of any outstanding or authorized security of such institution, or (3) enter into any management contract, agreement, or arrangement, or any contract, agreement, or arrangement for the rendering to the institution of management or similar services. The Board would be authorized by a new subsection (h) of said section 403 to make such classifications as it might deem necessary or appropriate for the purposes of the new subsection (e) and to define the terms used therein.

Liquidity of Federal home loan bank members

The Board's recommendation on this matter appears as item 121 of the committee's printed compilation, and implementing language is embodied in amendment No. 2 attached hereto. The suggested language would apply not only to member institutions but also to insured institutions and would include provisions with respect to commitments, firm or otherwise, of such institutions to make or purchase loans, so that the concept of liquidity as an amount of liquid assets related to current obligations may be adequately carried out.

Regulation of insured institutions

The Board's submission of October 1 included under the above heading two recommendations for which specific legislative langnage was not included. These 2 recommendations, which appear in the committee's printed compilation as recommendations (1) and (2) of item 158 (at p. 196 of said compilation), are that subsection (b) of section 403 of the National Housing Act be amended (1) by adding a provision that the Board may establish conditions subject to which it will approve mergers or consolidations of, or the purchase or sale of assets by, insured institutions, and (2) by adding a provision that the Federal Savings and

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Loan Insurance Corporation shall have power to regulate retirement, pension, and deferred compensation contracts and arrangements of insured institutions.

Specific language to implement these 2 recommendations is included in amendment No. 4 of the amendments attached hereto, in the form of a new subsection (f) and a new subsection (g) of section 403 of the National Housing Act. When the drafting of specific language was undertaken it was found that it would be difficult to fit the new provisions into the context of existing subsection (b) of section 403, and it is for this reason that they have been cast in the form of suggested new subsections.

The suggested new subsection (f) would provide that, except with the prior approval of the Federal Savings and Loan Insurance Corporation by regulations or otherwise, no insured institution shall (1) be a party to any merger or consolidation; (2) purchase assets from or sell assets to any savings and loan, building and loan, or homestead association or cooperative bank, or any savings bank; or (3) increase its accounts of an insurable type through or in connection with any purchase of assets.

The suggested new subsection (g) would provide in effect that, except with such approval, no insured institution shall enter into any retirement, pension, or deferred compensation contract, agreement, or arrangement, or consent to any extension, renewal, or alteration thereof except an alteration, extension, or renewal of a preexisting contract, agreement, or arrangement where the institution's consent is not legally needed or the institution is under a valid and binding obligation to give the consent.

1. Section 5 of the Federal Home Loan Bank Act, as amended, is hereby amended by inserting immediately before the first sentence thereof the language "(a)" and by adding thereto at the end thereof the following new subsections:

"(b) Except with the written consent of the Board, no person shall serve as a director, officer, or employee of a member or of an insured institution who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or breach of trust. For each willful violation of this prohibition the member or insured institution involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Board may recover by suit or otherwise for its own use.

"(c) No member shall carry on any sales plans or practices, any advertising, or any other operating practice, in violation of regulations of the Board: *Provided*, That this subsection shall not authorize the Board to impose any greater limitations or restrictions on members than the Board or the Federal Savings and Loan Insurance Corporation may from time to time have power to impose on insured institutions under title IV of the National Housing Act as now or hereafter in force (including agreements therein provided for) or otherwise.

"(d) The Board is hereby authorized, in such manner and to such extent as it may deem necessary or appropriate in the public interest or for the protection of investors or borrowers, to regulate relationships between members or insured institutions and affiliates thereof, and to regulate business, financial, or other transactions between members or insured institutions and affiliates thereof, or between such affiliates and investors in or borrowers from such members or such institutions.

"As used in this subsection, the term 'person' includes individuals, corporations, and organized groups of persons (including any of the foregoing occupying or acting in a fiduciary capacity or otherwise than in their own right), and any conservator, receiver, or other legal custodian of or for any of the same, and the terms 'investors' and 'borrowers' include applicants and prospective investors or borrowers. For the purposes of this subsection or any application thereof, the term 'affiliate' as used in this subsection means—

"(1) Any person who is a director, officer, or employee of a member or an insured institution;

"(2) Any person directly or indirectly owning, controlling, or holding with power to vote more than 5 per centum of the outstanding voting securities of a member or an insured institution:

"(3) Any person more than 5 per centum of whose outstanding voting securities is directly or indirectly owned, controlled, or held with power to vote by (i) a member or insured institution or (ii) a person directly or indirectly owning, controlling, or holding with power to vote more than 5 per centum of the outstanding voting securities of a member or an insured institution; or

"(4) Any person or class of persons with respect to which there is outstanding a determination by the Board, by regulations or otherwise, that

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it is necessary or appropriate in the public interest or for the protection of investors or borrowers that such person or class of persons be treated as an affiliate for the purposes of this subsection or of such application: *Provided*, That, notwithstanding any provision of this subsection, the term 'affiliate' as therein used shall not, for the purposes of this subsection or any application thereof, include any person or class of persons with respect to which there is outstanding a determination by the Board, by regulations or otherwise, that the exclusion of such person or class from the meaning of said term for the purposes of this subsection or of such application is consistent with the protection of investors and borrowers and is necessary or appropriate in the public interest.

"(e) For the purposes of subsections (c) and (d) of this section, the Board shall have power from time to time (1) to make such classifications as it may deem necessary or appropriate therefor and (2) to define any or all of the terms used in said subsections. As used in this Act, the term 'insured institution' means an institution the accounts of which are insured under title IV of the National Housing Act as now or hereafter in force, and the term 'regulate' and derivatives thereof include prohibition.

"(f) As used in this subsection, the term 'institution' means a member or an insured institution, other than a Federal savings and loan association. Whenever in the opinion of the Board any director or officer of an institution has violated or is violating any law or regulation relating to such institution or has engaged or is engaging in unsafe or unsound practices in conducting the business of such institution or has violated his duty to such institution as a director or officer, the Board may notify the board of directors of such institution to remove such director or officer from office. If, within thirty days from the date of the notification to it by the Board, the board of directors of such institution shall have failed or refused to remove such director or officer as hereinbefore provided, the Board may cause notice to be served upon such director or officer to appear at a hearing before the Board, a member thereof, or a person designated by the Board and show cause why an order of removal should not be issued against him. The notive shall state the ground or grounds upon which it is based. A copy of such notice shall be sent to each director of the institution affected by registered mail. The Board may issue an order of suspension against such officer or director pending final determination upon the question of the issuance of an order of removal against him. If, after hearing, the Board finds that such director or officer has violated or is violating any law or regulation relating to such institution or has engaged or is engaging in unsafe or unsound practices in conducting the business of such institution or has violated his duty to such institution as a director or officer, the Board may issue an order of removal against such director or officer. A copy of such order shall be served upon such director or officer. A copy of such order shall also be served upon the insitution of which he is a director or officer. Any such director or officer against whom an order of removal has been issued as herein provided who thereafter participates in any manner in the management of such institution, or any such director or officer who participates in any manner in the management of such institution while such an order of suspension against him is in effect, shall be fined not more than $5,000 or imprisoned for not more than 5 years, or both, in the discretion of the court. The provisions of subdivisions (4), (5), and (6) of subsection (d) of section 5 of the Home Owners' Loan Act of 1933, as now or hereafter in force, shall be applicable with respect to this subsection and hearings and other proceedings under this subsection, and for the purposes of this subsection the term 'association' as used in said subdivisions shall be deemed to mean 'institution' as defined in this subsection and the references in said subdivision (4) to subdivision (2) of said subsection (d) shall be deemed to be references to this subsection. As used in this subsection, the term 'order of removal' means an order directing a person to resign or otherwise cease to hold office, and the term 'order of suspension' means an order directing a person to refrain from participating in the management of an institution pending determination upon the question of the issuance of an order of removal against him. If, at the expiration of thirty days from the date on which such an order of removal becomes conclusive as against further proceedings by way of review as provided for in this subsection, such director or officer shall not have ceased to hold office, the Board, without any requirement of notice or hearing, may, by order, terminate the membership of such institution or the status of such institution as an insured institution (or both such membership and such status if the institution is both a member and an insured institu-

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tion), and the action of the Board shall be final. In case of such termination of insured status, the provisions of section 407 of the National Housing Act, as now or hereafter in force, with respect to continuance of insurance, examination, payment of final premium, and notice to insured members shall be applicable."

2. Section 5A of the Federal Home Loan Bank Act, as amended, is hereby amended to read as follows:

"SEC. 5A. As used in this section, the term 'institution' means a member or an insured institution. No institution shall make or purchase any loan or make (except subject to the provisions of this section) any commitment to make or purchase any loan at any time when its cash and obligations of the United States are not at least equal to such amount as the Board shall by regulations prescribe: *Provided*, That such amount shall not be less than 4 percentum nor more than 8 per centum of the obligations of the institution on withdrawable accounts or, in the case of any member insurance company, such other base as the Board may determine to be comparable. The Board is authorized in said regulations to prescribe from time to time different amounts, within the limitations hereinbefore specified, for different classes of institutions, and for such purposes and for the other purposes of this section the Board is authorized to classify institutions according to type of institution, size, location, rate of withdrawals, or any other basis or bases of differentiation as the Board may deem to be reasonably necessary or appropriate for effectuating the purposes of this section. The Board shall have power by regulations (a) to define firm or other commitments by institutions to make or purchase loans and to require the keeping of such records and the furnishing to it of such reports and information with respect to such commitments as it may deem necessary or appropriate in the public interest and (b) to provide that for the purposes of this section an institution's cash and obligations of the United States shall be the net amount of its cash and obligations of the United States after deduction of the amount of specified liabilities (including firm or other commitments) or portions thereof as provided in such regulations. Failure to comply with any of the provisions of this section or of any regulation thereunder shall constitute ground for removal from membership and for termination of insured status under section 407 of the National Housing Act as now or hereafter in force."

3. Section 8 of the Federal Home Loan Bank Act, as amended, is hereby amended as follows: (1) By inserting the language "(a)" immediately before the first sentence and (2) by adding to said section at the end thereof the following new subsection:

"(b) (1) As used in this subsection, the term 'institution' means (i) a member which is a savings and loan, building and loan, or homestead association, or a cooperative bank, or (ii) an insured institution, and the term 'affiliate' has the meaning ascribed to it by the definition of that term in subsection (d) of section 5, except that for the purposes of this subsection the references in said definition to said subsection (d) shall be deemed to be references to this subsection and the term 'institution' as used in said subsection (d) shall have the meaning ascribed to it by this subsection.

"(2) The Board shall have power by regulations or otherwise to provide for the examination of any institution or affiliate and to require any institution or affiliate to furnish, under oath or otherwise, such periodic or other reports and such information as the Board may deem necessary or appropriate in connection with any function of the Board or of the Federal Savings and Loan Insurance Corporation. The cost, as determined by the Board, of any examination of an institution or of any affiliate thereof may be assessed by the Board upon such institution and, when so assessed, shall be promptly paid to and may be recovered by suit or otherwise by the Board: *Provided*, That if an affiliate is an affiliate of two or more institutions the expense of any examination of such affiliate may be assessed against any or all of such institutions in such proportions as the Board may by regulations or otherwise prescribe.

"(3) In the event of (i) failure or refusal by any institution or affiliate thereof, or by any director, officer, employee, or agent of any institution or of any affiliate thereof, to submit any of such books, records, papers, or affairs to examination or inspection by any examiner or agent of the Board, or to comply with any requirement of or under this subsection or regulations thereunder, (ii) concealment by any of them of any of such books, records, papers, or affairs, or (iii) failure or refusal by any such institution to make prompt payment of any such cost so assessed upon it, the Board, without any requirement of notice or hearing, may, by order, terminate the membership of such institution or the status of such institution as an insured institution (or both

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such membership and such status if the institution is both a member and an insured institution), and the action of the Board shall be final. In case of such termination of insured status, the provisions of section 407 of the National Housing Act, as now or hereafter in force, with respect to continuance of insurance, examination, payment of final premium, and notice to insured members shall be applicable. Any such failure, refusal, or concealment by a director or an officer of an institution shall, if such institution is a Federal savings and loan association, constitute a violation of law or regulation within the meaning of subdivision (2) of subsection (d) of section 5 of the Home Owners' Loan Act of 1933, as now or hereafter in force, and shall, if such institution is not a Federal savings and loan association, constitute a violation of law or regulation within the meaning of subsection (f) of section 5 of this Act as so in force."

4. Section 403 of the National Housing Act is hereby amended by adding thereto at the end thereof the following new subsections:

"(e) No insured institution shall, in violation of regulations of the Corporation, (1) issue any security (i) not having the same characteristics as a security of such institution previously issued and currently outstanding or (ii) the issue of which is contrary to any agreement entered into with the Corporation or any condition imposed by the Corporation in connection with the insurance of the accounts of such institution or otherwise; (2) enter into, become a party to, or consent to any contract, agreement, or arrangement, or take any other action for modification of, or which has the effect of modifying, any of the characteristics of any security of such institution which is currently outstanding or which it is authorized to issue; or (3) enter into any management contract, agreement, or arrangement, or any contract, agreement, or arrangement for the rendering to such institution of management or similar services. As used in this subsection, the term 'security' means any share, stock, note, bond, or debenture, or any right or interest in or with respect to, or obligation of or with respect to, an insured institution or a security thereof, or any other right, interest, or obligation defined by regulations of the Corporation to be a security for the purposes of this subsection, whether or not any of the same be evidenced by a writing.

"(f) Except with the prior approval of the Corporation by regulations or otherwise, no insured institution shall (1) be a party to any merger or consolidation; (2) purchase any assets from or sell any assets to any savings and loan, building and loan, or homestead association or cooperative bank, or any savings bank; or (3) increase its accounts of an insurable type through or in connection with any purchase of any assets.

"(g) Except with the prior approval of the Corporation by regulations or otherwise, no insured institution shall (1) enter into any retirement, pension, or deferred compensation contract, agreement, or arrangement for any one or more or all of its directors, officers, or employees, or (2) consent to any extension, renewal, or alteration of any such contract, agreement, or arrangement, whether or not existing prior to the date of enactment of this subsection, except an extension, renewal, or alteration of such a contract, agreement, or arrangement existing on said date which may be validly effected without such consent or as to which such institution is on said date under a valid and binding legal obligation to give such consent.

"(h) For the purposes of subsections (e), (f), and (g), the Corporation shall have power from time to time (1) to make such classifications as it may deem necessary or appropriate therefor and (2) to define any or all of the terms used in said subsections."

RECOMMENDATIONS OF THE FEDERAL HOME LOAN BANK BOARD

Letter of Transmittal

Federal Home Loan Bank Board,
Washington, D. C., October 1, 1956.

Re study of Federal laws relating to financial institutions and credit

Hon. A. Willis Robertson,
Chairman, Subcommittee on Banking, Committee on Banking and Currency, United States Senate, Washington, D. C.

Dear Senator Robertson: This is in reply to your letter of July 20, 1956, requesting recommendations by this Board not later than the first week in October (this date was subsequently changed by a telephone call from Mr. Don Rogers of your staff advising that the report must be submitted not later than

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October 1), with respect to the elimination of obsolete and overlapping provisions of statutes administered by the Federal Home Loan Bank Board and the addition of new provisions designed to bring such statutes up to date so that financial and credit institutions may better meet the needs of the people.

Attached are 30 copies of the recommendations and suggestions of the Board in the form suggested by Mr. Rogers.

We would have preferred to present all recommendations in specific and detailed form; however, the time limitation imposed made it necessary that certain proposals for changes in the statutes relating to problems believed to be of basic importance to the Board be set forth in our recommendations in a less formal manner. Since the time available to the Board, and particularly to the Chairman, did not permit a completion of our study, we are continuing the same and should any additional amendments or changes in the proposals submitted be indicated we trust that the Board will be afforded an opportunity to present such amendments to your committee at a later date.

In view of your request for a submission of our recommendations by October 1, they are being forwarded to you without prior clearance with the Bureau of the Budget. Accordingly, we are unable at this time to advise of the relationship of the attached recommendations to the program of the President. Copies of this report are being transmitted to the Bureau of the Budget and the Board will transmit such advice as it may receive with respect to such relationship.

Sincerely yours,

ALBERT J. ROBERTSON, *Chairman.*

GENERAL STATEMENT

In addition to the suggested specific changes set forth below there are also set forth, in a less formal manner, certain changes or proposals for changes in these statutes relating to problems which is believed will be of basic importance to the Federal Home Loan Bank Board in carrying out its responsibilities in the supervision of federally chartered savings and loan associations, the chartering of new associations, the granting of insurance by the Federal Savings and Loan Insurance Corporation, and the regulation of such insured institutions.

RELATIONSHIPS BETWEEN SAVINGS AND LOAN ASSOCIATIONS AND AFFILIATES

It is suggested that the most serious consideration be given to the question of amending the Federal Home Loan Bank Act, the Home Owners' Loan Act of 1933, and title IV of the National Housing Act, or such of them as may be necessary, so that the Federal Home Loan Bank Board may have express power to make rules and regulations with respect to the relationships of and business transactions between members of the Federal home loan banks, and institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, on the one hand, and individuals, corporations, and organizations that are "affiliates" of such institutions. The need for such specific statutory authority is necessary because of the indications of instances of self-dealing on the part of such affiliated individuals and organizations in transactions and relationships with savings and loan institutions with which they are affiliated.

While the specific form which such amendments might or should take is a matter which deserves careful and mature consideration, it would appear that it should include power in the Board to define what constitutes an affiliate for the purpose of such regulation; provision for information and reports by such affiliates and examination thereof by the Board's examiners; and further provision that failure or refusal by any such member or insured institution or affiliate thereof to furnish the Board all information and reports as to the condition, operation, or management of any such affiliate, or to permit examination of an affiliate as above, or violation by any such institution or affiliate thereof of any provision of statute or of regulations made by the Board with respect to affiliates shall make mandatory the termination of the institution's membership or insurance or the removal of the responsible director or officer of such institution, without regard to any other provision of law or regulation.

STRENGTHENING OF EXAMINATION POWERS

At present, this agency has general powers of examination under section 5 of the Home Owners' Loan Act of 1933 with respect to Federal savings and loan associations, and general powers of examination under subsection (b) of section 403 of the National Housing Act with respect to institutions the acounts of which

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are insured by the Federal Savings and Loan Insurance Corporation. It does not have comparable powers of examination with respect to institutions which are members of a Federal home loan bank but are not federally chartered or so insured. With respect to those member institutions the Board's powers of examination in the absence of further legislation, would, in general, be limited to cases where there was no State examination (there is only one remaining State in which there is no State examination of savings and loan associations) or where the Board might deem the State examination inadequate as set forth in section 8 of the Federal Home Loan Bank Act.

Nevertheless, the Board has been charged with definite responsibilities with respect to Federal home loan bank members, regardless of whether the particular member is or is not an insured institution. Among these is the responsibility of administering section 5 of the Federal Home Loan Bank Act, which places certain limitations on interest and similar charges with respect to home mortgage loans, and of administering section 5A of that act, which provides that no member institution shall make or purchase any loan when its cash and obligations of the United States are not equal to the amount prescribed by the Board under that section.

It is felt, therefore, that the Federal Home Loan Bank Act should be amended so as to vest in the Board power to examine every savings and loan or building and loan association, homestead association, or cooperative bank that is a member of a Federal home loan bank, and so as to provide that each such institution shall pay to the Board the cost of such examination, as determined by the Board. It is also felt that, by suitable amendment to the Federal Home Loan Bank Act and title IV of the National Housing Act, the examiners of the Board should be given ample power to examine the books, records, and affairs not only of member and insured institutions but of any and all "affiliates" (as that term may be defined by the Board under statutory authority) of such member and insured institutions, with power in such examiners to administer oaths and to examine, under oath, any of the directors, officers, employees, and agents thereof and to make a full and detailed report to the Board of the condition of the institution and its affiliates.

Further, it is felt that failure or refusal by any such institution or affiliate, or by any director, officer, employee, or agent thereof, to submit its books, records, and affairs to examination or inspection by any examiner or lawful agent of the Board, or concealment by any of them of any of its books, records, or affairs from any such examiner or agent, should be grounds for termination by the Board of the institution's bank membership or insurance, without regard to any other provision of law or regulation, and that such action by the Board be final.

REGULATION OF FEDERAL HOME LOAN BANK MEMBERS

It is suggested that serious consideration be given to the question whether uninsured members of the Federal Home Loan Bank System should not be subject to the same regulation as insured institutions with respect to advertising, sales plans and practices, and other operating practices. The Board has recently promulgated regulations restricting, with respect to insured institutions, the practice of making gifts for the opening or increasing of share accounts or deposits, a practice which has gone to extreme lengths in the case of some few institutions; and the Board has given notice of a proposed regulation to impose a strict limitation on the amount of brokerage commissions which may be paid by insured institutions in connection with investments in such institutions.

For insured institutions to be subjected, in the public interest, to these types of regulation while at the same time uninsured institutions which are members of the Federal home loan banks and which are in competition with such insured institutions are not subjected to corresponding regulation raises a serious problem which, as is indicated above, deserves serious consideration.

REMOVAL OF DIRECTORS OR OFFICERS

The attached suggested amendments to the Home Owners' Loan Act of 1933, as amended, include, in connection with subsection (d) of section 5 of that act, a proposed provision authorizing the Board, under procedure therein prescribed, to remove a director or officer of a Federal savings and loan association who has violated or is violating any law or regulation relating to such association or who has engaged or is engaging in unsafe or unsound practices in conducting the business of such association, or has violated his duty to such associa-

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tion as an officer or director. This provision is comparable to that contained in section 677 of title 12 of the United States Code with respect to the removal by the Board of Governors of the Federal Reserve System of a director or officer of a national bank, a bank or trust company doing business in the District of Columbia, or a State member bank of the Federal Reserve System.

The Board suggests that, in the consideration of this proposal, serious consideration be given to the question whether similar provision should not be made with respect to directors and officers of institutions which are not federally chartered but are Federal home loan bank members or institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

PERSONS CONVICTED OF CRIMINAL OFFENSES INVOLVING DISHONESTY OR BREACH OF TRUST

It is also suggested that serious consideration be given to the enactment of a provision that, except with the written consent of the Federal Home Loan Bank Board, no person shall serve as a director, officer, or employee of a Federal home loan bank member or an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation if such person has been convicted, or is convicted after the effective date of such provision, of any criminal offense involving dishonesty or breach of trust, and that, for each willful violation of such provision, the institution involved shall be subject to a penalty of not more than $100 for each day the prohibition is violated, which penalty may be recovered by the Board for its use. Such a provision would be parallel to section 1829 of title 12 of the United States Code, which is applicable to banks which are insured by the Federal Deposit Insurance Corporation.

CONVERSION OF MUTUAL SAVINGS AND LOAN ASSOCIATIONS INTO STOCK COMPANIES

The Board has under active consideration the adoption of regulations laying down procedures and standards for cases in which Federal savings and loan associations, which are mutual institutions, undertake to convert into State-chartered nonmutual institutions, variously known as stock companies, permanent stock associations, and guaranty-stock associations. The same problems arise, however, where the conversion which is undertaken is a conversion from a State-chartered mutual association into a State-chartered stock company, and it is suggested that consideration be given to the question whether the Federal Home Loan Board should be given power to impose comparable regulations where the institution which proposes to convert from mutual to stock-type operation is not a Federal savings and loan association but is a State-chartered mutual institution to accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

FEDERAL HOME LOAN BANK ACT

116. General Amendment

Existing law

Federal Home Loan Bank Act, as amended (too long for complete reproduction here).

Recommendation

Amend the Federal Home Loan Bank Act, as amended, by striking the word "board" wherever the same appears therein (except where used with reference to a board of directors) and inserting in lieu thereof in each place the word "Board."

Reason

For uniformity of style and format.

117. Definitions

Existing law

Section 2 of the Federal Home Loan Bank Act, as amended:

"As used in this Act—

"(1) The term 'board' means the Federal Home Loan Bank Board.

"(2) The term 'Federal Home Loan Bank' means a bank established by the board under authority of this Act.

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"(3) The term 'State' includes the District of Columbia, Guam, Puerto Rico, the Virgin Islands of the United States, and the Territories of Alaska and Hawaii.

"(4) The term 'member' (except when used in reference to a member of the board) means any institution which has subscribed for the stock of a Federal Home Loan Bank.

"(5) The term 'home mortgage loan' means a loan made by a member or a nonmember borrower upon the security of a home mortgage.

"(6) The term 'home mortgage' means a mortgage upon real estate, in fee simple, or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable or (2) under a lease having a period of not less than fifty years to run from the date the mortgage was executed, upon which there is located a dwelling for not more than four families, and shall include, in addition to first mortgages, such classes of first liens as are commonly given to secure advances on real estate by institutions authorized under this Act to become members, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

"(7) The term 'unpaid principal,' when used in respect of a loan secured by a home mortgage means the principal thereof less the sum of (1) payments made on such principal, and (2) in cases where shares or stock are pledged as security for the loan, the payments made on such shares or stock plus earnings or dividends appropriated or credited thereon.

"(8) An 'amortized' or 'installment' home mortgage loan shall, for the purposes of this Act, be a home mortgage loan to be repaid or liquidated in not less than eight years by means of regular weekly, monthly, or quarterly payments made directly in reduction of the debt or upon stock or shares pledged as collateral for the repayment of such loan.

"(9) The term 'nonmember borrower' includes an institution authorized to secure advances from a Federal Home Loan Bank under the provisions of section 6 (e)."

Recommendations

Amend section 2 as follows: (1) by striking in subdivision (1) the language "term 'board' " and inserting in lieu thereof the language "terms 'Federal Home Loan Bank Board' and 'Board' " and by adding at the end of said subdivision, immediately before the period, the language "referred to in subsection (b) of section 17"; (2) by striking in subdivision (2) the language "by the board"; (3) by amending subdivision (3) to read: "(3) The term 'State', except as used in the proviso to subsection (a) of section 7, includes the District of Columbia and the Territories and possessions of the United States"; (4) by amending subdivision (8) as follows: (a) by striking the language "or installment" and (b) by striking the language "eight years" and inserting in lieu thereof the language "six years from the date the loan was made"; and (5) by striking all of subdivision (9) after the language " 'nonmember borrower' " and inserting in lieu there of the following: "means a nonmember mortgagee as referred to in section 10b".

Reasons

Amendment (1) is needed to change existing references in the act to the Board, which were to the five-member board established by the original act, so as to make them apply to the present three-member board established by Reorganization Plan No. 3 of 1947. Amendment (2) is a technical amendment; the present Federal home loan banks were established by the original five-member Board, and if the references in the act to the Board are to be changed as suggested in amendment (1) next above, the Federal home loan banks should no longer be referred to as having been established by the Board. Amendment (3) would conform the language used in the Federal Home Loan Bank Act to that used in subsection (a) of section 403 of the National Housing Act, as amended. Amendment (4) would conform the definition language of section 2 to the language used in subdivision (2) of subsection (a) of section 10 of the act, which refers to "amortized" home mortgages but contains no reference to "installment" home mortgages, and would make the maturity requirement consistent with the requirements of that subdivision. Amendment (5) would clarify the term "nonmember borrower" by making it clear that the term applies to nonmember mortgagees referred to in subsection 10b of the act and that it no longer applies to those nonmember borrowers mentioned in subsection (e) of section 6 of the act, which subsection is now obsolete and is later herein proposed to be repealed.

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118. Federal Home Loan Bank Districts

Existing law

Section 3 of the Federal Home Loan Bank Act, as amended:

"As soon as practicable the board shall divide the continental United States, Puerto Rico, the Virgin Islands, Guam, and the Territories of Alaska and Hawaii into not less than eight nor more than twelve districts. Such districts shall be apportioned with due regard to the convenience and customary course of business of the institutions eligible to and likely to subscribe for stock of a Federal Home Loan Bank to be formed under this Act, but no such district shall contain a fractional part of any State. The districts thus created may be readjusted and new districts may from time to time be created by the board, not to exceed twelve in all. Such districts shall be known as Federal Home Loan Bank districts and may be designated by number. As soon as practicable the board shall establish, in each district, a Federal Home Loan Bank at such city as may be designated by the Board. Its title shall include the name of the city at which it is established."

Recommendation

Amend section 3 to read as follows:

"Sec. 3. The districts heretofore created or readjusted under this section as formerly in force may be readjusted and new districts may from time to time be created by the Board, not to exceed twelve in all. No such district shall contain a fractional part of any State. There shall be, in each district, a Federal Home Loan Bank at such city as has heretofore been designated under this section as formerly in force or as may be designated by the Board. Its title shall include the name of the city at which it is established.

Reasons

This amendment is suggested by the Board (1) because the provisions of section 3 relating to the original establishment of districts are now obsolete and (2) because it is not clear under the existing act whether the authority to create new districts is or is not still in force. Since, by reason of reduction of the number of districts, it might be advisable in the future to create one or more new districts (subject to the existing limit that there may not be more than 12), the suggested amendment would permit new districts to be created, but the number could not at any time exceed 12.

119. Eligibility of Member and Nonmember Borrowers

Existing law

Subsection (a) of section 4 of the Federal Home Loan Bank Act, as amended:

"(a) Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, or savings bank, shall be eligible to become a member of, or a nonmember borrower of, a Federal Home Loan Bank if such institution (1) is duly organized under the laws of any State or of the United States; (2) is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States; and (3) makes such home mortgage loans as, in the judgment of the board, are long-term loans (and in the case of a savings bank, if in the judgment of the board, its time deposits, as defined in section 19 of the Federal Reserve Act, warrant its making such loans). No institution shall be eligible to become a member of, or a nonmember borrower of, a Federal Home Lan Bank if, in the judgment of the board, its financial conditions is such that advances may not safely be made to such institution or the character of its management or its home-financing policy is inconsistent with sound and economical home financing, or with the purposes of this Act."

Recommendations

Amend the subsection (1) by striking the language "or a nonmember borrower of," and the commas preceding and following said language, wherever said language appears in said subsection; (2) by deleting in the first sentence the language "as defined in section 19 of the Federal Reserve Act" and the commas preceding and following said language; and (3) by inserting at the end of the first sentence, immediately before the period, a comma and the following language: "and the Board shall have power by regulations or otherwise to define the term 'time deposits' as used in this sentence."

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Reasons

Amendment (1) would strike obsolete references to "nonmember borrowers." Amendments (2) and (3) are needed because section 19 of the Federal Reserve Act, by reason of amendment after the enactment of the Federal Home Loan Bank Act, no longer contains a definition of the term "time deposits."

120. Territorial Limitations on Membership and Advances

Existing law

Subsection (b) of section 4 of the Federal Home Loan Bank Act, as amended:

"(b) An institution eligible to become a member or a nonmember borrower under this section may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business, or of the bank of a district adjoining such district, if demanded by convenience and then only with the approval of the board."

Recommendation

Amend the subsection by striking the language "under this section" and inserting in lieu thereof the language "under this act."

Reasons

Nonmember borrowers now eligible to obtain advances are not eligible "under this section" (sec. 4), but are eligible under section 10b. The language "under this section" should, therefore, be changed to read "under this Act", which includes both section 4, the section governing the eligibility of members, and section 10b, the section which governs the eligibility of nonmember mortgagees.

121. Liquidity of Federal Home Loan Bank Members

Existing law

Section 5A of the Federal Home Loan Bank Act, as amended:

"No member of a Federal Home Loan Bank shall make or purchase any loan at any time when its cash and obligations of the United States are not equal to such amount as the Home Loan Bank Board shall by regulations prescribe: *Provided*, That such amount shall not be less than 4 per centum or more than 8 per centum of the obligation of the member on withdrawable accounts or, in the case of any member insurance company, such other base as the Board may determine to be comparable. The Board is authorized in said regulations to prescribe from time to time different amounts, within the limitations hereinbefore specified, for different classes of member institutions, and for such purposes the Board is authorized to classify such members according to type of institution, size, location, rate of withdrawals, or such other basis or bases of differentiation as the Board may deem to be reasonably necessary or appropriate for effectuating the purposes hereof. Failure to comply with the provisions hereof shall constitute ground for removal from membership. This section shall be effective six months after the date of its enactment."

Recommendation

Amend the section by striking the last sentence and inserting in lieu thereof a provision authorizing the Board to provide that for the purposes of this section a member's cash and obligations of the United States shall be the net amount of its cash and obligations of the United States after deduction of the amount of specified liabilities or portions thereof, and authorizing the Board to classify members for this purpose on the basis of the turnover of their share accounts or deposits or on other appropriate bases.

Reasons

The existing provision does not adequately reflect the concept of liquidity as an amount of liquid assets related to current obligations. The suggested amendment would enable the Board to impose appropriate requirements for net liquidity of member institutions and to classify member institutions for this purpose on the basis of appropriate criteria, including the turnover of share accounts or deposits.

122. Capital Stock of Federal Home Loan Banks

Existing law

Section 6 of the Federal Home Loan Bank Act, as amended:

"(a) As soon as practicable after the enactment of this Act, the board, with the approval of the Secretary of the Treasury, shall determine the minimum

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capital of each Federal Home Loan Bank which shall be not less than $5,000,000. The board shall, as soon as practicable thereafter, open books in each district established under section 3 for subscription to the capital stock of the Federal Home Loan Bank of the district.

"(b) The capital stock of each Federal Home Loan Bank shall be divided into shares of a par value of $100 each. The minimum capital stock shall be issued at par. Stock issued thereafter shall be issued at such price not less than par as may be fixed by the board.

"(c) The original stock subscription for each institution eligible to become a member under section 4 shall be an amount equal to 1 per centum of the aggregate of the unpaid principal of the subscriber's home mortgage loans, but not less than $500. The board shall from time to time adjust the amount of stock held by each member so that, as nearly as possible, such member shall at all times have invested in the stock of the Federal Home Loan Bank at least an amount calculated in the manner provided in the preceding sentence (but not less than $500). If the board finds that the investment of any member in stock is greater than that required under this section, upon application of such member, the bank shall pay such member for each share of stock in excess of the amount so required an amount equal to the value of such stock, or, at the election of the bank, the whole or any part of the payments which would be so made shall be credited upon the indebtedness of the member to the bank. In either such event, stock equal in value to the amount of the payment or credit, or both, as the case may be, shall be surrendered and canceled. No share of stock shall be surrendered and canceled if the effect of such surrender and cancellation would be to violate the provisions of section 10 (c) requiring the amount of stock held by such member to equal at least one-twelfth of the outstanding advances to such member.

"(d) Stock subscriptions other than by the United States shall be paid for in cash, and shall be paid for at the time of application therefor, or, at the election of the subscriber, in installments, but not less than one-fourth of the total amount payable shall be paid at the time of filing application, and a further sum of not less than one-fourth of such total shall have been paid at the end of each succeeding period of four months.

"(e) If the law of the State under which an institution described in section 4 operates does not permit such institution to subscribe for stock in the Federal Home Loan Bank but if such institution has the power to borrow money and give security therefor, the board may permit such institution to obtain advances on the same terms and conditions and subject to the same limitations as members (except that such institution shall not be required, during the period during which advances may be made under this subsection, to subscribe for stock in the Federal Home Loan Bank or to deposit such stock as collateral security as required in section 10), but such institution shall be required to keep on deposit such security, in addition to home mortgages, for such advances, as the board shall determine, which shall equal in value 1 per centum of the aggregate unpaid principal of such institution's home mortgage loans (but not less than $500). No advance to any such institution shall be made under authority of this subsection after the State in which the institution is organized enacts legislation authorizing such institution to subscribe for Federal Home Loan Bank stock or after the expiration of the next regular session of the legislature of such State begun after the enactment of this Act, whichever is earlier. If, at the end of such time, such institution is not authorized to subscribe for stock, the bank shall proceed to liquidate the indebtedness of such institution to the bank and to terminate its relations with such institution. No advance shall be made under authority of this subsection which matures more than one year after the advance is made, but the bank may renew any such advance for yearly periods, or less, thereafter. The maturity of no advance authorized under this subsection shall be later than the time of the enactment of legislation authorizing such institution to become a member or the expiration of such session of the legislature of the State, whichever is earlier.

"(f) The Secretary of Treasury shall subscribe, on behalf of the United States, for such part of the minimum capital of each Federal Home Loan Bank as is not subscribed for by members under subsection (c) of this section within thirty days after books have been opened for stock subscriptions as provided in subsection (a). Payments for stock subscriptions by the Secretary of the Treasury shall be subject to call in whole or in part by the board, with the approval of the Secretary of the Treasury, at such time or times as may be deemed advisable. Each Federal Home Loan Bank receiving such payments shall issue receipts therefor to the Secretary of the Treasury, and such receipts shall be evidence of the stock ownership of the United States. The aggregate amount expended by the United

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States for the purchase of stock under this Act shall not exceed $125,000,000. The Reconstruction Finance Corporation Act, approved January 22, 1932, is amended by adding at the end of section 2 thereof the following new paragraph:

"'In order to enable the Secretary of the Treasury to make payments upon stock of the Federal Home Loan Banks subscribed for by him in accordance with the Federal Home Loan Bank Act, the sum of $125,000,000, or so much thereof as may be necessary for such purpose, is hereby allocated and made available to the Secretary of the Treasury out of the capital of the corporation and/or the proceeds of notes, debentures, bonds, and other obligations issued by the corporation. For the purposes of this paragraph, the corporation shall issue such notes, bonds, debentures, and other obligations as may be necessary.'

"(g) After the amount of capital of a Federal Home Loan Bank paid in by members equals the amount paid in by the Secretary of the Treasury under subsection (f), such bank shall apply annually to the payment and retirement of the shares of the capital stock held by the United States, 50 per centum of all sums thereafter paid in as capital until all such capital stock held by the United States is retired at par. Stock held by the United States may at any time, in the discretion of the Federal Home Loan Bank, and with the approval of the board, be paid off at par and retired in whole or in part; and the board may at any time require such stock to be paid off at par and retired in whole or in part if in the opinion of the board the Federal Home Loan Bank has resources available therefor; *Provided*, That accumulated dividends, as provided in subsection (k), have been paid.

"(h) Stock subscribed for otherwise than by the United States, and the right to the proceeds thereof, shall not be transferred or hypothecated except as hereinafter provided and the certificates therefor shall so state.

"(i) Any member other than a Federal savings and loan association may withdraw from membership in a Federal Home Loan Bank six months after filing with the board written notice of intention so to do, and the board may, after hearing, remove any member from membership, or deprive any nonmember borrower of the privilege of obtaining further advances, if, in the opinion of the board, such member or nonmember borrower (i) has failed to comply with any provision of this Act or regulation of the board made pursuant thereto; (ii) is insolvent: *Provided*, That any member of a bank which is a building and loan association, savings and loan association, cooperative bank, or homestead association shall be deemed insolvent if the assets of such member are less than its obligations to its creditors and others, including the holders of its withdrawable accounts; or (iii) has a management or home-financing policy of a character inconsistent with sound and economical home financing or with the purposes of this Act. In any such case, the indebtedness of such member or nonmember borrower to the Federal Home Loan Bank shall be liquidated, and the capital stock in the Federal Home Loan Bank owned by such member shall be surrendered and canceled. Upon the liquidation of such indebtedness such member or nonmember borrower shall be entitled to the return of its collateral, and, upon surrender and cancellation of such capital stock, the member shall receive a sum equal to its cash paid subscriptions for the capital stock surrendered, except that if at any time the board finds that the paid-in capital of a Federal Home Loan Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held, the Federal Home Loan Bank shall on the order of the board withhold from the amount to be paid in retirement of the stock a pro rata share of the amount of such impairment as determined by the board.

"(j) A Federal Home Loan Bank may, with the approval of the board, permit the disposal of stock to another member, or to an institution eligible to become a member, but only to enable such an institution to become a member.

"(k) All stock of any Federal Home Loan Bank shall share in dividend distributions without preference.

"(l) Within one year after the enactment of this subsection, each member of each Federal Home Loan Bank shall acquire and hold and thereafter maintain its stock holding in an amount equal to at least 2 per centum of the aggregate of the unpaid principal of such member's home mortgage loans, home-purchase contracts, and similar obligations, but not less than $500. Such stock in excess of the amount hereby required may be purchased from time to time by members and may be retired from time to time as heretofore. One year after the enactment of this subsection, each Federal Home Loan Bank shall retire and pay off at par an amount of its stock held by the Secretary of the Treasury equivalent to the amount of its stock held by its members in excess of the amount required to be held by them by the first two sentences of subsection (c) of this section imme-

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diately prior to the enactment of this subsection and annually thereafter each Federal Home Loan Bank shall retire an amount of such Government stock equivalent to 50 per centum of the net increase of its stock held by members since the last previous retirement: *Provided*, That none of such Government capital shall at any time be retired so as to reduce the aggregate capital stock, reserves, surplus, and undivided profits of the Federal Home Loan Banks to less than $200,000,000: *Provided further*, That notwithstanding any provision of this subsection, nothing in this subsection shall limit or affect the operation of subsection (g) of this section."

Recommendations

Amend section 6 as follows: (1) by striking subsections (a), (e), (f), (g), and (l), and relettering subsections (b), (c), (d), (h), (i), (j), and (k) as subsections (a), (b), (c), (d), (e), (f), and (g), respectively; (2) by striking in subsection (b) (to be relettered as (a)) the second sentence and the language "issued thereafter" in the last sentence; (3) by striking in subsection (c) (to be relettered as (b)) the language in the first sentence "1 per centum of the aggregate of the unpaid principal of the subscriber's home mortgage loans" and inserting in lieu thereof the language "2 per centum of the aggregate of the unpaid principal of the subscriber's home mortgage loans, home-purchase contracts, and similar obligations"; (4) by striking in subsection (d) (to be relettered as (c)) the language "other than by the United States"; (5) by striking in subsection (h) (to be relettered as (d)) the language "otherwise than by the United States"; and (6) by inserting in subsection (i) (to be relettered as (e)), at the end of said subsection, the following new sentence: "The Board shall have power by regulations or otherwise to define, for the purposes of this subsection, management or home-financing policy of a character inconsistent with sound and economical home financing or with the purposes of this Act."

Reasons

Amendments (1) through (5) would delete obsolete matter; the provisions relating to the original capitalization and establishment of the Federal home loan banks are now *functus officio* and all of the Government capital has been retired. Amendment (6) would give the Federal Home Loan Bank Board express authority to define what is management or home-financing policy inconsistent with sound and economical home financing or with the purposes of the act, and thus a ground for termination of Federal home loan bank membership. It is believed that it would be to the advantage both of the Board and of member institutions if express authority were given to the Board to set up standards on this matter.

123. Directors of Federal Home Loan Banks

Existing law

Subsections (a) through (h) of section 7 of the Federal Home Loan Bank Act, as amended:

"(a) The management of each Federal Home Loan Bank shall be vested in a board of twelve directors, all of whom shall be citizens of the United States and bona fide residents of the district in which such bank is located: *Provided*, That the board may by regulation increase the number of elective directors of any Federal Home Loan Bank having a district which includes five or more States to a number not exceeding twice the number of States comprising such district, but such additional elective directors shall be apportioned as nearly as may be practicable in the same manner and order as is provided for the apportionment of elective directors under subsections (c) and (d) hereof: *Provided further*, That there shall be not less than one elective director from any of the States nor more than three elective directors from any of the States in any district referred to in the preceding proviso and in no event shall the total number of elective directors in any one district exceed eleven. The term 'States' as used in the preceding provisos shall mean the States of the Union and the District of Columbia.

"(b) Four of such directors shall be appointed by the Board and shall hold office for terms of four years; except that the terms of office of the two such directors heretofore appointed shall expire at the end of the calendar years 1936 and 1937, respectively, and the terms of office of the first two such directors hereafter appointed shall expire at the end of the calendar years 1938 and 1939, respectively.

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"(c) Six of such directors, two of whom shall be known as class A directors, two of whom shall be known as class B directors, and two of whom shall be known as class C directors, shall be elected as provided in subsection (e), and shall hold office for terms of two years; except that the terms of office of the directors heretofore elected or appointed shall expire at the end of the terms for which they were elected or appointed.

"(d) Two of such directors shall be elected by the members of the Federal Home Loan Bank without regard to classes under rules and regulations to be prescribed by the Board, and shall hold office for terms of two years; except that the term of office of one of the directors first elected under this subsection shall expire at the end of the calendar year 1936.

"(e) The board shall divide all the members of each Federal Home Loan Bank into three groups which shall be designated as groups A, B, and C, which groups shall represent, respectively, and as fairly as may be, group A, the large group B, the medium-sized, and group C, the small members, the size of such members to be determined according to the aggregate unpaid principal of the member's home mortgage loans. The board may revise the membership of such groups from time to time. Of the directors elected as hereinafter provided, each class A director shall be an officer or director of a member in group A, each class B director shall be an officer or director of a member in group B, and each class C director shall be an officer or director of a member in group C. Each member shall be entitled to nominate suitably qualified persons for election as directors of the class corresponding to the group to which such member belongs, and shall cast one vote for each director in its class. The directors of each class shall be nominated and elected in accordance with such rules and regulations as may be prescribed by the board.

"(f) Any director appointed or elected as provided in this section to fill a vacancy shall hold office only until the expiration of the term of his predecessor.

"(g) The board shall designate one of the directors of each bank to be chairman, and one to be vice chairman, of the board of directors of such bank.

"(h) If at any time when nominations are required, members shall hold less than $1,000,000 of the capital stock of the Federal Home Loan Bank, the board shall appoint a director or directors to fill the place or places for which such nominations are required. A director so appointed shall serve until the expiration of the calendar year during which he takes office."

Recommendations

Amend section 7 as follows: (1) by striking all of subsection (b) beginning with the semicolon and ending immediately before the period and inserting in lieu thereof a colon and the following: "*Provided*, That in the fixing of the initial terms of appointive directorships of any Federal Home Loan Bank one such term shall expire at the end of the first, one at the end of the second, one at the end of the third, and one at the end of the fourth year beginning on the first day of January next following the commencement of said terms"; (2) by striking all of subsection (c) beginning with the semicolon and ending immediately before the period; (3) by striking all of subsection (d) beginning with the semicolon and ending immediately before the period; (4) by adding to subsection (f), immediately before the period, a colon and the following: "*Provided*, That if any director shall cease to have the qualifications set forth in subsection (a), or if any elective director shall cease to have the qualification set forth in the third sentence of subsection (e) or any similar qualification imposed by regulation under the first proviso to the first sentence of subsection (a), the office held by such director shall immediately become vacant, but such director may continue to act as such director until his successor shall have qualified or the term of such office shall have expired, whichever shall first occur"; and (5) by inserting in the first sentence of subsection (h), immediately before the period, a comma and the following: "and the Board may, prior to the filing of the certificate mentioned in section 12, appoint directors who shall be respectively designated by it as appointive directors and as elective directors, including class directors, in accordance with the provisions of this section."

Reasons

Amendments (1), (2), and (3) would remove obsolete matter relating to the original directorates of the Federal home loan banks. Amendment (4) is designed to make clear that where a director ceases to have the specified qualifications the office immediately becomes vacant but the director may continue to act until his succesesor has qualified or his term expires, whichever shall first occur;

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this amendment is needed to overcome legal problems which have arisen in this type of case. Amendment (5) would provide for interim directors in the case of the future establishment of a Federal home loan bank; such interim directors would be needed in such case because of the necessity for execution of the certificate provided for by the first sentence of section 12 of the act.

124. FEDERAL SAVINGS AND LOAN ADVISORY COUNCIL

Existing law

Section 8a of the Federal Home Loan Bank Act, as amended:

"There is hereby created a Federal Savings and Loan Advisory Council, which shall consist of one member for each Federal Home Loan Bank district to be elected annually by the board of directors of the Federal Home Loan Bank in such district and six members to be appointed annually by the Board. Each such elected member shall be a resident of the district for which he is elected. All members of the Council shall serve without compensation, but shall be entitled to reimbursement from the Board for traveling expenses incurred in attendance at meetings of such Council. The Council shall meet at Washington, District of Columbia, at least twice a year and oftener if requested by the Board. The Council may select its chairman, vice chairman, and secretary, and adopt methods of procedure, and shall have power—

"(1) To confer with the Board and board of trustees of the Federal Savings and Loan Insurance Corporation on general business conditions, and on special conditions affecting the Federal Home Loan Banks and their members and such Corporation.

"(2) To request information, and to make recommendations with respect to matters within the jurisdiction of the Board and the board of trustees of such Corporation."

Recommendations

Amend section 8a as follows: (1) by inserting in the second sentence, after the word "shall", the language "at the time of his election"; (2) by striking in subdivision numbered (1) the language "and board of trustees of the Federal Savings and Loan Insurance Corporation"; (3) by striking in subdivision numbered (1) the language "such Corporation" and inserting in lieu thereof the language "the Federal Savings and Loan Insurance Corporation"; and (4) by striking in subdivision numbered (2) the language "and the board of trustees of such Corporation".

Reasons

Amendment (1) is needed in order to make clear that a member of the Federal Savings and Loan Advisory Council who, at the time of his election, is a resident of the district for which he is elected does not cease to be a member if he ceases to be such a resident; since the term is only 1 year, it would appear that a change of residence should not require that the membership be vacated. Amendments (2), (3), and (4) would remove obsolete references to the board of trustees of the Federal Savings and Loan Insurance Corporation, which since Reorganization Plan No. 3 of 1947 has been under the present Federal Home Loan Bank Board rather than under a separate board of trustees.

125. ADVANCES BY FEDERAL HOME LOAN BANKS

Existing law

Section 10 of the Federal Home Loan Bank Act, as amended:

"(a) Each Federal Home Loan Bank is authorized to make advances to its members, upon the security of home mortgages, or obligations of the United States, or obligations fully guaranteed by the United States, subject to such regulations, restrictions, and limitations as the Board may prescribe. Any such advance shall be subject to the following limitations as to amount:

"(1) If secured by a mortgage insured under the provisions of title I, title II, title VI, title VIII, or title IX of the National Housing Act, the advance may be for an amount not in excess of 90 per centum of the unpaid principal of the mortgage loan.

"(2) If secured by a home mortgage given in respect of an amortized home mortgage loan which was for an original term of six years or more, or in cases where shares of stock, which are pledged as security for such loan, mature in a period of six years or more, the advance may be for an amount not in excess of 65 per centum of the unpaid principal of the home mortgage loan; but in no case

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shall the amount of the advance exceed 60 per centum of the value of the real estate securing the home mortgage loan.

"(3) If secured by a home mortgage given in respect of any other home mortgage loan, the advance shall not be for an amount in excess of 50 per centum of the unpaid principal of the home mortgage loan; but in no case shall the amount of such advance exceed 40 per centum of the value of the real estate securing the home mortgage loan.

"(4) If secured by obligations of the United States, or obligations fully guaranteed by the United States, the advance shall not be for an amount in excess of the face value of such obligations.

"(b) No home mortgage shall be accepted as collateral security for an advance by a Federal Home Loan Bank if, at the time such advance is made (1) the home mortgage loan secured by it has more than twenty-five years to run to maturity, unless such home mortgage is insured under the National Housing Act, as amended, or insured or guaranteed under the Servicemen's Readjustment Act of 1944, as amended, or (2) the home mortgage exceeds $35,000, or (3) is past due more than six months when presented, unless the amount of the debt secured by such home mortgage is less than 50 per centum of the value of the real estate with respect to which the home mortgage was given, as such real estate was appraised when the home mortgage was made. For the purposes of this subsection and subsection (a) the value of real estate shall be as of the time the advance is made and shall be established by such certification by the borrowing institution, or such other evidence, as the board may require. For the purposes of this section, each Federal Home Loan Bank shall have power to make, or to cause or require to be made, such appraisals and other investigations as it may deem necessary. No home mortgage otherwise eligible to be accepted as collateral security for an advance by a Federal Home Loan Bank shall be accepted if any director, officer, employee, attorney, or agent of the Federal Home Loan Bank or of the borrowing institution is personally liable thereon, unless the board has specifically approved by formal resolution such acceptance.

"(c) Such advances shall be made upon the note or obligation of the member or nonmember borrower secured as provided in this section, bearing such rate of interest as the board may approve or determine, and the Federal Home Loan Bank shall have a lien upon and shall hold the stock of such member as further collateral security for all indebtedness of the member to the Federal Home Loan Bank. At no time shall the aggregate outstanding advances made by any Federal Home Loan Bank to any member exceed twelve times the amounts paid in by such member for outstanding capital stock held by it, or made to a nonmember borrower exceed twelve times the value of the security required to be deposited under section 6 (e).

"(d) The institution applying for an advance shall enter into a primary and unconditional obligation to pay off all advances, together with interest and any unpaid costs and expenses in connection therewith according to the terms under which they were made, in such form as shall meet the requirements of the bank and the approval of the board. The bank shall reserve the right to require at any time, when deemed necessary for its protection, deposits of additional collateral security or substitutions of security by the borrowing institution, and each borrowing institution shall assign additional or substituted security when and as so required. Subject to the approval of the board, any Federal Home Loan Bank shall have power to sell to any other Federal Home Loan Bank, with or without recourse, any advance made under the provisions of this Act, or to allow to such bank a participation therein, and any other Federal Home Loan Bank shall have power to purchase such advance or to accept a participation therein, together with an appropriate assignment of security therefor."

Recommendation

Amend section 10 as follows: (1) by striking in subdivision (1) of subsection (a) the language beginning "insured under" and ending "the National Housing Act" and inserting in lieu thereof the language "insured under any provision of the National Housing Act as heretofore or hereafter in force, or guaranteed under any provision of the Servicemen's Readjustment Act of 1944 as so in force"; (2) by striking in subdivision (2) of subsection (a) the language "which was for an original term of six years or more, or in cases where shares of stock, which are pledged as security for such loan, mature in a period of six years or more"; (3) by striking in subsection (b) the language "with respect to which the home mortgage was given, as such real estate was appraised when the home mort-

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gage loan was made" and inserting in lieu thereof the language "securing the mortgage loan"; (4) by striking in the first sentence of subsection (c) the language "or nonmember borrower"; (5) by striking the last sentence of subsection (c) the language "or made to a nonmember borrower exceed twelve times the value of the security require to be deposited under section 6 (e)"; and (6) by adding at the end of said section a new subsection, to be lettered "(e)" and to read as follows:

"(e) Subject to such restrictions, limitations, and conditions as the Board by regulations or otherwise may prescribe, security required or permitted to be taken by a Federal Home Loan Bank under this section or otherwise may be taken by pledge, assignment, or equitable or other lien, and may be placed with or left with the member or nonmember borrower under trust receipt or other agreement."

Reasons

Amendment (1) would obviate the necessity of future amendment of the Federal Home Loan Bank Act in the event that new mortgage-insurance titles are added to the National Housing Act and would place mortgages guaranteed under the Servicemen's Readjustment Act of 1944 on the same basis for the purpose of security for Federal home loan bank advances as mortgages insured under the National Housing Act. Amendment (2) would remove matter which is overlapping in view of the amendment to subdivision (8) of section 2 hereinbefore proposed. Amendment (3) would remove an inconsistency between the first sentence of subsection (b) and the second sentence of that subsection with respect to the time as of which the valuation of real-estate security is to be made. Amendments (4) and (5) would remove obsolete matter. Amendment (6) would provide a specific statutory basis for methods of handling collateral which are currently being followed.

126. Advances for Home Repairs

Existing law

Section 10a of the Federal Home Loan Bank Act, as amended:

"Until July 1, 1936, each Federal Home Loan Bank is authorized to make advances to its members, in order to enable such members to finance home repairs, improvements, and alterations. Such advances shall not be subject to the provisions and restrictions of section 10 of this Act, but shall be made upon the security of notes representing obligations incurred pursuant to, and insurable under, section 2 of the National Housing Act. Advances made under the terms of this section shall be at such rates of interest and upon such terms and conditions as shall be determined by the Federal Home Loan Bank Board."

Recommendation

Repeal section 10a.

Reason

To remove an obsolete provision.

127. Obligations of Federal Home Loan Banks

Existing law

Subsections (a), (b), and (c) of section 11 of the Federal Home Loan Bank Act, as amended:

"(a) Each Federal Home Loan Bank shall have power, subject to rules and regulations prescribed by the board, to borrow and give security therefor and to pay interest thereon, to issue debentures, bonds, or other obligations upon such terms and conditions as the board may approve, and to do all things necessary for carrying out the provisions of this Act and all things incident thereto.

"(b) The board may issue consolidated Federal Home Loan Bank debentures which shall be the joint and several obligations of all Federal Home Loan Banks organized and existing under this Act, in order to provide funds for any such bank or banks, and such debentures shall be issued upon such terms and conditions as the board may prescribe. No such debentures shall be issued at any time if any of the assets of any Federal Home Loan Bank are pledged to secure any debts or subject to any lien, and neither the board nor any Federal Home Loan Bank shall have power to pledge any of the assets of any Federal Home Loan Bank, or voluntarily to permit any lien to attach to the same while any of such debentures so issued are outstanding. The debentures issued under this section and outstanding shall at no time exceed five times the total paid-in

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capital of all the Federal Home Loan Banks as of the time of the issue of such debentures. It shall be the duty of the board not to issue debentures under this section in excess of the notes or obligations of member institutions held and secured under section 10 (a) of this Act by all the Federal Home Loan Banks.

"(c) At any time that no debentures are outstanding under this Act, or in order to refund all outstanding consolidated debentures issued under this section, the board may issue consolidated Federal Home Loan Bank bonds which shall be the joint and several obligations of all the Federal Home Loan Banks, and shall be secured and be issued upon such terms and conditions as the Board may prescribe."

Recommendation

Amend subsection (a) by adding thereto at the end thereof the following new sentence: "Debentures, bonds, or other obligations issued or purporting to be issued under this subsection or under subsection (b) or subsection (c) shall be valid and binding notwithstanding that a person or persons purporting to have executed or attested the same may have died, become under disability, or ceased to hold office before the issuance thereof."

Reasons

It is necessary to prepare the necessary documents for security issues, including facsimile signatures of executing and attesting officials, in advance of the date on which the same will be physically issued. The occurrence of the stated circumstances after such preparation and before actual issue would cause unnecessary confusion and expense. In the recent change of Chairman of the Board it was not known from day to day when the successor of the existing Chairman might be appointed and take office, and it was necessary to make hand-stamped changes on a large number of unissued securities so as to provide for execution by a member other than the Chairman, in case the change of Chairmen should take place between the date of approval of the particular series and the date of issuance thereof. The suggested amendment would obviate the confusion and expense which may now arise.

128. Interbank Transactions of Federal Home Loan Banks

Existing law

Subsection (f) of section 11 of the Federal Home Loan Bank Act, as amended:

"(f) The Board is authorized and empowered to permit, or whenever in the judgment of at least four members of the board an emergency exists requiring such action, to require, Federal Home Loan Banks, upon such terms and conditions as the board may prescribe, to rediscount the discounted notes of members held by other Federal Home Loan Banks, or to make loans to, or make deposits with, such other Federal Home Loan Banks, or to purchase any bonds or debentures issued under this section."

Recommendations

Amend subsection (f) as follows: (1) by striking the language "at least four members of", and (2) by striking the language "bonds or debentures" and inserting in lieu thereof "debentures, bonds, or other obligations".

Reasons

Amendment (1) would repeal an obsolete provision. The reference to "at least four members of" the Board applied to the original Federal Home Loan Bank Board of five members. By Reorganization Plan No. 3 of 1947, all of the powers of said Board, or of any member or members thereof (with certain exceptions not here material) were transferred to a new three-member board, now known as the Federal Home Loan Bank Board. Since the power here vested in four members of the former board was thus transferred to the new three-member board, the reference to "at least four members of" the Board is now obsolete and should be repealed. Amendment (2) would conform the language of this subsection to the provisions of subsection (a) of section 11, under which the Federal Home Loan Banks may issue "debentures, bonds, or other obligations".

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129. Required Investments of Federal Home Loan Banks

Existing law

Subsection (g) of section 11 of the Federal Home Loan Bank Act, as amended:
"(g) Each Federal Home Loan Bank shall at all times have at least an amount equal to the current deposits received from its members invested in (1) obligations of the United States, (2) deposits in banks or trust companies, (3) advances with a maturity of not to exceed one year which are made to members or nonmember borrowers, upon such terms and conditions as the Board may prescribe, and (4) advances with a maturity of not to exceed one year which are made to members or nonmember borrowers whose creditor liabilities (not including advances from the Federal home loan bank) do not exceed 5 per centum of their net assets, and which may be made without the security of home mortgages or other security, upon such terms and conditions as the Board may prescribe."

Recommendations

Amend subsection (g) as follows: (1) by striking in subdivision (3) the language "or nonmember borrowers"; (2) by striking in subdivision (3) the language "may prescribe, and" and inserting in lieu thereof the language "may prescribe, or made to nonmember mortgagees under section 10b and"; and (3) by striking in subdivision (4) the language "or nonmember borrowers".

Reasons

Advances to nonmember mortgagees may be made only upon the security of insured mortgages as set forth in section 10b of the act. The original power to make advances to nonmember borrowers under subdivision (e) of section 6 has expired, and that subdivision would be repealed if a proposal hereinbefore made is adopted. The above amendments would reflect this situation by deleting the reference to "nonmember borrowers" in subdivision (4) and by changing the reference to advances to "nonmember borrowers" in subdivision (3) to a specific reference to advances to nonmember mortgagees under section 10b.

130. Judicial Proceedings Involving Federal Home Loan Banks

Existing law

The second sentence of section 12 of the Federal Home Loan Bank Act, as amended:
"Upon the making and filing of such organization certificate with the board, such bank shall become, as of the date of the execution of its organization certificate, a body corporate, and as such and in its name as designated by the board, it shall have power * * * to sue and be sued, to complain, and to defend, in any court of competent jurisdiction, State or Federal * * *."

Recommendation

Amend section 12 by adding thereto, immediately before the last sentence, the following new sentence:
"Notwithstanding section 1349 of title 28 of the United States Code or any other provision of law, a Federal Home Loan Bank (a) shall be deemed to be an agency included in sections 1345 and 1442 of said title, and (b) may remove actions and prosecutions under subsection (a) of said section 1442, or separate and independent claims or causes of action under subsection (c) of section 1441 of said title, without regard to any restriction or requirement imposed by said subsections. No attachment or execution shall be issued against any Federal Home Loan Bank or its property before final judgment in any court of any State or of the United States or any District, Territory, or possession thereof, or any other court."

Reasons

It is considered highly advisable that the Federal home loan banks, as Federal agencies, have clear power to bring suit in the Federal courts and to remove to the Federal courts judicial proceedings brought against them, or separable controversies in judicial proceedings involving them, which may be initiated in State courts. Such power would be conferred by the first sentence and is similar to the power of Federal Reserve banks under section 632 of title 12 of the United States Code. The provisions of the second sentence are similar to provisions with respect to the Federal Reserve banks which are contained in said section 632.

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131. Eligibility of Federal Home Loan Bank Personnel as Director

Existing law

The next to last sentence of section 12 of the Federal Home Loan Bank Act, as amended:

"The President of a Federal Home Loan Bank may also be a member of the board of directors thereof, but no other officer, employee, attorney, or agent of such bank, who receives compensation, may be a member of the board of directors."

Recommendation

Amend the sentence to read as follows: "No officer, employee, attorney, or agent of a Federal Home Loan Bank, who receives compensation from any Federal Home Loan Bank, may be a member of the board of directors."

Reasons

It is believed that it would be undesirable for the president of a Federal home loan bank to be a member of the board which makes policies under which he administers the affairs of the bank. It is felt that the reasons which lead to the belief that other personnel of the bank should not serve as directors would apply with even greater force to the president.

132. Exemption From Taxation

Existing law

Section 13 of the Federal Home Loan Bank Act, as amended:

"Any and all notes, debentures, bonds, and such other obligations issued by any bank, and consolidated Federal Home Loan Bank bonds and debentures, shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. The bank, including its franchise, its capital, reserves, and surplus, its advances, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that in any real property of the bank shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. The notes, debentures, and bonds issued by any bank, with unearned coupons attached, shall be accepted at par by such bank in payment of or as a credit against the obligation of any home-owner debtor of such bank."

Note.—The exemptions from taxation by the United States conferred by the first sentence of the foregoing section have been affected by the Public Debt Act of 1941 and amendments thereof.

Recommendations

Amend section 13 as follows: (1) by adding thereto, immediately after the first sentence, the following new sentence: "The foregoing exemption from taxation (except as to taxation imposed by the United States) shall include exemption from taxation measured by such notes, debentures, bonds, and other such obligations, including such consolidated obligations, or by the principal thereof or interest therefrom, and from inclusion of such obligations, including such consolidated obligations, or the principal thereof or interest therefrom, in the measure of any such taxation."; (2) by striking in the record in the second sentence the word "in"; and (3) by repealing the last sentence.

Reasons

It is believed that the intent of the original provisions was to include exemption from taxation regardless of whether such taxation was, in the technical legal sense, "imposed on" such obligations or the principal thereof or the interest therefrom, as in the case of the usual personal property tax or individual income tax, or was, in the technical legal sense, not "imposed on" but "measured by" such obligations or the principal thereof or the interest therefrom, as in the case of some corporation franchise or excise taxes. Amendment (1) would make clear what is thus believed to have been the original intent; it would not, however, be applicable to taxation imposed by the United States. Amendment (2) would correct a technical error in wording. Amendment (3) would repeal an obsolete provision related to the former provision of the Federal Home Loan Bank Act

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authorizing the banks to make direct loans to homeowners, which itself has been repealed.

133. Eligibility of Bank Obligations as Investments

Existing law

The first sentence of section 15 of the Federal Home Loan Bank Act, as amended:

"Obligations of the Federal Home Loan Banks issued with the approval of the board under this Act 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 or officers thereof."

Recommendations

Amend the sentence (1) by inserting after "public" the language "or other" and (2) by striking the language "or any officer or officers thereof" and inserting in lieu thereof a comma and the language "the District of Columbia, or any Territory or possession of the United States, any county or municipality of any of the foregoing, any political subdivision of any of the same, any court or any corporate or other agency or instrumentality of any of the preceding, or any officer or officers, employee or employees, or agent or agents of any of the above".

Reasons

This amendment is proposed for the purpose of providing a reasonable broadening of the classes of funds for which obligations of the Federal home loan banks are legally eligible as investments of security.

134. Reserves of Federal Home Loan Banks

Existing law

Section 16 of the Federal Home Loan Bank Act, as amended:

"Each Federal Home Loan Bank shall carry to a reserve account semiannually 20 per centum of its net earnings until said reserve account shall show a credit balance equal to 100 per centum of the paid-in capital of such bank. After said reserve has reached 100 per centum of the paid-in capital of said bank, 5 per centum of its net earnings shall be added thereto semiannually. Whenever said reserve shall have been impaired below 100 per centum of the paid-in capital it shall be restored before any dividends are paid. Each Federal Home Loan Bank shall establish such additional reserves and/or make such charge-offs on account of depreciation or impairment of its assets as the board shall require from time to time. No dividends shall be paid except out of net earnings remaining after all reserves and charge-offs required under this Act have been provided for, and then only with the approval of the board. The reserves of each Federal Home Loan Bank shall be invested, subject to such regulations, restrictions, and limitations as may be prescribed by the board, in direct obligations of the United States, in obligations of the Federal National Mortgage Association, and in such securities as fiduciary and trust funds may be invested in under the laws of the State in which the Federal Home Loan Bank is located."

Recommendations

Amend section 16 as follows: (1) by inserting in the first sentence, immediately after the word "semiannually", the language "an amount at least equal to", and (2) by inserting in the second sentence, immediately after the comma following the word "bank", the language "an amount at least equal to".

Reason

These are technical amendments to make clear that the requirements of the first and second sentences are minimum requirements.

135. The Federal Home Loan Bank Board

Existing law

Section 17 of the Federal Home Loan Bank Act, as amended:

"(a) For the purposes of this Act there shall be a board, to be konwn as the 'Federal Home Loan Bank Board,' which shall consist of five citizens of the United States appointed by the President of the United States, by and with the advice and consent of the Senate. Not more than three members of the board shall be members of the same political party. Each member shall devote his

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entire time to the business of the board. Before entering upon his duties each of the members shall take an oath faithfully to discharge the duties of his office. The President of the United States shall designate one of the members of the board to serve for a term of two years, one for three years, one for four years, one for five years, and one for six years from the date of the enactment hereof, and thereafter the term of each member shall be six years from the date of the expiration of the term for which his predecessor was appointed. Whenever a vacancy shall occur among the members the person appointed to fill such vacancy shall hold office for the unexpired portion of the term of the member whose place he is selected to fill. Each of the members of the board shall receive a salary at the rate of $10,000 per annum: *Provided*, That during the fiscal year 1933 the salary shall be $9,000 per annum. The President shall designate one of the members as chairman of the board. The chairman shall be the chief executive officer of the board and in his absence or disability the duties of his office shall be performed by some one of the other members to be designated as acting chairman by the chairman in such order as he may determine. The board shall supervise the Federal Home Loan Banks created by this Act, shall perform the other duties specifically prescribed by this Act, and shall have power to adopt, amend, and require the observance of such rules, regulations, and orders as shall be necessary from time to time for carrying out the purposes of the provisions of this Act. The board shall have power to suspend or remove any director, officer, employee, or agent of any Federal Home Loan Bank, the cause of such suspension or removal to be communicated in writing forthwith to such director, officer, employee, or agent and to such Federal Home Loan Bank.

"(b) The Home Loan Bank Board which was, pursuant to Reorganization Plan Numbered 3 of 1947, established and made a constituent agency of the Housing and Home Finance Agency shall, from the effective date of the Housing Amendments of 1955, cease to be such a constituent agency and shall be an independent agency (including the Federal Savings and Loan Insurance Corporation) in the executive branch of the Government: *Provided*, That the functions vested in the Chairman of said board under clause (2) of the last sentence of subsection (b) of section 2 of said reorganization plan are hereby transferred to said board. Notwithstanding any other provision of law, said board, the Chairman thereof except as herein otherwise provided, and the Federal Savings and Loan Insurance Corporation, respectively, shall have and may exercise all functions which they respectively had or could exercise, immediately prior to the effective date of the Housing Amendments of 1955 or immediately prior to the effective date of the Independent Office Appropriation Act, 1955. Said board shall annually make a report of its operations (including those of the Fedreal Savings and Loan Insurance Corporation) to the Congress as soon as practicable after the first day of January in each year. The name of the Home Loan Bank Board is hereby changed to 'Federal Home Loan Bank Board.'

Recommendations

Amend section 17 as follows: (1) by striking all of subsection (a) except the last two sentences; (2) by adding to subsection (a), at the end of said subsection, the following new sentence: "Upon the expiration of their terms of office members of the Board shall continue to serve until their successors are appointed and have qualified; and if at any time there shall be less than three members serving on the Board, all functions vested in or exercisable by the Board shall vest in and be exercisable by the member or members serving, and authority is hereby conferred on such remaining member or members to act by formal resolution or otherwise. The Board may from time to time make such provisions as it may deem appropriate for the exercise of its functions through meetings or otherwise and such provisions as it may deem appropriate authorizing the performance by any officer or employee of the Board or of the Federal Savings and Loan Insurance Corporation of any function of the Board or authorizing the performance by any such officer or employee of any function of said Corporation."; and (3) by adding to said section, at the end thereof, a new subsection to be lettered "(c)" and to read as follows:

"(c) In connection with any of their functions, and without regard to any provisions of law except those thereafter enacted expressly limiting this sentence, the Board and the Federal Savings and Loan Insurance Corporation, without limitation on the powers or authority otherwise vested in them, shall hereafter respectively have with respect to their financial transactions, including administrative and other expenses, their personnel, and their property, funds, and receipts, including procurement, disposal, custody, and disbursement thereof,

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the powers and authority provided in section 19 of this Act and subsection (b) of section 402 of the National Housing Act (all of which powers and authority shall hereafter be vested both in said Board and in said Corporation) and the same powers and authority as the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, respectively, now have, subject respectively to no other requirements, scrutiny, or review than are now applicable to said Board of Governors and said Federal Deposit Insurance Corporation, respectively. Notwithstanding the foregoing provisions of this subsection, title I of the Act of November 26, 1940 (54 Stat. 1211), and the Act of May 29, 1930 (46 Stat. 468), as now or hereafter in force, shall continue to be applicable except as the Board may otherwise determine upon a finding that such determination is necessary or advisable for the efficient conduct of operations."

Reasons

Amendment (1) is proposed for the reason that all of the existing language of subsection (a) relates solely to the original Federal Home Loan Bank Board and is now obsolete; the number, terms of office, and other matters relating to the present three-member Board are governed by Reorganization Plan No. 3 of 1947 and subdivision (b) of this section of the act. Amendment (2) is proposed for the purpose of affording continuity for the exercise of the functions of the Board and the Federal Savings and Loan Insurance Corporation, with clear statutory authorization for action otherwise than through formal meetings, and with provision for effective delegation of functions. Amendment (3) would recognize the fact that none of the funds used by the Board and the Insurance Corporation come from the United States Treasury or from the taxpayers, and the further fact that these agencies, with functions essentially comparable to those of the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, have the same need as those agencies for the ability to incur proper expenditures without the necessity for annual budgeting and authorization and for freedom to operate without regard to restrictive statutes. It is to be noted, however, that under the language proposed they would remain subject to the Civil Service Act and the Civil Service Retirement Act except as the Board might otherwise determine upon a finding that departure therefrom was necessary or advisable for the efficient conduct of operations.

136. Expenses of the Board and Assessments on the Bank

Existing law

Section 18 of the Federal Home Loan Bank Act, as amended:

"(a) There is hereby authorized to be appropriated the sum of not to exceed $300,000 for salaries, travel and subsistence expenses, rents, printing and binding, furniture and equipment, law books, books of reference, periodicals, newspapers, maps, contract stenographic reporting services, telephone and telegraph services, and all other necessary expenses of the board, together with expenses preliminary to the organization and establishment of the banks created hereunder, until the end of the fiscal year 1933.

"(b) The board shall have power to levy semiannually upon the Federal Home Loan Banks, and they shall pay, on such equitable basis as the board shall determine, an assessment sufficient in its judgment to provide for the payment of its estimated expenses for the half year succeeding the levying of each such assessment, beginning with the second half of the calendar year 1933. All expenses of the board incurred in carrying out the provisions of this Act, as determined by it, beginning July 1, 1933, shall be paid from the proceeds of such assessments, and if any deficiency shall occur in such fund at any time between such semiannual assessments the board shall have power to make an immediate assessment againt the banks to cover uch deficiency on the same basis as the original assessment. If any surplus shall remain from any assessment after the expiration of the semiannual period for which it was levied, such surplus may be deducted from the next following assessment."

Recommendations

(1) Repeal subsection (a) and strike the language "(b)" at the beginning of subsection (b); (2) amend the first sentence of subsection (b) by striking the language "beginning with the second half of the calendar year 1933" and inserting in lieu thereof the language "(except to the extent that it is estimated that such expenses will be borne from other sources), including such amount as the Board

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may include for the purpose of providing reasonable working capital, together with any deficit carried forward from the preceding half year"; (3) amend the second sentence of subsection (b) by striking all language preceding the word "if", and by amending said word to read "If"; and (4) amend the last sentence by striikng the language "the next" and inserting in lieu thereof the word "any".

Reasons

Amendment (1) would remove an obsolete provision which merely provided for expenses until the end of the fiscal year 1933. Amendment (2) would strike obsolete language and insert in lieu thereof language intended to make clear that assessments on the banks may reflect in reduced amount the estimated expenses to be borne otherwise than from such assessments, such as examination fees paid by institutions examined, and to make clear that such assessments may include provision for reasonable working capital and for making good any deficit from the preceding half year (the language as to deficits is taken from sec. 10 of the Federal Reserve Act, as amended). Amendment (3) would remove obsolete language. Amendment (4) is proposed for the reason that, at least in some cases, it may be necessary to make the semiannual assessment on the Federal home loans banks before the existence or amount of a surplus from the next prior assessment can be definitely ascertained.

137. Powers and Duties of Examiners

Existing law

The last sentence of section 20 of the Federal Home Loan Bank Act, as amended:

"For the purposes of this Act, examiners appointed by the Board shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act and the Federal Reserve Act, and shall have, in the exercise of functions under this Act, the same powers and privileges as are vested in such examiners by law."

Recommendations

Amend this sentence (1) by inserting, after the comma following "this Act", the language "the Home Owners' Loan Act of 1933 as now or hereafter in force, or title IV of the National Housing Act so as in force", followed by a comma, and (2) by striking the language "functions under this Act" and inserting in lieu thereof the language "their functions".

Reasons

Examiners appointed by the Board exercise functions not only under the Federal Home Loan Bank Act but also under section 5 of the Home Owners' Loan Act of 1933 (relating to Federal savings and loan associations) and under title VI of the National Housing Act (relating to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation). The proposed amendments appropriately broaden the language of the sentence by recognition of these functions under the other two acts.

138. Interagency Services

Existing law

Subsection (a) of section 22 of the Federal Home Loan Bank Act, as amended:

"(a) In order to enable the board to carry out the provisions of this Act, the Treasury Department, the Comptroller of the Currency, the Federal Reserve Board, and the Federal reserve banks are hereby authorized, under such conditions as they may prescribe, to make available to the board in confidence for its use and the use of any Federal Home Loan Bank such reports, records, or other information as may be available, relating to the condition of institutions with respect to which any such Federal Home Loan Bank has had or contemplates having transactions under this Act or relating to persons whose obligations are offered to or held by any Federal Home Loan Bank, and to make through their examiners or other employees, for the confidential use of the board or any Federal Home Loan Bank, examinations of such institutions."

Recommendation

Amend subsection (a) by striking the language "Federal Reserve Board" and inserting in lieu thereof the language "Board of Governors of the Federal Reserve System".

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Reason

To reflect in the act the present name of the board in question.

139. Interbank Adjustments

Existing law

Section 26 of the Federal Home Loan Bank Act, as amended:

"Whenever the board finds that the efficient and economical accomplishment of the purposes of this Act will be aided by such action, and in accordance with such rules, regulations, and orders as the board may prescribe, any Federal Home Loan Bank may be liquidated or reorganized, and its stock paid off and retired in whole or in part in connection therewith after paying or making provision for the payment of its liabilities. In the case of any such liquidation or reorganization, any other Federal Home Loan Bank may, with the approval of the board, acquire assets of any such liquidated or reorganized bank and assume liabilities thereof, in whole or in part."

Recommendation

Amend section 26 by inserting at the end thereof the following new sentence: "In case of the readjustment or creation of any district or districts, the Board may, subject to the provisions of subsection (b) of section 4, require such transfer of assets and membership, such assumption of liabilities, and such other adjustments as it may deem necessary or advisable, but notwithstanding this sentence or any other provision of law all debentures and bonds issued under subsections (b) and (c) of section 11 and from time to time outstanding shall at all times be the joint and several obligations of all Federal home-loan banks."

Reason

This amendment is proposed for the purpose of providing clear authority for the Board to make necessary adjustments in case of the readjustment or creation of any Federal home loan bank district or districts, at the same time making it clear that notwithstanding such adjustments any consolidated debentures or consolidated bonds are to be and remain the joint and several obligations of all Federal home loan banks.

140. Territorial Applicability of Act

Existing law

Section 29 of the Federal Home Loan Bank Act, as amended:

"That notwithstanding any provisions of law prohibiting bonds of the United States from bearing the circulation privilege, for a period of three years from the date of enactment of this Act all outstanding bonds of the United States heretofore issued or issued during such period, bearing interest at a rate not exceeding 3⅜ per centum per annum, shall be receivable by the Treasurer of the United States as security for the issuance of circulating notes to national banking associations, and upon the deposit with the Treasurer of the United States by a national banking association of any such bonds, such association shall be entitled to receive circulating notes in the same manner and to the same extent and subject to the same conditions and limitations now provided by law in the case of 2 per centum gold bonds of the United States bearing the circulation privilege; except that the limitation contained in section 9 of the Act of July 12, 1882, as amended, with respect to the amount of lawful money which may be deposited with the Treasurer of the United States by national banking associations for the purpose of withdrawing bonds held as security for their circulating notes, shall not apply to the bonds of the United States to which the circulation privilege is extended by this section and which are held as security for such notes. Nothing contained in this section shall be construed to modify, amend, or repeal any law relating to bonds of the United States which now bear the circulation privilege.

"As used in this section, the word 'bonds' shall not include notes, certificates, or bills issued by the United States.

"There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section."

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Recommendation

Amend section 29 to read as follows:

"SEC. 29. Notwithstanding any other provision of law now or hereafter in force, the provisions of this Act shall apply to the several States, the District of Columbia, and the Territories and possessions of the United States."

Reason

This amendment is proposed in order to repeal the existing provisions of section 29, which are now obsolete, and to make clear that the act applies to all the States, to the District of Columbia, to Territories now existing or hereafter created, and to the possessions of the United States.

HOME OWNERS' LOAN ACT OF 1933

141. REFERENCES TO HOME LOAN BANK BOARD

Existing law

The Home Owners' Loan Act of 1933, as amended (too long for reproduction here).

Recommendation

Amend the Home Owners' Loan Act of 1933, as amended, by striking the language "Home Loan Bank Board", wherever the same appears therein, and inserting in lieu thereof in each place the word "Board".

Reason

References in the existing act to "Home Loan Bank Board" do not accurately reflect the name of the Board (the present Federal Home Loan Bank Board).

142. DEFINITIONS

Existing law

Section 2 of the Home Owners' Loan Act of 1933, as amended:

"As used in this Act—

"(a) The term 'Board' means the Federal Home Loan Bank Board created under the Federal Home Loan Bank Act.

"(b) The term 'Corporation' means the Home Owners' Loan Corporation created under section 4 of this Act.

"(c) The term 'home mortgage' means a first mortgage on real estate in fee simple or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable, or (2) under a lease having a period of not less than fifty years to run from the date the mortgage was executed, upon which there is located a dwelling or dwellings for not more than four families, which is used in whole or in part by the owner as a home or held by him as his homestead, and which has a value of not to exceed $20,000; and the term 'first mortgage' includes such classes of first liens as are commonly given to secure advances on real estate under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

"(d) The term 'association' means a Federal Savings and Loan Association chartered by the Board as provided in section 5 of this Act."

Recommendation

Amend section 2 as follows: (1) by striking all in subdivision (a) after "Federal Home Loan Bank Board" and before the period and inserting in lieu thereof the language "referred to in subsection (b) of section 17 of the Federal Home Loan Bank Act", and (2) by striking subdivison (b) and relettering subdivisions (c) and (d) as (b) and (c), respectively.

Reason

Existing references in the act to the original Federal Home Loan Bank Board created in 1932 by the Federal Home Loan Bank Act should now be changed to references to the present Federal Home Loan Bank Board created by Reorganization Plan No. 3 of 1947 and referred to in subsection (b) of section 17 of the Federal Home Loan Bank Act, as amended. Also, subdivision (b) is obsolete and should be deleted.

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143. Interest Rates and Charges of Federal Savings and Loan Associations

Existing law

Section 4 of the Home Owners' Loan Act of 1933, as amended (now obsolete and too long for reproduction here).

Recommendation

Amend section 4 to read as follows:

"Sec. 4. Subject to such restrictions and limitations as the Board may be regulations prescribe, any Federal savings and loan association may take, receive, reserve, or charge, with respect to any loan, such charges by way of interest, discount, fees, or otherwise as are allowed by applicable law to other lenders, or such other or higher rates or charges as are allowed by applicable laws to any class of other similar local mutual thrift and home-financing institution or as are allowed by regulations of the Board: *Provided*, That nothing in this section shall authorize any association to exceed, with respect to any loan to which the provisions of section 5 of the Federal Home Loan Bank Act are applicable, the charges permitted by the provisions of said section 5."

Reason

This amendment is proposed (1) in order to repeal the existing provisions of section 4, which relate solely to the Home Owners' Loan Corporation, now out of existence, and (2) in order to clarify the question of the extent to which interest rates and charges by Federal savings and loan associations are, on the one hand, governed by State or local law or are, on the other hand, governed by Federal law and regulations of the Federal Home Loan Bank Board.

Recommendation

Strike the heading "CREATION OF HOME OWNERS' LOAN CORPORATION" immediately preceding section 4 and the heading "FEDERAL SAVINGS AND LOAN ASSOCIATIONS" immediately preceding section 5, and insert immediately before section 4 a new heading "FEDERAL SAVINGS AND LOAN ASSOCIATIONS."

Reason

This technical amendment would replace an obsolete heading immediately before section 4 and move the heading relating to Federal savings and loan associations so as to make it precede section 4 which if amended in accordance with the amendment suggested next above would apply to such associations.

144. Administrative Proceedings

Existing law

Subsection (d) of section 5 of the Home Owners' Loan Act of 1933, as amended.

"(d) (1) The Board shall have power to enforce this section and rules and regulations made hereunder. In the enforcement of any provision of this section or rules and regulations made hereunder, or any other law or regulation, and in the administration of conservatorships and receiverships as provided in subsection (d) (2) hereof, the Board is authorized to act in its own name and through its own attorneys. The Board shall have power to sue and be sued, complain and defend in any court of competent jurisdiction in the United States or its territories or possessions or the Commonwealth of Puerto Rico. It shall by formal resolution state any alleged violation of law or regulation and give written notice to the association concerned of the facts alleged to be such violation, except that the appointment of a Supervisory Representative in Charge, a conservator or a receiver shall be exclusively as provided in subsection (d) (2) hereof. Such association shall have thirty days within which to correct the alleged violation of law or regulation and to perform any legal duty. If the association concerned does not comply with the law or regulation within such period, then the Board shall give such association twenty days' written notice of the charges against it and of a time and place at which the Board will conduct a hearing as to such alleged violation of duty. Such hearing shall be in the Federal judicial district of the association unless it consents to another place and shall be conducted by a hearing examiner as is provided by the Administrative Procedure Act. The Board or any member thereof or its designated representative shall have power to administer oaths and affirmations and shall have power to issue subpenas and subpenas duces tecum, and shall issue such at the request of any interested party, and the Board or any interested party may apply to the United States district court of the dis-

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trict where such hearing is designated for the enforcement of such subpena or subpena duces tecum and such courts shall have power to order and require compliance therewith. A record shall be made of such hearing and any interested party shall be entitled to a copy of such record to be furnished by the Board at its reasonable cost. After such hearing and adjudication by the Board, appeals shall lie as is provided by the Administrative Procedure Act, and the review by the court shall be upon the weight of the evidence. Upon the giving of notice of alleged violation of law or regulation as herein provided, either the Board or the association affected may, within thirty days after the service of said notice, apply to the United States district court for the district where the association is located for a declaratory judgment and an injunction or other relief with respect to such controversy, and said court shall have jurisdiction to adjudicate the same as in other cases and to enforce its orders. The Board may apply to the United States district court of the district where the association affected has its home office for the enforcement of any order of the Board and such court shall have power to enforce any such order which has become final. The Board shall be subject to suit by any Federal savings and loan association with respect to any matter under this section or regulations made thereunder, or any other law or regulation, in the United States district court for the district where the home office of such association is located, and may be served by serving a copy of process on any of its agents and mailing a copy of such process by registered mail, to the Home Loan Bank Board, Washington, District of Columbia.

"(2) The grounds for the appointment of a conservator or receiver for a Federal savings and loan association shall be one or more of the following: (i) insolvency in that the assets of such association are less than its obligations to its creditors and others, including its members; (ii) violation of law or of a regulation; (iii) the concealment of its books, records, or assets or the refusal to submit its books, papers, records, or affairs for inspection to any examiner or lawful agent appointed by the Home Loan Bank Board, and (iv) unsafe or unsound operation. The Board shall have exclusive jurisdiction to appoint a Supervisory Representative in Charge, conservator, or receiver. If, in the opinion of the Board, a ground for the appointment of a conservator or receiver as herein provided exists and the Board determines that an emergency exists requiring immediate action, the Board is authorized to appoint ex parte and without notice a Supervisory Representative in Charge to take charge of said association and its affairs who shall have and exercise the powers herein provided for conservators and receivers. Unless sooner removed by the Board, such Supervisory Representative in Charge shall hold office until a conservator or receiver, appointed by the Board after notice as herein provided, takes charge of the association and its affairs, or for six months, or until thirty days after the termination of the administrative hearing and final proceedings herein provided, or until sixty days after the final termination of any litigation affecting such temporary appointment, whichever is longest. The Board shall have the power to appoint a conservator or receiver but no such appointment of a conservator or receiver shall be made except pursuant to a formal resolution of the Board stating the grounds therefor and except notice thereof is given to said association stating the grounds therefor and until an opportunity for an administrative hearing thereon is afforded to said association. Such hearing shall be held in accordance with the provisions of the Administrative Procedure Act and shall be subject to review as therein provided and the review by the court shall be upon the weight of the evidence. A conservator shall have all the powers of the members, the directors, and officers of the Federal association and shall be authorized to operate it in its own name or conserve its assets in the manner and to the extent authorized by the Board. The Board shall appoint only the Federal Savings and Loan Insurance Corporation as receiver for any Federal savings and loan association, which shall have power as receiver to buy at its own sale subject to approval by the Board. With the consent of the association expressed by a resolution of the board of directors or of its members, the Board is authorized to appoint a conservator or receiver for a Federal association without notice and without hearing. The Board shall have power to make rules and regulations for the reorganization, merger, and liquidation of Federal associations and for such associations in conservatorship and receivership and for the conduct of conservatorships and receiverships. Whenever a Supervisory Representative in Charge, conservator, or receiver, appointed by the Board pursuant to the provisions of this section, demands possession of the property, business and assets of any association, the refusal of any officer, agent, employee, or director of such association to comply with the demand

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shall be punishable by a fine of not more than $1,000 or by imprisonment for not more than one year or both by such fine and imprisonment."

Recommendation

Amend subsection (d) to read as follows:

"(d) (1) Whenever in the opinion of the Board an association has violated or is violating any provision of law or regulation to which it is subject, the Board may by formal resolution state such alleged violation and give written notice to the association of the facts alleged to constitute such violation. If the association shall not correct such violation within twenty days, or within such further time as the Board shall allow, the Board shall give the association twenty days' written notice of the time and place at which the Board, a member thereof, or a person designated by the Board will conduct a hearing as to such alleged violation. If the Board finds the association to be guilty of the charges alleged it may issue its order or orders to the association to cease or correct the violation or violations of which it is found guilty.

"Nothing contained in this subdivision (1) or in subdivision (2) hereof shall limit the power of the Board to appoint a Supervisory Representative in Charge, a conservator, or a receiver, which appointment shall be exclusively as provided in subdivision (3) hereof.

"(2) Whenever in the opinion of the Board any director or officer of an association has violated or is violating any law or regulation relating to such association or has engaged or is engaging in unsafe or unsound practices in conducting the business of such association or has violated his duty to such association as an officer or director, the Board may notify the board of directors of such association to remove such director or officer from office. Such director or officer may be removed by an affirmative vote of a majority of the members of the board of directors of such association at a regular meeting of the board or at a special meeting called for that purpose. No vote of such board of directors upon removal of a director shall be taken until he has been advised of the cause therefor and has had an opportunity to submit to the board of directors his statement relative thereto, either oral or written. If, within thirty days from the date of the notification to it by the Board, the board of directors of such association shall have failed or refused to remove such director or officer as hereinabove provided, the Board may cause notice to be served upon such director or officer to appear at a hearing before the Board, a member thereof, or a person designated by the Board and show cause why he should not be removed from office. The notice shall state the ground or grounds upon which it is based. A copy of such notice shall be sent to each director of the association affected by registered mail. The Board may suspend such officer or director pending final determination upon the removal of such officer or director. If, after hearing, the Board finds that such officer or director has violated or is violating any law or regulation relating to such association or has engaged or is engaging in unsafe or unsound practices in conducting the business of such association or has violated his duty to such association as an officer or director, the Board may order that such director or officer be removed from office. A copy of such order shall be served upon such director or officer. A copy of such order shall also be served upon the association of which he is a director or officer, whereupon such director or officer shall cease to be a director or officer of such association. Any such director or officer removed from office as herein provided who thereafter participates in any manner in the management of such association, or any such director or officer who participates in any manner in the management of such association during his suspension as herein provided, shall be fined not more than $5,000 or imprisoned for not more than 5 years, or both, in the discretion of the court.

"(3) The grounds for the appointment of a conservator or a receiver for an association shall be one or more of the following: (i) insolvency in that the assets of such association are less than its obligations to its creditors and others, including its members; (ii) violation of law or of a regulation; (iii) the concealment of it books, papers, records, or assets or the refusal to submit its books, papers, records, or affairs for inspection to any examiner or lawful agent appointed by the Board; (iv) unsafe or unsound operation; (v) failure or refusal to obey an order issued pursuant to subdivision (1) hereof. The Board shall have exclusive power and jurisdiction to appoint a Supervisory Representative in Charge, a conservator, or a receiver for an association. If, in the opinion of the Board, a ground for the appointment of a conservator or receiver as herein provided exists and the Board determines that an emergency exists requiring immediate action, the Board is authorized to appoint ex parte and without

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notice a Supervisory Representative in Charge to take charge of such association and its affairs, who shall have and exercise all the powers herein provided for conservators. Unless sooner removed by the Board, such Supervisory Representative in Charge shall hold office until a conservator or receiver, appointed by the Board as herein provided, takes charge of such association and its affairs, or for six months, or until thirty days after the termination of the administrative hearing on the appointment of a conservator or receiver and final proceedings thereon as herein provided, whichever is longest. No appointment of a conservator or receiver shall be made until notice thereof is given to the association stating the grounds therefor and until an opportunity for a hearing thereon before the Board, a member thereof, or a person designated by the Board is afforded to such association. A conservator shall have all the powers of the members, the directors, and the officers of the association and shall be authorized to operate it in its own name or conserve its assets in the manner and to the extent authorized by the Board. The Board shall appoint only the Federal Savings and Loan Insurance Corporation as a receiver for the association. With the consent of the association expressed by a resolution of its board of directors or of its members, the Board is authorized to appoint a conservator or receiver for an association without any requirement of notice or hearing. Such action to appoint a conservator may be taken regardless of whether a Supervisory Representative in Charge has been appointed, and such action to appoint a receiver may be taken regardless of whether a Supervisory Representative in Charge or a conservator has been appointed. The Board may replace a conservator with a receiver without any requirement of notice or hearing. The Board shall have power to make rules and regulations for the reorganization, merger, and liquidation of associations and for associations in conservatorship and receivership and for the conduct of conservatorships and receiverships and shall have power by regulation or otherwise to define, for the purpose of this subsection, what constitutes unsafe or unsound practices and unsafe or unsound operation. In the event that an association's Federal Home Loan Bank membership or its status as an insured institution as defined in section 401 of the National Housing Act is terminated, the Board shall, simultaneously with such termination or promptly thereafter, and without any requirement of notice or hearing, appoint a conservator or appoint the Federal Savings and Loan Insurance Corporation as receiver for such association, and such an appointment of said Corporation as receiver shall be deemed to constitute a default within the meaning of title IV of the National Housing Act.

"Whenever a Supervisory Representative in Charge, a conservator, or a receiver appointed by the Board demands possession of the property, business, and assets of any association, the refusal of any director, officer, employee, or agent of such association to comply with the demand shall be punishable by a fine of not more than $5,000 or by imprisonment for not more than one year, or by both such fine and imprisonment.

"(4) All hearings under the provisions of subdivisions (1), (2), and (3) hereof shall be conducted in accordance with the provisions of the Administrative Procedure Act and shall be held in the Federal judicial district in which the principal office of the association affected is located unless it consents to another place. The Board or any member thereof or its designated representative shall have power to administer oaths and affirmations and to take or cause depositions to be taken and shall have power to issue subpenas and subpenas duces tecum and shall issue such at the request of any interested party, and the Board or any interested party may apply to the United States District Court of the district where such hearing is designated for the enforcement of such subpenas or subpenas duces tecum and such court shall have power to order and require compliance therewith.

"Any association aggrieved by a final order of the Board entered pursuant to any such hearing or any officer or director against whom an order of removal has been issued pursuant to subdivision (2) hereof after hearing may obtain a review of such order in the United States Court of Appeals in the circuit in which the hearing was held by filing in such court within thirty days after the issuance of such order a written petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith served upon the Board by serving a copy thereof on any of its agents and mailing a copy by registered mail to the Federal Home Loan Bank Board, Washington, District of Columbia.

"Within thirty days after the service of such petition upon it or such further time as the court shall allow, the Board shall file with the court a copy of the order complained of and the originals or certified copies of all papers and evidence

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presented to and considered by it in entering said order. The record and briefs upon which any such review shall be held and determined by the court shall contain such information and material and shall be prepared within such time and in such manner as the court may by rule or order prescribe. At the earliest convenient time the court shall determine the matter upon the record before it in the manner prescribed by subsection (e) of section 10 of the Administrative Procedure Act. The court shall not stay, or enjoin the operation of, the order of the Board pending its final judgment. The court may in its discretion enter judgment for costs against the petitioner. The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari upon petition therefor under section 1254 of title 28 of the United States Code by the petitioner or by the Board, or by certification by the court pursuant to the provisions of that section.

"(5) The Board shall have power to sue, complain, and defend in any court of competent jurisdiction. In any action, suit, or other proceeding to which it is a party, and in the administration of conservatorships and receiverships, the Board is authorized to act in its own name and through its own attorneys.

"(6) All expenses of the Board or of the Federal Savings and Loan Insurance Corporation in connection with the preparation for or conduct of proceedings under this subsection shall be considered as nonadministrative expenses."

Reasons

The existing provisions of subsection (d) are complicated and involved, in some respects self-contradictory, and capable of causing needless delays in the process of judicial review. The suggested revision would, it is believed, remedy these defects and provide a speedy and effective means of judicial review on the basis provided in the Administrative Procedure Act, as distinguished from review on the weight of the evidence as provided in the existing subsection.

The revision contains provisions for removal of a director or officer who is guilty of violation of law or regulation or of engaging in unsafe or unsound practices in conducting the business of the associations. These provisions are similar to those of section 77 of title 12 of the United States Code, which is applicable to directors and officers of national banks and of State member banks of the Federal Reserve System.

In addition, the revision would require the Board to appoint a conservator or receiver for a Federal savings and loan association in the event that such association's Federal home loan bank membership or its status as an insured institution under title IV of the National Housing Act is terminated. The existing law requires that each Federal savings and loan association have such membership and insurance, but does not make clear what is to happen when a situation arises involving termination of a Federal association's Federal home loan bank membership or its insured status.

145. Investments by Secretary of the Treasury in Federal Savings and Loan Associations

Existing law

Subsections (g) and (j) of section 5 of the Home Owners' Loan Act of 1933, as amended:

"(g) The Secretary of the Treasury is authorized on behalf of the United States to subscribe for preferred shares in such associations which shall be preferred as to the assets of the association and which shall be entitled to a dividend, if earned, after payment of expenses and provisions for reasonable reserves, to the same extent as other shareholders. It shall be the duty of the Secretary of the Treasury to subscribe for such preferred shares upon the request of the Board; but the subscription by him to the shares of any one association shall not exceed $100,000, and no such subscription shall be called for unless in the judgment of the Board the funds are necessary for the encouragement of local home financing in the community to be served and for the reasonable financing of homes in such community. Payment on such shares may be called from time to time by the association, subject to the approval of the Board and the Secretary of the Treasury; but the amount paid in by the Secretary of the Treasury shall at no time exceed the amount paid in by all other shareholders, and the aggregate amount of shares held by the Secretary of the Treasury shall not exceed at any time the aggregate amount of shares held by all other shareholders. To enable the Secretary of the Treasury to make such subscriptions when called there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000, to be immediately available

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and to remain available until expended. Each such association shall issue receipts for such payments by the Secretary of the Treasury in such form as may be approved by the Board, and such receipts shall be evidence of the interest of the United States in such preferred shares to the extent of the amount so paid. Each such association shall make provision for the retirement of its preferred shares held by the Secretary of the Treasury, and beginning at the expiration of five years from the time of the investment in such shares, the association shall set aside one-third of the receipts from its investing and borrowing shareholders to be used for the purpose of such retirement. In case of the liquidation of any such association the shares held by the Secretary of the Treasury shall be retired at par before any payments are made to any other shareholders.

"(j) In addition to the authority to subscribe for preferred shares in Federal Savings and Loan Association, the Secretary of the Treasury is authorized on behalf of the United States to subscribe for any amount of full paid income shares in such associations, and it shall be the duty of the Secretary of the Treasury to subscribe for such full paid income shares upon the request of the Federal Home Loan Bank Board. Payment on such shares may be called from time to time by the association, subject to the approval of said Board and the Secretary of the Treasury, and such payments shall be made from the funds appropriated pursuant to subsection (g) of this section; but the amount paid in by the Secretary of the Treasury for shares under this subsection and such subsection (g), together shall at no time exceed 75 per centum of the total investment in the shares of such association by the Secretary of the Treasury and other shareholders. Each such association shall issue receipts for such payments by the Secretary of the Treasury in such form as may be approved by said Board and such receipts shall be evidence of the interest of the United States in such full paid income shares to the extent of the amount so paid. No request for the repurchase of the full paid income shares purchased by the Secretary of the Treasury shall be made for a period of five years from the date of such purchase, and thereafter requests by the Secretary of the Treasury for the repurchase of such shares by such associations shall be made at the discretion of the Board; but no such association shall be requested to repurchase any such shares in any one year in an amount in excess of 10 per centum of the total amount invested in such shares by the Secretary of the Treasury. Such repurchases shall be made in accordance with the rules and regulations prescribed by the Board for such associations."

Recommendation

Repeal subsections (g) and (j), and reletter subsections (h), (i), and (k) as subsections (g), (h), and (i), respectively,

Reason

These subsections are now obsolete. All investments made under said subsections have been liquidated, and no further funds are currently available thereunder.

146. Conversions

Existing law

Subsection (i) of section 5 of the Home Owners' Loan Act of 1933, as amended:

"(i) Any member of a Federal Home Loan Bank may convert itself into a Federal Savings and Loan Association under this Act upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act.

"Any Federal savings and loan association may convert itself into a savings and loan type of institution organized pursuant to the laws of the State, District, or Territory (hereinafter referred to in this section as the State) in which the principal office of such Federal association is located: *Provided*, (1) That the State permits the conversion of any savings and loan type of institution of such State into a Federal savings and loan association; (2) that such conversion of a Federal savings and loan association into such a State institution is determined upon the vote in favor of such conversion cast in person or by proxy at a special meeting of members called to consider such action, specified by the law of the State in which the home office of the Federal association is located, as required by such law for a State-chartered institution to convert itself into a Federal association, but in no event upon a vote of less than 51 per centum

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of all the votes cast at such meeting, and upon compliance with other requirements reciprocally equivalent to the requirements of such State law for the conversion of a State-chartered institution into a Federal association; (3) that notice of the meeting to vote on conversion shall be given as herein provided and no other notice thereof shall be necessary; the notice shall expressly state that such meeting is called to vote thereon, as well as the time and place thereof, and such notice shall be mailed, postage prepaid, at least twenty and not more than thirty days prior to the date of the meeting, to each member of record of the Federal association at his last address as shown on the books of the Federal association and to the General Manager of the Federal Savings and Loan Insurance Corporation, Washington, District of Columbia; (4) that, upon the effective date of the conversion, the association has repurchased the total amount invested in its shares by the Secretary of the Treasury; and (5) that if, upon the effective date of conversion, the Home Owners' Loan Corporation will hold of record shares of the association, its approval of the conversion has been obtained; (6) that, in the event of dissolution after conversion, the members or shareholders of the association will share on a mutual basis in the assets of the association in exact proportion to their relative share or account credits; (7) that such conversion shall be effective upon the date that all the provisions of this act shall have been fully complied with and upon the issuance of a new charter by the State wherein the association is located; it being provided that its act of converting into a State-chartered institution shall constitute an agreement to be bound by all the requirements that the Federal Savings and Loan Insurance Corporation may legally impose under section 403 of title IV of the National Housing Act, as now or hereafter amended, and the association shall upon conversion and thereafter be authorized to issue securities in any form currently approved at the time of issue by the Federal Savings and Loan Insurance Corporation for issuance by similar insured institutions in such State, District, or Territory.

"In addition to the foregoing provision for conversion upon a vote of the members only any association chartered as a Federal savings and loan association, including any having outstanding shares held by the Secretary of the Treasury or Home Owners' Loan Corporation, may convert itself into a State institution upon an equitable basis, subject to approval, by regulations or otherwise, by the Home Loan Bank Board and by the Federal Savings and Loan Insurance Corporation: *Provided*, That if the insurance of accounts is terminated in connection with such conversion, the notice and other action shall be taken as provided by law and regulations for the termination of insurance of accounts."

Recommendations

Amend subsection (i) as follows: (1) by striking in the second paragraph the language "or Territory" and inserting in lieu thereof the language "Territory, or possession"; (2) by striking in the second paragraph subdivisions (4) and (5) and renumbering subdivisions (6) and (7) as subdivisions (4) and (5), respectively; and (3) by striking in the last paragraph the language "a State institution" and inserting in lieu thereof the language "an institution organized pursuant to the laws of the State, District, Territory, or possession in which the principal office of such Federal association is located".

Reasons

Amendment (1) would make clear that Federal savings and loan associations may convert under the second paragraph of subsection (i) not only to State-chartered institutions but also to institutions of the District of Columbia or of the Territories and possessions. Amendment (2) would remove obsolete provisions relating to investments in Federal savings and loan associations by the Secretary of the Treasury and the Home Owners' Loan Corporation; the Home Owners' Loan Corporation is no longer in existence, and the provisions of the Home Owners' Loan Act of 1933 under which the Secretary of the Treasury formerly made such investments, subsecs. (g) and (j) of sec. 5) are hereinabove proposed to be repealed. Amendment (3) would accomplish the same purpose with respect to the last paragraph of subsection (i) that amendment (1) would accomplish with respect to the second paragraph of said subsection.

147. Promotion of Savings and Loan Associations

Existing law

Section 6 of the Home Owners' Loan Act of 1933, as amended:

"To enable the Board to encourage local thrift and local home financing and to promote, organize, and develop the associations herein provided for or similar

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associations organized under local laws, there is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated, the sum of $150,000, to be immediately available and remain available until expended, subject to the call of the Board, which sum, or so much thereof as may be necessary, the Board is authorized to use in its discretion for the accomplishment of the purposes of this section without regard to the provisions of any other law governing the expenditure of public funds. For the purposes of this section the Secretary of the Treasury is authorized and directed to allocate and make immediately available to the Board, out of the funds appropriated pursuant to section 5 (g), the sum of $700,000. Such sum shall be in addition to the funds appropriated pursuant to this section, and shall be subject to the call of the Board and shall remain available until expended. The sums appropriated and made available pursuant to this section shall be used impartially in the promotion and development of local thrift and home-financing institutions, whether State or Federally chartered."

Recommendation

Repeal section 6, and renumber the last two sections of the act as sections 6 and 7, respectively.

Reason

Section 6 authorized an appropriation and an allocation of funds to enable the original Federal Home Loan Bank Board to promote, organize, and develop Federal savings and loan associations or similar associations organized under local laws. The present Board has not engaged in any such promotional activities and sees no need at the present time or in the foreseeable future for the resumption of such activities.

148. Territorial Applicability of Act

Existing law

Section 7 of the Home Owners' Loan Act of 1933, as amended:

"The provisions of this Act shall apply to the continental United States, to the Territories of Alaska and Hawaii, and to Puerto Rico, Guam, and the Virgin Islands."

Recommendation

Amend section 7 (to be renumbered sec. 6) to read as follows:

"Sec. 6. Nothwithstanding any other provision of law now or hereafter in force, the provisions of this Act shall apply to the several States, the District of Columbia, and the Territories and possessions of the United States."

Reason

This amendment is proposed in order to make clear that the act applies to all the States, to the District of Columbia, to Territories now existing or hereafter created, and to the possessions of the United States.

TITLE IV OF NATIONAL HOUSING ACT

149. References to Home Loan Bank Board

Existing law

Title IV of the National Housing Act, as amended (too long for reproduction here).

Recommendation

Amend title IV by striking the language "Home Loan Bank Board," wherever the same appears therein, and inserting in lieu thereof in each place the word "Board."

Reason

References in existing title IV to "Home Loan Bank Board" do not accurately reflect the name of the Board (the present Federal Home Loan Bank Board).

150. Definitions

Recommendations

Amend section 401 of the National Housing Act, as amended, by adding thereto at the end thereof the following new paragraph:

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"(e) The term 'Board' means the Federal Home Loan Bank Board referred to in subsection (b) of section 17 of the Federal Home Loan Bank Act."

Reason

This amendment would supply a definition which is needed in the act.

151. Insured Accounts of Fiduciaries

Existing law

The last sentence of paragraph (b) of section 401:

"Funds held in fiduciary capacity, when invested in an insured institution, shall be insured in an amount not to exceed $10,000 for each trust estate, and notwithstanding any other provisions of this Act, such insurance shall be separate from and additional to that covering other investments by the owners of such trust funds or the beneficiaries of such trust estates."

Recommendation

Amend the sentence as follows: (1) by striking the language beginning with the word "Funds" and ending "shall be insured" and inserting in lieu thereof the language "Any account of an insurable type in any insured institution held in fiduciary capacity shall be insured to the fiduciary or fiduciaries"; (2) by striking the language "trust estate" and inserting in lieu thereof the word "beneficiary"; and (3) by striking all of said sentence beginning with "the owners of such trust funds" and ending immediately before the period and inserting in lieu thereof the language "the fiduciary or fiduciaries holding such account or the beneficiary or beneficiaries of such account."

Reasons

This amendment is proposed for the purpose of clarifying the insurance of accounts held in trust or in other fiduciary capacity. Amendment (1) would make clear that the special provisions as to such accounts would apply whenever an account of an insurable type is held in a fiduciary capacity, regardless of the antecedent status of the funds. The same amendment would also make it clear, by the use of the language "shall be insured to such fiduciary," that the Federal Savings and Loan Insurance Corporation, in making payment of the insurance, will be protected in making payment to the fiduciary and would not be under a duty to make payment to the beneficiaries. Amendment (2) is designed to clarify a problem which arises from the fact that the existing sentence provides separate insurance for each "trust estate." Although the regulations treat these words as referring to the interest of each beneficiary, it might be contended that the reference to "trust estate" is a reference to the property held by the fiduciary. This amendment would clarify the matter by substituting the word "beneficiary" for the quoted words. Amendment (3) would conform the closing language of the provision to the terminology of the remainder of the provision as it would be amended by the other two suggested amendments.

152. Insured Accounts of "Public Units"

Existing Law

The second sentence of paragraph (b) of section 401:

"Each officer, employee, or agent of the United States, of any State of the United States, of the District of Columbia, of any Territory of the United States, of Puerto Rico, of the Virgin Islands, of any county, of any municipality, or of any political subdivision thereof, herein called public unit, having official custody of public funds and lawfully investing the same in an insured institution, shall, for the purpose of determining the amount of the insured account, be deemed an insured member in such custodial capacity separate and distinct from any other officer, employee, or agent of the same, or any public unit having official custody of public funds and lawfully investing the same in the same insured institution in custodial capacity."

Recommendation

Amend the sentence aforesaid as follows: (1) by striking the language "of any Territory of the United States, of Puerto Rico, of the Virgin Islands, of any county, of any municipality, or of any political subdivision thereof" and inserting in lieu thereof the following: "of any Territory or possession of the United States, of any county, of any municipality, of any political subdivision of any of the preceding, or any court or any corporate or other public agency or public instrumentality of any of the same"; (2) by striking the language "of public funds" and

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inserting in lieu thereof the language "or control of public funds or funds of such public unit, or funds deposited with such public unit or with such officer, employee, or agent"; (3) by striking the language "the insured account" and inserting in lieu thereof the language "insurance under this title"; and (4) by striking the language "an insured member in such custodial capacity" and inserting in lieu thereof the language "a separate insured member with respect to each separate account of an insurable type in such institution in which any of such funds are so invested, and as such shall be deemed to be an insured member."

Reasons

This amendment is proposed for the purpose of clarifying the provisions of the act with respect to the insurance of investments by officers, employees, and agents of the United States, the States, and other "public units." Amendment (1) would expressly include "possessions" of the United States as public units within the meaning of the provision. The same amendment would include courts and public agencies and instrumentalities, corporate or unincorporated, as public units for this purpose. Amendment (2) would make clear that funds of a public nature or funds on deposit with public units or personnel thereof, such as funds paid into court, are covered by the provision, as well as funds which are public funds in the strict legal sense. Amendments (3) and (4) would make clear that each separate account is separately insured and would thus accomplish the dual purpose of giving public officials reasonable assurance as to the extent of the insurance coverage and freeing the Federal Savings and Loan Insurance Corporation from the necessity of trying to determine, by itself or through the courts, difficult and complicated questions of State law as to the status of various funds under the control of the same public official or public unit.

153. Federal Savings and Loan Insurance Corporation

Existing law

Subsection (a) of section 402 of the National Housing Act, as amended:

"(a) There is hereby created a Federal Savings and Loan Insurance Corporation (hereinafter referred to as the 'Corporation'), which shall insure the accounts of institutions eligible for insurance as hereinafter provided, and shall be under the direction of a board of trustees to be composed of five members and operated by it under such bylaws, rules, and regulations as it may prescribe for carrying out the purposes of this title. The members of the Federal Home Loan Bank Board shall constitute the board of trustees of the Corporation and shall serve as such without additional compensation. The principal office of the Corporation shall be in the District of Columbia."

Recommendation

Amend subsection (a) of section 402 as follows: (1) by striking in the first sentence all language after "under the direction of" and before the period and inserting in lieu thereof the language "the Board", and (2) by striking the second sentence.

Reason

This amendment is suggested for the purpose of removing from title IV certain provisions as to the Board of Trustees of the Federal Savings and Loan Insurance Corporation which became obsolete with the taking effect of Reorganization Plan No. 3 of 1947, which abolished said Board of Trustees. The amendment would also delete certain provisions as to bylaws, rules, and regulations; these provisions are proposed to be included in more appropriate place and form in proposed amendments to subsection (c) of section 402 hereinbelow.

154. Capital Stock of Insurance Corporation

Existing law

Subsection (b) of section 402 of the National Housing Act, as amended:

"(b) The Corporation shall have a capital stock of $100,000,000, which shall be divided into shares of $100 each. The total amount of such capital stock shall be subscribed for by the Home Owners' Loan Corporation which is hereby authorized and directed to subscribe for such stock and make payment therefor in bonds of the Home Owners' Loan Corporation. The Corporation shall issue to the Home Owners' Loan Corporation receipts for payment for or on account of such stock, which shall serve as evidence of the ownership thereof, and the

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Home Owners' Loan Corporation shall be entitled to the payment of dividends on such stock out of net earnings at a rate equal to the interest rate on such bonds, which dividends shall be cumulative."

Recommendation

Repeal the last two sentences of subsection (b).

Reason

To repeal obsolete provisions relating to the original subscription to and issuance of the capital stock of the Federal Savings and Loan Insurance Corporation.

155. POWERS OF INSURANCE CORPORATION

Existing law

Subsection (c) of section 402 of the National Housing Act, as amended:

"(c) Upon the date of enactment of this Act, the Corporation shall become a body corporate, and shall be an instrumentality of the United States, and as such shall have power—

"(1) To adopt and use a corporate seal.

"(2) To have succession until dissolved by Act of Congress.

"(3) To make contracts.

"(4) To sue and be sued, complain and defend, in any court of competent jurisdiction in the United States or its Territories or possessions or the Commonwealth of Puerto Rico, and may be served by serving a copy of process on any of its agents or any agent of the Home Loan Bank Board and mailing a copy of such process by registered mail to the Corporation at Washington, District of Columbia.

"(5) To appoint and to fix the compensation, by its board of trustees, of such officers, employees, attorneys, or agents, as shall be necessary for the performance of its duties under this title, without regard to the provisions of any other laws relating to the employment or compensation of officers or employees of the United States. Nothing in this title or any other provision of law shall be construed to prevent the appointment and compensation as an officer, attorney, or employee of the Corporation, of any officer, attorney, or employee of any board, corporation, commission, establishment, executive department, or instrumentality of the Government. The Corporation, with the consent of any board, corporation, commission, establishment, executive department, or instrumentality of the Government, including any field services thereof, may avail itself of the use of information, service, and facilities thereof in carrying out the provisions of this title. The Corporation shall be entitled to the free use of the United States mails for its official business in the same manner as the executive departments of the Government, and shall determine its necessary expenditures under this Act and the manner in which the same shall be incurred, allowed, and paid, without regard to the provisions of any other law governing the expenditure of public funds. All necessary expenses in connection with the making of supervisory or other examinations (except examinations of Federal home loan banks), including the provision of services and facilities therefor, shall be considered as nonadministrative expenses."

Recommendations

(1) Amend subdivision (3) of subsection (c) by adding thereto at the end thereof, immediately before the period, a comma and the language "and to settle, compromise, or release claims by or against the Corporation".

(2) Amend subdivision (4) of subsection (c) to read as follows:

"(4) To sue and be sued, complain and defend, in any court of competent jurisdiction. Notwithstanding section 1349 of title 28 of the United States Code or any other provision of law, the Corporation (a) shall be deemed to be an agency included in sections 1345 and 1442 of said title, and (b) may remove actions and prosecutions under subsection (a) of said section 1442, or separate and independent claims or causes of action under subsection (c) of section 1441 of said title, without regard to any restriction or requirement imposed by said subsections. No attachment or execution shall be issued against the Corporation or its property before final judgment in any court of any State or of the United States or any District, Territory, or possession thereof, or any other court. The Corporation may be served by serving a copy of process on any of its agents or any agent of the Board and mailing a copy of such process by registered mail to the Corporation at Washington, District of Columbia."

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(3) Amend subsection (c) of section 402 of adding thereto at the end thereof the following new subdivisions:

"(6) To adopt and amend bylaws and to adopt, amend, and require the observance of such rules, regulations, and orders as may from time to time be deemed necessary for carrying out the provisions or purposes of this title or for the protection of its insurance risk.

"(7) To require information and reports from insured institutions."

Reasons

(1) It appears advisable that the Corporation, as an insurer and in the administration of its affairs, have express authority to settle, compromise, or release claims.

(2) It is considered highly advisable that the Federal Savings and Loan Insurance Corporation, as a Federal agency, have clear power to bring suit in the Federal courts and to remove to the Federal courts judicial proceedings brought against them, or separable controversies in judicial proceedings involving them, which may be instituted in State courts. Such power would be conferred by the first full sentence of the proposed revision and is similar to the power of Federal Reserve banks under section 632 of title 12 of the United States Code. The provisions of the second full sentence are similar to provisions with respect to the Federal Reserve banks which are contained in said section 632 and provisions with respect to the Federal Deposit Insurance Corporation which are contained in section 1819 of title 12 of the United States Code.

(3) These amendments are proposed in order to (1) make clear that the Federal Savings and Loan Insurance Corporation has authority to make and enforce substantive rules and regulations to carry out the purposes or provisions of title IV of the National Housing Act and (2) make clear that the Corporation has authority to require insured institutions to submit information and reports.

156. PROTECTION OF INSURANCE CORPORATION'S SIGNS, DEVICES, AND INSIGNIA

Existing law

None.

Recommendation

Amend section 402 of the National Housing Act, as amended, by adding thereto, immediately after subsection (e), the following new subsection:

"(f) No individual, association, partnership, or corporation shall use or display (1) any sign, device, or insigne prescribed or approved by the Corporation for use or display by insured institutions, (2) any copy, reproduction or colorable imitation of any such sign, device, or insigne, or (3) any sign, device, or insigne reasonably calculated to convey the impression that it is a sign, device, or insigne used by insured institutions, contrary to regulations of the Corporation prohibiting, or limiting or restricting, such use or display by such individual, association, partnership, or corporation. Every individual, partnership, association, or corporation violating this subsection shall be punished by a fine of not exceeding $5,000, or by imprisonment not exceeding one year, or both."

Reason

There has been some misuse of the devices approved by the Insurance Corporation for use of insured members, and it is considered advisable that the Corporation be authorized to prohibit, under criminal penalties, misuse of this type.

157. CRIMINAL ACTS RELATING TO INSURANCE

Existing law

Subsection (g) of section 402 of the National Housing Act, as amended:

"(g) No individual association, partnership, or corporation shall use the words 'Federal Savings and Loan Insurance Corporation', or any combination of any of these words which would have the effect of leading the public in general to believe there was any connection, actually not existing, between such individual, association, partnership, or corporation and the Federal Savings and Loan Insurance Corporation, as the name under which he or it shall hereafter do business. No individual, association, partnership, or corporation shall advertise or otherwise represent falsely by any device whatsoever that his or its accounts are insured or in anywise guaranteed by the Federal Savings and Loan Insurance Corporation, or by the Government of the United States, or by any instru-

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mentality thereof; and no insured member shall advertise or otherwise represent falsely by any device whatsoever the extent to which or the manner in which its accounts are insured by the Federal Savings and Loan Insurance Corporation. Every individual, partnership, association, or corporation violating this subsection shall be punished by a fine of not exceeding $1,000, or by imprisonment not exceeding one year, or both.

Recommendation

Amend subsection (g) as follows: (1) By striking in the second sentence the word "member" and inserting in lieu thereof the word "institution", and (2) by striking in the last sentence the figure $1,000" and inserting in lieu thereof the figure "$5,000".

Reasons

Amendment (1) would correct a technical error in the language of the sentence which would be amended. Amendment (2) is proposed for the reason that it is believed that the $1,000 penalty in this provision is rather low in view of the possible serious consequences of the acts which are prohibited by the provisions in question.

158. Regulation of Insured Institutions

Existing law

Subsection (b) of section 403 of the National Housing Act, as amended:

"(b) Application for such insurance shall be made immediately by each Federal savings and loan association, and may be made at any time by other eligible institutions. Such applications shall be in such form as the Corporation shall prescribe, and shall contain an agreement (1) to pay the reasonable cost of such examinations as the Corporation shall deem necessary in connection with such insurance, and (2) if the insurance if granted, to permit and pay the cost of such examinations as in the judgment of the Corporation may from time to time be necessary for its protection and the protection of other insured institutions, to permit the Corporation to have access to any information or report with respect to any examination made by any public regulatory authority and to furnish any additional information with respect thereto as the Corporation may require, and to pay the premium charges for insurance as hereinafter provided. Each applicant for such insurance shall also file with its application an agreement that during the period that the insurance is in force it will not make any loans beyond fifty miles from its principal office except with the approval of, and pursuant to regulations of, the Corporation, but any applicant which, prior to the date of enactment of this Act, has been permitted to make loans beyond such fifty mile limit may continue to make loans within the territory in which the applicant is operating on such date; will not, after it becomes an insured institution, issue securities which guarantee a definite return or which have a definite maturity except with the specific approval of the Corporation, or issue any securities the form of which has not been approved by the Corporation; will not carry on any sales plan or practices, or any advertising, in violation of regulations to be made by the Corporation; will provide adequate reserves satisfactory to the Corporation, to be established in accordance with regulations made by the Corporation, before paying dividends to its insured members; but such regulations shall require the building up of reserves to 5 per centum of all insured accounts within a reasonable period, not exceeding twenty years, and shall prohibit the payment of dividends from such reserves, or the payment of any dividends if any losses are chargeable to such reserves: *Provided*, That for any year dividends may be declared and paid when losses are chargeable to such reserves if the declaration of such dividends in such case is approved by the Corporation."

Recommendation

Amend subsection (b) of section 403 as follows: (1) by adding a provision that the Board may establish conditions subject to which it will approve mergers or consolidations of, or the purchase or sale of assets by, insured institutions; (2) by adding a provision that the Corporation shall have power to regulate retirement, pension, and deferred-compensation contracts and arrangements of insured institutions; and (3) by adding to said subsection, at the end thereof, a new sentence along the following line: "The Corporation shall have power, by regulation, to define and limit the losses which may be charged to such reserves."

Reasons

Amendment (1) would supply a measure of needed regulatory authority which the Insurance Corporation does not at present clearly have. Amendment (2)

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would expressly authorize the Corporation to regulate on a matter with respect to which there has been a tendency toward abuse on the part of the managements of a few savings and loan institutions. Amendment (3) would enable the Corporation to take proper measures to protect the reserves which are required of insured institutions under subsection (b) of section 403; it is believed to be obvious that the making of allocations toward the building up of reserves may be defeated in a very simple manner if the reserves themselves are concurrently subjected to improper or unwarranted charges.

159. Application for Insurance

Existing law

Subsection (c) of section 403 of the National Housing Act, as amended.

"(c) The Corporation shall reject the application of any applicant if it finds that the capital of the applicant is impaired or that its financial policies or management are unsafe; and the Corporation may reject the application of any applicant if it finds that the character of the management of the applicant or its home financing policy is inconsistent with economical home financing or with the purposes of this title. Upon the approval of any application for insurance the Corporation shall notify the applicant, and upon the payment of the initial premium charge for such insurance, as provided in section 404, the Corporation shall issue to the applicant a certificate stating that it has become an insured institution. In considering applications for such insurance the Corporation shall give full consideration to all factors in connection with the financial condition of applicants and insured institutions, and shall have power to make such adjustments in their financial statements as the Corporation finds to be necessary."

Recommendation

Amend subsection (c) as follows: (1) By inserting immediately after the language "the management of the applicant" a comma and the language "the character or nature of its facilities for serving the public,"; (2) by inserting immediately after the language "inconsistent with" the language "sound and"; (3) by inserting immediately after the language "economical home financing" a comma and the language "with the rendering of proper services to the public, or"; and (4) by amending the last sentence to read as follows: "In considering applications for such insurance the Corporation shall give full consideration to all factors in connection with the financial condition and policies of applicants, the need for additional insured institutions in the community, and the effect of the granting of insurance upon existing insured institutions in the community, and shall have power to impose such conditions to insurance, which conditions may be conditions precedent or conditions subsequent, as it may deem necessary or advisable in the public interest or for the protection of investors. Any such conditions heretofore imposed are hereby validated."

Reasons

These amendments relate to the grounds of discretionary rejection of applications for insurance. Amendment (1) would expressly authorize rejection if the character or nature of the applicant's facilities for serving the public were of the nature set forth in the subsection. Amendment (2) would broaden the category of grounds for rejection by expressly authorizing rejection if the applicant's management or its home financing policy (or, if amendment (1) were adopted, its facilities for serving the public) were inconsistent with "sound and" economical home financing (the quoted language would be added by this amendment). Amendment (3) would expressly authorize rejection if the applicant's management or its home financing policy (or, if amendment (1) were adopted, its facilities for serving the public) were inconsistent with the rendering of proper services to the public. It is believed that this broadening of the categories for rejection would assist the Corporation in making proper disposition of applications for insurance. Amendment (4) would (*a*) expressly authorize the consideration of the financial policies of applicants for insurance, (*b*) expressly authorize the consideration of the question of need and of the effect upon existing insured institutions, and (*c*) expressly authorize the imposition of conditions to insurance and validate conditions heretofore imposed.

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160. Premium Adjustments

Existing law

No comparable provision contained in existing law.

Recommendation

Amend subsection (a) of section 404 by adding thereto at the end thereof the following new sentence: "The Corporation may by regulations provide for premium adjustments in the case of merger or consolidation involving an insured institution or insured institutions liquidation or dissolution of an insured institution, or purchase of assets by or from an insured instituton."

Reason

Where an insured institution merges into another insured institution, the merging institution may have only recently made payment on its insurance premium, and the premium year of the surviving institution may shortly begin, so that there is, in part, a double payment of premium. Similar maladjustments may occur in the other types of case referred to in the proposed amendment. If the amendment were adopted, the Corporation would have express statutory authority to make such adjustments as would prevent injustices or undue burdens, and it is therefore believed that the amendment should be enacted.

161. Excess Premiums Previously Paid

Existing law

Subsection (c) of section 404 of the National Housing Act, as amended:

"(c) If an insured institution has paid a premium (other than any premium which may be assessed under subsection (b) of this section) at a rate in excess of one-twelfth of 1 per centum of the total amount of the accounts of its insured members and its creditor obligations for any period of time after June 30, 1949, it shall receive a credit upon its future premiums in an amount equal to the excess premium so paid for the period beyond such date."

Recommendation

Repeal subsection (c) with a saving clause as follows: "*Provided*, That such repeal of said subsection shall not affect any right existing on the effective date of such repeal."

Reason

This amendment would repeal, with a saving clause, the provision (enacted in 1950 as a part of the reduction in the premium rate of the Federal Savings and Loan Insurance Corporation to one-twelfth of 1 percent) that if an insured institution has paid a premium (other than additional premiums under subsection (b)) at a rate in excess of one-twelfth of 1 percent after June 30, 1949, it shall receive a credit on future premiums for the excess. It would appear that such repeal, with a saving clause as aforesaid, would be advisable in order to remove from the act matter not currently helpful.

162. Liquidation of Insured Institutions

Existing law

Section 406 of the National Housing Act, as amended:

"(a) In order to facilitate the liquidation of insured institutions, the Corporation is authorized (1) to contract with any insured institution with respect to the making available of insured accounts to the insured members of any insured institution in default, or (2) to provide for the organization of a new Federal savings and loan association for such purpose subject to the approval of the Federal Home Loan Bank Board.

"(b) In the event that a Federal savings and loan association is in default, the Corporation shall be appointed as conservator or receiver and is authorized as such (1) to take over the assets of and operate such association, (2) to take such action as may be necessary to put it in a sound and solvent condition, (3) to merge it with another insured institution, (4) to organize a new Federal savings and loan association to take over its assets, or (5) to proceed to liquidate its assets in an orderly manner, whichever shall appear to be to the best interests of the insured members of the association in default; and in any event the Corporation shall pay the insurance as provided in section 405 and all valid credit obligations of such association. The surrender and transfer to the Corporation of an insured account in any such association which is in default shall

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subrogate the Corporation with respect to such insured account, but shall not affect any right which the insured member may have in the uninsured portion of his account or any right which he may have to participate in the distribution of the net proceeds remaining from the disposition of the assets of such association.

"(c) In the event any insured institution other than a Federal savings and loan association is in default, the Corporation shall have authority to act as conservator, receiver, or other legal custodian of such insured institution, and the services of the Corporation are hereby tendered to the court or other public authority having the power of appointment. If the Corporation is so appointed, it shall have the same powers and duties with respect to the insured institution in default as are conferred upon it under subsection (b) with respect to Federal savings and loan associations. If the Corporation is not so appointed it shall pay the insurance as provided in section 405, and shall have power (1) to bid for the assets of the insured institution in default, (2) to negotiate for the merger of the insured institution or the transfer of its assets, or (3) to make any other disposition of the matter as it may deem in the best interests of all concerned.

"(d) In connection with the liquidation of insured institutions in default, the Corporation shall have power to carry on the business of and to collect all obiligations to the insured institutions, to settle, compromise, or release claims in favor of or against the insured institutions, and to do all other things that may be necessary in connection therewith, subject only to the reglation of the court or other public authority having jurisdiction over the matter.

"(e) The Corporation shall make an annual report to the Congress of the operation by it of insured institutions in default, and shall keep a complete record of the administration by it of the assets of such insured institutions which shall be subject to inspection by any officer of any such insured insitution or by any other interested party, and, if any such insured institution is operated under the laws of any State, Territory, or possession of the United States, or of the District of Columbia, such annual report shall also be filed with the public authority which has jurisdiction over the insured institution.

"(f) In order to prevent a default in an insured institution or in order to restore an insured institution in default to normal operation as an insured institution, the Corporation is authorized, in its discretion, to make loans to, purchase the assets of, or make a contribution to, an insured institution or an insured institution in default; but no contribution shall be made to any such institution in an amount in excess of that which the Corporation finds to be reasonably necessary to save the expense of liquidating such institution."

Recommendations

(1) Amend subsection (b) as follows: (a) by striking in the first sentence the language "conservator or"; (b) by striking in the first sentence the language "and all valid credit obligations of such association"; and (c) by adding thereto at the end thereof the following new sentence: "In the event of such appointment the Corporation shall have power to purchase at public or private sale the assets or any part thereof of such association."

(2) Amend subsection (c) as follows: (a) by deleting all of the first sentence following the language "of such insured institution" and before the period, and inserting in lieu thereof the language "or as joint conservator, receiver, or other legal custodian, and to accept an appointment in any of said capacities from the court or other public authority having the power of appointment"; (b) by deleting in the second sentence the language "shall have" and inserting in lieu thereof the language "shall pay the insurance as provided in section 405 and shall, so far as not inconsistent with its powers and duties under such appointment have"; (c) by striking in the last sentence the language "(1) to bid for the assets of the insured institution in default, (2) to negotiate for the merger of the insured institution or the transfer of its assets, or (3)" and inserting in lieu thereof the language "(1) to negotiate for the merger of the insured institution or the transfer of its assets, or (2)"; and (d) by adding to said subsection, at the end thereof, the following new sentence: "Whether or not the Corporation is so appointed, the Corporation shall have power to purchase at public or private sale the assets or any part thereof of such institution."

(3) Amend subsection (d) by striking the language "the liquidation of".

(4) Amend subsection (e) of section 406 by striking the language "State, Territory, or possession of the United States, or of the District of Columbia" and inserting in lieu thereof the language "State, District, Territory, or possession".

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(5) Amend subsection (f) as follows: (a) by inserting after the language "prevent a default" the language "or impairment"; (b) by inserting after the word "restore" the language "an impairment in an insured institution or to restore"; and (c) by striking the language "to save the expense of liquidating such institution" and inserting in lieu thereof the word "therefor".

Reasons

Amendment (a) is suggested because the general objective of a conservatorship is to preserve assets rather than to liquidate the institution. Amendment (b) would strike a provision which is not an appropriate provision in view of the fact that payment of credit obligations would not always be necessary (as in the case of a successful effort to merge) and because the provision might possibly be contended to mean that the Corporation should pay such credit obligations out of its own funds as distinguished from paying them out of the funds of the institution in default. Amendment (c) would make clear that the Insurance Corporation may protect its interests where assets might otherwise be sold at a sacrifice.

(2) Amendments (a) and (b) would clarify the authority of the Insurance Corporation to serve as joint (as distinguished from sole) legal custodian in cases not involving Federal savings and loan associations and would make clear the Corporation's rights and duties if appointed as sole or joint custodian. Amendments (c) and (d) would make a companion clarification to that above proposed to be made as to Federal associations.

(3) The powers set forth in subsection (d) are equally needed whether the handling of the insured institution in default actually proceeds to liquidation or is accomplished through merger or other measures not involving liquidation.

(4) This is a needed conforming amendment to make the language here appearing consistent with that used elsewhere in title IV.

(5) Amendments (a) and (b) are intended to cover cases in which a contribution or purchase of assets by the Federal Savings and Loan Insurance Corporation might be needed not necessarily to prevent a "default" in the sense of the appointment of a legal custodian for purposes of liquidation but in order to prevent a writedown of accounts to cure an impairment, or to prevent other consequences of impairment. Amendment (c) would relieve the present restriction by which a contribution may not be made in excess of that which the Insurance Corporation finds to be necessary to save the expense of liquidating such institution, which has been found to be unduly narrow.

163. Termination of Insured Status

Existing law

Section 407 of the National Housing Act, as amended:

"Any insured institution other than a Federal savings and loan association may terminate its status as an insured institution by written notice to the Corporation. Whenever in the opinion of the Home Loan Bank Board any insured institution has violated its duty as such or has continued unsafe or unsound practices in conducting the business of such institution, or has knowingly or negligently permitted any of its officers or agents to violate any provision of any law or regulation to which the insured institution is subject, said Board shall first give to the authority having supervision of the institution, if any, a statement with respect to such practices or violations for the purpose of securing the correction thereof and shall give a copy thereof to the institution. In the case of an institution of a State where there is no supervisory authority the statement shall be sent directly to the institution. Unless such correction shall be made within one hundred and twenty days or such shorter period of time as the supervisory authority, if any, shall require, the Home Loan Bank Board, if it shall determine to proceed further, shall give to the institution not less than thirty days' written notice of intention to terminate the status of the institution as an insured institution, and shall fix a time and place for a hearing before the Home Loan Bank Board, a member thereof, or a person designated by the Board. The Home Loan Bank Board shall make written findings. Unless the institution shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured institution. If the Home Loan Bank Board shall find that any unsafe or unsound practice or violation specified in such notice has been established and has not been corrected within the time above prescribed in which to make such correction, the Home Loan Bank Board may issue its order terminating the insured status of the institution

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effective on a date subsequent to such finding and to the expiration of the time specified in such notice of intention. The hearing hereinabove provided for shall be held in accordance with the provisions of the Administrative Procedure Act and shall be subject to review as therein provided and the review by the court shall be upon the weight of the evidence. In the event of the termination of such status, insurance of its accounts to the extent that they were insured on the date of such notice by the institution to the Corporation or such order of termination, less any amounts thereafter withdrawn, repurchased, or redeemed which reduce the insured accounts of an insured member below the amount insured on the date of such notice or order, shall continue for a period of two years, but no investments or deposits made after the date of such notice or order of termination shall be insured. The Corporation shall have the right to examine such institution from time to time during the two-year period aforesaid. Such insured institution shall be obligated to pay, within thirty days after any such notice or order of termination, as a final insurance premium, a sum equivalent to twice the last annual insurance premium paid by it. In the event of the termination of insurance of accounts as herein provided the institution which was the insured institution shall give prompt and reasonable notice to all of its insured members that it has ceased to be an insured institution and it may include in such notice the fact that insured accounts, to the extent not withdrawn, repurchased, or redeemed, remain insured for two years from the date of such termination, but it shall not further represent itself in any manner as an insured institution. In the event of failure to give the notice to insured members as herein provided the Corporation is authorized to give reasonable notice."

Recommendation

Amend section 407 to read as follows:

"SEC. 407. (a) Any insured institution other than a Federal savings and loan association may terminate its status as an insured institution by written notice to the Corporation. Whenever, in the opinion of the Board, any insured institution has violated its duty as such, has continued any unsafe or unsound practice, or has violated any provision of any law or regulation to which it is subject, or any condition imposed by the Corporation or any agreement entered into with the Corporation under section 403 or otherwise, the Board may cause notice to be served upon such institution to appear at a hearing before the Board, a member thereof, or a person designated by the Board and show cause why its status as an insured institution should not be terminated. The notice shall state the ground or grounds upon which it is based and a copy thereof shall be sent by registered mail to each director of the institution. If, after hearing, the Board finds that a ground or grounds, as hereinabove stated, exist for termination of the insured status of an institution the Board may issue its order terminating such status and the insured status of such institution shall cease on the expiration of the date fixed in such order. The Corporation shall have power by regulation or otherwise to define, for the purpose of this subsection, unsafe or unsound practice.

"(b) All hearings under the provisions of subsection (a) hereof shall be conducted in accordance with the provisions of the Administrative Procedure Act and shall be held in the Federal judicial district in which the principal office of the institution affected is located unless it consents to another place. The Board or any member thereof or its designated representative shall have power to administer oaths and affirmations and to take or cause depositions to be taken and shall have power to issue subpenas and subpenas duces tecum and shall issue such at the request of any interested party, and the Board or any interested party may apply to the United States District Court of the district where such hearing is designated for the enforcement of such subpenas and subpenas duces tecum and such court shall have power to order and require compliance therewith.

"Any institution aggrieved by a final order of the Board entered pursuant to any such hearing may obtain a review of such order in the United States Court of Appeals in the circuit in which the hearing was held by filing in such court within thirty days after the issuance of such order a written petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith served upon the Board by serving a copy thereof on any of its agents and mailing a copy by registered mail to the Federal Home Loan Bank Board, Washington, District of Columbia.

"Within thirty days after the service of such petition upon it or such further time as the court shall allow, the Board shall file with the court a copy of the

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order complained of and the originals or certified copies of all papers and evidence presented to and considered by it in entering said order. The record and briefs upon which any such review shall be held and determined by the court shall contain such information and material and shall be prepared within such time and in such manner as the court may by rule or order prescribe. At the earliest convenient time the court shall determine the matter upon the record before it in the manner prescribed by subsection (e) of section 10 of the Administrative Procedure Act. The court may in its discretion enter judgment for costs against the petitioner. The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari, upon petition therefor under section 1254 of title 28 of the United States Code by the petitioner or by the Board, or by certification by the court pursuant to the provisions of that section.

"(c) In the event of the termination of an institution's status as an insured institution, insurance of its accounts to the extent that they were insured on the date of such notice by the institution to the Corporation or the effective date of the order of termination, less any amounts thereafter withdrawn, repurchased, or redeemed which reduce the insured accounts of an insured member below the amount insured on such date, shall continue for a period of two years, but no investments or deposits made after such date, shall be insured. The Corporation shall have the right to examine such institution from time to time during the two-year period aforesaid. Such insured institution shall be obligated to pay, within thirty days after such date, as a final insurance premium, a sum equivalent to twice the last annual insurance premium payable by it. In the event of the termination of insured status the institution which was the insured institution shall give prompt and reasonable notice to all of its insured members that it has ceased to be an insured institution and it may include in such notice the fact that insured accounts, to the extent not withdrawn, repurchased, or redeemed, remain insured for two years from the date of such termination, but it shall not further represent itself in any manner as an insured institution. In the event of failure to give the notice to insured members as herein provided the Corporation is authorized to give reasonable notice.

"(d) All expenses of the Board or of the Federal Savings and Loan Insurance Corporation in connection with the preparation for or conduct of proceedings under this section shall be considered as nonadministrative expenses."

Reasons

As in the case of the existing procedure under subsection (d) of section 5 of the Home Owners' Loan Act of 1933, dealing with the appointment of conservators and receivers for Federal savings and loan associations and with other proceedings involving such associations, the provisions of section 407 of the National Housing Act are presently capable of causing needless delays. The revision here suggested would, it is believed, remedy the defects of the existing section and provide a speedy and effective means of judicial review on the basis provided in the Administrative Procedure Act, as distinguished from review on the weight of the evidence as provided in the existing section.

CRIMINAL PROVISIONS

164. Commissions or Gifts for Procuring Loans

Existing law

Section 220 of title 18 of the United States Code:

"Whoever, being an officer, director, employee, agent, or attorney of any bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, of a Federal intermediate credit bank, or of a National Agricultural Credit Corporation, except as provided by law, stipulates for or receives or consents or agrees to receive any fee, commission, gift, or thing of value, from any person, firm, or corporation, for procuring or endeavoring to procure for such person, firm, or corporation, or for any other person, firm, or corporation, from any such bank or corporation, any loan or extension or renewal of loan or substitution of security, or the purchase or discount or acceptance of any paper, note, draft, check, or bill of exchange by any such bank or corporation, shall be fined not more than $5,000 or imprisoned not more than one year or both."

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Recommendation

Amend section 220 as follows: (1) By inserting immediately before the comma following the language "National Agricultural Credit Corporation", a comma and the language "or of a Federal home loan bank or member thereof or any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation", and (2) by striking the language "bank or corporation" and inserting in lieu thereof the language "bank, corporation, member, or institution".

Reasons

The Federal home loan banks and their member institutions, and institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, have the same need for the protection of such a statute as the institutions now named therein, and borrowers from Federal home loan banks, member institutions, and insured savings and loan institutions have the same need for such protection as borrowers from the institutions now covered. The interest of the Federal Government in protecting such institutions and borrowers is present here also, and it is believed that the statute should be broadened in the manner and to the extent above suggested.

165. Embezzlement and Similar Misconduct

Existing law

Section 657 of title 18 of the United States Code:

"Whoever, being an officer, agent, or employee of or connected in any capacity with the Reconstruction Finance Corporation, Federal Deposit Insurance Corporation, Home Owners' Loan Corporation, Farm Credit Administration, Federal Housing Administration, Federal Farm Mortgage Corporation, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, or any land bank, intermediate credit bank, bank for cooperatives or any lending mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, and whoever, being a receiver of any such institution, or agent or employee of the receiver, embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, credits, securities, or other things of value belonging to such institution, or pledged or otherwise intrusted to its care, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the amount or value embezzled, abstracted, purloined or misapplied does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both."

Recommendation

Amend section 657 by inserting therein, immediately before the comma following the language "Federal Savings and Loan Insurance Corporation," the language "or which is a member of a Federal Home Loan Bank."

Reasons

The Federal Government would appear to have a legitimate interest in the protection of the financial interests of members of the Federal Home Loan Banks both as borrowers and prospective borrowers from the Banks and as institutions over which it exercises, through the Federal Home Loan Bank Board and the Federal Home Loan Banks, some degree of supervision and regulation. It is therefore believed that the section should be broadened in the manner and to the extent above suggested.

166. False Entries and Other False or Fraudulent Conduct

Existing law

Section 1006 of title 18 of the United States Code:

"Whoever, being an officer, agent or employee of or connected in any capacity with the Reconstruction Finance Corporation, Federal Deposit Insurance Corporation, Home Owners' Loan Corporation, Farm Credit Administration, Federal Housing Administration, Federal Farm Mortgage Corporation, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, or any land bank, intermediate credit bank, bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting

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under the laws of the United States or any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, with intent to defraud any such institution or any other company, body politic or corporate, or any individual, or to deceive any officer, auditor, examiner or agent of any such institution or of department or agency of the United States, makes any false entry in any book, report or statement of or to any such institution, or without being duly authorized, draws any order or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation, or draft, bill of exchange, mortgage, judgment, or decree, or, with intent to defraud the United States or any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares, in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such corporation, institution, or association, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Recommendation

Amend section 1006 by inserting, immediately before the comma following the language "Federal Savings and Loan Insurance Corporation", the language "or which is a member of a Federal Home Loan Bank".

Reasons

In addition to the reasons set forth above in connection with the suggested amendment to section 657 of the same title, the Federal Government would appear to have a further interest in extending the protection of section 1006 to Federal Home Loan Bank members, in that the misconduct punishable under section 1006 specifically includes cases where there is intent to deceive any officer, auditor, examiner, or agent of a department or agency of the United States. It is believed that for these reasons section 1006 should be broadened as suggested.

Mr. ROBERTSON. The rest of my presentation, Mr. Chairman, is rather long, and with your permission I will abbreviate it, and I can be interrupted.

Senator ROBERTSON. It is all very important, and this is the only testimony we have on the subject of a very large financial group.

Mr. ROBERTSON. All right, sir. I shall insert this first part. Thank you.

Senator ROBERTSON. You do what you think best.

(The introduction to Mr. Robertson's statement follows:)

It gives me a great deal of pleasure that my first appearance before any congressional committee as Chairman of the Federal Home Loan Bank Board comes in connection with matters of such basic importance to the financial structure of our country as those now being considered by this committee.

The study which was initiated by this committee last July is, as far as I know, the first attempt ever made to conduct a general thoroughgoing review of the whole body of the Federal statutes relating to financial institutions and credit, with a view to the elimination of obsolete and overlapping provisions and the addition of new provisions to bring those statutes up to date in order that our financial and credit institutions may better meet the needs of the people.

My discussion today deals with one important segment of the financial structure, namely, the savings and loan industry. This industry is composed of the group of financial institutions generally known as savings and loan associations but also known in various localities as building and loan associations, cooperative banks, and homestead associations.

These institutions, the savings and loan associations, have been a part of the American scene for more than a hundred years. Starting in a small way as neighborhood organizations, they have steadily grown over the decades until their total assets are now estimated at approximately $42 billion and single associations have assets approaching a quarter of a billion dollars.

Despite this tremendous growth in total assets and in the size of some individual institutions, savings and loan associations are still predominantly of the local, mutual type and of moderate size as compared to banks, insurance companies, and other financial institutions. They render a rather specialized service in that they receive savings of the public and invest those savings predominantly in mortgage loans on homes, as distinguished from making com-

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mercial loans as do commercial banks, or making extensive investments in corporate and municipal bonds and obligations as do savings banks. However, even though their lending service is of a specialized nature, its base is broad enough to have the potentiality of reaching every American family. In actuality, savings and loan associations consistently make around 36 or 37 percent of all home mortgage loans in the county.

With the growing importance of savings and loan associations in the financial and economic structure of the country, it was inevitable that some governmental measures to protect the interests of the public and of the associations themselves should be necessary. The first stage consisted of the enactment by the various States of laws providing for the examination and supervision of savings and loan associations. Such laws were comparable to those which were passed for the examination and supervision of banks, and by the 1930's had been placed in effect in all but a handful of States.

As in the case of banks, however, it was apparent that something more was needed. By the Federal Reserve Act, passed in 1913, the banks of the country were given access to a reserve credit system to enable them to meet seasonal and emergency needs for funds. The need for a similar system for savings and loan associations was recognized in bills introduced in the Congress as early as the 1920's, but it was not until 1932, with the passage of the Federal Home Loan Bank Act, that concrete steps were taken to meet this need.

That act, the Federal Home Loan Bank Act, was the first of three major enactments by Congress in the savings and loan field. It provided for the establishment of not less than 8 nor more than 12 Federal home-loan banks in which savings and loan associations could become members through stock purchase and obtain advances of funds to meet seasonal, emergency, or other needs. Savings banks and insurance companies were also made eligible for membership, but, as was expected, the predominant element of their membership, both in number and in assets, consists of savings and loan associations. There are now 11 of these Federal home-loan banks (the number having been reduced from 12 through a merger of 2 banks in the Pacific coast area), and they had at the end of the calendar year 1955 a total of 4,336 member institutions, with assets in excess of $36 billion. While most of their stock was originally subscribed for by the Federal Government, its capital has been long since retired, and they are entirely self-supporting.

The second major step taken by Congress in this field was the provision made in the Home Owners' Loan Act of 1933 for the chartering, regulation, and supervision of Federal savings and loan associations. Through the enactment of this measure there was established in the savings and loan field a dual system of State-chartered and federally chartered institutions, similar to the existence in the banking field of the dual system of national banks and State banks. The administration of this system of Federal savings and loan associations was placed under the jurisdiction of the 5-member Federal Home Loan Bank Board which had been created by the Federal Home Loan Bank Act and of which the present 3-member Federal Home Loan Bank Board, of which I am the Chairman, is the successor.

Federal savings and loan associations may be established either by original incorporation by the Board or by conversion of a State-chartered institution into a Federal savings and loan association with the consent of the State. I may say parenthetically that under the present law conversion is a two-way street, as the Congress has placed in the law provisions by which any Federal savings and loan association may convert into a State-chartered institution upon meeting the required conditions. Federal associations are required to be Federal home loan bank members and operate on a relatively uniform basis throughout the country, and the Board, in exercising its powers to charter them, is under a mandate from the Congress to give primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States. They have not, any more than have the national banks, displaced or superseded the companion system of State-chartered institutions, and the Board is directed by statute not to grant Federal charters unless in its judgment a necessity for such an institution exists in the community to be served, nor unless it may be established without undue injury to properly conducted existing local institutions of similar nature. At the close of the last calendar year, there were 1,683 Federal savings and loan associations with assets of slightly more than $20 billion, as compared with 2,624 State-chartered associations belonging to the Federal Home Loan Bank System at that time, with assets of approximately $16 billion.

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The third and last of the three major legislative steps to which I have referred was taken by the Congress in 1934, when it enacted title IV of the National Housing Act. That title provided for the creation of a Federal Savings and Loan Insurance Corporation to afford to investors in savings and loan associations protection comparable to that afforded by the Federal Deposit Insurance Corporation to depositors in banks. All Federal savings and loan associations were required to be insured, and insurance was offered on an optional basis to State and locally chartered associations. At the end of the calendar year 1955 there were 3,544 insured associations, with assets in excess of $34 billion.

The direction of the new corporation was placed in a board of trustees, and it was provided that the members of the Federal Home Loan Bank Board should constitute that Board of Trustees. I may add at this point that the original five-member Federal Home Loan Bank Board was suspended by Executive order during the war period, during which time the Chairman of the Board, under a new title of Federal Home Loan Bank Commissioner, directed all of the activities which had been directed by the Board. After the war, by Reorganization Plan No. 3 of 1947, both the old Board and the Commissioner were replaced by a new three-member, bipartisan board which was given all the functions of the former Federal Home Loan Bank Board and the Board of Trustees of the Federal Savings and Loan Insurance Corporation. The name of this new Board, which was the Home Loan Bank Board, was changed to the original name of Federal Home Loan Bank Board by legislation enacted in 1955.

With these three major enactments—first, the Federal Home Loan Bank Act, providing a credit reserve system for savings and loan associations; second, the Home Owners' Loan Act of 1933, authorizing federally chartered savings and loan associations; and, third, title IV of the National Housing Act, providing insurance protection for investors in savings and loan associations—there has been placed in effect a workable and quite well coordinated system of Federal provisions for the development and protection of the savings and loan industry and the protection of those members of the public who place their savings in these associations or obtain loans from them. It is, however, unavoidable that, in the period of almost a quarter of a century that has followed, some of the provisions have become obsolete, and the need for new powers and provisions has emerged. This has come about in two ways—first, because of changing conditions during that time and, second, because there has been acquired, in the light of experience, a better understanding of what is needed.

In this situation the invitation of the committee to point out obsolete provisions and suggest needed new provisions comes at an especially appropriate time. The Board's canvass of the matter has convinced it that all reasonable needs can be met through appropriate deletions and additions without altering the basic framework of the three major acts. This does not mean that the suggested changes are not important; they are. It does mean that they are not, in the opinion of the Board, a radical departure from the original concepts or a complete breaking of new ground.

Because of the limited time which was available to the Board, and particularly to its new Chairman, it may transpire that some other changes, in addition to those included in this submission, may be needed. If that should prove to be the case, we trust that the Board will be allowed to suggest such additional changes at a later date.

With these prefatory remarks, I will proceed to the discussion of the Board's suggested changes, as embodied in the printed compilation of the committee dated October 12, 1956. For the purposes of this discussion the numbering of the items as set forth in that compilation will be used, so far as is possible.

The first group of suggestions made by the Board relates to changes to remove obsolete or overlapping material from the existing acts. I see no need to take up the time of the committee with a detailed discussion of these suggestions, as in each case we have tried to indicate clearly the nature of the change. I shall, therefore, pass immediately to the substantive changes. I will discuss these substantive changes in broad groupings on the basis of general subject matter, which means that they will not necessarily be taken up in the order in which they appear in the Board's submission or committee's compilation.

Mr. Robertson. The first group of substantive amendments included in the Board's submission consists of the 6 unnumbered suggestions appearing at pages 148 through 151 of the committee's printed compilation dated October 12, 1956.

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These suggestions are, the Board feels, of basic importance to the Board in carrying out its responsibilities and deserve the most thorough study by the committee. It was for this reason, and because of the time limitations, that they were presented in the Board's submission of October 1 in the form of recommendations for consideration rather than in the form of specific legislation language. In line with the desire of the committee, we have now prepared specific language for each of these suggestions, and I am submitting that suggested language concurrently herewith, with a brief explanatory memorandum. As is pointed out in the memorandum, the language represents only one of several possible ways in which the suggestions might be handled, and we hope that the committee will consider not only the suggested language but also the basic suggestions themselves as presented in our October 1 submission.

The six basic suggestions are, in brief, as follows: That the Federal Home Loan Bank Board be given authority to regulate the relationships and transactions between member and insured institutions and their affiliates; that the examining powers of the Board be strengthened and extended not only to Federal and insured associations, as at present, but also to other members of the Federal home loan banks and to affiliates of such member, Federal, and insured institutions; that the Board's powers of regulation be extended to uninsured member institutions on the specific matters of advertising, sales plans and practices, and other operating practices; that the Board be given power with respect to the removal of directors and officers of member or insured institutions where such officials violate applicable laws or regulations, engage in unsafe or unsound practices, or violate their duties to the institution; that civil penalties be imposed where persons who have been convicted of crimes involving dishonesty or breach of trust serve as directors, officers, or employees of member or insured institutions; and that the Board be given authority to lay down procedures and standards where insured institutions other than Federal associations undertake to convert into nonmutual institutions.

Since each of these suggestions is treated in some detail in the Board's original submission of October 1 and in the explanatory memorandum which we are submitting herewith, I will not here take up the committee's time with a lengthy explanation of these matters. I may point out, however, that the suggestion with respect to removal of directors and officers of insured institutions is comparable to a similar suggestion in item 144 with respect to Federal savings and loan associations and that both of these suggestions are made in order that there may be available a less drastic remedy than termination of insurance or the appointment of a conservator or receiver.

I would also like to call attention at this place to recommendation (6) of item 122, which would authorize the Board to define what is management or home-financing policy inconsistent with sound and economical home financing or the purposes of the Federal Home Loan Bank Act, and thus a ground for termination of Federal home-loan bank membership. We have felt that it would be desirable to confer this power of definition so that, among other things, the Board might have express power in appropriate cases to place such definitions in the regulations themselves for the guidance of member institutions and their officials. Items 144 and 163, which will later be discussed and which relate respectively to the removal of directors and officers

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of and appointment of conservators, receivers, and similar officials for Federal savings and loan associations and to the termination of the insured status of institutions insured by the Federal Savings and Loan Insurance Corporation, contain similar definition provisions with respect to unsafe and unsound practices and unsafe or unsound operation.

Item 135 contains several recommendations with regard to the Federal Home Loan Bank Board and its powers. The first objective is to assure continuity of the Board, and for this purpose it is recommended that members be allowed to serve until their successors are appointed and have qualified, as in the case of the Board of Governors of the Federal Reserve System and numerous other boards and commissions. It is also recommended for this purpose that if at any time there are less than three members the functions of the Board shall be vested in the member or members serving.

The second objective of item 135 is to confer on the Board express authority to make provision for the exercise of its functions at times when it may not be possible to assemble a sufficient number of members in one place to hold a formal meeting. In making this proposal and the other proposals I have just mentioned we are including in our thoughts the possibility of the occurrence of national emergencies, although we also have in mind that the authorities and responsibilities of the Board are at all times of such importance to the safety of savings and loan institutions and their investors that there should not be even brief periods when they could not be speedily and effectively exercised. For much the same reasons we are also proposing in item 135 that the Board be permitted to make responsible and effective delegations of functions.

The recommendation in item 135 is that the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation be given flexibility and freedom of action with respect to their administrative and other expenditures, their personnel, and their property, funds, and receipts.

In the original enactment and in the early years of the Federal Home Loan Bank Act and title IV of the National Housing Act the need for this flexibility and freedom was expressly recognized by the Congress. Over the ensuing years, however, there has been an accretion of enactments or extensions of restrictive statutes.

We feel that it is appropriate that the former position be restored. In this connection there appears to be no instance where the former flexibility or freedom which these agencies had was ever abused. The Board and the Insurance Corporation are self-supporting. No part of their expenditures comes from tax money or from appropriations of Treasury funds; their receipts come from the Federal home-loan banks, in which there is no Government capital, and from the member and insured institutions which pay examination fees and insurance premiums. While there is a small amount of Government capital left in the Federal Savings and Loan Insurance Corporation, this remaining capital will in the orderly course of events be retired within a very short period and in the meantime is bringing to the Treasury a return which, by statute, is fixed by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States.

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We have next a group of six items relating to the setup and powers of the Federal home-loan banks.

Item 118 relates to the creation and readjustment of Federal home-loan bank districts. In addition to removing obsolete matter, it would make clear that new districts may be created in the future, retaining the original limit that the total number of districts may not exceed 12. Item 139 would make appropriate provision for interbank adjustment of assets, liabilities, and membership in the event of creation or readjustment of any district or districts. Item 123 would do two things. First, it would make clear that when a member of the board of directors of a Federal home-loan bank ceases to have the qualifications originally required—and these qualifications relate to his citizenship and place of residence, plus a requirement that an elective class director be an officer or director of a member institution of the appropriate class group—the office immediately becomes vacant, but the incumbent may continue to serve until the qualification of his successor or the expiration of the term, whichever first occurs. The object of this provision is to avoid legal questions which might arise where a director who no longer has the requisite qualification attends a meeting and votes on matters coming before the meeting. Second, item 123 would also provide for interim directors in the case of the future establishment of a Federal home-loan bank. Such interim directors would be needed in such case because section 12 of the Federal Home Loan Bank Act requires the execution of an organization certificate by directors.

The next amendment in this group is item 125, which would amend section 10 of the Federal Home Loan Bank Act, relating to advances by the banks. There are only two substantive amendments in item 125. The first of these is recommendation (1). At present, advances may be made by the banks to their members up to 90 percent of the unpaid principal of mortgages insured under various specified titles of the National Housing Act. Recommendation (1) of item 125 would replace this specification of titles by a general reference to mortgages insured under the National Housing Act, thus making it no longer necessary, as it has been in the past, to amend section 10 of the Federal Home Loan Bank Act from time to time as changes are made in the mortgage-insurance provisions of the National Housing Act. Recommendation (1) of item 125 would also include home mortgages guaranteed under the Servicemen's Readjustment Act of 1944 on the same basis as FHA-insured mortgages. You will note that neither of these changes affects any major extension of the powers of the Federal home-loan banks to make advances to their member institutions. Your attention is also called to the fact that all the advances which may be made by the Federal home loan banks under section 10 of the Federal Home Loan Bank Act are, by the express provisions of that section and of section 9, subject to such regulations, restrictions, limitations, and conditions as the Federal Home Loan Bank Board may prescribe.

The other substantive amendment in item 125 is recommendation (6) of that item, which would expressly provide that, subject to the Board's control, security required or permitted to be taken by the Federal home-loan banks may be taken by pledge, assignment, or equitable or other lien, and may be placed with or left with the borrowing institution under trust receipt or other agreement. As the Federal Home

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Loan Bank System has grown and the volume of advances has increased, it has been found rather imperative, from a practical point of view, to follow the business practice of permitting the borrowing institutions to retain the notes and mortgages securing the advances, so that those institutions may properly and efficiently perform their functions in collecting and handling the mortgage loans evidenced thereby. Safeguards are, of course, taken to minimize the business risks involved. Recommendation (6) of item 125 would place beyond question the authority to follow business practices of this nature, which, as I have indicated, are quite necessary as a practical matter.

The fifth item in this group is item 131. At present, section 12 of the Federal Home Loan Bank Act provides in part that the president of a Federal home-loan bank may also be a member of the board of directors thereof, but that no other officer, employee, attorney, or agent of the bank who receives compensation may be a member of the board. Item 131 would provide that no officer, employee, attorney, or agent of a Federal home-loan bank who receives compensation from any Federal home-loan bank may be a member of the board of directors, thus placing the president in the same position for this purpose as other personnel of the bank. We feel that the same reasons which lead to the belief that other personnel of the bank should not serve on its board apply with even greater force to the president, and, specifically, we feel that it would be undesirable for the president of a bank to be a member of the board which makes policies under which he administers the affairs of the bank.

The remaining item of this group, item 130, would enact for the Federal home-loan banks provisions comparable to provisions with respect to the Federal Reserve banks, which may be found in section 632 of title 12 of the United States Code, with respect to the power to bring suit in the Federal courts and remove proceedings to those courts, and with respect to the freedom from attachment and execution prior to final judgment.

The next group is a group of three items relating to the obligations of the Federal Home Loan Banks. As a preface to my discussion of these items I may state that three types of Federal Home Loan Bank obligations are authorized. The first type consists of the separate obligations of individual Federal home-loan banks and the second and third consist respectively of what are known as consolidated debentures and consolidated bonds, which are the joint and several obligations of all the Federal home-loan banks and are issued by the Federal Home Loan Bank Board. At the present time separate obligations and consolidated debentures are not issued, and the obligations which are presently being issued are consolidated bonds.

The first of the three amendments is item 127, which would provide that obligations of the banks shall be valid and binding notwithstanding that a person or persons purporting to have executed or attested them may have died, become under disability, or ceased to hold office before they were issued. The reason for this recommendation is that it is necessary to prepare the securities in advance of the date on which they will be physically issued, using the facsimile signatures of the executing and attesting officials, and if anything of this sort should happen to one or more of those officials after the securities had been prepared and before they were issued a considerable amount of confusion and additional expense would result.

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The second amendment in this group is item 132. This item relates to the tax exemption of obligations of the Federal home-loan banks, including consolidated bonds and debentures. The existing law provides that they shall be exempt as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) imposed by the United States, by any Territory, dependency, or possession, or by any State, county, municipality, or local taxing authority, although it is to be noted that the exemption from taxation by the United States was removed, as to future issues, by the Public Debt Act of 1941. Item 132 deals with the exemption from State and local taxation, and is designed to clarify the question whether the exemption, which in terms is absolute, applies not only to taxes which, in the legal sense, are "imposed on" such obligations or the principal or interest thereof but also to taxes which, in the legal sense, are not "imposed on" but are merely "measured by" such obligations or such principal or interest. It is believed that the intent of the original provisions was to confer such exemption without regard to this technical legal distinction, and item 132 would make this intent expressly clear. I would like to point out that this item has no connection with taxation by the United States, but relates solely to taxation by other taxing authorities.

Item 133, the last item in this group relating to obligations of the Federal home-loan banks, relates to the provision of existing law that such obligations issued 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 is under the authority or control of the United States or any officer or officers thereof. The proposed change would broaden this language to include the District of Columbia, the Territories, and possessions, and subdivisions, courts, agencies, and instrumentalities as set forth in the item.

Item 121 deals with the liquidity which is required of institutions which are members of a Federal home-loan bank. Section 5A of the Federal Home Loan Bank Act, as now in force, provides that no member institution shall make or purchase any loan when its cash and obligations of the United States are not equal to such amount as the Board may by regulations prescribe. It further provides that such amount shall not be less than 4 percent nor more than 8 percent of the obligation of the member on withdrawable accounts or, in the case of any member insurance company, such other basis as the Board may determine to be comparable. The Board is authorized to prescribe different amounts, within the 4- to 8-percent range, for different classes of members, and for such purpose to classify members according to type of institution, size, location, rate of withdrawals, or such other basis or bases as it may deem reasonably necessary or appropriate for effectuating the purposes of the section.

For a considerable period of time it has been felt that this provision does not adequately reflect the concept of liquidity as a net amount of cash and obligations of the United States over and above the amount of the institution's current liabilities. Accordingly, it is recommended that the Board be authorized to provide that for the purposes of this section a member's cash and obligations of the United States shall be the net amount of such cash and obligations after deduction of specified liabilities or portions thereof, and that the Board be authorized for this purpose to make appropriate classification of members.

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It will be noted that specific legislative language to implement this recommendation is not included in item 121. Such language is, however, included in the material which I am submitting concurrently herewith for the purpose of providing the committee with legislative language on all recommendations for which the Board did not submit specific language in its submission of October 1.

Item 143 deals with the interest rates and similar charges of Federal savings and loan associations. This is a matter which has never been dealt with in the Federal statutes except to the extent that Federal associations, in common with all other Federal home-loan bank members, are subject to the provisions of section 5 of the Federal Home Loan Bank Act. Section 5 of that act provides in effect that no institution shall be admitted to or retained in Federal home-loan bank membership or allowed the privileges of a nonmember borrower if the total net cost to the homeowner exceeds the maximum legal rate of interest, or, if there is an applicable lawful contract rate, such contract rate, or, if there is neither of such types of rate in the State where the property is located, 8 percent per annum.

The provisions of section 5, however, apply only to home mortgage loans as defined in the Federal Home Loan Bank Act, and have no application, for example, to typical loans under title I of the National Housing Act, which are ordinarily not made as mortgage loans, or to alteration, repair, or improvement loans which may be made by Federal savings and loan associations on a similar basis under and subject to the limitations of the last paragraph of section 5 (c) of the Home Owners' Loan Act of 1933, as amended.

In order to clarify the question of the interest rates and charges which may be imposed by Federal savings and loan associations, including the question of the extent to which the same are governed on the one hand by State or local law or on the other hand by Federal law and regulations, the Board proposes in item 143 that the Home Owners' Loan Act of 1933 be expressly amended to provide that such associations may impose, subject to the limitations of section 5 of the Federal Home Loan Bank Act, such rates and charges as are allowed by applicable law to other lenders, or such other or higher rates or charges as are allowed by such laws to any class of other similar regula-mutual thrift and home-financing institutions or as are allowed by regulations of the Board. Thus, in the absence of limiting regulations of the Board, a Federal savings and loan association, under this proposal, could make the same, but no greater, charges as were allowed by the general law of the State or by laws of the State applicable to similar institutions. However, the Board would have power to limit such charges or to deal with situations, which it is expected would be rare but which might exist, in which the State law did not allow adequate returns either by general law or by laws applicable to other similar local mutual thrift and home-financing institutions but at the same time favored a class or classes of competing institutions.

The next group of recommendations relates to the Federal Savings and Loan Insurance Corporation and its powers and duties.

Item 151, the first item in this group, would clarify the situation with respect to the insurance of fiduciary or trust funds. At present, there is insurance up to $10,000 on the funds of each trust estate

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invested in an insured institution. Although the Insurance Corporation's regulations treat these words "trust estate" as referring to the interest of each separate beneficiary it might be contended that the reference is a reference to the property held by the fiduciary and not to the interest of each beneficiary. Item 151 would clarify this matter by making it expressly clear that the insurance is on the interest of each beneficiary and would also make it clear that the Insurance Corporation will be protected if, in the payment of the insurance, it pays the fiduciary as distinguished from making payment to the beneficiary.

The second item of this group, item 152, would make some changes, mainly of a clarifying nature, in the language with respect to the insurance of investments by public officials and other public units in accounts insured by the Federal Savings and Loan Insurance Corporation.

Senator DOUGLAS. May I ask you a question, Mr. Robertson?

Mr. ROBERTSON. Yes, sir.

Senator DOUGLAS. Do you have many deposits of public funds in savings and loan institutions?

Mr. DIXON. Yes, there are substantial deposits.

Senator DOUGLAS. Do you have the totals of public funds deposited in savings and loan institutions?

Mr. DIXON. We don't have it available, Senator.

Senator DOUGLAS. Could you prepare it?

Mr. DIXON. I think it could be prepared. I think that would be rather difficult, because in our compliation of statistics, we have never asked the individual reporting associations for that breakdown.

Senator DOUGLAS. Would you do so, so that in the course of some months we could have these figures?

Mr. DIXON. Oh, yes.

Senator DOUGLAS. Will you do so?

Mr. ROBERTSON. Yes, sir. Item 158, also in this group, would clarify the authority of the Insurance Corporation to regulate mergers, consolidations, and purchases or sales of assets involving insured institutions and would confer on the Corporation express authority to regulate retirement, pension, and deferred-compensation contracts, agreements, and arrangements of such institutions. It would also confer on the Insurance Corporation express authority to define and limit the losses which may be charged to the reserves which insured institutions are required to build up.

The fourth item in this group is item 159, which would expressly authorize the Insurance Corporation to reject an insurance application on grounds relating to the character or nature of the institution's facilities for serving the public or where the character of its management is inconsistent with sound home financing. It would also give the Insurance Corporation express authority to consider the financial policies of applicants for insurance and the question of need for additional insured institutions in the community and the effect of the granting of insurance on existing insured institutions in the community.

Item 159 would also expressly authorize the imposition of conditions in the granting of applications for insurance and would validate conditions previously imposed. The object of this provision is to

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clarify the extent of the Insurance Corporation's authority to impose such conditions.

The last set of recommendations relating to the Federal Savings and Loan Insurance Corporation consists of recommendations comprised in items 155, 160, and 162.

Recommendation (1) of item 155 would give the Insurance Corporation express authority to settle, compromise, or release claims by or against it. Recommendation (2) of this item would enact for the Federal Savings and Loan Insurance Corporation provisions comparable to provisions as to the Federal Deposit Insurance Corporation which may be found in section 1819 of title 12 of the United States Code, with respect to the power to bring suit in the Federal courts and remove proceedings to those courts, and with respect to the freedom from attachment and execution before final judgment. The last recommendation of this item would make clear that the Federal Savings and Loan Insurance Corporation has power to require reports and information from insured institutions and to make and enforce such rules, regulations, and orders as may be deemed necessary for carrying out the provisions or purposes of title IV of the National Housing Act or the protection of its insurance risk.

Item 160 would authorize the Insurance Corporation to make necessary premium adjustments in cases where insured institutions are involved in mergers, consolidations, or purchases of assets, or in case of the liquidation or dissolution of an insured institution.

Item 162 is concerned with the functions of the Insurance Corporation when an insured institution gets into difficulties. The substantial features of this item, as distinguished from technical changes which I shall not discuss in detail, are as follows. First, the existing provisions of section 406 of the National Housing Act require that when a Federal savings and loan association is in default the Insurance Corporation shall be appointed conservator or receiver and as such may operate the association, take action to put it in a sound and solvent condition, merge it with another insured institution, organize a new Federal association to take over its assets, or proceed to liquidate its assets in an orderly manner, and in any event shall pay the insurance and all valid credit obligations of the association. Item 162 would provide that in such case the Insurance Corporation shall be appointed as receiver and not as conservator, since the general objective of conservatorship does not include liquidation of an institution, and would also remove the requirement that the Insurance Corporation shall in any event pay all valid credit obligations. The reason for the latter change is twofold, first because the payment of creditor obligations may not always be necessary, as for instance where the association is restored to solvency and soundness or is merged with another insured institution, and second because the existing language might possibly be contended to mean that the Corporation should pay the credit obligations out of its own funds as distinguished from the funds of the institution.

Second, item 162 would clarify the authority of the Insurance Corporation in certain respects where an insured institution other than a Federal association goes into default. The laws of some States provide that in such case the Corporation shall or may be appointed as sole liquidator, but there are also State law provisions for the appoint-

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ment of the Corporation as joint liquidator. Item 162 would provide express authority for the Corporation to accept such joint appointments and would clarify the Corporation's rights and duties in case of sole or joint appointment as well as in cases where the liquidator is some person or agency other than the Insurance Corporation.

The last recommendation under this item, item 162, relates to the provision of section 406 of the National Housing Act that in order to prevent a default or restore an insured institution in default to normal operation the Corporation may make loans to, purchase the assets of, or make a contribution to an insured institution, no such contribution to be made in an amount in excess of what the Corporation finds to be reasonably necessary to save the expense of liquidating the institution. In the experience which has been had with this provision it has been found that the provision is too narrow in two respects. It does not cover cases where the Corporation's assistance is needed not necessarily to prevent a default in the sense of the appointment of a legal custodian for purposes of liquidation but to prevent a write-down of investors' accounts or other adverse consequences of impairment of the institution's assets; and the provision that no contribution shall exceed what the Corporation finds to be reasonably necessary to save the expense of liquidating the institution does not give clear recognition to other factors which appear to be equally relevant. These factors would include such elements as the loss (as distinguished from the expense) which might be involved in the liquidation and the cost and expense to the Corporation itself in settling and paying insurance claims.

For these reasons the Board recommends that this provision of section 406 be amended so as to permit loans, contributions, and purchases of assets for the purpose of preventing or restoring an impairment and so as to replace the limitation that a contribution may not exceed what the Corporation finds to be reasonably necessary to save the expense of liquidating the institution by a limitation that it may not exceed what the Corporation finds to be reasonably necessary for the prevention of default or impairment, the restoration of an impairment, or the restoration of an institution in default to normal operation as an insured institution.

Another group of items, somewhat technical in nature but of substantial importance, is composed of items 144 and 163. These items would respectively amend subsection (d) of section 5 of the Home Owners' Loan Act of 1933, dealing with administrative and court proceedings in connection with the Board's enforcement of its statutory powers, including the appointment of conservators and receivers for Federal savings and loan associations, and section 407 of the National Housing Act, dealing with administrative proceedings and court review in cases of termination of the insured status of institutions insured by the Federal Savings and Loan Insurance Corporation.

Without going into the technical details, I may say that the principal objects have been to iron out inconsistencies which are present in the existing provisions, to speed up the process of judicial review by providing that such review shall be directly in the United States court of appeals for the appropriate circuit, and to provide that such review shall be on the basis provided in the Administrative Procedure Act, that is, on the question whether the administrative action is supported by substantial evidence, in lieu of the existing provision of sec-

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tion 5 (d) of the Home Owners' Loan Act of 1933 and section 407 of the National Housing Act that the review by the court shall be on the weight of the evidence, I may add that the weight-of-evidence test is not only out of line with the substantial-evidence test which the Congress, after full and mature consideration, adopted in the Administrative Procedure Act, but also appears to be vague and confusing.

In addition, item 144 allows the Board to take action less drastic than the appointment of a conservator or receiver, by permitting it to bring administrative proceedings, subject to court review, for removal of a director or officer of a Federal savings and loan association in appropriate cases. I have already mentioned this feature in connection with the comparable proposal as to directors and officers of member or insured institutions which are not Federal associations. Finally, item 144 provides for the situation, not specifically covered by existing law, in which there is involved the termination of the Federal home-loan bank membership or the insured status of Federal savings and loan associations, which are required by the existing law to have bank membership and insurance. Item 144 would deal with this situation by providing that in such case the Board shall appoint a conservator for the association or shall appoint the Insurance Corporation as receiver. Since neither bank membership nor insurance could be terminated without an opportunity for a hearing except in certain exceptional cases specifically provided for in the proposals of the Board, it is provided that in the case of such termination the appointment of a conservator or receiver shall not require notice or hearing.

The last group of items consists of the criminal provisions dealt with in items 156 and 157 and in items 164 through 166.

Item 156 would prohibit the unauthorized use or display of the signs, devices, or insignia approved by the Federal Savings and Loan Insurance Corporation for insured institutions. There has been some misuse of these indicia by persons or organizations which are not insured institutions, and a criminal statute on the subject is considered advisable. The punishment for violation would be a fine of not over $5,000 or imprisonment not over 1 year, or both. Item 157 relates to the existing provisions of section 402 (g) of the National Housing Act, which prohibits misuse of the Insurance Corporation's name and false advertisements or representations as to insurance of accounts. The change which would be made under item 157 is to increase the penalty, now a fine of not over $1,000 or imprisonment for not over 1 year, so that the maximum amount of the fine would be $5,000, the same as is proposed for misuse of the signs, devices, and insignia approved by the Corporation.

The next item, item 164, would extend to the Federal Home Loan Banks, members thereof, and institutions insured by the Federal Savings and Loan Insurance Corporation the protection of section 220 of title 18 of the United States Code, which already applies to banks the deposits of which are insured by the Federal Deposit Insurance Corporation. Section 220 prohibits the personnel of such institutions from receiving, except as provided by law, any fees or other compensation for the procuring of loans or extensions or other specified types of accommodation from the institution.

The remaining items, 165 and 166, would extend to uninsured members of the Federal home-loan banks the protection of certain criminal statutes already applicable with respect to Federal savings-and-loan

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associations and other institutions insured by the Federal Savings and Loan Insurance Corporation. The sections which would be thus extended are sections 657 and 1006 of the United States Code, the first of which punishes embezzlement and other forms of defalcation, and the second of which punishes false entries and other specified types of unauthorized or fraudulent conduct on the part of personnel of the institutions covered.

Thank you.

Senator ROBERTSON. Thank you very much. The chairman wishes to say to all of his friends engaged in the savings-and-loan business what he said to the bankers: If we are to get a bill through, we need your help, we need your unselfish and patriotic help, because we cannot ignore the fact that savings-and-loan institutions are now in competition with commercial banks. They have all the privileges of a bank except a checking account. They have some privileges that banks do not enjoy. There is no restraint on what interest rate they can pay, and their tax treatment is a little more favorable.

I recently saw the statement that the biggest corporation in this country, and that means the world, because we yield to no one in bigness, was A. T. & T. with assets of nearly $15 billion. But the savings-and-loan associations have assets now of nearly $41 billion. And this is significant—they have doubled their assets in the last 5 years. If that rate of growth continues, they can understand that there is going to be inquiry as to the basis on which these competing financial institutions are going to operate.

Of course, no one can take any pride in the size of the national debt, but it should be some consolation that the combined assets of the groups represented here, the bankers and the savings-and-loan institutions, would pay off the debt. I am not for doing that, but that is a backlog which gives us some consolation.

We are going to recess for lunch. To make sure that we did not impose any unnecessary burdens on any employees of the Senate, we authorized the employees in the Senate restaurant to celebrate our great victory on November 11, 1919, today, tomorrow, and Monday. So we cannot eat at the Senate restaurant. We have got to eat at a private-enterprise restaurant. This restaurant we are going over to is in the Methodist Building, with the Supreme Court on one side and Congress on the other. That site, I think, was picked by Bishop Cannon. The building was built with contributions to national prohibition. But you don't have to wear a white ribbon to get in there. I have arranged for all of you to be accepted. I want to invite as our guests, if they will so honor us, Chairman Robertson and Messrs. Dixon and Hallahan.

We will stand in recess until 2 o'clock. Lunch will be served at 1 o'clock in the Methodist Building, and since some of my northern friends expressed appreciation yesterday of Virginia spoonbread, I hope we have some more over there today.

(Whereupon, at 12:40 p. m., the committee was recessed until 2 p. m. of the same day.)

AFTERNOON SESSION

Senator DOUGLAS. The hour of 2 o'clock having arrived, the committee will resume its session.

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Senator Robertson will be unable to be here for the first part of the hearing this afternoon, but will be here later.

I understand that Mr. Robertson had completed his formal statement this morning and is now ready to answer questions. I will call on Mr. Bubb to lead off.

Mr. BUBB. Senator Douglas, Chairman Cravens, gentlemen, Mr. Robertson, you have been a banker most of your life; could you briefly outline the differences between savings-and-loan associations and banks, just briefly? I don't want a long history of it.

Mr. ROBERTSON. I shall try to point out the differences.

Savings-and-loan associations have no checking accounts; they have only savings accounts. They make no commercial nor personal loans. They make only real-estate mortgage loans. That is the principal difference between the two institutions.

Federal savings-and-loan associations buy no securities except United States Government securities. They have no trust departments, nor any of the auxiliary services.

Mr. BUBB. Thank you very much. Were the proposals about affiliates, and the removal of officers and directors which you talked about this morning, submitted to the Bureau of the Budget through the regular legislative process in recent years?

Mr. ROBERTSON. No; I think not.

Mr. BUBB. Have they ever been discussed with the industry?

Mr. ROBERTSON. That I can't answer. I shall have to ask Mr. Dixon.

Mr. DIXON. They haven't been, Mr. Bubb, since I have been a member of the Board.

Mr. BUBB. Was there any particular reason why the Board requested the power to define affiliates by regulation when the other banking statutes define affiliates in the law?

Mr. ROBERTSON. I think only this: We didn't have a very clear-cut idea of what might develop in our definition of affiliates. The purpose was to identify and isolate, if we could, evidences of improper self-dealing, and what form that self-dealing might take was difficult to define in advance.

Mr. BUBB. In view of the complexity of the subject and the fact that it hasn't been discussed with the industry and the fact that it is apparently in excess of the powers provided in other statutes, would you have any objection to meeting with the leaders of the savings-and-loan business to work out a fair and equitable proposal?

Mr. ROBERTSON. No; we would be very glad to.

Mr. BUBB. How many associations belong to the Federal home-loan banks that are not supervised either by your Board or the State supervisors?

Mr. ROBERTSON. At September 30, 1956, the 11 Federal home-loan banks had 4,408 members, of which 4,381 were savings-and-loan associations, 25 were savings banks, and 2 were insurance companies.

Of the 4,381 member associations, 1,726 were Federals, 1,911 were insured State associations, and 744 were noninsured State associations.

Mr. BUBB. They were all supervised, though, either by you or some State agency; were they not?

Mr. ROBERTSON. Yes.

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Mr. BUBB. Do the Federal home-loan banks have a right to deny credit to associations applying for it?

Mr. ROBERTSON. Yes; they do. It is not, however, quite as simple as that. The Home Loan Bank Act provides that a board of directors shall administer the affairs of the bank fairly and impartially without discrimination, but it can deny credit if it thinks the situation is such that credit is not justified.

Mr. BUBB. Then, in effect, if the Federal home-loan bank finds that an institution is unsafely managed, it could deny credit to that institution?

Mr. ROBERTSON. Yes.

Mr. BUBB. Thank you.

Since the liquidity section was originally added in 1951, the Board, as I understand it, has had the authority to raise and lower the liquidity requirement between 4 and 8 percent, and to establish different classes for various member institutions. Has the Board ever established such classes?

Mr. ROBERTSON. I understand that it has not.

Mr. BUBB. Under the Board's proposal made today, what would be the maximum gross liquidity that could be required?

Mr. ROBERTSON. I don't know that I understand the question.

Mr. BUBB. Under the liquidity proposal you made today, we can't quite figure out——

Mr. ROBERTSON. Oh, I understand. We don't know.

Mr. BUBB. In other words, you don't know how much liquidity they might have?

Mr. ROBERTSON. The gross liquidity is a matter that could be determined only after the formula was applied to the institution concerned.

Mr. BUBB. What is meant by the phrase "specified liabilities or portions thereof"? I am still talking about item 121.

Mr. ROBERTSON. Those are liabilities to be specified. For example, trust funds or funds that were set aside that didn't belong to the institution. They might be in the form of cash or Government bonds, but they would be deductible; a portion or perhaps all of the loans in process; and other liabilities or portions thereof.

Mr. BUBB. To help my cohorts here, I want to ask some questions regarding recommendation No. 144.

On page 182 of the committee print, as part of the proposed revision of the present section 5 (d) of the Home Owners Loan Act, the Board asked for power to define by regulation or otherwise what constitutes unsafe or unsound practice. Do you think the Board would be unduly impeded in enforcement if it is not granted such power to define?

Mr. ROBERTSON. I think it would be helpful to have it defined.

Mr. BUBB. In a substantial or serious incident, do you not think the court on review could be trusted to decide whether the acts approved constituted an unsafe or unsound practice or method of operation?

Mr. ROBERTSON. I think so if we had a clean-cut, clearly determined case. But there are a great many borderline cases that would not be so easy to decide.

Mr. BUBB. What do you have in mind there by the words "or otherwise"?

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Mr. ROBERTSON. I shall have to ask counsel that question.

Mr. BUBB. That is under item 144.

Mr. CREIGHTON. We need that in order to deal with borderline cases. We feel if we were able to define what the Board would consider unsafe and unsound operations that we could avoid a lot of supervisory problems that do arise at the present time. It is not clear in every case what constitutes unsafe, unsound practice.

I realize that the courts have said that unsafe and unsound practices for financial institutions have been pretty well spelled out over a period of years. However, we think if we had the power to regulate and define it that it would be helpful to us in our supervisory problems and would, to a great extent, do away with self-dealing and conflict-of-interest cases.

Mr. BUBB. Thank you.

Mr. Robertson, let's note that in recommendation 84, the Board of Governors of the Federal Reserve System do not ask that that Board's power to remove an officer or director include the power to define unsafe practices.

Do you think you could get along with it as the Federal Reserve is able to do?

Mr. ROBERTSON. I think we could get along with it; yes.

Mr. BUBB. Could you also give a warning and an opportunity to desist or to correct as they do in every case?

Mr. DIXON. As a practical matter, I think the Board concluded that a person who was inclined to self-dealing or other unsafe or unsound practices once is very likely to repeat, and that was the reason that the Board feels that asking them to desist does not necessarily solve the question.

Mr. BUBB. I don't agree with you on that, Mr. Dixon. I am only asking if you don't think the savings and loan people are as honorable as the bankers are.

Mr. DIXON. I wouldn't comment on the bankers. I am just saying that my experience has been that a person who has that turn of mind is inclined to repeat the offense and if you leave him in and just say "desist," he may desist for a year and then may be right back in.

That is my own thinking, and I think it was what the Board concluded and the reason it was put in that way.

Mr. BUBB. But you still feel that you could operate under the same law concerning that as the Federal Reserve Board does?

Mr. DIXON. Of course, we will operate under any law that the committee here and the Congress decides is best for us to operate with.

Mr. BUBB. All right.

Mr. Robertson, are you familiar with the bill introduced by Representative Brent Spence to restrict holding companies in the savings and loan business?

Mr. ROBERTSON. I only know that there was such a bill.

Mr. BUBB. Would your Board, the Federal Home Loan Bank Board, be opposed to such legislation?

Mr. ROBERTSON. From what conversations I have heard and other comments, I would say not.

Mr. BUBB. I think the industry is very much for it. That is why I brought out that point, Mr. Chairman.

Two years ago, the Federal Home Loan Bank Board endorsed a proposal to permit Federal associations a limited right to acquire land

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in the assistance of slum-clearance projects and the preparation of home-building sites. As far as you know, would the Federal Home Loan Bank Board still be agreeable to that amendment?

Mr. ROBERTSON. I will have to ask Mr. Dixon to answer that.

Mr. DIXON. Yes. The Federal Home Loan Bank Board would be, depending upon the limitations.

Mr. BUBB. Senator Douglas, that is all I have right now. I might like to ask 1 or 2 later, if that is agreeable.

Senator DOUGLAS. Mr. Cravens.

Mr. CRAVENS. Mr. Robertson, subsection (a) of section 4 of the Federal Home Loan Bank Act, I notice, includes insurance companies, and you stated it did have two such members. Should they be members?

Mr. ROBERTSON. That I can't answer. How long have they been members, Mr. Dixon?

Mr. DIXON. It is my understanding, Mr. Cravens, they have been members since the early days. I can see no particular reason or advantage to them, but they still retain membership. They have a line of credit, of course.

Mr. CRAVENS. That is what I was thinking. Have they ever used their right to borrow, or——

Mr. DIXON. I suppose at one time they did. I don't think they have in recent years.

Mr. CRAVENS. Do you think it is a sound provision?

Mr. DIXON. I can't answer that question. I had better say, I don't know.

Mr. CRAVENS. Is there a logical reason why they should be permitted to be members?

Mr. DIXON. Only to the extent that Congress thought that there was an advantage in permitting them to have membership in the system.

Mr. REESE. Mr. Cravens, wouldn't this be a good time to clarify the field of the Home Loan Bank Board and recommend that any extraneous institutions be taken out? They might be a source of terrific difficulty in case of troubled times where you would be called upon for additional memberships and help. Wouldn't this be the opportunity to make the Federal Home Loan Bank System just for savings and loan associations?

Mr. ROBERTSON. It might be. I don't know the history, nor reason for those two insurance companies being members.

Mr. REESE. It isn't the two. It is the field, having the field wide open in case they want membership in the Home Loan Bank System.

Mr. ROBERTSON. Well, there are, of course, also savings banks in the system. They would be in a different category and different position from the insurance companies.

I, like Mr. Dixon, don't see why the insurance companies were in, but they are.

Mr. CRAVENS. It hasn't had very much appeal, so we will proceed with only two being members.

A technical question: Should the provisions of the Reorganization Plan No. 3 of 1947 be written into the statutory authority or not? They would still be operating in either case.

Mr. ROBERTSON. Will you answer that, Mr. Creighton?

Mr. CREIGHTON. I can see no direct advantage in writing it in.

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Mr. CRAVENS. You have a recommendation 146 with respect to conversion of a mutual association into a stock company. Are you concerned about any further language to protect the mutual owners upon conversion?

Mr. ROBERTSON. We have just published a regulation which we hope will completely protect the mutual shareholders.

Mr. CRAVENS. You have ample authority for that regulation, I assume?

Mr. ROBERTSON. Yes, sir.

Mr. DIXON. With respect to Federal associations, Senator, we do. I say there isn't any question in my mind that we have the authority with respect to Federals. There may be a question with regard to State-insured mutuals.

Senator DOUGLAS. What have you done in your regulation?

Mr. ROBERTSON. I will submit it for the record.

Mr. DIXON. Do you want it read? The Senator would like to have it read?

Senator DOUGLAS. No; I don't necessarily want to have it read. What do you do so far as Federal savings and loan institutions are concerned, and what, if anything, do you do on State savings and loans which are federally insured?

(The regulation referred to follows:)

PROPOSED AMENDMENT RELATING TO CONVERSION, MERGER, OR REORGANIZATION OF FEDERAL SAVINGS AND LOAN ASSOCIATIONS

Resolved, That, pursuant to Part 108 of the General Regulations of the Federal Home Loan Bank Board (24 CFR Part 108) and section 142.1 of the Rules and Regulations for the Federal Savings and Loan System (24 CFFR 142.1), it is hereby proposed that, pursuant to section 5, 48 Stat. 132, as amended (12 U. S. C. 1464), Part 146 of the Rules and Regulations for the Federal Savings and Loan System (24 CFR Part 146) be amended by an amendment the substance of which is as follows:

"Part 146 of the Rules and Regulations for the Federal Savings and Loan System is hereby amended by amending the heading of said Part to read 'MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION' and by adding to said Part a new section to be numbered 146.5 and to read as follows:

" 'SECTION 146.5 *Conversion from Federal to State charter under last paragraph of subsection (i) of section 5 of the Home Owners' Loan Act of 1933.* The following minimum requirements are hereby prescribed for approvals pursuant to the last paragraph of subsection (i) of section 5 of the Home Owners' Loan Act of 1933, as amended:

" '1. The conversion shall be effected in accordance with a plan approved by the Board.

" '2. The plan shall be submitted to the Board prior to the giving of notice as hereinafter provided.

" '3. The association shall give formal notice of a special meeting called to vote on the plan, which notice shall set forth the terms of the plan, the rights of the members, and such other matters as the Board may require.

" '4. The plan shall be approved by a vote of not less than two-thirds in withdrawal value of the outstanding shares of the association and not less than two-thirds in number of the vote cast at the meeting aforesaid, and by the Federal Home Loan Bank Board.

" '5. The entire amount of guaranty or permanent stock or other similar stock, if any, shall be issued, without payment, pro rata to all shareholders of record at such date as the Board shall fix: *Provided*, That scrip for fractional shares shall be issued to such extent and in such manner as the Board may require, with such provision for redemption, liquidation, or other disposition of such scrip as the Board may require: *Provided further*, That if the Board determines that it is not feasible to issue the entire amount of such stock as hereinbefore provided, all or such part thereof as may be specified in the plan may be is-

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sued otherwise than as hereinbefore required, provided the issuance thereof is in accordance with provisions of the plan. The amount of such stock shall be as required by the Board and shall be at least equal to the minimum amount required by the laws of the State. In the event that guaranty or permanent stock or other similar stock is provided for in the plan, the plan shall contain provisions which, in the judgment of the Board, are adequate to assure that each shareholder of record at said date will be entitled to receive, in the form of (a) a withdrawable account or accounts of the converted association, (b) such stock or scrip, or (c) cash, or such combination of all or any thereof as may be provided for in the plan, the full equivalent of his interest in the converting association.

" '6. The plan shall include appropriate provisions to prevent reduction of the Federal insurance reserve as a result of action under the plan.' "

Resolved further, That all interested persons are hereby given the opportunity to submit written data, views, or arguments on the following subjects and issues: (1) Whether said proposed amendment should be adopted as proposed; (2) whether said proposed amendment should be modified and adopted as modified; (3) whether said proposed amendment should be rejected. All such written data, views, or arguments must be received through the mail or otherwise at the office of the Secretary, Federal Home Loan Bank Board, Federal Home Loan Bank Board Building, 101 Indiana Avenue NW., Washington 25, D. C., not later than December 11, 1956, to be entitled to be considered, but any received later may be considered in the discretion of the Federal Home Loan Bank Board.

Mr. DIXON. One of the legislative proposals is that through the Insurance Corporation we be given clearer authority to control conversions of State-chartered insurance associations.

Senator DOUGLAS. But you don't feel that you have authority to do it by regulation?

Mr. DIXON. There is a question about it, Senator.

Senator DOUGLAS. But you have not exercised that authority?

Mr. DIXON. We have tried to exercise it. We have exercised it, and I think have had a salutary effect, but we would like it clarified by the Congress. We would like our authority——

Senator DOUGLAS. Could you tell us in brief what you have done so far as you have done this at all?

Mr. DIXON. We just simply refused to approve applications. However, the statute says that the Insurance Corporation shall approve security forms. On that basis, we have refused to approve, pending working out of an equitable formula.

Senator DOUGLAS. So that so far as you are concerned and to the degree which you think you have powers, you are now checking the conversion of mutual savings and loan institutions into stock institutions; is that correct?

Mr. DIXON. We are.

Senator DOUGLAS. Excuse me.

Mr. CRAVENS. Certainly.

We have asked almost everyone, we will ask you the same question: Should an officer or a director of a Federal savings and loan association be permitted to serve on the board of a bank or vice versa?

Mr. ROBERTSON. I shouldn't think it would make any difference.

Mr. CRAVENS. You don't see any area of conflict?

Mr. ROBERTSON. No.

Mr. CRAVENS. You mentioned 744 members of your system that are noninsured. Is there any logical reason why a member should have the privileges of the Federal home loan bank and not be insured?

Mr. ROBERTSON. Except that they are different functions. The membership gives a credit facility, while the insurance is——

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Mr. CRAVENS. I understand. Maybe I should make my question a little bit different: Shouldn't it be a condition of membership?

Mr. ROBERTSON. I am not sufficiently experiencd to know.

Mr. DIXON. If the Congress should so determine. As you know, Mr. Cravens, there are many of the States that feel that that is a question that should be determined by the boards of directors and the officers of the association, that we should not deny credit simply because the association is in an area where we feel that there are already as many insured institutions as there should be. We would be reluctant to grant insurance to additional institutions in those areas.

Mr. CRAVENS. It would still be optional whether they wanted to be a member of the Federal home loan bank.

Mr. DIXON. Not necessarily optional. In other words, we also could control that and do.

Mr. CRAVENS. Is the situation similar to that of the Federal Reserve? You don't have to belong to the Federal Reserve, but when you do you have to be insured.

Mr. DIXON. We have just the opposite.

Mr. CRAVENS. Is the situation similar? Does the same logic apply? That is what I am asking.

Mr. DIXON. As far as I am concerned, I would think it could well be said that the same logic should be applied.

Mr. CRAVENS. Should the authority be continued to make advances to nonmember borrowers of the Federal home loan bank? I assume you are not using it now, are you?

Mr. ROBERTSON. They say not to any great extent.

Mr. CRAVENS. Should it be continued or discontinued?

Mr. DIXON. I would beg to have a little time to consider that. I wouldn't want to answer that off the cuff, because there are a number of elements involved. I think that ought to be given study.

Mr. CRAVENS. Do you require annual audits from Federal savings and loan associations?

Mr. DIXON. Pardon?

Mr. CRAVENS. Does the Board require annual audits of the savings and loan associations?

Mr. DIXON. Yes, sir.

Mr. CRAVENS. Is that in lieu of an examination?

Mr. DIXON. It is in addition to.

Mr. CRAVENS. In addition to.

Mr. ROGERS. Mr. Dixon, do you have a copy of that regulation providing for annual audits?

Mr. DIXON. Yes; we have it here.

Mr. ROGERS. I wonder if we could have it for the record.

(The regulation referred to follows:)

Resolved, That, pursuant to part 108 of the General Regulations of the Federal Home Loan Bank Board (24 CFR, pt. 108) and section 167.1 of the Rules and Regulations for Insurance of Accounts (24 CFR 167.1), section 163.17 of the Rules and Regulations for Insurance of Accounts (24 CFR 163.17) is hereby amended to read as follows:

"*163.17 Examinations; examination and audit; cost of same.* For the protection of its insured members and other insured institutions each insured institution shall maintain safe and sound management, pursue financial policies that are safe and consistent with economical home financing and the purposes of insurance of accounts, and shall be examined periodically by the Corporation, with appraisals when deemed advisable, in accordance with general policies from time

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to time established by resolution of the Board. Each insured institution shall be audited periodically by auditors and in a manner satisfactory to the Corporation, and may be audited at any time by the Corporation. The insured institution shall promptly file with the Corporation, through the Chief Examiner of the Federal home loan bank district in which it is located, a copy of every report of its independent audit, which reports must be certified by the independent auditors. If the association has neither been audited by independent auditors within the 12-month period immediately preceding the date of such examination or within the period that has elapsed since such last preceding examination, whichever is greater, nor adopted and maintained an internal audit program acceptable to the Corporation, the examination by the Corporation shall include an audit. The cost, as computed by the Corporation, of any such audit or examination, or both, including office analysis thereof, and appraisals made in connection therewith, overhead, per diem, and travel expenses, shall be paid by the institution examined or audited. The Corporation may obtain at any time, at its expense, such appraisals of any of the assets of an insured institution as it deems appropriate."

Resolved further, That, since this amendment relates to procedure and practice, it is found that it is not necessary to issue such amended regulation with notice and public procedure thereon under the provisions of section 4 of the Administrative Procedure Act.

(Sec. 402, 48 Stat. 1256, as amended, 12 U. S. C. 1725; sec. 17, 47 Stat. 736, as amended, 12 U. S. C. 1437.)

This amendment shall be effective 30 days after the date of its publication in the Federal Register.

Mr. CRAVENS. What is the reasonable comparison between your assessment rate and that of the FDIC? I am speaking now of the savings and loan corporations?

Mr. ROBERTSON. I would like to ask Mr. Husband to answer that.

Mr. HUSBAND. Our rate is one-twelfth of the withdrawable shares plus the creditor obligations, as compared with the FDIC, which is, as you know, one-twelfth less the credit of 60 percent, and I understand that further reduction is being requested.

Mr. CRAVENS. What does that come out? To what would it be comparable?

Mr. HUSBAND. Our present rate is more than twice as great as the net charge made by the FDIC. We were charging one-twelfth straight, and they are charging one-twelfth minus that credit.

Mr. CRAVENS. Yes, but they are paying it on total deposits and your individual deposits would more nearly come within the $10,000 insured.

Mr. HUSBAND. Our charge is on the total, but our insured accounts amount to about 98 percent of the total.

Mr. CRAVENS. That is what I meant.

Mr. HUSBAND. Plus the credit obligations, as I mentioned before.

Mr. CRAVENS. Should legislation be enacted to regulate the establishment of branch offices of Federal savings and loan associations? That is, I am asking they be put, for example, on a par with national banks to be permitted branches only if the States permit them?

Mr. ROBERTSON. That is substantially what the savings and loan associations are doing. The variation would be in some States such as Florida where they have group banking in some other States. The savings and loan associations are not authorized to have branches where there isn't some State precedent.

Mr. CRAVENS. They do in Missouri.

MR. ROBERTSON. Is there any special reason that is so in Missouri?

Mr. ROGERS. Mr. Cravens, I wonder if I could help the Chairman clarify the record on that.

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Under your regulations you can establish a branch for a savings and loan in any State regardless of whether the State banks may have a branch—if State savings and loans may have a branch or mutual savings may have a branch or if you have a bank company operating. So the parallel is not to the national bank system which is limited to States specifically authorizing branches for State banks.

Mr. CRAVENS. I see.

Mr. ROBERTSON. Thank you for clearing that up for me.

Mr. CRAVENS. I suspect that the ones I referred to in Missouri were State chartered rather than Federal.

Mr. DIXON. In Missouri, State chartered associations, as I remember it, can have branches.

Mr. CRAVENS. Yes; I think that is right.

You mentioned that you required audits in addition to examinations. How often do you examine an association?

Mr. ROBERTSON. I would like Mr. Bonesteel to answer that.

Mr. BONESTEEL. We are now on an annual basis, approximately; about a 12½-month average between examinations.

Mr. CRAVENS. So that you do get an audit from each association and examine them almost once a year then?

Mr. BONESTEEL. That is right. If you want me to explain that briefly, I can do it. You see, the regulation provides that they have three options. They can have an audit by an independent certified public accountant, or they can have an audit combined with the examination—we refer to it as an extension of the examining procedures to test the integrity of accounts—or, third, they can have an internal audit established on a very sound basis, and we have quite a number of tests and ways of determining whether it is acceptable or not, with an auditor who does not have anything to do with operating functions. So they have those three options, and every association has to be audited once a year.

Mr. CRAVENS. Should the matter of conflict of interest be included in your legislation? Should you have specific legislative authority with respect to the protection against conflict of interest, or do you have that problem?

Mr. ROBERTSON. Of course, we have it. We are trying to bring it out through some of this legislation we are asking for now; the right to examine affiliates, and things of that sort. You can call it what you want. It is to avoid and prevent improper self-dealing.

Mr. CRAVENS. I was thinking more in terms of your own examiners having a conflict of interest and going with an association, and so forth.

Mr. ROBERTSON. We don't have. We don't have that problem.

Mr. CRAVENS. Is there any prohibition against members of the Home Loan Bank Board owning stock in a Federal savings-and-loan association?

Mr. ROBERTSON. None that I know of.

Mr. CRAVENS. Well then, I guess I should properly ask, Should there be then?

Mr. ROBERTSON. I wouldn't know. I shouldn't think so. The amount involved is so small.

Mr. CRAVENS. I understand. I think we would like to have in the record whether or not Federal savings-and-loan associations are permitted to make political contributions out of their funds.

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Mr. ROBERTSON. No; they are not.
Mr. CRAVENS. I am sure if I don't ask it Senator Douglas will.
Mr. ROBERTSON. No; they are definitely prohibited.
Mr. CRAVENS. They are definitely prohibited.
Mr. ROBERTSON. Yes. By Federal statute.
Senator DOUGLAS. Do you have any record of the statute having been violated by Federal savings-and-loan institutions?
Mr. ROBERTSON. I don't know of any.
Mr. CREIGHTON. No, sir.
Senator DOUGLAS. Would you make a search to find out?
Mr. ROBERTSON. Mr. Bonesteel says they review all the reports.
Senator DOUGLAS. Will you ask your examiners to make a special search on this question?
Mr. ROBERTSON. Yes, sir.
Senator DOUGLAS. And report to this committee what your findings are.
Mr. ROBERTSON. Yes, sir.
Mr. CRAVENS. Do you have any standard pattern of reserves that you require savings-and-loan companies to carry against their loans? They are permitted to carry a substantial amount before they pay taxes, but I wondered what the Board policy was.
Mr. ROBERTSON. Dr. Husband will answer that.
Mr. HUSBAND. Pursuant to statute, all insured members must accumulate a loss reserve restricted for loss purposes of 5 percent in 20 years.
Mr. CRAVENS. Five percent in 20 years.
Mr. HUSBAND. By regulation. The Board further provides that all insured members will continue to allocate at least 10 percent of their net income to reserves until the reserves are equal to 12 percent of the savings accounts; and if they ever fall below the 5 percent they must allocate 25 percent of their income.
Mr. CRAVENS. There is such a wide pattern of, we will call it, dividend rates. It seems to me I have seen some as high as 4¾ percent out West. Does this represent an inherent danger to the system or should they be controlled?
Mr. ROBERTSON. They could only be controlled by law. The Board doesn't have authority to control them now.
Mr. CRAVENS. Should you have that authority?
Mr. ROBERTSON. That is a question, I think, of philosophy. When the system was set up, the provision was that net earnings, after allocation to reserves and certain other accounts, should be distributed to the shareholders. Some of them obviously can earn more than others.
Mr. CRAVENS. In other words, you don't think that they are able to do that because they are not retaining their proper reserves or the proper quality of assets?
Mr. ROBERTSON. I am sure there are a great many reasons for it.
Mr. CRAVENS. I would assume to pay that you would have to make some investments that would be reasonably doubtful; to get that high a yield.
Mr. ROBERTSON. Certainly the high yield could be obtained 2 or 3 ways by a loose lending policy and high rates. It could also be done through efficient management. In other words, no two associations would necessarily have identical earnings. But I think the practical

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answer is that the Board does not have at present the authority to control those dividends whether or not it should.

Mr. CRAVENS. Your approach to that, I assume, was that you do have the authority to appraise the quality of their assets, though.

Mr. ROBERTSON. That is right.

Mr. CRAVENS. And if you have been paying out such high dividends that create poor assets, you can correct the situation?

Mr. ROBERTSON. That is correct, but that is a slow process.

Mr. CRAVENS. I understand. Do you think you should have the authority to deal with it?

Mr. ROBERTSON. I can't answer that question. I think that is a question for the Congress to decide.

Mr. CRAVENS. There is one other: You have at times today, in your opening statement, or your general statement in the committee print, or in this print, referred to unsound practices with respect to affiliates. Do they exist? I will ask you if they exist where, for example, you can't get a loan unless you get your insurance from an affiliate that the president of the savings and loan might own, or things of that nature? Is this a real problem?

Mr. DIXON. That, of course, has been specifically dealt with by the Department of Justice. There may be violations, but certainly every association is definitely instructed, and agrees when it is insured that it will not use coercion in the manner.

Mr. CRAVENS. Can an officer of the savings and loan borrow from his own savings and loan?

Mr. DIXON. Just for his own personal home.

Mr. CRAVENS. He can do that?

Mr. DIXON. He can borrow for his home.

Mr. CRAVENS. I have no further questions.

Senator DOUGLAS. One general question, Mr. Robertson, that I should like to ask:

Banks are sometimes classified into 2 groups, divided into 2 classes, investment banking and commercial banking. In investment banking, as I understand it, the banks later lend out only the amounts of money which have previously been deposited with them by depositors and, therefore, the deposit comes first and the loan comes second.

In commercial banking, the bankers now, I think, generally admit that it is the loan which comes first and which is made and the credit is given in the form of a deposit and that, therefore, the banking system creates monetary purchasing power.

The amount of this monetary purchasing power in this country is limited by the Federal Reserve requirements and the policies of the Federal Reserve Board, and the Government in effect becomes a partner in the creation of monetary purchasing power, getting about 18 percent, I think, of the profits from the creation of this purchasing power, and it is this which forms the chief revenue of the Federal Reserve System.

What I would like to ask you is this question about savings and loan instituions: Do they lend out only those precise amounts minus cash reserves which have previously been deposited in them by individual depositors and stockholders, or is there an additional amount of purchasing power which is created from the Federal Home Loan Bank System?

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Mr. ROBERTSON. Primarily, they lend their own funds, but they can borrow from the System.

Senator DOUGLAS. How much do they borrow from the System?

Mr. ROBERTSON. For other than withdrawal purposes, they can currently borrow 12½ percent of their share accounts, except that there is an emergency provision for another 2½ percent. So the maximum would be 15 percent.

Senator DOUGLAS. How is this credit to them kept on the books—as a deposit in your bank?

Mr. ROBERTSON. No. It is lent to them by the district Federal home-loan bank.

Senator DOUGLAS. Where do they do the purchasing?

Mr. ROBERTSON. The Federal Home Loan Bank Board periodically sells bonds or debentures in the market, but also the associations keep on deposit funds——

Senator DOUGLAS. What kind of debentures?

Mr. ROBERTSON. They are known as consolidated bonds which are the joint and several obligations of the 11 banks. They are ordinarily short term. They run from 6 to 9 months and are sold ordinarily about once a month.

Senator DOUGLAS. To whom are these sold?

Mr. ROBERTSON. They are sold in the general market.

Senator DOUGLAS. And paid for how?

Mr. ROBERTSON. In cash.

Senator DOUGLAS. So you are saying that they constitute part of the demand for the credit which the Federal Reserve System creates?

Mr. ROBERTSON. I don't know that I understand.

Senator DOUGLAS. The question I am trying to get at is, Who creates the supply of monetary purchasing power which commercial banking utilizes and which you utilize?

We know that in the case of the commercial banks or commercial banking it is the Federal Reserve System which directly or indirectly creates this. What I am trying to get at is, do you simply take a share of this already created amount of purchasing power, or do you create additional amounts yourself? That is what I am trying to find out.

Mr. ROBERTSON. We create additional.

Senator DOUGLAS. You create additional amounts?

Mr. ROBERTSON. Yes, sir.

Senator DOUGLAS. Have you made a computation as to how much this is? This is a very important question.

Mr. HALLAHAN. I think of the $1.1 billion of bonds which the system now has outstanding, probably 25 percent of those are currently bank held. The other holders of those bonds are nonbanking holders, such as pension funds, insurance companies, corporations, et cetera. So I think it would be in that category that the credit would exist.

Senator DOUGLAS. Are you saying only $250 million of additional monetary purchasing power is created by the System?

Mr. HALLAHAN. Other than savings; yes, sir.

Senator DOUGLAS. Is there a multiplier——

Mr. HALLAHAN. Senator, our bonds that are bank held vary over the years.

Senator DOUGLAS. Is there a multiplier attached to this, or can only this added amount of $250 million be loaned out? Namely, can this

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$250 million count as 5 percent so that you can loan out $5 billion on it?

Mr. HALLAHAN. No. It is on a straight dollar basis. I might say for the Senator's information that over the period since 1932 the amount of credit of this kind, whether it be bank credit or savings capital accumulated in other places, that has been outstanding with respect to assets of the institutions has varied within a range of 2 percent to probably 5.9 percent of assets of the institutions. So it is not a great factor in general credit expansion.

Senator DOUGLAS. So that as far as you are concerned, there is not too much danger of investment outrunning savings?

Mr. HALLAHAN. Yes, sir; that is correct.

Senator DOUGLAS. If this is true—and I assume that it is true—it is very reassuring.

Mr. HALLAHAN. As I say, the range, Senator, has been somewhere between 2 percent to, let's say, 6 percent outstanding during any year over these last 23 years since the System has been in effect. The amount of the monetization that you are speaking of could vary within that with respect to the amount of bonds that were bank held.

Senator DOUGLAS. Thank you very much.

Mr. CRAVENS. I have one more question.

Senator DOUGLAS. Yes, Mr. Cravens.

Mr. CRAVENS. Could you explain to me this brokers operation that is now going on?

Mr. ROBERTSON. I think so.

There has grown up over the years a group of brokers who undertake to place investment funds with the savings-and-loan associations. They advertise extensively—some of them do—a list of savings-and-loan associations, and for a consideration place the funds in the associations that will take the money. They do that for a fee.

Mr. CRAVENS. What is the consideration?

Mr. ROBERTSON. I think the standard fee is 1 percent, although I have heard of some that are as high as 1½.

Mr. CRAVENS. Is it a healthy situation?

Mr. ROBERTSON. There seems to be a great difference of opinion. We had a hearing last week on it. The people who use the brokers, and the brokers themselves, thought it was a healthy situation. The ones who didn't use the brokers thought it wasn't.

Mr. CRAVENS. Is it anything that you should have statutory power to deal with?

Mr. ROBERTSON. I think we have the power.

Mr. CRAVENS. You do?

Mr. ROBERTSON. We think we do, and we are talking about a regulation that will reduce that maximum commission to a quarter of 1 percent, and that is what the hearing was about.

Mr. CRAVENS. Thank you.

Senator DOUGLAS. Mr. Rogers.

Mr. ROGERS. Do you have any recommendations concerning holding companies in the savings-and-loan field?

Mr. ROBERTSON. I have had no acquaintance with it.

Mr. Dixon.

Mr. ROGERS. Mr. Dixon.

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Mr. DIXON. To answer it in a general way, I would say that we do have. But as to the actual mechanics, we wouldn't be prepared to answer, I don't think, at this time.

Of course, the bill that was introduced, referred to as the Spence bill, I think, by and large, reflects our thinking and the thinking of the savings-and-loan industry pretty much. But it is something with which we are concerned, and I think I speak for the Board in saying that we do have concern about it and are interested in pursuing it.

Mr. ROGERS. I wonder if you could describe for us the types of affiliates you are speaking of in your recommendations concerning this? I wasn't quite clear when you were talking about insurance a while ago what different types of activities these affiliates engage in.

Mr. DIXON. Let's let Mr. Hallahan answer that, because he has given a lot of thought to it.

Mr. HALLAHAN. I think basically what the Board is interested in with respect to affiliates—and probably it may well be that the word "affiliate" is not a proper word or a proper descriptive word of what we desire to delineate—what the Board is interested in basically is protecting against self-dealing, and it is interested in tracing the flow of funds; in other words, the association's funds.

I think the question was asked a short time ago by Mr. Cravens about insurance agencies; that is not the kind of activity that the Board has in mind.

Senator DOUGLAS. What do you have in mind, then?

Mr. HALLAHAN. I think that we have had instances where the association's funds were lent to a corporation in which, for instance, none of the officers or directors had an interest. Let's say a dummy corporation which was then relent to or used by a corporation in which they had an interest. The loan proceeds were going to either develop land or construct buildings in which they did have an interest.

That, I think, basically is the type of situation that the Board would like to protect against.

Mr. CRAVENS. Are you speaking of a construction loan?

Mr. HALLAHAN. Yes.

Mr. CRAVENS. They don't make commercial loans, do they—savings-and-loan associations?

Mr. HALLAHAN. No.

Mr. CRAVENS. They are not empowered to make those. So I assume you have reference, then, to——

Mr. HALLAHAN. It is construction lending principally; yes. There may be some other instances, but basically I think that is the problem.

Mr. ROGERS. Would this get into situations such as where a person would make a mortgage loan and a contractor who is associated with one of the directors would be doing the work?

Mr. HALLAHAN. In which the director has an interest?

Mr. ROGERS. In which one of the officers or directors is associated.

Mr. HALLAHAN. That is correct.

Mr. ROGERS. I agree with you. I think the term "affiliate" is a little misleading.

Mr. HALLAHAN. Yes; I think the matter as presented probably is broader verbally than what the Board is interested in.

Mr. Cravens asked a short while ago whether all bank members should be insured. Now we have the situation which I think cur-

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rently exists in the FDIC with respect, for instance, to mutual savings banks in Massachusetts.

We have 129 cooperative banks which are savings-and-loan associations in the State of Massachusetts which are members of our Boston bank but are not insured by us. They have their own insurance fund.

We have a number of bank members in other States who are not insured, and in a number of cases are concentrated in particular localities. There is a grave question, at least in my mind—and I think possibly in the minds of other members of the Board—whether we could insure that number of institutions in a particular locality. In other words, they may be overchartered for insurance purposes, especially when competitive factors are considered.

Mr. McCloy. I have one general question that I have had in the back of my head ever since I heard Senator Robertson indicate this morning what an enormous factor in the economy of this country these institutions are which are subject to your supervision.

Let me ask you this general question: Do you think the institutions which you supervise have now reached a state of vigor in size and quality that would permit them to be subject now to the same general regulations, restrictions, tax, competitive situations, etc., that the banks in the country are subject to?

Are you not now at a point, assuming that the original purpose of the establishment of these institutions has been met, where you could have the same general restrictions, which have been developed over the years in respect of the main credit situation in the country, applied to your institutions?

Mr. Robertson. Whether they should be subject to the same regulations, or treatment as to taxes, is something which I think the Congress has to decide. But, so far as the maturity, I would say that they had reached that point.

Mr. McCloy. I think the Congress may desire a little counsel on this subject. I just wondered how you feel about it.

Mr. Robertson. I would like to ask one of my associates.

Mr. Dixon. I would just like to make this observation: that I don't think they are completely comparable. In other words, I assume that what you have in mind is possibly the 12 percent.

Mr. McCloy. That is one of the things I do not purport to have studied closely all of the factors.

Mr. Dixon. Yes. That is one that I am going to address myself to.

That actually is a loss reserve, and the Congress arrived at that figure not because they were trying to do the associations an especial favor or grant them special privileges but because by study and investigation it was shown that in the depression period the losses on real-estate loans were actually greater than 12 percent. In other words, that that was the fundamental basis and is the fundamental basis on which that 12-percent figure has been arrived at.

I might say, incidentally, that that is one of the reasons that within the last year the Board has felt that in order to justify that percentage these associations should accumulate the 12 percent, which is allocated strictly for losses and cannot be used for anything else.

Mr. McCloy. Well, maybe there might be reasons for differences in perhaps the reserve requirements, but you also have certain tax advantages, if I understand it. Then there are quite a number of provisions which have been referred to earlier today in respect of possible

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conflicts of interest, and these are restrictions on banking which have grown up, as I say, as a result, perhaps, of abuses in the past on the part of the general banking system of the country; but now that the depression is over—to be sure, it may possibly return again; I don't wish to be a prophet of gloom, as the Senator indicated—but now with the economy of the country in the general pattern which it now finds itself, is there really any reason why you think, things being equal, mutatis mutandis, these institutions would not be subject to the same general competitive restrictions and——

Mr. DIXON. I think if you take into consideration all areas of advantages and disadvantages, why, certainly, the savings-and-loan industry shouldn't be singled out and favored. But there are a lot of facets in which, for example, commercial banks have very great advantages over savings-and-loan institutions. So I think they must be considered as a whole rather than just to single out 1 or 2 matters that might appear on the surfaces to be favoritism or putting certain institutions in a favorable light.

Mr. MCCLOY. May I put one more question, and then I am finished.

I asked Mr. Robertson, of the Federal Reserve, whether in the light of the changing pattern of the economy and the extraordinary developments that have occurred in the whole credit and monetary situation in the United States since the original study was made in 1914, wouldn't he think it would be desirable to have a thorough study made of this situation, which might take a year or two to accomplish, in order to weigh these considerations which we have just been talking about?

Mr. DIXON. I certainly would think that if it was a complete and thorough study conducted on the high plane that it should be, that such a study might well be made.

Mr. MCCLOY. You couldn't purport to do that between now and the next coming of Congress?

Mr. DIXON. No.

Mr. ROBERTSON. I concur.

Mr. CRAVENS. Do you have any more questions?

Mr. ROGERS. I have 1 or 2 more.

Would you permit a Federal savings and loan association to conduct a safe-deposit business?

Mr. DIXON. Oh, yes.

Mr. ROGERS. You do.

Are Federal savings and loans permitted to handle Christmas club accounts?

Mr. DIXON. Yes.

Mr. CRAVENS. I have just one more question: Would it be appropriate to limit dividends until the 12 percent is accumulated?

Mr. DIXON. There we have the statute which must be considered, which says in the case of mutual associations chartered by the Federal authorities, which is our Board—that after operating expense is taken care of and allocations to reserve, etc., the remainder shall be distributed to the stockholders. So, it might require amendment of that basic law because it is just incompatible with the present charter. That is all, in my best judgment, Mr. Cravens.

Mr. CRAVENS. Would that be true of Federal savings and loan associations?

Mr. DIXON. Yes; that is true of Federal savings and loan associations.

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Mr. Cravens. But it could be handled by a change in the Federal statutes, though, couldn't it?

Mr. Dixon. Oh, Federal statutes can change most anything.

Mr. Cravens. Then I will ask again, should it be done?

Mr. Dixon. In my best judgment, it should not be, but then, of course, this is purely personal opinion.

Mr. Cravens. You say it should not be. Could I ask why?

Mr. Dixon. If an association is in an area where there is terrific demand for lending and where the interest rates on the mortgages are high, or higher than they are in other areas, the earnings are more. If they follow out the provisions contained in the charters, after the operating expenses and the allocations of reserves, and so on, the remainder is distributed, and naturally those dividends would be, in my best judgment, higher than they would be in some other areas.

So it is a difficult situation to blanket this country, in my best judgment, with a set dividend rate without doing away with the mutual concept.

Mr. Cravens. That is the very reason we wanted your opinion in the record.

Are there any other questions?

Mr. Harris. You have stated that your establishment of the 12-percent reserve figure was based upon the experience during the depression losses on mortgages and loans. Would it make any difference that the portfolios of these institutions include a goodly number, at least, of FHA and GI type mortgages, where, as I understand it, the possible loss is picked up by the Government in one form or another?

Mr. Dixon. I would like to have Mr. Hallahan answer that, because he is very familiar with mortgage portfolio and devoted a lot of time to that.

Mr. Hallahan. As you probably know, the savings-and-loan associations are the largest maker of conventional mortgages by far. I think of the total portfolio of associations, FHA and GI mortgages, currently probably run somewhere around 24 percent of their total portfolio.

On the other hand, some of the institutions in this same field, and particularly the mutual-savings banks, have much higher holdings of guaranteed and insured mortgages than do our association, and they are on the same tax basis, as you know, that the savings-and-loan associations are. But basically we are in the conventional field.

Mr. Harris. The question is whether, to the extent, at least, of the 24 percent that shouldn't affect that 12 percent?

Mr. Hallahan. At the same time, you would certainly realize that you can take a loss on an FHA mortgage.

Mr. Harris. Yes, you can. I realize that.

May I ask this also: Do you think that the almost universal practice of having amortized loans might make some difference to the required reserve or possible losses?

Mr. Hallahan. Amortization, as you well know, is a great improvement in our whole mortgage-lending procedure procedure. I wouldn't say that it doesn't put an institution in a better position, because it does, but I think probably the emphasis is more on the liquidity side than it would be on the reserve side.

Mr. Harris. If properly applied, yes. Thank you.

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Senator ROBERTSON. Are there any other questions?

If not, we thank you, gentlemen.

Mr. REESE. Senator Robertson, I would just like to say the banks and savings and loan associations have been competing with each other for many years, and they will continue to do so. It seems to me this creates a great opportunity for these two industries or professions to begin to do constructive thinking, to have a recognition of the qualities of the other and an understanding that each of us are going to continue to function and to develop a greater respect for each other in the different industries and not begin to hash over and regurgitate things that have happened in the last 50 years.

Many of you are as old as I am. I lived through the twenties, the bad things that happened in the banks and building and loans. It seems to me this study gives us a great opportunity to try to do some things immediately in line with Senator Robertson's suggestion that we stay within the field where that can be done and then the other thing of taking the subjects that are too broad to be solved immediately and to put those in another study and try to make progress working toward goals ultimately to make each one of these institutions or these industries operate in their own field.

Of course, there will be competition. There will be overlapping. But as near as we can, we must try to do constructive things in the banking business and try to get constructive legislation in both fields so that we have a clear line of demarcation. It may be a revolutionary suggestion. The word "bank" means something to people in the United States and it means to a great extent a commercial bank.

We have in the Federal Home Loan Bank Board the word "bank" right in the name of the central institution. We use the word "bank," and it is probably a misnomer right at the start. You might say, well, it is in there, and it is passed by Congress, but if you made that as a start in your thinking of saying, "Let's separate; there is the banking system and there is the savings and loan system," and try to even get a different name so that we are not confused at the start as to the Federal home loan bank.

Let me say, too, that you people in the savings-and-loan industry have made great progress in your examinations. There has been much confusion here today between what an audit is and what an examination is. I know from experience and observation you people do an audit when you make an examination and you do good ones and in addition require an outside audit. You have made great progress in that field. So that I would be in hopes that this study would lead to a better understanding and respect on the part of banking for the savings-and-loan industry and vice versa and that we can work from that and stop going at the past and the competitive aspects but emphasize that each has a real field in our economy and try to stay as near as we can in our own field and get this area of differences lessened and have a respect for each other's large part in the economy.

Mr. ROBERTSON. We agree with you.

Mr. DIXON. We agree with you.

Senator ROBERTSON. The Chair recognizes Mr. Bubb, who wishes to inquire.

Mr. BUBB. Senator Robertson, I just want to say a great big amen to what Mr. Reese has said. One or two other things: To thank you and Mr. Cravens for making it possible.

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I want to correct Mr. McCloy on one thing, and that is his tax formula. It is absolutely no different. I can wear both hats. I have the savings-and-loan hat on now. But there is absolutely no difference between the bank-tax formula and the savings-and-loan formula except the bad-debt reserve. That is all.

The other thing I would like to say is I think we can bring about very easily what Mr. Reese has in mind, what comes out of this committee hearing and the Senators' interest, together with the fact that we have a Home Loan Bank Board of which we can all be very proud—I don't think they care whether the name "bank" is in it or not. We can all come out under your line of reasoning, Mr. Reese. I know we will all be very happy, and I will certainly do my part, for one.

Thank you, Senator.

Senator ROBERTSON. Thank you, gentlemen.

The last agency to be heard from is the Bureau of Federal Credit Unions.

The committee room will be in order, please.

The Chair recognizes Mr. Gannon, Director, Bureau of Federal Credit Unions.

STATEMENT OF J. DEANE GANNON, DIRECTOR, BUREAU OF FEDERAL CREDIT UNIONS, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. GANNON. Thank you, Mr. Chairman, and gentlemen.

I am J. Deane Gannon, Director, Bureau of Federal Credit Unions, Department of Health, Education, and Welfare.

In commenting on the recommendations and the proposals now before this committee, I do so on the basis of my knowledge of the Fedcredit union program and will be happy to present to you my personal ideas.

As pointed out in our letter to the committee of October 4, the specific recommendations made therein have not been coordinated with the viewpoints of other departments and agencies through the Bureau of the Budget, and the Secretary may, after further study, modify or change some of the recommendations made in that letter since he has not had the opportunity to study this matter completely.

Senator ROBERTSON. The Chair will interrupt to say that your letter and your credit recommendations will be printed in the record, and you made it clear that the recommendations had not been cleared by the Bureau but that in due course you would give us such recommendations as you officially are authorized to make.

You may proceed.

(The material referred to follows:)

RECOMMENDATIONS OF THE BUREAU OF FEDERAL CREDIT UNIONS

LETTER OF TRANSMITTAL

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, October 4, 1956.

Hon. A. WILLIS ROBERTSON,
Committee on Banking and Currency,
United States Senate, Washington, D. C.

DEAR SENATOR ROBERTSON: Enclosed for the committee's use in its study of Federal statutes governing financial institutions and credit are the recommenda-

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tions of this Department regarding proposed revisions of the Federal Credit Union Act.

These proposals are designed to remove obsolete provisions from the law and in some instances to add new authority where desirable or needed.

We are continuing to study the law and the various problems arising in the course of its administration. As the result of that study we may subsequently suggest to the Congress other amendments,

We shall be glad to assist your committee in drafting the amendments to effectuate the enclosed suggestions, if you so desire.

Because of the limited time available for preparation of these recommendations, no advice has been obtained from the Bureau of the Budget as to their relationship to the program of the President.

Sincerely yours,

M. B. FOLSOM, *Secretary.*

167. REMOVAL OF OBSOLETE DATA IN SECTION 8

Existing law

'SEC. 8. BYLAWS.—In order to simplify the organization of Federal credit unions the Director shall, on June 26, 1934, cause to be prepared a form of organization certificate and a form of bylaws, consistent with this chapter, which shall be used by Federal credit union incorporators, and shall be supplied to them on request. At the time of presenting the organization certificate the incorporators shall also submit proposed bylaws to the Director for his approval."

Recommendation

Delete "on June 26, 1934" from this section since it is obsolete.

Reason

Standard bylaws and organization certificate should be revised from time to time as deemed necessary.

168. MEMBERSHIP OF SUPERVISORY COMMITTEE

Existing law

"SEC. 11. MANAGEMENT.—(a) GENERALLY.—The business affairs of a Federal credit union shall be managed by a board of not less than five directors, a credit committee of not less than three members, and a supervisory committee of three members (a majority of whom shall not be directors) all to be elected by the members (and from their number) at their annual meeting, and to hold office for such terms, respectively, as the bylaws may provide. A record of the names and addresses of the members of the board and committees and officers shall be filed with the Bureau within ten days after their election. No member of the board or of either committee shall, as such, be compensated."

Recommendation

Prohibit overlap of supervisory committee membership with board of directors or credit committee.

Reason

It is believed that the supervisory committee should be composed of persons who are not involved in or responsible for any operations of the Federal credit union. It can then be more objective in making its audits of the affairs of the organization.

169. CHANGES IN SEC. 11 (b) OF ACT

Existing law

"SEC. 11. (b) OFFICERS.—At their first meeting after the annual meeting of the members, the directors shall elect from their number a president, a vice president, a clerk, and a treasurer, who shall be the executive officers of the corporation and may be compensated for their services to such extent as the bylaws may provide. The offices of clerk and treasurer may be held by the same person. The duties of the officers shall be as determined by the bylaws, except that the treasurer shall be the general manager of the corporation. Before the treasurer shall enter upon his duties he shall give bond with good and sufficient surety, in an amount and character to be determined from time to time by the board of directors in compliance with regulations prescribed, from time to time, by the Director, conditioned upon the faithful performance of his trust."

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Recommendation

(a) Provide for more than one vice president. Change "a vice president" to "one or more vice presidents."

(b) Change name of "clerk" to "secretary."

(c) Provide that among the elected officers the treasurer only may be compensated.

Reason

(a) Some Federal credit unions have requested permission to amend bylaws to provide for more than one vice president. This is justifiable in some cases.

(b) A number of credit union leaders have suggested this change. Secretary is more descriptive of the position and would probably add dignity to the office.

(c) The act prohibits compensation for directors and committeemen. Members of the credit committee and supervisory committee normally must devote as much or more time to their duties than is required of the president, vice president, or clerk. The treasurer is general manager and should be compensated in proportion to the requirements of his duties and the ability of the Federal credit union to pay.

Service on the management staff of Federal credit unions has traditionally been on a voluntary basis without compensation. It is believed that the nonprofit and cooperative nature of Federal credit unions can best be preserved if its officials (other than treasurer) will continue to serve without compensation. If other officers are compensated, it follows that credit committeemen and supervisory committeemen should also be compensated. Such a development would tend to change the motivation for service in these positions and lead to commercialization of the operations.

At present bylaws of all Federal credit unions provide only for compensation of the treasurer. It is suggested that this principle be incorporated in the act itself.

170. Clerical and Auditing Assistance for Supervisory Committee

Existing law

"Sec. 11 (c) Directors.—The board of directors shall meet at least once a month and shall have the general direction and control of the affairs of the corporation. Minutes of all such meetings shall be kept. Among other things they shall act upon applications for membership; require any officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character to be determined from time to time by the board of directors in compliance with regulations prescribed, from time to time, by the Director, and authorize the payment of the premium or premiums therefor from the funds of the Federal credit union; recommend the declaration of dividends; fill vacancies in the board and in the credit committee until successors elected at the next annual meeting have qualified; have charge of investments other than loans to members; determine from time to time the maximum number of shares that may be held by any individual; subject to the limitations of this chapter, determine the interest rates on loans and the maximum amount that may be loaned with or without security to any member and, subject to such regulations as may be issued by the Director, authorize an interest refund to members of record at the close of business on December 31 in proportion to the interest paid by them during that year."

Recommendation

Provision for compensation of necessary clerical and auditing assistance requested by supervisory committee.

The supervisory committee is charged with the responsibility for making internal audits of the affairs of the Federal credit union. The members of the committee serve without compensation. Usually they need clerical or professional auditing assistance to carry out their full responsibilities, but the committee does not have authority to authorize expenditure of funds for such assistance. It is important that the board of directors give full attention and support to the committee's need for assistance.

The Federal Credit Union Act provides for a supervisory committee to perform periodic internal audits of the affairs of the Federal credit union. Up to this time the performance of many such committees has been less than satisfactory. The Bureau of Federal Credit Unions has prepared and is issuing an improved manual for such committees and will endeavor to strengthen their

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performance. If concerted efforts to obtain adequate performance of the internal audit function do not succeed, it may be necessary to suggest a revision of the basic law in this area. The Department does not have any specific proposal of this nature at this time.

171. Maximum Size of Loans, Unsecured Loan Limit, and Loan Office

Existing law

"Sec. 11 (d) Credit committee.—The credit committee shall hold such meetings as the business of the Federal credit union may require and not less frequently than once a month (of which meetings due notice shall be given to members of the committee) to consider applications for loans. No loan shall be made unless approved by a majority of the entire committee and by all the members of the committee who are present at the meeting at which the application is considered. Applications for loans shall be made on forms prepared by such committee, which shall set forth the purpose for which the loan is desired, the security, if any, and such other data as may be required. No loan shall be made to any member which shall cause such member to become indebted to the Federal credit union in the aggregate, upon loans made to such member, in excess of $200 or 10 per centum of the Federal credit union's paid-in unimpaired capital and surplus, whichever is greater, or in excess of $400 unless such excess over $400 is adequately secured. For the purposes of this subdivision an assignment of shares or the endorsement of a note shall be deemed security."

Recommendation

(*a*) Provide specific authority for the Director of the Bureau of Federal Credit Unions to impose, by regulation, maximum loan limits.

(*b*) Increase the unsecured loan limit from $400 to $500.

(*c*) Provide authority for the credit committee to delegate to a loan officer, for whom compensation would be authorized, power to approve loans under specified conditions.

Reasons

(*a*) The 10 percent limit on loans is not realistic for Federal credit unions that have reached considerable size. There has been very little abuse of this situation up to this time but it is desirable to provide clear authority to deal with this area if and when the need may become apparent.

(*b*) The unsecured loan limit has been progressively increased by action of Congress from an initial limit of $50 in the original act to $100 in 1940, $300 in 1946, and $400 in 1949. The experience of Federal credit unions has been very good in making unsecured loans and it is believed logical now to increase the limit to $500. The cost of living has increased substantially since 1949 so that a limit of $500 at this time would not be out of line with a limit of $400 in 1949.

(*c*) The volume of loan applications in some Federal credit unions is rather large and the credit committee (which is not compensated) finds it difficult to give the time needed to render prompt loan service in many emergencies.

172. Section 19 of Act

Existing law

"Sec. 19, Appropriation for administration.—Not to exceed $50,000 of the fund available to the Governor [of the Farm Credit Administration] under section 1404 of this title, for expenses of administration in connection with loans made thereunder to aid in the establishment of agricultural credit corporation, is made available also for administrative expenses in administering this chapter." (June 26, 1934, c. 750, sec. 19, 48 Stat. 1222.)

Recommendation

Delete section 19 of the act and renumber sections 20–22 accordingly.

Reasons

The section is obsolete. It refers only to the initial appropriation of funds for administration of the act.

173. Allotment of Space in Federal Buildings

Existing law

"Sec. 21, Allotment of space in Federal buildings.—Upon application by any credit union organized under State law or by any Federal credit union

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organized in accordance with the terms of this chapter, the membership of which is composed exclusively of Federal employees and members of their families, which application shall be addressed to the officer or agency of the United States charged with the allotment of space in the Federal buildings in the community or district in which said credit union or Federal credit union does business, such officer or agency may in his or its discretion allot space to such credit union if space is available without charge for rent or services." (June 26, 1934, c. 750, sec. 21, as added July 9, 1937, c. 471, 50 Stat. 487.)

Recommendation

That the word "exclusively" be changed to "primarily".

Reasons

Several Federal credit unions organized to serve Federal employees have a few members who are not Federal employees. An example of this is a retired Federal employee who wishes to continue his membership in the Federal credit union after he has retired.

174. ROBBERY OF A FEDERAL CREDIT UNION

Existing law

(*Title 18, sec. 2113, USC*).—"(g) As used in this section the term 'savings and loan association' means any Federal Savings and Loan Association and any 'insured institution' as defined in section 401 of the National Housing Act, as amended."

Recommendation

False entries, forgery, and embezzlement involving Federal credit unions are now Federal offenses. Therefore, it is logical that the crimes covered by section 2113 involving Federal credit unions be specifically provided for.

Reasons

This amendment would be to the advantage of the Bureau of Federal Credit Unions and Federal credit unions as a deterrent to such crimes and would also permit the Federal Bureau of Investigation to assume jurisdiction which is now lacking.

175. CHANGE REFERENCES IN ACT

Recommendation

Change references in the act to the Federal Deposit Insurance Corporation and the Farm Credit Administration to the Bureau of Federal Credit Unions and substitute the Director of that Bureau for the Governor of the Farm Credit Administration. References to the Federal Security Agency and the Federal Security Administrator should also be changed to the Department of Health, Education, and Welfare and the Secretary, respectively.

Reasons

These changes would reflect the transfers of functions effected by reorganization plans and statutes passed since the Federal Credit Union Act was originally enacted.

Mr. GANNON. Thank you, sir.

With respect to the recommendations, Nos. 167, 169 (*a*) and (*b*), and 172, 174, and 175 are substantially technical revisions, and I don't believe I need further comment, unless you have any question.

Senator ROBERTSON. They will be self-explanatory.

Mr. GANNON. Recommendation No. 168 suggests that the supervisory committee be composed of persons who are not involved in or responsible for any operations of the Federal credit union or for the approval of the loans.

The supervisory committee has the responsibility of audit and even has the power of removal of directors and officers.

So, in our belief, it would be advantageous that they be completely divorced from the board of directors or from the credit committee.

We do not believe that this would work any hardship on any members of the board or the credit committee since ordinarily they have enough to keep them quite busy.

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Recommendation 169 suggests that the compensation of elected officials be limited to the position of treasurer.

The credit-union movement has been built in a large degree upon voluntary help and assistance, and in order to preserve this philosophy, we acknowledge that the treasurer who, as the general manager, does have to spend a great deal of time, is entitled to compensation where the earnings of the credit union permit. However, we feel that the other officers, due to the character of the organization, have been and should be willing to continue to serve without compensation.

Recommendation No. 170 identifies the particular power and duty of the board to, among other things, provide for compensation of necessary clerical and auditing assistance which might be requested by the supervisory committee.

Since the supervisory committee operates independently of the board of directors, in order to be effective, they may desire to engage outside clerical or outside auditing help, and there seems to be a little lapse in the power of the directors with respect to the compensation for such assistance. So we believe that this proposal would particularly clarify, that it would not only be within the powers but would be a duty of the board of directors to authorize any compensation for the supervisory committee when that committee requested audit or clerical help.

Recommendation 171 (a) suggests that the present 10-percent limitation on loans may not be realistic for larger credit unions. The Bureau already realizes that many credit unions have self-imposed limits much below those already contained in the statute. We further are aware of the fact that some persons believe that administrative limitations are less desirable than statutory limitations.

This is an area which has not become a problem for the Bureau yet, but we believe that as time goes on and credit unions continue to grow that the present limitations may become more realistic.

Recommendation 171 (b) suggests increasing the unsecured loan limit from 400 to 500.

Our experience with the $400 unsecured loan has been favorable and has not indicated any particular problem. We believe that it could be realistically increased $100 to $500 without adversely affecting the soundness of operation or the operation of the credit union.

Recommendation No. 171 (*c*) introduced somewhat of a new concept which on the surface might be presumed to be something more than was intended. That recommendation is:

Provide authority to the credit committee to delegate to a loan officer from whom compensation would be authorized power to approve loans under specified conditions.

In the credit-union program we believe that the members have two opportunities, one, to use the services of the credit union as a place of regular, systematic thrift, and the other is, of course, to obtain loans when in need thereof.

Some members have been successful in accumulating a few dollars in the credit union and then they have some demand for a loan and rather than make a loan, they would sometimes think about withdrawing from their share account, realizing, of course, when you withdraw your savings, it is more difficult to put back savings than to pay back a loan.

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This provision would authorize a loan officer authority to approve a loan which is fully secured by shares of the member, or where other limitations which the credit committee would impose upon the loan officer.

Now we realize that this is a different concept. The credit union has developed during these years with a credit committee and has been very successful in that method of operation. We further realize some people may consider this a deviation from normal operation.

Recommendation 173 is made simply because of a technicality hinging on the word "exclusive" in the present act. It provides that space may be allocated to credit unions whose membership is composed exclusively of Federal employees.

Well, we have credit unions of Federal employees and then some of these employees retire and continue their savings in the credit union, but they may not normally borrow in excess of those savings.

However, they are no longer technically Federal employees. We have suggested originally changing the word "exclusively" to "primarily." However, we acknowledge our purpose is merely to correct a technical exception and there may be other ways of defining what we wish to accomplish.

I believe I have covered all of the recommendations and I will be happy to answer any questions.

Senator ROBERTSON. Should the Bureau make an annual audit of each credit union?

Mr. GANNON. Senator, we attempt to examine each credit union once a year. Because of the limited examiner personnel, we are not always able to accomplish an annual examination. We have been within recent years able to examine credit unions within, say, 12 to 15 months. Some of them may be examined within 8 months and some of them will go for 15.

Senator ROBERTSON. When you don't make the examination should the credit union be required to make an independent audit?

Mr. GANNON. The present act provides for the supervisory committee, to whom I have previously referred. We have made one suggestion which will permit the supervisory committee to obtain outside auditors if they desire and there may be a proper charge against the expenses of the credit union.

We believe as credit unions grow larger they will need more expert auditing assistance.

Senator ROBERTSON. Should the accounts of credit unions be insured?

Mr. GANNON. I am not in a position to answer that question, Senator. That matter has been discussed at great length, but the Department has no position.

Senator ROBERTSON. Was that recommended in the Economic Report of the President?

Mr. GANNON. Yes, sir, it was recommended that it be considered.

Senator ROBERTSON. What is your position on it?

Mr. GANNON. We have no position, sir.

Senator ROBERTSON. What is the scope of examinations of credit unions?

Mr. GANNON. Our examinations of credit unions, I would say offhand substantially are about the same that the bank examiners apply to banks. It is more or less of a balance sheet examination for the

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purpose of determining whether or not the credit union is operating in accordance with the rules, regulations, and the statute and is solvent.

Senator ROBERTSON. Is there any law or regulation with respect to surety bonds for officers and employees?

Mr. GANNON. Yes, sir. The law provides that there shall be surety bonds on the officers and in an amount as specified by regulation. We, by regulation, have specified minimum amounts of surety bonds.

Senator ROBERTSON. Has there been any loss by reason of bonds not being adequate?

Mr. GANNON. Yes, there have been, Senator.

Senator ROBERTSON. Was the loss substantial?

Mr. GANNON. In a few cases, yes.

Senator ROBERTSON. Who can increase the requirements?

Mr. GANNON. Under the present act, the Director of the Bureau may increase the minimum requirements. The primary responsibility is with the individual boards of directors of the credit union to obtain adequate bond coverage.

Senator ROBERTSON. Do we need any legislation on that subject?

Mr. GANNON. I don't believe we do, sir.

Senator ROBERTSON. Are credit unions required to maintain reserves?

Mr. GANNON. Yes, sir. The act is very specific. Twenty percent of the net income before dividends must be set aside in a reserve for losses. The act further provides authority for the director to require additional reserves, if needed.

Senator ROBERTSON. A bill was introduced in the last Congress to permit credit unions to invest in the shares of other credit unions.

Mr. GANNON. Yes, sir, there was such a bill.

Senator ROBERTSON. What is your position on that in case that proposal should come up again?

Mr. GANNON. I don't believe I could express a position at this time, Senator, because there are many ramifications of that subject. There are two phases of that subject, as I recall. One is to permit credit unions to invest in a regional credit union. The other is in a so-called central credit union.

Senator ROBERTSON. Is there any need to broaden the investment authority of credit unions?

Mr. GANNON. As presently constituted, the investments of credit unions are pretty much limited and there are a few credit unions who apparently have excess capital in relation to the loan demands of their members.

I wouldn't say that there was presently a great need for the investment provisions to be expanded, only in relation to what they might accomplish through that.

Senator ROBERTSON. Is there any need in your Bureau for a counterpart of the home-loan bank to furnish funds for credit unions?

Mr. GANNON. I would not just know how to answer that question, Senator.

Senator ROBERTSON. Mr. Cravens.

Mr. CRAVENS. What is the aggregate total of the credit unions at the present time, roughly?

Mr. GANNON. There are State charters and Federal charters.

Mr. CRAVENS. I mean the aggregate.

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Mr. GANNON. Speaking of Federal, I would say the total assets presently are about $1.5 billion.

Mr. CRAVENS. That is Federal?

Mr. GANNON. Yes, sir. States are somewhat larger.

Mr. CRAVENS. So it is getting to be quite a large operation?

Mr. GANNON. It is large, compared to what it was when we looked at it 20 years ago.

Mr. CRAVENS. What has been the record of failures in credit unions?

Mr. GANNON. The record of failures has been substantially very good. The loss experience as indicated by Federal unions is 0.15 percent of the amount of money loaned. There have been some credit unions, of course, who have had to go out of business because the company in which they participated has moved away and that sort of thing. There have been instances where the credit union just didn't work out to serve the needs.

Mr. CRAVENS. Have there been losses to the depositor or saver?

Mr. GANNON. There have been in some cases; yes, sir. Substantially the return has been greater in liquidations. It has returned more than 100 percent.

Mr. CRAVENS. But there have been some losses?

Mr. GANNON. There have been some losses.

Mr. CRAVENS. Is this getting to a size now that would require the Congress to take a look with an idea of possibly shifting it from the Department of Health, Education, and Welfare to, say, the Comptroller of the Currency who has more examiners, a larger field staff, and so forth?

Mr. GANNON. Well, sir, it is difficult for me to answer that question. I might say, of course, that credit unions have been under the supervision of the Farm Credit Administration and the Federal Deposit Insurance Corporation.

Mr. CRAVENS. Do the associations pay you for your examination?

Mr. GANNON. They pay for supervision and examination. We charge them two fees and we do not request from Congress any appropriation for the operation of the Bureau.

Mr. CRAVENS. The fees pay the cost of the examination?

Mr. GANNON. That is right.

Mr. CRAVENS. They do not pay rent, however; do they?

Mr. GANNON. Do you mean the Federal credit union or the Bureau?

Mr. CRAVENS The Federal credit union.

Mr. GANNON. Well, yes; a good number of them do. A good number of them are in organizations where they have no connection where they can obtain rent free and that sort of thing.

Senator ROBERTSON. Mr. Pratt.

Mr. PRATT. On this proposal to provide that the law shall restrict a member of the Board from being a member of the supervisory committee, at the present time the restriction is in the bylaws; is it not?

Mr. GANNON. No; it is in the law.

Mr. PRATT. Permission is in the law but restriction is in the bylaws at the present time?

Mr. GANNON. The law permits one to be a member; yes, sir.

Mr. PRATT. Aren't we both, the Bureau and the credit union movement concerned about the ways and means of providing a more effective supervisory activity?

Mr. GANNON. That is right.

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Mr. PRATT. There is some thinking that the Treasurer should not be on the supervisory committee but access through a member on the Board might make it more effective.

Would you say that perhaps this is an amendment that is hardly necessary, if in the near future it might be possible that an amendment will be proposed to change the full complexion of the creation of the supervisory committee and obtain performance of a better internal audit?

Mr. GANNON. Yes; I think that is true. We indicate in our proposal we wanted to give further study to the area of the supervisory committee.

I will say, we do not feel having one member of the board of directors has been any problem. However, basically it seems that if the supervisory committee is to audit, it should completely be divorced from the operation.

Mr. PRATT. The reason I say that, in all these other institutions and in business generally, the board of directors, being responsible for the operation of the institution, is directly responsible to see that the accounts are properly examined and audited, which is something that doesn't exist in the credit union, which might have been one of our disadvantages. Therefore this amendment does not do much of anything to help us solve our problem.

Mr. GANNON. That is true.

Mr. PRATT. I would like to ask a question on the proposal to amend the signature limit.

Has or will the Bureau consider the possibility and desirability of raising it above that $500, in view of the fact that over the years the credit unions have developed a very definite knowledge of their membership, their character and integrity and ability to pay, and with the increasing costs of goods and services, whether it be medical or otherwise, that perhaps the $500 is not too realistic?

Mr. GANNON. We have had no indication that there has been any abuse of the unsecured-loan provision. On the other hand, we are fully aware of the good experience in credit unions, as indicated by their loss ratio. I do believe there is some top limit you would want to establish with respect to an unsecured loan. And while we admit that there is nothing magic about $500, that is our present thinking.

Mr. PRATT. In relation to the maximum limit, could you give a good estimate now as to what the average credit-union loan is at the present time, perhaps based on the June or December outstanding balances?

Mr. GANNON. Our December report indicates the average loan to be $384.

Mr. PRATT. Approximately $400.

Mr. GANNON. That is right.

Mr. PRATT. Which would indicate there might be very, very few cases where this 10-percent limitation is any problem.

Mr. GANNON. If I may correct that figure, the average loan outstanding is $394.

Mr. PRATT. We can assume $400.

That would indicate this 10-percent maximum loan limit is possibly not a problem, and therefore it is stabilizing the law, which is perhaps more desirable than, as you said earlier, leaving it with the supervisory authority, because it can be helpful to them, and embarrassing, also.

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Mr. GANNON. We have had no real problem with this 10-percent limitation, but we are becoming more and more aware that it is less realistic than is desirable and could become a problem, and therefore it would be of advantage to have some specific limitation that would be really more realistic.

Mr. PRATT. Has any consideration been given to the advisability of a semiannual dividend because of the penalty suffered by a member who withdraws his account and perhaps has good reason for doing so in the latter part of the year?

Mr. GANNON. The Bureau has considered that matter and we are aware of the fact that some credit unions believe it is desirable, and also we are aware of the fact that many of the State laws do provide that authority.

I don't personally feel it of great moment, but do know there is some incentive to the member to know he will be credited twice a year instead of annually because he might have to withdraw some of his shares during the latter part of the year. However, I don't really feel there is a particular problem with respect to the members.

Mr. PRATT. Within industry there is a feeling that perhaps—to provide for greater stability and to eliminate a desire among minimum groups who might encourage the majority vote at a meeting to change the declaration of dividends—that the declaration should be left instead with the directors. Since they are responsible for the operation and the soundness of the operation, they can supplement their reserve with a retained undivided profit. Has the Bureau any definite views or have they given any consideration to that change as a desirable amendment?

Mr. GANNON. I would say we have given consideration to it. We have not any definite views. We are aware of the fact that the present statute provides the authority for declaration of dividends to be in the hands of the members, and some members might be more interested in a more substantial dividend rate, even in spite of the advice and counsel of the board of directors.

On the other hand, we are also aware of the fact that that same hazard might exist if the authority was with the board of directors.

I think it is just more or less philosophy which is involved in that determination. This is a cooperative enterprise owned by the members. They then have a stake in determining how the dividends shall be determined. I don't believe actually it would make a great deal of difference one way or the other, except as a matter of basic philosophy.

Mr. PRATT. Perhaps you and I could agree that the record might more properly show the feeling of the credit union people in this matter of buying shares in another credit union to eliminate the idea that might be evident of this regional credit account which is completely different or very different from the idea of the central credit union that the Senator talked about, in which officers and directors could be members, from which they could obtain a loan in excess of their shares, where they are now definitely restricted to a loan only to the amount of their personally owned shares, and by letting credit unions put money into this central credit union it would make it possible to better serve the officers and directors with credit problems. I mean basically I think that is what industry is interested

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in rather than a regional system of credit unions which might make it appear that we are trying to get into a banking business.

Mr. GANNON. I believe that is right.

Mr. PRATT. I thought perhaps there might be some misunderstanding on that.

We have this suggestion to make in the interests of fixing the law so you do not have to come back to the Congress again in the future. I notice the other laws provide that it covers Territories and possessions now existing and that might hereafter be created, that it would be advisable to change section 22 to provide for that and then there would not be a need in the future to come to the Congress and ask for another amendment, adding one more Territory or possession or something like that.

Mr. GANNON. I would say that if it is the opinion of the Congress that it should extend the services beyond those presently set out it might be advisable to make that amendment.

Mr. PRATT. For instance, I understood there was a desire in Guam to have a credit union. I understand under the law as it is they could not have a credit union formed.

Mr. GANNON. That is right. The act is quite specific.

Mr. PRATT. Just one other thing. Has or would the Bureau give consideration to providing for the conversion of the Federal into a State and Federal where that provision was permitted under State law?

Mr. GANNON. This matter has been discussed in the Bureau. We have no real feelings on it and, of course, I would have to say that until such time as the matter had been thoroughly explored I wouldn't know what the reaction of the Department would be. It is a type of thing that might be worthy of consideration.

Mr. PRATT. Thank you.

I haven't talked to several members of the subcommittee since lunch time and they may have a question or two between them.

Senator ROBERTSON. Do I understand that concludes the questions?

Mr. CRAVENS. That concludes the questions.

Senator ROBERTSON. We will include in the record a telegram from Mr. Wayne Blackman, Wayzata, Minn.

MANKATO, MINN., *November 8, 1956.*

HON. WILLIS A. ROBERTSON,
United States Senator,
Chairman, Banking and Currency Subcommittee,
Washington, D. C.

DEAR SENATOR: The Minnesota Fair Exchange Committee, representing directly more than 400 nonpar banks in Minnesota, respectfully requests that compulsory par clearance of bank item in cash letters be kept out of the recommendations of the committee and that this matter be left to the determination of the individual States.

MINNESOTA FAIR EXCHANGE COMMITTEE,
WAYNE BLACKMAN, *Chairman,*
Wayzata State Bank, Wayzata, Minn.

Senator ROBERTSON. Mr. Cravens, again in thanking you and the members of our Advisory Committee, for the services they are rendering to me and to the Congress and to the public, I want the record to show no member of this Advisory Committee is being paid any compensation whatever and in addition to that each member is paying his own expenses.

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It may interest some of you to know that in the investigation of the RFC by Chairman Fulbright, one member of this Advisory Committee was employed as an expert at $100 a day and all expenses, and he was worth it. We get the same expert this time on a purely Scotch basis. I do not wish to criticize those congressional committees who employ high-paid staffs, although I have seen some products that I didn't think were worth what they cost. But if we don't come up with something worthwhile they can't say we threw away the taxpayers' money in the effort.

Gentlemen, I thank you very much.

(Thereupon, at 3:40 p. m., the committee recessed to reconvene at the call of the chairman.)

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APPENDIX

OFFICES OF OPERATING BANKS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, JUNE 30, 1956

(Corrected through October 31, 1956)

(Prepared by Federal Deposit Insurance Corporation Division of Research and Statistics)

Alabama

None

Arizona

Trust companies not engaged in deposit banking

Phoenix: Phoenix Title & Trust Co., head office
Yuma: Phoenix Title & Trust Co. (Phoenix), branch
Scottsdale: Phoenix Title & Trust Co. (Phoenix), branch
Tucson: Phoenix Title & Trust Co. (Phoenix), branch

Arkansas

Commercial banks operating under general banking laws

Portland: Portland Bank
Sidney: Bank of Sidney

Commercial banks, cooperative exchanges

Hardy: Hardy Exchange
Wilmar: Wilmar Exchange

Trust companies not engaged in deposit banking

Helena: Guaranty Loan & Trust Co.

California

Commercial banks operating under general banking laws

Trust companies not engaged in deposit banking

Long Beach: Farmers & Merchants Trust Co.
Los Angeles:
  Los Angeles Trust & Safe Deposit Co.
  Security Title Insurance Co., head office
  Title Insurance & Trust Co.
San Bernardino:
  Pioneer Title Insurance & Trust Co.
  Security Title Insurance Co. (Los Angeles), branch
San Diego:
  Security Title Insurance Co. (Los Angeles), branch
  Union Title Insurance & Trust Co.
San Francisco: Western Title Insurance & Guaranty Co.

Colorado

Commercial banks operating under general banking laws

Fairplay: Bank of Fairplay

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Commercial banks, industrial banks

Aurora: The Home Industrial Bank of Aurora
Boulder:
    The Boulder Industrial Bank
    Commonwealth Industrial Bank
Brush: Brush Industrial Bank
Denver:
    The Colorado Industrial Bank of Denver
    Continental Industrial Bank
    Furlong Industrial Bank
    Labor Finance Industrial Bank
    Security Industrial Bank
Durango: Turner Industrial Bank
Englewood: Englewood-Colorado Industrial Bank
Glenwood Springs: Glenwood Industrial Bank
Sterling: Sterling Industrial Bank

CONNECTICUT

Commercial banks operating under general banking laws

Derby: Home Trust Co.
Glastonbury: Glastonbury Bank & Trust Co.
Lakeville: Salisbury Bank & Trust Co.
New London: Union Bank & Trust Co.
Stratford: Stratford Trust Co.

Commercial banks, private banks

Bridgeport: James Staples & Co.
Hartford: Donato Laraia

Commercial banks, industrial banks

Bridgeport: Columbus Industrial Bank
Meriden: Meriden Industrial Bank

Trust companies not engaged in deposit banking

Meriden: Meriden Trust & Safe Deposit Co.

Mutual savings banks

Ansonia: Savings Bank of Ansonia
Branford: Branford Savings Bank
Bridgeport: People's Savings Bank, head office Mechanics & Farmers Savings Bank
Bristol: Bristol Savings Bank, head office
Canaan: Canaan Savings Bank
Chester: Chester Savings Bank
Collinsville: Collinsville Savings Society
Cromwell: Cromwell Savings Bank
Danbury: Union Savings Bank
Danielson: Brooklyn Savings Bank
Deep River: Deep River Savings Bank
Derby: Derby Saving Bank
East Haven: New Haven Savings Bank (New Haven), branch
East Hartford: Society for Savings (Hartford), branch
Fairfield: People's Savings Bank (Bridgeport), branch
Falls Village: Falls Village Savings Bank
Farmington: Farmington Savings Bank, head office
Groton: Groton Savings Bank (Mystic), branch
Guilford: Guilford Savings Bank
Hamden: New Haven Savings Bank (New Haven), branch
    Connecticut Savings Bank (New Haven), branch
Hartford:
    Dime Savings Bank

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Hartford—Continued
- Mechanics Savings Bank, head office and branch
- Society for Savings, head office and two branches
- State Saving Bank

Jewett City: Jewett City Savings Bank
Kensington: Berlin Savings Bank
Litchfield: Litchfield Savings Society, head office
Manchester: Savings Bank of Manchester, head office and branch
Meriden:
- City Savings Bank
- Meriden Savings Banks

Middletown:
- City Savings Bank
- Farmers & Mechanics Savings Bank
- Middletown Savings Bank

Moodus: Moodus Savings Bank
Mystic: Groton Savings Bank, head office
Naugatuck—Naugatuck Savings Bank
New Britain:
- Burritt Mutual Savings Bank
- Peoples Savings Bank
- Savings Bank of New Britain, head office

New Canaan—New Canaan Savings Bank
New Haven:
- Connecticut Savings Bank, head office
- National Savings Bank
- New Haven Savings Bank, head office and two branches

Newington: Savings Bank of New Britain, (New Britain), branch
New London: Savings Bank of New London
New Milford: New Milford Savings Bank
Newtown: Newtown Savings Bank
Norfolk: Norfolk Savings Bank
North Haven: Connecticut Savings Bank (New Haven), branch
Norwalk:
- Fairfield County Savings Bank
- Norwalk Savings Society

Norwich:
- Chelsea Savings Bank
- Dime Savings Bank of Norwich
- Norwich Savings Society, head office

Norwichtown: Norwich Savings Society (Norwich), branch
Plainville: Bristol Savings Bank (Bristol), branch
Putnam: Putnam Savings Bank
Ridgefield: Ridgefield Savings Bank
Rockville:
- People's Savings Bank
- Savings Bank of Rockville

Southington: Southington Savings Bank
South Norwalk: South Norwalk Savings Bank
Southport: People's Savings Bank (Bridgeport), branch
Stafford Springs: Stafford Savings Bank
Stamford:
- Citizens Savings Bank
- Stamford Savings Bank

Stratford: People's Savings Bank (Bridgeport), branch
Suffield: Suffield Savings Bank
Thomaston: Thomaston Savings Bank, head office
Tolland: Savings Bank of Tolland
Unionville: Farmington Savings Bank (Farmington), branch
Wallingford: Dime Savings Bank
Washington Depot: Litchfield Savings Society (Litchfield), branch
Waterbury: Waterbury Savings Bank
Watertown: Thomaston Savings Bank (Thomaston), branch
West Hartford: Society for Savings (Hartford), branch
West Haven:
- Connecticut Savings Bank (New Haven), branch
- New Haven Savings Bank (New Haven), branch

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Willimantic: Willimantic Savings Institute
Winsted:
Mechanics Savings Bank
Winsted Savings Bank
Woodbury: Woodbury Savings Bank

DELAWARE

Commercial banks operating under general banking laws

Wilmington: Colonial Trust Co., head office and two branches

Mutual savings banks

Wilmington: Wilmington Savings Fund Society, head office and branch

DISTRICT OF COLUMBIA

None

FLORIDA

Commercial banks operating under general banking laws

Quincy: Quincy State Bank

Commercial banks, industrial banks

Pensacola: Pensacola Loan & Savings Bank

Trust companies not engaged in deposit banking

Jacksonville: Title & Trust Company of Florida
Miami: Security Trust Co.
Orlando: Central Title & Trust Co.

GEORGIA

Commercial banks operating under general banking laws

Ailey: Montgomery County Bank
Atlanta: Southern Savings Bank
Fayetteville: Farmers & Merchants Bank
Gibson: Bank of Gibson
Sharon: Bank of Sharon

Commercial banks, private banks

Abbeville: Dorsey Banking Co.
Barwick: Citizens Banking Co.
Baxley: Peoples Bank
Blythe: Farmers Banking Co.
Boston: Jarrett Bank
Broxton: Citizens Bank
Cadwell: Farmers Clearing Bank
Carnesville: Citizens Exchange Bank
Chester: Bank of Chester
Cobbtown: Brown Bank
Culloden: Holes Banking Co.
Dexter: Knight-Hogan Banking Co.
Douglas:
Commercial Bank
Exchange Bank
Dublin: The Morris Bank
Edison: Hammack-Rish Bank
Folkston: Peoples Banking Co.
Fitzgerald: Peoples Bank
Hampton: Bank of Hampton
Haralson: The Citizens Bank, head office
Hiensville: The Coastal Bank
Hogansville: Citizens Bank

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Jeffersonville: People's Cash Depository
Kingsland: Citizens Bank
Lake Park: Exchange Bank
Leary: Jordan Banking Co.
Macon: Luther Williams' Son
McRae: Security Bank
Morven: Morven Mutual Exchange Bank
Ocilla: Citizens Bank
Omega: Citizens Service Bank
Pavo: Greene Banking Co.
Pearson: Corbett Bank
Portal: Farmers & Merchants Bank
Preston: Bulloch Exchange Bank
Ray City: Bank of Ray City
St. Marys: Peoples Bank
Smithville: Farmers & Merchants Bank
Sparks: Citizens Banking Co.
Sparta: Stewart & Pound Bank
Stockbridge: Citizens Bank
Swainsboro: Spivey Banking Co.
Statenville: Private Bank of Statenville
Tallapoosa: Commercial Bank
Tyrone: Redwine Bros., Bankers
Uvalda: Brogden Bros., Bankers
Valdosta:
  Industrial Banking Co.
  Commercial Bank of Valdosta
  Park Avenue Bank
Vidalia: Brice Banking Co.
Whigham: Whigham Banking Co.
Wrens: Thompson Banking Co.

Commercial banks, saving-and-loan companies

Savannah: Southern Savings & Loan Co.

Commercial banks, industrial banks

Savannah: Morris Plan Co.

Idaho

None

Illinois

Commercial banks operating under general banking laws

East Alton: Illinois State Bank of East Alton
Texico: Texico State Bank
Whittington: State Bank of Whittington

Trust companies not engaged in deposit banking

Chicago: Chicago Title & Trust Co.
Decatur: Millikin Trust Co.
East St. Louis: Illinois State Trust Co.

Indiana

Commercial banks operating under general banking laws

Austin: Austin State Bank
Yorktown: Yorktown State Bank

Commercial banks, private banks

Hamilton: Hamilton Bank
Newport: R. H. Nixon & Co. Bank
Russellville: Russellville Bank
Wakarusa: Citizens Bank

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Trust companies not engaged in deposit banking

Crown Point: Lake County Trust Co.

Mutual savings banks

Terre Haute: Terre Haute Savings Bank

IOWA

Commercial banks operating under general banking laws

Archer: State Bank of Archer
Beaman: Farmers Savings Bank
Cherokee: Steele State Bank
Climbing Hill: Climbing Hill Savings Bank, head office
Cresco:
  Cresco State Bank
  Cresco Union Savings Bank
Cylinder: Cylinder State Bank
Delhi: Delhi Savings Bank
Earlville: State Bank of Earlville
Emmetsburg: Iowa Trust and Savings Bank
Estherville: Emmet County State Bank, head office
Fosteria: Farmers Savings Bank
Fredericksburg: First State Bank
Frederika: Farmers Savings Bank
Graettinger: Graettinger State Bank
Greene Mountain: Producers Savings Bank
Halbur: Farmers Savings Bank
Hamburg: Iowa State Bank
Keystone: Keystone Savings Bank
Lime Springs: Exchange State Bank
Lytton: Lytton Savings Bank
Marathon: Citizens State Bank
Marengo: Iowa County Savings Bank
Marshalltown: Fidelity Savings Bank
Onslow: Onslow Savings Bank
Oran: Oran Savings Bank
Oto: Climbing Hill Savings Bank (Climbing Hill), branch
Radcliffe: Security State Bank
Ricketts: Farmers Savings Bank
Ridgeway: Farmers State Bank
Ringsted: Emmet County State Bank (Estherville), branch
Rock Falls: Farmers Savings Bank
Sergeant Bluff: Pioneer Valley Savings Bank
Sioux City: Morningside State Bank
Smithland: Sioux Valley Savings Bank
Van Horne: Van Horne Savings Bank
Watkins: Watkins Savings Bank
Westgate: State Savings Bank

Commercial banks, private banks

Adair: Exchange Bank
Bloomfield: Exchange Bank
Brooks: Bank of Brooks
Galt: Bank of Galt
Greenfield: Adair County Bank
Kingsley: Oltmann and Phelps Bank
Lanyon: Bank of Lanyon
Lone Rock: Lone Rock Bank
Lucas: Farmers and Miners Bank

Trust companies not engaged in deposit banking

Sioux City: Farmers Loan & Trust Co.

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KANSAS

Commercial banks operating under general banking laws

Abilene: United Trust Co.
Aliceville: Farmers State Bank
Alta Vista: Alta Vista State Bank
Argonia: Farmers & Merchants State Bank of Argonia
Arlington: Citizens State Bank
Arnold: Arnold State Bank
Asherville: Farmers State Bank
Bucklin: Farmers State Bank
Cawker City: Farmers & Merchants State Bank
Coats: Coats State Bank
Corning: Farmers State Bank
Dunlap: Guaranty State Bank
Eskridge:
  Eskridge State Bank
  Security State Bank
Freeport: Freeport State Bank
Geneseo: Citizens State Bank
Glen Elder: Traders State Bank
Grainfield: Citizens State Bank
Greeley: Bank of Greeley
Hanston: Hanston State Bank
Hazelton: Farmers State Bank
Hoyt: Hoyt State Bank
Irving: Irving State Bank
Isabel: Isabel State Bank
Leavenworth: Manufacturers State Bank
Leon: State Bank of Leon
Leonardville: Leonardville State Bank [1]
Macksville: Farmers & Merchants State Bank
Maplehill: Stockgrowers State Bank
Marquette: Farmers State Bank
McCracken: Citizens State Bank
Modoc: Modoc State Bank
Parker: Parker State Bank
Peabody: Peabody State Bank
Peru: Peru State Bank
Piqua: Piqua State Bank
Plains: Plains State Bank
  Citizens State Bank
  State Bank of Randolph
Raymond: Raymond State Bank
Roxbury: Roxbury State Bank
Russell:
  Home State Bank
  Russell State Bank
Selden: Farmers State Bank
Sharon: Sharon Valley State Bank
Simpson: Simpson State Bank
Tipton: Tipton State Bank
Tonganoxie: Tonganoxie State Bank
Utica: Citizens State Bank [1]
Walton: Walton State Bank
Wamego: Kaw Valley State & Savings Bank
Wellsville: Wellsville Bank
Windom: Windom State Bank
Woodston: Rooks County State Bank

[1] Admitted to insurance November 1, 1956.

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KENTUCKY

Commercial banks operating under general banking laws

Cave City: H. Y. Davis State Bank
Chaplin: Peoples State Bank
Ewing: Ewing Deposit Bank
Farmington: Bank of Farmington
Hiseville: Hiseville Deposit Bank
Island: Island Deposit Bank
Lowes: Bank of Lowes
Mayfield: Exchange Bank
Mays Lick: Bank of Mays Lick
Owingsville: Farmers Bank
Sebree: Sebree Deposit Bank
Water Valley: Citizens Bank
Waverly: Bank of Waverly
Wingo: Bank of Wingo

LOUISIANA

Commercial bank operating under general banking laws

Oak Ridge: Bank of Oak Ridge

MAINE

Commercial banks operating under general banking laws

Bangor: Eastern Trust & Banking Co., head office and three branches
Bath: Bath Trust Co.
East Millinocket: Millinocket Trust Co. (Millinocket), branch
Greenville: Guilford Trust Co. (Guilford), branch
Guilford: Guilford Trust Co., head office
Machias: Eastern Trust & Banking Co. (Bangor), branch
Millinocket: Millinocket Trust Co., head office
Old Town: Eastern Trust & Banking Co. (Bangor), branch
Phillips: Rangeley Trust Co., head office
Rangeley: Rangeley Trust Co., head office
Westbrook: Westbrook Trust Co., head office and branch

Commercial banks: industrial banks

Lewiston: First Industrial Bank of Maine (Portland), branch
Portland: First Industrial Bank of Maine, head office

Mutual savings banks

Auburn: Auburn Savings Bank
Augusta: Kennebec Savings Bank
Bangor:
  Bangor Savings Bank
  Penobscot Savings Bank
Bath: Bath Savings Institution
Bethel: Bethel Savings Bank
Biddeford:
  Biddeford Savings Bank
  York County Savings Bank
Brewer: Brewer Savings Bank
Dover-Foxcroft: Piscataquis Savings Bank
Farmington: Franklin County Savings Bank
Gardiner: Gardiner Savings Institution
Gorham: Gorham Savings Bank
Kingfield: Kingfield Savings Bank
Lewiston:
  Androscoggin County Savings Bank
  Peoples Savings Bank
Machias: Machias Savings Bank

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Old Orchard Beach: Saco and Biddeford Savings Institution (Saco), branch
Portland:
    Maine Savings Bank, head office
    Portland Savings Bank
Saco: Saco and Biddeford Savings Institution, head office
South Portland: Maine Savings Bank (Portland), branch
Skowhegan: Skowhegan Savings Bank
Waterville: Waterville Savings Bank

MARYLAND

Commercial banks operating under general banking laws

Baltimore: Mercantile Safe Deposit & Trust Co., head office and two branches

Mutual savings banks

Sandy Spring: Savings Institution of Sandy Spring

MASSACHUSETTS

Commercial banks operating under general banking laws

Athol: Athol Bank & Trust Co.
Boston:
    Boston Safe Deposit & Trust Co.
    Day Trust Co.
    Fiduciary Trust Co.
Lynn: Lynn Safe Deposit & Trust Co.

Commercial banks, private banks

Boston: Brown Bros. Harriman & Co. (New York), branch

Commercial banks, industrial banks

Haverhill: Haverhill Morris Plan Banking Co., head office
Lawrence: Lawrence Morris Plan Banking Co.
Newburyport: Haverhill Morris Plan Banking Co. (Haverhill), branch

Mutual savings banks

Abington: Abington Savings Bank
Adams: South Adams Savings Bank
Amesbury: Provident Institution for Savings in the Towns of Salisbury and Amesbury
Amherst: Amherst Savings Bank
Andover: Andover Savings Bank, head office
Arlington: Arlington Five Cents Savings Bank, head office and two branches
Athol: Athol Savings Bank
Attleboro: Attleborough Savings Bank (North Attleboro), branch
Ayer: North Middlesex Savings Bank
Barre: Barre Savings Bank
Bedford: Arling Five Cents Savings Bank (Arlington), branch
Belchertown: Ludlow Savings Bank (Ludlow), branch
Belmont: Belmont Savings Bank, head office and branch
Beverly: Beverly Savings Bank, head office and branch
Boston:
    Boston Five Cents Savings Bank, head office and three branches
    Boston Penny Savings Bank, head office and branch
    Brighton Five Cents Savings Bank, head office and branch
    Charlestown Savings Bank, head office and two branches
    Dorchester Savings Bank, head office and two branches
    East Boston Savings Bank
    Eliot Savings Bank
    Franklin Savings Bank of the City of Boston, head office and two branches
    Grove Hall Savings Bank, head office and branch
    Hibernia Savings Bank

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Home Savings Bank
Hyde Park Savings Bank
Institution for Savings in Roxbury, head office and branch
Lincoln Savings Bank
Massachusetts Savings Bank
The Provident Institution for Savings in the Town of Boston, head office and branch
South Boston Savings Bank
Suffolk Savings Bank for Seamen and Others, head office and two branches
Union Savings Bank of Boston, head office and branch
Warren Institution for Savings, head office and two branches
Wildey Savings Bank

Bridgewater: Bridgewater Savings Bank, head office

Brockton:
Brockton Savings Bank, head office and branch
People's Savings Bank

Brookline: Brookline Savings Bank, head office and two branches

Cambridge:
Cambridge Savings Bank
Cambridgeport Savings Bank
East Cambridge Savings Bank
North Avenue Savings Bank

Canton: Canton Institution for Savings
Chelmsford: Lowell Five Cents Savings Bank (Lowell), branch

Chelsea:
Chelsea Savings Bank, head office
County Savings Bank

Chicopee: Chicopee Savings Bank, head office and branch
Chicopee Falls: Chicopee Falls Savings Bank
Clinton: Clinton Savings Bank
Cohasset: Cohasset Savings Bank
Concord: Middlesex Institution for Savings
Conway: Conway Savings Bank
Danvers: Danvers Savings Bank
Dedham: Dedham Institution for Savings, head office
Duxbury: Plymouth Five Cents Savings Bank (Plymouth), branch
East Bridgewater: East Bridgewater Savings Bank
East Douglas: Uxbridge Savings Bank (Uxbridge), branch
Easthampton: Easthampton Savings Bank
East Weymouth: East Weymouth Savings Bank
Edgartown: Dukes County Savings Bank
Everett: Everett Savings Bank
Fairhaven: Fairhaven Institution for Savings

Fall River:
Citizens Savings Bank
Fall River Five Cents Savings Bank
Fall River Savings Bank
Union Savings Bank

Falmouth: Wareham Savings Bank (Wareham), branch

Fitchburg:
Fitchburg Savings Bank
Worcester North Savings Institution

Foxboro: Foxborough Savings Bank
Framingham: Farmers & Mechanics Savings Bank
Franklin: Benjamin Franklin Savings Bank
Gardner: Gardner Savings Bank
Georgetown: Georgetown Savings Bank
Gilbertville: Ware Savings Bank (Ware), branch
Gloucester: Cape Ann Savings Bank
Grafton: Grafton Savings Bank
Great Barrington: Great Barrington Savings Bank

Greenfield:
Franklin Savings Institution
Greenfield Savings Bank

Harwich Port: Cape Cod Five Cents Savings Bank, head office

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Haverhill:
  Pentucket Five Cents Savings Bank, head office and branch
  Haverhill Savings Bank, head office
Haydenville: Haydenville Savings Bank
Hingham: Hingham Institution for Savings
Holliston: Holliston Savings Bank
Holyoke:
  Holyoke Savings Bank
  Mechanics Savings Bank, head office
  Peoples Savings Bank
Hopkinton: Hopkinton Savings Bank
Hudson: Hudson Savings Bank
Hyannis: Bass River Savings Bank (South Yarmouth), branch
Ipswich: Ipswich Savings Bank
Lawrence:
  Broadway Savings Bank
  Community Savings Bank
  Essex Savings Bank
  Lawrence Savings Bank
Lee: Lee Savings Bank
Leicester: Leicester Savings Bank
Lenox: Lenox Savings Bank
Leominster: Leominster Savings Banks
Lexington: Lexingthon Savings Bank
Lowell:
  Central Savings Bank
  City Institution for Savings
  Lowell Five Cent Savings Bank, head office
  Lowell Institution for Savings, head office and branch
  Merrimack River Savings Bank in Lowell
  Washington Savings Bank
Ludlow: Ludlow Savings Bank, head office
Lynn:
  Lynn Five Cents Savings Bank, head office
  Lynn Institution for Savings
Malden: Malden Savings Bank, head office and branch
Marblehead: Marblehead Savings Bank
Marlboro: Marlborough Savings Bank
Maynard: Assabet Institution for Savings
Medford: Medford Savings Bank, head office and branch
Medway: Medway Savings Bank
Melrose: Melrose Savings Bank
Methuen: Andover Savings Bank (Andover), branch
Merrimac: Merrimac Savings Bank
Middleboro: Middleborough Savings Bank
Milford: Milford Savings Bank
Millbury: Millbury Savings Bank
Milton: Milton Savings Bank, head office and branch
Monson: Monson Savings Bank
Nantucket: Nantucket Institution for Savings
Natick: Natick Five Cents Savings Bank
Needham: Newton Savings Bank (Newton), branch
New Bedford:
  New Bedford Five Cents Savings Bank
  New Bedford Institution for Savings, head office and three branches
Newburyport:
  Institution for Savings in Newburyport and its vicinity
  Newburyport Five Cents Savings Bank
Newton: Newton Savings Bank, head office and branch
Newton Center: Newton Center Savings Bank
Newton Highlands: Newton Savings Bank (Newton), branch
North Adams:
  Hoosac Savings Bank
  North Adams Savings Bank
Northampton:
  Florence Savings Bank
  Nonotuck Savings Bank

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Northampton Institution for Savings
North Andover: Andover Savings Bank (Andover), branch
North Attleboro: Attleborough Savings Bank, head office
North Brookfield: North Brookfield Savings Bank
North Easton: North Easton Savings Bank
Norwell: South Scituate Savings Bank
Norwood: Union Savings Bank of Boston (Boston), branch
Orange: Orange Savings Bank
Orleans: Cape Cod Five Cents Savings Bank (Harwich Port), branch
Palmer: Palmer Savings Bank
Peabody: Warren Five Cents Savings Bank
Pittsfield:
Berkshire County Savings Bank
City Savings Bank of Pittsfield
Plymouth:
Plymouth Five Cents Savings Bank, head office
Plymouth Savings Bank
Provincetown: Seamens Savings Bank
Quincy: Quincy Savings Bank, head office and branch
Randolph: Randolph Savings Bank, head office
Reading: Mechanics Savings Bank, head office
Revere: Chelsea Savings Bank (Chelsea), branch
Rockland: Rockland Savings Bank
Rockport: Granite Savings Bank
Salem:
Salem Five Cents Savings Bank
Salem Savings Bank
Shelburne Falls: Shelburne Falls Savings Bank
Somerville:
Somerset Savings Bank, head office and one branch
Somerville Savings Bank
South Braintree: Braintree Savings Bank
Southbridge: Southbridge Savings Bank
South Hadley Falls: Mechanics Savings Bank (Holyoke), branch
South Weymouth: South Weymouth Savings Bank
Southwick: Woronoco Savings Bank (Westfield), branch
South Yarmouth: Bass River Savings Bank, head office
Spencer: Spencer Savings Bank
Springfield:
Hampden Savings Bank
Springfield Five Cents Savings Bank, head office and branch
Springfield Institution for Savings, head office and two branches
Stoneham: Stoneham Savings Bank
Stoughton: Randolph Savings Bank (Randolph), branch
Swampscott: Lynn Five Cents Savings Bank (Lynn), branch
Taunton:
Bristol County Savings Bank
Taunton Savings Bank
Topsfield: Haverhill Savings Bank (Haverhill), branch
Turners Falls: Crocker Institution for Savings
Uxbridge: Uxbridge Savings Bank, head office
Wakefield: Wakefield Savings Bank
Waltham: Waltham Savings Bank
Ware: Ware Savings Bank, head office
Wareham: Wareham Savings Bank, head office
Warren: Warren Savings Bank
Watertown: Watertown Savings Bank
Wayland: West Newton Savings Bank (West Newton), branch
Webster: Webster Five Cents Savings Bank
Wellesley: Newton Savings Bank (Newton), branch
Wellfleet: Wellfleet Savings Bank
Westboro: Westborough Savings Bank
West Bridgewater: Bridgewater Savings Bank (Bridgewater), branch
Westfield:
Westfield Savings Bank, head office.
Woronoco Savings Bank, head office

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West Newton: West Newton Savings Bank (Westfield), branch
West Springfield: Westfield Savings Bank (Westfield), branch
Westwood: Dedham Institution for Savings (Dedham), branch
Weymouth: Weymouth Savings Bank
Whitinsville: Whitinsville Savings Bank
Whitman: Whitman Savings Bank
Wilbraham: Ludlow Savings Bank (Ludlow), branch
Williamstown: Williamstown Savings Bank
Wilmington: Mechanics Savings Bank (Reading), branch
Winchendon: Winchendon Savings Bank
Winchester: Winchester Savings Bank
Winthrop: Winthrop Savings Bank
Woburn: Woburn Five Cents Savings Bank
Worcester:
    Bay State Savings Bank
    People's Savings Bank
    Worcester Five Cents Savings Bank
    Worcester Mechanics Savings Bank, head office and branch

Michigan

Commercial banks operating under general banking laws

Detroit: Merchants Bank of Detroit

Commercial banks, private banks

Clayton: Exchange Bank of Clayton, W. W. Cooke & Co.

Trust companies not engaged in deposit banking

Ann Arbor: Ann Arbor Trust Co.
Bay City: Bay Trust Co.
Grand Rapids: Michigan Trust Co.
Lansing: Central Trust Co.
Muskegon: Muskegon Trust Co.

Minnesota

Commercial banks operating under general banking laws

Cologne: State Bank of Cologne
Elrosa: Elrosa State Bank
Marietta: State Bank of Marietta
Medford: First State Bank
Roscoe: First State Bank
St. Paul: First Trust Company of St. Paul
Victoria: Victoria State Bank
Wanamingo: Security State Bank
Young America: State Bank of Young America

Trust companies not engaged in deposit banking

Albert Lea: Minnesota Trust Company of Albert Lea

Mississippi

Commercial banks operating under general banking laws

New Albany:
    Bank of Commerce
    Bank of New Albany
Potts Camp: Potts Camp State Bank

Missouri

Commercial banks operating under general banking laws

Amoret: Bank of Amoret
Amsterdam: Citizens Bank, Amsterdam, Mo.

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Antonia: Farmers Bank of Antonia (post office, Imperial, Mo.)
Bay: State Bank of Bay
Belle: Belle State Bank
Braggadocio: Farmers Bank
Bynumville: Bank of Bynumville
Diamond: Diamond Bank
Farley: Farley State Bank
Fortescue: Citizens Bank of Fortescue
Hillsboro: Jefferson Trust Co.
Kansas City: Savings Bank of Kansas City
Mindenmines: Bank of Minden
Plato: Bank of Plato
Puxico: Puxico State Bank
Riverside: Bank of Riverside
Seligman: Bank of Seligman
Valley Park: Meramec Valley Bank

Trust companies not engaged in deposit banking[3]

Clayton: Guaranty Trust Company of Missouri
St. Joseph:
  Missouri Valley Trust Co.
  The First Trust Co.[3]
St. Louis: St. Louis Union Trust Co.

Montana

Trust companies not engaged in deposit banking

Helena: First Trust Company of Montana

Nebraska

Commercial banks operating under general banking laws

Big Springs: Farmers State Bank
Boelus: Boelus State Bank
Bruning: Bruning State Bank
Carleton: Citizens State Bank
Cedar Rapids: Cedar Rapids State Bank
Clay Center: Commercial State Bank
Cook: Farmers Bank of Cook
Dannebrog: State Bank of Dannebrog
Davenport: Jennings State Bank
Deshler: Nebraska Security Bank
Edgar: Security State Bank
Elk Creek: State Bank of Elk Creek
Fairfield: The Fairfield State Bank
Fairmont: Farmers State Bank
Geneva: Geneva State Bank
Gresham: Gresham State Bank
Homer: American State Bank
Hubbell: Hubbell Bank
Ithaca: Farmers State Bank
Leshara: Leshara State Bank
Lindsay: Bank of Lindsay
Madrid: Security State Bank
McCool Junction: Blue River Bank
Oak: Scroggin & Co. Bank
Omaha: First West Side Bank
Palmer: State Bank
Panama: Bank of Panama
Pickrell: Pickrell State Bank
Prairie Home: Farmers Bank

[3] Noninsured member FRS.

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Shickley: Shickley State Bank
Sutherland: First Security Bank
Virginia: Citizens State Bank
Yutan: Bank of Yutan

Trust companies not engaged in deposit banking

Grand Island:
    Grand Island Trust Co.
    Nebraska Loan & Trust Co.
Kearney: Guaranty Trust Co.
Lincoln: First Trust Co.
Norfolk: Durland Trust Co.
York: First Trust Co.

NEVADA

None

NEW HAMPSHIRE

Commercial banks operating under general banking laws

Colebrook: Colebrook Guaranty Savings Bank
Concord: Union Trust Co.
Exeter: Exeter Banking Co.
Lancaster: Siwooganock Guaranty Savings Bank
Lisbon: Lisbon Savings Bank & Trust Co.
Manchester:
    Amoskeag Trust Co.
    Manchester Trust Co.
Penacook: Valley Trust Co.
Plymouth: Plymouth Guaranty Savings Bank
Suncook: Suncook Bank
Whitefield: Whitefield Savings Bank & Trust Co.
Woodsville: Woodsville Guaranty Savings Bank

Commercial banks operating under special code or charter

Manchester: St. Mary's Bank

Mutual savings banks

Bristol: Bristol Savings Bank
Claremont: Claremont Savings Bank
Concord:
    Loan & Trust Savings Bank
    Merrimack County Savings Bank
Dover: Merchants Savings Bank
East Jaffrey: Monadnock Savings Bank
Franklin: Franklin Savings Bank
Gorham: Gorham Savings Bank
Greenville: Mason Village Savings Bank
Hanover: Dartmouth Savings Bank
Keene:
    Cheshire County Savings Bank
    Keene Savings Bank
Laconia: Laconia Savings Bank
Lebanon: Mascoma Savings Bank
Littleton: Littleton Savings Bank
Manchester: Mechanics Savings Bank
Newport:
    Newport Savings Bank
    Sugar River Savings Bank
Peterborough: Peterborough Savings Bank
Pittsfield: Pittsfield Savings Bank
Somersworth: Somersworth Savings Bank
Walpole: Savings Bank of Walpole

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NEW JERSEY

Trust companies not engaged in deposit banking

Hoboken: Home Trust Co.
Jersey City:
  Bessemer Trust Co.
  Corporation Trust Co.

NEW MEXICO

None

NEW YORK

Commercial banks operating under general banking laws

New York:
  Bronx: Macy's Bank (New York, Manhattan), branch
  Brooklyn: Macy's Bank (New York, Manhattan), branch
  Manhattan:
    Belgian-American Bank & Trust Co., head office and branch
    Fiduciary Trust Company of New York
    Macy's Bank, head office
    Savings Banks Trust Co.
    The Bank of Tokyo Trust Co.
  Jamaica: Macy's Bank (New York, Manhattan), branch

Commercial banks, private banks

New York:
  Manhattan:
    Brown Bros., Harriman & Co., head office (out-of-State branches)
    Laidlaw & Co.

Trust companies not engaged in deposit banking

New York:
  Manhattan:
    Bank of Montreal Trust Co.
    The Canadian Bank of Commerce Trust Co.
    Corporation Trust Co.
    The Royal Bank of Canada Trust Co.

NORTH CAROLINA

Commercial banks operating under general banking laws

Albemarle: Cabarrus Bank & Trust Co. (Concord), branch
Concord: Cabarrus Bank & Trust Co., head office and branch
Kannapolis: Cabarrus Bank & Trust Co. (Concord), branch

NORTH DAKOTA

Commercial banks operating under general banking laws

Hazelton: Bank of Hazelton
Heaton: Farmers State Bank
Minto: Bank of Minto
Towner: Pioneer State Bank

Commercial banks, State owned and operated banks

Bismarck: Bank of North of North Dakota

OHIO

Commercial banks operating under general banking laws

Baltic: Baltic State Bank
Mechanicsburg: Farmers Bank

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Oklahoma

Commercial banks operating under general banking laws

Boley: Farmers State Bank
Canute: First State Bank
Carney: Carney State Bank at Carney
Elmore City: First State Bank
Renfrow: Bank of Renfrow
Spencer: Spencer State Bank
Union: Bank of Union

Trust companies not engaged in deposit banking

Newkirk: Albright Title & Trust Co.

Oregon

Commercial banks, branches of foreign banks

Portland: Canadian Bank of Commerce (branch of Toronto)

Trust companies not engaged in deposit banking

Salem: Pioneer Trust Co.

Pennsylvania

Commercial banks operating under general banking laws

Kersey: Farmers & Merchants Bank (St. Marys), branch
Philadelphia:
  Finance Company of Pennsylvania
  Pennsylvania Warehousing & Safe Deposit Co.
St. Marys: Farmers & Merchants Bank (St. Marys), head office
Smithfield: Smithfield State Bank

Commercial banks: private banks

Beaver Falls: John T. Reeves & Co., bankers
Blain: Bank of Landisburg (Landisburg), branch
Landisburg—Bank of Landisburg, head office
Leechburg: Favero Private Bank
Philadelphia:
  Brown Bros., Harriman & Co. (New York), branch
  Marian Bank
Reading: Tobias Knoblauch

Commercial banks: employees' mutual banking associations

Philadelphia:
  Pennsylvania Railroad Employees Mutual Provident & Loan Association
  United Savings & Beneficial Association

Trust companies not engaged in deposit banking

Hershey: Hershey Trust Co.
Philadelphia: The Glenmede Trust Co.
Wilkinsburg: Wilkinsburg Real Estate & Trust Co.

Rhode Island

Commercial banks operating under general banking laws

Hope Valley: Washington Trust Co. (Westerly), branch
Westerly: Washington Trust Co., head office

Trust companies not engaged in deposit banking

Pawtucket: Pawtucket Safe Deposit & Trust Co.

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Mutual savings banks

Newport: Savings Bank of Newport
West Warwick: Centreville Savings Bank

SOUTH CAROLINA

Commercial banks operating under general banking laws

Salley: Bank of Salley
Walhalla: Bank of Walhalla

Commercial banks: cash depositories

Branchville: Branchville Depository
Clio: Clio Depository
Georgetown: Georgetown Cash Depository
Jackson: Jackson Cash Depository
McColl: McColl Cash Depository
St. Stephen: Allen's Depository, Inc.
Swansea: Swansea Depository

SOUTH DAKOTA

None

TENNESSEE

Commercial banks operating under general banking laws

Brownsville: Brownsville Bank
Dukedom: Dukedom Bank
Gassaway: Melton's Bank
Stayton: Stayton Bank & Trust Co.

Trust companies not engaged in deposit banking

Clarksville: Southern Trust Co.
Knoxville: Fidelity-Bankers Trust Co.
Springfield: First Trust Co.

TEXAS

Commercial banks operating under general banking laws

Boerne: Boerne State Bank
Brazoria: First State Bank
Carmine: Carmine State Bank
Comfort: Comfort State Bank
Coupland: Coupland State Bank
Elkhart: Elkhart State Bank
Elysian Fields: Security State Bank
Flatonia: Flatonia State Bank
Mobeetie: First State Bank
Paint Rock: First State Bank
Powell: Powell State Bank
Round Top: Round Top State Bank
Schulenburg: Farmers State Bank
Smiley: Smiley State Bank

Commercial banks, private banks

Benavides: Merchants Exchange Bank, Uninc.
Chico: First Bank of Chico
Chilton: Chilton Citizens Bank
Cibolo: Cibolo Bank, Uninc.
Fort Worth: Fraternal Bank & Trust Co.
Galveston: W. L. Moody & Co.
Kerrville: Charles Schreiner Bank
Leroy: Leroy Bank
Mason: Commercial Bank
Priddy: Farmers & Merchants Bank

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San Antonio: D. & A. Oppenheimer
Taft: Taft Bank, Uninc.
Wingate: Security Bank, Uninc.
Winnsboro: Cain Banking Co., Uninc.
Zapata: Bank of Zapata

Commercial banks, savings-and-loan companies

Hillsboro: Colonial Trust Co.
San Antonio: San Antonio Loan & Trust Co.

Commercial banks, industrial banks

Dallas: Commercial Credit Plan Industrial Bank, Inc., of Dallas

UTAH

Commercial banks operating under general banking laws

Midvale: Continental Bank of Midvale

VERMONT

Trust companies not engaged in deposit banking

Burlington: Farmers Trust Co.

VIRGINIA

None

WASHINGTON

Commercial banks operating under general banking laws

Colton: Security State Bank
Latah: Bank of Latah

Commercial banks, branches of foreign banks

Seattle: Canadian Bank of Commerce (branch of Toronto)

WEST VIRGINIA

Commercial banks operating under general banking laws

Bridgeport: Bridgeport Bank
Matoaka: Bank of Matoaka
Weston: Citizens Bank
Widen: Bank of Widen

WISCONSIN

Commercial banks operating under general banking laws

Abbottsford: Security State Bank (Colby), branch
Colby: Security State Bank, head office
Edgar: Bank of Edgar
Ontario: Bank of Ontario

Trust companies not engaged in deposit banking

LaCrosse: La Crosse Trust Co.
Manitowoc: East Wisconsin Trustee Co.
Milwaukee: First Wisconsin Trust Co.

Mutual savings banks

Milwaukee: Guardian Mutual Savings Bank

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Wyoming

None

Alaska

Commercial banks operating under general banking laws

Cordova: First Bank of Cordova
Homer: Bank of Homer, Inc.
Juneau: B. M. Behrends Bank
Ketchikan: Miners & Merchants Bank
Nome: Miners & Merchants Bank of Alaska
Petersburg: Bank of Petersburg
Wrangell: Bank of Wrangell

Commercial banks, private bank

Valdez: First Bank of Valdez

American Samoa

Commercial bank, Government owned and operated

Pago Pago: Bank of American Samoa

Hawaii

Commercial banks operating under general banking laws

Aiea: Bank of Hawaii (Honolulu), branch
Barber's Point: Bank of Hawaii (Honolulu), branch
Ewa: Bank of Hawaii (Honolulu), branch
Hana: Bank of Hawaii (Honolulu), branch
Hanapepe:
  Bank of Hawaii (Honolulu), branch
  Bishop National Bank of Hawaii (Honolulu), branch
Hickam Field: Bishop National Bank of Hawaii (Honolulu), branch
Hilo:
  Bank of Hawaii (Honolulu), branch
  Bishop National Bank of Hawaii (Honolulu), branch
Honokaa: Bank of Hawaii at Honolulu (Honolulu), branch
Honolulu:
  Bank of Hawaii, head office and three branches
  Bishop National Bank of Hawaii, head office and 4 branches
Kahuku: Bishop National Bank of Hawaii (Honolulu), branch
Kahului:
  Bank of Hawaii (Honolulu), branch
  Bishop National Bank of Hawaii (Honolulu), branch
Kailua:
  Bishop National Bank of Hawaii (Honolulu), branch
  Bank of Hawaii (Honolulu), branch
Kaneohe: Bank of Hawaii (Honolulu), branch
Kaneohe Bay: Bank of Hawaii (Honolulu), branch
Kapaa:
  Bank of Hawaii (Honolulu), branch
  Bishop National Bank of Hawaii (Honolulu), branch
Kaunakakai: Bank of Hawaii (Honolulu), branch
Kealakekua:
  Bank of Hawaii (Honolulu), branch
  Bishop National Bank of Hawaii (Honolulu), branch
Kohala: Bank of Hawaii (Honolulu), branch
Koloa: Bishop National Bank of Hawaii (Honolulu), branch
Lahaina: Bank of Hawaii (Honolulu), branch
Lanai City: Bishop National Bank of Hawaii (Honolulu), branch
Lihue:
  Bank of Hawaii (Honolulu), branch
  Bishop National Bank of Hawaii (Honolulu), branch

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Maunaloa: Bank of Hawaii (Honolulu), branch
Pahala: Bank of Hawaii (Honolulu), branch
Paia:
  Bank of Hawaii (Honolulu), branch
  Bishop National Bank of Hawaii (Honolulu), branch
Pearl Harbor: Bank of Hawaii (Honolulu), branch
Schofield Barracks: Bishop National Bank of Hawaii (Honolulu), branch
Tripler Army Hospital: Bishop National Bank of Hawaii (Honolulu), branch
Wahiawa:
  Bank of Hawaii (Honolulu), branch
  Bishop National Bank of Hawaii (Honolulu), branch
Waialua:
  Bank of Hawaii (Honolulu), branch
  Bishop National Bank of Hawaii (Honolulu), branch
Wailuku:
  Bank of Hawaii (Honolulu), branch
  Bishop National Bank of Hawaii (Honolulu), branch
Waimea: Bishop National Bank of Hawaii (Honolulu), branch
Waianae: Bank of Hawaii (Honolulu), branch
Waipahu: Bank of Hawaii (Honolulu), branch

Trust companies not engaged in deposit banking

Hilo: First Trust Company of Hilo, Ltd.
Honolulu:
  Bishop Trust Co., Ltd., head office and branch
  Cooke Trust Co., Ltd.
  Hawaiian Trust Co., Ltd.
  Honolulu Trust Co., Ltd.

MARIANAS ISLANDS

Noninsured branches of insured banks

Guam:
  Agana: Bank of America National Trust & Savings Association (San Francisco), branch
  Anderson Air Force Base: Bank of America National Trust, & Savings Association (San Francisco), branch
  Saipan: Bank of America National Trust & Savings Association (San Francisco), branch

PANAMA CANAL ZONE

Noninsured branches of insured banks

Balboa:
  The Chase Manhattan Bank (New York), branch
  The First National City Bank of New York (New York), branch

Cristobal:
  The Chase Manhattan Bank (New York), branch
  The First National City Bank of New York (New York), branch

PUERTO RICO

Commercial banks operating under general banking laws

Commercial bank, Government owned: San Juan: Government Development Bank for Puerto Rico

Commercial banks, branches of foreign banks

Fajardo: Bank of Nova Scotia (San Juan), branch
Mayaguez: Royal Bank of Canada (San Juan), branch
San Juan:
  Bank of Nova Scotia, head office
  Royal Bank of Canada, head office

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San Juan (Santurce):
Royal Bank of Canada (San Juan), branch
Bank of Nova Scotia (San Juan), branch

VIRGIN ISLANDS

Mutual savings bank

Christiansted: New St. Croix Savings Bank

DENVER, COLO., *November 16, 1956.*

Re cumulative voting, national banks.

Hon. A. WILLIS ROBERTSON,
United States Senator from Virginia,
Senate Office Building, Washington, D. C.

DEAR SENATOR ROBERTSON: The Senate Subcommittee on Banking and Currency will soon be again conducting hearings on legislation which would dispense with cumulative voting for national bank directors, except in those cases where shareholders of individual banks specifically vote to retain this method of voting for their particular banks.

Similar legislation, in one form or another, has been considered by both Houses of Congress in 1954, 1955, and 1956. I have vigorously opposed these bills because they are inimical to our national interests.

A national bank is a quasi-public institution. It is strongly endowed with a public interest. The Federal Reserve Act of 1913 recognized this, but it was not until 1933, when the Glass-Stegall legislation was passed, that Congress took full cognizance of the necessity of protecting minority shareholders, depositors, and the public at large from the evils and abuses which so materially contributed to virtually thousands of bank failures following on the heels of the stock market crash in 1929.

Before reporting this legislation out to the floor of the Senate, I respectfully suggest that your committee request the Comptroller of the Currency to submit for the record a detailed report on all bank failures during the period 1929 to 1933, together with the circumstances surrounding each. I think that you will find it both illuminating and frightening to note just how many bank failures, mergers, and reorganizations were directly or indirectly caused or aggravated by one-man domination. The public was shocked by the abuses and irregularities which came to light daily during this very critical period. They were amazed at the number of big names involved, names which had been considered to be above reproach prior to that time.

Twenty-three years have elapsed since the passage of the Banking Act of 1933, but human nature remains very much the same. If adopted, the present legislation will again open the door for greedy and self-seeking individuals to manage the banks they control for their own self-enrichment. Needless to say, this should be avoided at all costs.

Let us look at a hypothetical case:

A national bank has a 15-man board of directors. One of these is a minority director, who owns sufficient stock in the bank to elect himself to the board under the cumulative method of voting.

While he votes in accordance with the dictates of his heart and mind, the very last thing that he would want to do would be to hurt his bank in the eyes of the community. After all, he had to own a very sizable block of stock (possibly as much as 6⅔ percent of the bank's capital) in order to secure election to the board.

Although he may vote with the management 99 percent of the time, he still is branded as "uncongenial" because he is an uninvited member and because the majority interests know that he is always a potential source of trouble.

As long as the management's program is within legal, moral, and ethical bounds, it has no cause for concern. A 14-to-1 vote is just as effective as a unanimous vote. It is only when the board oversteps the bounds of propriety and embarks on an illegal, immoral, or unconscionable project, that its fears are justifiable. In such a case, the minority director could seek a full and adequate remedy in the courts. However, the mere threat is usually sufficient to keep the majority in line. Differences of opinion are aired in the privacy of the directors' room and disputes practically never reach the courts or even

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come to the attention of the public, and so do not undermine the public's confidence in the bank or its management.

Cumulative voting in the election of bank directors is democracy in banking. It is in accord with American tradition. Minority directors, who come into existence through cumulative voting, are on the job 12 months of the year, and protect not only their own investment in the bank but the investments of all other shareholders and the interests of the community at large. This is a necessary adjunct to periodic examinations by bank examiners.

Let us revert from a hypothetical case to the comparatively recent case involving former Gov. Harold S. Hoffman, of New Jersey, and his South Amboy Trust Co. It is very unlikely that a defalcation of this sort, involving some $300,000 of a relatively small bank's assets, would have gone unnoticed if there had been even one minority director on the bank's board of directors.

Kindly have this letter spread on the minutes of your committee, so that each and every member thereof may give it mature consideration in reaching a decision on this very important matter.

Respectfully submitted.

FLOYD W. KRAMER.

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