Public Law 101-73
101st Congress

An Act

To reform, recapitalize, and consolidate the Federal deposit insurance system, to enhance the regulatory and enforcement powers of Federal financial institutions regulatory agencies, and for other purposes.

Aug. 9, 1989
[H.R. 1278]

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

Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
12 USC 1811 note.

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TITLE I—PURPOSES

SEC. 101. PURPOSES. 12 USC 1811 note.

The purposes of this Act are as follows:

(1) To promote, through regulatory reform, a safe and stable system of affordable housing finance.

(2) To improve the supervision of savings associations by strengthening capital, accounting, and other supervisory standards.

(3) To curtail investments and other activities of savings associations that pose unacceptable risks to the Federal deposit insurance funds.

(4) To promote the independence of the Federal Deposit Insurance Corporation from the institutions the deposits of which it insures, by providing an independent board of directors, adequate funding, and appropriate powers.

(5) To put the Federal deposit insurance funds on a sound financial footing.

(6) To establish an Office of Thrift Supervision in the Department of the Treasury, under the general oversight of the Secretary of the Treasury.

(7) To establish a new corporation, to be known as the Resolution Trust Corporation, to contain, manage, and resolve failed savings associations.

(8) To provide funds from public and private sources to deal expeditiously with failed depository institutions.

(9) To strengthen the enforcement powers of Federal regulators of depository institutions.

(10) To strengthen the civil sanctions and criminal penalties for defrauding or otherwise damaging depository institutions and their depositors.

TITLE II—FEDERAL DEPOSIT INSURANCE CORPORATION

SEC. 201. DEPOSITORY INSTITUTIONS.

(a) AMENDMENTS TO REFERENCES TO INSURED BANK.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by striking out "insured bank", "insured banks", and "insured bank's" each place each term appears in such Act (except where any such term is preceded by "member" or "nonmember") and inserting in lieu thereof "insured depository institution", "insured depository institutions", and "insured depository institution's", respectively.

(2) EXCEPTIONS.—The terms "insured bank" and "insured banks" shall not be amended pursuant to paragraph (1) in

sections 3(h), 11(h), 11(i), 13(c)(1)(B), 13(f), and 18(d) of the Federal Deposit Insurance Act.

(b) AMENDMENTS TO REFERENCES TO FEDERAL HOME LOAN BANK BOARD.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by striking out "Federal Home Loan Bank Board" each place such term appears and inserting in lieu thereof "Director of the Office of Thrift Supervision".

SEC. 202. DUTIES OF FEDERAL DEPOSIT INSURANCE CORPORATION.

Section 1 of the Federal Deposit Insurance Act (12 U.S.C. 1811) is amended by inserting "and savings associations" after "banks".

SEC. 203. FDIC BOARD MEMBERS.

12 USC 1812.

(a) IN GENERAL.—Section 2 of the Federal Deposit Insurance Act is amended to read as follows:

"SEC. 2. MANAGEMENT.

"(a) BOARD OF DIRECTORS.—

"(1) IN GENERAL.—The management of the Corporation shall be vested in a Board of Directors consisting of 5 members—

"(A) 1 of whom shall be the Comptroller of the Currency;

"(B) 1 of whom shall be the Director of the Office of Thrift Supervision; and

"(C) 3 of whom shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

"(2) POLITICAL AFFILIATION.—After February 28, 1993, not more than 3 of the members of the Board of Directors may be members of the same political party.

"(b) CHAIRPERSON AND VICE CHAIRPERSON.—

"(1) CHAIRPERSON.—1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairperson of the Board of Directors for a term of 5 years.

"(2) VICE CHAIRPERSON.—1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairperson of the Board of Directors.

"(3) ACTING CHAIRPERSON.—In the event of a vacancy in the position of Chairperson of the Board of Directors or during the absence or disability of the Chairperson, the Vice Chairperson shall act as Chairperson.

"(c) TERMS.—

"(1) APPOINTED MEMBERS.—Each appointed member shall be appointed for a term of 6 years.

"(2) INTERIM APPOINTMENTS.—Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term.

"(3) CONTINUATION OF SERVICE.—The Chairperson, Vice Chairperson, and each appointed member may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and qualified.

"(d) VACANCY.—

"(1) IN GENERAL.—Any vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made.

"(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the Comptroller of the Currency or the office of Director of the Office of Thrift Supervision and pending the appointment of a successor, or during the absence or disability of the Comptroller or such Director, the acting Comptroller of the Currency or the acting Director of the Office of Thrift Supervision, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director.

"(e) INELIGIBILITY FOR OTHER OFFICES.—

"(1) POSTSERVICE RESTRICTION.—

"(A) IN GENERAL.—No member of the Board of Directors may hold any office, position, or employment in any insured depository institution or any depository institution holding company during—

"(i) the time such member is in office; and

"(ii) the 2-year period beginning on the date such member ceases to serve on the Board of Directors.

"(B) EXCEPTION FOR MEMBERS WHO SERVE FULL TERM.—The limitation contained in subparagraph (A)(ii) shall not apply to any member who has ceased to serve on the Board of Directors after serving the full term for which such member was appointed.

"(2) RESTRICTION DURING SERVICE.—No member of the Board of Directors may—

"(A) be an officer or director of any insured depository institution, depository institution holding company, Federal Reserve bank, or Federal home loan bank; or

"(B) hold stock in any insured depository institution or depository institution holding company.

"(3) CERTIFICATION.—Upon taking office, each member of the Board of Directors shall certify under oath that such member has complied with this subsection and such certification shall be filed with the secretary of the Board of Directors.".

(b) TRANSITION PROVISION.— 12 USC 1812 note.

(1) CHAIRPERSON.—Notwithstanding any provision of section 2 of the Federal Deposit Insurance Act, the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 may continue to serve as the Chairperson until the end of the term to which such Chairman was appointed.

(2) MEMBERS.—Notwithstanding any provision of section 2 of the Federal Deposit Insurance Act, the appointed member of the Board of Directors of the Federal Deposit Insurance Corporation on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 who is not the Chairman shall continue to serve in office until the earlier of—

(A) the end of the term to which such member was appointed; or

(B) February 28, 1993,

except that such member may continue to serve after the end of such term until a successor has been appointed and qualified.

(3) APPOINTMENTS BEFORE MARCH 1, 1993.—Notwithstanding any provision of section 2 of the Federal Deposit Insurance Act, the term of any member appointed to the Board of Directors of the Federal Deposit Insurance Corporation before February 28,

1993 (including the term of any Chairperson), shall end on such date.

SEC. 204. DEFINITIONS.

(a) DEFINITIONS OF BANK AND RELATED TERMS.—Section 3(a) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)) is amended to read as follows:

"(a) DEFINITIONS OF BANK AND RELATED TERMS.—

"(1) BANK.—The term 'bank'—

"(A) means any national bank, State bank, and District bank, and any Federal branch and insured branch;

"(B) includes any former savings association that—

"(i) has converted from a savings association charter; and

"(ii) is a Savings Association Insurance Fund member.

"(2) STATE BANK.—The term 'State bank' means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or other banking institution which—

"(A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

"(B) 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 bank),

including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(3) STATE.—The term 'State' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

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

(b) DEFINITION OF SAVINGS ASSOCIATIONS AND RELATED TERMS.—Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)) is amended to read as follows:

"(b) DEFINITION OF SAVINGS ASSOCIATIONS AND RELATED TERMS.—

"(1) SAVINGS ASSOCIATION.—The term 'savings association' means—

"(A) any Federal savings association;

"(B) any State savings association; and

"(C) any corporation (other than a bank) that the Board of Directors and the Director of the Office of Thrift Supervision jointly determine to be operating in substantially the same manner as a savings association.

"(2) FEDERAL SAVINGS ASSOCIATION.—The term 'Federal savings association' means any Federal savings association or Federal savings bank which is chartered under section 5 of the Home Owners' Loan Act.

"(3) STATE SAVINGS ASSOCIATION.—The term 'State savings association' means—

"(A) any building and loan association, savings and loan association, or homestead association; or

"(B) any cooperative bank (other than a cooperative bank which is a State bank as defined in subsection (a)(2)),

which is organized and operating according to the laws of the State (as defined in subsection (a)(3)) in which it is chartered or organized.".

(c) DEFINITIONS RELATING TO DEPOSITORY INSTITUTIONS.—Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) is amended to read as follows:

"(c) DEFINITIONS RELATING TO DEPOSITORY INSTITUTIONS.—

"(1) DEPOSITORY INSTITUTION.—The term 'depository institution' means any bank or savings association.

"(2) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' means any bank or savings association the deposits of which are insured by the Corporation pursuant to this Act.

"(3) INSTITUTIONS INCLUDED FOR CERTAIN PURPOSES.—The term 'insured depository institution' includes any uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank for purposes of section 8 of this Act.

"(4) FEDERAL DEPOSITORY INSTITUTION.—The term 'Federal depository institution' means any national bank, any Federal savings association, and any Federal branch.

"(5) STATE DEPOSITORY INSTITUTION.—The term 'State depository institution' means any State bank, any State savings association, and any insured branch which is not a Federal branch.".

(d) DEFINITIONS RELATING TO MEMBER BANKS.—Section 3(d) of the Federal Deposit Insurance (12 U.S.C. 1813(d)) is amended to read as follows:

"(d) DEFINITIONS RELATING TO MEMBER BANKS.—

"(1) NATIONAL MEMBER BANK.—The term 'national member bank' means any national bank which is a member of the Federal Reserve System.

"(2) STATE MEMBER BANK.—The term 'State member bank' means any State bank which is a member of the Federal Reserve System.".

(e) DEFINITIONS RELATING TO NONMEMBER BANKS.—Section 3(e) of the Federal Deposit Insurance Act (12 U.S.C. 1813(e)) is amended to read as follows:

"(e) DEFINITIONS RELATING TO NONMEMBER BANKS.—

"(1) NATIONAL NONMEMBER BANK.—The term 'national nonmember bank' means any national bank which—

"(A) is located in any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Northern Mariana Islands; and

"(B) is not a member of the Federal Reserve System.

"(2) STATE NONMEMBER BANK.—The term 'State nonmember bank' means any State bank which is not a member of the Federal Reserve System.".

(f) ADDITIONAL AMENDMENTS TO DEFINITIONS.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(1) in subsection (j), by inserting "or savings association" after "of a bank";

(2) in subsection (l)—

(A) by inserting "or savings association" after "a bank", "the bank", "another bank", "receiving bank", and "such bank" each place such terms appear;

(B) by inserting "or savings association's" after the word "bank's" each place such term appears;

(C) in paragraph (5), by inserting ", Director of the Office of Thrift Supervision," after "Comptroller of the Currency"; and

(D) in paragraph (5)(A), by striking out "and the Virgin Islands" and inserting in lieu thereof "the Virgin Islands, and the Northern Mariana Islands";

(3) in subsection (m)—

(A) in paragraph (1)—

(i) by striking out "the bank" and inserting in lieu thereof "the depository institution"; and

(ii) by inserting "of the Northern Mariana Islands," after "Virgin Islands,"; and

(B) in paragraph (2), by striking out "ther" and inserting in lieu thereof "term";

(4) by striking out subsection (q) and inserting in lieu thereof the following:

"(q) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' means—

"(1) the Comptroller of the Currency, in the case of any national banking association, any District bank, or any Federal branch or agency of a foreign bank;

"(2) the Board of Governors of the Federal Reserve System, in the case of—

"(A) any State member insured bank (except a District bank),

"(B) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978,

"(C) any foreign bank which does not operate an insured branch,

"(D) any agency or commercial lending company other than a Federal agency,

"(E) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Depository Institutions Supervisory Act, and

"(F) any bank holding company and any subsidiary of a bank holding company (other than a bank);

"(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank (except a District bank), or a foreign bank having an insured branch; and

"(4) the Director of the Office of Thrift Supervision in the case of any savings association or any savings and loan holding company.

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution."; and

(5) by striking out subsection (t) and inserting in lieu thereof the following new subsection:

"(t) INCLUDES, INCLUDING.—

"(1) IN GENERAL.—The terms 'includes' and 'including' shall not be construed more restrictively than the ordinary usage of such terms so as to exclude any other thing not referred to or described.

"(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed as creating any inference that the term 'includes' or 'including' in any other provision of Federal law may be deemed to exclude any other thing not referred to or described.";

(6) by adding at the end thereof the following new subsections:

"(u) INSTITUTION-AFFILIATED PARTY.—The term 'institution-affiliated party' means—

"(1) any director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, an insured depository institution;

"(2) any other person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under section 7(j);

"(3) any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person as determined by the appropriate Federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution; and

"(4) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

"(A) any violation of any law or regulation;

"(B) any breach of fiduciary duty; or

"(C) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution.

"(v) VIOLATION.—The term 'violation' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(w) DEFINITIONS RELATING TO HOLDING COMPANIES.—

"(1) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term 'depository institution holding company' means a bank holding company or a savings and loan holding company.

"(2) BANK HOLDING COMPANY.—The term 'bank holding company' has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

"(3) SAVINGS AND LOAN HOLDING COMPANY.—The term 'savings and loan holding company' has the meaning given to such term in section 10 of the Home Owners' Loan Act.

"(4) SUBSIDIARY.—The term 'subsidiary'—

"(A) means any company which is owned or controlled directly or indirectly by another company; and

"(B) includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such a service corporation.

"(5) CONTROL.—The term 'control' has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

"(6) AFFILIATE.—The term 'affiliate' has the meaning given to such term in section 2(k) of the Bank Holding Company Act of 1956.

"(x) DEFINITIONS RELATING TO DEFAULT.—

"(1) DEFAULT.—The term 'default' means, with respect to an insured depository institution, any adjudication or other official determination by any court of competent jurisdiction, the appropriate Federal banking agency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured depository institution or, in the case of a foreign bank having an insured branch, for such branch.

"(2) IN DANGER OF DEFAULT.—The term 'in danger of default' means an insured depository institution with respect to which (or in the case of a foreign bank having an insured branch, with respect to such insured branch) the appropriate Federal banking agency or State chartering authority has advised the Corporation (or, if the appropriate Federal banking agency is the Corporation, the Corporation has determined) that—

"(A) in the opinion of such agency or authority—

"(i) the depository institution or insured branch is not likely to be able to meet the demands of the institution's or branch's depositors or pay the institution's or branch's obligations in the normal course of business; and

"(ii) there is no reasonable prospect that the depository institution or insured branch will be able to meet such demands or pay such obligations without Federal assistance; or

"(B) in the opinion of such agency or authority—

"(i) the depository institution or insured branch has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

"(ii) there is no reasonable prospect that the capital of the depository institution or insured branch will be replenished without Federal assistance.".

SEC. 205. INSURED SAVINGS ASSOCIATIONS.

Section 4 of the Federal Deposit Insurance Act (12 U.S.C. 1814) is amended—

(1) in subsection (a)—

(A) by striking out "(a) Every bank" and inserting in lieu thereof the following:

"(a) CONTINUATION OF INSURANCE.—

"(1) BANKS.—Each bank"; and

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

"(2) SAVINGS ASSOCIATIONS.—Each savings association the accounts of which were insured by the Federal Savings and Loan Insurance Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, shall be, without application or approval, an insured depository institution.";

(2) in subsection (b)—

(A) by inserting after the 1st sentence the following new sentences: "Any application or notice for membership or to commence or resume business shall be promptly provided by the appropriate Federal banking agency to the Corporation and the Corporation shall have a reasonable period of time to provide comments on such application or notice. Any comments submitted by the Corporation to the appro-

priate Federal banking agency shall be considered by such agency.";

(B) by striking out the penultimate and the last sentences; and

(C) by striking out "(b) Every national bank" and inserting in lieu thereof "(b) CERTIFICATION BY OTHER BANKING AGENCIES.—Every national bank"; and

(3) by striking out subsection (c) and inserting in lieu thereof the following new subsections:

"(c) CONTINUATION OF INSURANCE AFTER CONVERSION.—Subject to section 5(d)—

"(1) any State depository institution which results from the conversion of any insured Federal depository institution; and

"(2) any Federal depository institution which results from the conversion of any insured State depository institution,

shall continue as an insured depository institution.

"(d) CONTINUATION OF INSURANCE AFTER MERGER OR CONSOLIDATION.—Any State depository institution or any Federal depository institution which results from the merger or consolidation of insured depository institutions, or from the merger or consolidation of a noninsured depository institution with an insured depository institution, shall continue as an insured depository institution.".

SEC. 206. APPLICATION PROCESS; INSURANCE FEES.

(a) IN GENERAL.—Section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) is amended—

(1) by striking out "(a) Subject to the provisions of this Act, any" and inserting in lieu thereof the following:

"(a) APPLICATION FOR INSURANCE.—

"(1) NATIONAL AND STATE NONMEMBER BANKS; STATE SAVINGS ASSOCIATIONS.—Any";

(2) in the 1st sentence of subsection (a)(1) (as so redesignated by paragraph (1) of this subsection), by striking out the comma after "State nonmember bank" and inserting in lieu thereof "and State savings association,"; and

(3) in the 2nd sentence of subsection (a)(1) (as so redesignated by paragraph (1) of this subsection)—

(A) by striking out the comma after "State nonmember bank" and inserting in lieu thereof "and State savings association,";

(B) by striking out the comma after "such bank" and inserting in lieu thereof "or savings association,"; and

(C) by inserting "or savings association, and, in the case of an application by a State savings association, the Corporation shall notify the Director of the Office of Thrift Supervision of the Corporation's approval of such application" before the period at the end;

(4) by adding at the end of subsection (a) the following new paragraphs:

"(2) FEDERAL SAVINGS ASSOCIATIONS.—Any Federal savings association shall become an insured depository institution upon—

"(A) application to the Corporation; and

"(B) receipt by the Corporation of a certificate issued to the Corporation by the Director which meets the requirements of paragraph (4),

unless insurance is denied by the Board of Directors.

"(3) INTERIM FEDERAL SAVINGS ASSOCIATIONS.—In the case of any interim Federal savings association which is chartered by the Director of the Office of Thrift Supervision and will not open for business, such association shall be an insured depository institution upon the issuance of such association's charter by the Director.

"(4) CERTIFICATE REQUIREMENTS.—Any certificate issued to the Corporation under paragraph (2) shall state that the Federal savings association is authorized to transact business as a savings association and that consideration has been given to the factors enumerated in section 6.

"(5) REVIEW REQUIREMENTS.—In reviewing any certificate and application referred to in paragraph (2), the Board of Directors shall consider the factors described in paragraphs (1), (2), (3), (4), and (5) of section 6 in determining whether to deny insurance.

"(6) NOTICE OF DENIAL OF APPLICATION.—If the Board of Directors, after giving due deference to the determination of the Director of the Office of Thrift Supervision with respect to such factors, does not concur in the determination of the Director, the Board of Directors shall promptly notify the Director that insurance has been denied, giving specific reasons in writing for the Corporation's determination with reference to the factors described in paragraphs (1), (2), (3), (4), and (5) of section 6, and no insurance shall be granted.

"(7) VOTING REQUIREMENTS.—The authority of the Board of Directors to make any determination to deny insurance under this subsection may not be delegated by the Board of Directors and any such determination may be made only upon a vote of ¾ of all members of the Board of Directors (excluding the Director of the Office of Thrift Supervision).";

(5) in subsection (b)(4), by inserting "and fitness" after character;

(6) in subsection (b)—

(A) by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), respectively; and

(B) by inserting after paragraph (4) the following:

"(5) the risk presented to the Bank Insurance Fund or the Savings Association Insurance Fund;"; and

(7) by adding at the end thereof the following new subsections:

"(d) INSURANCE FEES.—

"(1) UNINSURED INSTITUTIONS.—

"(A) IN GENERAL.—Any institution that becomes insured by the Corporation, and any noninsured branch that becomes insured by the Corporation, shall pay the Corporation any fee which the Corporation may by regulation prescribe, after giving due consideration to the need to establish and maintain reserve ratios in the Bank Insurance Fund and the Savings Association Insurance Fund as required by section 7.

"(B) FEE CREDITED TO APPROPRIATE FUND.—The fee paid by the depository institution shall be credited to the Bank Insurance Fund if the depository institution becomes a Bank Insurance Fund member, and to the Savings Association Insurance Fund if the depository institution becomes a Savings Association Insurance Fund member.

"(C) EXCEPTION FOR CERTAIN DEPOSITORY INSTITUTIONS.—Any depository institution that becomes an insured deposi-

tory institution by operation of section 4(a) shall not pay any fee.

"(2) CONVERSIONS.—

"(A) IN GENERAL.—

"(i) PRIOR APPROVAL REQUIRED.—No insured depository institution may participate in a conversion transaction without the prior approval of the Corporation.

"(ii) 5-YEAR MORATORIUM ON CONVERSIONS.—Except as provided in subparagraph (C), the Corporation may not approve any conversion transaction before the end of the 5-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(B) CONVERSION DEFINED.—For purposes of this paragraph, the term 'conversion transaction' means—

"(i) the change of status of an insured depository institution from a Bank Insurance Fund member to a Savings Association Insurance Fund member or from a Savings Association Insurance Fund member to a Bank Insurance Fund member;

"(ii) the merger or consolidation of a Bank Insurance Fund member with a Savings Association Insurance Fund member;

"(iii) the assumption of any liability by—

"(I) any Bank Insurance Fund member to pay any deposits of a Savings Association Insurance Fund member; or

"(II) any Savings Association Insurance Fund member to pay any deposits of a Bank Insurance Fund member;

"(iv) the transfer of assets of—

"(I) any Bank Insurance Fund member to any Savings Association Insurance Fund member in consideration of the assumption of liabilities for any portion of the deposits of such Bank Insurance Fund member; or

"(II) any Savings Association Insurance Fund member to any Bank Insurance Fund member in consideration of the assumption of liabilities for any portion of the deposits of such Savings Association Insurance Fund member.

"(C) APPROVAL DURING MORATORIUM.—The Corporation may approve a conversion transaction at any time if—

"(i) the conversion transaction affects an insubstantial portion, as determined by the Corporation, of the total deposits of each depository institution participating in the conversion transaction;

"(ii) the conversion occurs in connection with the acquisition of a Savings Association Insurance Fund member in default or in danger of default, and the Corporation determines that the estimated financial benefits to the Savings Association Insurance Fund or Resolution Trust Corporation equal or exceed the Corporation's estimate of loss of assessment income to such insurance fund over the remaining balance of the 5-year period referred to in subparagraph (A), and the

Resolution Trust Corporation concurs in the Corporation's determination; or

"(iii) the conversion occurs in connection with the acquisition of a Bank Insurance Fund member in default or in danger of default and the Corporation determines that the estimated financial benefits to the Bank Insurance Fund equal or exceed the Corporation's estimate of the loss of assessment income to the insurance fund over the remaining balance of the 5-year period referred to in subparagraph (A).

"(D) CERTAIN TRANSFERS DEEMED TO AFFECT INSUBSTANTIAL PORTION OF TOTAL DEPOSITS.—For purposes of subparagraph (C)(i), any conversion transaction shall be deemed to affect an insubstantial portion of the total deposits of an insured depository institution, to the extent the aggregate amount of the total deposits transferred in such transaction and in all conversion transactions occurring after the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 does not exceed 35 percent of the lesser of—

"(i) the amount which is equal to the sum of—

"(I) the total deposits of such insured depository institution on May 1, 1989; and

"(II) the total amount of net interest credited to the depository institution's deposits during the period beginning on May 1, 1989, and ending on the date of the transfer of deposits in connection with such transaction; or

"(ii) the amount which is equal to the total deposits of such insured depository institution on the date of the transfer of deposits in connection with such transaction.

"(E) EXIT AND ENTRANCE FEES.—Each insured depository institution participating in a conversion transaction shall pay—

"(i) in the case of a conversion transaction in which the resulting or acquiring depository institution is not a Savings Association Insurance Fund member, an exit fee (in an amount to be determined and assessed in accordance with subparagraph (F)) which—

"(I) shall be deposited in the Savings Association Insurance Fund; or

"(II) shall be paid to the Financing Corporation, if the Secretary of the Treasury determines that the Financing Corporation has exhausted all other sources of funding for interest payments on the obligations of the Financing Corporation and orders that such fees be paid to the Financing Corporation;

"(ii) in the case of a conversion transaction in which the resulting or acquiring depository institution is not a Bank Insurance Fund member, an exit fee in an amount to be determined by the Corporation (and assessed in accordance with subparagraph (F)(ii)) which shall be deposited in the Bank Insurance Fund; and

"(iii) an entrance fee in an amount to be determined by the Corporation (and assessed in accordance with subparagraph (F)(ii)), except that—

"(I) in the case of a conversion transaction in which the resulting or acquiring depository institution is a Bank Insurance Fund member, the fee shall be the approximate amount which the Corporation calculates as necessary to prevent dilution of the Bank Insurance Fund, and shall be paid to the Bank Insurance Fund; and

"(II) in the case of a conversion transaction in which the resulting or acquiring depository institution is a Savings Association Insurance Fund member, the fee shall be the approximate amount which the Corporation calculates as necessary to prevent dilution of the Savings Association Insurance Fund, and shall be paid to the Savings Association Insurance Fund.

"(F) ASSESSMENT OF EXIT AND ENTRANCE FEES.—

"(i) DETERMINATION OF AMOUNT OF EXIT FEES.—

"(I) CONVERSIONS BEFORE JANUARY 1, 1997.—In the case of any exit fee assessed under subparagraph (E)(i) for any conversion transaction consummated before January 1, 1997, the amount of such fee shall be determined jointly by the Corporation and the Secretary of the Treasury.

"(II) ASSESSMENTS AFTER DECEMBER, 31, 1996.—In the case of any exit fee assessed under subparagraph (E)(i) for any conversion transaction consummated after December 31, 1996, the amount of such fee shall be determined by the Corporation.

"(ii) PROCEDURES.—The Corporation shall prescribe, by regulation, procedures for assessing any exit or entrance fee under subparagraph (E). Regulations.

"(G) CHARTER CONVERSION OF SAIF MEMBERS.—This subsection shall not be construed as prohibiting any savings association which is a Savings Association Insurance Fund member from converting to a bank charter during the period described in subparagraph (A)(ii) if the resulting bank remains a Savings Association Insurance Fund member.

"(3) OPTIONAL CONVERSION THROUGH MERGER.—

"(A) IN GENERAL.—Notwithstanding paragraph (2)(A), any bank holding company that controls any savings association may merge or consolidate the assets and liabilities of such savings association with, or transfer such assets and liabilities to, any subsidiary bank which is a Bank Insurance Fund member with the approval of the appropriate Federal banking agency and the Board of Governors of the Federal Reserve System.

"(B) ASSESSMENTS BY SAIF ON DEPOSITS ATTRIBUTABLE TO FORMER SAVINGS ASSOCIATION.—That portion of the average assessment base of any subsidiary bank referred to in subparagraph (A) for any semiannual period which is equal to the adjusted attributable deposit amount (determined under subparagraph (C) with respect to the transaction described in subparagraph (A)) shall—

"(i) be subject to assessment at the assessment rate applicable under section 7 for Savings Association Insurance Fund members;

"(ii) shall not be taken into account for purposes of any assessment under section 7 for Bank Insurance Fund members; and

"(iii) shall be treated as deposits which are insured by the Savings Association Insurance Fund.

"(C) DETERMINATION OF ADJUSTED ATTRIBUTABLE DEPOSIT AMOUNT.—The adjusted attributable deposit amount which shall be taken into account by any bank subsidiary referred to in subparagraph (A) for purposes of determining the amount of the assessment under subparagraph (B)(i) for any semiannual period is the amount which is equal to the sum of—

"(i) the amount of any deposits acquired by such bank subsidiary in connection with any transaction described in subparagraph (A) (as determined at the time of such transaction);

"(ii) the total of the amounts determined under clause (iii) for semiannual periods preceding the semiannual period for which the determination is being made under this subparagraph; and

"(iii) the amount by which the sum of the amounts described in clauses (i) and (ii) would have increased during the preceding semiannual period (other than any semiannual period beginning before the date of such transaction) if such increase occurred at a rate equal to the greater of—

"(I) an annual rate of 7 percent; or

"(II) the annual rate of growth of deposits of such subsidiary bank minus the amount of any deposits acquired through the acquisition, in whole or in part, of a Bank Insurance Fund member during such semiannual period.

"(D) DEPOSIT OF ASSESSMENT.—The amount of the assessment referred to in subparagraph (B)(i) shall be deposited in the Savings Association Insurance Fund.

"(E) CONDITIONS FOR FEDERAL RESERVE BOARD APPROVAL.—The Board of Governors of the Federal Reserve System may not approve any application by any bank holding company to engage in any transaction described in subparagraph (A) unless such Board determines that—

"(i) the amount which is equal to the aggregate amount of the total assets of all depository institution subsidiaries of such bank holding company is not less than the amount which is equal to 200 percent of the total assets of the savings association (at the time of the proposed transaction);

"(ii) the bank holding company and all bank subsidiaries of such holding company will meet all applicable capital standards upon consummation of the proposed transaction;

"(iii) the transaction is not in substance the acquisition of any Bank Insurance Fund member bank by any Savings Association Insurance Fund member;

"(iv) in the case of any transaction which occurs—

"(I) during the 1-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the savings association had tangible capital of less than 4 percent during the preceding quarter; and

"(II) during the 1-year period beginning after the end of the 1-year period referred to in subclause (I), the savings association had tangible capital of less than 5 percent during the preceding quarter; and

"(v) the transaction would comply with the requirements of section 3(d) of the Bank Holding Company Act of 1956 if, at the time of such transaction, the savings association were a State bank which the bank holding company was applying to acquire.

"(F) ALLOCATION OF COSTS IN EVENT OF DEFAULT.—If any subsidiary bank referred to in subparagraph (A) is in default or danger of default at any time before this paragraph ceases to apply, any loss incurred by the Corporation shall be allocated between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the amount of insured deposits of such bank subsidiary (other than the adjusted attributable deposit amount) which is insured by the Bank Insurance Fund and the adjusted attributable deposit amount which is insured by the Savings Association Insurance Fund pursuant to subparagraph (B)(iii).

"(G) SUBSEQUENT APPROVAL OF CONVERSION TRANSACTION.—This paragraph shall cease to apply if—

"(i) after the end of the 5-year period referred to in paragraph (2)(A), the Corporation approves an application by the bank described in subparagraph (A) to treat the transaction described in subparagraph (A) as a conversion transaction; and

"(ii) such bank pays the amount of any exit and entrance fee assessed by the Corporation under paragraph (2)(E) with respect to such transaction.

"(e) LIABILITY OF COMMONLY CONTROLLED DEPOSITORY INSTITUTIONS.—

"(1) IN GENERAL.—

"(A) LIABILITY ESTABLISHED.—Any insured depository institution shall be liable for any loss incurred by the Corporation, or any loss which the Corporation reasonably anticipates incurring, after the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 in connection with—

"(i) the default of a commonly controlled insured depository institution; or

"(ii) any assistance provided by the Corporation to any commonly controlled insured depository institution in danger of default.

"(B) PAYMENT UPON NOTICE.—An insured depository institution shall pay the amount of any liability to the Corporation under subparagraph (A) upon receipt of written notice by the Corporation in accordance with this subsection.

"(C) NOTICE REQUIRED TO BE PROVIDED WITHIN 2 YEARS OF LOSS.—No insured depository institution shall be liable to

the Corporation under subparagraph (A) if written notice with respect to such liability is not received by such institution before the end of the 2-year period beginning on the date the Corporation incurred the loss.

"(2) AMOUNT OF COMPENSATION; PROCEDURES.—

"(A) USE OF ESTIMATES.—When an insured depository institution is in default or requires assistance to prevent default, the Corporation shall—

"(i) in good faith, estimate the amount of the loss the Corporation will incur from such default or assistance;

"(ii) if, with respect to such insured depository institution, there is more than 1 commonly controlled insured depository institution, estimate the amount of each such commonly controlled depository institution's share of such liability; and

"(iii) advise each commonly controlled depository institution of the Corporation's estimate of the amount of such institution's liability for such losses.

"(B) PROCEDURES; IMMEDIATE PAYMENT.—The Corporation, after consultation with the appropriate Federal banking agency and the appropriate State chartering agency, shall—

"(i) on a case-by-case basis, establish the procedures and schedule under which any insured depository institution shall reimburse the Corporation for such institution's liability under paragraph (1) in connection with any commonly controlled insured depository institution; or

"(ii) require any insured depository institution to make immediate payment of the amount of such institution's liability under paragraph (1) in connection with any commonly controlled insured depository institution.

"(C) PRIORITY.—The liability of any insured depository institution under this subsection shall have priority with respect to other obligations and liabilities as follows:

"(i) SUPERIORITY.—The liability shall be superior to the following obligations and liabilities of the depository institution:

"(I) Any obligation to shareholders arising as a result of their status as shareholders (including any depository institution holding company or any shareholder or creditor of such company).

"(II) Any obligation or liability owed to any affiliate of the depository institution (including any other insured depository institution), other than any secured obligation which was secured as of May 1, 1989.

"(ii) SUBORDINATION.—The liability shall be subordinate in right and payment to the following obligations and liabilities of the depository institution:

"(I) Any deposit liability (which is not a liability described in clause (i)(II)).

"(II) Any secured obligation, other than any obligation owed to any affiliate of the depository institution (including any other insured depository institution) which was secured after May 1, 1989.

"(III) Any other general or senior liability (which is not a liability described in clause (i)).

"(IV) Any obligation subordinated to depositors or other general creditors (which is not an obligation described in clause (i)).

"(D) ADJUSTMENT OF ESTIMATED PAYMENT.—

"(i) OVERPAYMENT.—If the amount of compensation estimated by and paid to the Corporation by 1 or more such commonly controlled depository institutions is greater than the actual loss incurred by the Corporation, the Corporation shall reimburse each such commonly controlled depository institution its pro rata share of any overpayment.

"(ii) UNDERPAYMENT.—If the amount of compensation estimated by and paid to the Corporation by 1 or more such commonly controlled depository institutions is less than the actual loss incurred by the Corporation, the Corporation shall redetermine in its discretion the liability of each such commonly controlled depository institution to the Corporation and shall require each such commonly controlled depository institution to make payment of any additional liability to the Corporation.

"(3) REVIEW.—

"(A) JUDICIAL.—Actions of the Corporation shall be reviewable pursuant to chapter 7 of title 5, United States Code.

"(B) ADMINISTRATIVE.—The Corporation shall prescribe regulations and establish administrative procedures which provide for a hearing on the record for the review of— Regulations.

"(i) the amount of any loss incurred by the Corporation in connection with any insured depository institution;

"(ii) the liability of individual commonly controlled depository institutions for the amount of such loss; and

"(iii) the schedule of payments to be made by such commonly controlled depository institutions.

"(4) LIMITATION ON RIGHTS OF PRIVATE PARTIES.—To the extent the exercise of any right or power of any person would impair the ability of any insured depository institution to perform such institution's obligations under this subsection—

"(i) the obligations of such insured depository institution shall supersede such right or power; and

"(ii) no court may give effect to such right or power with respect to such insured depository institution.

"(5) WAIVER AUTHORITY.—

"(A) IN GENERAL.—The Corporation, in its discretion, may exempt any insured depository institution from the provisions of this subsection if the Corporation determines that such exemption is in the best interests of the Bank Insurance Fund or the Savings Association Insurance Fund.

"(B) CONDITION.—During the period any exemption granted to any insured depository institution under subparagraph (A) or (C) is in effect, such insured depository institution and all other insured depository institution affiliates of such depository institution shall comply fully

with the restrictions of sections 23A and 23B of the Federal Reserve Act without regard to section 23A(d)(1).

"(C) LIMITED PARTNERSHIPS.—

"(i) IN GENERAL.—The Corporation may, in its discretion, exempt any limited partnership and any affiliate of any limited partnership (other than any insured depository institution which is a majority owned subsidiary of such partnership) from the provisions of this subsection if such limited partnership or affiliate has filed a registration statement with the Securities and Exchange Commission on or before April 10, 1989, indicating that as of the date of such filing such partnership intended to acquire 1 or more insured depository institutions.

"(ii) REVIEW AND NOTICE.—Within 10 business days after the date of submission of any request for an exemption under this subparagraph together with such information as shall be reasonably requested by the Corporation, the Corporation shall make a determination on the request and shall so advise the applicant.

"(6) 5-YEAR TRANSITION RULE.—During the 5-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

"(A) no Savings Association Insurance Fund member shall have any liability to the Corporation under this subsection arising out of assistance provided by the Corporation or any loss incurred by the Corporation as a result of the default of a Bank Insurance Fund member which was acquired by such Savings Association Insurance Fund member or any affiliate of such member before the date of the enactment of such Act; and

"(B) no Bank Insurance Fund member shall have such liability with respect to assistance provided by or loss incurred by the Corporation as a result of the default of a Savings Association Insurance Fund member which was acquired by such Bank Insurance Fund member or any affiliate of such member before the date of the enactment of such Act.

"(7) EXCLUSION FOR INSTITUTIONS ACQUIRED IN DEBT COLLECTIONS.—Any depository institution shall not be treated as commonly controlled, for purposes of this subsection, during the 5-year period beginning on the date of an acquisition described in subparagraph (A) or such longer period as the Corporation may determine after written application by the acquirer, if—

"(A) 1 depository institution controls another by virtue of ownership of voting shares acquired in securing or collecting a debt previously contracted in good faith; and

"(B) during the period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and ending upon the expiration of the exclusion, the controlling bank and all other insured depository institution affiliates of such controlling bank comply fully with the restrictions of sections 23A and 23B of the Federal Reserve Act, without regard to section 23A(d)(1) of such Act, in transactions with the acquired insured depository institution.

"(8) EXCEPTION FOR CERTAIN FSLIC ASSISTED INSTITUTIONS.—No depository institution shall have any liability to the Corporation under this subsection as the result of the default of, or assistance provided with respect to, an insured depository institution which is an affiliate of such depository institution if—

"(A) such affiliate was receiving cash payments from the Federal Savings and Loan Insurance Corporation under an assistance agreement or note entered into before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

"(B) the Federal Savings and Loan Insurance Corporation, or such other entity which has succeeded to the payment obligations of such Corporation with respect to such assistance agreement or note, is unable to continue such payments; and

"(C) such affiliate—

"(i) is in default or in need of assistance solely as a result of the failure to meet the payment obligations referred to in subparagraph (B); and

"(ii) is not otherwise in breach of the terms of any assistance agreement or note which would authorize the Federal Savings and Loan Insurance Corporation or such other successor entity, pursuant to the terms of such assistance agreement or note, to refuse to make such payments.

"(9) COMMONLY CONTROLLED DEFINED.—For purposes of this subsection, depository institutions are commonly controlled if—

"(A) such institutions are controlled by the same depository institution holding company (including any company required to file reports pursuant to section 4(f)(6) of the Bank Holding Company Act of 1956); or

"(B) 1 depository institution is controlled by another depository institution.".

(b) NEWLY INSURED THRIFT PROVISION.—Any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act, as added by section 204(c) of this Act)— 12 USC 1815 note.

(1) which was an insured institution (as defined in section 401(a) of the National Housing Act, as in effect before the date of the enactment of this Act) on the day before the date of the enactment of this Act;

(2) the board of directors of which determined, before April 1, 1987, to terminate such association's status as an insured institution (as so defined) as evidenced in sworn minutes of the board of directors meeting held before such date;

(3) had insured deposits of less than $11,000,000 on April 1, 1987; and

(4) was an insured institution (as so defined) for less than 1 year as of April 1, 1987,

may cease to be a Savings Association Insurance Fund member and become a Bank Insurance Fund member at any time during the 2-year period beginning on the date of the enactment of this Act without the approval of the Federal Deposit Insurance Corporation under section 5(d)(2) of the Federal Deposit Insurance Act (as added by subsection (a) of this section) and without incurring any liability for any exit or entrance fee imposed under such section 5(d)(2).

SEC. 207. INSURABILITY FACTORS.

Section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816) is amended to read as follows:

"SEC. 6. FACTORS TO BE CONSIDERED.

"The factors that are required, under section 4, to be considered in connection with, and enumerated in, any certificate issued pursuant to section 4 and that are required, under section 5, to be considered by the Board of Directors in connection with any determination by such Board pursuant to section 5 are the following:

"(1) The financial history and condition of the depository institution.

"(2) The adequacy of the depository institution's capital structure.

"(3) The future earnings prospects of the depository institution.

"(4) The general character and fitness of the management of the depository institution.

"(5) The risk presented by such depository institution to the Bank Insurance Fund or the Savings Association Insurance Fund.

"(6) The convenience and needs of the community to be served by such depository institution.

"(7) Whether the depository institution's corporate powers are consistent with the purposes of this Act.".

SEC. 208. ASSESSMENTS.

Section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended—

(1) in subsection (a)(2)—

(A) by inserting ", the Director of the Office of Thrift Supervision, the Federal Housing Finance Board, any Federal home loan bank," after "Comptroller of the Currency" each place such term appears (except after "Comptroller of the Currency,");

(B) by inserting "the Director of the Office of Thrift Supervision, the Federal Housing Finance Board, any Federal home loan bank," after "Comptroller of the Currency,";

(C) by striking out "either" in the 1st sentence and inserting in lieu thereof "any";

(D) in the last sentence of subparagraph (A), by inserting "or savings associations" after "banks";

(E) by striking out "State nonmember bank (except a District bank)" and inserting in lieu thereof "depository institution"; and

(F) by striking out subparagraph (B) and inserting the following:

"(B) ADDITIONAL REPORTS.—The Board of Directors may from time to time require any insured depository institution to file such additional reports as the Corporation, after agreement with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision, as appropriate, may deem advisable for insurance purposes.";

(2) in subsection (a)(3)—

(A) by striking out "Each insured State nonmember bank" and all that follows through "four reports" and inserting the following: "Each insured depository institution shall make to the appropriate Federal banking agency 4 reports";

(B) by striking out "bank" each place such term appears in the 2nd, 5th, and 6th sentences and inserting in lieu thereof "depository institution";

(C) by striking out "insured national, District" and all that follows through "member bank" in the 7th sentence and inserting in lieu thereof "insured depository institution"; and

(D) by inserting "or savings associations" after "banks" in the last sentence;

(3) in subsection (a)(4), by striking out "bank", "bank's", and "banks" each place such terms appear (except in "foreign bank") and inserting in lieu thereof "depository institution", "depository institution's", and "depository institutions", respectively;

(4) by striking out paragraphs (1) and (2) of subsection (b) and inserting the following:

"(1) ASSESSMENT RATES.—

"(A) ANNUAL ASSESSMENT RATES PRESCRIBED.—

"(i) The Corporation shall set assessment rates for insured depository institutions annually.

"(ii) The Corporation shall fix the annual assessment rate of Bank Insurance Fund members independently from the annual assessment rate for Savings Association Insurance Fund members.

"(iii) The Corporation shall, by September 30 of each year, announce the assessment rates for the succeeding calendar year.

"(B) DESIGNATED RESERVE RATIO DEFINED.—

"(i) The designated reserve ratio of the Bank Insurance Fund for each year shall be—

"(I) 1.25 percent of estimated insured deposits; or

"(II) such higher percentage of estimated insured deposits, not exceeding 1.50 percent, as the Board of Directors determines for that year to be justified by circumstances that raise a significant risk of substantial future losses to the Bank Insurance Fund.

"(ii) The designated reserve ratio of the Savings Association Insurance Fund for each year shall be—

"(I) 1.25 percent of estimated insured deposits; or

"(II) such higher percentage of estimated insured deposits, not exceeding 1.50 percent, as the Board of Directors determines for that year to be justified by circumstances that raise a significant risk of substantial future losses to the Savings Association Insurance Fund.

"(iii) The Board of Directors shall—

"(I) maintain reserves in the Bank Insurance Fund received pursuant to clause (i)(II) as Supplemental Reserves in the Bank Insurance Fund;

"(II) allocate each calendar quarter to an Earnings Participation Account in the Bank Insurance

Securities.

Fund the investment income earned by the Bank Insurance Fund on such Supplemental Reserves in the preceding calendar quarter;

"(III) distribute such Earnings Participation Account at the conclusion of each calendar year to Bank Insurance Fund members; and

"(IV) distribute such Supplemental Reserves to Bank Insurance Fund members if and to the extent the Corporation determines that such Supplemental Reserves are not needed to satisfy the projected designated reserve ratio for the next succeeding calendar year.

"(iv) The Board of Directors shall—

"(I) maintain reserves in the Savings Association Insurance Fund received pursuant to clause (ii)(II) as Supplemental Reserves in the Savings Association Insurance Fund;

Securities.

"(II) allocate each calendar quarter to an Earnings Participation Account in the Savings Association Insurance Fund the investment income earned by the Savings Association Insurance Fund on such Supplemental Reserves in the preceding calendar quarter;

"(III) distribute such Earnings Participation Account at the conclusion of each calendar year to Savings Association Insurance Fund members; and

"(IV) distribute such Supplemental Reserves to Savings Association Insurance Fund members if and to the extent the Corporation determines that such Supplemental Reserves are not needed to satisfy the projected designated reserve ratio for the next succeeding calendar year.

"(C) ASSESSMENT RATE FOR BANK INSURANCE FUND MEMBERS.—The annual assessment rate for Bank Insurance Fund members shall be—

"(i) until December 31, 1989, 1/12 of 1 percent;

"(ii) from January 1, 1990, through December 31, 1990, 0.12 percent;

"(iii) on and after January 1, 1991, 0.15 percent;

"(iv) on January 1 of a calendar year in which the reserve ratio of the Bank Insurance Fund is expected to be less than the designated reserve ratio by determination of the Board of Directors, such rate determined by the Board of Directors to be appropriate to restore the reserve ratio to the designated reserve ratio within a reasonable period of time, after taking into consideration the expected operating expenses, case resolution expenditures, and investment income of the Bank Insurance Fund, and the impact on insured bank earnings and capitalization, except that—

"(I) from the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 until the earlier of January 1, 1995, or January 1 of the calendar year in which the Bank Insurance Fund reserve ratio is expected to first attain the designated reserve ratio, the rate shall be as specified in clauses (i), (ii), and (iii) of

this subparagraph so long as the Bank Insurance Fund reserve ratio is increasing on a calendar year basis;

"(II) the rate shall not exceed 0.325 percent; and

"(III) the increase in the rate in any 1 year shall not exceed 0.075 percent; and

"(v) sufficient to ensure that for each member in each year the assessment shall not be less than $1,000.

"(D) ASSESSMENT RATE FOR SAVINGS ASSOCIATION INSURANCE FUND MEMBERS.—The annual assessment rate for Savings Association Insurance Fund members shall be—

"(i) until December 31, 1990, 0.208 percent;

"(ii) from January 1, 1991, through December 31, 1993, 0.23 percent;

"(iii) from January 1, 1994, through December 31, 1997, 0.18 percent;

"(iv) on and after January 1, 1998, 0.15 percent;

"(v) on January 1 of a calendar year in which the reserve ratio of the Savings Association Insurance Fund is expected to be less than the designated reserve ratio by determination of the Board of Directors, such rate determined by the Board of Directors to be appropriate to restore the reserve ratio to the designated reserve ratio within a reasonable period of time, after taking into consideration the expected expenses and income of the Savings Association Insurance Fund, and the effect on insured savings association earnings and capitalization, except that—

"(I) from the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 through December 31, 1994, the rate shall be as specified in clauses (i), (ii), and (iii) above;

"(II) the rate shall not exceed 0.325 percent; and

"(III) the increase in the rate in any one year shall not exceed 0.075 percent; and

"(vi) sufficient to ensure that for each member in each year the assessment shall not be less than $1,000.

"(E) FINANCING CORPORATION AND FUNDING CORPORATION ASSESSMENTS.—Notwithstanding any other provision of this paragraph, amounts assessed by the Financing Corporation and the Funding Corporation under sections 21 and 21B, respectively, of the Federal Home Loan Bank Act against Savings Association Insurance Fund members, shall be subtracted from the amounts authorized to be assessed by the Corporation under this paragraph.

"(F) SPECIAL RULE TO ALLOW CONTINUING ASSESSMENTS BY THE FINANCING CORPORATION AND THE FUNDING CORPORATION DURING PREMIUM YEAR ADJUSTMENTS.—In order to ensure that the Financing Corporation and the Resolution Funding Corporation obtain sufficient funds for interest payments on obligations of such corporations, the Corporation, in coordination with the Financing Corporation and the Secretary of the Treasury, may prescribe such regulations as may be necessary to allow the Financing Corporation and the Resolution Funding Corporation to impose assessments against Savings Association Insurance

Fund members pursuant to sections 21 and 21B, respectively, of the Federal Home Loan Bank Act during the period required to change such members' premium year from the 1-year period applicable under section 404(b) of the National Housing Act (as in effect before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) to a calendar year basis.

"(2) ASSESSMENT PROCEDURES.—

"(A) SEMIANNUAL ASSESSMENTS.—Except as provided in subsection (c)(2)—

"(i) the semiannual assessment due from any Bank Insurance Fund member for any semiannual period shall be equal to the product of—

"(I) ½ the annual assessment rate applicable to such Bank Insurance Fund member; and

"(II) such Bank Insurance Fund member's average assessment base for the immediately preceding semiannual period; and

"(ii) the semiannual assessment due from any Savings Association Insurance Fund member for any semiannual period shall be equal to the product of—

"(I) ½ the annual assessment rate applicable to such Savings Association Insurance Fund member; and

"(II) such Savings Association Insurance Fund member's average assessment base for the immediately preceding semiannual period.

"(B) DEFINITION.—For purposes of this section, the term 'semiannual period' means a period beginning on January 1 of any calendar year and ending on June 30 of the same year, or a period beginning on July 1 of any calendar year and ending on December 31 of the same year.";

(5) by amending subsection (d) to read as follows:

"(d) ASSESSMENT CREDITS.—

"(1) IN GENERAL.—

"(A) By September 30 of each calendar year, the Corporation shall prescribe and publish the aggregate amount to be credited to insured depository institutions in the succeeding calendar year.

"(B) Each insured depository institution shall be notified by the Corporation of the percentage by which the assessment rate should be reduced in computing its net premium.

"(C) Any outstanding obligations owed to the Corporation by an individual insured depository institution shall be deducted from any assessment credit to be credited to such depository institution.

"(2) ASSESSMENT CREDIT FOR INSURED BANKS.—

"(A) CREDIT BARRED.—The Board of Directors shall not prescribe an assessment credit to Bank Insurance Fund members if the Board of Directors determines that the Bank Insurance Fund reserve ratio is expected to be equal to or less than the designated reserve ratio in the coming year after taking into consideration such Fund's expected expenses and income.

"(B) CREDIT AUTHORIZED.—If the Board of Directors determines, after taking into consideration the Bank Insurance Fund's expected operating expenses, case resolution expenditures, investment income, and assessment income,

that the Bank Insurance Fund reserve ratio is expected to exceed the designated reserve ratio in the succeeding year, the Board of Directors shall prescribe an assessment credit to Bank Insurance Fund members in such succeeding calendar year equal to the lesser of—

"(i) the amount necessary to reduce the Bank Insurance Fund reserve ratio to the designated reserve ratio; or

"(ii) 100 percent of the net assessment income to be received from Bank Insurance Fund members in such succeeding year.

"(3) ASSESSMENT CREDIT FOR INSURED SAVINGS ASSOCIATIONS.—

"(A) CREDIT BARRED.—The Board of Directors shall not prescribe an assessment credit to Savings Association Insurance Fund members if the Board of Directors determines that the Savings Association Insurance Fund reserve ratio is expected to be equal to or less than the designated reserve ratio in the coming year after taking into consideration such Fund's expected expenses and income.

"(B) CREDIT AUTHORIZED.—If the Board of Directors determines, after taking into consideration the Savings Association Insurance Fund's expected expenses and income, that the Savings Association Insurance Fund reserve ratio is expected to exceed the designated reserve ratio in the succeeding year, the Board of Directors shall prescribe an assessment credit to Savings Association Insurance Fund members in such succeeding calendar year equal to the lesser of—

"(i) the amount necessary to reduce the Savings Association Insurance Fund reserve ratio to the designated reserve ratio; or

"(ii) 100 percent of the net assessment income to be received from Savings Association Insurance Fund members in such succeeding year.

"(4) NET ASSESSMENT INCOME DEFINED.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'net assessment income' means—

"(i) with respect to the Bank Insurance Fund, the Bank Insurance Fund net assessment income (as defined in subparagraph (B)); and

"(ii) with respect to the Savings Association Insurance Fund, the Savings Association Insurance Fund net assessment income (as defined in subparagraph (C)).

"(B) BANK INSURANCE FUND NET ASSESSMENT INCOME.—

"(i) IN GENERAL.—The term 'Bank Insurance Fund net assessment income' means—

"(I) the total assessments which become due during the calendar year with respect to members of such Fund, minus

"(II) the sum of the amount of the operating costs and expenses described in clause (ii) and the amount by which the Bank Insurance Fund's insurance costs described in clause (iii) exceed its investment income for the calendar year.

"(ii) OPERATING COST AND EXPENSES.—For the purposes of this subparagraph, the operating costs and

expenses to be deducted from assessments include the operating costs and expenses of—

"(I) the Corporation for the calendar year directly attributable to the Bank Insurance Fund; and

"(II) the Bank Insurance Fund.

"(iii) INSURANCE COSTS.—For purposes of this subparagraph, the insurance costs include—

"(I) additions to the Bank Insurance Fund's reserve to provide for insurance losses during the calendar year, excluding any adjustments to such reserve which result in a reduction of such reserve; and

"(II) the insurance losses sustained in such calendar year.

"(C) SAVINGS ASSOCIATION INSURANCE FUND NET ASSESSMENT INCOME.—

"(i) IN GENERAL.—The term 'Savings Association Insurance Fund net assessment income' means—

"(I) the total assessments which become due during the calendar year with respect to members of such Fund, minus

"(II) the sum of the amount of the operating costs and expenses described in clause (ii) and the amount by which the Savings Association Insurance Fund's insurance costs described in clause (iii) exceed its investment income for the calendar year.

"(ii) OPERATING COST AND EXPENSES.—For purposes of this subparagraph, the operating costs and expenses to be deducted from assessments include the operating costs and expenses of—

"(I) the Corporation for the calendar year directly attributable to the Savings Association Insurance Fund; and

"(II) the Savings Association Insurance Fund.

"(iii) INSURANCE COSTS.—For the purposes of this subparagraph, the insurance costs include—

"(I) additions to the Savings Association Insurance Fund's reserve to provide for insurance losses during the calendar year, excluding any adjustments to such reserve which result in a reduction of such reserve; and

"(II) the insurance losses sustained in such calendar year.

"(5) INVESTMENT INCOME DEFINED.—For purposes of this subsection, the term 'investment income' means—

"(A) for the Bank Insurance Fund, interest, dividends, and net market gains earned on investments of the Bank Insurance Fund; and

"(B) for the Savings Association Insurance Fund, interest, dividends, and net market gains earned on investments of the Savings Association Insurance Fund.".

(6) in paragraphs (3), (4), (5), (6), (7), and (8) of subsection (b), by striking out "bank", "bank's", and "banks" each place such term appears (except where "foreign" precedes any of such terms) and inserting in lieu thereof "depository institution",

"depository institution's", and "depository institutions", respectively;

(7) in subsections (c), (e), (f), (g), and (i), by striking out "bank" each place such term appears and inserting in lieu thereof "depository institution";

(8) in subsection (j)(1), by striking out the last sentence;

(9) in subsection (j)(2)(A)—

(A) by striking out "failure" and inserting in lieu thereof "default"; and

(B) by striking out "bank" each place such term appears and inserting in lieu thereof "depository institution";

(10) in subsection (j)(2)(D), by inserting "unless such agency determines that an emergency exists," after "shall,";

(11) in subsection (j)(7)—

(A) by striking out "or" at the end of subparagraph (D);

(B) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof "; or"; and

(C) by adding at the end thereof the following new subparagraph:

"(F) the appropriate Federal banking agency determines that the proposed transaction would result in an adverse effect on the Bank Insurance Fund or the Savings Association Insurance Fund.";

(12) by amending subsection (j)(17) to read as follows:

"(17) EXCEPTIONS.—This subsection shall not apply with respect to a transaction which is subject to—

"(A) section 3 of the Bank Holding Company Act of 1956;

"(B) section 18(c) of this Act; or

"(C) section 10 of the Home Owners' Loan Act.";

(13) by adding at the end of subsection (j) the following new paragraph:

"(18) APPLICABILITY OF CHANGE IN CONTROL PROVISIONS TO OTHER INSTITUTIONS.—For purposes of this subsection, the term 'insured depository institution' includes—

"(A) any depository institution holding company; and

"(B) any other company which controls an insured depository institution and is not a depository institution holding company.";

(14) by adding at the end thereof the following new subsection:

"(l) DESIGNATION OF FUND MEMBERSHIP FOR NEWLY INSURED DEPOSITORY INSTITUTIONS; DEFINITIONS.—For purposes of this section:

"(1) BANK INSURANCE FUND.—Any institution which—

"(A) becomes an insured depository institution; and

"(B) does not become a Savings Association Insurance Fund member pursuant to paragraph (2),

shall be a Bank Insurance Fund member.

"(2) SAVINGS ASSOCIATION INSURANCE FUND.—Any savings association, other than any Federal savings bank chartered pursuant to section 5(o) of the Home Owners' Loan Act, which becomes an insured depository institution shall be a Savings Association Insurance Fund member.

"(3) TRANSITION PROVISION.—

"(A) BANK INSURANCE FUND.—Any depository institution the deposits of which were insured by the Federal Deposit Insurance Corporation on the day before the date of the

enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, including—

"(i) any Federal savings bank chartered pursuant to section 5(o) of the Home Owners' Loan Act; and

"(ii) any cooperative bank,

shall be a Bank Insurance Fund member as of such date of enactment.

"(B) SAVINGS ASSOCIATION INSURANCE FUND.—Any savings association which is an insured depository institution by operation of section 4(a)(2) shall be a Savings Association Insurance Fund member as of the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(4) BANK INSURANCE FUND MEMBER.—The term 'Bank Insurance Fund member' means any depository institution the deposits of which are insured by the Bank Insurance Fund.

"(5) SAVINGS ASSOCIATION INSURANCE FUND MEMBER.—The term 'Savings Association Insurance Fund member' means any depository institution the deposits of which are insured by the Savings Association Insurance Fund.

"(6) BANK INSURANCE FUND RESERVE RATIO.—The term 'Bank Insurance Fund reserve ratio' means the ratio of the net worth of the Bank Insurance Fund to the value of the aggregate estimated insured deposits held in all Bank Insurance Fund members.

"(7) SAVINGS ASSOCIATION INSURANCE FUND RESERVE RATIO.—The term 'Savings Association Insurance Fund reserve ratio' means the ratio of the value of the net worth of the Savings Association Insurance Fund to the value of the aggregate estimated insured deposits held in all Savings Association Insurance Fund members.";

(15) by adding after the subsection added by paragraph (14) of this section the following new subsections:

"(m) SECONDARY RESERVE OFFSETS AGAINST PREMIUMS.—

"(1) OFFSETS IN CALENDAR YEARS BEGINNING BEFORE 1993.—Subject to the maximum amount limitation contained in paragraph (2) and notwithstanding any other provision of law, any insured savings association may offset such association's pro rata share of the statutorily prescribed amount against any premium assessed against such association under subsection (b) of this section for any calendar year beginning before 1993.

"(2) ANNUAL MAXIMUM AMOUNT LIMITATION.—The amount of any offset allowed for any savings association under paragraph (1) for any calendar year beginning before 1993 shall not exceed an amount which is equal to 20 percent of such association's pro rata share of the statutorily prescribed amount (as computed for such calendar year).

"(3) OFFSETS IN CALENDAR YEARS BEGINNING AFTER 1992.—Notwithstanding any other provision of law, a savings association may offset such association's pro rata share of the statutorily prescribed amount against any premium assessed against such association under subsection (b) for any calendar year beginning after 1992.

"(4) TRANSFERABILITY.—No right, title, or interest of any insured depository institution in or with respect to its pro rata share of the secondary reserve shall be assignable or transferable whether by operation of law or otherwise, except to the

extent that the Corporation may provide for transfer of such pro rata share in cases of merger or consolidation, transfer of bulk assets or assumption of liabilities, and similar transactions, as defined by the Corporation for purposes of this paragraph.

"(5) PRO RATA DISTRIBUTION ON TERMINATION OF INSURED STATUS.—If—

"(A) the status of any savings association as an insured depository institution is terminated pursuant to any provision of section 8 or the insurance of accounts of any savings association institution is otherwise terminated;

"(B) a receiver or other legal custodian is appointed for the purpose of liquidation or winding up the affairs of any savings association; or

"(C) the Corporation makes a determination that for the purposes of this subsection any savings association has otherwise gone into liquidation,

the Corporation shall pay in cash to such institution its pro rata share of the secondary reserve, in accordance with such terms and conditions as the Corporation may prescribe, or, at the option of the Corporation, the Corporation may apply the whole or any part of the amount which would otherwise be paid in cash toward the payment of any indebtedness or obligation, whether matured or not, of such institution to the Corporation, existing or arising before such payment in cash. Such payment or such application need not be made to the extent that the provisions of the exception in paragraph (4) are applicable.

"(6) STATUTORILY PRESCRIBED AMOUNT DEFINED.—For purposes of this subsection, the term 'statutorily prescribed amount' means, with respect to any calendar year which ends after the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

"(A) $823,705,000, minus

"(B) the sum of—

"(i) the aggregate amount of offsets made before such date of enactment by all insured institutions under section 404(e)(2) of the National Housing Act (as in effect before such date of enactment); and

"(ii) the aggregate amount of offsets made by all savings associations under this subsection before the beginning of such calendar year.

"(7) SAVINGS ASSOCIATION'S PRO RATA AMOUNT.—For purposes of this subsection, any savings association's pro rata share of the statutorily prescribed amount is the percentage which is equal to such association's share of the secondary reserve as determined under section 404(e) of the National Housing Act on the day before the date on which Federal Savings and Loan Insurance Corporation ceased to recognize the secondary reserve (as such Act was in effect on the day before such date).

"(8) YEAR OF ENACTMENT RULE.—With respect to the calendar year in which the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is enacted, the Corporation shall make such adjustments as may be necessary—

"(A) in the computation of the statutorily prescribed amount which shall be applicable for the remainder of such calendar year after taking into account the aggregate amount of offsets by all insured institutions under section 404(e)(2) of the National Housing Act (as in effect before the

date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) after the beginning of such calendar year and before such date of enactment; and

"(B) in the computation of the maximum amount of any savings association's offset for such calendar year under paragraph (1) after taking into account—

"(i) the amount of any offset by such savings association under section 404(e)(2) of the National Housing Act (as in effect before such date of enactment) after the beginning of such calendar year and before such date of enactment; and

"(ii) the change of such association's premium year from the 1-year period applicable under section 404(b) of the National Housing Act (as in effect before such date of enactment) to a calendar year basis.

"(n) COLLECTIONS ON BEHALF OF THE DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—When requested by the Director of the Office of Thrift Supervision, the Corporation shall collect on behalf of the Director assessments on savings associations levied by the Director under section 9 of the Home Owners' Loan Act. The Corporation shall be reimbursed for its actual costs for the collection of such assessments. Any such assessments by the Director shall be in addition to any amounts assessed by the Corporation, the Financing Corporation, and the Resolution Funding Corporation.".

SEC. 209. CORPORATE POWERS OF THE FDIC.

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) is amended—

(1) by striking out "bank" and "banks" each place such terms appear (except in the last sentence of the paragraph designated the "Fourth") and inserting in lieu thereof "depository institution" and "depository institutions", respectively; and

(2) by striking out "Upon the date" and inserting the following:

"(a) IN GENERAL.—Upon the date";

(3) by amending the paragraph designated the "Fourth" to read as follows:

"Fourth. To sue and be sued, and complain and defend, in any court of law or equity, State or Federal."; and

(4) by adding at the end thereof the following new subsection:

"(b) AGENCY AUTHORITY.—

"(1) STATUS.—The Corporation, in any capacity, shall be an agency of the United States for purposes of section 1345 of title 28, United States Code, without regard to whether the Corporation commenced the action.

"(2) FEDERAL COURT JURISDICTION.—

"(A) IN GENERAL.—Except as provided in subparagraph (D), all suits of a civil nature at common law or in equity to which the Corporation, in any capacity, is a party shall be deemed to arise under the laws of the United States.

"(B) REMOVAL.—Except as provided in subparagraph (D), the Corporation may, without bond or security, remove any action, suit, or proceeding from a State court to the appropriate United States district court.

"(C) APPEAL OF REMAND.—The Corporation may appeal any order of remand entered by any United States district court.

"(D) STATE ACTIONS.—Except as provided in subparagraph (E), any action—

"(i) to which the Corporation, in the Corporation's capacity as receiver of a State insured depository institution by the exclusive appointment by State authorities, is a party other than as a plaintiff;

"(ii) which involves only the preclosing rights against the State insured depository institution, or obligations owing to, depositors, creditors, or stockholders by the State insured depository institution; and

"(iii) in which only the interpretation of the law of such State is necessary,

shall not be deemed to arise under the laws of the United States.

"(E) RULE OF CONSTRUCTION.—Subparagraph (D) shall not be construed as limiting the right of the Corporation to invoke the jurisdiction of any United States district court in any action described in such subparagraph if the institution of which the Corporation has been appointed receiver could have invoked the jurisdiction of such court.

"(3) SERVICE OF PROCESS.—The Board of Directors shall designate agents upon whom service of process may be made in any State, territory, or jurisdiction in which any insured depository institution is located.

"(4) BONDS OR FEES.—The Corporation shall not be required to post any bond to pursue any appeal and shall not be subject to payments of any filing fees in United States district courts or courts of appeal.".

SEC. 210. ADMINISTRATION OF CORPORATION.

(a) EXAMINATION AUTHORITY.—Section 10(b) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)) is amended to read as follows:

"(b) EXAMINATIONS.—

"(1) APPOINTMENT OF EXAMINERS AND CLAIMS AGENTS.—The Board of Directors shall appoint examiners and claim agents.

"(2) REGULAR EXAMINATIONS.—Any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to examine—

"(A) any insured State nonmember bank (except a District bank) or insured State branch of any foreign bank;

"(B) any savings association, State nonmember bank, or State branch of a foreign bank, or other depository institution which files an application with the Corporation to become an insured depository institution; and

"(C) any insured depository institution in default,

whenever the Board of Directors determines an examination of any such depository institution is necessary.

"(3) SPECIAL EXAMINATION OF ANY INSURED DEPOSITORY INSTITUTION.—In addition to the examinations authorized under paragraph (2), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make any special examination of any insured depository institution whenever the Board of Directors determines a special examination of

any such depository institution is necessary to determine the condition of such depository institution for insurance purposes.

"(4) EXAMINATION OF AFFILIATES.—

"(A) IN GENERAL.—In making any examination under paragraph (2) or (3), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make such examinations of the affairs of any affiliate of any insured depository institution as may be necessary to disclose fully—

"(i) the relationship between such insured depository institution and any such affiliate; and

"(ii) the effect of such relationship on the insured depository institution.

"(B) COMMITMENT BY FOREIGN BANKS TO ALLOW EXAMINATIONS OF AFFILIATES.—No branch or depository institution subsidiary of a foreign bank may become an insured depository institution unless such foreign bank submits a written binding commitment to the Board of Directors to permit any examination of any affiliate of such branch or depository institution subsidiary pursuant to subparagraph (A) to the extent determined by the Board of Directors to be necessary to carry out the purposes of this Act.

"(5) POWER AND DUTY OF EXAMINERS.—Each examiner appointed under paragraph (1) shall—

"(A) have power to make a thorough examination of any insured depository institution or affiliate under paragraph (2), (3), or (4); and

Reports.

"(B) shall make a full and detailed report of condition of any insured depository institution or affiliate examined to the Corporation.

"(6) POWER OF CLAIM AGENTS.—Each claim agent appointed under paragraph (1) shall have power to investigate and examine all claims for insured deposits.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 10(c) of the Federal Deposit Insurance Act (12 U.S.C. 1820(c)) is amended by striking out ", State nonmember banks or other institutions" and inserting in lieu thereof "and any State nonmember bank, savings association, or other institution".

(2) Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by striking out subsection (d).

SEC. 211. INSURANCE FUNDS.

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

(1) by striking out paragraph (1) and inserting the following:

"(1) The Corporation shall insure the deposits of all insured depository institutions as provided in this Act. The maximum amount of the insured deposit of any depositor shall be $100,000.";

(2) in paragraph (2)(B), by striking out "time and savings"; and

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

"(4) GENERAL PROVISION RELATING TO FUNDS.—The Bank Insurance Fund established under paragraph (5) and the Savings Association Insurance Fund established under paragraph (6) shall each be—

"(A) maintained and administered by the Corporation;

"(B) maintained separately and not commingled; and

"(C) used by the Corporation to carry out its insurance purposes in the manner provided in this subsection.

"(5) BANK INSURANCE FUND.—

"(A) ESTABLISHMENT.—There is established a fund to be known as the Bank Insurance Fund.

"(B) TRANSFER TO FUND.—On the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Permanent Insurance Fund shall be dissolved and all assets and liabilities of the Permanent Insurance Fund shall be transferred to the Bank Insurance Fund.

"(C) USES.—The Bank Insurance Fund shall be available to the Corporation for use with respect to Bank Insurance Fund members.

"(D) DEPOSITS.—All amounts assessed against Bank Insurance Fund members by the Corporation shall be deposited into the Bank Insurance Fund.

"(6) SAVINGS ASSOCIATION INSURANCE FUND.—

"(A) ESTABLISHMENT.—There is established a fund to be known as the Savings Association Insurance Fund.

"(B) USES.—The Savings Association Insurance Fund shall be available to the Corporation for use with respect to Savings Association Insurance Fund members.

"(C) DEPOSITS.—All amounts assessed against Savings Association Insurance Fund members which are not required for the Financing Corporation, the Resolution Funding Corporation, or the FSLIC Resolution Fund shall be deposited in the Savings Association Insurance Fund.

"(D) AVAILABILITY OF FUNDS FOR ADMINISTRATIVE EXPENSES.—

"(i) IN GENERAL.—The FSLIC Resolution Fund shall deposit in the Savings Association Insurance Fund such amounts as the Corporation determines are needed during the period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and ending on September 30, 1991, to pay the administrative and supervisory expenses of such Fund.

"(ii) PRIORITY.—The Savings Association Insurance Fund shall have priority over other obligations of the FSLIC Resolution Fund with respect to such amounts.

"(E) TREASURY PAYMENTS TO FUND.—To provide sufficient funding for the Savings Association Insurance Fund to carry out the purposes of this Act, the Secretary of the Treasury shall pay to such Fund, for each of the fiscal years 1992 through 1999, the amount, if any, by which $2,000,000,000 exceeds the amount deposited in such Fund (during such fiscal year) pursuant to subparagraph (C).

"(F) TREASURY PAYMENTS TO MAINTAIN NET WORTH OF FUND.—The Secretary of the Treasury shall pay to the Savings Association Insurance Fund, for each fiscal year described in the following table, any additional amount which may be necessary, as determined by the Corporation and the Secretary of the Treasury to ensure that such Fund has the minimum net worth referred to in such table throughout each such fiscal year:

"For the fiscal year beginning October 1 of:	The amount of minimum net worth (in billions):
1991	0.0
1992	1.0
1993	2.1
1994	3.2
1995	4.3
1996	5.4
1997	6.5
1998	7.6
1999	8.8

"(G) EXCEPTION TO SUBPARAGRAPHS (E) AND (F).—Notwithstanding subparagraphs (E) and (F), no payment may be made pursuant to such subparagraphs after the Savings Association Insurance Fund achieves a reserve ratio of 1.25 percent.

"(H) DISCRETIONARY RTC PAYMENTS.—If amounts available to the Savings Association Insurance Fund for purposes other than the payment of administrative expenses are insufficient for the Savings Association Insurance Fund to carry out the purposes of this Act, the Corporation may request the Resolution Trust Corporation to provide, and the Oversight Board of the Resolution Trust Corporation (in the discretion of the Oversight Board) may pay, such amount as may be needed for such purposes.

"(I) BORROWING AUTHORITY.—

"(i) IN GENERAL.—The Corporation may borrow from the Federal home loan banks, with the concurrence of the Federal Housing Finance Board, such funds as the Corporation considers necessary for the use of the Savings Association Insurance Fund.

"(ii) TERMS AND CONDITIONS.—Any loan from any Federal home loan bank under clause (i) to the Savings Association Insurance Fund shall—

"(I) bear a rate of interest of not less than such bank's current marginal cost of funds, taking into account the maturities involved;

"(II) be adequately secured, as determined by the Federal Housing Finance Board;

"(III) be a direct liability of such Fund; and

"(IV) be subject to the limitations of section 15(c).

"(J) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the Treasury, such sums as may be necessary to carry out the provisions of this paragraph, except that—

"(i) the annual amount appropriated under subparagraph (F) shall not exceed $2,000,000,000 in either fiscal year 1991 or fiscal year 1992; and

"(ii) the cumulative amount appropriated under subparagraph (F) for fiscal years 1991 through 1999 shall not exceed $16,000,000,000.

"(7) PROVISIONS APPLICABLE TO MAINTENANCE OF ACCOUNTS.—

"(A) CORPORATION'S AUTHORITY.—Any provision of this Act forbidding the commingling of the Bank Insurance Fund with the Savings Association Insurance Fund, or requiring the separate maintenance of the Bank Insurance Fund and the Savings Association Insurance Fund, is not intended—

"(i) to limit or impair the authority of the Corporation to use the same facilities and resources in the course of conducting supervisory, regulatory, conservatorship, receivership, or liquidation functions with respect to banks and savings associations, or to integrate such functions; or

"(ii) to limit or impair the Corporation's power to combine assets or liabilities belonging to banks and savings associations in conservatorship or receivership for managerial purposes, or to limit or impair the Corporation's power to dispose of such assets or liabilities on an aggregate basis.

"(B) ACCOUNTING REQUIREMENTS.—

"(i) ACCOUNTING FOR USE OF FACILITIES AND RESOURCES.—The Corporation shall keep a full and complete accounting of all costs and expenses associated with the use of any facility or resource used in the course of any function specified in subparagraph (A)(i) and shall allocate, in the manner provided in subparagraph (C), any such costs and expenses incurred by the Corporation—

"(I) with respect to Bank Insurance Fund members to the Bank Insurance Fund; and

"(II) with respect to Savings Association Insurance Fund members to the Savings Association Insurance Fund.

"(ii) ACCOUNTING FOR HOLDING AND MANAGING ASSETS AND LIABILITIES.—The Corporation shall keep a full and complete accounting of all costs and expenses associated with the holding management of any asset or liability specified in subparagraph (A)(ii).

"(iii) ACCOUNTING FOR DISPOSITION OF ASSETS AND LIABILITIES.—The Corporation shall keep a full and complete accounting of all expenses and receipts associated with the disposition of any asset or liability specified in subparagraph (A)(ii).

"(iv) ALLOCATION OF COST, EXPENSES AND RECEIPTS.—The Corporation shall allocate any cost, expense, and receipt described in clause (ii) or clause (iii) which is associated with any asset or liability belonging to—

"(I) any Bank Insurance Fund member to the Bank Insurance Fund; and

"(II) any Savings Association Insurance Fund member to the Savings Association Insurance Fund.

"(C) ALLOCATION OF ADMINISTRATIVE EXPENSES.—Any personnel, administrative, or other overhead expense of the Corporation shall be allocated—

"(i) fully to the Bank Insurance Fund, if the expense was incurred directly as a result of the Corporation's responsibilities solely with respect to Bank Insurance Fund members;

"(ii) fully to the Savings Association Insurance Fund, if the expense was incurred directly as a result of the Corporation's responsibilities solely with respect to Savings Association Insurance Fund members;

"(iii) between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the relative degree to which the expense was incurred as a result of the activities of Bank Insurance Fund and Savings Association Insurance Fund members; or

"(iv) between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the relative total assets as of the end of the preceding calendar year of Bank Insurance Fund members and Savings Association Insurance Fund members, to the extent that the Board of Directors is unable to make a determination under clause (i), (ii), or (iii).".

SEC. 212. CONSERVATORSHIP AND RECEIVERSHIP POWERS OF THE CORPORATION.

(a) BASIC AUTHORITIES.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by striking out subsections (c) through (j) and inserting the following new subsections:

"(c) APPOINTMENT OF CORPORATION AS CONSERVATOR OR RECEIVER.—

"(1) IN GENERAL.—Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may accept appointment and act as conservator or receiver for any insured depository institution upon appointment in the manner provided in paragraph (2) or (3).

"(2) FEDERAL DEPOSITORY INSTITUTIONS.—

"(A) APPOINTMENT.—

"(i) CONSERVATOR.—The Corporation may, at the discretion of the supervisory authority, be appointed conservator of any insured Federal depository institution or District bank and the Corporation may accept such appointment.

"(ii) RECEIVER.—The Corporation shall be appointed receiver, and shall accept such appointment, whenever a receiver is appointed for the purpose of liquidation or winding up the affairs of an insured Federal depository institution or District bank by the appropriate Federal banking agency, notwithstanding any other provision of Federal law (other than section 21A of the Federal Home Loan Bank Act) or the code of law for the District of Columbia.

"(B) ADDITIONAL POWERS.—In addition to and not in derogation of the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver, the Corporation, to the extent not inconsistent with such powers and duties, shall have any other power conferred on or any duty (which is related to the exercise of such power) imposed on a conservator or receiver for any Federal depository institution under any other provision of law.

"(C) CORPORATION NOT SUBJECT TO ANY OTHER AGENCY.—When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any

State in the exercise of the Corporation's rights, powers, and privileges.

"(D) DEPOSITORY INSTITUTION IN CONSERVATORSHIP SUBJECT TO BANKING AGENCY SUPERVISION.—Notwithstanding subparagraph (C), any Federal depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate Federal banking agency.

"(3) INSURED STATE DEPOSITORY INSTITUTIONS—

"(A) APPOINTMENT BY APPROPRIATE STATE SUPERVISOR.—Whenever the authority having supervision of any insured State depository institution (other than a District depository institution) appoints a conservator or receiver for such institution and tenders appointment to the Corporation, the Corporation may accept such appointment.

"(B) ADDITIONAL POWERS.—In addition to the powers conferred and the duties related to the exercise of such powers imposed by State law on any conservator or receiver appointed under the law of such State for an insured State depository institution, the Corporation, as conservator or receiver pursuant to an appointment described in subparagraph (A), shall have the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver.

"(C) CORPORATION NOT SUBJECT TO ANY OTHER AGENCY.—When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of its rights, powers, and privileges.

"(D) DEPOSITORY INSTITUTION IN CONSERVATORSHIP SUBJECT TO BANKING AGENCY SUPERVISION.—Notwithstanding subparagraph (C), any insured State depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate State bank or savings association supervisor.

"(4) APPOINTMENT OF CORPORATION BY THE CORPORATION.—Except as otherwise provided in section 21A of the Federal Home Loan Bank Act and notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may appoint itself as sole conservator or receiver of any insured State depository institution if—

"(A) the Corporation determines—

"(i) that—

"(I) a conservator, receiver, or other legal custodian has been appointed for such institution;

"(II) such institution has been subject to the appointment of any such conservator, receiver, or custodian for a period of at least 15 consecutive days; and

"(III) 1 or more of the depositors in such institution is unable to withdraw any amount of any insured deposit; or

"(ii) that such institution has been closed by or under the laws of any State; and

"(B) the Corporation determines that 1 or more of the grounds specified in paragraph (5)—

"(i) existed with respect to such institution at the time—

"(I) the conservator, receiver, or other legal custodian was appointed; or

"(II) such institution was closed; or

"(ii) exist at any time—

"(I) during the appointment of the conservator, receiver, or other legal custodian; or

"(II) while such institution is closed.

"(5) GROUNDS FOR PARAGRAPH (4) APPOINTMENT.—The grounds referred to in paragraph (4)(B) for the appointment of the Corporation as conservator or receiver for any insured State depository institution are as follows:

"(A) Insolvency in that the assets of the institution are less than the institution's obligations to its creditors and others, including members of the institution.

"(B) Substantial dissipation of assets or earnings due to—

"(i) any violation of any law or regulation; or

"(ii) any unsafe or unsound practice.

"(C) An unsafe or unsound condition to transact business, including substantially insufficient capital or otherwise.

"(D) Any willful violation of a cease-and-desist order which has become final.

"(E) Any concealment of books, papers, records, or assets of the institution or any refusal to submit books, papers, records, or affairs of the institution for inspection to any examiner or to any lawful agent of the appropriate Federal banking agency or State bank or savings association supervisor.

"(F) The likelihood that the institution will not be able to meet the demands of its depositors or pay its obligations in the normal course of business.

"(G) The incurrence or likely incurrence of losses by the institution that will deplete all or substantially all of its capital with no reasonable prospect for the replenishment of the capital of the institution without Federal assistance.

"(H) Any violation of any law or regulation, or an unsafe or unsound practice or condition which is likely to cause insolvency or substantial dissipation of assets or earnings, or is likely to weaken the condition of the institution or otherwise seriously prejudice the interests of its depositors.

"(6) APPOINTMENT BY DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

"(A) CONSERVATOR.—The Corporation or the Resolution Trust Corporation may, at the discretion of the Director of the Office of Thrift Supervision, be appointed conservator and the Corporation may accept any such appointment.

"(B) RECEIVER.—Whenever the Director of the Office of Thrift Supervision appoints a receiver under the provisions of section 5(d)(2)(C) of the Home Owner's Loan Act for the purpose of liquidation or winding up any savings association's affairs—

"(i) during the 3-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Resolution Trust Corporation shall be appointed; and

"(ii) after the end of the 3-year period referred to in clause (i), the Corporation shall be appointed.

"(7) JUDICIAL REVIEW.—If the Corporation appoints itself as conservator or receiver under paragraph (4), the insured State depository institution may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to remove itself as such conservator or receiver, and the court shall, upon the merits, dismiss such action or direct the Corporation to remove itself as such conservator or receiver.

"(8) REPLACEMENT OF CONSERVATOR OF STATE DEPOSITORY INSTITUTION.—

"(A) IN GENERAL.—In the case of any insured State depository institution for which the Corporation appointed itself as conservator pursuant to paragraph (4), the Corporation may, without any requirement of notice, hearing, or other action, replace itself as conservator with itself as receiver of such institution.

"(B) REPLACEMENT TREATED AS REMOVAL OF INCUMBENT.—The replacement of a conservator with a receiver under subparagraph (A) shall be treated as the removal of the Corporation as conservator.

"(C) RIGHT OF REVIEW OF ORIGINAL APPOINTMENT NOT AFFECTED.—The replacement of a conservator with a receiver under subparagraph (A) shall not affect any right of the insured State depository institution to obtain review, pursuant to paragraph (7), of the original appointment of the conservator.

"(9) ADDITIONAL POWERS.—In any case in which the Corporation is appointed conservator or receiver pursuant to paragraph (4) or (6)—

"(A) the provisions of this section shall be applicable to the Corporation, as conservator or receiver of any insured State depository institution in the same manner and to the same extent as if such institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and

"(B) the Corporation as receiver of any insured State depository institution may—

"(i) liquidate such institution in an orderly manner; and

"(ii) make such other disposition of any matter concerning such institution as the Corporation determines is in the best interests of the institution, the depositors of such institution, and the Corporation.

"(d) POWERS AND DUTIES OF CORPORATION AS CONSERVATOR OR RECEIVER.—

"(1) RULEMAKING AUTHORITY OF CORPORATION.—The Corporation may prescribe such regulations as the Corporation determines to be appropriate regarding the conduct of conservatorships or receiverships.

"(2) GENERAL POWERS.—

"(A) SUCCESSOR TO INSTITUTION.—The Corporation shall, as conservator or receiver, and by operation of law, succeed to—

"(i) all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, accountholder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution; and

"(ii) title to the books, records, and assets of any previous conservator or other legal custodian of such institution.

"(B) OPERATE THE INSTITUTION.—The Corporation may, as conservator or receiver—

"(i) take over the assets of and operate the insured depository institution with all the powers of the members or shareholders, the directors, and the officers of the institution and conduct all business of the institution;

"(ii) collect all obligations and money due the institution;

"(iii) perform all functions of the institution in the name of the institution which is consistent with the appointment as conservator or receiver; and

"(iv) preserve and conserve the assets and property of such institution.

"(C) FUNCTIONS OF INSTITUTION'S OFFICERS, DIRECTORS, AND SHAREHOLDERS.—The Corporation may, by regulation or order, provide for the exercise of any function by any member or stockholder, director, or officer of any insured depository institution for which the Corporation has been appointed conservator or receiver.

"(D) POWERS AS CONSERVATOR.—The Corporation may, as conservator, take such action as may be—

"(i) necessary to put the insured depository institution in a sound and solvent condition; and

"(ii) appropriate to carry on the business of the institution and preserve and conserve the assets and property of the institution.

"(E) ADDITIONAL POWERS AS RECEIVER.—The Corporation may, as receiver, place the insured depository institution in liquidation and proceed to realize upon the assets of the institution, having due regard to the conditions of credit in the locality.

"(F) ORGANIZATION OF NEW INSTITUTIONS.—The Corporation may, as receiver—

"(i) with respect to savings associations and by application to the Director of the Office of Thrift Supervision, organize a new Federal savings association to take over such assets or such liabilities as the Corporation may determine to be appropriate; and

"(ii) with respect to any insured bank, organize a new national bank under subsection (m) or a bridge bank under subsection (n).

"(G) MERGER; TRANSFER OF ASSETS AND LIABILITIES.—

"(i) IN GENERAL.—The Corporation may, as conservator or receiver—

"(I) merge the insured depository institution with another insured depository institution; or

"(II) subject to clause (ii), transfer any asset or liability of the institution in default (including

assets and liabilities associated with any trust business) without any approval, assignment, or consent with respect to such transfer.

"(ii) APPROVAL BY APPROPRIATE FEDERAL BANKING AGENCY.—No transfer described in clause (i)(II) may be made to another depository institution (other than a new bank or a bridge bank established pursuant to subsection (m) or (n)) without the approval of the appropriate Federal banking agency for such institution.

"(H) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as conservator or receiver, shall pay all valid obligations of the insured depository institution in accordance with the prescriptions and limitations of this Act.

"(I) INCIDENTAL POWERS.—The Corporation may, as conservator or receiver—

"(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this Act and such incidental powers as shall be necessary to carry out such powers; and

"(ii) take any action authorized by this Act,

which the Corporation determines is in the best interests of the depository institution, its depositors, or the Corporation.

"(3) AUTHORITY OF RECEIVER TO DETERMINE CLAIMS.—

"(A) IN GENERAL.—The Corporation may, as receiver, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (4)(A).

"(B) NOTICE REQUIREMENTS.—The receiver, in any case involving the liquidation or winding up of the affairs of a closed depository institution, shall—

"(i) promptly publish a notice to the depository institution's creditors to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

"(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

"(C) MAILING REQUIRED.—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the institution's books—

"(i) at the creditor's last address appearing in such books; or

"(ii) upon discovery of the name and address of a claimant not appearing on the institution's books within 30 days after the discovery of such name and address.

"(4) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

"(5) PROCEDURES FOR DETERMINATION OF CLAIMS.—

"(A) DETERMINATION PERIOD.—

"(i) IN GENERAL.—Before the end of the 180-day period beginning on the date any claim against a

depository institution is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

"(ii) EXTENSION OF TIME.—The period described in clause (i) may be extended by a written agreement between the claimant and the Corporation.

"(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

"(I) on the depository institution's books;

"(II) in the claim filed by the claimant; or

"(III) in documents submitted in proof of the claim.

"(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

"(I) a statement of each reason for the disallowance; and

"(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

"(B) ALLOWANCE OF PROVEN CLAIMS.—The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

"(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—

"(i) IN GENERAL.—Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (3)(B)(i) shall be disallowed and such disallowance shall be final.

"(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (3)(B)(i) and such claim may be considered by the receiver if—

"(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

"(II) such claim is filed in time to permit payment of such claim.

"(D) AUTHORITY TO DISALLOW CLAIMS.—The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

"(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).—No court may review the Corporation's determination pursuant to subparagraph (D) to disallow a claim.

"(F) LEGAL EFFECT OF FILING.—

"(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a

claim with the receiver shall constitute a commencement of an action.

"(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

"(6) PROVISION FOR AGENCY REVIEW OR JUDICIAL DETERMINATION OF CLAIMS.—

"(A) IN GENERAL.—Before the end of the 60-day period beginning on the earlier of—

"(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a depository institution for which the Corporation is receiver; or

"(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i),

the claimant may request administrative review of the claim in accordance with subparagraph (A) or (B) of paragraph (7) or file suit on such claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the depository institution's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

"(B) STATUTE OF LIMITATIONS.—If any claimant fails to—

"(i) request administrative review of any claim in accordance with subparagraph (A) or (B) of paragraph (7); or

"(ii) file suit on such claim (or continue an action commenced before the appointment of the receiver),

before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

"(7) REVIEW OF CLAIMS.—

"(A) ADMINISTRATIVE HEARING.—If any claimant requests review under this subparagraph in lieu of filing or continuing any action under paragraph (6) and the Corporation agrees to such request, the Corporation shall consider the claim after opportunity for a hearing on the record. The final determination of the Corporation with respect to such claim shall be subject to judicial review under chapter 7 of title 5, United States Code.

"(B) OTHER REVIEW PROCEDURES.—

"(i) IN GENERAL.—The Corporation shall also establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

"(ii) CRITERIA.—In establishing alternative dispute resolution processes, the Corporation shall strive for procedures which are expeditious, fair, independent, and low cost.

"(iii) VOLUNTARY BINDING OR NONBINDING PROCEDURES.—The Corporation may establish both binding

and nonbinding processes, which may be conducted by any government or private party, but all parties, including the claimant and the Corporation, must agree to the use of the process in a particular case.

"(iv) CONSIDERATION OF INCENTIVES.—The Corporation shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

"(8) EXPEDITED DETERMINATION OF CLAIMS.—

"(A) ESTABLISHMENT REQUIRED.—The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

"(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any depository institution for which the Corporation has been appointed receiver; and

"(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

"(B) DETERMINATION PERIOD.—Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

"(i) determine—

"(I) whether to allow or disallow such claim; or

"(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (5); and

"(ii) notify the claimant of the determination, and if the claim is disallowed, a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

"(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—

"(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

"(ii) the date the Corporation denies the claim.

"(D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

"(E) LEGAL EFFECT OF FILING.—

"(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

"(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

"(9) AGREEMENT AS BASIS OF CLAIM.—

"(A) REQUIREMENTS.—Except as provided in subparagraph (B), any agreement which does not meet the requirements set forth in section 13(e) shall not form the basis of, or substantially comprise, a claim against the receiver or the Corporation.

"(B) EXCEPTION TO CONTEMPORANEOUS EXECUTION REQUIREMENT.—Notwithstanding section 13(e)(2), any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (A).

"(10) PAYMENT OF CLAIMS.—

"(A) IN GENERAL.—The receiver may, in the receiver's discretion and to the extent funds are available, pay creditor claims which are allowed by the receiver, approved by the Corporation pursuant to a final determination pursuant to paragraph (7) or (8), or determined by the final judgment of any court of competent jurisdiction in such manner and amounts as are authorized under this Act.

"(B) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the receiver's sole discretion, pay dividends on proved claims at any time, and no liability shall attach to the Corporation (in such Corporation's corporate capacity or as 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.

"(11) DISTRIBUTION OF ASSETS.—

"(A) SUBROGATED CLAIMS; CLAIMS OF UNINSURED DEPOSITORS AND OTHER CREDITORS.—The receiver shall—

"(i) retain for the account of the Corporation such portion of the amounts realized from any liquidation as the Corporation may be entitled to receive in connection with the subrogation of the claims of depositors; and

"(ii) pay to depositors and other creditors the net amounts available for distribution to them.

"(B) DISTRIBUTION TO SHAREHOLDERS OF AMOUNTS REMAINING AFTER PAYMENT OF ALL OTHER CLAIMS AND EXPENSES.—In any case in which funds remain after all depositors, creditors, other claimants, and administrative expenses are paid, the receiver shall distribute such funds to the depository institution's shareholders or members together with the accounting report required under paragraph (14)(C).

"(12) SUSPENSION OF LEGAL ACTIONS.—

"(A) IN GENERAL.—After the appointment of a conservator or receiver for an insured depository institution, the conservator or receiver may request a stay for a period not to exceed—

"(i) 45 days, in the case of any conservator; and

"(ii) 90 days, in the case of any receiver,

in any judicial action or proceeding to which such institution is or becomes a party.

"(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by any conservator or receiver pursuant to subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

"(13) ADDITIONAL RIGHTS AND DUTIES.—

"(A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as conservator or receiver.

"(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.—In the event of any appealable judgment, the Corporation as conservator or receiver shall—

"(i) have all the rights and remedies available to the insured depository institution (before the appointment of such conservator or receiver) and the Corporation in its corporate capacity, including removal to Federal court and all appellate rights; and

"(ii) not be required to post any bond in order to pursue such remedies.

"(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the receiver.

"(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this subsection, no court shall have jurisdiction over—

"(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the Corporation has been appointed receiver, including assets which the Corporation may acquire from itself as such receiver; or

"(ii) any claim relating to any act or omission of such institution or the Corporation as receiver.

"(14) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY CONSERVATOR OR RECEIVER.—

"(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as conservator or receiver shall be—

"(i) in the case of any contract claim, the longer of—

"(I) the 6-year period beginning on the date the claim accrues; or

"(II) the period applicable under State law; and

"(ii) in the case of any tort claim, the longer of—

"(I) the 3-year period beginning on the date the claim accrues; or

"(II) the period applicable under State law.

"(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitation begins to run on any claim described in such subparagraph shall be the later of—

"(i) the date of the appointment of the Corporation as conservator or receiver; or

"(ii) the date on which the cause of action accrues.

"(15) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

"(A) IN GENERAL.—The Corporation as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each conservatorship and receivership or other disposition of institutions in default.

"(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each conservatorship or receivership to which the Corporation was appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary of the Treasury, the Comptroller General of the United States, and the authority which appointed the Corporation as conservator or receiver.

"(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) shall be made available by the Corporation upon request to any shareholder of the depository institution for which the Corporation was appointed conservator or receiver or any other member of the public.

"(D) RECORDKEEPING REQUIREMENT.—After the end of the 6-year period beginning on the date the Corporation is appointed as receiver of an insured depository institution, the Corporation may destroy any records of such institution which the Corporation, in the Corporation's discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

"(16) CONTRACTS WITH STATE HOUSING FINANCE AUTHORITIES.—

"(A) IN GENERAL.—The Corporation may enter into contracts with any State housing finance authority for the sale of mortgage-related assets (as such terms are defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) of any depository institution in default (including assets and liabilities associated with any trust business), such contracts to be effective in accordance with their terms without any further approval, assignment, or consent with respect thereto.

"(B) FACTORS TO CONSIDER.—In evaluating the disposition of mortgage related assets to any State housing finance authority the Corporation shall consider—

"(i) the State housing finance authority's ability to acquire and service current, delinquent, and defaulted mortgage related assets;

"(ii) the State housing finance authority's ability to further national housing policies;

"(iii) the State housing finance authority's sensitivity to the impact of the sale of mortgage related assets upon the State and local communities;

"(iv) the costs to the Federal Government associated with alternative ownership or dispositions of the mortgage related assets;

"(v) the minimization of future guaranties which may be required of the Federal Government;

"(vi) the maximization of mortgage related asset values; and

"(vii) the utilization of institutions currently established in mortgage related asset market activities.

"(e) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

"(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a conservator or receiver may have, the conservator or receiver for any insured depository institution may disaffirm or repudiate any contract or lease—

"(A) to which such institution is a party;

"(B) the performance of which the conservator or receiver, in the conservator's or receiver's discretion, determines to be burdensome; and

"(C) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the institution's affairs.

"(2) TIMING OF REPUDIATION.—The conservator or receiver appointed for any insured depository institution in accordance with subsection (c) shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

"(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

"(A) IN GENERAL.—Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

"(i) limited to actual direct compensatory damages; and

"(ii) determined as of—

"(I) the date of the appointment of the conservator or receiver; or

"(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

"(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term 'actual direct compensatory damages' does not include—

"(i) punitive or exemplary damages;

"(ii) damages for lost profits or opportunity; or

"(iii) damages for pain and suffering.

"(C) MEASURE OF DAMAGES FOR REPUDIATION OF FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

"(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

"(ii) paid in accordance with this subsection and subsection (k) except as otherwise specifically provided in this section.

"(4) LEASES UNDER WHICH THE INSTITUTION IS THE LESSEE.—

"(A) IN GENERAL.—If the conservator or receiver disaffirms or repudiates a lease under which the insured depository institution was the lessee, the conservator or

receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

"(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

"(i) be entitled to the contractual rent accruing before the later of the date—

"(I) the notice of disaffirmance or repudiation is mailed; or

"(II) the disaffirmance or repudiation becomes effective,

unless the lessor is in default or breach of the terms of the lease;

"(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and Claims.

"(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (k). Claims.

"(5) LEASES UNDER WHICH THE INSTITUTION IS THE LESSOR.—

"(A) IN GENERAL.—If the conservator or receiver repudiates an unexpired written lease of real property of the insured depository institution under which the institution is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

"(i) treat the lease as terminated by such repudiation; or

"(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

"(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

"(i) the lessee—

"(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease;

"(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the insured depository institution under the lease after such date; and

"(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

"(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

"(A) IN GENERAL.—If the conservator or receiver repudiates any contract (which meets the requirements of each paragraph of section 13(e)) for the sale of real property and the purchaser of such real property under such contract is

in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

"(i) treat the contract as terminated by such repudiation; or

"(ii) remain in possession of such real property.

"(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

"(i) the purchaser—

"(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

"(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the depository institution under the contract; and

"(ii) the conservator or receiver shall—

"(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

"(II) deliver title to the purchaser in accordance with the provisions of the contract; and

"(III) have no obligation under the contract other than the performance required under subclause (II).

"(C) ASSIGNMENT AND SALE ALLOWED.—

"(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

"(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

"(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

Claims.

"(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any insured depository institution for which the Corporation has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be—

"(i) a claim to be paid in accordance with subsections (d) and (i); and

"(ii) deemed to have arisen as of the date the conservator or receiver was appointed.

"(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described in subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise

the right of repudiation of such contract under this section—

"(i) the other party shall be paid under the terms of the contract for the services performed; and

"(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

"(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by any conservator or receiver of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

"(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

"(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraph (10) of this subsection and notwithstanding any other provision of this Act (other than subsections (d)(9) and (i)(4)(I) of this section and section 13(e)), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

"(i) any right to cause the termination or liquidation of any qualified financial contract with an insured depository institution which arises upon the appointment of the Corporation as receiver for such institution at any time after such appointment;

"(ii) any right under any security arrangement relating to any contract or agreement described in clause (i); or

"(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

"(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (d)(12) shall apply in the case of any judicial action or proceeding brought against any receiver referred to in subparagraph (A), or the insured depository institution for which such receiver was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such institution.

"(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

"(i) IN GENERAL.—Notwithstanding paragraph (11), the Corporation, whether acting as such or as conservator or receiver of an insured depository institution, may not avoid any transfer of money or other property in connection with any qualified financial contract with an insured depository institution.

"(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with an insured depository institution if the Corporation determines that the transferee had actual intent to hinder, delay, or defraud such institution, the creditors of such institution, or any conservator or receiver appointed for such institution.

"(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this subsection—

"(i) QUALIFIED FINANCIAL CONTRACT.—The term 'qualified financial contract' means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation to be a qualified financial contract for purposes of this paragraph.

"(ii) SECURITIES CONTRACT.—The term 'securities contract'—

"(I) has the meaning given to such term in section 741(7) of title 11, United States Code, except that the term 'security' (as used in such section) shall be deemed to include any mortgage loan, any mortgage-related security (as defined in section 3(a)(41) of the Securities Exchange Act of 1934), and any interest in any mortgage loan or mortgage-related security; and

"(II) does not include any participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.

"(iii) COMMODITY CONTRACT.—The term 'commodity contract' has the meaning given to such term in section 761(4) of title 11, United States Code.

"(iv) FORWARD CONTRACT.—The term 'forward contract' has the meaning given to such term in section 101(24) of title 11, United States Code.

"(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement'—

"(I) has the meaning given to such term in section 101(41) of title 11, the United States Code, except that the items (as described in such section) which may be subject to any such agreement shall be deemed to include mortgage-related securities (as such term is defined in section 3(a)(41) of the Securities Exchange Act of 1934, any mortgage loan, and any interest in any mortgage loan; and

"(II) does not include any participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.

"(vi) SWAP AGREEMENT.—The term 'swap agreement'—

"(I) means any agreement, including the terms and conditions incorporated by reference in any such agreement, which is a rate swap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option purchased, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or

currency option purchased or any other similar agreement, and

"(II) includes any combination of such agreements and any option to enter into any such agreement.

"(vii) TREATMENT OF MASTER AGREEMENT AS 1 SWAP AGREEMENT.—Any master agreement for any agreements described in clause (vi)(I) together with all supplements to such master agreement shall be treated as 1 swap agreement.

"(viii) TRANSFER.—The term 'transfer' has the meaning given to such term in section 101(50) of title 11, United States Code.

"(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this Act (other than paragraph (12) of this subsection, subsections (d)(9) and (i)(4)(I) of this section, and section 13(e) of this Act), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

"(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a depository institution in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

"(ii) any right under any security arrangement relating to such qualified financial contracts; or

"(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

"(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

"(A) transfer to 1 depository institution (other than a depository institution in default)— Claims.

"(i) all qualified financial contracts between—

"(I) any person or any affiliate of such person; and

"(II) the depository institution in default;

"(ii) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

"(iii) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

"(iv) all property securing any claim described in clause (ii) or (iii) under any such contract; or

"(B) transfer none of the financial contracts, claims, or property referred to in subparagraph (A) (with respect to such person and any affiliate of such person).

"(10) NOTIFICATION OF TRANSFER.—

"(A) IN GENERAL.—If—

"(i) the conservator or receiver for an insured depository institution in default makes any transfer of the assets and liabilities of such institution; and

"(ii) the transfer includes any qualified financial contract,

the conservator or receiver shall use such conservator's or receiver's best efforts to notify any person who is a party to any such contract of such transfer by 12:00, noon (local time) on the business day following such transfer.

"(B) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term 'business day' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

"(11) CERTAIN SECURITY INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any depository institution except where such an interest is taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.

"(12) AUTHORITY TO ENFORCE CONTRACTS.—

"(A) IN GENERAL.—The conservator or receiver may enforce any contract, other than a director's or officer's liability insurance contract or a depository institution bond, entered into by the depository institution notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of a conservator or receiver.

"(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a directors or officers liability insurance contract or depository institution bond under other applicable law.

"(13) EXCEPTION FOR FEDERAL RESERVE AND FEDERAL HOME LOAN BANKS.—No provision of this subsection shall apply with respect to—

"(A) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

"(B) any security interest in the assets of the institution securing any such extension of credit.

"(f) PAYMENT OF INSURED DEPOSITS.—

"(1) IN GENERAL.—In case of the liquidation of, or other closing or winding up of the affairs of, any insured depository institution, payment of the insured deposits in such institution shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g), either by cash or by making available to each depositor a transferred deposit in a new insured depository institution in the same community or in another insured depository institution in an amount equal to the insured deposit of such depositor, except that—

"(A) all payments made pursuant to this section on account of a closed Bank Insurance Fund member shall be made only from the Bank Insurance Fund, and

"(B) all payments made pursuant to this section on account of a closed Savings Association Insurance Fund member shall be made only from the Savings Association Insurance Fund.

"(2) PROOF OF CLAIMS.—The Corporation, in its discretion, may require proof of claims to be filed and may approve or reject such claims for insured deposits.

"(3) RESOLUTION OF DISPUTES.—

"(A) RESOLUTIONS IN ACCORDANCE TO CORPORATION REGULATIONS.—In the case of any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit, the Corporation may resolve such disputed claim in accordance with regulations prescribed by the Corporation establishing procedures for resolving such claims. Claims.

"(B) ADJUDICATION OF CLAIMS.—If the Corporation has not prescribed regulations establishing procedures for resolving disputed claims, the Corporation may require the final determination of a court of competent jurisdiction before paying any such claim.

"(4) REVIEW OF CORPORATION'S DETERMINATION.—Final determination made by the Corporation shall be reviewable in accordance with chapter 7 of title 5, United States Code, by the United States Court of Appeals for the District of Columbia or the court of appeals for the Federal judicial circuit where the principal place of business of the depository institution is located. Courts, U.S.

"(5) STATUTE OF LIMITATIONS.—Any request for review of a final determination by the Corporation shall be filed with the appropriate circuit court of appeals not later than 60 days after such determination is ordered.

"(g) SUBROGATION OF CORPORATION.—

"(1) IN GENERAL.—Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation, upon the payment to any depositor as provided in subsection (f) in connection with any insured depository institution or insured branch described in such subsection or the assumption of any deposit in such institution or branch by another insured depository institution pursuant to this section or section 13, shall be subrogated to all rights of the depositor against such institution or branch to the extent of such payment or assumption.

"(2) DIVIDENDS ON SUBROGATED AMOUNTS.—The subrogation of the Corporation under paragraph (1) with respect to any insured depository institution shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of such institution and recoveries on account of stockholders' liability as would have been payable to the depositor on a claim for the insured deposit, but such depositor shall retain such claim for any uninsured or unassumed portion of the deposit. Claims.

"(3) WAIVER OF CERTAIN CLAIMS.—With respect to any bank which closes after May 25, 1938, the Corporation shall waive, in favor only of any person against whom stockholders' individual liability may be asserted, any claim on account of such liability in excess of the liability, if any, to the bank or its creditors, for the amount unpaid upon such stock in such bank; but any such

waiver shall be effected in such manner and on such terms and conditions as will not increase recoveries or dividends on account of claims to which the Corporation is not subrogated.

"(4) APPLICABILITY OF STATE LAW.—If the Corporation is appointed pursuant to subsection (c)(3), or determines not to invoke the authority conferred in subsection (c)(4), the rights of depositors and other creditors of any State depository institution shall be determined in accordance with the applicable provisions of State law.

"(h) CONDITIONS APPLICABLE TO LIQUIDATION PROCEEDINGS.—

"(1) CONSIDERATION OF LOCAL ECONOMIC IMPACT REQUIRED.—The Corporation shall fully consider the adverse economic impact on local communities, including businesses and farms, of actions to be taken by it during the administration and liquidation of loans of a depository institution in default.

"(2) ACTIONS TO ALLEVIATE ADVERSE ECONOMIC IMPACT TO BE CONSIDERED.—The actions which the Corporation shall consider include the release of proceeds from the sale of products and services for family living and business expenses and shortening the undue length of the decisionmaking process for the acceptance of offers of settlement contingent upon third party financing.

"(3) GUIDELINES REQUIRED.—The Corporation shall adopt and publish procedures and guidelines to minimize adverse economic effects caused by its actions on individual debtors in the community.

"(i) VALUATION OF CLAIMS IN DEFAULT.—

"(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State and regardless of the method which the Corporation determines to utilize with respect to an insured depository institution in default or in danger of default, including transactions authorized under subsection (n) and section 13(c), this subsection shall govern the rights of the creditors (other than insured depositors) of such institution.

"(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver or in any other capacity, to any person having a claim against the receiver or the insured depository institution for which such receiver is appointed shall equal the amount such claimant would have received if the Corporation had liquidated the assets and liabilities of such institution without exercising the Corporation's authority under subsection (n) of this section or section 13.

"(3) ADDITIONAL PAYMENTS AUTHORIZED.—

"(A) IN GENERAL.—The Corporation may, in its discretion and in the interests of minimizing its losses, use its own resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. The Corporation shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category or claimants.

"(B) SOURCE OF FUNDS.—If the depository institution in default is a Bank Insurance Fund member, the Corporation may only make such payments out of funds held in the Bank Insurance Fund. If the depository institution in de-

fault is a Savings Association Insurance Fund member, the Corporation may only make such payments out of funds held in the Savings Association Insurance Fund.

"(C) MANNER OF PAYMENT.—The Corporation may make the payments or credit the amounts specified in subparagraphs (A) and (B) directly to the claimants or may make such payments or credit such amounts to an open insured depository institution to induce such institution to accept liability for such claims.

"(j) LIMITATION ON COURT ACTION.—Except as provided in this section, no court may take any action, except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Corporation as a conservator or a receiver.

"(k) LIABILITY OF DIRECTORS AND OFFICERS.—A director or officer of an insured depository institution may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

"(1) acting as conservator or receiver of such institution,

"(2) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator, or

"(3) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by an insured depository institution or its affiliate in connection with assistance provided under section 13,

for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law. Nothing in this paragraph shall impair or affect any right of the Corporation under other applicable law.

"(l) DAMAGES.—In any proceeding related to any claim against an insured depository institution's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an insured depository institution, recoverable damages determined to result from the improvident or otherwise improper use or investment of any insured depository institution's assets shall include principal losses and appropriate interest.".

SEC. 213. NEW BANKS.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by inserting after subsection (l) (as added by section 212) the following new subsection:

"(m) NEW BANKS.—

"(1) ORGANIZATION AUTHORIZED.—As soon as possible after the default of an insured bank, the Corporation, if it finds that it is advisable and in the interest of the depositors of the insured bank in default or the public shall organize a new national bank in the same community as the bank in default to assume the insured deposits of such bank in default and otherwise to perform temporarily the functions hereinafter provided for.

"(2) ARTICLES OF ASSOCIATION.—The articles of association and the organization certificate of the new bank shall be executed by representatives designated by the Corporation.

"(3) CAPITAL STOCK.—No capital stock need be paid in by the Corporation.

"(4) EXECUTIVE OFFICER.—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.

"(5) SUBJECT TO LAWS RELATING TO NATIONAL BANKS.—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.

"(6) NEW DEPOSITS.—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 $100,000 from any depositor.

"(7) INSURED STATUS.—The new bank, without application to or approval by the Corporation, shall be an insured depository institution 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.

"(8) INVESTMENTS.—Funds of the new bank shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Corporation, any Federal Reserve bank, or, to the extent of the insurance coverage on any such deposit, an insured depository institution.

"(9) CONDUCT OF BUSINESS.—The new bank, unless otherwise authorized by the Comptroller of the Currency, shall transact business only as authorized by this Act and as may be incidental to its organization.

Taxes.

"(10) EXEMPT STATUS.—Notwithstanding any other provision of Federal or State 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.

"(11) TRANSFER OF DEPOSITS.—(A) 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 bank in default 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 the depositor's insured deposit in the bank in default, and the total expenses of operation of the new bank.

"(B) Upon such determination, the amounts so estimated and made available shall be adjusted to conform to the amounts so determined.

"(12) EARNINGS.—Earnings of the new bank shall be paid over or credited to the Corporation in such adjustment.

"(13) LOSSES.—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.

"(14) PAYMENT OF INSURED DEPOSITS.—(A) The new bank shall assume as transferred deposits the payment of the insured deposits of such bank in default to each of its depositors.

"(B) 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.

"(15) ISSUANCE OF STOCK.—(A) 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 for the organization of a national bank in the place where such new bank is located.

"(B) The stockholders of the insured bank in default shall be given the first opportunity to purchase any shares of common stock so offered.

"(16) ISSUANCE OF CERTIFICATE.—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, the Comptroller of the Currency 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, may exercise all the powers granted by law, and shall be subject to all provisions of law relating to national banks. Such bank shall thereafter be an insured national bank, without certification to or approval by the Corporation. Securities.

"(17) TRANSFER TO OTHER INSTITUTION.—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 of Directors may offer to transfer its business to any insured depository institution 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. Securities.

"(18) WINDING UP.—Unless the capital stock of the new bank is sold or its assets are taken over and its liabilities are assumed by an insured depository institution as above provided within 2 years after 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 Securities.

the new bank. Thereafter the Corporation shall be liable for the obligations of such bank and shall be the owner of its assets.

"(19) APPLICABILITY OF CERTAIN LAWS.—The provisions of sections 5220 and 5221 of the Revised Statutes shall not apply to a new bank under this subsection.".

SEC. 214. BRIDGE BANKS.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by inserting after subsection (m) (as added by section 213) the following new subsection:

"(n) BRIDGE BANKS.—

"(1) ORGANIZATION.—

"(A) PURPOSE.—When 1 or more insured banks are in default, or when the Corporation anticipates that 1 or more insured banks may become in default, the Corporation may, in its discretion, organize, and the Office of the Comptroller of the Currency shall charter, 1 or more national banks with respect thereto with the powers and attributes of national banking associations, subject to the provisions of this subsection, to be referred to as bridge banks.

"(B) AUTHORITIES.—Upon the granting of a charter to a bridge bank, the bridge bank may—

"(i) assume such deposits of such insured bank or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate, except that if any insured deposits of a bank are assumed, all insured deposits of that bank shall be assumed by the bridge bank or another insured depository institution;

"(ii) assume such other liabilities (including liabilities associated with any trust business) of such insured bank or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

"(iii) purchase such assets (including assets associated with any trust business) of such insured bank or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate; and

"(iv) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this Act.

"(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge bank as approved by the Corporation shall be executed by 3 representatives designated by the Corporation.

"(D) INTERIM DIRECTORS.—A bridge bank shall have an interim board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

"(E) NATIONAL BANK.—A bridge bank shall be organized as a national bank.

"(2) CHARTERING.—

"(A) CONDITIONS.—A national bank may be chartered by the Comptroller of the Currency as a bridge bank only if the Board of Directors determines that—

"(i) the amount which is reasonably necessary to operate such bridge bank will not exceed the amount

which is reasonably necessary to save the cost of liquidating, including paying the insured accounts of, 1 or more insured banks in default or in danger of default with respect to which the bridge bank is chartered;

"(ii) the continued operation of such insured bank or banks in default or in danger of default with respect to which the bridge bank is chartered is essential to provide adequate banking services in the community where each such bank in default or in danger of default is located; or

"(iii) the continued operation of such insured bank or banks in default or in danger of default with respect to which the bridge bank is chartered is in the best interest of the depositors of such bank or banks in default or in danger of default or the public.

"(B) INSURED NATIONAL BANK.—A bridge bank shall be an insured bank from the time it is chartered as a national bank.

"(C) BRIDGE BANK TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A bridge bank shall be treated as an insured bank in default at such times and for such purposes as the Corporation may, in its discretion, determine.

"(D) MANAGEMENT.—A bridge bank, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

"(E) BYLAWS.—The board of directors of a bridge bank shall adopt such bylaws as may be approved by the Corporation.

"(3) TRANSFER OF ASSETS AND LIABILITIES.—

"(A) IN GENERAL.—

"(i) TRANSFER UPON GRANT OF CHARTER.—Upon the granting of a charter to a bridge bank pursuant to this subsection, the Corporation, as receiver, or any other receiver appointed with respect to any insured bank in default with respect to which the bridge bank is chartered may transfer any assets and liabilities of such bank in default to the bridge bank in accordance with paragraph (1).

"(ii) SUBSEQUENT TRANSFERS.—At any time after a charter is granted to a bridge bank, the Corporation, as receiver, or any other receiver appointed with respect to an insured bank in default may transfer any assets and liabilities of such insured bank in default as the Corporation may, in its discretion, determine to be appropriate in accordance with paragraph (1).

"(iii) TREATMENT OF TRUST BUSINESS.—For purposes of this paragraph, the trust business, including fiduciary appointments, of any insured bank in default is included among its assets and liabilities.

"(iv) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust business, of an insured bank in default transferred to a bridge bank shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

"(B) INTENT OF CONGRESS REGARDING CONTINUING OPERATIONS.—It is the intent of the Congress that, in order to prevent unnecessary hardship or losses to the customers of any insured bank in default with respect to which a bridge bank is chartered, especially creditworthy farmers, small businesses, and households, the Corporation should—

"(i) continue to honor commitments made by the bank in default to creditworthy customers, and

"(ii) not interrupt or terminate adequately secured loans which are transferred under subparagraph (A) and are being repaid by the debtor in accordance with the terms of the loan instrument.

"(4) POWERS OF BRIDGE BANKS.—Each bridge bank chartered under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, a national bank, except that—

"(A) the Corporation may—

"(i) remove the interim directors and directors of a bridge bank;

"(ii) fix the compensation of members of the interim board of directors and the board of directors and senior management, as determined by the Corporation in its discretion, of a bridge bank; and

"(iii) waive any requirement established under section 5145, 5146, 5147, 5148, or 5149 of the Revised Statutes (relating to directors of national banks) or section 31 of the Banking Act of 1933 which would otherwise be applicable with respect to directors of a bridge bank by operation of paragraph (2)(B);

"(B) the Corporation may indemnify the representatives for purposes of paragraph (1)(B) and the interim directors, directors, officers, employees, and agents of a bridge bank on such terms as the Corporation determines to be appropriate;

"(C) no requirement under section 5138 of the Revised Statutes or any other provision of law relating to the capital of a national bank shall apply with respect to a bridge bank;

"(D) the Comptroller of the Currency may establish a limitation on the extent to which any person may become indebted to a bridge bank without regard to the amount of the bridge bank's capital or surplus;

"(E)(i) the board of directors of a bridge bank shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Corporation;

"(ii) the board of directors of a bridge bank may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Corporation;

"(F) a bridge bank shall not be required to purchase stock of any Federal Reserve bank;

"(G) the Comptroller of the Currency shall waive any requirement for a fidelity bond with respect to a bridge bank at the request of the Corporation;

"(H) any judicial action to which a bridge bank becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a bank in default shall be stayed from further proceedings for a period of up to 45 days at the request of the bridge bank;

"(I) no agreement which tends to diminish or defeat the right, title or interest of a bridge bank in any asset of an insured bank in default acquired by it shall be valid against the bridge bank unless such agreement—

"(i) is in writing,

"(ii) was executed by such insured bank in default and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by such insured bank in default,

"(iii) was approved by the board of directors of such insured bank in default or its loan committee, which approval shall be reflected in the minutes of said board or committee, and

"(iv) has been, continuously from the time of its execution, an official record of such insured bank in default;

"(J) notwithstanding section 13(e)(2), any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such depository institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (I); and

"(K) except with the prior approval of the Corporation, a bridge bank may not, in any transaction or series of transactions, issue capital stock or be a party to any merger, consolidation, disposition of assets or liabilities, sale or exchange of capital stock, or similar transaction, or change its charter.

"(5) CAPITAL.—

"(A) NO CAPITAL REQUIRED.—The Corporation shall not be required to— Securities.

"(i) issue any capital stock on behalf of a bridge bank chartered under this subsection; or

"(ii) purchase any capital stock of a bridge bank, except that notwithstanding any other provision of Federal or State law, the Corporation may purchase and retain capital stock of a bridge bank in such amounts and on such terms as the Corporation, in its discretion, determines to be appropriate.

"(B) OPERATING FUNDS IN LIEU OF CAPITAL.—Upon the organization of a bridge bank, and thereafter, as the Board of Directors may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge bank, upon such terms and conditions and in such form and amounts as the Corporation may in its discretion determine, funds for the operation of the bridge bank in lieu of capital.

"(C) AUTHORITY TO ISSUE CAPITAL STOCK.—Whenever the Board of Directors determines it is advisable to do so, the

Corporation shall cause capital stock of a bridge bank to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

"(6) NO FEDERAL STATUS.—

"(A) AGENCY STATUS.—A bridge bank is not an agency, establishment, or instrumentality of the United States.

"(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a bridge bank are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a bridge bank shall not—

"(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law, or

Wages.

"(ii) receive any salary or benefits for service in any such capacity with respect to a bridge bank in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

"(7) ASSISTANCE AUTHORIZED.—The Corporation may, in its discretion, provide assistance under section 13(c) to facilitate any transaction described in clause (i), (ii), or (iii) of paragraph (10)(A) with respect to any bridge bank in the same manner and to the same extent as such assistance may be provided under such section with respect to an insured bank in default, or to facilitate a bridge bank's acquisition of any assets or the assumption of any liabilities of an insured bank in default.

"(8) ACQUISITION.—

"(A) IN GENERAL.—The responsible agency shall notify the Attorney General of any transaction involving the merger or sale of a bridge bank requiring approval under section 18(c) and if a report on competitive factors is requested within 10 days, such transaction may not be consummated before the 5th calendar day after the date of approval by the responsible agency with respect thereto. If the responsible agency has found that it must act immediately to prevent the probable failure of 1 of the banks involved, the preceding sentence does not apply and the transaction may be consummated immediately upon approval by the agency.

Securities.

"(B) BY OUT-OF-STATE HOLDING COMPANY.—Any depository institution, including an out-of-State depository institution, or any out-of-State depository institution holding company may acquire and retain the capital stock or assets of, or otherwise acquire and retain a bridge bank if the bridge bank at any time had assets aggregating $500,000,000 or more, as determined by the Corporation on the basis of the bridge bank's reports of condition or on the basis of the last available reports of condition of any insured bank in default, which institution has been acquired, or whose assets have been acquired, by the bridge bank. The acquiring

entity may acquire the bridge bank only in the same manner and to the same extent as such entity may acquire an insured bank in default under section 13(f)(2).

"(9) DURATION OF BRIDGE BANK.—Subject to paragraphs (11) and (13), the status of a bridge bank as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Board of Directors may, in its discretion, extend the status of the bridge bank as such for 3 additional 1-year periods.

"(10) TERMINATION OF BRIDGE BANK STATUS.—The status of any bridge bank as such shall terminate upon the earliest of—

"(A) the merger or consolidation of the bridge bank with a depository institution that is not a bridge bank;

"(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge bank to an entity other than the Corporation and other than another bridge bank;

"(C) the sale of 80 percent, or more, of the capital stock of the bridge bank to an entity other than the Corporation and other than another bridge bank;

"(D) at the election of the Corporation, either the assumption of all or substantially all of the deposits and other liabilities of the bridge bank by a depository institution holding company or a depository institution that is not a bridge bank, or the acquisition of all or substantially all of the assets of the bridge bank by a depository institution holding company, a depository institution that is not a bridge bank, or other entity as permitted under applicable law; and

"(E) the expiration of the period provided in paragraph (9), or the earlier dissolution of the bridge bank as provided in paragraph (12).

"(11) EFFECT OF TERMINATION EVENTS.—

"(A) MERGER OR CONSOLIDATION.—A bridge bank that participates in a merger or consolidation as provided in paragraph (10)(A) shall be for all purposes a national bank with all the rights, powers, and privileges thereof, and such merger or consolidation shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law.

"(B) CHARTER CONVERSION.—Following the sale of a majority of the capital stock of the bridge bank as provided in paragraph (10)(B), the Corporation may amend the charter of the bridge bank to reflect the termination of the status of the bridge bank as such, whereupon the bank shall remain a national bank, with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

"(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge bank as provided in paragraph (10)(C), the bank shall remain a national bank, with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

"(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the assumption of all or substantially all of the liabilities of the bridge bank, or the sale of all or substantially all of the assets of the bridge bank, as provided in

paragraph (10)(D), at the election of the Corporation the bridge bank may retain its status as such for the period provided in paragraph (8).

"(E) EFFECT ON HOLDING COMPANIES.—A depository institution holding company acquiring a bridge bank under section 13(f), paragraph (8)(B) (or any predecessor provision), or both provisions, shall not be impaired or adversely affected by the termination of the status of a bridge bank as a result of subparagraph (A), (B), (C), or (D) of paragraph (10), and shall be entitled to the rights and privileges provided in section 13(f).

"(F) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (10), the charter of the resulting institution shall be amended to reflect the termination of bridge bank status, if appropriate.

"(12) DISSOLUTION OF BRIDGE BANK.—

"(A) IN GENERAL.—Notwithstanding any other provision of State or Federal law, if the bridge bank's status as such has not previously been terminated by the occurrence of an event specified in subparagraphs (A), (B), (C), or (D) of paragraph (10)—

"(i) the Board of Directors may, in its discretion, dissolve a bridge bank in accordance with this paragraph at any time; and

"(ii) the Board of Directors shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge bank was chartered, or any extension thereof, as provided in paragraph (9).

"(B) PROCEDURES.—The Comptroller of the Currency shall appoint the Corporation receiver for a bridge bank upon certification by the Board of Directors to the Comptroller of the Currency of its determination to dissolve the bridge bank. The Corporation as such receiver shall wind up the affairs of the bridge bank in conformity with the provisions of law relating to the liquidation of closed national banks. With respect to any such bridge bank, the Corporation as such receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to a receiver of any insured depository institution 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 any State agency or other Federal agency.

"(13) MULTIPLE BRIDGE BANKS.—Subject to paragraph (1)(B)(i), the Corporation may, in the Corporation's discretion, organize 2 or more bridge banks under this subsection to assume any deposits of, assume any other liabilities of, and purchase any assets of a single bank in default.".

SEC. 215. FSLIC RESOLUTION FUND.

The Federal Deposit Insurance Act is amended by inserting after section 11 the following:

"SEC. 11A. FSLIC RESOLUTION FUND. 12 USC 1821a.

"(a) ESTABLISHED.—

"(1) IN GENERAL.—There is established a separate fund to be designated as the FSLIC Resolution Fund which shall be managed by the Corporation and separately maintained and not commingled.

"(2) TRANSFER OF FSLIC ASSETS AND LIABILITIES.—

"(A) IN GENERAL.—Except as provided in section 21A of the Federal Home Loan Bank Act, all assets and liabilities of the Federal Savings and Loan Insurance Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 shall be transferred to the FSLIC Resolution Fund.

"(B) ADDITIONAL CLAIMS ON ASSETS.—The FSLIC Resolution Fund shall pay to the Savings Association Insurance Fund such amounts as are needed for administrative and supervisory expenses from the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 through September 30, 1991.

"(3) SEPARATE HOLDING.—Assets and liabilities transferred to the FSLIC Resolution Fund shall be the assets and liabilities of the Fund and not of the Corporation and shall not be consolidated with the assets and liabilities of the Bank Insurance Fund, the Savings Association Insurance Fund, or the Corporation for accounting, reporting, or any other purpose.

"(b) SOURCE OF FUNDS.—The FSLIC Resolution Fund shall be funded from the following sources to the extent funds are needed in the listed priority:

"(1) Income earned on assets of the FSLIC Resolution Fund.

"(2) Liquidating dividends and payments made on claims received by the FSLIC Resolution Fund from receiverships to the extent such funds are not required by the Resolution Funding Corporation pursuant to section 21B of the Federal Home Loan Bank Act or the Financing Corporation pursuant to section 21 of such Act.

"(3) Amounts borrowed by the Financing Corporation pursuant to section 21 of the Federal Home Loan Bank Act.

"(4) During the period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and ending on December 31, 1991, amounts assessed against Savings Association Insurance Fund members by the Corporation pursuant to section 7 which are not required by the Financing Corporation pursuant to section 21 of the Federal Home Loan Bank Act or by the Resolution Funding Corporation pursuant to section 21B of the Federal Home Loan Bank Act.

"(c) TREASURY BACKUP.—

"(1) IN GENERAL.—If the funds described in subsections (a) and (b) are insufficient to satisfy the liabilities of the FSLIC Resolution Fund, the Secretary of the Treasury shall pay to the Fund such amounts as may be necessary, as determined by the Corporation and the Secretary, for FSLIC Resolution Fund purposes.

"(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the Treasury,

without fiscal year limitation, such sums as may be necessary to carry out this section.

"(d) LEGAL PROCEEDINGS.—Any judgment resulting from a proceeding to which the Federal Savings and Loan Insurance Corporation was a party prior to its dissolution or which is initiated against the Corporation with respect to the Federal Savings and Loan Insurance Corporation or with respect to the FSLIC Resolution Fund shall be limited to the assets of the FSLIC Resolution Fund.

"(e) TRANSFER OF NET PROCEEDS FROM SALE OF RTC ASSETS.—The FSLIC Resolution Fund shall transfer to the Resolution Funding Corporation any net proceeds from the sale of assets acquired from the Resolution Trust Corporation upon the termination of such Corporation pursuant to section 21A of the Federal Home Loan Bank Act.

"(f) DISSOLUTION.—The FSLIC Resolution Fund shall be dissolved upon satisfaction of all debts and liabilities and sale of all assets. Upon dissolution any remaining funds shall be paid into the Treasury. Any administrative facilities and supplies, including offices and office supplies, shall be transferred to the Corporation for use by and to be held as assets of the Savings Association Insurance Fund.".

SEC. 216. AMENDMENTS TO SECTION 12.

Section 12 of the Federal Deposit Insurance Act (12 U.S.C. 1822) is amended—

(1) by striking out "closed bank" each place it appears and inserting in lieu thereof "depository institution in default";

(2) by striking out subsection (a) and inserting the following:

"(a) BOND NOT REQUIRED; AGENTS; FEE.—The Corporation as receiver of an insured depository institution or branch of a foreign bank shall not be required to furnish bond and may appoint an agent or agents to assist it in its duties as such receiver. All fees, compensation, and expenses of liquidation and administration shall be fixed by the Corporation, and may be paid by it out of funds coming into its possession as such receiver."; and

(3) in subsection (d)—

(A) by striking out "as a stockholder of the depository institution in default, or of any liability of such depositor"; and

(B) by striking out "such bank" and inserting in lieu thereof "such depository institution".

SEC. 217. AMENDMENTS TO SECTION 13.

Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) is amended—

(1) by striking out subsection (a) and inserting the following:

"(a) INVESTMENT OF CORPORATION'S FUNDS.—

"(1) AUTHORITY.—Funds held in the Bank Insurance Fund, the Savings Association Insurance Fund, or the FSLIC Resolution Fund, that are not otherwise employed shall be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

"(2) LIMITATION.—The Corporation shall not sell or purchase any obligations described in paragraph (1) for its own account, at any one time aggregating in excess of $100,000, without the approval of the Secretary of the Treasury. The Secretary may approve a transaction or class of transactions subject to the

provisions of this paragraph under such conditions as the Secretary may determine.";

(2) in subsection (b)—

(A) by striking out "banking and checking" and "banking or checking" each place such terms appear and inserting in lieu thereof "depository";

(B) by striking out "bank" (except "Federal Reserve bank") each place such term appears and inserting in lieu thereof "depository institution";

(3) in subsection (c)—

(A) by striking out "closing" or "closed" each place such terms appear and inserting in lieu thereof "default" or "in default";

(B) by striking out "an" before "closed insured bank" each place such terms appear and inserting in lieu thereof "a";

(C) by striking out "in default insured depository institution" each place such term appears and inserting in lieu thereof "insured depository institution in default";

(D) in paragraph (2)(A)—

(i) by striking out "such insured institution" and "an insured depository institution" and inserting in lieu thereof "such other insured depository institution" and "another insured depository institution", respectively;

(ii) by inserting "any or all of the" after "the sale of"; and

(iii) by striking out "and the assumption" and inserting in lieu thereof "or the assumption of any or all";

(E) by adding at the end of paragraph (2) the following:

"(C) Any action to which the Corporation is or becomes a party by acquiring any asset or exercising any other authority set forth in this section shall be stayed for a period of 60 days at the request of the Corporation.";

(F) in paragraph (3), by striking out "section 13(f) of this Act" and inserting in lieu thereof "subsection (f) or (k) of this section";

(G) in paragraph (4)—

(i) by striking out "banking" and inserting in lieu thereof "depository"; and

(ii) by inserting at the end of subparagraph (A) the following: "In calculating the cost of assistance, the Corporation shall include (i) the immediate and long-term obligations of the Corporation with respect to such assistance, including contingent liabilities, and (ii) the Federal tax revenues foregone by the Government, to the extent reasonably ascertainable."; and

(H) by striking out paragraph (8);

(I) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(J) by inserting after paragraph (5) the following:

"(6) The transfer of any assets or liabilities associated with any trust business of an insured depository institution in default under subparagraph (2)(A) shall be effective without any State or Federal approval, assignment, or consent with respect thereto."; and

(K) by adding at the end the following:

"(9) Payments made under this subsection shall be made—

"(A) from the Bank Insurance Fund in the case of payments to or on behalf of a member of such Fund; or

"(B) from the Savings Association Insurance Fund or from funds made available by the Resolution Trust Corporation in the case of payments to or on behalf of any Savings Association Insurance Fund member.";

(4) by striking out subsections (d) and (e) and inserting the following:

"(d) SALE OF ASSETS TO CORPORATION.—

Loans.

"(1) IN GENERAL.-Any conservator, receiver, or liquidator appointed for any insured depository institution in default, including the Corporation acting in such capacity, shall be entitled to offer the assets of such depository institutions for sale to the Corporation or as security for loans from the Corporation.

"(2) PROCEEDS.—The proceeds of every sale or loan of assets to the Corporation shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such depository institutions.

"(3) RIGHTS AND POWERS OF CORPORATION.—

"(A) IN GENERAL.—With respect to any asset acquired or liability assumed pursuant to this section, the Corporation shall have all of the rights, powers, privileges, and authorities of the Corporation as receiver under sections 11 and 15(b).

"(B) RULE OF CONSTRUCTION.—Such rights, powers, privileges, and authorities shall be in addition to and not in derogation of any rights, powers, privileges, and authorities otherwise applicable to the Corporation.

"(C) FIDUCIARY RESPONSIBILITY.—In exercising any right, power, privilege, or authority described in subparagraph (A), the Corporation shall continue to be subject to the fiduciary duties and obligations of the Corporation as receiver to claimants against the insured depository institution in receivership.

"(4) LOANS.—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 depository institution which is now or may hereafter be in default.

"(e) AGREEMENTS AGAINST INTERESTS OF CORPORATION.—No agreement which tends to diminish or defeat the interest of the Corporation in any asset acquired by it under this section or section 11, either as security for a loan or by purchase or as receiver of any insured depository institution, shall be valid against the Corporation unless such agreement—

"(1) is in writing,

"(2) was executed by the depository institution and any person claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the depository institution,

"(3) was approved by the board of directors of the depository institution or its loan committee, which approval shall be reflected in the minutes of said board or committee, and

"(4) has been, continuously, from the time of its execution, an official record of the depository institution.";

(5) in subsection (f)—

(A) by striking out "closed" and "closing" each place such terms appear (except in "closed bank") and inserting in lieu thereof "in default" or "default", respectively;

(B) by striking out "closed bank" and inserting in lieu thereof "bank in default";

(C) in paragraph (1), by inserting "savings association" after "out-of-state bank";

(D) in paragraph (2)(B)(iii), by striking out "a unanimous vote" and inserting in lieu thereof "a vote of 75 percent of";

(E) by striking out "the constitution of any State,";

(F) in paragraph (6)(A), by inserting "the offeror which made the initial lowest acceptable offer and" after "the Corporation shall permit";

(G) by adding at the end of paragraph (7) the following:

"(C) if in the opinion of the Corporation the acquisition threatens the safety and soundness of the acquirer or does not result in the future viability of the resulting depository institution.";

(H) in paragraph (8), by striking out subparagraphs (A), (B), and (D) and redesignating paragraphs (C), (E), (F), and (G) as subparagraphs (A), (B), (C), and (D), respectively;

(I) in paragraph (9)—

(i) in the paragraph heading, by striking out "NONBANK" and inserting in lieu thereof "CERTAIN";

(ii) in paragraph (9)(A), by inserting ", other than a subsidiary that is an insured depository institution," after "subsidiary" and by striking out "which is not an insured bank"; and

(iii) in paragraph (9)(B), by inserting "or an affiliate of an insured depository institution" after "intermediate holding company"; and

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

"(12) ACQUISITION OF MINORITY BANK BY MINORITY BANK HOLDING COMPANY WITHOUT REGARD TO ASSET SIZE.—

"(A) IN GENERAL.—For the purpose of ensuring continued minority control of a minority-controlled bank, paragraphs (2) and (3) shall apply with respect to the acquisition of a minority-controlled bank by an out-of-State minority-controlled depository institution or depository institution holding company without regard to the fact that the total assets of such minority-controlled bank is less than $500,000,000.

"(B) DEFINITIONS.—For purposes of this paragraph:

"(i) MINORITY BANK.—The term 'minority bank' means any depository institution described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act—

"(I) more than 50 percent of the ownership or control of which is held by one or more minority individuals; and

"(II) more than 50 percent of the net profit or loss of which accrues to minority individuals.

"(ii) MINORITY.—The term 'minority' means any Black American, Native American, Hispanic American, or Asian American.";

(6) in subsection (h), by striking out "a closed insured depository institution", "closing", and "insurance fund" and inserting in lieu thereof "an insured depository institution in default", "default", and "Bank Insurance Fund", respectively;

(7) in subsection (i)—

(A) by inserting "depository" before "institution" each place such term appears;

(B) in paragraph (1)(C)—

(i) by striking out "corporation" and inserting in lieu thereof "Corporation";

(ii) by striking out "chartered bank" and inserting in lieu thereof "chartered depository institution";

(iii) by inserting ", a savings association," after "State member bank"; and

(iv) by inserting "or the Director of the Office of Thrift Supervision" after "Federal Reserve System";

(C) in paragraph (2), by striking out "or insured or guaranteed under State law"; and

(D) by striking out paragraphs (10) and (12); and

(8) by adding at the end thereof the following:

"(k) EMERGENCY ACQUISITIONS.—

"(1) IN GENERAL.—

"(A) ACQUISITIONS AUTHORIZED.—

"(i) TRANSACTIONS DESCRIBED.—Notwithstanding any provision of State law, upon determining that severe financial conditions threaten the stability of a significant number of savings associations, or of savings associations possessing significant financial resources, the Corporation, in its discretion and if it determines such authorization would lessen the risk to the Corporation, may authorize—

"(I) a savings association that is eligible for assistance pursuant to subsection (c) to merge or consolidate with, or to transfer its assets and liabilities to, any other savings association or any insured bank,

"(II) any other savings association to acquire control of such savings association, or

"(III) any company to acquire control of such savings association or to acquire the assets or assume the liabilities thereof.

The Corporation may not authorize any transaction under this subsection unless the Corporation determines that the authorization will not present a substantial risk to the safety or soundness of the savings association to be acquired or any acquiring entity.

"(ii) TERMS OF TRANSACTIONS.—Mergers, consolidations, transfers, and acquisitions under this subsection shall be on such terms as the Corporation shall provide.

"(iii) APPROVAL BY APPROPRIATE AGENCY.—Where otherwise required by law, transactions under this subsection must be approved by the appropriate Federal banking agency of every party thereto.

"(iv) ACQUISITIONS BY SAVINGS ASSOCIATIONS.—Any Federal savings association that acquires another savings association pursuant to clause (i) may, with the concurrence of the Director of the Office of Thrift

Supervision, hold that savings association as a subsidiary notwithstanding the percentage limitations of section 5(c)(4)(B) of the Home Owners' Loan Act.

"(v) DUAL SERVICE.—Dual service by a management official that would otherwise be prohibited under the Depository Institution Management Interlocks Act may, with the approval of the Corporation, continue for up to 10 years.

"(vi) CONTINUED APPLICABILITY OF CERTAIN STATE RESTRICTIONS.—Nothing in this subsection overrides or supersedes State laws restricting or limiting the activities of a savings association on behalf of another entity.

"(B) CONSULTATION WITH STATE OFFICIAL.—

"(i) CONSULTATION REQUIRED.—Before making a determination to take any action under subparagraph (A), the Corporation shall consult the State official having jurisdiction of the acquired institution.

"(ii) PERIOD FOR STATE RESPONSE.—The official shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

"(iii) APPROVAL OVER OBJECTION OF STATE OFFICIAL.—If the official objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent or more of the voting members of the Board of Directors. The Corporation shall provide to the official, as soon as practicable, a written certification of its determination.

"(2) SOLICITATION OF OFFERS.—

"(A) IN GENERAL.—In considering authorizations under this subsection, the Corporation may solicit such offers or proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the savings association.

"(B) MINORITY-CONTROLLED INSTITUTIONS.—In the case of a minority-controlled depository institution, the Corporation shall seek an offer from other minority-controlled depository institutions before seeking an offer from other persons or entities.

"(3) DETERMINATION OF COSTS.—In determining the cost of offers under this subsection, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers.

"(4) BRANCHING PROVISIONS.—

"(A) IN GENERAL.—If a merger, consolidation, transfer, or acquisition under this subsection involves a savings association eligible for assistance and a bank or bank holding company, a savings association may retain and operate any existing branch or branches or any other existing facilities. If the savings association continues to exist as a separate entity, it may establish and operate new branches to the same extent as any savings association that is not affiliated with a bank holding company and the home office of which is located in the same State.

"(B) RESTRICTIONS.—

"(i) IN GENERAL.—Notwithstanding subparagraph (A), if—

"(I) a savings association described in such subparagraph does not have its home office in the State of the bank holding company bank subsidiary, and

"(II) such association does not qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986, or does not meet the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify,

such savings association shall be subject to the conditions upon which a bank may retain, operate, and establish branches in the State in which the Savings Association Insurance Fund member is located.

"(ii) TRANSITION PERIOD.—The Corporation, for good cause shown, may allow a savings association up to 2 years to comply with the requirements of clause (i).

"(5) ASSISTANCE BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

"(A) ASSISTANCE PROPOSALS.—The Corporation shall consider proposals by Savings Association Insurance Fund members for assistance pursuant to subsection (c) before grounds exist for appointment of a conservator or receiver for such member under the following circumstances:

"(i) TROUBLED CONDITION CRITERIA.—The Corporation determines—

"(I) that grounds for appointment of a conservator or receiver exist or likely will exist in the future unless the member's tangible capital is increased;

"(II) that it is unlikely that the member can achieve positive tangible capital without assistance; and

"(III) that providing assistance pursuant to the member's proposal would be likely to lessen the risk to the Corporation.

"(ii) OTHER CRITERIA.—The member meets the following criteria:

"(I) Before enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the member was solvent under applicable regulatory accounting principles but had negative tangible capital.

"(II) The member's negative tangible capital position is substantially attributable to its participation in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons.

"(III) The member is a qualified thrift lender (as defined in section 10(m) of the Home Owners' Loan Act) or would be a qualified thrift lender if commercial real estate owned and nonperforming commercial loans acquired in acquisition and

merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons were excluded from the member's total assets.

"(IV) The appropriate Federal banking agency has determined that the member's management is competent and has complied with applicable laws, rules, and supervisory directives and orders.

"(V) The member's management did not engage in insider dealing or speculative practices or other activities that jeopardized the member's safety and soundness or contributed to its impaired capital position.

"(VI) The member's offices are located in an economically depressed region.

"(B) CORPORATION CONSIDERATION OF ASSISTANCE PROPOSAL.—If a member meets the requirements of clauses (i) and (ii) of subparagraph (A), the Corporation shall consider providing direct financial assistance.

"(C) ECONOMICALLY DEPRESSED REGION DEFINED.—For purposes of this paragraph, the term 'economically depressed region' means any geographical region which the Corporation determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a decline in energy or agricultural values or prices.".

SEC. 218. FDIC BORROWING AUTHORITY.

Section 14 of the Federal Deposit Insurance Act (12 U.S.C. 1824) is amended—

(1) by striking out "$3,000,000,000 outstanding at any one time" and inserting in lieu thereof "$5,000,000,000 outstanding at any one time, subject to the approval of the Secretary of the Treasury"; and

(2) by adding at the end the following: "The Corporation may employ such funds for purposes of the Bank Insurance Fund or the Savings Association Insurance Fund and the borrowing shall become a liability of each such fund to the extent funds are employed therefor. There are hereby appropriated to the Secretary, for fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to carry out this section."; and

(3) by striking out "the current average rate on outstanding marketable and nonmarketable obligations of the United States as of the last day of the month preceding the making of such loan" and inserting in lieu thereof the following: "an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities".

SEC. 219. EXEMPTION FROM TAXATION; LIMITATION ON BORROWING.

Section 15 of the Federal Deposit Insurance Act (12 U.S.C. 1825) is amended—

(1) by inserting "(a) GENERAL RULE.—" before "All"; and

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

"(b) OTHER EXEMPTIONS.—When acting as a receiver, the following provisions shall apply with respect to the Corporation:

"(1) The Corporation including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Corporation 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, except that, notwithstanding the failure of any person to challenge an assessment under State law of such property's value, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed.

"(2) No property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation, nor shall any involuntary lien attach to the property of the Corporation.

Taxes.

"(3) The Corporation shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

This subsection shall not apply with respect to any tax imposed (or other amount arising) under the Internal Revenue Code of 1986.

"(c) LIMITATION ON BORROWING.—

"(1) COST ESTIMATE FOR OUTSTANDING OBLIGATIONS LIABILITIES.—As soon as practicable after the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Corporation shall estimate the aggregate cost to the Corporation for all outstanding obligations and guarantees of the Corporation which were issued, and all outstanding liabilities which were incurred, by the Corporation before such date.

"(2) ESTIMATE OF NOTES AND OTHER OBLIGATIONS REQUIRED.—Before issuing an obligation or making a guarantee, the Corporation shall estimate the cost of such obligations or guarantees.

"(3) INCLUSION OF ESTIMATES IN FINANCIAL STATEMENTS.—The Corporation shall—

"(A) reflect in its financial statements the estimates made by the Corporation under paragraphs (1) and (2) of the aggregate amount of the costs to the Corporation for outstanding obligations and other liabilities, and

"(B) make such adjustments as are appropriate in the estimate of such aggregate amount not less frequently than quarterly.

"(4) ESTIMATE OF OTHER ASSETS REQUIRED.—The Corporation shall—

"(A) estimate the market value of assets held by it as a result of case resolution activities, with a reduction for expenses expected to be incurred by the Corporation in connection with the management and sale of such assets;

"(B) reflect the amounts so estimated in its financial statements; and

"(C) make such adjustments as are appropriate of such market value not less than quarterly.

"(5) MINIMUM NET WORTH REQUIRED.—The Corporation may not issue any note or similar obligation, and may not incur any liability under a guarantee or similar obligation, with respect to either the Bank Insurance Fund or the Savings Association Insurance Fund if, after reduction for the estimated cost of the

obligation or guarantee, the net worth of the affected insurance fund would be less than 10 percent of assets.

"(6) EXCEPTION.—With the prior approval of the Secretary of the Treasury, the Corporation may issue or incur up to $5,000,000,000 in the aggregate of additional liabilities in excess of the limitations of paragraph (5). The amount which the Corporation may borrow from the Treasury under section 14 of this Act shall be reduced by the amount of additional liabilities issued or incurred under this paragraph.

"(7) NET WORTH AND ASSET VALUATION.—For the purpose of paragraph (5)—

"(A) the assets of the Bank Insurance Fund or the Savings Association Insurance Fund shall be calculated based on the most recent audit of such Fund by the Comptroller General of the United States, subject to any adjustments described in paragraph (3) or (4) and taking into account any subsequent transactions; and

"(B) the net worth of the Bank Insurance Fund or the Savings Association Insurance Fund shall be calculated based on the most recent audit of such Fund by the Comptroller General of the United States, subject to any adjustments described in paragraphs (3) and (4) and taking into account any subsequent transactions.

"(d) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of any obligation issued after the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by the Corporation, with respect to both principal and interest, if—

"(1) the principal amount of such obligation is stated in the obligation; and

"(2) the term to maturity or the date of maturity of such obligation is stated in the obligation.".

SEC. 220. REPORTS.

(a) IN GENERAL.—Section 17 of the Federal Deposit Insurance Act (12 U.S.C. 1827) is amended—

(1) by striking out subsection (a) and inserting the following:

"(a) ANNUAL REPORTS ON BIF, SAIF, AND THE FSLIC RESOLUTION FUND.—

"(1) IN GENERAL.—The Corporation shall annually submit a full report of its operations, activities, budget, receipts, and expenditures for the preceding 12-month period. The report shall include, with respect to the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund, an analysis by the Corporation of—

"(A) the current financial condition of each such fund;

"(B) the purpose, effect, and estimated cost of each resolution action taken for an insured depository institution during the preceding year;

"(C) the extent to which the actual costs of assistance provided to, or for the benefit of, an insured depository institution during the preceding year exceeded the estimated costs of such assistance reported in a previous year under paragraph (A);

"(D) the exposure of each insurance fund to changes in those economic factors most likely to affect the condition of that fund;

"(E) a current estimate of the resources needed for the Bank Insurance Fund, the Savings Association Insurance Fund, or the FSLIC Resolution Fund to achieve the purposes of this Act; and

"(F) any findings, conclusions, and recommendations for legislative and administrative actions considered appropriate to future resolution activities by the Corporation.

"(2) MANNER OF SUBMISSION.—Such report shall be submitted to the President of the Senate and the Speaker of the House of Representatives, who shall cause the same to be printed for the information of Congress, and the President as soon as practicable after the first day of January each year.";

(2) by redesignating subsections (b), (c), and (d) as (e), (f), and (g), respectively; and

(3) by inserting after subsection (a) the following new subsections:

"(b) QUARTERLY REPORTS TO TREASURY.—

"(1) FINANCIAL OPERATING PLANS AND FORECASTS.—Before the beginning of each fiscal quarter, the Corporation shall provide to the Secretary of the Treasury a copy of the Corporation's financial operating plans and forecasts.

"(2) FINANCIAL CONDITION AND REPORTS OF OPERATIONS.—As soon as practicable after the end of each fiscal quarter, the Corporation shall submit to the Secretary of the Treasury a copy of the report of the Corporation's financial condition as of the end of such fiscal quarter and the results of the Corporation's operations during such fiscal quarter.

"(3) ITEMS TO BE INCLUDED.—The plans, forecasts, and reports required under this subsection shall reflect the estimates required to be made under section 15(b) of the liabilities and obligations of the Corporation described in such section.

"(4) RULE OF CONSTRUCTION.—The requirement to provide plans, forecasts, and reports to the Secretary of the Treasury under this subsection may not be construed as implying any obligation on the part of the Corporation to obtain the consent or approval of such Secretary with respect to such plans, forecasts, and reports.

"(c) REPORTS TO OMB.—

"(1) FINANCIAL INFORMATION.—The Corporation shall continue to provide to the Director of the Office of Management and Budget financial information consistent with that contained in the reports that were being provided to the Director immediately prior to the effective date of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(2) FINANCIAL OPERATING PLANS AND FORECASTS.—The Corporation shall also provide to the Director copies of the Corporation's financial operating plans and forecasts as prepared by the Corporation in the ordinary course of its operations, and copies of the quarterly reports of the Corporation's financial condition and results of operations as prepared by the Corporation in the ordinary course of its operations.

"(3) RULE OF CONSTRUCTION.—This subsection may not be construed as implying any obligation on the part of the Corporation to consult with or obtain the consent or approval of the Director with respect to any reports, plans, forecasts, or other information referred to in paragraph (1) or (2) or any jurisdic-

tion or oversight over the affairs or operations of the Corporation.

"(d) AUDIT.—

"(1) AUDIT REQUIRED.—The Comptroller General shall audit annually the financial transactions of the Corporation, the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund in accordance with generally accepted government auditing standards.

"(2) ACCESS TO BOOKS AND RECORDS.—All books, records, accounts, reports, files, and property belonging to or used by the Corporation, the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund, or by an independent certified public accountant retained to audit the Fund's financial statements, shall be made available to the Comptroller General.".

(b) SPECIFIC REPORTS.—

(1) RISK-BASED ASSESSMENTS.— 12 USC 1827 note.

(A) REPORT REQUIRED.—The Federal Deposit Insurance Corporation shall study the establishment of premium assessment categories related to types of risk to the insurance funds and shall report its recommendations to the Congress not later than January 1, 1991. If the Corporation should recommend the establishment of such a risk-based assessment plan, it shall also provide a timetable and plan for implementation.

(B) CONGRESSIONAL RESPONSE.—Not later than 180 days after receipt by the Congress of the report required under subparagraph (A) and the accompanying plan and timetable, the Congress shall make a recommendation to the Chairperson of the Board of Directors regarding the disposition of such plan and timetable.

(2) STUDY OF DEPOSIT INSURANCE PASS-THROUGH.—Not later than 6 months after the date of enactment of this Act, the Federal Deposit Insurance Corporation shall transmit to the Congress a report containing its findings and recommendations relating to the pass-through of deposit insurance either to individual investors in unit investment trust funds or to individual participants in pension or to profit sharing plans qualified under section 401 of the Internal Revenue Code of 1986. Such report shall also contain the Corporation's assessment of the potential effects of broadening deposit insurance coverage on the safety of the insurance funds and the operation of capital markets.

(3) REPORT ON DIRECTORS' AND OFFICERS' LIABILITY INSURANCE.—

(A) STUDY.—The Federal Deposit Insurance Corporation shall, together with the Secretary of the Treasury and the Attorney General, conduct a comprehensive study of directors' and officers' liability insurance and depository institution bonds, and the availability of such insurance for directors and officers of insured depository institutions. The study shall include—

(i) consideration of State laws limiting liability for directors and officers;

(ii) the effect of contractual provisions limiting insurance coverage when an institution is placed in receivership or conservatorship;

(iii) provisions limiting coverage when a claim is made by the Federal Deposit Insurance Corporation; and

(iv) provisions limiting claims made by one insured against another insured.

In addition, the study shall consider the need for such insurance or bonds and the effect any change in any of the above noted conditions or terms may have on the future availability of such insurance, and the ability of depository institutions to attract qualified officers and directors.

(B) REPORT.—Not later than 6 months after the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Federal Deposit Insurance Corporation, together with the Secretary of the Treasury and the Attorney General, shall report the findings from the study under subparagraph (A) to the Congress, together with legislative recommendations, if appropriate.

SEC. 221. REGULATIONS GOVERNING INSURED DEPOSITORY INSTITUTIONS.

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

(1) by striking out "(a)" and the 1st 2 sentences of subsection (a) and inserting the following:

"(a) INSURANCE LOGO.—

"(1) INSURED SAVINGS ASSOCIATIONS.—Each insured savings association shall display at each place of business maintained by such association a sign containing only the following items:

"(A) A statement that insured deposits are backed by the full faith and credit of the United States Government.

"(B) A statement that deposits are federally insured to $100,000.

"(C) The symbol of an eagle.

The sign shall not contain any reference to a Government agency and shall accord each item substantially equal prominence.

"(2) INSURED BANKS.—Not later than 30 days after the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, each insured bank shall display at each place of business maintained by such bank one of the following:

"(A) The sign required to be displayed by insured banks under regulations prescribed by the Corporation in effect on January 1, 1989.

"(B) The sign prescribed under paragraph (1).

"(3) REGULATIONS.—The Corporation shall prescribe regulations to carry out the purposes of this subsection, including regulations governing the manner of display or use of such signs, except that the size of the sign prescribed under paragraph (1) shall be similar to that prescribed under paragraph (2)(A). Initial regulations under this subsection shall be prescribed on the date of enactment of the Financial Institutions Recovery, Reform, and Enforcement Act of 1989.";

(2) in subsection (c)—

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

"(C) the Corporation if the acquiring, assuming, or resulting bank is to be a State nonmember insured bank (except a District bank or a savings bank supervised by the Director of the Office of Thrift Supervision); and

"(D) the Director of the Office of Thrift Supervision if the acquiring, assuming, or resulting institution is to be a savings association.";

(B) by striking out paragraph (12);

(C) in paragraphs (3), (4), (6), (7), and (9), by inserting after the word "bank" or "banks" each time it appears, the words "or savings association" or "or savings associations", respectively; and

(D) in paragraph (3), by striking out "failure" and inserting in lieu thereof "default";

(3) in subsection (i)(2)—

(A) by striking out "insured bank" and inserting in lieu thereof "insured Federal depository institution";

(B) by striking out "insured State bank" and inserting in lieu thereof "insured State depository institution";

(C) by striking out the period at the end of subpargraph (C) and inserting in lieu thereof "; and";

(D) by inserting after subparagraph (C) the following new subparagraph:

"(D) the Director of the Office of Thrift Supervision if the resulting institution is to be an insured State savings association.";

(E) in paragraph (4)(D), by inserting "and fitness" after "character"; and

(F) by striking out paragraph (5); and

(4) by adding at the end the following:

"(m) ACTIVITIES OF SAVINGS ASSOCIATIONS AND THEIR SUBSIDIARIES.—

"(1) PROCEDURES.—When an insured savings association establishes or acquires a subsidiary or when an insured savings association elects to conduct any new activity through a subsidiary that the insured savings association controls, the insured savings association—

"(A) shall notify the Corporation and the Director of the Office of Thrift Supervision not less than 30 days prior to the establishment, or acquisition, of any such subsidiary, and not less than 30 days prior to the commencement of any such activity, and in either case shall provide at that time such information as each such agency may, by regulation, require; and

"(B) shall conduct the activities of the subsidiary in accordance with regulations and orders of the Director of the Office of Thrift Supervision.

"(2) ENFORCEMENT POWERS.—With respect to any subsidiary of an insured savings association:

"(A) the Corporation and the Director of the Office of Thrift Supervision shall each have, with respect to such subsidiary, the respective powers that each has with respect to the insured savings association pursuant to this section or section 8; and

"(B) the Director of the Office of Thrift Supervision may determine, after notice and opportunity for hearing, that the continuation by the insured savings association of its

ownership or control of, or its relationship to, the subsidiary—

"(i) constitutes a serious risk to the safety, soundness, or stability of the insured savings association, or

"(ii) is inconsistent with sound banking principles or with the purposes of this Act.

Upon making any such determination, the Corporation or the Director of the Office of Thrift Supervision shall have authority to order the insured savings association to divest itself of control of the subsidiary. The Director of the Office of Thrift Supervision may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Director may deem appropriate.

"(3) ACTIVITIES INCOMPATIBLE WITH DEPOSIT INSURANCE.—

"(A) IN GENERAL.—The Corporation may determine by regulation or order that any specific activity poses a serious threat to the Savings Association Insurance Fund. Prior to adopting any such regulation, the Corporation shall consult with the Director of the Office of Thrift Supervision and shall provide appropriate State supervisors the opportunity o comment thereon, and the Corporation shall specifically ake such comments into consideration. Any such regulaion shall be issued in accordance with section 553 of title 5, Jnited States Code. If the Board of Directors makes such a letermination with respect to an activity, the Corporation shall have authority to order that no Savings Association Insurance Fund member may engage in the activity directly.

"(B) AUTHORITY OF DIRECTOR.—This section does not limit the authority of the Office of Thrift Supervision to issue regulations to promote safety and soundness or to enforce compliance with other applicable laws.

"(C) ADDITIONAL AUTHORITY OF FDIC TO PREVENT SERIOUS RISKS TO INSURANCE FUND.—Notwithstanding subparagraph (A), the Corporation may prescribe and enforce such regulations and issue such orders as the Corporation determines to be necessary to prevent actions or practices of savings associations that pose a serious threat to the Savings Association Insurance Fund or the Bank Insurance Fund.

"(4) 'SUBSIDIARY' DEFINED.—As used in this subsection, the term 'subsidiary' does not include an insured depository institution.

"(5) APPLICABILITY TO CERTAIN SAVINGS BANKS.—Subparagraphs (A) and (B) of paragraph (1) of this subsection do not apply to—

"(A) any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law, or

"(B) a savings association that acquired its principal assets from an institution that was chartered prior to October 15, 1982, as a savings bank under State law.

"(n) CALCULATION OF CAPITAL.—No appropriate Federal banking agency shall allow any insured depository institution to include an unidentifiable intangible asset in its calculation of compliance with the appropriate capital standard, if such unidentifiable intangible

asset was acquired after April 12, 1989, except to the extent permitted under section 5(t) of the Home Owners' Loan Act."

SEC. 222. ACTIVITIES OF SAVINGS ASSOCIATIONS.

The Federal Deposit Insurance Act is amended by adding at the end the following new section:

"SEC. 28. ACTIVITIES OF SAVINGS ASSOCIATIONS. 12 USC 1831e.

"(a) IN GENERAL.—On and after January 1, 1990, a savings association chartered under State law may not engage as principal in any type of activity, or in any activity in an amount, that is not permissible for a Federal savings association unless—

"(1) the Corporation has determined that the activity would pose no significant risk to the affected deposit insurance fund; and

"(2) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act.

"(b) DIFFERENCES OF MAGNITUDE BETWEEN STATE AND FEDERAL POWERS.—Notwithstanding subsection (a)(1), if an activity (other than an activity described in section 5(c)(2)(B) of the Home Owners' Loan Act) is permissible for a Federal savings association, a savings association chartered under State law may engage as principal in that activity in an amount greater than the amount permissible for a Federal savings association if—

"(1) the Corporation has not determined that engaging in that amount of the activity poses any significant risk to the affected deposit insurance fund; and

"(2) the savings association chartered under State law is and continues to be in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act.

"(c) EQUITY INVESTMENTS BY STATE SAVINGS ASSOCIATIONS.—

"(1) IN GENERAL.—Notwithstanding subsections (a) and (b), a savings association chartered under State law may not directly acquire or retain any equity investment of a type or in an amount that is not permissible for a Federal savings association.

"(2) EXCEPTION FOR SERVICE CORPORATIONS.—Paragraph (1) does not prohibit a savings association from acquiring or retaining shares of one or more service corporations if—

"(A) the Corporation has determined that no significant risk to the affected deposit insurance fund is posed by—

"(i) the amount that the association proposes to acquire or retain, or

"(ii) the activities in which the service corporation engages; and

"(B) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act.

"(3) TRANSITION RULE.—

"(A) IN GENERAL.—The Corporation shall require any savings association to divest any equity investment the retention of which is not permissible under paragraph (1) or (2) as quickly as can be prudently done, and in any event not later than July 1, 1994.

"(B) TREATMENT OF NONCOMPLIANCE DURING DIVESTMENT.—With respect to any equity investment held by any savings association on May 1, 1989, the savings association shall be deemed not to be in violation of the prohibition in paragraph (1) or (2) on retaining such investment so long as the savings association complies with any applicable requirement established by the Corporation pursuant to subparagraph (A) for divesting such investments.

"(d) CORPORATE DEBT SECURITIES NOT OF INVESTMENT GRADE.—

"(1) IN GENERAL.—No savings association may, directly or through a subsidiary, acquire or retain any corporate debt security not of investment grade.

"(2) EXCEPTION FOR SECURITIES HELD BY QUALIFIED AFFILIATE.—Paragraph (1) shall not apply with respect to any corporate debt security not of investment grade which is acquired and retained by any qualified affiliate of a savings association.

"(3) TRANSITION RULE.—

"(A) IN GENERAL.—The Corporation shall require any savings association or any subsidiary of any savings association to divest any corporate debt security not of investment grade the retention of which is not permissible under paragraph (1) as quickly as can be prudently done, and in any event not later than July 1, 1994.

"(B) TREATMENT OF NONCOMPLIANCE DURING DIVESTMENT.—With respect to any corporate debt security not of investment grade held by any savings association or subsidiary on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the savings association or subsidiary shall be deemed not to be in violation of the prohibition in paragraph (1) on retaining such investment so long as the association or subsidiary complies with any applicable requirement established by the Corporation pursuant to subparagraph (A) for divesting such securities.

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

"(A) INVESTMENT GRADE.—Any corporate debt security is not of 'investment grade' unless that security, when acquired by the savings association or subsidiary, was rated in one of the 4 highest rating categories by at least one nationally recognized statistical rating organization.

"(B) QUALIFIED AFFILIATE.—The term 'qualified affiliate' means—

"(i) in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and

"(ii) in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association's investments in and extensions of credit to the subsidiary are deducted from the savings association's capital.

"(C) CERTAIN SECURITIES NOT INCLUDED.—The term 'corporate debt security not of investment grade' does not include any obligation issued or guaranteed by a corporation that may be held by a Federal savings association without limitation as to percentage of assets under subparagraphs (D), (E), or (F) of section 5(c)(1) of the Home Owners' Loan Act.

"(e) TRANSFER OF CORPORATE DEBT SECURITY NOT OF INVESTMENT GRADE IN EXCHANGE FOR A QUALIFIED NOTE.—

"(1) ACQUISITION OF NOTE.—Notwithstanding subsections (a), (b), and (c) of section 5 of the Home Owners' Loan Act and any other provision of Federal or State law governing extensions of credit by savings associations, any insured savings association, and any subsidiary of any insured savings association, that, on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, holds any corporate debt security not of investment grade may acquire a qualified note in exchange for the transfer of such security to—

"(A) any holding company which controls 80 percent or more of the shares of such insured savings association; or

"(B) any company other than an insured savings association, or any subsidiary of any insured savings association, 80 percent or more of the shares of which are controlled by such holding company,

if the conditions of paragraph (2) are met.

"(2) CONDITIONS FOR EXCHANGE OF SECURITY FOR QUALIFIED NOTE.—The conditions of this paragraph are met if—

"(A) the insured savings association was in compliance with applicable capital requirements on December 31, 1988, and the insured savings association after such date—

"(i) remains in compliance with applicable capital requirements; or

"(ii) adopts and complies with a capital plan acceptable to the Director of the Office of Thrift Supervision;

"(B) the company to which the corporate debt security not of investment grade is transferred is not a bank holding company, an insured savings association, or a direct or indirect subsidiary of such holding company or insured savings association;

"(C) before the end of the 90-day period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the insured savings association notifies the Director of the Office of Thrift Supervision of such association's intention to transfer the corporate debt security not of investment grade to the savings and loan holding company or the subsidiary of such holding company;

"(D) the transfer of the corporate debt security not of investment grade is completed—

"(i) before the end of the 1-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, in the case of an insured savings association that, as of such date, is controlled by a savings and loan holding company; or

"(ii) before the end of the 2-year period beginning on such date, in the case of a savings association that is not, as of such date, a subsidiary of a savings and loan holding company;

"(E) the insured savings association receives in exchange for the corporate debt security not of investment grade the fair market value of such security;

"(F) the Director of the Office of Thrift Supervision has—

"(i) approved the transaction; and

"(ii) determined that the transfer represents a complete and effective divestiture of the corporate debt security not of investment grade and is in compliance with the provisions of this subsection; and

"(G) any gain on the sale of the corporate debt security not of investment grade is recognized, and included for applicable regulatory capital requirements, by the insured savings association only at such time and to the extent that the insured savings association receives payment of principal on the note in cash in excess of the fair market value of the transferred corporate debt security not of investment grade as carried on the accounts of the insured savings association immediately prior to the transfer.

"(3) QUALIFIED NOTE DEFINED.—The term 'qualified note' means any note that—

"(A) is at all times fully secured by the corporate debt security not of investment grade transferred in exchange for the note, or by other collateral of at least equivalent value that is acceptable to the Director of the Office of Thrift Supervision;

"(B) contains provisions acceptable to the Director of the Office of Thrift Supervision that would—

"(i) prevent any action to encumber or impair the value of the collateral referred to in subparagraph (A); and

"(ii) allow the sale of the corporate debt security not of investment grade if the proceeds of the sale are reinvested in assets of equivalent value;

"(C) is on market terms, including interest rate, which must in all cases be above the insured savings association's borrowing rate for similar term funds;

"(D) is fully repayable over a period of time not to exceed 5 years from the date of transfer;

"(E) is repaid with annual principal payments at least as large as would be necessary to repay the note within 5 years if it were on a level payment amortization schedule and the interest rate for the first year of repayment were fixed throughout the amortization period;

"(F) is fully guaranteed by each holding company of the insured savings association that acquires such note; and

"(G) is repaid in full in cash in accordance with its terms and this subsection.

"(4) FAILURE TO REPAY ON SCHEDULE.—The exemption provided by this subsection from subsections (a), (b), and (c) of section 11 of the Home Owners' Loan Act any other applicable provision of Federal or State law shall terminate immediately if the insured savings association or any affiliate of such association fails to comply with the terms of the qualified note or this subsection.

"(f) DETERMINATIONS.—The Corporation shall make determinations under this section by regulation or order.

"(g) ACTIVITY DEFINED.—For purposes of subsections (a) and (b)—

"(1) IN GENERAL.—The term 'activity' includes acquiring or retaining any investment.

"(2) DIVESTITURE OF CERTAIN ASSETS.— Notwithstanding paragraph (1), subsections (a) and (b) shall not be construed to require a savings association to divest itself of any assets ac-

quired before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(h) DISCLOSURES BY UNINSURED SAVINGS ASSOCIATIONS.—

"(1) IN GENERAL.—Any savings association the deposits of which are not insured by the Corporation under this Act shall disclose clearly and conspicuously in periodic statements of account and in all advertising that the savings association's deposits are 'not federally insured'.

"(2) MANNER AND CONTENT.—The Corporation may, by regulation or order, prescribe the manner and content of the disclosure.

"(3) ENFORCEMENT.—Compliance with the requirements of this subsection, and any regulation prescribed or order issued under this subsection, shall be enforced under section 8 in the same manner and to the same extent as if the savings association were an insured State nonmember bank.

"(i) OTHER AUTHORITY NOT AFFECTED.—This section may not be construed as limiting—

"(1) any other authority of the Corporation; or

"(2) any authority of the Director of the Office of Thrift Supervision or of a State to impose more stringent restrictions.".

SEC. 223. NONDISCRIMINATION.

Section 22 of the Federal Deposit Insurance Act (12 U.S.C. 1830) is amended to read as follows:

"SEC. 22. NONDISCRIMINATION.

"It is not the purpose of this Act to discriminate in any manner against State nonmember banks or State savings associations and in favor of national or member banks or Federal savings associations, respectively. It is the purpose of this Act to provide all banks and savings associations with the same opportunity to obtain and enjoy the benefits of this Act.".

SEC. 224. BROKERED DEPOSITS.

(a) IN GENERAL.—The Federal Deposit Insurance Act is amended by inserting after section 28 (as added by section 222 of this title) the following new section:

"SEC. 29. BROKERED DEPOSITS. 12 USC 1831f.

"(a) IN GENERAL.—A troubled institution may not accept funds obtained, directly or indirectly, by or through any deposit broker for deposit into 1 or more deposit accounts.

"(b) RENEWALS AND ROLLOVERS TREATED AS ACCEPTANCE OF FUNDS.—Any renewal of an account in any troubled institution and any rollover of any amount on deposit in any such account shall be treated as an acceptance of funds by such troubled institution for purposes of subsection (a).

"(c) WAIVER AUTHORITY.—The Corporation may, on a case-by-case basis and upon application by an insured depository institution, waive the applicability of subsection (a) upon a finding that the acceptance of such deposits does not constitute an unsafe or unsound practice with respect to such institution.

"(d) LIMITED EXCEPTION FOR CERTAIN CONSERVATORSHIPS.—In the case of any insured depository institution for which the Corporation has been appointed as conservator, subsection (a) shall not apply to

the acceptance of deposits (described in such subsection) by such institution if the Corporation determines that the acceptance of such deposits—

"(1) is not an unsafe or unsound practice; and

"(2) either—

"(A) is necessary to enable the institution to meet the demands of its depositors or pay its obligations in the ordinary course of business; or

"(B) is consistent with the conservator's fiduciary duty to minimize the losses of the institution.

"(e) ADDITIONAL RESTRICTIONS.—The Corporation may impose, by regulation or order, such additional restrictions on the acceptance of brokered deposits by any troubled institution as the Corporation may determine to be appropriate.

"(f) DEFINITIONS RELATING TO DEPOSIT BROKER.—

"(1) DEPOSIT BROKER.—The term 'deposit broker' means—

"(A) any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and

"(B) an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

"(2) EXCLUSIONS.—The term 'deposit broker' does not include—

"(A) an insured depository institution, with respect to funds placed with that depository institution;

"(B) an employee of an insured depository institution, with respect to funds placed with the employing depository institution;

"(C) a trust department of an insured depository institution, if the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

"(D) the trustee of a pension or other employee benefit plan, with respect to funds of the plan;

"(E) a person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan provided that that person is performing managerial functions with respect to the plan;

"(F) the trustee of a testamentary account;

"(G) the trustee of an irrevocable trust (other than one described in paragraph (1)(B)), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

"(H) a trustee or custodian of a pension or profitsharing plan qualified under section 401(d) or 403(a) of the Internal Revenue Code of 1986; or

"(I) an agent or nominee whose primary purpose is not the placement of funds with depository institutions.

"(3) INCLUSION OF DEPOSITORY INSTITUTIONS ENGAGING IN CERTAIN ACTIVITIES.—Notwithstanding paragraph (2), the term 'deposit broker' includes any insured depository institution, and any employee of any insured depository institution, which en-

gages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions having the same type of charter in such depository institution's normal market area.

"(4) EMPLOYEE.—For purposes of this subsection, the term 'employee' means any employee—

"(A) who is employed exclusively by the insured depository institution;

"(B) whose compensation is primarily in the form of a salary;

"(C) who does not share such employee's compensation with a deposit broker; and

"(D) whose office space or place of business is used exclusively for the benefit of the insured depository institution which employs such individual.

"(g) TROUBLED INSTITUTION DEFINED.—The term 'troubled institution' means any insured depository institution which does not meet the minimum capital requirements applicable with respect to such institution.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to deposits accepted after the end of the 120-day period beginning on the date of the enactment of this Act. 12 USC 1831f note.

SEC. 225. CONTRACTS BETWEEN DEPOSITORY INSTITUTIONS AND PERSONS PROVIDING GOODS, PRODUCTS, OR SERVICES.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 29 (as added by section 224 of this title) the following new section:

"SEC. 30. CONTRACTS BETWEEN DEPOSITORY INSTITUTIONS AND PERSONS PROVIDING GOODS, PRODUCTS, OR SERVICES. 12 USC 1831g.

"(a) IN GENERAL.—An insured depository institution may not enter into a written or oral contract with any person to provide goods, products, or services to or for the benefit of such depository institution if the performance of such contract would adversely affect the safety or soundness of the institution.

"(b) RULEMAKING.—The Corporation shall prescribe such regulations and issue such orders, including definitions consistent with this section, as may be necessary to administer and carry out the purposes of, and prevent evasions of, this section. Regulations.

"(c) ENFORCEMENT.—Any action taken by any appropriate Federal banking agency under section 8 to enforce compliance on the part of any insured depository institution with the requirements of this section may include a requirement that such institution properly reflect the transaction on its books and records.

"(d) NO PRIVATE RIGHT OF ACTION.—This section may not be construed as creating any private right of action.

"(e) STUDY.—

"(1) IN GENERAL.—The Attorney General and the Comptroller General of the United States shall jointly conduct a study on the extent to which—

"(A) insured depository institutions are entering into contracts with vendors under which venders agree to purchase stock or assets from insured depository institutions or to invest capital in or make deposits in such institutions; and

"(B) if such practices occur, the extent to which such practices are having an anticompetitive effect and should be prohibited.

"(2) REPORT TO CONGRESS.—Before the end of the 1-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Attorney General and the Comptroller General shall submit a report to the Congress on the results of the study conducted pursuant to paragraph (1).".

SEC. 226. SAVINGS ASSOCIATION INSURANCE FUND INDUSTRY ADVISORY COMMITTEE ESTABLISHED.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 30 (as added by section 225 of this title) the following new section:

12 USC 1831h.

"SEC. 31. SAVINGS ASSOCIATION INSURANCE FUND INDUSTRY ADVISORY COMMITTEE.

"(a) ESTABLISHMENT.—There is hereby established the Savings Association Insurance Fund Industry Advisory Committee (hereinafter referred to in this section as the 'Committee').

"(b) MEMBERSHIP.—The Committee shall consist of 18 members, appointed as follows:

"(1) 1 member elected from each Federal home loan bank district (by the members of the Board of Directors of each such bank who were elected by the members of such bank) from among individuals residing therein who are officers of insured depository institutions that are Savings Association Insurance Fund members.

"(2) 6 members appointed by the Corporation from among individuals who shall represent the public interest.

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

"(d) PAY AND EXPENSES.—Members of the Committee shall serve without pay, but each member shall be reimbursed, in such manner as the Corporation shall prescribe by regulation, for expenses incurred in connection with attendance of such members at meetings of the Committee.

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

"(f) AUTHORITY OF THE COMMITTEE.—The Committee may select its Chairperson, Vice Chairperson, and Secretary, and adopt methods of procedure, and shall have power—

"(1) to confer with the Board of Directors on general and special business conditions and regulatory and other matters affecting insured financial institutions that are members of the Savings Association Insurance Fund; and

"(2) to request information, and to make recommendations, with respect to matters within the jurisdiction of the Corporation.

"(g) MEETINGS.—The Committee shall meet 4 times each year, and more frequently if requested by the Corporation.

"(h) REPORTS.—The Committee shall submit a semiannual written report to the Committee on Banking, Finance and Urban Affairs of the House and to the Committee on Banking, Housing, and Urban Affairs of the Senate. Such report shall describe the activities of the

Committee for such semiannual period and contain such recommendations as the Committee considers appropriate.

"(i) PROVISION OF STAFF AND OTHER RESOURCES.—The Corporation shall provide the Committee with the use of such resources, including staff, as the Committee reasonably shall require to carry out its duties, including the preparation and submission of reports to Congress, under this section.

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

"(k) SUNSET.—The Committee shall cease to exist 10 years after the enactment of this section.".

TITLE III—SAVINGS ASSOCIATIONS

SEC. 301. AMENDMENT TO HOME OWNERS' LOAN ACT OF 1933.

The Home Owners' Loan Act of 1933 is amended to read as follows:

"SECTION 1. SHORT TITLE AND TABLE OF CONTENTS. 12 USC 1461.

"This Act may be cited as the 'Home Owners' Loan Act'.

"TABLE OF CONTENTS

"Sec. 1. Short title and table of contents.
"Sec. 2. Definitions.
"Sec. 3. Director of the Office of Thrift Supervision.
"Sec. 4. Supervision of savings associations.
"Sec. 5. Federal savings associations.
"Sec. 6. Liquid asset requirements.
"Sec. 7. Applicability.
"Sec. 8. District associations.
"Sec. 9. Examination fees.
"Sec. 10. Regulation of holding companies.
"Sec. 11. Transactions with affiliates; extensions of credit to executive officers, directors, and principal shareholders.
"Sec. 12. Advertising.
"Sec. 13. Powers of examiners.
"Sec. 14. Separability provision.

"SEC. 2. DEFINITIONS. 12 USC 1462.

"For purposes of this Act—

"(1) DIRECTOR.—The term 'Director' means the Director of the Office of Thrift Supervision.

"(2) CORPORATION.—The term 'Corporation' means the Federal Deposit Insurance Corporation.

"(3) OFFICE.—The term 'Office' means the Office of Thrift Supervision.

"(4) SAVINGS ASSOCIATION.—The term 'savings association' means a savings association, as defined in section 3 of the Federal Deposit Insurance Act, the deposits of which are insured by the Corporation.

"(5) FEDERAL SAVINGS ASSOCIATION.—The term 'Federal savings association' means a Federal savings association or a Federal savings bank chartered under section 5 of this Act.

"(6) NATIONAL BANK.—The term 'national bank' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(7) FEDERAL BANKING AGENCIES.—The term 'Federal banking agencies' means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

"(8) STATE.—The term 'State' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(9) AFFILIATE.—The term 'affiliate' means any person that controls, is controlled by, or is under common control with, a savings association, except as provided in section 10.

12 USC 1462a.

"SEC. 3. DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.

"(a) ESTABLISHMENT OF OFFICE.—There is established the Office of Thrift Supervision, which shall be an office in the Department of the Treasury.

"(b) ESTABLISHMENT OF POSITION OF DIRECTOR.—

"(1) IN GENERAL.—There is established the position of the Director of the Office of Thrift Supervision, who shall be the head of the Office of Thrift Supervision and shall be subject to the general oversight of the Secretary of the Treasury.

"(2) AUTHORITY TO PRESCRIBE REGULATIONS.—The Director may prescribe such regulations and issue such orders as the Director may determine to be necessary for carrying out this Act and all other laws within the Director's jurisdiction.

"(3) AUTONOMY OF DIRECTOR.—The Secretary of the Treasury may not intervene in any matter or proceeding before the Director unless otherwise provided by law.

"(c) APPOINTMENT; TERM.—

"(1) APPOINTMENT.—The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

"(2) TERM.—The Director shall be appointed for a term of 5 years.

"(3) VACANCY.—A vacancy in the position of Director which occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established in paragraph (1) and the Director appointed to fill such vacancy shall be appointed only for the remainder of such term.

"(4) SERVICE AFTER END OF TERM.—An individual may serve as Director after the expiration of the term for which appointed until a successor Director has been appointed.

"(5) TRANSITIONAL PROVISION.—Notwithstanding paragraphs (1) and (2), the Chairman of the Federal Home Loan Bank Board on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, shall be the Director until the date on which that individual's term as Chairman of the Federal Home Loan Bank Board would have expired.

"(d) PROHIBITION ON FINANCIAL INTERESTS.—The Director shall not have a direct or indirect financial interest in any insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act.

"(e) POWERS OF THE DIRECTOR.—The Director shall have all powers which—

"(1) were vested in the Federal Home Loan Bank Board (in the Board's capacity as such) or the Chairman of such Board on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

"(2) were not—

"(A) transferred to the Federal Deposit Insurance Corporation, the Federal Housing Finance Board, the Resolution Trust Corporation, or the Federal Home Loan Mort-

gage Corporation pursuant to any amendment made by such Act; or

"(B) established under any provision of law repealed by such Act.

"(f) ANNUAL REPORT REQUIRED.—The Director shall make an annual report to the Congress. Such report shall include—

"(1) a description of any changes the Director has made or is considering making in the district offices of the Office, including a description of the geographic allocation of the Office's resources and personnel used to carry out examination and supervision functions; and

"(2) a description of actions taken to carry out section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(g) STAFF.—

"(1) APPOINTMENT AND COMPENSATION.—The Director shall fix the compensation and number of, and appoint and direct, all employees of the Office of Thrift Supervision notwithstanding section 301(f)(1) of title 31, United States Code. Such compensation shall be paid without regard to the provisions of other laws applicable to officers or employees of the United States.

"(2) RATES OF BASIC PAY.—Rates of basic pay for employees of the Office may be set and adjusted by the Director without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

"(3) ADDITIONAL COMPENSATION AND BENEFITS.—The Director may provide additional compensation and benefits to employees of the Office if the same type of compensation or benefits are then being provided by any Federal banking agency or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and benefits for employees of the Office, the Director shall consult, and seek to maintain comparability with, the Federal banking agencies.

"(4) DELEGATION AUTHORITY.—

"(A) IN GENERAL.—The Director may—

"(i) designate who shall act as Director in the Director's absence; and

"(ii) delegate to any employee, representative, or agent any power of the Director.

"(B) LIMITATIONS.—Notwithstanding subparagraph (A)(ii), the Director shall not, directly or indirectly—

"(i) after October 10, 1989, delegate to any Federal home loan bank or to any officer, director, or employee of a Federal home loan bank, any power involving examining, supervising, taking enforcement action with respect to, or otherwise regulating any savings association, savings and loan holding company, or other person subject to regulation by the Director; or

"(ii) delegate the Director's authority to serve as a member of the Corporation's Board of Directors.

"(h) FUNDING THROUGH ASSESSMENTS.—The compensation of the Director and other employees of the Office and all other expenses thereof may be paid from assessments levied under this Act.

"(i) GAO AUDIT.—The Director shall make available to the Comptroller General of the United States all books and records

necessary to audit all of the activities of the Office of Thrift Supervision.

12 USC 1463.

"SEC. 4. SUPERVISION OF SAVINGS ASSOCIATIONS.

"(a) FEDERAL SAVINGS ASSOCIATIONS.—

"(1) IN GENERAL.—The Director shall provide for the examination, safe and sound operation, and regulation of savings associations.

"(2) REGULATIONS.—The Director may issue such regulations as the Director determines to be appropriate to carry out the responsibilities of the Director or the Office.

"(3) SAFE AND SOUND HOUSING CREDIT TO BE ENCOURAGED.—The Director shall exercise all powers granted to the Director under this Act so as to encourage savings associations to provide credit for housing safely and soundly.

"(b) ACCOUNTING AND DISCLOSURE.—

"(1) IN GENERAL.—The Director shall, by regulation, prescribe uniform accounting and disclosure standards for savings associations, to be used in determining savings associations' compliance with all applicable regulations.

"(2) SPECIFIC REQUIREMENTS FOR ACCOUNTING STANDARDS.—Subject to section 5(t), the uniform accounting standards prescribed under paragraph (1) shall—

"(A) incorporate generally accepted accounting principles to the same degree that such principles are used to determine compliance with regulations prescribed by the Federal banking agencies;

"(B) allow for no deviation from full compliance with such standards as are in effect after December 31, 1993; and

"(C) prior to January 1, 1994, require full compliance by savings associations with accounting standards in effect at any time before such date not later than provided under the schedule in section 563.23-3 of title 12, Code of Federal Regulations (as in effect on May 1, 1989).

"(3) AUTHORITY TO PRESCRIBE MORE STRINGENT ACCOUNTING STANDARDS.—The Director may at any time prescribe accounting standards more stringent than required under paragraph (2) if the Director determines that the more stringent standards are necessary to ensure the safe and sound operation of savings associations.

"(c) STRINGENCY OF STANDARDS.—All regulations and policies of the Director governing the safe and sound operation of savings associations, including regulations and policies governing asset classification and appraisals, shall be no less stringent than those established by the Comptroller of the Currency for national banks.

"(d) INVESTMENT OF CERTAIN FUNDS IN ACCOUNTS OF SAVINGS ASSOCIATIONS.—The savings accounts and share accounts of savings associations insured by the Corporation shall be lawful investments and may be accepted as security for all public funds of the United States, fiduciary and trust funds under the authority or control of the United States or any officer thereof, and for the funds of all corporations organized under the laws of the United States (subject to any regulatory authority otherwise applicable), regardless of any limitation of law upon the investment of any such funds or upon the acceptance of security for the investment or deposit of any of such funds.

"(e) PARTICIPATION BY SAVINGS ASSOCIATIONS IN LOTTERIES AND RELATED ACTIVITIES.—

"(1) PARTICIPATION PROHIBITED.—No savings association may—

"(A) deal in lottery tickets;

"(B) deal in bets used as a means or substitute for participation in a lottery;

"(C) announce, advertise, or publicize the existence of any lottery; or

"(D) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

"(2) USE OF FACILITIES PROHIBITED.—No savings association may permit—

"(A) the use of any part of any of its own offices by any person for any purpose forbidden to the institution under paragraph (1); or

"(B) direct access by the public from any of its own offices to any premises used by any person for any purpose forbidden to the institution under paragraph (1).

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

"(A) DEAL IN.—The term 'deal in' includes making, taking, buying, selling, redeeming, or collecting.

"(B) LOTTERY.—The term 'lottery' includes any arrangement under which—

"(i) 3 or more persons (hereafter in this subparagraph referred to as the 'participants') advance money or credit to another in exchange for the possibility or expectation that 1 or more but not all of the participants (hereafter in this paragraph referred to as the 'winners') will receive by reason of those participants' advances more than the amounts those participants have advanced; and

"(ii) the identity of the winners is determined by any means which includes—

"(I) a random selection;

"(II) a game, race, or contest; or

"(III) any record or tabulation of the result of 1 or more events in which any participant has no interest except for the bearing that event has on the possibility that the participant may become a winner.

"(C) LOTTERY TICKET.—The term 'lottery ticket' includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

"(4) EXCEPTION FOR STATE LOTTERIES.—Paragraphs (1) and (2) shall not apply with respect to any savings association accepting funds from, or performing any lawful services for, any State operating a lottery, or any officer or employee of such a State who is charged with administering the lottery.

"(5) REGULATIONS.—The Director shall prescribe such regulations as may be necessary to provide for enforcement of this subsection and to prevent any evasion of any provision of this subsection.

"(f) FEDERALLY RELATED MORTGAGE LOAN DISCLOSURES.—A savings association may not make a federally related mortgage loan to an agent, trustee, nominee, or other person acting in a fiduciary

capacity without requiring that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the savings association. At the request of the Director, the savings association shall report to the Director the identity of such person and the nature and amount of the loan.

Reports.

"(g) PREEMPTION OF STATE USURY LAWS.—(1) Notwithstanding any State law, a savings association may charge interest on any extension of credit at a rate of not more than 1 percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district in which such savings association is located or at the rate allowed by the laws of the State in which such savings association is located, whichever is greater.

"(2) If the rate prescribed in paragraph (1) exceeds the rate such savings association would be permitted to charge in the absence of this subsection, the receiving or charging a greater rate of interest than that prescribed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the extension of credit carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than 2 years after the date of such payment, an amount equal to twice the amount of the interest paid from the savings association taking or receiving such interest.

"(h) FORM AND MATURITY OF SECURITIES.—No savings association shall—

"(1) issue securities which guarantee a definite maturity except with the specific approval of the Director, or

"(2) issue any securities the form of which has not been approved by the Director.

12 USC 1464.

"SEC. 5. FEDERAL SAVINGS ASSOCIATIONS.

Housing.

"(a) IN GENERAL.—In order to provide thrift institutions for the deposit of funds and for the extension of credit for homes and other goods and services, the Director is authorized, under such regulations as the Director may prescribe—

"(1) to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings associations (including Federal savings banks), and

"(2) to issue charters therefor,

giving primary consideration of the best practices of thrift institutions in the United States. The lending and investment powers conferred by this section are intended to encourage such institutions to provide credit for housing safely and soundly.

"(b) DEPOSITS AND RELATED POWERS.—

"(1) DEPOSIT ACCOUNTS.—

"(A) Subject to the terms of its charter and regulations of the Director, a Federal savings association may—

"(i) raise funds through such deposit, share, or other accounts, including demand deposit accounts (hereafter in this section referred to as 'accounts'); and

"(ii) issue passbooks, certificates, or other evidence of accounts.

"(B) A Federal savings association may not—

"(i) pay interest on a demand account; or

"(ii) permit any overdraft (including an intraday overdraft) on behalf of an affiliate, or incur any such

overdraft in such savings association's account at a Federal reserve bank or Federal home loan bank on behalf of an affiliate.

All savings accounts and demand accounts shall have the same priority upon liquidation. Holders of accounts and obligors of a Federal savings association shall, to such extent as may be provided by its charter or by regulations of the Director, be members of the savings association, and shall have such voting rights and such other rights as are thereby provided.

"(C) A Federal savings association may require not less than 14 days notice prior to payment of savings accounts if the charter of the savings association or the regulations of the Director so provide.

"(D) If a Federal savings association does not pay all withdrawals in full (subject to the right of the association, where applicable, to require notice), the payment of withdrawals from accounts shall be subject to such rules and procedures as may be prescribed by the savings association's charter or by regulation of the Director. Except as authorized in writing by the Director, any Federal savings association that fails to make full payment of any withdrawal when due shall be deemed to be in an unsafe or unsound condition.

"(E) Accounts may be subject to check or to withdrawal or transfer on negotiable or transferable or other order or authorization to the Federal savings association, as the Director may by regulation provide.

"(F) A Federal savings association may establish remote service units for the purpose of crediting savings or demand accounts, debiting such accounts, crediting payments on loans, and the disposition of related financial transactions, as provided in regulations prescribed by the Director.

"(2) OTHER LIABILITIES.—To such extent as the Director may authorize in writing, a Federal savings association may borrow, may give security, may be surety as defined by the Director and may issue such notes, bonds, debentures, or other obligations, or other securities, including capital stock.

"(3) LOANS FROM STATE HOUSING FINANCE AGENCIES.—

"(A) IN GENERAL.—Subject to regulation by the Director but without regard to any other provision of this subsection, any Federal savings association that is in compliance with the capital standards in effect under subsection (t) may borrow funds from a State mortgage finance agency of the State in which the head office of such savings association is situated to the same extent as State law authorizes a savings association organized under the laws of such State to borrow from the State mortgage finance agency.

"(B) INTEREST RATE.—A Federal savings association may not make any loan of funds borrowed under subparagraph (A) at an interest rate which exceeds by more than 1¾ percent per annum the interest rate paid to the State mortgage finance agency on the obligations issued to obtain the funds so borrowed.

"(4) CREDIT CARDS.—Subject to regulations of the Director, a Federal savings association may issue credit cards, extend credit

in connection therewith, and otherwise engage in or participate in credit card operations.

"(5) MUTUAL CAPITAL CERTIFICATES.—In accordance with regulations issued by the Director, mutual capital certificates may be issued and sold directly to subscribers or through underwriters. Such certificates may be included in calculating capital for the purpose of subsection (t) to the extent permitted by the Director. The issuance of certificates under this paragraph does not constitute a change of control or ownership under this Act or any other law unless there is in fact a change in control or reorganization. Regulations relating to the issuance and sale of mutual capital certificates shall provide that such certificates—

"(A) are subordinate to all savings accounts, savings certificates, and debt obligations;

"(B) constitute a claim in liquidation on the general reserves, surplus, and undivided profits of the Federal savings association remaining after the payment in full of all savings accounts, savings certificates, and debt obligations;

"(C) are entitled to the payment of dividends; and

"(D) may have a fixed or variable dividend rate.

"(c) LOANS AND INVESTMENTS.—To the extent specified in regulations of the Director, a Federal savings association may invest in, sell, or otherwise deal in the following loans and other investments:

"(1) LOANS OR INVESTMENTS WITHOUT PERCENTAGE OF ASSETS LIMITATION.—Without limitation as a percentage of assets, the following are permitted:

"(A) ACCOUNT LOANS.—Loans on the security of its savings accounts and loans specifically related to transaction accounts.

"(B) RESIDENTIAL REAL PROPERTY LOANS.—Loans on the security of liens upon residential real property.

"(C) UNITED STATES GOVERNMENT SECURITIES.—Investments in obligations of, or fully guaranteed as to principal and interest by, the United States.

"(D) FEDERAL HOME LOAN BANK AND FEDERAL NATIONAL MORTGAGE ASSOCIATION SECURITIES.—Investments in the stock or bonds of a Federal home loan bank or in the stock of the Federal National Mortgage Association.

"(E) FEDERAL HOME LOAN MORTGAGE CORPORATION INSTRUMENTS.—Investments in mortgages, obligations, or other securities which are or have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act.

"(F) OTHER GOVERNMENT SECURITIES.—Investments in obligations, participations, securities, or other instruments issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, or any agency of the United States. A savings association may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act.

"(G) DEPOSITS.—Investments in accounts of any insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act.

"(H) STATE SECURITIES.—Investments in obligations issued by any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision). A Federal savings association may not invest more than 10 percent of its capital in obligations of any one issuer, exclusive of investments in general obligations of any issuer.

"(I) PURCHASE OF INSURED LOANS.—Purchase of loans secured by liens on improved real estate which are insured or guaranteed under the National Housing Act, the Servicemen's Readjustment Act of 1944, or chapter 37 of title 38, United States Code.

"(J) HOME IMPROVEMENT AND MANUFACTURED HOME LOANS.—Loans made to repair, equip, alter, or improve any residential real property, and loans made for manufactured home financing.

Real property.

"(K) INSURED LOANS TO FINANCE THE PURCHASE OF FEE SIMPLE.—Loans insured under section 240 of the National Housing Act.

"(L) LOANS TO FINANCIAL INSTITUTIONS, BROKERS, AND DEALERS.—Loans to—

"(i) financial institutions with respect to which the United States or an agency or instrumentality thereof has any function of examination or supervision, or

"(ii) any broker or dealer registered with the Securities and Exchange Commission,

which are secured by loans, obligations, or investments in which the Federal savings association has the statutory authority to invest directly.

"(M) LIQUIDITY INVESTMENTS.—Investments which, when made, are of a type that may be used to satisfy any liquidity requirement imposed by the Director pursuant to section 6.

"(N) INVESTMENT IN THE NATIONAL HOUSING PARTNERSHIP CORPORATION, PARTNERSHIPS, AND JOINT VENTURES.—Investments in shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and investments in any partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of such Act.

"(O) CERTAIN HUD INSURED OR GUARANTEED INVESTMENTS.—Loans that are secured by mortgages—

"(i) insured under title X of the National Housing Act, or

"(ii) guaranteed under title IV of the Housing and Urban Development Act of 1968, under part B of the National Urban Policy and New Community Development Act of 1970, or under section 802 of the Housing and Community Development Act of 1974.

"(P) STATE HOUSING CORPORATION INVESTMENTS.—Obligations of and loans to any State housing corporation, if—

"(i) such obligations or loans are secured directly, or indirectly through an agent or fiduciary, by a first lien on improved real estate which is insured under the provisions of the National Housing Act, and

"(ii) in the event of default, the holder of the obligations or loans has the right directly, or indirectly through an agent or fiduciary, to cause to be subject to

the satisfaction of such obligations or loans the real estate described in the first lien or the insurance proceeds under the National Housing Act.

"(Q) INVESTMENT COMPANIES.—A Federal savings association may invest in, redeem, or hold shares or certificates issued by any open-end management investment company which—

"(i) is registered with the Securities and Exchange Commission under the Investment Company Act of 1940, and

"(ii) the portfolio of which is restricted by such management company's investment policy (changeable only if authorized by shareholder vote) solely to investments that a Federal savings association by law or regulation may, without limitation as to percentage of assets, invest in, sell, redeem, hold, or otherwise deal in.

"(R) MORTGAGE-BACKED SECURITIES.—Investments in securities that—

"(i) are offered and sold pursuant to section 4(5) of the Securities Act of 1933; or

"(ii) are mortgage related securities (as defined in section 3(a)(41) of the Securities Exchange Act of 1934), subject to such regulations as the Director may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales price, or both.

"(2) LOANS OR INVESTMENTS LIMITED TO A PERCENTAGE OF ASSETS OR CAPITAL.—The following loans or investments are permitted, but only to the extent specified:

"(A) COMMERCIAL AND OTHER LOANS.—Secured or unsecured loans for commercial, corporate, business, or agricultural purposes. The aggregate amount of loans under this paragraph shall not exceed 10 percent of the assets of the Federal savings association.

"(B) NONRESIDENTIAL REAL PROPERTY LOANS.—

"(i) IN GENERAL.—Loans on the security of liens upon nonresidential real property. Except as provided in clause (ii), the aggregate amount of such loans shall not exceed 400 percent of the Federal savings association's capital, as determined under subsection (t).

"(ii) EXCEPTION.—The Director may permit a savings association to exceed the limitation set forth in clause (i) if the Director determines that the increased authority—

"(I) poses no significant risk to the safe and sound operation of the association, and

"(II) is consistent with prudent operating practices.

"(iii) MONITORING.—If the Director permits any increased authority pursuant to clause (ii), the Director shall closely monitor the Federal savings association's condition and lending activities to ensure that the savings association carries out all authority under this paragraph in a safe and sound manner and complies with this subparagraph and all relevant laws and regulations

"(C) INVESTMENTS IN PERSONAL PROPERTY.—Investments in tangible personal property, including, vehicles, manufactured homes, machinery, equipment, or furniture, for rental or sale. Investments under this subparagraph may not exceed 10 percent of the assets of the Federal savings association.

"(D) CONSUMER LOANS AND CERTAIN SECURITIES.—A Federal savings association may make loans for personal, family, or household purposes, including loans reasonably incident to providing such credit, and may invest in, sell, or hold commercial paper and corporate debt securities, as defined and approved by the Director. Loans and other investments under this subparagraph may not exceed 30 percent of the assets of the Federal savings association.

"(3) LOANS OR INVESTMENTS LIMITED TO 5 PERCENT OF ASSETS.—The following loans or investments are permitted, but not to exceed 5 percent of assets of a Federal savings association for each subparagraph:

"(A) EDUCATION LOANS.—Loans made for the payment of educational expenses.

"(B) COMMUNITY DEVELOPMENT INVESTMENTS.—Investments in real property and obligations secured by liens on real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under title I of the Housing and Community Development Act of 1974. No investment under this subparagraph in such real property may exceed an aggregate of 2 percent of the assets of the Federal savings association. Real property.

"(C) NONCONFORMING LOANS.—Loans upon the security of or respecting real property or interests therein used for primarily residential or farm purposes that do not comply with the limitations of this subsection. Real property.

"(D) CONSTRUCTION LOANS WITHOUT SECURITY.—Loans—

"(i) the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate; and

"(ii) with respect to which the association—

"(I) relies substantially on the borrower's general credit standing and projected future income for repayment, without other security; or

"(II) relies on other assurances for repayment, including a guarantee or similar obligation of a third party.

The aggregate amount of such investments shall not exceed the greater of the Federal savings association's capital or 5 percent of its assets.

"(4) OTHER LOANS AND INVESTMENTS.—The following additional loans and other investments to the extent authorized below:

"(A) BUSINESS DEVELOPMENT CREDIT CORPORATIONS.—A Federal savings association that is in compliance with the capital standards prescribed under subsection (t) may invest in, lend to, or to commit itself to lend to, any business development credit corporation incorporated in the State in which the home office of the association is located in the same manner and to the same extent as savings associa-

tions chartered by such State are authorized. The aggregate amount of such investments, loans, and commitments of any such Federal savings association shall not exceed one-half of 1 percent of the association's total outstanding loans or $250,000, whichever is less.

Securities.

"(B) SERVICE CORPORATIONS.—Investments in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which the Federal savings association's home office is located, if such corporation's entire capital stock is available for purchase only by savings associations of such State and by Federal associations having their home offices in such State. No Federal savings association may make any investment under this subparagraph if the association's aggregate outstanding investment under this subparagraph would exceed 3 percent of the association's assets. Not less than one-half of the investment permitted under this subparagraph which exceeds 1 percent of the association's assets shall be used primarily for community, inner-city, and community development purposes.

Housing.

"(C) FOREIGN ASSISTANCE INVESTMENTS.—Investments in housing project loans having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961 or loans having the benefit of any guarantee under section 224 of such Act, or any commitment or agreement with respect to such loans made pursuant to either of such sections and in the share capital and capital reserve of the Inter-American Savings and Loan Bank. This authority extends to the acquisition, holding, and disposition of loans guaranteed under section 221 or 222 of such Act. Investments under this subparagraph shall not exceed 1 percent of the Federal savings association's assets.

"(D) SMALL BUSINESS INVESTMENT COMPANIES.—A Federal savings association may invest in stock, obligations, or other securities of any small business investment company formed pursuant to section 301(d) of the Small Business Investment Act of 1958 for the purpose of aiding members of a Federal home loan bank. A Federal savings association may not make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 1 percent of the assets of such savings association.

"(5) DEFINITIONS.—As used in this subsection—

"(A) RESIDENTIAL PROPERTY.—The terms 'residential real property' or 'residential real estate' mean leaseholds, homes (including condominiums and cooperatives, except that in connection with loans on individual cooperative units, such loans shall be adequately secured as defined by the Director) and, combinations of homes or dwelling units and business property, involving only minor or incidental business use, or property to be improved by construction of such structures.

"(B) LOANS.—The term 'loans' includes obligations and extensions or advances of credit; and any reference to a loan or investment includes an interest in such a loan or investment.

"(d) REGULATORY AUTHORITY.—

"(1) IN GENERAL.—

"(A) ENFORCEMENT.—The Director shall have power to enforce this section, section 8 of the Federal Deposit Insurance Act, and regulations prescribed hereunder. In enforcing any provision of this section, regulations prescribed under this section, or any other law or regulation, or in any other action, suit, or proceeding to which the Director is a party or in which the Director is interested, and in the administration of conservatorships and receiverships, the Director may act in the Director's own name and through the Director's own attorneys. Except as otherwise provided, the Director shall be subject to suit (other than suits on claims for money damages) by any Federal savings association or director or officer thereof with respect to any matter under this section or any other applicable law, or regulation thereunder, in the United States district court for the judicial district in which the savings association's home office is located, or in the United States District Court for the District of Columbia, and the Director may be served with process in the manner prescribed by the Federal Rules of Civil Procedure. Courts, U.S.

"(B) ANCILLARY PROVISIONS.—(i) In making examinations of savings associations, examiners appointed by the Director shall have power to make such examinations of the affairs of all affiliates of such savings associations as shall be necessary to disclose fully the relations between such savings associations and their affiliates and the effect of such relations upon such savings associations. For purposes of this subsection, the term 'affiliate' has the same meaning as in section 2(b) of the Banking Act of 1933, except that the term 'member bank' in section 2(b) shall be deemed to refer to a savings association.

"(ii) In the course of any examination of any savings association, upon request by the Director, prompt and complete access shall be given to all savings association officers, directors, employees, and agents, and to all relevant books, records, or documents of any type.

"(iii) Upon request made in the course of supervision or oversight of any savings association, for the purpose of acting on any application or determining the condition of any savings association, including whether operations are being conducted safely, soundly, or in compliance with charters, laws, regulations, directives, written agreements, or conditions imposed in writing in connection with the granting of an application or other request, the Director shall be given prompt and complete access to all savings association officers, directors, employees, and agents, and to all relevant books, records, or documents of any type.

"(iv) If prompt and complete access upon request is not given as required in this subsection, the Director may apply to the United States district court for the judicial district (or the United States court in any territory) in which the principal office of the institution is located, or in which the person denying such access resides or carries on business, for an order requiring that such information be promptly provided. Courts, U.S.

"(v) In connection with examinations of savings associations and affiliates thereof, the Director may—

"(I) administer oaths and affirmations and examine and to take and preserve testimony under oath as to any matter in respect of the affairs or ownership of any such savings association or affiliate, and

"(II) issue subpenas and, for the enforcement thereof, apply to the United States district court for the judicial district (or the United States court in any territory) in which the principal office of the savings association or affiliate is located, or in which the witness resides or carries on business.

Courts, U.S.

Such courts shall have jurisdiction and power to order and require compliance with any such subpena.

"(vi) In any proceeding under this section, the Director may administer oaths and affirmations, take depositions, and issue subpenas. The Director may prescribe regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted.

Courts, U.S.

"(vii) Any party to a proceeding under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district (or the United States court in any territory) in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena issued pursuant to this subsection or section 10(c) of the Federal Deposit Insurance Act, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. All expenses of the Director in connection with this section shall be considered as nonadministrative expenses. Any court having jurisdiction of any proceeding instituted under this section by a savings association, or a director or officer thereof, may allow to any such party reasonable expenses and attorneys' fees. Such expenses and fees shall be paid by the savings association.

"(2) CONSERVATORSHIPS AND RECEIVERSHIPS.—

"(A) GROUNDS FOR APPOINTMENT FOR FEDERAL SAVINGS ASSOCIATIONS.—A conservator or receiver may be appointed for a Federal savings association if one or more of the following conditions exist:

"(i) insolvency in that the assets of the association are less than its obligations to its creditors and others, including its members;

"(ii) substantial dissipation of assets or earnings due to any violation or violations of law or regulations, or to any unsafe or unsound practice or practices;

"(iii) an unsafe or unsound condition to transact business, including having substantially insufficient capital or otherwise;

"(iv) willful violation of a cease-and-desist order which has become final;

"(v) concealment of books, papers, records, or assets of the savings association or refusal to submit books, papers, records, or affairs of the association for inspection to any examiner or to any lawful agent of the Director;

"(vi) the association is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course of business;

"(vii)(I) the association has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and (II) there is no reasonable prospect for the replenishment of the capital of the association without Federal assistance; or

"(viii) there is a violation or violations of laws or regulations, or an unsafe or unsound practice or condition which is likely to cause insolvency or substantial dissipation of assets or earnings, or is likely to weaken the condition of the association or otherwise seriously prejudice the interests of its depositors.

"(B) ADDITIONAL GROUNDS FOR APPOINTMENT OF FEDERAL ASSOCIATIONS.—In addition to the foregoing provisions, the Director may, without any requirement of notice, hearing, or other action, appoint a conservator or receiver for a Federal savings association if—

"(i) the association, by resolution of its board of directors or of its members, consents to such appointment, or

"(ii) the association is removed from membership in any Federal home loan bank, or its status as an institution the accounts of which are insured by the Corporation is terminated.

"(C) GROUNDS FOR APPOINTMENT FOR STATE ASSOCIATIONS.—Notwithstanding any other provision of law, the Director shall have power and jurisdiction to appoint a conservator or receiver for an insured State savings association, if the Director determines that any of the following grounds for the appointment of a conservator or receiver exists:

"(i) insolvency in that the assets of the savings association are less than its obligations to its creditors and others, including its members;

"(ii) substantial dissipation of assets or earnings due to any violation or violations of law or regulations, or to any unsafe or unsound practice or practices;

"(iii) an unsafe or unsound condition to transact business, including having substantially insufficient capital or otherwise;

"(iv) the association is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course of business;

"(v)(I) the savings association has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and (II) there is no reasonable prospect for the savings association's capital to be replenished without Federal assistance; or

"(vi) there is a violation or violations of laws or regulations, or an unsafe or unsound practice or condi-

tion which is likely to cause insolvency or substantial dissipation of assets or earnings, or is likely to weaken the condition of the association or otherwise seriously prejudice the interests of its depositors.

"(D) APPROVAL OF STATE OFFICIAL.—(i) The authority conferred by subparagraph (C) shall not be exercised without the written approval of the State official having jurisdiction over the insured State savings association that one or more of the grounds specified for such exercise exist.

"(ii) If such approval has not been received within 30 days of receipt of notice to the State that the Director has determined such grounds exist, and the Director has responded in writing to the State's written reasons, if any, for withholding approval, then the Director may proceed without State approval.

"(E) POWER OF APPOINTMENT; JUDICIAL REVIEW.—The Director shall have exclusive power and jurisdiction to appoint a conservator or receiver for a Federal savings association. If, in the opinion of the Director, a ground for the appointment of a conservator or receiver for a savings association exists, the Director is authorized to appoint ex parte and without notice a conservator or receiver for the savings association. In the event of such appointment, the association may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such association is located, or in the United States District Court for the District of Columbia, for an order requiring the Director to remove such conservator or receiver, and the court shall upon the merits dismiss such action or direct the Director to remove such conservator or receiver. Upon the commencement of such an action, the court having jurisdiction of any other action or proceeding authorized under this subsection to which the association is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

Courts, U.S.

"(F) REPLACEMENT.—The Director may, without any prior notice, hearing, or other action, replace a conservator with another conservator or with a receiver, but such replacement shall not affect any right which the association may have to obtain judicial review of the original appointment, except that any removal under this subparagraph shall be removal of the conservator or receiver in office at the time of such removal.

"(G) COURT ACTION.—Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver or, except at the request of the Director, to restrain or affect the exercise of powers or functions of a conservator or receiver.

"(H) POWERS.—

"(i) IN GENERAL.—A conservator shall have all the powers of the members, the stockholders, the directors, and the officers of the association and shall be authorized to operate the association in its own name or to conserve its assets in the manner and to the extent authorized by the Director.

"(ii) FDIC OR RTC AS CONSERVATOR OR RECEIVER.—Except as provided in section 21A of the Federal Home Loan Bank Act, the Director, at the Director's discretion, may appoint the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, as appropriate, as conservator for a savings association. The Director shall appoint only the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, as appropriate, as receiver for a savings association for the purpose of liquidation or winding up the affairs of such savings association. The conservator or receiver so appointed shall, as such, have power to buy at its own sale. The Federal Deposit Insurance Corporation, as such conservator or receiver, shall have all the powers of a conservator or receiver, as appropriate, granted under the Federal Deposit Insurance Act, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators or receivers, as appropriate, of savings associations under this Act and any other provisions of law.

"(I) DISCLOSURE REQUIREMENT FOR THOSE ACTING ON BEHALF OF CONSERVATOR.—A conservator shall require that any independent contractor, consultant, or counsel employed by the conservator in connection with the conservatorship of a savings association pursuant to this section shall fully disclose to all parties with which such contractor, consultant, or counsel is negotiating, any limitation on the authority of such contractor, consultant, or counsel to make legally binding representations on behalf of the conservator.

"(3) REGULATIONS.—

"(A) IN GENERAL.—The Director may prescribe regulations for the reorganization, consolidation, liquidation, and dissolution of savings associations, for the merger of insured savings associations with insured savings associations, for savings associations in conservatorship and receivership, and for the conduct of conservatorships and receiverships. The Director may, by regulation or otherwise, provide for the exercise of functions by members, stockholders, directors, or officers of a savings association during conservatorship and receivership.

"(B) FDIC OR RTC AS CONSERVATOR OR RECEIVER.—In any case where the Federal Deposit Insurance Corporation or the Resolution Trust Corporation is the conservator or receiver, any regulations prescribed by the Director shall be consistent with any regulations prescribed by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act.

"(4) REFUSAL TO COMPLY WITH DEMAND.—Whenever a conservator or receiver appointed by the Director demands possession of the property, business, and assets of any savings association, or of any part thereof, the refusal by 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 imprisonment for not more than one year, or both.

Law enforcement and crime.

"(5) DEFINITIONS.—As used in this subsection, the term 'savings association' includes any savings association or former

savings association that retains deposits insured by the Corporation, notwithstanding termination of its status as an institution insured by the Corporation.

"(6) COMPLIANCE WITH MONETARY TRANSACTION RECORD-KEEPING AND REPORT REQUIREMENTS.—

Regulations.

"(A) COMPLIANCE PROCEDURES REQUIRED.—The Director shall prescribe regulations requiring savings associations to establish and maintain procedures reasonably designed to assure and monitor the compliance of such associations with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(B) EXAMINATIONS OF SAVINGS ASSOCIATIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(i) IN GENERAL.—Each examination of a savings association by the Director shall include a review of the procedures required to be established and maintained under subparagraph (A).

"(ii) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the association.

"(C) ORDER TO COMPLY WITH REQUIREMENTS.—If the Director determines that a savings association—

"(i) has failed to establish and maintain the procedures described in subparagraph (A); or

"(ii) has failed to correct any problem with the procedures maintained by such association which was previously reported to the association by the Director,

the Director shall issue an order under section 8 of the Federal Deposit Insurance Act requiring such association to cease and desist from its violation of this paragraph or regulations prescribed under this paragraph.

"(e) CHARACTER AND RESPONSIBILITY.—A charter may be granted only—

"(1) to persons of good character and responsibility,

"(2) if in the judgment of the Director a necessity exists for such an institution in the community to be served,

"(3) if there is a reasonable probability of its usefulness and success, and

"(4) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions.

"(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—Each Federal savings association, upon receiving its charter, shall become automatically a member of the Federal home loan bank of the district in which it is located, or if convenience requires and the Director approves, shall become a member of a Federal home loan bank of an adjoining district. Such associations shall qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members.

"(g) PREFERRED SHARES.—[Repealed.]

"(h) DISCRIMINATORY STATE AND LOCAL TAXATION PROHIBITED.—No State, county, municipal, or local taxing authority may impose any tax on Federal savings associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions.

"(i) CONVERSIONS.—

(1) IN GENERAL.—Any savings association which is, or is eligible to become, a member of a Federal home loan bank may convert into a Federal savings association (and in so doing may change directly from the mutual form to the stock form, or from the stock form to the mutual form). Such conversion shall be subject to such regulations as the Director shall prescribe. Thereafter such Federal savings 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.

Regulations.

"(2) AUTHORITY OF DIRECTOR.—(A) No savings association may convert from the mutual to the stock form, or from the stock form to the mutual form, except in accordance with the regulations of the Director.

"(B) Any aggrieved person may obtain review of a final action of the Director which approves or disapproves a plan of conversion pursuant to this subsection only by complying with the provisions of section 10(j) of this Act within the time limit and in the manner therein prescribed, which provisions shall apply in all respects as if such final action were an order the review of which is therein provided for, except that such time limit shall commence upon publication of notice of such final action in the Federal Register or upon the giving of such general notice of such final action as is required by or approved under regulations of the Director, whichever is later.

"(C) Any Federal savings association may change its designation from a Federal savings association to a Federal savings bank, or the reverse.

"(3) CONVERSION TO STATE ASSOCIATION.—(A) Any Federal savings association may convert itself into a savings association or savings bank organized pursuant to the laws of the State in which the principal office of such Federal savings association is located if—

"(i) the State permits the conversion of any savings association or savings bank of such State into a Federal savings association;

"(ii) such conversion of a Federal savings association into such a State savings association is determined—

"(I) upon the vote in favor of such conversion cast in person or by proxy at a special meeting of members or stockholders called to consider such action, specified by the law of the State in which the home office of the Federal savings association is located, as required by such law for a State-chartered institution to convert itself into a Federal savings association, but in no event upon a vote of less than 51 percent of all the votes cast at such meeting, and

"(II) 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 savings association;

"(iii) 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 30 and not more than 60 days prior to the

date of the meeting, to the Director and to each member or stockholder of record of the Federal savings association at the member's or stockholder's last address as shown on the books of the Federal savings association;

"(iv) when a mutual savings association is dissolved after conversion, the members or shareholders of the savings association will share on a mutual basis in the assets of the association in exact proportion to their relative share or account credits;

"(v) when a stock savings association is dissolved after conversion, the stockholders will share on an equitable basis in the assets of the association; and

"(vi) 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 savings association is located.

"(B)(i) The act of conversion constitutes consent by the institution to be bound by all the requirements that the Director may impose under this Act.

"(ii) The savings association shall upon conversion and thereafter be authorized to issue securities in any form currently approved at the time of issue by the Director for issuance by similar savings associations in such State.

"(iii) 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.

"(4) SAVINGS BANK ACTIVITIES.—(A) To the extent authorized by the Director, but subject to section 18(m)(3) of the Federal Deposit Insurance Act—

"(i) any Federal savings bank chartered as such prior to October 15, 1982, may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree it was permitted to do so as a Federal savings bank prior to October 15, 1982; and

"(ii) any Federal savings bank in existence on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and formerly organized as a mutual savings bank under State law may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree it was authorized to do so as a mutual savings bank under State law.

"(B) The authority conferred by this paragraph may be utilized by any Federal savings association that acquires, by merger or consolidation, a Federal savings bank enjoying grandfather rights hereunder.

"(j) SUBSCRIPTION FOR SHARES.—[Repealed.]

"(k) DEPOSITORY OF PUBLIC MONEY.—When designated for that purpose by the Secretary of the Treasury, a savings association the deposits of which are insured by the Corporation shall be a depository of public money and may be employed as fiscal agent of the Government under such regulations as may be prescribed by the Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. A savings association the deposits of which are insured by the Corporation may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality, including services in connection with the collection of taxes and other

Regulations.

obligations owed the United States, and the Secretary of the Treasury may deposit public money in any such savings association, and shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

"(l) RETIREMENT ACCOUNTS.—A Federal savings association is authorized to act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan which qualifies or qualified for specific tax treatment under section 401(d) of the Internal Revenue Code of 1986 and to act as trustee or custodian of an individual retirement account within the meaning of section 408 of such Code if the funds of such trust or account are invested only in savings accounts or deposits in such Federal savings association or in obligations or securities issued by such Federal savings association. All funds held in such fiduciary capacity by any Federal savings association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under this paragraph. Records.

"(m) BRANCHING.—

"(1) IN GENERAL.— District of Columbia.

"(A) No savings association incorporated under the laws of the District of Columbia or organized in the District or doing business in the District shall establish any branch or move its principal office or any branch without the Director's prior written approval.

"(B) No savings association shall establish any branch in the District of Columbia or move its principal office or any branch in the District without the Director's prior written approval.

"(2) DEFINITION.—For purposes of this subsection the term 'branch' means any office, place of business, or facility, other than the principal office as defined by the Director, of a savings association at which accounts are opened or payments are received or withdrawals are made, or any other office, place of business, or facility of a savings association defined by the Director as a branch within the meaning of such sentence.

"(n) TRUSTS.—

"(1) PERMITS.—The Director may grant by special permit to a Federal savings association applying therefor the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which compete with Federal savings associations are permitted to act under the laws of the State in which the Federal savings association is located. Subject to the regulations of the Director, service corporations may invest in State or federally chartered corporations which are located in the State in which the home office of the Federal savings association is located and which are engaged in trust activities. Securities.

"(2) SEGREGATION OF ASSETS.—A Federal savings association exercising any or all of the powers enumerated in this section shall segregate all assets held in any fiduciary capacity from the general assets of the association and shall keep a separate set of books and records showing in proper detail all transactions engaged in under this subsection. The State banking authority involved may have access to reports of examination made by the Director insofar as such reports relate to the trust department of such association but nothing in this subsection shall be Records.

construed as authorizing such State banking authority to examine the books, records, and assets of such associations.

"(3) PROHIBITIONS.—No Federal savings association 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 association awaiting investment shall be carried in a separate account and shall not be used by the association 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 Director.

"(4) SEPARATE LIEN.—In the event of the failure of a Federal savings association, 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 association.

"(5) DEPOSITS.—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, Federal savings associations so acting shall be required to make similar deposits. Securities so deposited shall be held for the protection of private or court trusts, as provided by the State law. Federal savings associations 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. Federal savings associations shall have power to execute such bond when so required by the laws of the State involved.

"(6) OATHS AND AFFIDAVITS.—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 association may take the necessary oath or execute the necessary affidavit.

"(7) CERTAIN LOANS PROHIBITED.—It shall be unlawful for any Federal savings 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 $50,000 or twice the amount of that person's gain from the loan, whichever is greater, or may be imprisoned not more than 5 years, or may be both fined and imprisoned, in the discretion of the court.

Law enforcement and crime.

"(8) FACTORS TO BE CONSIDERED.—In reviewing applications for permission to exercise the powers enumerated in this section, the Director may consider—

"(A) the amount of capital of the applying Federal savings association,

"(B) whether or not such capital is sufficient under the circumstances of the case,

"(C) the needs of the community to be served, and

"(D) any other facts and circumstances that seem to it proper.

The Director may grant or refuse the application accordingly, except that no permit shall be issued to any association having capital less than the capital required by State law of State

banks, trust companies, and corporations exercising such powers.

"(9) SURRENDER OF CHARTER.—(A) Any Federal savings association may surrender its right to exercise the powers granted under this subsection, and have returned to it any securities which it may have deposited with the State authorities, by filing with the Director a certified copy of a resolution of its board of directors indicating its intention to surrender its right.

"(B) Upon receipt of such resolution, the Director, if satisfied that such Federal savings association has been relieved in accordance with State law of all duties as trustee, executor, administrator, guardian or other fiduciary, may in the Director's discretion, issue to such association a certificate that such association is no longer authorized to exercise the powers granted by this subsection.

"(C) Upon the issuance of such a certificate by the Director, such Federal savings association (i) shall no longer be subject to the provisions of this section or the regulations of the Director made pursuant thereto, (ii) shall be entitled to have returned to it any securities which it may have deposited with State authorities, and (iii) shall not exercise thereafter any of the powers granted by this section without first applying for and obtaining a new permit to exercise such powers pursuant to the provisions of this section.

"(D) The Director may prescribe regulations necessary to enforce compliance with the provisions of this subsection.

"(10) REVOCATION.—(A) In addition to the authority conferred by other law, if, in the opinion of the Director, a Federal savings association is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of 5 consecutive years to exercise, the powers granted by this subsection or otherwise fails or has failed to comply with the requirements of this subsection, the Director may issue and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this subsection. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should issue against the association.

"(B) Such hearing shall be conducted in accordance with the provisions of subsection (d)(1)(B), and subject to judicial review as therein provided, and shall be fixed for a date not earlier than 30 days and not later than 60 days after service of such notice unless the Director sets an earlier or later date at the request of any Federal savings association so served.

"(C) Unless the Federal savings association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent, or if upon the record made at any such hearing, the Director shall find that any allegation specified in the notice of charges has been established, the Director may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers

granted by this subsection, except that such order shall permit the association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

"(D) A revocation order shall become effective not earlier than the expiration of 30 days after service of such order upon the association so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

"(o) CONVERSION OF STATE SAVINGS BANKS.—(1) Subject to the provisions of this subsection and under regulations of the Director, the Director may authorize the conversion of a State-chartered savings bank that is a Bank Insurance Fund member into a Federal savings bank, if such conversion is not in contravention of State law, and provide for the organization, incorporation, operation, examination, and regulation of such institution.

"(2)(A) Any Federal savings bank chartered pursuant to this subsection shall continue to be a Bank Insurance Fund member until such time as it changes its status to a Savings Association Insurance Fund member.

"(B) The Director shall notify the Corporation of any application under this Act for conversion to a Federal charter by an institution insured by the Corporation, shall consult with the Corporation before disposing of the application, and shall notify the Corporation of the Director's determination with respect to such application.

"(C) Notwithstanding any other provision of law, if the Corporation determines that conversion into a Federal stock savings bank or the chartering of a Federal stock savings bank is necessary to prevent the default of a savings bank it insures or to reopen a savings bank in default that it insured, or if the Corporation determines, with the concurrence of the Director, that severe financial conditions exist that threaten the stability of a savings bank insured by the Corporation and that such a conversion or charter is likely to improve the financial condition of such savings bank, the Corporation shall provide the Director with a certificate of such determination, the reasons therefor in conformance with the requirements of this Act, and the bank shall be converted or chartered by the Director, pursuant to the regulations thereof, from the time the Corporation issues the certificate.

"(D) A bank may be converted under subparagraph (C) only if the board of trustees of the bank—

"(i) has specified in writing that the bank is in danger of closing or is closed, or that severe financial conditions exist that threaten the stability of the bank and a conversion is likely to improve the financial condition of the bank; and

"(ii) has requested in writing that the Corporation use the authority of subparagraph (C).

"(E)(i) Before making a determination under subparagraph (D), the Corporation shall consult the State bank supervisor of the State in which the bank in danger of closing is chartered. The State bank supervisor shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of subparagraph (D).

"(ii) If the State supervisor objects during such period, the Corporation may use the authority of subparagraph (D) only by an

affirmative vote of three-fourths of the Board of Directors. The Board of Directors shall provide the State supervisor, as soon as practicable, with a written certification of its determination.

"(3) A Federal savings bank chartered under this subsection shall have the same authority with respect to investments, operations, and activities, and shall be subject to the same restrictions, including those applicable to branching and discrimination, as would apply to it if it were chartered as a Federal savings bank under any other provision of this Act.

"(p) CONVERSIONS.—(1) Notwithstanding any other provision of law, and consistent with the purposes of this Act, the Director may authorize (or in the case of a Federal savings association, require) the conversion of any mutual savings association or Federal mutual savings bank that is insured by the Corporation into a Federal stock savings association or Federal stock savings bank, or charter a Federal stock savings association or Federal stock savings bank to acquire the assets of, or merge with such a mutual institution under the regulations of the Director.

"(2) Authorizations under this subsection may be made only—

"(A) if the Director has determined that severe financial conditions exist which threaten the stability of an association and that such authorization is likely to improve the financial condition of the association,

"(B) when the Corporation has contracted to provide assistance to such association under section 13 of the Federal Deposit Insurance Act, or

"(C) to assist an institution in receivership.

Securities.

"(3) A Federal savings bank chartered under this subsection shall have the same authority with respect to investments, operations and activities, and shall be subject to the same restrictions, including those applicable to branching and discrimination, as would apply to it if it were chartered as a Federal savings bank under any other provision of this Act, and may engage in any investment, activity, or operation that the institution it acquired was engaged in if that institution was a Federal savings bank, or would have been authorized to engage in had that institution converted to a Federal charter.

"(q) TYING ARRANGEMENTS.—(1) A savings association may not in any manner extend credit, lease, or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

"(A) that the customer shall obtain additional credit, property, or service from such savings association, or from any service corporation or affiliate of such association, other than a loan, discount, deposit, or trust service;

"(B) that the customer provide additional credit, property, or service to such association, or to any service corporation or affiliate of such association, other than those related to and usually provided in connection with a similar loan, discount, deposit, or trust service; and

"(C) that the customer shall not obtain some other credit, property, or service from a competitor of such association, or from a competitor of any service corporation or affiliate of such association, other than a condition or requirement that such association shall reasonably impose in connection with credit transactions to assure the soundness of credit.

"(2)(A) Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by reason of a violation of paragraph (1), under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings.

"(B) Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

Courts, U.S.

"(3) Any person injured by a violation of paragraph (1) may bring an action in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, or in any other court of competent jurisdiction, and shall be entitled to recover three times the amount of the damages sustained, and the cost of suit, including a reasonable attorney's fee. Any such action shall be brought within 4 years from the date of the occurrence of the violation.

"(4) Nothing contained in this subsection affects in any manner the right of the United States or any other party to bring an action under any other law of the United States or of any State, including any right which may exist in addition to specific statutory authority, challenging the legality of any act or practice which may be proscribed by this subsection. No regulation or order issued by the Director under this subsection shall in any manner constitute a defense to such action.

"(5) For purposes of this subsection, the term 'loan' includes obligations and extensions or advances of credit.

"(r) OUT-OF-STATE BRANCHES.—(1) No Federal savings association may establish, retain, or operate a branch outside the State in which the Federal savings association has its home office, unless the association qualifies as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 or meets the asset composition test imposed by subparagraph (c) of that section on institutions seeking so to qualify. No out-of-State branch so established shall be retained or operated unless the total assets of the Federal savings association attributable to all branches of the Federal savings association in that State would qualify the branches as a whole, were they otherwise eligible, for treatment as a domestic building and loan association under section 7701(a)(19).

"(2) The limitations of paragraph (1) shall not apply if—

"(A) the branch results from a transaction authorized under section 13(k) of the Federal Deposit Insurance Act;

"(B) the branch was authorized for the Federal savings association prior to October 15, 1982;

"(C) the law of the State where the branch would be located would permit the branch to be established if the branch were a Federal savings association chartered by the State in which its home office is located; or

"(D) the branch was operated lawfully as a branch under State law prior to the association's conversion to a Federal charter.

"(3) The Director, for good cause shown, may allow Federal savings associations up to 2 years to comply with the requirements of this subsection.

"(s) MINIMUM CAPITAL REQUIREMENTS.—

"(1) IN GENERAL.—Consistent with the purposes of section 908 of the International Lending Supervision Act of 1983 and the capital requirements established pursuant to such section by the appropriate Federal banking agencies (as defined in section 903(1) of such Act), the Director shall require all savings associations to achieve and maintain adequate capital by—

"(A) establishing minimum levels of capital for savings associations; and

"(B) using such other methods as the Director determines to be appropriate.

"(2) MINIMUM CAPITAL LEVELS MAY BE DETERMINED BY DIRECTOR CASE-BY-CASE.—The Director may, consistent with subsection (t), establish the minimum level of capital for a savings association at such amount or at such ratio of capital-to-assets as the Director determines to be necessary or appropriate for such association in light of the particular circumstances of the association.

"(3) UNSAFE OR UNSOUND PRACTICE.—In the Director's discretion, the Director may treat the failure of any savings association to maintain capital at or above the minimum level required by the Director under this subsection or subsection (t) as an unsafe or unsound practice.

"(4) DIRECTIVE TO INCREASE CAPITAL.—

"(A) PLAN MAY BE REQUIRED.—In addition to any other action authorized by law, including paragraph (3), the Director may issue a directive requiring any savings association which fails to maintain capital at or above the minimum level required by the Director to submit and adhere to a plan for increasing capital which is acceptable to the Director.

"(B) ENFORCEMENT OF PLAN.—Any directive issued and plan approved under subparagraph (A) shall be enforceable under section 8 of the Federal Deposit Insurance Act to the same extent and in the same manner as an outstanding order which was issued under section 8 of the Federal Deposit Insurance Act and has become final.

"(5) PLAN TAKEN INTO ACCOUNT IN OTHER PROCEEDINGS.—The Director may—

"(A) consider a savings association's progress in adhering to any plan required under paragraph (4) whenever such association or any affiliate of such association (including any company which controls such association) seeks the Director's approval for any proposal which would have the effect of diverting earnings, diminishing capital, or otherwise impeding such association's progress in meeting the minimum level of capital required by the Director; and

"(B) disapprove any proposal referred to in subparagraph (A) if the Director determines that the proposal would adversely affect the ability of the association to comply with such plan.

"(t) CAPITAL STANDARDS.—

"(1) IN GENERAL.—

"(A) REQUIREMENT FOR STANDARDS TO BE PRESCRIBED.—The Director shall, by regulation, prescribe and maintain uniformly applicable capital standards for savings associations. Those standards shall include—

"(i) a leverage limit;

"(ii) a tangible capital requirement; and

"(iii) a risk-based capital requirement.

"(B) COMPLIANCE.—A savings association is not in compliance with capital standards for purposes of this subsection unless it complies with all capital standards prescribed under this paragraph.

"(C) STRINGENCY.—The standards prescribed under this paragraph shall be no less stringent than the capital standards applicable to national banks.

"(D) DEADLINE FOR REGULATIONS.—The Director shall promulgate final regulations under this paragraph not later than 90 days after the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and those regulations shall become effective not later than 120 days after the date of enactment.

"(2) CONTENT OF STANDARDS.—

"(A) LEVERAGE LIMIT.—The leverage limit prescribed under paragraph (1) shall require a savings association to maintain core capital in an amount not less than 3 percent of the savings association's total assets.

"(B) TANGIBLE CAPITAL REQUIREMENT.—The tangible capital requirement prescribed under paragraph (1) shall require a savings association to maintain tangible capital in an amount not less than 1.5 percent of the savings association's total assets.

"(C) RISK-BASED CAPITAL REQUIREMENT.—Notwithstanding paragraph (1)(C), the risk-based capital requirement prescribed under paragraph (1) may deviate from the risk-based capital standards applicable to national banks to reflect interest-rate risk or other risks, but such deviations shall not, in the aggregate, result in materially lower levels of capital being required of savings associations under the risk-based capital requirement than would be required under the risk-based capital standards applicable to national banks.

"(3) TRANSITION RULE.—

"(A) CERTAIN QUALIFYING SUPERVISORY GOODWILL INCLUDED IN CALCULATING CORE CAPITAL.—Notwithstanding paragraph (9)(A), an eligible savings association may include qualifying supervisory goodwill in calculating core capital. The amount of qualifying supervisory goodwill that may be included may not exceed the applicable percentage of total assets set forth in the following table:

"For the following period:	The applicable percentage is:
Prior to January 1, 1992	1.500 percent
January 1, 1992–December 31, 1992	1.000 percent
January 1, 1993–December 31, 1993	0.750 percent
January 1, 1994–December 31, 1994	0.375 percent
Thereafter	0 percent

"(B) ELIGIBLE SAVINGS ASSOCIATIONS.—For purposes of subparagraph (A), a savings association is an eligible savings association so long as the Director determines that—

"(i) the savings association's management is competent;

"(ii) the savings association is in substantial compliance with all applicable statutes, regulations, orders, and supervisory agreements and directives; and

"(iii) the savings association's management has not engaged in insider dealing, speculative practices, or any other activities that have jeopardized the association's safety and soundness or contributed to impairing the association's capital.

"(4) SPECIAL RULES FOR PURCHASED MORTGAGE SERVICING RIGHTS.—

"(A) IN GENERAL.—Notwithstanding paragraphs (1)(C) and (9), the standards prescribed under paragraph (1) may permit a savings association to include in calculating capital for the purpose of the leverage limit and risk-based capital requirement prescribed under paragraph (1), on terms no less stringent than under both the capital standards applicable to State nonmember banks and (except as to the amount that may be included in calculating capital) the capital standards applicable to national banks, 90 percent of the fair market value of readily marketable purchased mortgage servicing rights.

"(B) TANGIBLE CAPITAL REQUIREMENT.—Notwithstanding paragraphs (1)(C) and (9)(C), the standards prescribed under paragraph (1) may permit a savings association to include in calculating capital for the purpose of the tangible capital requirement prescribed under paragraph (1), on terms no less stringent than under both the capital standards applicable to State nonmember banks and (except as to the amount that may be included in calculating capital) the capital standards applicable to national banks, 90 percent of the fair market value of readily marketable purchased mortgage servicing rights.

"(C) PERCENTAGE LIMITATION PRESCRIBED BY FDIC.—Notwithstanding paragraph (1)(C) and subparagraphs (A) and (B) of this paragraph—

"(i) for the purpose of subparagraph (A), the maximum amount of purchased mortgage servicing rights that may be included in calculating capital under the leverage limit and the risk-based capital requirement prescribed under paragraph (1) may not exceed the amount that could be included if the savings association were an insured State nonmember bank; and

"(ii) for the purpose of subparagraph (B), the Corporation shall prescribe a maximum percentage of the tangible capital requirement that savings associations may satisfy by including purchased mortgage servicing rights in calculating such capital.

"(D) QUARTERLY VALUATION.—The fair market value of purchased mortgage servicing rights shall be determined not less often than quarterly.

"(5) SEPARATE CAPITALIZATION REQUIRED FOR CERTAIN SUBSIDIARIES.—

"(A) IN GENERAL.—In determining compliance with capital standards prescribed under paragraph (1), all of a savings association's investments in and extensions of credit to any subsidiary engaged in activities not permis-

sible for a national bank shall be deducted from the savings association's capital.

"(B) EXCEPTION FOR AGENCY ACTIVITIES.—Subparagraph (A) shall not apply with respect to a subsidiary engaged, solely as agent for its customers, in activities not permissible for a national bank unless the Corporation, in its sole discretion, determines that, in the interests of safety and soundness, this subparagraph should cease to apply to that subsidiary.

"(C) OTHER EXCEPTIONS.—Subparagraph (A) shall not apply with respect to any of the following:

"(i) MORTGAGE BANKING SUBSIDIARIES.—A savings association's investments in and extensions of credit to a subsidiary engaged solely in mortgage-banking activities.

"(ii) SUBSIDIARY INSURED DEPOSITORY INSTITUTIONS.—A savings association's investments in and extensions of credit to a subsidiary—

"(I) that is itself an insured depository institution or a company the sole investment of which is an insured depository institution, and

"(II) that was acquired by the parent insured depository institution prior to May 1, 1989.

"(iii) CERTAIN FEDERAL SAVINGS BANKS.—Any Federal savings association existing as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

"(I) that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law; or

"(II) that acquired its principal assets from an association that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law.

"(D) TRANSITION RULE.—

"(i) INCLUSION IN CAPITAL.—Notwithstanding subparagraph (A), if a savings association's subsidiary was, as of April 12, 1989, engaged in activities not permissible for a national bank, the savings association may include in calculating capital the applicable percentage (set forth in clause (ii)) of the lesser of—

"(I) the savings association's investments in and extensions of credit to the subsidiary on April 12, 1989; or

"(II) the savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is as follows:

"For the following period:	The applicable percentage is:
Prior to July 1, 1990	100 percent
July 1, 1990–June 30, 1991	90 percent
July 1, 1991–June 30, 1992	75 percent
July 1, 1992–June 30, 1993	60 percent
July 1, 1993–June 30, 1994	40 percent
Thereafter	0 percent

"(iii) FDIC'S DISCRETION TO PRESCRIBE LESSER PERCENTAGE.—The Corporation may prescribe by order, with respect to a particular savings association, an applicable percentage less than that provided in clause (ii) if the Corporation determines, in its sole discretion, that the use of a greater percentage would, under the circumstances, constitute an unsafe or unsound practice or be likely to result in the association's being in an unsafe or unsound condition.

"(E) CONSOLIDATION OF SUBSIDIARIES NOT SEPARATELY CAPITALIZED.—In determining compliance with capital standards prescribed under paragraph (1), the assets and liabilities of each of a savings association's subsidiaries (other than any subsidiary described in subparagraph (C)(ii)) shall be consolidated with the savings association's assets and liabilities, unless all of the savings association's investments in and extensions of credit to the subsidiary are deducted from the savings association's capital pursuant to subparagraph (A).

"(6) CONSEQUENCES OF FAILING TO COMPLY WITH CAPITAL STANDARDS.—

"(A) PRIOR TO JANUARY 1, 1991.—Prior to January 1, 1991, the Director—

"(i) may restrict the asset growth of any savings association not in compliance with capital standards; and

"(ii) shall, beginning 60 days following the promulgation of final regulations under this subsection, require any savings association not in compliance with capital standards to submit a plan under subsection (s)(4)(A) that—

"(I) addresses the savings association's need for increased capital;

"(II) describes the manner in which the savings association will increase its capital so as to achieve compliance with capital standards;

"(III) specifies the types and levels of activities in which the savings association will engage;

"(IV) requires any increase in assets to be accompanied by an increase in tangible capital not less in percentage amount than the leverage limit then applicable;

"(V) requires any increase in assets to be accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standard then applicable; and

"(VI) is acceptable to the Director.

"(B) ON OR AFTER JANUARY 1, 1991.—On or after January 1, 1991, the Director—

"(i) shall prohibit any asset growth by any savings association not in compliance with capital standards, except as provided in subparagraph (C); and

"(ii) shall require any savings association not in compliance with capital standards to comply with a capital directive issued by the Director (which may

include such restrictions, including restrictions on the payment of dividends and on compensation, as the Director determines to be appropriate).

"(C) LIMITED GROWTH EXCEPTION.—The Director may permit any savings association that is subject to subparagraph (B) to increase its assets in an amount not exceeding the amount of net interest credited to the savings association's deposit liabilities if—

"(i) the savings association obtains the Director's prior approval;

"(ii) any increase in assets is accompanied by an increase in tangible capital in an amount not less than 6 percent of the increase in assets (or, in the Director's discretion if the leverage limit then applicable is less than 6 percent, in an amount equal to the increase in assets multiplied by the percentage amount of the leverage limit);

"(iii) any increase in assets is accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standard then applicable;

"(iv) any increase in assets is invested in low-risk assets, such as first mortgage loans secured by 1- to 4-family residences and fully secured consumer loans; and

"(v) the savings association's ratio of core capital to total assets is not less than the ratio existing on January 1, 1991.

"(D) ADDITIONAL RESTRICTIONS IN CASE OF EXCESSIVE RISKS OR RATES.—The Director may restrict the asset growth of any savings association that the Director determines is taking excessive risks or paying excessive rates for deposits.

"(E) FAILURE TO COMPLY WITH PLAN, REGULATION, OR ORDER.—The Director shall treat as an unsafe and unsound practice any material failure by a savings association to comply with any plan, regulation, or order under this paragraph.

"(F) EFFECT ON OTHER REGULATORY AUTHORITY.—This paragraph does not limit any authority of the Director under other provisions of law.

"(7) EXEMPTION FROM CERTAIN SANCTIONS.—

"(A) APPLICATION FOR EXEMPTION.—Any savings association not in compliance with the capital standards prescribed under paragraph (1) may apply to the Director for an exemption from any applicable sanction or penalty for noncompliance which the Director may impose.

"(B) EFFECT OF GRANT OF EXEMPTION.—If the Director approves any savings association's application under subparagraph (A), the only sanction or penalty to be imposed by the Director for the savings association's failure to comply with the capital standards prescribed under paragraph (1) is the growth limitation contained in paragraph (6)(B) or paragraph (6)(C), whichever is applicable.

"(C) STANDARDS FOR APPROVAL OR DISAPPROVAL.—

"(i) APPROVAL.—The Director may approve an application for an exemption if the Director determines that—

"(I) such exemption would pose no significant risk to the affected deposit insurance fund;

"(II) the savings association's management is competent;

"(III) the savings association is in substantial compliance with all applicable statutes, regulations, orders, and supervisory agreements and directives; and

"(IV) the savings association's management has not engaged in insider dealing, speculative practices, or any other activities that have jeopardized the association's safety and soundness or contributed to impairing the association's capital.

"(ii) DENIAL OR REVOCATION OF APPROVAL.—The Director shall deny any application submitted under clause (i) and revoke any prior approval granted with respect to any such application if the Director determines that the association's failure to meet any capital standards prescribed under paragraph (1) is accompanied by—

"(I) a pattern of consistent losses;

"(II) substantial dissipation of assets;

"(III) evidence of imprudent management or business behavior;

"(IV) a material violation of any Federal law, any law of any State to which such association is subject, or any applicable regulation; or

"(V) any other unsafe or unsound condition or activity, other than the failure to meet such capital standards.

"(D) SUBMISSION OF PLAN REQUIRED.—Any application submitted under subparagraph (A) shall be accompanied by a plan which—

"(i) meets the requirements of paragraph (6)(A)(ii); and

"(ii) is acceptable to the Director.

"(E) FAILURE TO COMPLY WITH PLAN.—The Director shall treat as an unsafe and unsound practice any material failure by any savings association which has been granted an exemption under this paragraph to comply with the provisions of any plan submitted by such association under subparagraph (D).

"(F) EXEMPTION NOT AVAILABLE WITH RESPECT TO UNSAFE OR UNSOUND PRACTICES.—This paragraph does not limit any authority of the Director under any other provision of law, including section 8 of the Federal Deposit Insurance Act, to take any appropriate action with respect to any unsafe or unsound practice or condition of any savings association, other than the failure of such savings association to comply with the capital standards prescribed under paragraph (1).

"(8) TEMPORARY AUTHORITY TO MAKE EXCEPTIONS FOR ELIGIBLE SAVINGS ASSOCIATIONS.—

"(A) IN GENERAL.—Notwithstanding paragraph (1)(C), the Director may, by order, make exceptions to the capital standards prescribed under paragraph (1) for eligible savings associations. No exception under this paragraph shall be effective after January 1, 1991.

"(B) STANDARDS FOR APPROVAL OR DISAPPROVAL.—In determining whether to grant an exception under subparagraph (A), the Director shall apply the same standards as apply to determinations under paragraph (7)(C).

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

"(A) CORE CAPITAL.—Unless the Director prescribes a more stringent definition, the term 'core capital' means core capital as defined by the Comptroller of the Currency for national banks, less any unidentifiable intangible assets, plus any purchased mortgage servicing rights excluded from the Comptroller's definition of capital but included in calculating the core capital of savings associations pursuant to paragraph (4).

"(B) QUALIFYING SUPERVISORY GOODWILL.—The term 'qualifying supervisory goodwill' means supervisory goodwill existing on April 12, 1989, amortized on a straightline basis over the shorter of—

"(i) 20 years, or

"(ii) the remaining period for amortization in effect on April 12, 1989.

"(C) TANGIBLE CAPITAL.—The term 'tangible capital' means core capital minus any intangible assets (as intangible assets are defined by the Comptroller of the Currency for national banks).

"(D) TOTAL ASSETS.—The term 'total assets' means total assets (as total assets are defined by the Comptroller of the Currency for national banks) adjusted in the same manner as total assets would be adjusted in determining compliance with the leverage limit applicable to national banks if the savings association were a national bank.

"(10) USE OF COMPTROLLER'S DEFINITIONS.—

(A) IN GENERAL.—The standards prescribed under paragraph (1) shall include all relevant substantive definitions established by the Comptroller of the Currency for national banks.

"(B) SPECIAL RULE.—If the Comptroller of the Currency has not made effective regulations defining core capital or establishing a risk-based capital standard, the Director shall use the definition and standard contained in the Comptroller's most recently published final regulations.

"(u) LIMITS ON LOANS TO ONE BORROWER.—

"(1) IN GENERAL.—Section 5200 of the Revised Statutes shall apply to savings associations in the same manner and to the same extent as it applies to national banks.

"(2) SPECIAL RULES.—

"(A) Notwithstanding paragraph (1), a savings association may make loans to one borrower under one of the following clauses:

"(i) for any purpose, not to exceed $500,000; or

"(ii) to develop domestic residential housing units, not to exceed the lesser of $30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus, if—

"(I) the purchase price of each single family dwelling unit the development of which is financed under this clause does not exceed $500,000;

"(II) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under subsection (t);

"(III) the Director, by order, permits the savings association to avail itself of the higher limit provided by this clause;

"(IV) loans made under this clause to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus; and

"(V) such loans comply with all applicable loan-to-value requirements.

"(B) A savings association's loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted in good faith shall not exceed 50 percent of the savings association's unimpaired capital and unimpaired surplus.

Real property.

"(3) AUTHORITY TO IMPOSE MORE STRINGENT RESTRICTIONS.—The Director may impose more stringent restrictions on a savings association's loans to one borrower if the Director determines that such restrictions are necessary to protect the safety and soundness of the savings association.

"(v) REPORTS OF CONDITION.—

"(1) IN GENERAL.—Each association shall make reports of conditions to the Director which shall be in a form prescribed by the Director and shall contain—

"(A) information sufficient to allow the identification of potential interest rate and credit risk;

"(B) a description of any assistance being received by the association, including the type and monetary value of such assistance;

"(C) the identity of all subsidiaries and affiliates of the association;

"(D) the identity, value, type, and sector of investment of all equity investments of the associations and subsidiaries; and

"(E) other information that the Director may prescribe.

"(2) PUBLIC DISCLOSURE.—

"(A) Reports required under paragraph (1) and all information contained therein shall be available to the public upon request, unless the Director determines—

"(i) that a particular item or classification of information should not be made public in order to protect the safety or soundness of the institution concerned or institutions concerned, the Savings Association Insurance Fund; or

Classified information.

"(ii) that public disclosure would not otherwise be in the public interest.

"(B) Any determination made by the Director under subparagraph (A) not to permit the public disclosure of information shall be made in writing, and if the Director restricts any item of information for savings institutions generally, the Director shall disclose the reason in detail in the Federal Register.

"(C) The Director's determinations under subparagraph (A) shall not be subject to judicial review.

"(3) ACCESS BY CERTAIN PARTIES.—

"(A) Notwithstanding paragraph (2), the persons described in subparagraph (B) shall not be denied access to any information contained in a report of condition, subject to reasonable requirements of confidentiality. Those requirements shall not prevent such information from being transmitted to the Comptroller General of the United States for analysis.

"(B) The following persons are described in this subparagraph for purposes of subparagraph (A):

"(i) the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and their designees; and

"(ii) the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives and their designees.

"(4) FIRST TIER PENALTIES.—Any savings association which—

"(A) maintains procedures reasonably adapted to avoid any inadvertent and unintentional error and, as a result of such an error—

"(i) fails to submit or publish any report or information required by the Director under paragraph (1) or (2), within the period of time specified by the Director; or

"(ii) submits or publishes any false or misleading report or information; or

"(B) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The savings association shall have the burden of proving by a preponderence of the evidence that an error was inadvertent and unintentional and that a report was inadvertently transmitted or published late.

"(5) SECOND TIER PENALTIES.—Any savings association which—

"(A) fails to submit or publish any report or information required by the Director under paragraph (1) or (2), within the period of time specified by the Director; or

"(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (4) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

"(6) THIRD TIER PENALTIES.—If any savings association knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (5) submits or publishes any false or misleading report or information, the Director may assess a penalty of not more than $1,000,000 or 1 percent of total assets, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

"(7) ASSESSMENT.—Any penalty imposed under paragraph (4), (5), or (6) shall be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act (for penalties imposed under such section), and any such assessment (including

the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

"(8) HEARING.—Any savings association against which any penalty is assessed under this subsection shall be afforded a hearing if such savings association submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

"SEC. 6. LIQUID ASSET REQUIREMENTS. 12 USC 1465.

"(a) IN GENERAL.—The purpose of this section is to provide a means for creating effective and flexible liquidity in savings associations which can be increased when mortgage money is plentiful, maintained in easily liquidated instruments, and reduced to add to the flow of funds to the mortgage market in periods of credit stringency. More flexible liquidity will help support sound mortgage credit and a more stable supply of such credit.

"(b) MAINTENANCE OF ACCOUNT.—

"(1) IN GENERAL.—Every savings association shall maintain the aggregate amount of its assets of the following types at not less than such amount as, in the opinion of the Director, is appropriate:

"(A) cash;

"(B) balances maintained in a Federal reserve bank or passed through a Federal home loan bank or another depository institution to a Federal reserve bank pursuant to the Federal Reserve Act; and

"(C) to such extent as the Director may approve for the purposes of this section— Securities.

"(i) time and savings deposits in Federal home loan banks, institutions which are, or are eligible to become, members thereof, and commercial banks;

"(ii) such obligations, including such special obligations, of the United States, a State, any territory or possession of the United States, or a political subdivision, agency, or instrumentality of any one or more of the foregoing, and bankers' acceptances, as the Director may approve;

"(iii) shares or certificates of any open-end management investment company which is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and the portfolio of which is restricted by such investment company's investment policy, changeable only if authorized by shareholder vote, solely to any of the obligations or other investments enumerated in subparagraph (A) and in clauses (i), (ii), (iv), (v), (vi), and (vii) of this subparagraph;

"(iv) liquid, highly rated corporate debt obligations with 3 years or less remaining until maturity;

"(v) highly rated commercial paper with 270 days or less remaining until maturity;

"(vi) mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934)—

"(I) that have one year or less remaining until maturity; or

"(II) that are subject to an agreement (including a repurchase agreement, put option, right of redemption, or takeout commitment) that requires another person

to purchase the securities within a period that does not exceed one year, and that person is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) that is in compliance with applicable capital standards, a primary dealer in United States Government securities, or a broker or dealer registered under the Securities Exchange Act of 1934; and

Loans.
Real property.

"(vii) mortgage loans on the security of a first lien on residential real property, if the mortgage loans qualify as backing for mortgage-backed securities issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Association or guaranteed by the Government National Mortgage Association, and either—

"(I) the mortgage loans have one year or less remaining until maturity, or

"(II) the mortgage loans are subject to an agreement (including a repurchase agreement, put option, right of redemption, or takeout commitment) that requires another person to purchase the loans within a period that does not exceed one year, and that person is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) that is in compliance with applicable capital standards, a primary dealer in United States Government securities, or a broker or dealer registered under the Securities Exchange Act of 1934.

"(2) LIMITATION.—The requirement prescribed by the Director pursuant to this subsection (hereafter in this section referred to as the 'liquidity requirement') may not be less than 4 percent or more than 10 percent of the obligation of the institution on withdrawable accounts and borrowings payable on demand or with unexpired maturities of one year or less. The Director shall prescribe regulations to implement the provisions of this subsection.

Regulations.

"(c) CALCULATION.—The amount of any savings association's liquidity requirement, and any deficiency in compliance therewith, shall be calculated as the Director shall prescribe. The Director may prescribe different liquidity requirements, within the limitations specified herein, for different classes of savings associations, and for such purposes the Director is authorized to classify savings associations according to type, size, location, rate of withdrawals, or on such other basis or bases of differentiation as the Director may deem to be reasonably necessary or appropriate for the purposes of this section.

"(d) DEFICIENCY ASSESSMENTS.—For any deficiency in compliance with the liquidity requirements, the Director may, in the Director's discretion, assess a penalty consisting of the payment by the institution of such sum as may be assessed by the Director but not in excess of a rate equal to the highest rate on Federal home loan bank advances of one year or less, plus 2 percent per year, on the amount of the deficiency for the period with respect to which the deficiency existed. Any penalty assessed under this subsection against a savings association shall be paid to the Director. The Director may authorize or require that, at any time before collection thereof, and whether before or after the bringing of any action or other legal proceeding, the obtaining of any judgment or other recovery, or the

issuance or levy of any execution or other legal process therefor, and with or without consideration, any such penalty or recovery be compromised, remitted, or mitigated in whole or part. The penalties authorized under this subsection are in addition to all remedies and sanctions otherwise available.

"(e) REDUCTION OR SUSPENSION.—Whenever the Director deems it advisable in order to enable a savings association to meet withdrawals or to pay obligations, the Director may, to such extent and subject to such conditions as the Director may prescribe, permit the savings association to reduce its liquidity below the minimum amount. Whenever the Director determines that conditions of national emergency or unusual economic stress exist, the Director may suspend any part or all of the liquidity requirements hereunder for such period as the Director may prescribe. Any such suspension, unless sooner terminated by its terms or by the Director, shall terminate at the expiration of 90 days next after its commencement. The preceding sentence does not prevent the Director from again exercising, before, at, or after any such termination, the authority conferred by this subsection.

"(f) REGULATING AUTHORITY.—The Director is authorized to issue such regulations, including definitions of terms used in this section, to make such examinations, and to conduct such investigations as the Director deems necessary or appropriate to effectuate the purposes of this section. The reasonable cost of any such examination or investigation, as determined by the Director, shall be paid by the association.

"SEC. 7. APPLICABILITY.

Territories, U.S.
12 USC 1466.

"The provisions of this Act shall apply to the United States and to Puerto Rico, Guam, and the Virgin Islands.

"SEC. 8. DISTRICT ASSOCIATIONS.

District of Columbia.
12 USC 1466a.

"(a) IN GENERAL.—The Director shall, with respect to all incorporated or unincorporated building, building or loan, building and loan, or homestead associations, and similar institutions, of or transacting or doing business in the District of Columbia, or maintaining any office in the District of Columbia (other than Federal savings associations), have the same powers and functions as to examination, operation, and regulation as the Director has with respect to Federal savings associations.

"(b) ADDITIONAL POWERS.—Any such association or institution incorporated under the laws of, or organized in, the District of Columbia shall have in addition to any existing statutory authority such statutory authority as is vested in Federal savings associations.

"(c) CHARTER AMENDMENTS.—Charters, certificates of incorporation, articles of incorporation, constitutions, bylaws, or other organic documents of associations or institutions referred to in subsection (b) of this section may, without regard to anything contained therein or otherwise, be amended in such manner and to such extent and upon such votes if any as the Director may by regulation or otherwise provide.

"(d) LIMITATION.—Nothing in this section shall cause, or permit the Director to cause, District of Columbia associations to be or become Federal savings associations, or require the Director to impose on District of Columbia associations the same regulations as are imposed on Federal savings associations.

12 USC 1467.

"SEC. 9. EXAMINATION FEES.

"(a) EXAMINATION OF SAVINGS ASSOCIATIONS.—The cost of conducting examinations of savings associations pursuant to section 5(d) of this Act shall be assessed by the Director against each such savings association in proportion to the assets or resources of the savings association.

"(b) EXAMINATION OF AFFILIATES.—The cost of conducting examinations of affiliates of savings associations pursuant to this Act may be assessed by the Director against each affiliate which is examined in proportion to the assets or resources held by the affiliate on the date of any such examination.

"(c) ASSESSMENT AGAINST ASSOCIATION IN CASE OF AFFILIATE'S REFUSAL TO PAY.—

"(1) IN GENERAL.—Subject to paragraph (2), if any affiliate of any savings association—

"(A) refuses to pay any assessment under subsection (b); or

"(B) fails to pay any such assessment before the end of the 60-day period beginning on the date of the assessment,

the Director may assess such cost against, and collect such cost from, such savings association.

"(2) AFFILIATE OF MORE THAN 1 SAVINGS ASSOCIATION.—If any affiliate referred to in paragraph (1) is an affiliate of more than 1 savings association, the assessment with respect to the affiliate against, and collected from, any affiliated savings association in such proportions as the Director may prescribe.

"(d) CIVIL MONEY PENALTY FOR AFFILIATE'S REFUSAL TO COOPERATE.—

"(1) PENALTY IMPOSED.—If any affiliate of any savings association—

"(A) refuses to permit any examiner appointed by the Director to make an examination; or

"(B) refuses to provide any information required to be disclosed in the course of any examination,

the savings association shall forfeit and pay a civil penalty of not more than $5,000 for each day that any such refusal continues.

"(2) ASSESSMENT AND COLLECTION.—Any penalty imposed under paragraph (1) shall be assessed and collected by the Director, in the manner provided in section 8(i)(2) of the Federal Deposit Insurance Act.

"(e) REGULATIONS.—Only the Director may prescribe regulations with respect to—

"(1) the computation of, and the assessment for, the cost of conducting examinations pursuant to this section; and

"(2) the collection and use of such assessments and any fees under this section.

Such regulations may establish formulas to determine a fee or schedule of fees to cover the costs of examinations and also to cover the cost of processing applications, filings, notices, and requests for approvals by the Director or the Director's designee.

"(f) COLLECTION THROUGH FDIC OR FEDERAL HOME LOAN BANKS.—The Corporation or the Federal home loan banks shall, upon request of and by agreement with the Director, collect fees and assessments on behalf of the Director and be reimbursed for the actual cost of collection.

"(g) COSTS OF OTHER EXAMINATIONS.—

"(1) EXAMINATION OF FIDUCIARY ACTIVITIES.—In addition to any assessment imposed pursuant to subsection (a), the cost of conducting examinations of fiduciary activities of savings associations which exercise fiduciary powers (including savings associations or similar institutions in the District of Columbia) shall be assessed by the Director against such savings associations (or similar institutions).

"(2) EXAMINATIONS IN EXCESS OF 2 PER CALENDAR YEAR.—If any savings association or affiliate of a savings association is examined by the Director, or the Corporation, as the case may be, more than 2 times in any calendar year, the cost of conducting such additional examinations shall be assessed, in addition to any assessment imposed pursuant to subsection (a), by the Director or the Corporation, as the case may be, against such savings association or affiliate.

"(h) ADDITIONAL INFORMATION.—Any savings association and any affiliate of any savings association shall provide the Director with access to any information or report with respect to any examination made by any public regulatory authority and furnish any additional information with respect thereto as the Director may require.

"(i) TREATMENT OF EXAMINATION ASSESSMENTS.—

"(1) DEPOSITS.—Amounts received by the Director from assessments under this section (other than an assessment under subsection (d)(2)) or section 10(b)(4) may be deposited in the manner provided in section 5234 of the Revised Statutes with respect to assessments by the Comptroller of the Currency.

"(2) ASSESSMENTS ARE NOT GOVERNMENT FUNDS.—The amounts received by the Director from any assessment under this section shall not be construed to be Government or public funds or appropriated money.

"(3) ASSESSMENTS ARE NOT SUBJECT TO APPORTIONMENT OF FUNDS.—Notwithstanding any other provision of law, the amounts received by the Director from any assessment under this section shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

"(j) PROCESSING FEE.—The Director may, in the Director's sole discretion, assess against any person that submits to the Director an application, filing, notice, or request a fee to cover the cost of processing such submission.

"(k) FEES FOR EXAMINATIONS AND SUPERVISORY ACTIVITIES.—The Director may assess against institutions for which the Director is the appropriate Federal banking agency, within the meaning of section 3 of the Federal Deposit Insurance Act, fees to fund the direct and indirect expenses of the Office. Such fees shall be imposed in proportion of the assets or resources of the institutions. The fees may be imposed more frequently than annually at the discretion of the Director. The annual rate of such fees shall be the same for all institutions subject to such fees.

"(l) WORKING CAPITAL.—The Director is authorized to impose fees and assessments pursuant to subsections (a), (b), (e), and (k) of this section, in excess of actual expenses for any given year, to permit the Director to maintain a working capital fund. The Director shall remit to the payors of such fees and assessments any funds collected in excess of what he deems necessary to maintain such working capital fund.

"(m) USE OF FUNDS.—The Director is authorized to use the combined resources retained through fees and assessments imposed pursuant to this section to pay all direct and indirect salary and administrative expenses of the Office, including contracts and purchases of property and services, and the direct and indirect expenses of the examinations and supervisory activities of the Office.

12 USC 1467a.

"SEC. 10. REGULATION OF HOLDING COMPANIES.

"(a) DEFINITIONS.—

"(1) IN GENERAL.—As used in this section, unless the context otherwise requires—

"(A) SAVINGS ASSOCIATION.—The term 'savings association' includes a savings bank or cooperative bank which is deemed by the Director to be a savings association under subsection (l).

"(B) UNINSURED INSTITUTION.—The term 'uninsured institution' means any depository institution the deposits of which are not insured by the Federal Deposit Insurance Corporation.

"(C) COMPANY.—The term 'company' means any corporation, partnership, trust, joint-stock company, or similar organization, but does not include the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, any Federal home loan bank, or any company the majority of the shares of which is owned by the United States or any State, or by an instrumentality of the United States or any State.

"(D) SAVINGS AND LOAN HOLDING COMPANY.—The term 'savings and loan holding company' means any company which directly or indirectly controls a savings association or controls any other company which is a savings and loan holding company.

"(E) MULTIPLE SAVINGS AND LOAN HOLDING COMPANY.—The term 'multiple savings and loan holding company' means any savings and loan holding company which directly or indirectly controls 2 or more savings associations.

"(F) DIVERSIFIED SAVINGS AND LOAN HOLDING COMPANY.—The term 'diversified savings and loan holding company' means any savings and loan holding company whose subsidiary savings association and related activities as permitted under paragraph (2) of subsection (c) of this section represented, on either an actual or a pro forma basis, less than 50 percent of its consolidated net worth at the close of its preceding fiscal year and of its consolidated net earnings for such fiscal year, as determined in accordance with regulations issued by the Director.

"(G) SUBSIDIARY.—The term 'subsidiary' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(H) AFFILIATE.—The term 'affiliate' of a savings association means any person which controls, is controlled by, or is under common control with, such savings association.

"(I) BANK HOLDING COMPANY.—The terms 'bank holding company' and 'bank' have the meanings given to such terms in section 2 of the Bank Holding Company Act of 1956.

"(J) ACQUIRE.—The term 'acquire' has the meaning given to such term in section 13(f)(8) of the Federal Deposit Insurance Act.

"(2) CONTROL.—For purposes of this section, a person shall be deemed to have control of—

"(A) a savings association if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of such savings association, or controls in any manner the election of a majority of the directors of such association;

"(B) any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares or rights of such other company, or controls in any manner the election or appointment of a majority of the directors or trustees of such other company, or is a general partner in or has contributed more than 25 percent of the capital of such other company;

"(C) a trust if the person is a trustee thereof; or

"(D) a savings association or any other company if the Director determines, after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such association or other company.

"(3) EXCLUSIONS.—Notwithstanding any other provision of this subsection, the term 'savings and loan holding company' does not include—

"(A) any company by virtue of its ownership or control of voting shares of a savings association or a savings and loan holding company acquired in connection with the underwriting of securities if such shares are held only for such period of time (not exceeding 120 days unless extended by the Director) as will permit the sale thereof on a reasonable basis; and

"(B) any trust (other than a pension, profit-sharing, shareholders', voting, or business trust) which controls a savings association or a savings and loan holding company if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and is (i) in existence on June 26, 1967, or (ii) a testamentary trust created on or after June 26, 1967.

"(4) SPECIAL RULE RELATING TO QUALIFIED STOCK ISSUANCE.—No savings and loan holding company shall be deemed to control a savings association solely by reason of the purchase by such savings and loan holding company of shares issued by such savings association, or issued by any savings and loan holding company (other than a bank holding company) which controls such savings association, in connection with a qualified stock issuance if such purchase is approved by the Director under subsection (q)(1)(D), unless the acquiring savings and loan holding company, directly or indirectly, or acting in concert with 1 or more other persons, or through 1 or more subsidiaries, owns,

controls, or holds with power to vote, or holds proxies representing, more than 15 percent of the voting shares of such savings association or holding company.

"(b) REGISTRATION AND EXAMINATION.—

"(1) IN GENERAL.—Within 90 days after becoming a savings and loan holding company, each savings and loan holding company shall register with the Director on forms prescribed by the Director, which shall include such information, under oath or otherwise, with respect to the financial condition, ownership, operations, management, and intercompany relationships of such holding company and its subsidiaries, and related matters, as the Director may deem necessary or appropriate to carry out the purposes of this section. Upon application, the Director may extend the time within which a savings and loan holding company shall register and file the requisite information.

"(2) REPORTS.—Each savings and loan holding company and each subsidiary thereof, other than a savings association, shall file with the Director, and the regional office of the Director of the district in which its principal office is located, such reports as may be required by the Director. Such reports shall be made under oath or otherwise, and shall be in such form and for such periods, as the Director may prescribe. Each report shall contain such information concerning the operations of such savings and loan holding company and its subsidiaries as the Director may require.

"(3) BOOKS AND RECORDS.—Each savings and loan holding company shall maintain such books and records as may be prescribed by the Director.

"(4) EXAMINATIONS.—Each savings and loan holding company and each subsidiary thereof (other than a bank) shall be subject to such examinations as the Director may prescribe. The cost of such examinations shall be assessed against and paid by such holding company. Examination and other reports may be furnished by the Director to the appropriate State supervisory authority. The Director shall, to the extent deemed feasible, use for the purposes of this subsection reports filed with or examinations made by other Federal agencies or the appropriate State supervisory authority.

"(5) AGENT FOR SERVICE OF PROCESS.—The Director may require any savings and loan holding company, or persons connected therewith if it is not a corporation, to execute and file a prescribed form of irrevocable appointment of agent for service of process.

"(6) RELEASE FROM REGISTRATION.—The Director may at any time, upon the Director's own motion or upon application, release a registered savings and loan holding company from any registration theretofore made by such company, if the Director determines that such company no longer has control of any savings association.

"(c) HOLDING COMPANY ACTIVITIES.—

"(1) PROHIBITED ACTIVITIES.—Except as otherwise provided in this subsection, no savings and loan holding company and no subsidiary which is not a savings association shall—

"(A) engage in any activity or render any service for or on behalf of a savings association subsidiary for the purpose or with the effect of evading any law or regulation applicable to such savings association;

"(B) commence any business activity, other than the activities described in paragraph (2); or

"(C) continue any business activity, other than the activities described in paragraph (2), after the end of the 2-year period beginning on the date on which such company received approval under subsection (e) of this section to become a savings and loan holding company subject to the limitations contained in this subparagraph.

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

"(A) Furnishing or performing management services for a savings association subsidiary of such company.

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

"(C) Holding, managing, or liquidating assets owned or acquired from a savings association subsidiary of such company.

"(D) Holding or managing properties used or occupied by a savings association subsidiary of such company.

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

"(F) Any other activity—

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

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

"(G) In the case of a savings and loan holding company, purchasing, holding, or disposing of stock acquired in connection with a qualified stock issuance if the purchase of such stock by such savings and loan holding company is approved by the Director pursuant to subsection (q)(1)(D).

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

"(A) only 1 savings association, if the savings association subsidiary of such company is a qualified thrift lender (as determined under subsection (m)); or

"(B) more than 1 savings association, if—

"(i) all, or all but 1, of the savings association subsidiaries of such company were initially acquired by the company or by an individual who would be deemed to control such company if such individual were a company—

"(I) pursuant to an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act or section 408(m) of the National Housing Act; or

"(II) pursuant to an acquisition in which assistance was continued to a savings association under

section 13(i) of the Federal Deposit Insurance Act; and

"(ii) all of the savings association subsidiaries of such company are qualified thrift lenders (as determined under subsection (m)).

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

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

"(B) FACTORS TO BE CONSIDERED BY DIRECTOR.—In considering any application under subparagraph (A) by any savings and loan holding company or any subsidiary of any such company which is not a savings association, the Director shall consider—

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

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

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

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

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

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

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

"(A) EXCEPTION TO 2-YEAR GRACE PERIOD FOR ACHIEVING COMPLIANCE.—Notwithstanding paragraph (1)(C), any company which received approval under subsection (e) of this section to acquire control of a savings association between March 5, 1987, and August 10, 1987, shall not continue any business activity other than an activity described in paragraph (2) after August 10, 1987.

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

"(C) TERMINATION OF SUBPARAGRAPH (B) EXEMPTION.—The exemption provided under subparagraph (B) for activities engaged in by any savings and loan holding company or a subsidiary of such company (which is not a savings association) which would otherwise be prohibited under paragraph (1)(C) shall terminate with respect to such activities of such company or subsidiary upon the occurrence (after August 10, 1987) of any of the following:

"(i) The savings and loan holding company acquires control of a bank or an additional savings association (other than a savings association acquired pursuant to section 13(c) or 13(k) of the Federal Deposit Insurance Act or section 406(f) or 408(m) of the National Housing Act).

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

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

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

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

"(iv) Any savings association subsidiary of the savings and loan holding company increases the number of locations from which such savings association conducts business after March 5, 1987 (other than an increase which occurs in connection with a transaction under section 13(c) or (k) of the Federal Deposit Insurance Act or section 408(m) of the National Housing Act.

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

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

"(7) FOREIGN SAVINGS AND LOAN HOLDING COMPANY.—Notwithstanding any other provision of this section, any savings and

loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof which is not a savings association), which controls a single savings association on August 10, 1987, shall not be subject to this subsection with respect to any activities of such holding company which are conducted exclusively in a foreign country.

"(8) EXEMPTION FOR BANK HOLDING COMPANIES.—Except for paragraph (1)(A), this subsection shall not apply to any company that is treated as a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956, or any of its subsidiaries.

"(d) TRANSACTIONS WITH AFFILIATES.—Transactions between any subsidiary savings association of a savings and loan holding company and any affiliate (of such savings association subsidiary) shall be subject to the limitations and prohibitions specified in section 11 of this Act.

"(e) ACQUISITIONS.—

"(1) IN GENERAL.—It shall be unlawful for—

"(A) any savings and loan holding company directly or indirectly, or through one or more subsidiaries or through one or more transactions—

"(i) to acquire, except with the prior written approval of the Director, the control of a savings association or a savings and loan holding company, or to retain the control of such an association or holding company acquired or retained in violation of this section as heretofore or hereafter in effect;

"(ii) to acquire, except with the prior written approval of the Director, by the process of merger, consolidation, or purchase of assets, another savings association or a savings and loan holding company, or all or substantially all of the assets of any such association or holding company;

"(iii) to acquire, by purchase or otherwise, or to retain more than 5 percent of the voting shares of a savings association not a subsidiary, or of a savings and loan holding company not a subsidiary, or in the case of a multiple savings and loan holding company (other than a company described in subsection (c)(8)), to so acquire or retain more than 5 percent of the voting shares of any company not a subsidiary which is engaged in any business activity other than the activities specified in subsection (c)(2). This clause shall not apply to shares of a savings association or of a savings and loan holding company—

"(I) held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

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

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

"(IV) over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

"(V) acquired in securing or collecting a debt previously contracted in good faith, during the 2-

year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Director may permit if the Director determines that such an extension will not be detrimental to the public interest;

"(VI) acquired under section 408(m) of the National Housing Act or section 13(k) of the Federal Deposit Insurance Act;

"(VII) held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940, except as provided in paragraph (6);

"(VIII) acquired pursuant to a qualified stock issuance if such purchase is approved by the Director under subsection (q)(1)(D);

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), and (VI)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association or savings and loan holding company; or

"(iv) to acquire the control of an uninsured institution, or to retain for more than one year after February 14, 1968, or from the date on which such control was acquired, whichever is later, except that the Director may upon application by such company extend such one-year period from year to year, for an additional period not exceeding 3 years, if the Director finds such extension is warranted and is not detrimental to the public interest;

"(B) any other company, without the prior written approval of the Director, directly or indirectly, or through one or more subsidiaries or through one or more transactions, to acquire the control of one or more savings associations, except that such approval shall not be required in connection with the control of a savings association, (i) acquired by devise under the terms of a will creating a trust which is excluded from the definition of 'savings and loan holding company' under subsection (a) of this section, or (ii) acquired in connection with a reorganization in which a person or group of persons, having had control of a savings association for more than 3 years, vests control of that association in a newly formed holding company subject to the control of the same person or group of persons. The Director shall approve an acquisition of a savings association under this subparagraph unless the Director finds the financial and managerial resources and future prospects of the company and association involved to be such that the acquisition would be detrimental to the association or the insurance risk of the Savings Association Insurance Fund or Bank Insurance Fund, and shall render a decision within 90 days after submission to the Director of the complete record on the application.

"(2) FACTORS TO BE CONSIDERED.—The Director shall not approve any acquisition under subparagraph (A)(i) or (A)(ii), or of more than one savings association under subparagraph (B) of paragraph (1) of this subsection, any acquisition of stock in connection with a qualified stock issuance, any acquisition under paragraph (4)(A), or any transaction under section 13(k)

of the Federal Deposit Insurance Act, except in accordance with this paragraph. In every case, the Director shall take into consideration the financial and managerial resources and future prospects of the company and association involved, the effect of the acquisition on the association, the insurance risk to the Savings Association Insurance Fund or the Bank Insurance Fund, and the convenience and needs of the community to be served, and shall render a decision within 90 days after submission to the Director of the complete record on the application. Before approving any such acquisition, except a transaction under section 13(k) of the Federal Deposit Insurance Act, the Director shall request from the Attorney General and consider any report rendered within 30 days on the competitive factors involved. The Director shall not approve any proposed acquisition—

"(A) which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States, or

"(B) the effect of which in any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served.

"(3) INTERSTATE ACQUISITIONS.—No acquisition shall be approved by the Director under this subsection which will result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a multiple savings and loan holding company controlling savings associations in more than one State, unless—

"(A) such company, or a savings association subsidiary of such company, is authorized to acquire control of a savings association subsidiary, or to operate a home or branch office, in the additional State or States pursuant to section 13(k) of the Federal Deposit Insurance Act;

"(B) such company controls a savings association subsidiary which operated a home or branch office in the additional State or States as of March 5, 1987; or

"(C) the statutes of the State in which the savings association to be acquired is located permit a savings association chartered by such State to be acquired by a savings association chartered by the State where the acquiring savings association or savings and loan holding company is located or by a holding company that controls such a State chartered savings association, and such statutes specifically authorize such an acquisition by language to that effect and not merely by implication.

"(4) ACQUISITIONS BY CERTAIN INDIVIDUALS.—

"(A) IN GENERAL.—Notwithstanding subsection (h)(2), any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of such holding company, may acquire control of any savings association not a subsidiary of such

savings and loan holding company with the prior written approval of the Director.

"(B) TREATMENT OF CERTAIN HOLDING COMPANIES.—If any individual referred to in subparagraph (A) controls more than 1 savings and loan holding company or more than 1 savings association, any savings and loan holding company controlled by such individual shall be subject to the activities limitations contained in subsection (c) to the same extent such limitations apply to multiple savings and loan holding companies, unless all or all but 1 of the savings associations (including any institution deemed to be a savings association under subsection (1) of this section) controlled directly or indirectly by such individual was acquired pursuant to an acquisition described in subclause (I) or (II) of subsection (c)(3)(B)(i).

"(5) ACQUISITIONS PURSUANT TO CERTAIN SECURITY INTERESTS.—This subsection and subsection (c)(2) of this section do not apply to any savings and loan holding company which acquired the control of a savings association or of a savings and loan holding company pursuant to a pledge or hypothecation to secure a loan, or in connection with the liquidation of a loan, made in the ordinary course of business. It shall be unlawful for any such company to retain such control for more than one year after February 14, 1968, or from the date on which such control was acquired, whichever is later, except that the Director may upon application by such company extend such one-year period from year to year, for an additional period not exceeding 3 years, if the Director finds such extension is warranted and would not be detrimental to the public interest.

"(6) SHARES HELD BY INSURANCE AFFILIATES.—Shares described in clause (iii)(VII) of paragraph (1)(A) shall not be excluded for purposes of clause (iii) of such paragraph if—

"(A) all shares held under such clause (iii)(VII) by all insurance company affiliates of such savings association or savings and loan holding company in the aggregate exceed 5 percent of all outstanding shares or of the voting power of the savings association or savings and loan holding company; or

"(B) such shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company.

"(f) DECLARATION OF DIVIDEND.—Every subsidiary savings association of a savings and loan holding company shall give the Director not less than 30 days' advance notice of the proposed declaration by its directors of any dividend on its guaranty, permanent, or other nonwithdrawable stock. Such notice period shall commence to run from the date of receipt of such notice by the Director. Any such dividend declared within such period, or without the giving of such notice to the Director, shall be invalid and shall confer no rights or benefits upon the holder of any such stock.

"(g) ADMINISTRATION AND ENFORCEMENT.—

"(1) IN GENERAL.—The Director is authorized to issue such regulations and orders as the Director deems necessary or appropriate to enable the Director to administer and carry out the purposes of this section, and to require compliance therewith and prevent evasions thereof.

"(2) INVESTIGATIONS.—The Director may make such investigations as the Director deems necessary or appropriate to determine whether the provisions of this section, and regulations and orders thereunder, are being and have been complied with by savings and loan holding companies and subsidiaries and affiliates thereof. For the purpose of any investigation under this section, the Director may administer oaths and affirmations, issue subpenas, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which may be relevant or material to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in any State. The Director may apply to the United States district court for the judicial district (or the United States court in any territory) in which any witness or company subpenaed resides or carries on business, for enforcement of any subpena issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance.

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"(3) PROCEEDINGS.—(A) In any proceeding under subsection (a)(2)(D) or under paragraph (5) of this section, the Director may administer oaths and affirmations, take or cause to be taken depositions, and issue subpenas. The Director may make regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this paragraph may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to such proceedings may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

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"(B) Any hearing provided for in subsection (a)(2)(D) or under paragraph (5) of this section shall be held in the Federal judicial district or in the territory in which the principal office of the association or other company is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5, United States Code.

"(4) INJUNCTIONS.—Whenever it appears to the Director that any person is engaged or has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this section or of any regulation or order thereunder, the Director may bring an action in the proper United States district court, or the United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, to enforce compliance with this section or any regulation or order, or to require the divestiture of any acquisition in violation of this section, or for any combination of the foregoing, and such courts shall have jurisdiction of such actions. Upon a proper showing

an injunction, decree, restraining order, order of divestiture, or other appropriate order shall be granted without bond.

"(5) CEASE AND DESIST ORDERS.—(A) Notwithstanding any other provision of this section, the Director may, whenever the Director has reasonable cause to believe that the continuation by a savings and loan holding company of any activity or of ownership or control of any of its noninsured subsidiaries constitutes a serious risk to the financial safety, soundness, or stability of a savings and loan holding company's subsidiary savings association and is inconsistent with the sound operation of a savings association or with the purposes of this section or section 8 of the Federal Deposit Insurance Act, order the savings and loan holding company or any of its subsidiaries, after due notice and opportunity for hearing, to terminate such activities or to terminate (within 120 days or such longer period as the Director directs in unusual circumstances) its ownership or control of any such noninsured subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the savings and loan holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing savings and loan holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

"(B) The Director may in the Director's discretion apply to the United States district court within the jurisdiction of which the principal office of the company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith. Except as provided in subsection (j), no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

"(h) PROHIBITED ACTS.—It shall be unlawful for—

"(1) any savings and loan holding company or subsidiary thereof, or any director, officer, employee, or person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 percent of the voting shares, of such holding company or subsidiary, to hold, solicit, or exercise any proxies in respect of any voting rights in a savings association which is a mutual association;

"(2) any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of such holding company, to acquire control of any savings association not a subsidiary of such savings and loan holding company, unless such acquisition is approved by the Director pursuant to subsection (e)(4); or

"(3) any individual, except with the prior approval of the Director, to serve or act as a director, officer, or trustee of, or become a partner in, any savings and loan holding company after having been convicted of any criminal offense involving dishonesty or breach of trust.

"(i) PENALTIES.—

"(1) CRIMINAL PENALTIES.—(A) Whoever knowingly violates any provision of this section, and any company which violates any regulation or order issued by the Director pursuant thereto,

shall be fined not more than $100,000 per day for each day during which the violation continues.

"(B) Any individual who knowingly violates any provision of this section shall be fined not more than $100,000 per day for each day during which the violation continues, imprisoned not more than 1 year, or both.

"(C) Whoever knowingly violates any provision of this section with intent to deceive, to defraud, or to profit significantly shall be fined not more than $1,000,000 per day for each day during which the violation continues, imprisoned not more than 5 years, or both.

"(2) FALSE ENTRIES.—Every director, officer, partner, trustee, agent, or employee of a savings and loan holding company shall be subject to the same penalties for false entries in any book, report, or statement of such savings and loan holding company as are applicable to officers, agents, and employees of a savings association the accounts of which are insured by the Corporation for false entries in any books, reports, or statements of such association under section 1006 of title 18, United States Code.

"(3) CIVIL MONEY PENALTY.—

"(A) PENALTY.—Any company which violates, and any person who participates in a violation of, any provision of this section, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

"(B) ASSESSMENT.—Any penalty imposed under subparagraph (A) may be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

"(C) HEARING.—The company or other person against whom any civil penalty is assessed under this paragraph shall be afforded a hearing if such company or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this paragraph.

"(D) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

"(E) VIOLATE DEFINED.—For purposes of this section, the term 'violate' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(F) REGULATIONS.—The Director shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

"(4) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a savings and loan holding company or subsidiary thereof (including a separation caused by the deregistration of such a company or such a subsidiary) shall not affect the jurisdiction and authority of the Director to issue any notice

and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such holding company or its subsidiary (whether such date occurs before, on, or after the date of the enactment of this paragraph).

"(j) JUDICIAL REVIEW.—Any party aggrieved by an order of the Director under this section may obtain a review of such order by filing in the court of appeals of the United States for the circuit in which the principal office of such party is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Director, and thereupon the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28, United States Code.

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"(k) SAVINGS CLAUSE.—Nothing contained in this section, other than any transaction approved under subsection (e)(2) of this section or section 13 of the Federal Deposit Insurance Act, shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any act, action, or conduct in violation of the antitrust laws.

"(l) TREATMENT OF FDIC INSURED STATE SAVINGS BANKS AND COOPERATIVE BANKS AS SAVINGS ASSOCIATIONS.—

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

"(2) FAILURE TO MAINTAIN QUALIFIED THRIFT LENDER STATUS.—If any savings bank which is deemed to be a savings association under paragraph (1) subsequently fails to maintain its status as a qualified thrift lender, as determined by the Director, such bank may not thereafter be a qualified thrift lender for a period of 5 years.

"(m) QUALIFIED THRIFT LENDER TEST.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (6), any savings association shall have the status of a qualified thrift lender if—

"(A) the qualified thrift investments of such savings association equal or exceed 60 percent of the total tangible assets of such association; and

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

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

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

"(B) the Director determines that—

"(i) the grant of any such exception will significantly facilitate an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act;

"(ii) the acquired association will comply with the transition requirements of paragraph (6)(B), as if the date of the exemption were the starting date for the transition period described in that paragraph; and

"(iii) the Director determines that the exemption will not have an undue adverse effect on competing savings associations in the relevant market and will further the purposes of this subsection.

"(3) FAILURE TO BECOME AND REMAIN A QUALIFIED THRIFT LENDER.—

"(A) IN GENERAL.—Except as provided in subparagraph (D), a savings association that fails to become or remain a qualified thrift lender shall either become one or more banks (other than a savings bank), or be subject to subparagraph (B).

"(B) RESTRICTIONS APPLICABLE TO SAVINGS ASSOCIATIONS THAT ARE NOT QUALIFIED THRIFT LENDERS.—

"(i) RESTRICTIONS EFFECTIVE IMMEDIATELY.—The following restrictions shall apply immediately to a savings association after the date on which the savings association should have become or ceases to be a qualified thrift lender:

"(I) ACTIVITIES.—The savings association shall not make any new investment (including an investment in a subsidiary) or engage, directly or indirectly, in any other new activity unless that investment or activity would be permissible for the savings association if it were a national bank, and is also permissible for the savings association as a savings association.

"(II) BRANCHING.—The savings association shall not establish any new branch office at any location at which a national bank located in the savings association's home State may not establish a branch office. For purposes of this subclause, a savings association's home State is the State in which the savings association's total deposits were largest on the date on which the savings associa-

tion should have become or ceased to be a qualified thrift lender.

"(III) ADVANCES.—The savings association shall not be eligible to obtain new advances from any Federal home loan bank.

"(IV) DIVIDENDS.—The savings association shall be subject to all statutes and regulations governing the payment of dividends by a national bank in the same manner and to the same extent as if the savings association were a national bank.

"(ii) ADDITIONAL RESTRICTIONS EFFECTIVE AFTER THREE YEARS.—The following additional restrictions shall apply to a savings association beginning 3 years after the date on which the savings association should have become or ceases to be a qualified thrift lender:

"(I) ACTIVITIES.—The savings association shall not retain any investment (including an investment in any subsidiary) or engage, directly or indirectly, in any activity unless that investment or activity would be permissible for the savings association if it were a national bank, and is also permissible for the savings association as a savings association.

"(II) ADVANCES.—The savings association shall repay any outstanding advances from any Federal home loan bank as promptly as can be prudently done consistent with the safe and sound operation of the savings association.

"(C) HOLDING COMPANY REGULATION.—Any company that controls a savings association that is subject to any provision of subparagraph (B) shall, within one year after the date on which the savings association should have become or ceases to be a qualified thrift lender, register as and be deemed to be a bank holding company subject to all of the provisions of the Bank Holding Company Act of 1956, section 8 of the Federal Deposit Insurance Act, and other statutes applicable to bank holding companies, in the same manner and to the same extent as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Holding Company Act of 1956.

"(D) REQUALIFICATION.—A savings association that should have become or ceases to be a qualified thrift lender shall not be subject to subparagraph (B) or (C) if the savings association becomes a qualified thrift lender by meeting the qualified thrift lender requirement in paragraph (1) on an average basis in 3 out of every 4 quarters and 2 out of every 3 years and thereafter remains a qualified thrift lender. If the savings association (or any savings association that acquired all or substantially all of its assets from that savings association) at any time thereafter ceases to be a qualified thrift lender, it shall immediately be subject to all provisions of subparagraphs (B) and (C) as if all the periods described in subparagraphs (B)(ii) and (C) had expired.

"(E) DEPOSIT INSURANCE ASSESSMENTS.—Any bank chartered as a result of the requirements of this section shall be obligated until December 31, 1993, to pay to the Savings

Association Insurance Fund the assessments assessed on savings associations under the Federal Deposit Insurance Act. Such association shall also be assessed, on the date of its change of status from a Savings Association Insurance Fund member, the exit fee and entrance fee provided in section 5(d) of the Federal Deposit Insurance Act. Such institution shall not be obligated to pay the assessments assessed on banks under the Federal Deposit Insurance Act until—

"(i) December 31, 1993, or

"(ii) the institution's change of status from a Savings Association Insurance fund member to a Bank Insurance Fund member,

whichever is later.

"(F) SPECIAL RULE.—This paragraph shall not apply to savings associations headquartered and operating primarily in Puerto Rico or the Virgin Islands.

"(G) EXEMPTION FOR CERTAIN FEDERAL SAVINGS ASSOCIATIONS.—This paragraph shall not apply to any Federal savings association in existence as a Federal savings association on the date of enactment of the Financial Institutions Reform Recovery, and Enforcement Act of 1989—

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

"(ii) that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law.

"(H) NO CIRCUMVENTION OF EXIT MORATORIUM.—Subparagraph (A) of this paragraph shall not be construed as permitting any insured depository institution to engage in any conversion transaction prohibited under section 5(d) of the Federal Deposit Insurance Act.

"(I) EFFECTIVE DATE.—This paragraph shall take effect upon the expiration of 1 year after the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

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

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

"(i) the amount of the qualified thrift investments of a savings association, by

"(ii) the total amount of tangible assets of such savings association.

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

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

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

"(iii) subject to paragraph (5), the liquid assets of the type required to be maintained under this Act; and

"(iv) subject to paragraph (5), 50 percent of the dollar amount of the residential mortgage loans originated by such savings association or subsidiary and sold within 90 days of origination.

"(5) LIMITATION ON TREATMENT OF CERTAIN ASSETS AS THRIFT INVESTMENTS.—The aggregate amount of the assets described in clauses (iii) and (iv) of paragraph (4)(B) which may be taken into account in determining the amount of the qualified thrift investments of any savings association shall not exceed the amount which is equal to 10 percent of the tangible assets of such association.

"(6) TRANSITIONAL RULE FOR CERTAIN SAVINGS ASSOCIATIONS.—

"(A) IN GENERAL.—If any Federal savings association in existence as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

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

"(ii) that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law,

meets the requirements of subparagraph (B), such savings association shall be treated as a qualified thrift lender during the 6-year period beginning on August 10, 1989.

"(B) SUBPARAGRAPH (B) REQUIREMENTS.—A savings association meets the requirements of this subparagraph if, in the determination of the Director—

"(i) the actual thrift investment percentage of such association does not, after the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, decrease below the actual thrift investment percentage of such association on July 15, 1989; and

"(ii) the amount by which—

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

"(II) the actual thrift investment percentage of such association on July 15, 1989,

is equal to or greater than the applicable percentage (as determined under the following table) of the amount by which 70 percent exceeds the actual thrift investment percentage of such association on such date of enactment:

"For the following period:	The applicable percentage is:
Prior to July 1, 1991	25 percent
July 1, 1991–December 31, 1992	50 percent
January 1, 1993–June 30, 1994	75 percent
Thereafter	100 percent

"(C) For purposes of this paragraph, the actual thrift investment percentage of an association on July 15, 1989, shall be determined by applying the definition of 'actual thrift investment percentage' that takes effect on July 1, 1991.

"(n) TYING RESTRICTIONS.—A savings and loan holding company and any of its affiliates shall be subject to section 5(q) and regulations prescribed under such section, in connection with transactions involving the products or services of such company or affiliate and those of an affiliated savings association as if such company or affiliate were a savings association.

"(o) MUTUAL HOLDING COMPANIES.—

"(1) IN GENERAL.—A savings association operating in mutual form may reorganize so as to become a holding company by—

"(A) chartering an interim savings association, the stock of which is to be wholly owned, except as otherwise provided in this section, by the mutual association; and

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

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

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

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

"(3) NOTICE TO THE DIRECTOR; DISAPPROVAL PERIOD.—

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

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

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

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

"(ii) the financial or management resources of the savings association involved warrant disapproval;

"(iii) the savings association fails to furnish the information required under subparagraph (A); or

"(iv) the savings association fails to comply with the requirement of paragraph (2).

"(D) RETENTION OF CAPITAL ASSETS.—In connection with the transaction described in paragraph (1), a savings association may, subject to the approval of the Director, retain capital assets at the holding company level to the extent that such capital exceeds the association's capital requirement established by the Director pursuant to sections 5 (s) and (t) of this Act.

"(4) OWNERSHIP.—

"(A) IN GENERAL.—Persons having ownership rights in the mutual association pursuant to section 5(b)(1)(B) of this Act or State law shall have the same ownership rights with respect to the mutual holding company.

"(B) HOLDERS OF CERTAIN ACCOUNTS.—Holders of savings, demand or other accounts of—

"(i) a savings association chartered as part of a transaction described in paragraph (1); or

"(ii) a mutual savings association acquired pursuant to paragraph (5)(B),

shall have the same ownership rights with respect to the mutual holding company as persons described in subparagraph (A) of this paragraph.

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

"(A) Investing in the stock of a savings association.

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

"(C) Subject to paragraph (6), merging with or acquiring another holding company, one of whose subsidiaries is a savings association.

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

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

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

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

"(B) GRACE PERIOD FOR DIVESTING PROHIBITED ASSETS OR DISCONTINUING PROHIBITED ACTIVITIES.—Not later than 2 years following a merger or acquisition described in paragraph (5)(C), the acquired holding company or the holding company resulting from such merger or acquisition shall—

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

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

"(7) REGULATION.—A mutual holding company shall be chartered by the Director and shall be subject to such regulations as the Director may prescribe. Unless the context otherwise requires, a mutual holding company shall be subject to the other requirements of this section regarding regulation of holding companies.

"(8) CAPITAL IMPROVEMENT.—

"(A) PLEDGE OF STOCK OF SAVINGS ASSOCIATION SUBSIDIARY.—This section shall not prohibit a mutual holding company from pledging all or a portion of the stock of a savings association chartered as part of a transaction described in paragraph (1) to raise capital for such savings association.

"(B) ISSUANCE OF NONVOTING SHARES.—This section shall not prohibit a savings association chartered as part of a transaction described in paragraph (1) from issuing any nonvoting shares or less than 50 percent of the voting shares of such association to any person other than the mutual holding company.

"(9) INSOLVENCY AND LIQUIDATION.—

"(A) IN GENERAL.—Notwithstanding any provision of law, upon—

"(i) the default of any savings association—

"(I) the stock of which is owned by any mutual holding company; and

"(II) which was chartered in a transaction described in paragraph (1);

"(ii) the default of a mutual holding company; or

"(iii) a foreclosure on a pledge by a mutual holding company described in paragraph (8)(A),

a trustee shall be appointed receiver of such mutual holding company and such trustee shall have the authority to liquidate the assets of, and satisfy the liabilities of, such mutual holding company pursuant to title 11, United States Code.

"(B) DISTRIBUTION OF NET PROCEEDS.—Except as provided in subparagraph (C), the net proceeds of any liquidation of any mutual holding company pursuant to subparagraph (A) shall be transferred to persons who hold ownership interests in such mutual holding company.

"(C) RECOVERY BY CORPORATION.—If the Corporation incurs a loss as a result of the default of any savings association subsidiary of a mutual holding company which is liquidated pursuant to subparagraph (A), the Corporation shall succeed to the ownership interests of the depositors of such savings association in the mutual holding company, to the extent of the Corporation's loss.

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

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

"(B) MUTUAL ASSOCIATION.—The term 'mutual association' means a savings association which is operating in mutual form.

"(C) DEFAULT.—The term 'default' means an adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed.

"(p) HOLDING COMPANY ACTIVITIES CONSTITUTING SERIOUS RISK TO SUBSIDIARY SAVINGS ASSOCIATION.—

"(1) DETERMINATION AND IMPOSITION OF RESTRICTIONS.—If the Director determines that there is reasonable cause to believe that the continuation by a savings and loan holding company of any activity constitutes a serious risk to the financial safety, soundness, or stability of a savings and loan holding company's subsidiary savings association, the Director may impose such restrictions as the Director determines to be necessary to address such risk. Such restrictions shall be issued in the form of a directive to the holding company and any of its subsidiaries, limiting—

"(A) the payment of dividends by the savings association;

"(B) transactions between the savings association, the holding company, and the subsidiaries or affiliates of either; and

"(C) any activities of the savings association that might create a serious risk that the liabilities of the holding company and its other affiliates may be imposed on the savings association.

Such directive shall be effective as a cease and desist order that has become final.

"(2) REVIEW OF DIRECTIVE.—

"(A) ADMINISTRATIVE REVIEW.—After a directive referred to in paragraph (1) is issued, the savings and loan holding company, or any subsidiary of such holding company subject to the directive, may object and present in writing its reasons why the directive should be modified or rescinded. Unless within 10 days after receipt of such response the Director affirms, modifies, or rescinds the directive, such directive shall automatically lapse.

"(B) JUDICIAL REVIEW.—If the Director affirms or modifies a directive pursuant to subparagraph (A), any affected party may immediately thereafter petition the United States district court for the district in which the savings and loan holding company has its main office or in the United States District Court for the District of Columbia to stay, modify, terminate or set aside the directive. Upon a showing of extraordinary cause, the savings and loan holding company, or any subsidiary of such holding company subject to a directive, may petition a United States district court for relief without first pursuing or exhausting the administrative remedies set forth in this paragraph.

District of Columbia.

"(q) QUALIFIED STOCK ISSUANCE BY UNDERCAPITALIZED SAVINGS ASSOCIATIONS OR HOLDING COMPANIES.—

"(1) IN GENERAL.—For purposes of this section, any issue of shares of stock shall be treated as a qualified stock issuance if the following conditions are met:

"(A) The shares of stock are issued by—

"(i) an undercapitalized savings association; or

"(ii) a savings and loan holding company which is not a bank holding company but which controls an undercapitalized savings association if, at the time of issuance, the savings and loan holding company is legally obligated to contribute the net proceeds from the issuance of such stock to the capital of an undercapitalized savings association subsidiary of such holding company.

"(B) All shares of stock issued consist of previously unissued stock or treasury shares.

"(C) All shares of stock issued are purchased by a savings and loan holding company that is registered, as of the date of purchase, with the Director in accordance with the provisions of subsection (b)(1) of this section.

"(D) Subject to paragraph (2), the Director approved the purchase of the shares of stock by the acquiring savings and loan holding company.

"(E) The entire consideration for the stock issued is paid in cash by the acquiring savings and loan holding company.

"(F) At the time of the stock issuance, each savings association subsidiary of the acquiring savings and loan holding company (other than an association acquired in a transaction pursuant to subsection (c) or (k) of section 13 of the Federal Deposit Insurance Act or section 408(m) of the National Housing Act) has capital (after deducting any subordinated debt, intangible assets, and deferred, unamortized gains or losses) of not less than 6½ percent of the total assets of such savings association.

"(G) Immediately after the stock issuance, the acquiring savings and loan holding company holds not more than 15 percent of the outstanding voting stock of the issuing undercapitalized savings association or savings and loan holding company.

"(H) Not more than one of the directors of the issuing association or company is an officer, director, employee, or other representative of the acquiring company or any of its affiliates.

"(I) Transactions between the savings association or savings and loan holding company that issues the shares pursuant to this section and the acquiring company and any of its affiliates shall be subject to the provisions of section 11.

"(2) APPROVAL OF ACQUISITIONS.—

"(A) ADDITIONAL CAPITAL COMMITMENTS NOT REQUIRED.—The Director shall not disapprove any application for the purchase of stock in connection with a qualified stock issuance on the grounds that the acquiring savings and loan holding company has failed to undertake to make subsequent additional capital contributions to maintain the capital of the undercapitalized savings association at or above the minimum level required by the Director or any other Federal agency having jurisdiction.

"(B) OTHER CONDITIONS.—Notwithstanding subsection (a)(4), the Director may impose such conditions on any approval of an application for the purchase of stock in connection with a qualified stock issuance as the Director determines to be appropriate, including—

"(i) a requirement that any savings association subsidiary of the acquiring savings and loan holding company limit dividends paid to such holding company for such period of time as the Director may require; and

"(ii) such other conditions as the Director deems necessary or appropriate to prevent evasions of this section.

"(C) APPLICATION DEEMED APPROVED IF NOT DISAPPROVED WITHIN 90 DAYS.—An application for approval of a purchase of stock in connection with a qualified stock issuance shall be deemed to have been approved by the Director if such application has not been disapproved by the Director before the end of the 90-day period beginning on the date such application has been deemed sufficient under regulations issued by the Director.

"(3) NO LIMITATION ON CLASS OF STOCK ISSUED.—The shares of stock issued in connection with a qualified stock issuance may be shares of any class.

"(4) UNDERCAPITALIZED SAVINGS ASSOCIATION DEFINED.—For purposes of this subsection, the term 'undercapitalized savings association' means any savings association—

"(A) the assets of which exceed the liabilities of such association; and

"(B) which does not comply with one or more of the capital standards in effect under section 5(t).

"(r) PENALTY FOR FAILURE TO PROVIDE TIMELY AND ACCURATE REPORTS.—

"(1) FIRST TIER.—Any savings and loan holding company, and any subsidiary of such holding company, which—

"(A) maintains procedures reasonably adapted to avoid any inadvertent and unintentional error and, as a result of such an error—

"(i) fails to submit or publish any report or information required under this section or regulations prescribed by the Director, within the period of time specified by the Director; or

"(ii) submits or publishes any false or misleading report or information; or

"(B) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. Such holding company or subsidiary shall have the burden of proving by a preponderence of the evidence that an error was inadvertent and unintentional and that a report was inadvertently transmitted or published late.

"(2) SECOND TIER.—Any savings and loan holding company, and any subsidiary of such holding company, which—

"(A) fails to submit or publish any report or information required under this section or under regulations prescribed by the Director, within the period of time specified by the Director; or

"(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

"(3) THIRD TIER.—If any savings and loan holding company or any subsidiary of such a holding company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Director may assess a penalty of not more than $1,000,000 or 1 percent of total assets of such company or subsidiary, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

"(4) ASSESSMENT.—Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

"(5) HEARING.—Any savings and loan holding company or any subsidiary of such a holding company against which any penalty is assessed under this subsection shall be afforded a hearing if such savings and loan holding company or such subsidiary, as the case may be, submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

12 USC 1468.

"SEC. 11. TRANSACTIONS WITH AFFILIATES; EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.

"(a) AFFILIATE TRANSACTIONS.—

"(1) IN GENERAL.—Sections 23A and 23B of the Federal Reserve Act shall apply to every savings association in the same manner and to the same extent as if the savings association were a member bank (as defined in such Act), except that—

"(A) no loan or other extension of credit may be made to any affiliate unless that affiliate is engaged only in activities described in section 10(c)(2)(F)(i); and

"(B) no savings association may enter into any transaction described in section 23A(b)(7)(B) of the Federal Reserve Act with any affiliate other than with respect to shares of a subsidiary.

"(2) SISTER BANK EXEMPTION MADE AVAILABLE TO SAVINGS ASSOCIATIONS.—

"(A) SAVINGS ASSOCIATIONS CONTROLLED BY BANK HOLDING COMPANIES.—Every savings association more than 80 percent of the voting stock of which is owned by a company described in section 10(c)(8) shall be treated as a bank for purposes of section 23A(d)(1) and section 23B of the Federal Reserve Act, if every savings association and bank controlled by such company complies with all applicable capital requirements on a fully phased-in basis and without reliance on goodwill.

"(B) SAVINGS ASSOCIATIONS GENERALLY.—Effective on and after January 1, 1995, every savings association shall be treated as a bank for purposes of section 23A(d)(1) and section 23B of the Federal Reserve Act.

"(3) AFFILIATES DESCRIBED.—Any company that would be an affiliate (as defined in sections 23A and 23B of the Federal Reserve Act) of any savings association if such savings association were a member bank (as such term is defined in such Act) shall be deemed to be an affiliate of such savings association for purposes of paragraph (1).

"(4) ADDITIONAL RESTRICTIONS AUTHORIZED.—The Director may impose such additional restrictions on any transaction between any savings association and any affiliate of such savings association as the Director determines to be necessary to protect the safety and soundness of the savings association.

"(b) EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—

"(1) IN GENERAL.—Section 22(h) of the Federal Reserve Act shall apply to every savings association in the same manner and to the same extent as if the savings association were a member bank (as defined in such Act).

"(2) ADDITIONAL RESTRICTIONS AUTHORIZED.—The Director may impose such additional restrictions on loans or extensions of credit to any director or executive officer of any savings association, or any person who directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a savings association, as the Director determines to be necessary to protect the safety and soundness of the savings association.

"(c) ADMINISTRATIVE ENFORCEMENT.—The Director may take enforcement action with respect to violations of this section pursuant to section 8 or 18(j) of the Federal Deposit Insurance Act, as appropriate.

"SEC. 12. ADVERTISING. 12 USC 1468a.

"No savings association shall carry on any sale, plan, or practices, or any advertising, in violation of regulations promulgated by the Director.

"SEC. 13. POWERS OF EXAMINERS. 12 USC 1468b.

"For the purposes of this Act, examiners appointed by the Director shall—

"(1) be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the Federal Reserve Act and title LXII of the Revised Statutes; and

"(2) have, in the exercise of functions under this Act, the same powers and privileges as are vested in such examiners by law.

"SEC. 14. SEPARABILITY PROVISION. 12 USC 1468c.

"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.".

SEC. 302. SAVINGS PROVISIONS. 12 USC 1467a note.

Notwithstanding the amendment made by this title to section 10 of the Home Owners' Loan Act and the repeal of section 416 of the National Housing Act—

(1) any plan approved by the Federal Home Loan Bank Board under such section 10 for any Federal savings association shall continue in effect as long as such association adheres to the plan and continues to submit to the Director of the Office of Thrift Supervision regular and complete reports on the association's progress in meeting the association's goals under the plan; and

(2) any plan approved by the Federal Savings and Loan Insurance Corporation under such section 416 for any State savings association shall continue in effect as long as such association adheres to the plan and continues to submit to the Federal Deposit Insurance Corporation regular and complete reports on the association's progress in meeting the savings association's goals under the plan.

SEC. 303. QUALIFIED THRIFT LENDER TEST. 12 USC 1467a.

(a) IN GENERAL.—Section 10(m) of the Home Owners' Loan Act is amended to read as follows:

"(m) QUALIFIED THRIFT LENDER TEST.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (7), any savings association is a qualified thrift lender if—

"(A) the savings association's qualified thrift investments equal or exceed 70 percent of the savings association's portfolio assets; and

"(B) the savings association's qualified thrift investments continue to equal or exceed 70 percent of the savings association's portfolio assets, as measured by a daily or weekly average of such qualified thrift investments and such portfolio assets, for the 2-year period beginning on July 1, 1991, and for each 2-year period thereafter.

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

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

"(B) the Director determines that—

"(i) the grant of any such exception will significantly facilitate an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act;

"(ii) the acquired association will comply with the transition requirements of paragraph (7)(B), as if the date of the exemption were the starting date for the transition period described in that paragraph; and

"(iii) the Director determines that the exemption will not have an undue adverse effect on competing savings associations in the relevant market and will further the purposes of this subsection.

"(3) FAILURE TO BECOME AND REMAIN A QUALIFIED THRIFT LENDER.—

"(A) IN GENERAL.—A savings association that fails to become or remain a qualified thrift lender shall either become one or more banks (other than a savings bank) or be subject to subparagraph (B), except as provided in subparagraph (D).

"(B) RESTRICTIONS APPLICABLE TO SAVINGS ASSOCIATIONS THAT ARE NOT QUALIFIED THRIFT LENDERS.—

"(i) RESTRICTIONS EFFECTIVE IMMEDIATELY.—The following restrictions shall apply to a savings association beginning on the date on which the savings association should have become or ceases to be a qualified thrift lender:

"(I) ACTIVITIES.—The savings association shall not make any new investment (including an investment in a subsidiary) or engage, directly or indirectly, in any other new activity unless that investment or activity would be permissible for the savings association if it were a national bank, and is also permissible for the savings association as a savings association.

"(II) BRANCHING.—The savings association shall not establish any new branch office at any location at which a national bank located in the savings association's home State may not establish a

branch office. For purposes of this subclause, a savings association's home State is the State in which the savings association's total deposits were largest on the date on which the savings association should have become or ceased to be a qualified thrift lender.

"(III) ADVANCES.—The savings association shall not be eligible to obtain new advances from any Federal home loan bank.

"(IV) DIVIDENDS.—The savings association shall be subject to all statutes and regulations governing the payment of dividends by a national bank in the same manner and to the same extent as if the savings association were a national bank.

"(ii) ADDITIONAL RESTRICTIONS EFFECTIVE AFTER THREE YEARS.—The following additional restrictions shall apply to a savings association beginning 3 years after the date on which the savings association should have become or ceases to be a qualified thrift lender:

"(I) ACTIVITIES.—The savings association shall not retain any investment (including an investment in any subsidiary) or engage, directly or indirectly, in any activity unless that investment or activity would be permissible for the savings association if it were a national bank, and is also permissible for the savings association as a savings association.

"(II) ADVANCES.—The savings association shall repay any outstanding advances from any Federal home loan bank as promptly as can be prudently done consistent with the safe and sound operation of the savings association.

"(C) HOLDING COMPANY REGULATION.—Any company that controls a savings association that is subject to any provision of subparagraph (B) shall, within one year after the date on which the savings association should have become or ceases to be a qualified thrift lender, register as and be deemed to be a bank holding company subject to all of the provisions of the Bank Holding Company Act of 1956, section 8 of the Federal Deposit Insurance Act, and other statutes applicable to bank holding companies, in the same manner and to the same extent as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Holding Company Act of 1956.

"(D) REQUALIFICATION.—A savings association that should have become or ceases to be a qualified thrift lender shall not be subject to subparagraph (B) or (C) if the savings association becomes a qualified thrift lender by meeting the qualified thrift lender requirement in paragraph (1) for the preceding 2-year period and remains a qualified thrift lender. If the savings association (or any savings association that acquired all or substantially all of its assets from that savings association) at any time thereafter ceases to be a qualified thrift lender, it shall immediately be subject to all provisions of subparagraphs (B) and (C) as if all the periods described in subparagraphs (B)(ii) and (C) had expired.

"(E) DEPOSIT INSURANCE ASSESSMENTS.—Any bank chartered as a result of the requirements of this section shall be obligated until December 31, 1993, to pay to the Savings Association Insurance Fund the assessments assessed on savings associations under the Federal Deposit Insurance Act. Such association shall also be assessed, on the date of its change of status from a Savings Association Insurance Fund member, the exit fee and entrance fee provided in section 5(d) of the Federal Deposit Insurance Act. Such institution shall not be obligated to pay the assessments assessed on banks under the Federal Deposit Insurance Act until—

"(i) December 31, 1993, or

"(ii) the institution's change of status from a Savings Association Insurance Fund member to a Bank Insurance Fund member,

whichever is later.

"(F) EXEMPTION FOR SPECIALIZED SAVINGS ASSOCIATION SERVING TRANSIENT MILITARY PERSONNEL.—Subparagraph (A) shall not apply to a savings association subsidiary of a savings and loan holding company if—

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

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

"(G) EXEMPTION FOR CERTAIN FEDERAL SAVINGS ASSOCIATIONS.—This paragraph shall not apply to any Federal savings association in existence as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

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

"(ii) that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law.

"(H) NO CIRCUMVENTION OF EXIT MORATORIUM.—Subparagraph (A) of this paragraph shall not be construed as permitting any insured depository institution to engage in any conversion transaction prohibited under section 5(d) of the Federal Deposit Insurance Act.

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

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

"(i) the amount of a savings association's qualified thrift investments, by

"(ii) the amount of the savings association's portfolio assets.

"(B) PORTFOLIO ASSETS.—The term 'portfolio assets' means, with respect to any savings association, the total assets of the savings association, minus the sum of—

"(i) goodwill and other intangible assets;

"(ii) the value of property used by the savings association to conduct its business; and

"(iii) liquid assets of the type required to be maintained under section 6 of the Home Owners' Loan Act, in an amount not exceeding the amount equal to 10 percent of the savings association's total assets.

"(C) QUALIFIED THRIFT INVESTMENTS.—

"(i) IN GENERAL.—The term 'qualified thrift investments' means, with respect to any savings association, the assets of the savings association that are described in clauses (ii) and (iii).

"(ii) ASSETS INCLUDIBLE WITHOUT LIMIT.—The following assets are described in this clause for purposes of clause (i):

"(I) The aggregate amount of loans held by the savings association that were made to purchase, refinance, construct, improve, or repair domestic residential housing or manufactured housing.

"(II) Home-equity loans.

"(III) Securities backed by or representing an interest in mortgages on domestic residential housing or manufactured housing.

"(IV) EXISTING OBLIGATIONS OF DEPOSIT INSURANCE AGENCIES.—Direct or indirect obligations of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation issued in accordance with the terms of agreements entered into prior to July 1, 1989, for the 10-year period beginning on the date of issuance of such obligations.

"(V) NEW OBLIGATIONS OF DEPOSIT INSURANCE AGENCIES.—Obligations of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the FSLIC Resolution Fund, and the Resolution Trust Corporation issued in accordance with the terms of agreements entered into on or after July 1, 1989, for the 5-year period beginning on the date of issuance of such obligations.

"(iii) ASSETS INCLUDIBLE SUBJECT TO PERCENTAGE RESTRICTION.—The following assets are described in this clause for purposes of clause (i):

"(I) 50 percent of the dollar amount of the residential mortgage loans originated by such savings association and sold within 90 days of origination.

"(II) Investments in the capital stock or obligations of, and any other security issued by, any service corporation if such service corporation derives at least 80 percent of its annual gross revenues from activities directly related to purchasing, refinancing, constructing, improving, or repairing domestic residential real estate or manufactured housing.

"(III) 200 percent of the dollar amount of loans and investments made to acquire, develop, and construct 1- to 4-family residences the purchase price of which is or is guaranteed to be not greater than 60 percent of the median value of comparable newly constructed 1- to 4-family residences within the local community in which such real estate is located, except that not more than 25 percent of the amount included under this subclause may consist of commercial properties related to the development if those properties are directly related to providing services to residents of the development.

"(IV) 200 percent of the dollar amount of loans for the acquisition or improvement of residential real property, churches, schools, and nursing homes located within, and loans for any other purpose to any small businesses located within any area which has been identified by the Director, in connection with any review or examination of community reinvestment practices, as a geographic area or neighborhood in which the credit needs of the low- and moderate-income residents of such area or neighborhood are not being adequately met.

"(V) Loans for the purchase or construction of churches, schools, nursing homes, and hospitals, other than those qualifying under clause (IV), and loans for the improvement and upkeep of such properties.

"(VI) Loans for personal, family, household, or educational purposes, but the dollar amount treated as qualified thrift investments under this subclause may not exceed the amount which is equal to 5 percent of the savings association's portfolio assets.

"(iv) PERCENTAGE RESTRICTION APPLICABLE TO CERTAIN ASSETS.—The aggregate amount of the assets described in clause (iii) which may be taken into account in determining the amount of the qualified thrift investments of any savings association shall not exceed the amount which is equal to 15 percent of a savings association's portfolio assets.

"(v) The term 'qualified thrift investments' excludes—

"(I) except for home equity loans, that portion of any loan or investment that is used for any purpose other than those expressly qualifying under any subparagraph of clause (ii) or (iii); or

"(II) goodwill or any other intangible asset.

"(5) CONSISTENT ACCOUNTING REQUIRED.—

"(A) In determining the amount of a savings association's portfolio assets, the assets of any subsidiary of the savings association shall be consolidated with the assets of the savings association if—

"(i) Assets of the subsidiary are consolidated with the assets of the savings association in determining the savings association's qualified thrift investments; or

"(ii) Residential mortgage loans originated by the subsidiary are included pursuant to paragraph (4)(C)(iii)(I) in determining the savings association's qualified thrift investments.

"(B) In determining the amount of a savings association's portfolio assets and qualified thrift investments, consistent accounting principles shall be applied.

"(6) SPECIAL RULES FOR PUERTO RICO AND VIRGIN ISLANDS SAVINGS ASSOCIATIONS.—

"(A) PUERTO RICO SAVINGS ASSOCIATIONS.—With respect to any savings association headquartered and operating primarily in Puerto Rico—

"(i) the term 'qualified thrift investments' includes, in addition to the items specified in paragraph (4)—

"(I) the aggregate amount of loans for personal, family, educational, or household purposes made to persons residing or domiciled in the Commonwealth of Puerto Rico; and

"(II) the aggregate amount of loans for the acquisition or improvement of churches, schools, or nursing homes, and of loans to small businesses, located within the Commonwealth of Puerto Rico; and

"(ii) the aggregate amount of loans related to the purchase, acquisition, development and construction of 1- to 4-family residential real estate—

"(I) which is located within the Commonwealth of Puerto Rico; and

"(II) the value of which (at the time of acquisition or upon completion of the development and construction) is below the median value of newly constructed 1- to 4-family residences in the Commonwealth of Puerto Rico, which may be taken into account in determining the amount of the qualified thrift investments and of such savings association shall be doubled.

"(B) VIRGIN ISLANDS SAVINGS ASSOCIATIONS.—With respect to any savings association headquartered and operating primarily in the Virgin Islands—

"(i) the term 'qualified thrift investments' includes, in addition to the items specified in paragraph (4)—

"(I) the aggregate amount of loans for personal, family, educational, or household purposes made to persons residing or domiciled in the Virgin Islands; and

"(II) the aggregate amount of loans for the acquisition or improvement of churches, schools, or nursing homes, and of loans to small businesses, located within the Virgin Islands; and

"(ii) the aggregate amount of loans related to the purchase, acquisition, development and construction of 1- to 4-family residential real estate—

"(I) which is located within the Virgin Islands; and

"(II) the value of which (at the time of acquisition or upon completion of the development and construction) is below the median value of newly constructed 1- to 4-family residences in the Virgin Islands, which may be taken into account in determining the amount of the qualified thrift investments and of such savings association shall be doubled.

"(7) TRANSITIONAL RULE FOR CERTAIN SAVINGS ASSOCIATIONS.—

"(A) IN GENERAL.—If any Federal savings association in existence as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

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

"(ii) that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law,

meets the requirements of subparagraph (B), such savings association shall be treated as a qualified thrift lender during period ending on September 30, 1995.

"(B) SUBPARAGRAPH (B) REQUIREMENTS.—A savings association meets the requirements of this subparagraph if, in the determination of the Director—

"(i) the actual thrift investment percentage of such association does not, after the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, decrease below the actual thrift investment percentage of such association on July 15, 1989; and

"(ii) the amount by which—

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

"(II) the actual thrift investment percentage of such association on July 15, 1989,

is equal to or greater than the applicable percentage (as determined under the following table) of the amount by which 70 percent exceeds the actual thrift investment percentage of such association on such date of enactment:

"For the following period:	The applicable percentage is:
July 1, 1991–September 30, 1992	25 percent
October 1, 1992–March 31, 1994	50 percent
April 1, 1994–September 30, 1995	75 percent
Thereafter	100 percent

"(C) For purposes of this paragraph, the actual thrift investment percentage of an association on July 15, 1989, shall be determined by applying the definition of 'actual thrift investment percentage' that takes effect on July 1, 1991.".

12 USC 1467a note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on July 1, 1991.

(c) ASSOCIATIONS THAT HAVE PREVIOUSLY FAILED TO REMAIN QUALIFIED THRIFT LENDERS.—If, as of June 30, 1991, any savings association is subject to any provision of section 10(m)(3) of the Home Owners' Loan Act as in effect on that date, the amendment to this subsection made by section 303 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, shall not be construed as reducing the period specified in section 10(m)(3) of such Act. 12 USC 1467a note.

SEC. 304. TRANSITIONAL RULE FOR CERTAIN TRANSACTIONS WITH AFFILIATES. 12 USC 1468 note.

(a) CONSISTENCY OF CERTAIN REGULATIONS WITH SECTION 23A OF THE FEDERAL RESERVE ACT.—Not later than 6 months after the date of enactment of this Act, the Director of the Office of Thrift Supervision shall revise the Director's conflicts regulations so as not to prohibit a thrift institution from purchasing mortgages from a mortgage-banking affiliate to the same extent as a member bank may do so under section 250.250 of title 12, Code of Federal Regulations.

(b) TRANSITIONAL PERIOD.—Notwithstanding section 11(a) of the Home Owners' Loan Act (as added by section 301 of this Act), a thrift institution that, before May 1, 1989, had received approval from the Federal Savings and Loan Insurance Corporation pursuant to section 408(d)(6) of the National Housing Act as then in effect to purchase mortgages from a mortgage-banking affiliate may, during the 6-month period following the date on which final regulations are prescribed pursuant to subsection (a), continue to engage in transactions for which it had received such approval. Any savings association that engages in such transactions pursuant to this subsection shall comply with the standards that were applicable under section 408(d)(6) as in effect on May 1, 1989.

(c) AUTHORITY TO EXTEND REGULATORY APPROVALS THAT WOULD OTHERWISE LAPSE DURING THE TRANSITIONAL PERIOD.—The Director of the Office of Thrift Supervision may extend until the expiration of the 6-month period described in subsection (b) any approval granted by the Federal Savings and Loan Insurance Corporation that expires or would expire before the expiration of that 6-month period. In determining whether to grant such exemptions, the Director shall apply the standards that were applicable under section 408(d)(6) of the National Housing Act as in effect on May 1, 1989.

SEC. 305. TRANSITIONAL RULES REGARDING CERTAIN LOANS AND EFFECTIVE DATES.

(a) DIVESTITURE OF CERTAIN LOANS AND INVESTMENTS NOT REQUIRED.—The limitations on loans and investments contained in section 5(c) of the Home Owners' Loan Act, as amended by section 301, do not require the divestiture of any loan or investment that was lawful when made under the provisions of such section as those provisions were in effect at the time such loan or investment was made. 12 USC 1464 note.

(b) LOANS SECURED BY NONRESIDENTIAL REAL PROPERTY.— 12 USC 1464 note.

(1) IN GENERAL.—The Director of the Office of Thrift Supervision may, by order, permit a Federal savings association to exceed the limitation set forth in section 5(c)(2)(B)(i) of the Home Owners' Loan Act during the period beginning on the date of enactment of this Act and ending on June 1, 1991, if the Director determines that—

(A) there is a reasonable prospect that the savings association can be in compliance, not later than June 1, 1991, with the capital standards prescribed under section 5(t) of the Home Owners' Loan Act; and

(B) the increased authority—

(i) is consistent with prudent operating practices, and

(ii) is in accordance with a plan submitted by the savings association for—

(I) an orderly transition to compliance with section 5(c)(2)(B)(i), or

(II) an orderly conversion to a bank charter.

(2) OTHER EXEMPTIVE AUTHORITY NOT AFFECTED.—The authority granted by paragraph (1) is in addition to any authority of the Director under section 5(c)(2)(B)(ii) of the Home Owners' Loan Act.

12 USC 1461 note.

(c) EFFECTIVE DATE.—The amendments made by section 301 relating to civil penalties shall apply with respect to violations committed and activities engaged in after the date of the enactment of this Act, except that the increased maximum civil penalties of $5,000 and $25,000 per violation or per day may apply to such violations or activities committed or engaged in before such date with respect to an institution if such violations or activities—

(1) are not already subject to a notice issued by the appropriate Federal banking agency or the Board (initiating an administrative proceeding); and

(2) occurred after the completion of the last report of examination of the institution by the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) occurring before the date of the enactment of this Act.

SEC. 306. AMENDMENT OF ADDITIONAL POWERS OF DIRECTOR.

(a) Section 502(c) of the Housing Act of 1948 (12 U.S.C. 1701c(c)) is amended by striking out "Federal Home Loan Bank Board (which term as used in this section shall also include and refer to the Federal Savings and Loan Insurance Corporation, the Home Owners Loan Corporation, and the Chairman of the Federal Home Loan Bank Board)," and inserting in lieu thereof the following: "Director of the Office of Thrift Supervision,".

(b) Section 502(c)(1) of the Housing Act of 1948 (12 U.S.C. 1701c(b)(1)) is amended by striking out "of any State" and inserting in lieu thereof "of any Federal, State,".

SEC. 307. AMENDMENT TO TITLE 31, UNITED STATES CODE.

(a) OFFICE ESTABLISHED AS AN OFFICE WITHIN THE DEPARTMENT.—

(1) IN GENERAL.—Subchapter I of chapter 3 of title 31, United States Code, is amended by redesignating section 309 as section 310 and by inserting after section 308 the following new section:

"§ 309. Office of Thrift Supervision

"The Office of Thrift Supervision established under section 2A(a) of the Home Owners' Loan Act shall be an office in the Department of the Treasury.".

(2) CLERICAL AMENDMENT.—The table of chapters for subchapter I of chapter 3 of title 31, United States Code, is amended by redesignating the item relating to section 309 as section 310 and by inserting after the item relating to section 308 the following new item:

"309. Office of Thrift Supervision.".

(b) CONFORMING AMENDMENT.—Section 321(c) of title 31, United States Code, is amended—

(1) by adding at the end thereof the following new paragraph: "(3) of the Director of the Office of Thrift Supervision;";

(2) by striking out "and" at the end of paragraph (1); and

(3) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and".

(c) GAO AUDIT AUTHORITY.—Section 714(a) of title 31, United States Code, is amended—

(1) by inserting ", and the Office of Thrift Supervision" before the period; and

(2) by striking out "and" after "Corporation,".

(d) CERTAIN REORGANIZATION PROHIBITED.—Section 321 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) CERTAIN REORGANIZATION PROHIBITED.—The Secretary of the Treasury may not merge or consolidate the Office of Thrift Supervision, or any of the functions or responsibilities of the Office or the Director of such office, with the Office of the Comptroller of the Currency or the Comptroller of the Currency.".

(e) TECHNICAL AND CONFORMING AMENDMENT TO GOVERNMENT CONTROL ACT.—Section 9101(3) of title 31, United States Code, is amended by striking out subparagraph (E).

SEC. 308. PRESERVING MINORITY OWNERSHIP OF MINORITY FINANCIAL INSTITUTIONS. 12 USC 1463 note.

(a) CONSULTATION ON METHODS.—The Secretary of the Treasury shall consult with the Director of the Office of Thrift Supervision and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation on methods for best achieving the following goals:

(1) Preserving the present number of minority depository institutions.

(2) Preserving their minority character in cases involving mergers or acquisition of a minority depository institution by using general preference guidelines in the following order:

(A) Same type of minority depository institution in the same city.

(B) Same type of minority depository institution in the same State.

(C) Same type of minority depository institution nationwide.

(D) Any type of minority depository institution in the same city.

(E) Any type of minority depository institution in the same State.

(F) Any type of minority depository institution nationwide.

(G) Any other bidders.

(3) Providing technical assistance to prevent insolvency of institutions not now insolvent.

(4) Promoting and encouraging creation of new minority depository institutions.

(5) Providing for training, technical assistance, and educational programs.

(b) DEFINITIONS.—For purposes of this section—

(1) MINORITY FINANCIAL INSTITUTION.—The term "minority depository institution" means any depository institution that—

(A) if a privately owned institution, 51 percent is owned by one or more socially and economically disadvantaged individuals;

(B) if publicly owned, 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; and

(C) in the case of a mutual institution where the majority of the Board of Directors, account holders, and the community which it services is predominantly minority.

(2) MINORITY.—The term "minority" means any black American, Native American, Hispanic American, or Asian American.

12 USC 1437 note.

TITLE IV—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY

Government organization and employees.

SEC. 401. FSLIC AND FEDERAL HOME LOAN BANK BOARD ABOLISHED.

(a) IN GENERAL.—

(1) FSLIC.—Effective on the date of the enactment of this Act, the Federal Savings and Loan Insurance Corporation established under section 402 of the National Housing Act is abolished.

(2) FHLBB.—Effective at the end of the 60-day period beginning on the date of the enactment of this Act, the Federal Home Loan Bank Board and the position of Chairman of the Federal Home Loan Bank Board are abolished.

(b) DISPOSITION OF AFFAIRS.—

(1) IN GENERAL.—During the 60-day period beginning on the date of the enactment of this Act, the Chairman of the Federal Home Loan Bank Board—

(A) shall, solely for the purpose of winding up the affairs of the Federal Savings and Loan Insurance Corporation and the Federal Home Loan Bank Board—

(i) manage the employees of the Board and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee pursuant to section 403; and

(ii) manage any property of the Board and the Corporation until such property is transferred pursuant to section 405; and

(B) may take any other action necessary for the purpose of winding up the affairs of the Corporation and the Board.

(2) AVAILABILITY OF FUNDS IN FSLIC RESOLUTION FUND ON A REIMBURSABLE BASIS.—

(A) AVAILABILITY OF FUNDS.—Notwithstanding any provision of section 11A of the Federal Deposit Insurance Act (as added by section 215 of this Act), funds in the FSLIC Resolution Fund shall be available to the Chairman of the Federal Home Loan Bank Board to pay any expense incurred in carrying out the requirements of paragraph (1).

(B) PAYMENT BY FDIC.—Upon the request of the Chairman of the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation shall pay to the Chairman from the

FSLIC Resolution Fund the amounts requested for expenses described in subparagraph (A).

(C) EXCLUSIVE SOURCE OF FUNDS.—No funds or other property of the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation (other than the FSLIC Resolution Fund) may be used by the Chairman of the Federal Home Loan Bank Board to pay any expense incurred in carrying out any provision of this title.

(D) REIMBURSEMENT BY SUCCESSOR AGENCIES.—Disbursements from the FSLIC Resolution Fund pursuant to subparagraph (A) which are attributable to employees described in paragraph (1)(A)(i) and property described in paragraph (1)(A)(ii) shall be reimbursed by the agency to which any such employee or property is transferred.

(c) AUTHORITY AND STATUS OF CHAIRMAN OF THE FEDERAL HOME LOAN BANK BOARD.—

(1) IN GENERAL.—Notwithstanding the repeal of section 17 of the Federal Home Loan Bank Act by section 703 of this Act, the repeal of section 402(c) of the National Housing Act by section 407 of this title, the abolishment of the Federal Savings and Loan Insurance Corporation under section 401 of this title, the Chairman of the Federal Home Loan Bank Board shall have any authority vested in the Chairman or the Board before such date of enactment which is necessary for the Chairman to carry out the requirements of this section, paragraphs (1) and (2) of section 403(b), and section 405(a) during the 60-day period beginning on such date.

(2) OTHER PROVISIONS.—For purposes of paragraph (1), the Chairman of the Federal Home Loan Bank Board shall continue to be—

(A) treated as an officer of the United States during the 60-day period referred to in such subparagraph; and

(B) entitled to compensation at the annual rate of basic pay payable for level III of the Executive Schedule.

(3) NO ADDITIONAL COMPENSATION IF APPOINTED DIRECTOR.—During the 60-day period beginning on the date of the enactment of this Act, the Chairman of the Federal Home Loan Bank Board shall not be entitled to any additional compensation by reason of his appointment as Director of the Office of Thrift Supervision.

(d) STATUS OF EMPLOYEES BEFORE TRANSFER.—

(1) EMPLOYEES OF FSLIC.—Any employee of the Federal Savings and Loan Insurance Corporation shall be treated as an employee of the Federal Home Loan Bank Board for purposes of subsection (b)(1)(A)(i).

(2) RULE OF CONSTRUCTION.—The repeal of section 17 of the Federal Home Loan Bank Act by section 703 of this Act, the repeal of section 402(c) of the National Housing Act by section 407 of this title, and the abolishment of the Federal Savings and Loan Insurance Corporation under section 401 of this title, shall not be construed as affecting the status of employees of such Corporation or of the Federal Home Loan Bank Board as employees of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee pursuant to section 403.

(e) CONTINUATION OF SERVICES.—

(1) IN GENERAL.—The Director of the Office of Thrift Supervision, the Chairperson of the Oversight Board of the Resolution Trust Corporation, the Chairperson of the Federal Deposit Insurance Corporation, and the Chairperson of the Federal Housing Finance Board may use the services of employees and other personnel and the property of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation, on a reimbursable basis, to perform functions which have been transferred to such agencies for such time as is reasonable to facilitate the orderly transfer of functions transferred pursuant to any other provision of this Act or any amendment made by this Act to any other provision of law.

(2) REIMBURSEMENT.—The reimbursement required under paragraph (1) with respect to employees, personnel, and property described in such paragraph shall be made to the FSLIC Resolution Fund and shall be taken into account in determining the amount of any reimbursement required under subsection (b)(2)(D).

(3) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States (including any Federal home loan bank), and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation before the enactment of this Act in connection with functions that are transferred to the Office of Thrift Supervision, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or the Federal Housing Finance Board shall—

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(f) SAVINGS PROVISIONS RELATING TO FSLIC.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Federal Savings and Loan Insurance Corporation, or any other person, which—

(A) arises under or pursuant to any section of title IV of the National Housing Act; and

(B) existed on the day before the date of the enactment of this Act.

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Federal Savings and Loan Insurance Corporation, or any Federal home loan bank with respect to any function of the Corporation which was delegated to employees of such bank, shall abate by reason of the enactment of this Act, except that the appropriate successor to the interests of such Corporation shall be substituted for the Corporation or the Federal home loan bank as a party to any such action or proceeding.

(g) SAVINGS PROVISIONS RELATING TO FHLBB.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Federal Home Loan Bank Board, or any other person, which—

(A) arises under or pursuant to the Federal Home Loan Bank Act, the Home Owners' Loan Act of 1933, or any other

provision of law applicable with respect to such Board (other than title IV of the National Housing Act); and

(B) existed on the day before the date of the enactment of this Act.

(2) CONTINUATION OF SUITS.—

(A) IN GENERAL.—No action or other proceeding commenced by or against the Federal Home Loan Bank Board, or any Federal home loan bank with respect to any function of the Board which was delegated to employees of such bank, shall abate by reason of the enactment of this Act, except that the appropriate successor to the interests of such Board shall be substituted for the Board or the Federal home loan bank as a party to any such action or proceeding.

(h) CONTINUATION OF ORDERS, RESOLUTIONS, DETERMINATIONS, AND REGULATIONS.—Subject to section 402, all orders, resolutions, determinations, and regulations, which—

(1) have been issued, made, prescribed, or allowed to become effective by the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank Board (including orders, resolutions, determinations, and regulations which relate to the conduct of conservatorships and receiverships), or by a court of competent jurisdiction, in the performance of functions which are transferred by this Act; and

(2) are in effect on the date this Act takes effect,

shall continue in effect according to the terms of such orders, resolutions, determinations, and regulations and shall be enforceable by or against the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the Federal Housing Finance Board, or the Resolution Trust Corporation, as the case may be, until modified, terminated, set aside, or superseded in accordance with applicable law by the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the Federal Housing Finance Board, or the Resolution Trust Corporation, as the case may be, by any court of competent jurisdiction, or by operation of law.

(i) IDENTIFICATION OF REGULATIONS WHICH REMAIN IN EFFECT PURSUANT TO THIS SECTION.—Before the end of the 60-day period beginning on the date of the enactment of this Act, the Director of the Office of Thrift Supervision and the Chairperson of the Federal Deposit Insurance Corporation shall—

(1) identify the regulations and orders which relate to the conduct of conservatorships and receiverships in accordance with the allocation of authority between them under this Act and the amendments made by this Act; and

(2) promptly publish notice of such identification in the Federal Register.

Federal Register, publication.

SEC. 402. CONTINUATION AND COORDINATION OF CERTAIN REGULATIONS.

(a) REGULATIONS RELATING TO INSURANCE FUNCTIONS.—All regulations and orders of the Federal Savings and Loan Insurance Corporation, or the Federal Home Loan Bank Board (in such Board's capacity as the board of trustees of such Corporation), which are in effect on the date of the enactment of this Act and relate to—

(1) the provision, rates, or cancellation of insurance of accounts; or

(2) the administration of the insurance fund of the Federal Savings and Loan Insurance Corporation,

shall remain in effect according to the terms of such regulations and orders and shall be enforceable by the Federal Deposit Insurance Corporation unless determined otherwise by such Corporation after consultation with the Director of the Office of Thrift Supervision and, with respect to regulations and orders relating to the scope of deposit insurance coverage, pursuant to subsection (c).

(b) IDENTIFICATION OF REGULATIONS WHICH REMAIN IN EFFECT PURSUANT TO THIS SECTION.—Before the end of the 60-day period beginning on the date of the enactment of this Act, the Director of the Office of Thrift Supervision and the Chairperson of the Federal Deposit Insurance Corporation shall—

(1) identify the regulations and orders referred to in subsection (a) of this section in accordance with the allocation of authority between them under this Act and the amendments made by this Act; and

Federal Register, publication.

(2) promptly publish notice of such identification in the Federal Register.

(c) PROCEDURE FOR DIFFERENCES IN DEPOSIT INSURANCE COVERAGE BETWEEN FSLIC AND FDIC.—

(1) TRANSITION RULE.—Until the effective date of regulations prescribed under paragraph (3)(B), any determination of the amount of any insured deposit in any depository institution which becomes an insured depository institution as a result of the amendment made to section 4(a) of the Federal Deposit Insurance Act by section 205(1) of this Act shall be made in accordance with the regulations and interpretations of the Federal Savings and Loan Insurance Corporation for determining the amount of an insured account which were in effect on the day before the date of the enactment of this Act.

(2) LIMITATION ON EXTENT OF COVERAGE.—During the period beginning on the date of the enactment of this Act and ending on the effective date of regulations prescribed under paragraph (3)(B), the amount of any insured account which is required to be treated as an insured deposit pursuant to paragraph (1) shall not exceed the amount of insurance to which such insured account would otherwise have been entitled pursuant to the regulations and interpretations of the Federal Savings and Loan Insurance Corporation which were in effect on the day before the date of the enactment of this Act.

(3) UNIFORM TREATMENT OF INSURED DEPOSITS.—The Federal Deposit Insurance Corporation shall—

(A) review its regulations, principles, and interpretations for deposit insurance coverage and those established by the Federal Savings and Loan Insurance Corporation; and

Regulations.

(B) on or before the end of the 270-day period beginning on the date of the enactment of this Act, prescribe a uniform set of regulations which shall be applicable to all insured deposits in insured depository institutions (except to the extent any provision of this Act, any amendment made by this Act to the Federal Deposit Insurance Act, or any other provision of law requires or explicitly permits the Federal Deposit Insurance Corporation to treat insured deposits of Savings Association Insurance Fund members differently than insured deposits of Bank Insurance Fund members).

(4) FACTORS REQUIRED TO BE CONSIDERED.—In prescribing regulations providing for the uniform treatment of deposit insurance

coverage, the Federal Deposit Insurance Corporation shall consider all relevant factors necessary to promote safety and soundness, depositor confidence, and the stability of deposits in insured depository institutions.

(5) NOTICE; EFFECTIVE DATE.—Regulations prescribed under this subsection shall—

(A) provide for effective notice to depositors in insured depository institutions of any change in deposit insurance coverage which would result under such regulations; and

(B) take effect on or before the end of the 90-day period beginning on the date such regulations become final.

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

(A) INSURED ACCOUNT.—The term "insured account" has the meaning given to such term in section 401(c) of the National Housing Act (as in effect before the date of the enactment of this Act).

(B) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the meaning given to such term in section 3(c)(2) of the Federal Deposit Insurance Act.

(d) INTERIM TREATMENT OF CUSTODIAL ACCOUNTS.—

(1) IN GENERAL.—Subject to paragraph (2) and notwithstanding subsection (a) or any limitation contained in the Federal Deposit Insurance Act relating to the amount of deposit insurance available to any 1 borrower, amounts held in custodial accounts in insured depository institutions (as defined in section 3(c)(2) of such Act) for the payment of principal, interest, tax, and insurance payments for mortgage borrowers, shall be insured under the Federal Deposit Insurance Act in the amount of $100,000 per mortgage borrower.

(2) TREATMENT AFTER EFFECTIVE DATE OF NEW REGULATIONS.—After the effective date of the regulations prescribed under subsection (c)—

(A) the amount of deposit insurance available for custodial accounts shall be determined in accordance with such regulations; and

(B) paragraph (1) shall cease to apply with respect to such accounts.

(e) TREATMENT OF REFERENCES IN ADJUSTABLE RATE MORTGAGE INSTRUMENTS.—

(1) IN GENERAL.—For purposes of adjustable rate mortgage instruments that are in effect as of the date of enactment of this Act, any reference in the instrument to the Federal Savings and Loan Insurance Corporation, the Federal Home Loan Bank Board, or institutions insured by the Federal Savings and Loan Insurance Corporation before such date shall be treated as a reference to the Federal Deposit Insurance Corporation, the Federal Housing Finance Board, the Office of Thrift Supervision, or institutions which are members of the Savings Association Insurance Fund, as appropriate on the basis of the transfer of functions pursuant to this Act, unless the context of the reference requires otherwise.

(2) SUBSTITUTION FOR INDEXES.—If any index used to calculate the applicable interest rate on any adjustable rate mortgage instrument is no longer calculated and made available as a direct or indirect result of the enactment of this Act, any index—

(A) made available by the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, or the Chairperson of the Federal Housing Finance Board pursuant to paragraph (3); or

(B) determined by the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, or the Chairperson of the Federal Housing Finance Board, pursuant to paragraph (4), to be substantially similar to the index which is no longer calculated or made available,

may be substituted by the holder of any such adjustable rate mortgage instrument upon notice to the borrower.

(3) AGENCY ACTION REQUIRED TO PROVIDE CONTINUED AVAILABILITY OF INDEXES.—Promptly after the enactment of this subsection, the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, and the Chairperson of the Federal Housing Finance Board shall take such action as may be necessary to assure that the indexes prepared by the Federal Savings and Loan Insurance Corporation, the Federal Home Loan Bank Board, and the Federal home loan banks immediately prior to the enactment of this subsection and used to calculate the interest rate on adjustable rate mortgage instruments continue to be available.

(4) REQUIREMENTS RELATING TO SUBSTITUTE INDEXES.—If any agency can no longer make available an index pursuant to paragraph (3), an index that is substantially similar to such index may be substituted for such index for purposes of paragraph (2) if the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, or the Chairperson of the Federal Housing Finance Board, as the case may be, determines, after notice and opportunity for comment, that—

(A) the new index is based upon data substantially similar to that of the original index; and

(B) the substitution of the new index will result in an interest rate substantially similar to the rate in effect at the time the original index became unavailable.

SEC. 403. DETERMINATION OF TRANSFERRED FUNCTIONS AND EMPLOYEES.

(a) ALL FHLBB AND FSLIC EMPLOYEES SHALL BE TRANSFERRED.—All employees of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation shall be identified for transfer under subsection (b) to the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the Federal Housing Finance Board.

(b) FUNCTIONS AND EMPLOYEES TRANSFERRED.—

(1) IN GENERAL.—The Director of the Office of Thrift Supervision, the Chairperson of the Oversight Board of the Resolution Trust Corporation, the Chairperson of the Federal Deposit Insurance Corporation, the Chairperson of the Federal Housing Finance Board, and the Chairman of the Federal Home Loan Bank Board (as of the day before the date of the enactment of this Act) shall jointly determine the functions or activities of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation, and the number of employees of such Board and Corporation necessary to perform or support

such functions or activities, which are transferred from the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation to the Office of Thrift Supervision, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or the Federal Housing Finance Board, as the case may be.

(2) ALLOCATION OF EMPLOYEES.—The Director of the Office of Thrift Supervision, the Chairperson of the Oversight Board of the Resolution Trust Corporation, the Chairperson of the Federal Deposit Insurance Corporation, and the Chairperson of the Federal Housing Finance Board shall allocate the employees of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation consistent with the number determined pursuant to paragraph (1) in a manner which such Director, Chairman, and Chairpersons, in their sole discretion, deem equitable, except that, within work units, the agency preferences of individual employees shall be accommodated as far as possible.

(c) FEDERAL HOME LOAN BANK PERSONNEL.—Employees of the Federal home loan banks or the joint offices of such banks who, on the day before the date of the enactment of this Act, are performing functions or activities on behalf of the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation shall be treated as employees of the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for purposes of determining, pursuant to subsection (b)(1), the number of employees performing or supporting functions or activities of such Board or Corporation to the extent such functions or activities are transferred to the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Resolution Trust Corporation, or the Federal Housing Finance Board.

(d) FSLIC EMPLOYEES ENGAGED IN CONSERVATORSHIP OR RECEIVERSHIP FUNCTIONS.—Individuals who, on the day before the date of the enactment of this Act, are employed by the Federal Savings and Loan Insurance Corporation in such Corporation's capacity as conservator or receiver of any insured depository institution shall be treated as employees of the Federal Savings and Loan Insurance Corporation for purposes of determining, pursuant to subsection (b)(1), the number of employees performing or supporting functions or activities of such Corporation if such conservatorship or receivership is transferred to the Federal Deposit Insurance Corporation or the Resolution Trust Corporation.

SEC. 404. RIGHTS OF EMPLOYEES OF ABOLISHED AGENCIES.

All employees identified for transfer under subsection (b) of section 403 (other than individuals described in subsection (c) or (d) of such section) shall be entitled to the following rights:

(1) Each employee so identified shall be transferred to the appropriate agency or entity for employment no later than 60 days after the date of the enactment of this Act and such transfer shall be deemed a transfer of function for the purpose of section 3503 of title 5, United States Code.

(2) Each transferred employee shall be guaranteed a position with the same status, tenure, and pay as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or

reduced in grade or compensation for 1 year after the date of transfer, except for cause.

(3)(A) In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) An agency or entity may decline a transfer of authority under subparagraph (A) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and noncareer positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(4) If any agency or entity to which employees are transferred determines, after the end of the 1-year period beginning on the date the transfer of functions to such agency or entity is completed, that a reorganization of the combined work force is required, that reorganization shall be deemed a "major reorganization" for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(5) Any employee accepting employment with any agency or entity (other than the Office of Thrift Supervision) as a result of such transfer may retain for 1 year after the date such transfer occurs membership in any employee benefit program of the Federal Home Loan Bank Board, including insurance, to which such employee belongs on the date of the enactment of this Act if—

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Director of the Office of Thrift Supervision.

The difference in the costs between the benefits which would have been provided by such agency or entity and those provided by this section shall be paid by the Director of the Office of Thrift Supervision. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director of the Office of Thrift Supervision, the employee shall be permitted to select an alternate Federal health insurance program within 30 days of such election or notice, without regard to any other regularly scheduled open season.

(6) Any employee employed by the Office of Thrift Supervision as a result of the transfer may retain membership in any employee benefit program of the Federal Home Loan Bank Board, including insurance, which such employee has on the date of enactment of this Act, if such employee does not elect to give up such membership and the benefit or program is continued by the Director of the Office of Thrift Supervision. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by the Director of the Office of Thrift Supervision, such employee shall be permitted to select an alternate Federal health insurance program within 30 days of such election or discontinuance, without regard to any other regularly scheduled open season.

(7) A transferring employee in the Senior Executive Service shall be placed in a comparable position at the agency or entity to which such employee is transferred.

(8) Transferring employees shall receive notice of their position assignments not later than 120 days after the effective date of their transfer.

(9) Upon the termination of the Resolution Trust Corporation pursuant to section 21A(m) of the Federal Home Loan Bank Act, any employee of such Corporation shall be transferred to the Federal Deposit Insurance Corporation in accordance with the provisions of paragraphs (2) and (4) through (7) of this subsection, except that the liability for any difference in the costs of benefits described in paragraph (5) shall be a liability of the Resolution Trust Corporation and not the Office of Thrift Supervision.

SEC. 405. DIVISION OF PROPERTY AND FACILITIES.

Before the end of the 60-day period beginning on the date of the enactment of this Act, the Director of the Office of Thrift Supervision, the Chairperson of the Oversight Board of the Resolution Trust Corporation, the Chairperson of the Federal Deposit Insurance Corporation, and the Chairperson of the Federal Housing Finance Board shall jointly divide all property of the Federal Savings and Loan Insurance Corporation and the Federal Home Loan Bank Board used to perform functions and activities of the Federal Home Loan Bank Board among the Office of Thrift Supervision, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, and the Federal Housing Finance Board in accordance with the division of responsibilities, functions, and activities effected by this Act. Any disagreement between them in so doing shall be resolved by the Director of the Office of Management and Budget.

SEC. 406. REPORT.

Before the end of the 60-day period beginning on the date of the enactment of this Act, the Chairman of the Federal Home Loan Bank Board shall provide by written report to the Secretary of the Treasury, the Director of the Office of Management and Budget, and the Congress, a final accounting of the finances and operations of the Federal Savings and Loan Insurance Corporation.

SEC. 407. REPEALS.

Title 4 of the National Housing Act (1724 et seq.) is hereby repealed. 12 USC 1724 *et seq.*

TITLE V—FINANCING FOR THRIFT RESOLUTIONS

Subtitle A—Oversight Board and Resolution Trust Corporation

SEC. 501. OVERSIGHT BOARD AND RESOLUTION TRUST CORPORATION ESTABLISHED.

(a) IN GENERAL.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 21 the following new section:

12 USC 1441a.

"SEC. 21A. OVERSIGHT BOARD AND RESOLUTION TRUST CORPORATION.

"(a) OVERSIGHT BOARD ESTABLISHED.—

"(1) IN GENERAL.—There is hereby established the Oversight Board as an instrumentality of the United States with the powers and authorities herein provided.

"(2) STATUS.—The Oversight Board shall oversee and be accountable for the Resolution Trust Corporation (hereinafter referred to in this section as the 'Corporation'). The Oversight Board shall be an 'agency' of the United States for purposes of subchapter II of chapter 5 and chapter 7 of title 5, United States Code.

"(3) MEMBERSHIP.—

"(A) IN GENERAL.—The Oversight Board shall consist of 5 members—

"(i) the Secretary of the Treasury;

"(ii) the Chairman of the Board of Governors of the Federal Reserve System;

"(iii) the Secretary of Housing and Urban Development; and

"(iv) two independent members appointed by the President, with the advice and consent of the Senate. Such nominations shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(B) POLITICAL AFFILIATION.—The independent members shall not be members of the same political party. No independent member of the Oversight Board shall hold any other appointed office during his or her term as a member.

"(C) CHAIRPERSON.—The Chairperson of the Oversight Board shall be the Secretary of the Treasury.

"(D) TERM OF OFFICE.—The term of each member (other than the independent members) of the Oversight Board shall expire when such member has fulfilled all of his or her responsibilities under this section and section 21B. The term of each independent member shall be 3 years.

"(E) QUORUM REQUIRED.—A quorum shall consist of 3 members of the Oversight Board and all decisions of the Board shall require an affirmative vote of at least a majority of the members voting.

"(4) COMPENSATION AND EXPENSES.—

"(A) EXPENSES.—Members of the Oversight Board shall receive allowances in accordance with subchapter I of chapter 57 of title 5, United States Code, for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Oversight Board, as set forth in the bylaws issued by the Oversight Board.

"(B) NO ADDITIONAL COMPENSATION FOR UNITED STATES OFFICERS OR EMPLOYEES.—Members of the Oversight Board (other than independent members) shall receive no additional pay by reason of service on such Board.

"(C) COMPENSATION FOR INDEPENDENT MEMBERS.—The independent members of the Oversight Board shall be paid at a rate equal to the daily equivalent of the rate of basic pay for level II of the Executive Schedule for each day (including travel time) during which such member is engaged in the actual performance of duties of the Oversight Board.

"(5) POWERS.—The Oversight Board shall be a body corporate that shall have the power to—

"(A) adopt, alter, and use a corporate seal;

"(B) provide for a principal or executive officer and such other officers and employees as may be necessary to perform the functions of the Oversight Board, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

"(C) fix the compensation and number of, and appoint, employees for any position established by the Oversight Board;

"(D) set and adjust rates of basic pay for employees of the Oversight Board without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code;

"(E) provide additional compensation and benefits to employees of the Oversight Board if the same type of compensation or benefits are then being provided by any other Federal bank regulatory agency or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation; in setting and adjusting the total amount of compensation and benefits for employees of the Oversight Board, the Oversight Board shall consult with and seek to maintain comparability with the other Federal bank regulatory agencies, except that the Oversight Board shall not in any event exceed the compensation and benefits provided by the Federal Deposit Insurance Corporation with respect to any comparable position;

"(F) with the consent of any executive agency, department, or independent agency utilize the information, services, staff, and facilities of such department or agency, on a reimbursable (or other) basis, in carrying out this section;

"(G) prescribe bylaws that are consistent with law to provide for the manner in which—

"(i) its officers and employees are selected, and

"(ii) its general operations are to be conducted;

"(H) enter into contracts and modify or consent to the modification of any contract or agreement;

"(I) sue and be sued in courts of competent jurisdiction; and

"(J) exercise any and all powers established under this section and such incidental powers as are necessary to carry out its powers, duties, and functions under this Act.

"(6) OVERSIGHT BOARD DUTIES AND AUTHORITIES.—The Oversight Board shall have the following duties and authorities with respect to the Corporation:

"(A) To develop and establish overall strategies, policies, and goals for the Corporation's activities in consultation with the Corporation, including such items as—

"(i) general policies and procedures for case resolutions, the management and disposition of assets, the use of private contractors, and the use of notes, guarantees or other obligations by the Corporation;

"(ii) overall financial goals, plans, and budgets; and

"(iii) restructuring agreements described in subsection (b)(11)(B).

"(B) To approve prior to implementation periodic financing requests developed by the Corporation.

"(C) To review all rules, regulations, principles, procedures, and guidelines that may be adopted or announced by the Corporation. After consultation with the Corporation, the Oversight Board may require the modification of any such rules, regulations, principles, procedures, or guidelines except that the rules, regulations, principles, procedures, and guidelines relating to the Corporation's powers and activities as a conservator or receiver shall be consistent with the Federal Deposit Insurance Act. The provisions of this subparagraph shall not apply to internal administrative policies and procedures, and determinations or actions described in paragraph (8) of this subsection.

"(D) To review the overall performance of the Corporation on a periodic basis, including its work, management activities, and internal controls, and the performance of the Corporation relative to approved budget plans.

"(E) To require from the Corporation any reports, documents, and records it deems necessary to carry out its oversight responsibilities.

"(F) To establish a national advisory board and regional advisory boards.

"(G) To authorize the use of proceeds from any funds provided by the Treasury to the Corporation and from any financing by the Resolution Funding Corporation established pursuant to section 21B of this Act consistent with the approved budget and financial plans of the Corporation and to oversee the collection of funds by the Resolution Funding Corporation.

"(H) To evaluate audits by the Inspector General and other congressionally required audits.

"(I) To have general oversight over the Resolution Funding Corporation as provided under section 21B of this Act.

"(J) To authorize, as appropriate, the Corporation's sale of capital certificates to the Resolution Funding Corporation.

"(7) TRANSITION POLICIES.—Until such time as the Oversight Board and the Corporation (consistent with paragraph (6) and subsection (b)(12)) adopt strategies, policies, goals, regulations, rules, operating principles, procedures, or guidelines, the Corporation may carry out its duties in accordance with the strategies, policies, goals, regulations, rules, operating principles, procedures, or guidelines of the Federal Deposit Insurance Corporation, notwithstanding the provisions of section 553 of title 5, United States Code.

"(8) LIMITATION ON AUTHORITY.—

"(A) IN GENERAL.—The Corporation shall have the authority, without any prior review, approval, or disapproval by the Oversight Board, to make such determinations and take such actions as it deems appropriate with respect to case-specific matters (i) involving individual case resolutions, (ii) asset liquidations, or (iii) day-to-day operations of the Corporation. The preceding sentence in no way limits the authority of the Oversight Board to provide general policies and procedures.

"(B) FEDERAL DEPOSIT INSURANCE CORPORATION.—Nothing contained in this section shall give the Oversight Board authority over the activities, powers, or functions of the Federal Deposit Insurance Corporation except to the extent provided in this section and only with respect to the activities of the Federal Deposit Insurance Corporation in carrying out the responsibilities of the Corporation. The Federal Deposit Insurance Corporation shall be subject to the obligations, responsibilities, duties, and restrictions imposed by this section only to the extent it is carrying out the functions of the Corporation.

"(9) DELEGATION.—Except with respect to the meetings required by paragraph (10), nothing in this section shall preclude a member of the Oversight Board who is a public official from delegating his or her authority to an employee or officer of such member's agency or organization, if such employee or officer has been appointed by the President with the advice and consent of the Senate. For purposes of the preceding sentence, the Chairman of the Board of Governors of the Federal Reserve System may delegate his or her authority to another member of the Board of Governors.

"(10) QUARTERLY MEETINGS.—Not less than 4 times each year, the Oversight Board shall conduct open meetings to establish and review the general policy of the Corporation and to consider such other standards, policies, and procedures necessary to carry out its functions under this Act.

"(11) POWER TO REMOVE; JURISDICTION.—Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Oversight Board is a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction. The Oversight Board may, without bond or security, remove any such action, suit, or proceeding from a State court to a United States District Court or to the United States District Court for the District of Columbia.

"(12) ADMINISTRATIVE EXPENSES.—The administrative expenses of the Oversight Board shall be paid by the Corporation, upon request of the Oversight Board.

"(13) STANDARDS, POLICIES, PROCEDURES, GUIDELINES, AND STATEMENTS.—The Oversight Board may issue rules, regulations, standards, policies, procedures, guidelines, and statements as the Oversight Board considers necessary or appropriate to carry out its authorities and duties under this Act which shall be promulgated pursuant to subchapter II of chapter 5 of title 5, United States Code.

"(14) STRATEGIC PLAN FOR CORPORATION OPERATIONS.—

"(A) IN GENERAL.—The Oversight Board shall, subject to paragraph (6), develop a strategic plan for conducting the Corporation's functions and activities. The Oversight Board shall submit the strategic plan to the Congress not later than December 31, 1989.

"(B) PROVISIONS OF PLAN.—The strategic plan and implementing policies and procedures required under this paragraph shall at a minimum contain the following:

"(i) Factors the Corporation shall consider in deciding the order in which failed institutions or categories of failed institutions will be resolved.

"(ii) Standards the Corporation shall use to select the appropriate resolution action for a failed institution.

"(iii) With respect to assisted acquisitions, factors the Corporation shall consider in deciding whether nonperforming assets of the failed institution will be transferred to the acquiring institution rather than retained by the Corporation for management and disposal.

"(iv) Plans for the disposition of assets.

"(v) Management objectives by which the Corporation's progress in carrying out its duties under this section can be measured.

"(vi) A plan for the organizational structure and staffing of the Corporation, including an assessment of the extent to which the Corporation will perform asset management functions and other duties through contracts with public and private entities.

"(vii) Consideration of whether incentives should be included in asset management contracts to promote active and efficient asset management.

"(viii) Standards for adequate competition and fair and consistent treatment of offerors.

Discrimination, prohibition.

"(ix) Standards that prohibit discrimination on the basis of race, sex, or ethnic group in the solicitation and consideration of offers.

Women. Minorities.

"(x) Procedures for the active solicitation of offers from minorities and women.

"(xi) Procedures requiring that unsuccessful offerors be notified in writing of the decision within 30 days after the offer has been rejected.

"(xii) Procedures for establishing the market value of assets based upon standard market analysis, valuation, and appraisal practices.

"(xiii) Procedures requiring the timely evaluation of purchase offers for an institution.

"(xiv) Procedures for bulk sales and auction marketing of assets.

Disadvantaged persons. Homeless persons. Children and youth.

"(xv) Guidelines for determining if the value of an asset has decreased so that no reasonable recovery is anticipated. In such cases, the Corporation may consider potential public uses of such asset including providing housing for lower income families (including the homeless), day care centers for the children of low- and moderate-income families, or such other public purpose designated by the Secretary of Housing and Urban Development.

"(xvi) Guidelines for the conveyance of assets to units of general local government, States, and public agencies designated by a unit of general local government or a State, for use in connection with urban homesteading programs approved by the Secretary of Housing and Urban Development under section 810 of the Housing and Community Development Act of 1974.

"(xvii) Policies and procedures for avoiding political favoritism and undue influence in contracts and decisions made by the Oversight Board and the Corporation.

"(15) TERMINATION.—The Oversight Board shall terminate not later than 60 days after the Oversight Board fulfills all of its responsibilities under this Act.

"(b) RESOLUTION TRUST CORPORATION ESTABLISHED.—

"(1) ESTABLISHMENT.—

"(A) IN GENERAL.—There is hereby established a Corporation to be known as the Resolution Trust Corporation which shall be an instrumentality of the United States.

"(B) STATUS.—The Corporation shall be deemed to be an agency of the United States for purposes of subchapter II of chapter 5 and chapter 7 of title 5, United States Code, when it is acting as a corporation. The Corporation, when it is acting as a conservator or receiver of an insured depository institution, shall be deemed to be an agency of the United States to the same extent as the Federal Deposit Insurance Corporation when it is acting as a conservator or receiver of an insured depository institution.

"(C) FDIC AS EXCLUSIVE MANAGER.—Immediately upon enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Federal Deposit Insurance Corporation shall be authorized to and shall perform all responsibilities of the Corporation, and shall continue to do so unless removed pursuant to subsection (m).

"(2) GOVERNMENT CORPORATION.—Notwithstanding the fact that no Government funds may be invested in the Corporation, the Corporation shall be treated, for purposes of sections 9105, 9107, and 9108 of title 31, United States Code, as a mixed-ownership Government corporation which has capital of the Government.

"(3) DUTIES.—The duties of the Corporation shall be to carry out a program, under the general oversight of the Oversight Board and through the Federal Deposit Insurance Corporation (or any replacement authorized pursuant to subsection (m)), including:

"(A) To manage and resolve all cases involving depository institutions—

"(i) the accounts of which were insured by the Federal Savings and Loan Insurance Corporation before the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

"(ii) for which a conservator or receiver—

"(I) had been appointed at any time during the period beginning on January 1, 1989, and ending on the date of the enactment of such Act (including any institution described in paragraph (6)); or

"(II) is appointed within the 3-year period beginning on the date of the enactment of such Act.

"(B) To manage the Federal Asset Disposition Association, subject to the provisions of subsection (f).

"(C) To conduct the operations of the Corporation in a manner which—

"(i) maximizes the net present value return from the sale or other disposition of institutions described in subparagraph (A) or the assets of such institutions;

"(ii) minimizes the impact of such transactions on local real estate and financial markets;

"(iii) makes efficient use of funds obtained from the Funding Corporation or from the Treasury;

"(iv) minimizes the amount of any loss realized in the resolution of cases; and

"(v) maximizes the preservation of the availability and affordability of residential real property for low- and moderate-income individuals.

"(D) To perform any other function authorized under this section.

"(4) CONSERVATORSHIP, RECEIVERSHIP, AND ASSISTANCE POWERS.—Except as provided in paragraph (5) and in addition to any other provision of this section, the Corporation shall have the same powers and rights to carry out its duties with respect to institutions described in paragraph (3)(A) as the Federal Deposit Insurance Corporation has under sections 11, 12, and 13 of the Federal Deposit Insurance Act with respect to insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act).

"(5) LIMITATION ON PARAGRAPH (4) POWERS.—The Corporation—

"(A) may not obligate the Federal Deposit Insurance Corporation or any funds of the Federal Deposit Insurance Corporation; and

"(B) in connection with providing assistance to an institution under this subsection, shall be subject to the limitations contained in section 13(c)(4) of the Federal Deposit Insurance Act.

"(6) SUCCESSOR TO FSLIC AS CONSERVATOR OR RECEIVER.—As of the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Corporation shall succeed the Federal Savings and Loan Insurance Corporation as conservator or receiver with respect to any institution for which the Federal Savings and Loan Insurance Corporation was appointed conservator or receiver during the period beginning on January 1, 1989 and ending on such date of enactment.

"(7) OBLIGATIONS AND GUARANTEES.—The Corporation's authority to issue obligations and guarantees shall be subject to general supervision by the Oversight Board under subsection (a) and shall be consistent with subsection (j).

"(8) BOARD OF DIRECTORS.—

"(A) IN GENERAL.—Except as provided in subsection (m), the Board of Directors of the Federal Deposit Insurance Corporation shall serve as the Board of Directors of the Corporation.

"(B) CHAIRPERSON.—Except as provided in subsection (m), the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation shall serve as the Chairperson of the Board of Directors of the Corporation.

"(C) COMPENSATION.—Members of the Board of Directors of the Corporation shall receive no pay, allowances, or benefits from the Corporation by reason of their service on the Board of Directors, but shall receive allowances in accordance with subchapter I of chapter 57 of title 5, United States Code, for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Board of Directors, as set forth in the bylaws issued by the Board of Directors.

"(9) STAFF.—

"(A) IN GENERAL.—Unless the Oversight Board exercises its authority under subsection (m), the Corporation itself shall have no employees.

"(B) UTILIZATION OF PERSONNEL OF OTHER AGENCIES.—

"(i) FDIC.—The Federal Deposit Insurance Corporation, when acting as the exclusive manager of the Corporation, shall (subject to subsection (a)(6)) receive reimbursement from the Corporation for all services performed for the Corporation. Such reimbursement may not exceed the actual and reasonable cost incurred by the Federal Deposit Insurance Corporation in performing such services.

"(ii) OTHER AGENCIES.—With the agreement of any executive department or agency, the Corporation may utilize the personnel of any such executive department or agency on a reimbursable basis to cover actual and reasonable expenses.

"(10) CORPORATE POWERS.—The Corporation shall have the following powers:

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

"(B) In the event the Oversight Board exercises its authority under subsection (m), the Corporation shall provide for a chief executive officer, 1 or more vice presidents, a secretary, a general counsel, a treasurer, and such other officers, employees, attorneys, and agents as the Corporation may determine to be necessary, define the duties of such officers or employees, and require surety bonds or make other provisions against losses occasioned by acts of such individuals.

"(C) To enter into contracts and modify, or consent to the modification of, any contract or agreement to which the Corporation is a party or in which the Corporation has an interest under this section.

"(D) To make advance, progress, or other payments.

"(E) To acquire, hold, lease, mortgage, maintain, or dispose of, at public or private sale, real and personal property, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to the operations of the Corporation.

"(F) To sue and be sued in its corporate capacity in any court of competent jurisdiction.

"(G) To deposit any securities or funds held by the Corporation in any facility or depositary described in section 13(b) of the Federal Deposit Insurance Act under the terms and conditions applicable to the Federal Deposit Insurance Corporation under such section 13(b) and pay fees thereof and receive interest thereon.

"(H) To take warrants, voting and nonvoting equity, or other participation interests in institutions or assets or properties of institutions described in paragraph (3)(A) and paragraph (11)(A)(iv).

"(I) To use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

"(J) To prescribe through its Board of Directors bylaws that shall be consistent with law.

"(K) To make loans.

"(L) To prepare reports and provide such reports, documents, and records to the Oversight Board as required by this section.

"(M) To issue capital certificates to the Resolution Funding Corporation consistent with the provisions of section 21B of this Act in the following manner:

"(i) AUTHORIZATION TO ISSUE.—The Corporation is hereby authorized to issue to the Resolution Funding Corporation nonvoting capital certificates.

"(ii) REQUIREMENT RELATING TO THE AMOUNT OF CERTIFICATES.—The amount of certificates issued by the Corporation under clause (i) shall be equal to the aggregate amount of funds provided by the Resolution Funding Corporation to the Corporation under section 21B.

"(iii) CERTIFICATES MAY BE ISSUED ONLY TO THE RESOLUTION FUNDING CORPORATION.—Capital certificates issued under clause (i) may be issued only to the Resolution Funding Corporation in the manner and to the extent provided in section 21B and this section.

"(iv) NO DIVIDENDS.—The Corporation shall not pay dividends on any capital certificates issued under this section.

"(N) To exercise any other power established under this section and such incidental powers as are necessary to carry out its duties and functions under this section.

"(11) SPECIAL POWERS.—

"(A) IN GENERAL.—In addition to the powers of the Corporation described in paragraph (10), the Corporation shall have the following powers:

"(i) CONTRACTS.—The Corporation may enter into contracts with any person, corporation, or entity, including State housing finance authorities (as such term is defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) and insured depository institutions, which the Corporation determines to be necessary or appropriate to carry out its responsibilities under this section. Such contracts shall be subject to the procedures adopted pursuant to paragraph (12).

"(ii) UTILIZATION OF PRIVATE SECTOR.—In carrying out the Corporation's duties under this section, the Corporation and the Federal Deposit Insurance Corporation shall utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, and brokerage services, if such services are available in the private sector and the Corporation determines utilization of such services are practicable and efficient.

"(iii) MERGERS AND CONSOLIDATIONS.—The Corporation may require a merger or consolidation of an institution or institutions over which the Corporation has jurisdiction, if such merger or consolidation is consistent with section 13(c)(4) of the Federal Deposit Insurance Act.

"(iv) ORGANIZATION OF SAVINGS ASSOCIATIONS.—The Corporation may organize 1 or more Federal savings associations—

"(I) which shall be chartered by the Director of the Office of Thrift Supervision,

"(II) the deposits of which, if any, shall be insured by the Federal Deposit Insurance Corporation through the Savings Association Insurance Fund, and

"(III) which shall operate in accordance with subsection (e).

"(v) ORGANIZATION OF BRIDGE BANKS.—The Corporation may organize 1 or more bridge banks pursuant to subsection (i) of section 11 of the Federal Deposit Insurance Act with respect to any institution described in paragraph (3)(A) which becomes a bank. Such bridge bank shall be subject to subsection (e).

"(B) REVIEW OF PRIOR CASES.—The Corporation shall—

"(i) review and analyze all insolvent institution cases resolved by the Federal Savings and Loan Insurance Corporation between January 1, 1988, and the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and actively review all means by which it can reduce costs under existing Federal Savings and Loan Insurance Corporation agreements relating to such cases, including restructuring such agreements;

"(ii) evaluate the costs under existing Federal Savings and Loan Insurance Corporation agreements with regard to the following—

"(I) capital loss coverage,

"(II) yield maintenance guarantees,

"(III) forbearances,

"(IV) tax consequences, and

"(V) any other relevant cost consideration;

"(iii) review the bidding procedures used in resolving such cases in order to determine whether the bidding and negotiating processes were sufficiently competitive; and

"(iv) report to the Oversight Board and the Congress pursuant to subsection (k). Reports.

The Corporation shall exercise any and all legal rights to modify, renegotiate, or restructure such agreements where savings would be realized by such actions. The cost or income of any modification shall be a liability or an asset of the Corporation or the FSLIC Resolution Fund as determined by the Oversight Board. Nothing in this paragraph shall be construed as granting the Corporation any legal rights to modify, renegotiate, or restructure agreements between the Federal Savings and Loan Insurance Corporation and any other party, which did not exist prior to the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(12) REGULATIONS, POLICIES, AND PROCEDURES.—

"(A) IN GENERAL.—Subject to the review of the Oversight Board, the Corporation shall adopt the rules, regulations, standards, policies, procedures, guidelines, and statements

necessary to implement the strategic plan established by the Oversight Board under subsection (a)(14). The Corporation may issue such rules, regulations, standards, policies, procedures, guidelines, and statements as the Corporation considers necessary or appropriate to carry out this section.

"(B) REVIEW, ETC.—Such rules, regulations, standards, policies, procedures, guidelines, and statements—

"(i) shall be provided by the Corporation to the Oversight Board promptly or prior to publication or announcement to the extent practicable;

"(ii) shall be subject to the review of the Oversight Board as provided in subsection (a)(6)(C); and

"(iii) shall be promulgated pursuant to subchapter II of chapter 5 of title 5, United States Code.

"(C) PREPARATION AND MAINTENANCE OF RECORDS RELATING TO SOLICITATION AND ACCEPTANCE OF OFFERS.—The Corporation shall—

"(i) document decisions made in the solicitation and selection process and the reasons for the decisions; and

"(ii) maintain such documentation in the offices of the Corporation, as well as any other documentation relating to the solicitation and selection process.

Real property.

"(D) DISTRESSED AREAS.—

"(i) IN GENERAL.—In developing its implementing policies, the Corporation shall take the action described in clause (ii) to avoid adverse economic impact for those real estate markets that are distressed.

"(ii) VALUATION AND DISPOSITION.—The Corporation shall establish an appraisal or other valuation method for determining the market value of real property. With respect to a real property asset with a market value in excess of a certain dollar limit (such limit to be determined by the Board of Directors of the Corporation), consideration shall be given to the volume of assets above such limit and the potential impact of sales in such distressed areas. The Corporation shall not sell a real property asset located in a distressed area without obtaining at least the minimum disposition price, unless a determination has been made that such a transaction furthers the objectives set forth in paragraph (3)(C).

"(iii) EXCEPTION.—The provisions of this subparagraph shall not apply to any property as long as such property is subject to the requirements of subsection (c).

"(E) DEFINITIONS.—For the purposes of this subsection—

"(i) The term 'minimum disposition price' means 95 percent of the market value established by the Corporation. The Board of Directors, in its discretion, may change the percentage set forth in this definition from time to time if the Board of Directors determines that such change does not adversely impact the objectives set forth in paragraph (3)(C).

"(ii) The term 'sell a real property asset' means to convey all title and interest in a piece of tangible real property in which the Corporation has a fee simple or equivalent interest. The term 'real property' does not

include loans secured by real property, joint ventures, participation interests, options, or other similar interests. In addition, the term 'sell' does not include hypothecation of assets, issuance of asset backed securities, issuance of joint ventures, or participation interests, or other similar activities.

"(iii) The term 'distressed area' means the geographic areas in those political subdivisions designated from time to time by the Board of Directors as having depressed real estate markets. Until the Board of Directors designates otherwise, such distressed areas shall be the States of Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, and Texas.

"(iv) The term 'market value' means the most probable price which a property should bring in a competitive and open market if—

"(I) all conditions requisite to a fair sale are present,

"(II) the buyer and seller are acting prudently and are knowledgable, and

"(III) the price is not affected by any undue stimulus.

"(F) REAL ESTATE ASSET DIVISION.—The Corporation shall establish a Real Estate Asset Division to assist and advise the Corporation with respect to the management, sale, or other disposition of real property assets of institutions described in paragraph (3)(A). The Real Estate Asset Division shall have such duties as the Corporation establishes, including the publication of an inventory of real property assets of institutions subject to the jurisdiction of the Corporation. Such inventory shall be published before January 1, 1990 and updated semiannually thereafter and shall identify properties with natural, cultural, recreational, or scientific values of special significance.

Public information.

"(13) PERIODIC FINANCING REQUESTS.—The Corporation shall provide the Oversight Board with periodic financing requests which shall detail—

"(A) anticipated funding requirements for operations, case resolution, and asset liquidation,

"(B) anticipated payments on previously issued notes, guarantees, other obligations, and related activities, and

"(C) any proposed use of notes, guarantees or other obligations.

Such financing requests shall be submitted on a quarterly basis or such other period as the Oversight Board determines necessary. Following approval by the Oversight Board, such requests shall form the basis for expending funds provided by the Treasury, for transferring funds from the Resolution Funding Corporation to the Corporation and the issuance of capital certificates by the Corporation in exchange therefor.

"(14) FISCAL YEAR 1989 FUNDING.—

"(A) FUNDS FROM TREASURY.—The Secretary of the Treasury shall provide the Corporation with the sum of $18,800,000,000 in fiscal year 1989, and for such purpose the Secretary is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, United States Code.

"(B) FUNDS FROM RESOLUTION FUNDING CORPORATION.—The Resolution Funding Corporation shall provide the Corporation with such sums authorized pursuant to section 21B(e)(8) and the Corporation shall issue capital certificates in exchange therefor.

Disadvantaged persons.

"(c) DISPOSITION OF ELIGIBLE RESIDENTIAL PROPERTIES.—

"(1) PURPOSE.—The purpose of this subsection is to provide homeownership and rental housing opportunities for very low-income, lower-income, and moderate-income families.

"(2) RULES GOVERNING DISPOSITION OF ELIGIBLE SINGLE FAMILY PROPERTIES.—

"(A) NOTICE TO CLEARINGHOUSES.—Within a reasonable period of time after acquiring title to an eligible single family property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, condition, and information relating to the estimated fair market value of the property. Each clearinghouse shall make such information available, upon request, to other public agencies, other nonprofit organizations, and qualifying households. The Corporation shall allow public agencies, nonprofit organizations, and qualifying households reasonable access to eligible single family property for purposes of inspection.

"(B) OFFERS TO SELL SINGLE FAMILY PROPERTIES TO NONPROFIT ORGANIZATIONS, PUBLIC AGENCIES, AND QUALIFYING HOUSEHOLDS.—For the 3-month period following the date on which the Corporation makes an eligible single family property available for sale, the Corporation shall offer to sell the property to (i) qualifying households, or (ii) public agencies or nonprofit organizations that agree to (I) make the property available for occupancy by and maintain it as affordable for lower-income families for the remaining useful life of such property, or (II) make the property available for purchase by such families. The restrictions described in subclause (I) of the preceding sentence shall be contained in the deed or other recorded instrument. If upon the expiration of such 3-month period, no qualifying household, public agency, or nonprofit organization has made a bona fide offer to purchase the property, the Corporation may offer to sell the property to any purchaser. The Corporation shall actively market eligible single family properties for sale to lower-income families.

Marketing.

"(3) RULES GOVERNING DISPOSITION OF ELIGIBLE MULTIFAMILY HOUSING PROPERTIES.—

"(A) NOTICE TO CLEARINGHOUSES.—Within a reasonable period of time after acquiring title to an eligible multifamily housing property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, number of units (identified by number of bedrooms), and information relating to the estimated fair market value of the property. The clearinghouses shall make such information available, upon request, to qualifying multifamily purchasers. The Corporation shall allow qualifying multifamily purchasers reasonable access to an

eligible multifamily housing property for purposes of inspection.

"(B) EXPRESSION OF SERIOUS INTEREST.—Qualifying multifamily purchasers may give written notice of serious interest in a property during a period ending 90 days after the time the Corporation provides notice under subparagraph (A), or until the Corporation determines that a property is ready for sale, whichever occurs first. Such notice of serious interest shall be in such form and include such information as the Corporation may prescribe.

"(C) NOTICE OF READINESS FOR SALE.—Upon determining that a property is ready for sale the Corporation shall provide written notice to any qualifying multifamily purchaser that has expressed serious interest in the property. Such notice shall specify the minimum terms and conditions for sale of the property.

"(D) OFFERS TO PURCHASE.—A qualifying multifamily purchaser receiving notice in accordance with subparagraph (C) shall have 45 days (from the date notice is received) to make a bona fide offer to purchase a property. The Corporation shall accept an offer that complies with the terms and conditions established by the Corporation.

"(E) LOWER-INCOME OCCUPANCY REQUIREMENTS.—Not less than 35 percent of all dwelling units purchased by a qualifying multifamily purchaser under subparagraph (D) shall be made available for occupancy by and maintained as affordable for lower-income families during the remaining useful life of the property in which the units are located, provided that not less than 20 percent of all units shall be made available for occupancy by and maintained as affordable for very low-income families during the remaining useful life of such property. If a single entity purchases more than 1 eligible property as part of the same negotiation, the requirements of this subparagraph shall apply in the aggregate to the properties so purchased. The requirements of this subparagraph shall be contained in the deed or other recorded instrument.

"(F) SALE OF MULTIFAMILY PROPERTIES TO OTHER PURCHASERS.—

"(i) If, upon the expiration of the period referred to in subparagraph (B), no qualifying multifamily purchaser has expressed serious interest in a property, the Corporation may offer to sell the property, individually or in combination with other properties, to any purchaser.

"(ii) The Corporation may not sell in combination with other properties any property which a qualifying multifamily purchaser has expressed serious interest in purchasing individually.

"(iii) If, upon the expiration of the period referred to in subparagraph (D), no qualifying multifamily purchaser has made an offer to purchase the property, the Corporation may sell the property, individually or in combination with other properties, to any purchaser.

"(G) EXEMPTIONS.—

"(i) CONTINUED OCCUPANCY OF CURRENT RESIDENTS.—No purchaser of an eligible multifamily housing property may terminate the occupancy of any person resid-

ing in the property on the date of purchase for purposes of meeting the lower-income occupancy requirement applicable to the property under subparagraph (E). The purchaser shall be in compliance with this paragraph if each newly vacant dwelling unit is reserved for lower-income occupancy until the lower-income occupancy requirement is met.

"(ii) FINANCIAL INFEASIBILITY.—The Secretary of Housing and Urban Development or the State housing finance agency for the State in which the property is located may temporarily reduce the lower-income occupancy requirements applicable to any property under subparagraph (E), if the Secretary or the applicable State housing finance agency determines that an owner's compliance with such requirements is no longer financially feasible. The owner of the property shall make a good-faith effort to return lower-income occupancy to the level required by subparagraph (E), and the Secretary of Housing and Urban Development or the State housing finance agency, as appropriate, shall review the reduction annually to determine whether financial infeasibility continues to exist.

"(4) RENT LIMITATIONS.—

"(A) IN GENERAL.—With respect to properties under subparagraph (B), rents charged to tenants for units made available for occupancy by very-low income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the median income for the area, as determined by the Secretary, with adjustment for family size. Rents charged to tenants for units made available for occupancy by lower-income families other than very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

"(B) APPLICABILITY.—The rent limitations under this paragraph shall apply to any eligible single-family property sold pursuant to paragraph (2)(B)(ii)(I) and to any multifamily housing property sold pursuant to paragraph (3).

"(5) PREFERENCE FOR SALES.—When selling any eligible multifamily housing property or combinations of eligible residential properties, the Corporation shall give preference, among substantially similar offers, to the offer that would reserve the highest percentage of dwelling units for occupancy or purchase by very low-income families and lower-income families and would retain such affordability for the longest term.

"(6) FINANCING OF SALE.—

"(A) ASSISTANCE BY CORPORATION.—

"(i) SALE PRICE.—The Corporation shall establish a market value for each eligible residential property. The Corporation shall sell eligible residential property at the net realizable market value. The Corporation may agree to sell an eligible single family property at a price below the net realizable market value to the extent necessary to facilitate an expedited sale of the property and enable a lower-income family to purchase the property. The Corporation may agree to sell eligible

residential property at a price below the net realizable market value to the extent necessary to facilitate an expedited sale of such property and enable a public agency or nonprofit organization to comply with the lower-income occupancy requirements applicable to such property under paragraphs (2) and (3).

"(ii) PURCHASE LOAN.—The Corporation may provide a loan at market interest rates to the purchaser of eligible residential property for all or a portion of the purchase price, which loan shall be secured by a first or second mortgage on the property. The Corporation may provide such a loan at below market interest rates to the extent necessary to facilitate an expedited sale of eligible residential property and permit (I) a lower-income family to purchase an eligible single family property under paragraph (2); or (II) a public agency or nonprofit organization to comply with the lower-income occupancy requirements applicable to the purchase of an eligible residential property under paragraph (2) or (3). The Corporation shall provide such loan in a form which would permit its sale or transfer to a subsequent holder.

"(B) ASSISTANCE BY HUD.—The Secretary shall take such action as may be necessary to expedite the processing of applications for assistance under section 202 of the Housing Act of 1959, the United States Housing Act of 1937, title IV of the Stewart B. McKinney Homeless Assistance Act, section 810 of the Housing and Community Development Act of 1974, and the National Housing Act to enable any organization or individual to purchase eligible residential property.

"(C) ASSISTANCE BY FMHA.—The Secretary of Agriculture shall take such actions as may be necessary to expedite the processing of applications for assistance under title V of the Housing Act of 1949 to enable any organization or individual to purchase eligible residential property.

"(7) CONTRACTING RULES.—Contracts entered into under this subsection shall not be subject to the requirements of subsection (b)(11)(A).

"(8) USE OF SECONDARY MARKET AGENCIES.—

"(A) IN GENERAL.—In the disposition of eligible residential properties, the Corporation shall, in consultation with the Secretary, explore opportunities to work with secondary market entities to provide housing for lower- and moderate-income families.

"(B) CREDIT ENHANCEMENT.—With respect to such Corporation properties, the Secretary may, consistent with statutory authorities, work through the Federal Housing Administration, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and other secondary market entities to develop risk sharing structures, mortgage insurance, and other credit enhancements to assist in the provision of property ownership, rental, and cooperative housing opportunities for lower- and moderate-income families.

"(C) REPORT.—In the annual report submitted by the Secretary to the Congress, the Secretary shall include a detailed description of his activities under this paragraph, including recommendations for such additional authorization as he deems necessary to implement the provisions of this subsection.

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

"(A) ADJUSTED INCOME.—The term 'adjusted income' has the same meaning as such term has under section 3 of the United States Housing Act of 1937.

"(B) CLEARINGHOUSES.—The term 'clearinghouses' means—

"(i) the State housing finance agency for the State in which an eligible residential property is located,

"(ii) the Office of Community Investment (or other comparable division) within the Federal Housing Finance Board, and

"(iii) any national nonprofit organizations (including any nonprofit entity established by the corporation established under title IX of the Housing and Community Development Act of 1968) that the Corporation determines has the capacity to act as a clearinghouse for information.

"(C) CORPORATION.—The term 'Corporation' means the Resolution Trust Corporation either in its corporate capacity or as receiver, but does not include the Corporation in its capacity as an operating conservator.

"(D) ELIGIBLE MULTIFAMILY HOUSING PROPERTY.—The term 'eligible multifamily housing property' means a property consisting of more than 4 dwelling units—

"(i) to which the Corporation acquires title; and

"(ii) that has an appraised value that does not exceed the applicable dollar amount set forth in section 221(d)(3)(ii) of the National Housing Act for elevator-type structures (without regard to any increase of such amount for high-cost areas).

"(E) ELIGIBLE RESIDENTIAL PROPERTY.—The term 'eligible residential property' includes eligible single family properties and eligible multifamily housing properties.

"(F) ELIGIBLE SINGLE FAMILY PROPERTY.—The term 'eligible single family property' means a 1- to 4-family residence (including a manufactured home)—

"(i) to which the Corporation acquires title; and

"(ii) that has an appraised value that does not exceed the applicable dollar amount set forth in the first sentence of section 203(b)(2) of the National Housing Act (without regard to any increase of such amount for high-cost areas).

"(G) LOWER-INCOME FAMILIES.—The term 'lower-income families' means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

"(H) NET REALIZABLE MARKET VALUE.—The term 'net realizable market value' means a price below the market value that takes into account (i) any reductions in holding costs resulting from the expedited sale of a property, includ-

ing but not limited to foregone real estate taxes, insurance, maintenance costs, security costs, and loss of use of funds, and (ii) the avoidance, where applicable, of fees paid to real estate brokers, auctioneers, or other individuals or organizations involved in the sale of property owned by the Corporation.

"(I) NONPROFIT ORGANIZATION.—The term 'nonprofit organization' means a private organization (including a limited equity cooperative)—

"(i) no part of the net earnings of which inures to the benefit of any member, shareholder, founder, contributor, or individual; and

"(ii) that is approved by the Corporation as to financial responsibility.

"(J) PUBLIC AGENCY.—The term 'public agency'—

"(i) means any Federal, State, local, or other governmental entity; and

"(ii) includes any public housing agency.

"(K) QUALIFYING HOUSEHOLD.—The term 'qualifying household' means a household (i) who intends to occupy eligible single family property as a principle residence; and (ii) whose adjusted income does not exceed 115 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

"(L) QUALIFYING MULTIFAMILY PURCHASER.—The term 'qualifying multifamily purchaser' means (i) a public agency, (ii) a nonprofit organization, or (iii) a for-profit entity which makes a commitment (for itself or any related entity) to satisfy the lower-income occupancy requirements specified under paragraph (3)(E) for any eligible multifamily property for which an offer to purchase is made during or after the periods specified under paragraph (3).

"(M) RURAL AREA.—The term 'rural area' has the meaning given such term in section 520 of the Housing Act of 1949.

"(N) SECRETARY.—The term 'Secretary' means the Secretary of the Housing and Urban Development.

"(O) STATE HOUSING FINANCE AGENCY.—The term 'State housing finance agency' means the public agency, authority, corporation, or other instrumentality of a State that has the authority to provide residential mortgage loan financing throughout such State.

"(P) VERY LOW-INCOME FAMILIES.—The term 'very-low income families' means families and individuals whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

"(10) EXCEPTION.—The provisions of this subsection shall not apply whenever the Corporation as receiver contracts to sell all or substantially all of the assets of a closed savings association to an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act).

"(11) THIRD PARTY RIGHTS.—

"(A) IN GENERAL.—The provisions of this subsection, or any failure by the Corporation to comply with such provisions, may not be used by any person to attack or defeat any title to property once it is conveyed by the Corporation.

"(B) LOWER-INCOME OCCUPANCY.—The lower-income occupancy requirements specified under paragraphs (2) and (3) shall be judicially enforceable against purchasers of property under this subsection or their successors in interest by affected very low- and lower-income families, State housing finance agencies, and any agency, corporation, or authority of the United States Government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

"(C) CLEARINGHOUSE.—A clearinghouse shall not be subject to suit for its failure to comply with the requirements of this subsection.

"(d) NATIONAL AND REGIONAL ADVISORY BOARDS.—

"(1) NATIONAL ADVISORY BOARD.—

"(A) ESTABLISHMENT.—The Oversight Board shall establish a national advisory board to provide information to the Oversight Board, and to advise that Board on policies and programs for the sale or other disposition of real property assets of institutions which are described in subsection (b)(3)(A).

"(B) MEMBERSHIP.—The national advisory board shall consist of—

"(i) a chairperson appointed by the Oversight Board; and

"(ii) the chairpersons of any regional advisory boards established pursuant to paragraph (2).

"(C) MEETINGS.—The national advisory board shall meet 4 times a year, or more frequently if requested by the Corporation.

"(2) REGIONAL ADVISORY BOARDS.—

"(A) ESTABLISHMENT.—The Oversight Board shall establish not less than 6 regional advisory boards to advise the Corporation on the policies and programs for the sale or other disposition of real property assets of institutions described in subsection (b)(3)(A). Such regional advisory boards shall be established in any region where the Oversight Board determines that there exists a significant portfolio of real property assets of institutions which are described in subsection (b)(3)(A).

"(B) MEMBERSHIP.—

"(i) APPOINTMENT.—Each regional advisory board shall consist of 5 members. Each member shall be appointed by the Oversight Board and shall serve at the pleasure of the Oversight Board. The members shall be selected from those residents of the region who will represent the views of low- and moderate-income consumers and small businesses, or who have knowledge and experience regarding business, financial, and real estate matters.

"(ii) TERMS.—Each member of a regional advisory board shall serve a term not to exceed 2 years, except that the Oversight Board may provide for classes of members so that the terms of not more than 3 members of any such board shall expire in any 1 year.

"(C) MEETINGS.—Each regional advisory board shall meet 4 times a year, or more frequently if requested by the

Corporation. A regional advisory board shall conduct its meetings in its region.

"(3) PROHIBITION ON COMPENSATION.—Members of the national and regional advisory boards shall serve without compensation, except that such members shall be entitled to receive allowances in accordance with subchapter I of chapter 57 of title 5, United States Code, for necessary expenses of travel, lodging, and subsistence incurred in attending official meetings and other activities of the boards.

"(4) TREATMENT AS ADVISORY COMMITTEE AND TERMINATION OF NATIONAL AND REGIONAL ADVISORY BOARDS.—

"(A) FEDERAL ADVISORY COMMITTEE ACT.—The national and regional advisory boards shall be subject to the provisions of the Federal Advisory Committee Act.

"(B) TERMINATION.—Notwithstanding the provisions of the Federal Advisory Committee Act, the national advisory board and any regional advisory board established pursuant to this subsection which is in existence on the date on which the Corporation terminates shall also terminate on such date.

"(e) INSTITUTIONS ORGANIZED BY THE CORPORATION.—

"(1) LIMITATIONS ON CERTAIN ACTIVITIES.—All insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act) organized by the Corporation under this section shall, during the period such institutions are within the control of the Corporation, be subject to such limitations, restrictions, and conditions as determined by the Corporation with respect to the following activities:

"(A) Growth of assets.

"(B) Lending and borrowing activities.

"(C) Asset acquisitions.

"(D) Use of brokered deposits.

"(E) Payment of deposit rates.

"(F) Setting policy or credit standards.

"(G) Capital standards.

"(2) APPLICABILITY OF OTHER PROVISIONS OF LAW.—Except as otherwise provided, all insured depository institutions (defined in section 3 of the Federal Deposit Insurance Act) organized by the Corporation shall—

"(A) be subject to all laws and rules otherwise applicable to them as insured depository institutions, and

"(B) shall be subject to the supervision of the appropriate Federal banking agency (as that term is defined in section 3 of the Federal Deposit Insurance Act).

"(f) FADA.—Before the end of the 180-day period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Corporation shall liquidate the Federal Asset Disposition Association.

"(g) EXEMPTION FROM STATE AND LOCAL TAXATION.—The Corporation and the Oversight Board, the capital, reserves, surpluses, and assets of the Corporation and the Oversight Board, and the income derived from such capital, reserves, surpluses, or assets shall be exempt from State, municipal, and local taxation except taxes on real estate held by the Corporation, according to its value as other similar property held by other persons is taxed.

"(h) GUARANTEES OF FSLIC.—

"(1) ASSUMPTION BY CORPORATION.—On the date of the enactment of this section, the Corporation shall, by operation of law (and without further action by the Corporation, the Oversight Board, the Federal Housing Finance Board, the Federal Savings and Loan Insurance Corporation, or any court), assume all rights and obligations of the Federal Savings and Loan Insurance Corporation with respect to any guarantee issued by the Federal Savings and Loan Insurance Corporation during the period beginning on January 1, 1989, and ending on such date of enactment, in connection with any loan to any savings association by any Federal Reserve bank or Federal Home Loan Bank (hereinafter in this subsection referred to as a 'lender').

"(2) PAYMENT BY CORPORATION.—Any obligation assumed by the Corporation for any guarantee described in paragraph (1) to any lender shall be paid by the Corporation before the end of the 1-year period beginning on the date of the enactment of this section. Payment shall be made from funds or assets available to the Corporation.

"(3) PRIORITY OF CLAIMS OF LENDERS.—Any claim by a lender with respect to any obligation assumed by the Corporation for a guarantee described in paragraph (1) shall have priority over all other secured or unsecured obligations of the Corporation.

"(4) TREASURY BACKUP.—If the resources of the Corporation are insufficient to pay all the obligations assumed by the Corporation under paragraph (1) within the 1-year period, the Secretary of the Treasury shall pay the amount of any such deficiency. There are hereby appropriated to the Secretary for fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to pay such deficiency.

"(i) BORROWING.—

"(1) IN GENERAL.—The Corporation, upon approval of the Oversight Board, is authorized to borrow from the Treasury. The Secretary of the Treasury is authorized and directed to loan to the Corporation, on such terms as may be fixed by the Secretary of the Treasury, an amount not exceeding in the aggregate $5,000,000,000 outstanding at any one time.

Loans.

"(2) INTEREST RATE.—Each such loan shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

"(j) MAXIMUM AMOUNT LIMITATIONS ON OUTSTANDING OBLIGATIONS.—

"(1) IN GENERAL.—Notwithstanding any other provision of this section, the amount which is equal to—

"(A) the sum of—

"(i) the total amount of contributions received from the Resolution Funding Corporation; and

"(ii) the total amount of outstanding obligations of the Corporation; minus

"(B) the sum of—

"(i) the amount of cash held by the Corporation; and

"(ii) the amount which is equal to 85 percent of the Corporation's estimate of the fair market value of other assets held by the Corporation,

may not exceed $50,000,000,000.

"(2) OUTSTANDING OBLIGATION DEFINED.—For purposes of this subsection (other than paragraph (3)), the term 'outstanding obligation' includes—

"(A) any obligation or other liability assumed by the Corporation from the Federal Savings and Loan Insurance Corporation under this section or pursuant to any provision of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

"(B) any guarantee issued by the Corporation;

"(C) the total of the outstanding amounts borrowed from the Secretary of the Treasury pursuant to subsection (i); and

"(D) any other obligation for which the Corporation has a direct or contingent liability to pay any amount.

"(3) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of any obligation issued by the Corporation, with respect to both principal and interest, if—

"(A) the principal amount of such obligation is stated in the obligation; and

"(B) the term to maturity or the date of maturity of such obligation is stated in the obligation.

"(4) ESTIMATES OF COSTS OF CONTINGENT LIABILITIES REQUIRED.—

"(A) IN GENERAL.—The Corporation shall—

"(i) estimate the cost to such Corporation of any contingent liability of the Corporation; and

"(ii) at least once each calendar quarter, make such adjustment as is appropriate in the estimate of such cost.

"(B) INCLUSION IN FINANCIAL STATEMENTS AND OUTSTANDING OBLIGATIONS.—The estimated amount of the cost to the Corporation of any contingent liability of the Corporation (taking into account the most recent adjustment to such estimate pursuant to paragraph (A)(ii)) shall be—

"(i) treated as an outstanding obligation of the Corporation for purposes of this subsection; and

"(ii) included in any financial statement of the Corporation.

"(k) REPORTING AND DISCLOSURE OBLIGATIONS.—

"(1) AUDITS.—

"(A) ANNUAL AUDIT.—The Comptroller General shall audit annually the financial statements of the Corporation in accordance with generally accepted Government auditing standards unless the Comptroller General notifies the Oversight Board not later than 180 days before the close of a fiscal year that the Comptroller General will not perform such audit for that fiscal year. In the event of such notification, the Oversight Board shall contract with an independent certified public accountant to perform the annual audit of the Corporation's financial statement in accordance with generally accepted Government auditing standards. Contracts.

"(B) ACCESS TO BOOKS AND RECORDS.—All books, records, accounts, reports, files, and property belonging to or used by the Corporation, or the Oversight Board, or by an independent certified public accountant retained to audit

the Corporation's financial statement, shall be made available to the Comptroller General.

"(2) PUBLIC DISCLOSURE OF TRANSACTIONS.—

Public information.

"(A) DISCLOSURE REQUIRED.—Except as otherwise provided in this subsection, the Corporation shall make available to the public—

"(i) any agreement entered into by the Corporation relating to a transaction for which the Corporation provides assistance pursuant to section 13(c) of the Federal Deposit Insurance Act, not later than 30 days after the first meeting of the Oversight Board after such agreement is entered into; and

"(ii) all agreements relating to cases reviewed by the Corporation pursuant to subsection (b)(11)(B).

"(B) EXCEPTION FOR DISCLOSURES AGAINST THE PUBLIC INTEREST.—

"(i) IN GENERAL.—The Oversight Board may withhold from public disclosure any document or part of a document if the Oversight Board determines, by a unanimous affirmative vote of the members of the Board, that disclosure would be contrary to the public interest.

"(ii) REPORT OF DETERMINATION.—A written report shall be made of any determination by the Oversight Board to withhold any part of a document from public disclosure pursuant to clause (i). Such report shall contain a full explanation of the specific reasons for such determination.

"(iii) PUBLICATION AND SUBMISSION OF REPORT.—The report prepared pursuant to clause (ii) shall be—

Federal Register, publication.

"(I) published in the Federal Register; and

"(II) transmitted to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(C) AGREEMENT DEFINED.—For purposes of this subsection, the term 'agreement' includes—

"(i) all documents which effectuate the terms and conditions of the assisted transaction;

"(ii) a comparison, which the Corporation shall prepare of—

"(I) the estimated cost of the transaction, with

"(II) the estimated cost of liquidating the insured institution; and

"(iii) a description of any economic or statistical assumptions on which such estimates are based.

"(3) DISCLOSURE TO CONGRESS OF TRANSACTIONS.—

"(A) PROSPECTIVE TRANSACTIONS.—The Corporation shall make available to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate any agreement entered into by the Corporation relating to a transaction for which the Corporation provides assistance pursuant to section 13(c) of the Federal Deposit Insurance Act not later than 25 days after the first meeting of the Oversight Board after such agreement is entered into. The foregoing requirement is in addition to the Cor-

poration's obligation to make such agreements publicly available pursuant to paragraph (2).

"(B) PRIOR TRANSACTIONS.—The Corporation shall submit a report to the Oversight Board and the Congress containing the results and conclusions of the review of the 1988 transactions conducted pursuant to subsection (b)(11)(B) and such recommendations for legislative action as the Corporation may determine to be appropriate.

"(4) ANNUAL REPORTS.—

"(A) IN GENERAL.—The Oversight Board and the Corporation shall annually submit a full report of their respective operations, activities, budgets, receipts, and expenditures for the preceding 12-month period.

"(B) CONTENTS.—The report required under subparagraph (A) shall include—

"(i) audited statements and such information as is necessary to make known the financial condition and operations of the Corporation in accordance with generally accepted accounting principles;

"(ii) the Corporation's financial operating plans and forecasts (including budgets, estimates of actual and future spending, and estimates of actual and future cash obligations) taking into account the Corporation's financial commitments, guarantees, and other contingent liabilities;

"(iii) the number of minority and women investors participating in the bidding process for assisted acquisitions and the disposition of assets and the number of successful bids by such investors; and

"(iv) a list of the properties sold to State housing finance authorities (as such term is defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989), the individual purchase prices of such properties, and an estimate of the premium paid by such authorities for such properties.

"(C) SUBMISSION TO CONGRESS AND THE PRESIDENT.—The Corporation shall submit each annual report required under this subsection to the Congress and the President as soon as practicable after the end of the calendar year for which such report is made but not later than June 30 of the year following such calendar year.

"(5) ADDITIONAL REPORTS.—

"(A) REPORTS REQUIRED.—In addition to the annual report required under paragraph (4), the Oversight Board and the Corporation shall submit to Congress not later than April 30 and October 31 of each calendar year, a semiannual report on the activities and efforts of the Corporation, the Federal Deposit Insurance Corporation, and the Oversight Board for the 6-month period ending on the last day of the month prior to the month in which such report is required to be submitted.

"(B) CONTENTS OF REPORT.—Each semiannual report required under subparagraph (A) shall include the following information with respect to the Corporation's assets and liabilities and to the assets and liabilities of institutions described in subsection (b)(3)(A):

"(i) A statement of the total book value of all assets held or managed by the Corporation at the beginning and end of the reporting period.

"(ii) A statement of the total book value of such assets which are under contract to be managed by private persons and entities at the beginning and end of the reporting period.

"(iii) The number of employees of the Corporation, the Federal Deposit Insurance Corporation, and the Oversight Board at the beginning and end of the reporting period.

"(iv) The total amounts expended on employee wages, salaries, and overhead, during such period which are attributable to—

"(I) contracting with, supervising, or reviewing the performance of private contractors, or

"(II) managing or disposing of such assets.

"(v) A statement of the total amount expended on private contractors for the management of such assets.

"(vi) A statement of the efforts of the Corporation to maximize the efficient utilization of the resources of the private sector during the reporting period and in future reporting periods and a description of the policies and procedures adopted to ensure adequate competition and fair and consistent treatment of qualified third parties seeking to provide services to the Corporation or the Federal Deposit Insurance Corporation.

"(vii) The total book value and total proceeds from such assets disposed of during the reporting period.

"(viii) Summary data on discounts from book value at which such assets were sold or otherwise disposed of during the reporting period.

"(ix) A list of all of the areas that carried a distressed area designation during the reporting period (including a justification for removal of areas from or addition of areas to the list of distressed areas).

"(x) An evaluation of market conditions in distressed areas and a description of any changes in conditions during the reporting period.

"(xi) Any change adopted by the Oversight Board in a minimum disposition price and the reasons for such change.

"(xii) The valuation method or methods adopted by the Oversight Board or the Corporation to value assets and the reasons for selecting such methods.

"(6) APPEARANCES BEFORE CONGRESSIONAL COMMITTEES.—

"(A) SEMIANNUAL APPEARANCE REQUIRED.—Not later than 30 days after submission of the semiannual reports required by paragraph (5), the Oversight Board shall appear before the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate to—

Reports.

"(i) report on the progress made during such period in resolving cases involving institutions described in subsection (b)(3)(A);

"(ii) provide an estimate of the short-term and long-term cost to the United States Government of obligations issued or incurred during such period;

"(iii) report on the progress made during such period in selling assets of institutions described in subsection (b)(3)(A) and the impact such sales are having on the local markets in which such assets are located; Reports.

"(iv) describe the costs incurred by the Corporation in issuing obligations, managing and selling assets acquired by the Corporation;

"(v) provide an estimate of the income of the Corporation from assets acquired by the Corporation;

"(vi) provide an assessment of any potential source of additional funds for the Corporation; and

"(vii) provide an estimate of the remaining exposure of the United States Government in connection with institutions described in subsection (b)(3)(A) which, in the Oversight Board's estimation, will require assistance or liquidation after the end of such period.

"(7) APPEARANCES CONCERNING START-UP OF CORPORATION.—

"(A) APPEARANCE REQUIRED.—Before January 31, 1990, the Oversight Board and the Corporation shall appear before the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate for the purposes described in subparagraph (B).

"(B) PURPOSES OF APPEARANCE.—In connection with the appearance of the Oversight Board and the Corporation required by subparagraph (A), the Oversight Board and the Corporation shall—

"(i) describe the strategic plan established for the operations of the Corporation;

"(ii) describe the policies and procedures established or proposed to be established for the Corporation, including specific measures taken to avoid political favoritism or undue influence with respect to the activities of the Corporation;

"(iii) provide any regulation proposed to be prescribed by the Corporation; and

"(iv) provide the proposed case resolution schedule.

"(l) POWER TO REMOVE; JURISDICTION.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Corporation is a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction over such action, suit, or proceeding.

"(2) CORPORATION AS PARTY.—The Corporation shall be substituted as a party in any civil action, suit, or proceeding to which its predecessor in interest was a party with respect to institutions which are subject to the management agreement dated February 7, 1989, among the Federal Savings and Loan Insurance Corporation, the Federal Home Loan Bank Board and the Federal Deposit Insurance Corporation.

"(3) REMOVAL AND REMAND.—The Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States District Court for the District of Columbia, or if the action, suit, or proceeding arises

out of the actions of the Corporation with respect to an institution for which a conservator or a receiver has been appointed, the United States district court for the district where the institution's principal business is located. The removal of any action, suit, or proceeding shall be instituted—

"(A) not later than 90 days after the date the Corporation is substituted as a party, or

"(B) not later than 30 days after the date suit is filed against the Corporation, if such suit is filed after the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

The Corporation may appeal any order of remand entered by a United States district court.

"(m) INTERVENTION BY OVERSIGHT BOARD IN EXTRAORDINARY CIRCUMSTANCES.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, the Oversight Board has the ultimate authority to supervise the Corporation and is ultimately accountable for the administration of the Corporation. The Oversight Board is authorized to remove the Federal Deposit Insurance Corporation (or any replacement) from its position as exclusive manager of the Corporation and from all of its responsibilities and authorities to act for the Corporation, in any case where the Oversight Board determines that any of the following extraordinary events has occurred:

"(A) There has been a material failure of the Corporation to adhere to the strategic plan developed pursuant to subsection (a)(14).

"(B) There has been a material failure of the Corporation to meet its financial goals, including over-commitment of financial resources.

"(C) There is evidence of fraud, abuse, gross mismanagement in the Corporation's programs or activities, or willful violation of this Act or the Corporation's policies or procedures.

"(D) There is a continuing failure to obtain consideration at least nearly equivalent to the market value of the assets sold or otherwise transferred by the Corporation.

"(2) PROCEDURE.—Any decisions made or action taken by the Oversight Board under paragraph (1) shall be made or taken at an open meeting of the Oversight Board and the Oversight Board shall document its reasons for such actions or decisions.

"(3) NOTIFICATION TO CONGRESS.—Within 30 days of the meeting of the Oversight Board described in paragraph (2) and not later than 90 days before the removal of the Federal Deposit Insurance Corporation pursuant to paragraph (1), the Oversight Board shall notify Congress of any decision made or action taken pursuant to such paragraph and provide written documentation of its decision, including any supporting documentation relied on by the Oversight Board.

"(n) OPERATION OF CORPORATION AFTER EXERCISE OF POWERS UNDER SUBSECTION (m).—If the Oversight Board exercises authority under subsection (m), the Oversight Board shall—

"(1) develop an operations and management plan for the Corporation, including a detailed description of the employment and retention procedures for the Corporation and the classification standards for employment positions for the Corporation

and the compensation rates and benefits established for each class of positions, all of which shall be subject to the provisions of subsection (a)(5);

"(2) select a Board of Directors and a chief executive officer for the Corporation; and

"(3) provide to Congress, not later than 60 days before the removal of the Federal Deposit Insurance Corporation, the operations and management plan developed pursuant to paragraph (1) and the identity of the Board of Directors and the chief executive officer selected pursuant to paragraph (2).

"(o) TERMINATION.—

"(1) IN GENERAL.—The Corporation shall terminate not later than December 31, 1996. If at the time of its termination, the Corporation is acting as a conservator or receiver, the Federal Deposit Insurance Corporation shall succeed the Corporation as conservator or receiver.

"(2) CASE RESOLUTIONS TRANSFERRED.—Simultaneous with the termination of the Corporation as provided in paragraph (1), all assets and liabilities of the Corporation shall be transferred to the FSLIC Resolution Fund. Thereafter the FSLIC Resolution Fund shall transfer any net proceeds from the sale of assets to the Resolution Funding Corporation.

"(p) CONFLICT OF INTEREST.—

"(1) IN GENERAL.—

"(A) The Oversight Board and the Corporation shall each be an 'agency' for purposes of title 18, United States Code. Any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Oversight Board or the Corporation, under the direct supervision of an officer or employee of the Oversight Board or the Corporation, shall be deemed to be an employee of the Oversight Board or the Corporation for the purposes of title 18, United States Code and this Act.

"(B) Any individual who, pursuant to a contract or any other agreement, acts for or on behalf of the Corporation shall be deemed to be a public official for the purposes of section 201 of title 18, United States Code.

"(2) ESTABLISHMENT OF RULES.—The Oversight Board and the Corporation shall, not later than 180 days after the date of enactment of this subsection, promulgate rules and regulations governing conflict of interest, ethical responsibilities, and post-employment restrictions applicable to members, officers, and employees of the Oversight Board and the Corporation that shall be no less stringent than those applicable to the Federal Deposit Insurance Corporation. Regulations.

"(3) USE OF CONFIDENTIAL INFORMATION.—The Oversight Board and the Corporation shall, not later than 180 days after the date of enactment of this subsection, promulgate rules and regulations applicable to independent contractors governing conflicts of interest, ethical responsibilities, and the use of confidential information consistent with the goals and purposes of titles 18 and 41, United States Code. Regulations.

"(4) POST EMPLOYMENT.—The chief executive officer of the Corporation shall be prohibited for a period of 1 year after leaving the Corporation from holding any office, position, or employment with, or receiving remuneration from, a company (other than the Corporation) which, during the time the chief

executive was employed by the Corporation, participated in any case resolution or contract with the Corporation for which such person was either responsible or in which such person was personally and substantially involved except that the chief executive officer may hold any office, position, or employment so long as the chief executive officer does not, during the 1-year period, provide advice with respect to, participate in decisions relating to, or otherwise provide assistance to such entity on the enumerated matters or receive remuneration with respect thereto from such company.

"(5) OTHER AGENCY EMPLOYEES.—Directors, officers, and employees of the Oversight Board and the Corporation who are also subject to the ethical rules of another agency or Government Corporation shall file with the Corporation a copy of any financial disclosure statement required by such other agency or corporation.

"(6) DISAPPROVAL OF CONTRACTORS.—

Regulations.

"(A) IN GENERAL.—The Oversight Board shall prescribe regulations establishing procedures for ensuring that any individual who is performing, directly or indirectly, any function or service on behalf of the Corporation meets minimum standards of competence, experience, integrity, and fitness.

"(B) PROHIBITION FROM SERVICE ON BEHALF OF CORPORATION.—The procedures established under subparagraph (A) shall provide that the Corporation shall prohibit any person who does not meet the minimum standards of competence, experience, integrity, and fitness from—

"(i) entering into any contract with the Corporation; or

"(ii) being employed by the Corporation or any person performing any service for or on behalf of the Corporation.

"(C) INFORMATION REQUIRED TO BE SUBMITTED.—The procedures established under subparagraph (A) shall require that any offer submitted to the Corporation by any person under this section and any employment application submitted to the Corporation by any person shall include—

"(i) a list and description of any instance during the preceding 5 years in which the person or company under such person's control defaulted on a material obligation to an insured depository institution; and

"(ii) such other information as the Board may prescribe by regulation.

"(D) SUBSEQUENT SUBMISSIONS.—No offer submitted to the Corporation may be accepted unless the offeror agrees that no person will be employed, directly or indirectly, by the offeror under any contract with the Corporation unless all applicable information described in subparagraph (C) with respect to any such person is submitted to the Corporation and the Corporation does not disapprove of the direct or indirect employment of such person. Any decision made by the Corporation pursuant to this paragraph shall be in its sole discretion and shall not be subject to review.

"(E) PROHIBITION REQUIRED IN CERTAIN CASES.—The standards established under subparagraph (A) shall require the Corporation to prohibit any person who has—

"(i) been convicted of any felony,

"(ii) been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency,

"(iii) demonstrated a pattern or practice of defalcation regarding obligations to insure depository institutions, or

"(iv) caused a substantial loss to Federal deposit insurance funds,

from service on behalf of the Corporation.

"(7) ABROGATION OF CONTRACTS.—The Oversight Board or the Corporation may rescind any contract with a person who—

"(A) fails to disclose a material fact to the Oversight Board or the Corporation,

"(B) would be prohibited under paragraph (6) from providing services to, receiving fees from, or contracting with the Corporation or the Oversight Board, or

"(C) has been subject to a final enforcement action by any Federal bank regulatory agency.

"(8) PRIORITY OF OVERSIGHT BOARD RULES.—To the extent that the rules established under this subsection conflict with rules of other agencies or Government corporations, officers, directors, employees, and independent contractors of the Corporation or the Oversight Board, who are also subject to the conflict of interest or ethical rules of another agency or Government corporation, shall be governed by the rules and regulations established by the Oversight Board under this subsection when acting for or on behalf of the Corporation.

"(9) DEFINITIONS.—For the purposes of this subsection—

"(A) The term 'company' has the same meaning as in section 2(b) of the Bank Holding Company Act of 1956.

"(B) The term 'control' has the same meaning given such term under regulations promulgated by the Federal Home Loan Bank Board with respect to savings and loan holding companies as in effect on the day before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(C) The term 'Corporation' includes the Resolution Trust Corporation, the national advisory board, and the regional advisory boards.".

(b) INSPECTOR GENERAL OF THE CORPORATION.—

(1) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(A) in paragraph (1), by inserting "the Oversight Board and the Board of Directors of the Resolution Trust Corporation" before "; as the case may be,"; and

(B) in paragraph (2), by inserting "the Resolution Trust Corporation," after "the Railroad Retirement Board,".

(2) POSITION AT LEVEL IV OF THE EXECUTIVE SCHEDULE.—

(A) IN GENERAL.—Section 5315 of title 5, United States Code, is amended by adding at the end thereof:

"Inspector General, Resolution Trust Corporation.".

(B) APPROPRIATION.—There is hereby authorized to be appropriated such sums as may be necessary for the oper-

ation of the Office of Inspector General established by the amendment made by paragraph (1) of this subsection.

(c) CONFORMING AMENDMENTS TO TITLE 5.—Section 5313 of title 5, United States Code, is amended by adding at the end thereof:

"Independent Members, Oversight Board, Resolution Trust Corporation.".

(d) MIXED-OWNERSHIP GOVERNMENT CORPORATION.—Section 9101(2) of title 31, United States Code, is amended by adding at the end thereof:

"(L) the Resolution Trust Corporation.".

(e) CONFORMING AMENDMENTS TO URBAN HOMESTEADING PROGRAM AND HOUSING ACT OF 1949.—

(1) URBAN HOMESTEADING.—Section 810(g) of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e(g)) is amended by adding at the end the following new paragraph:

"(3) The Secretary is authorized to reimburse the Resolution Trust Corporation, in an amount to be agreed upon by the Secretary and the Corporation, for property that the Corporation conveys to a unit of general local government, State, or agency for use in connection with an urban homesteading program approved by the Secretary.".

42 USC 1487.

(2) HOUSING ACT OF 1949.—Section 517 of the Housing Act of 1949 (42 U.S.C. 1987) is amended by adding after subsection (m) the following new subsection:

"(n) The Secretary may guarantee and service loans made for the purchase of eligible residential properties under section 21A(c) of the Federal Home Loan Bank Act in accordance with subsection (d) of this section and the last sentence of section 521(a)(1)(A).".

Reports.
12 USC 1441a note.

(f) GAO EXAMINATION OF CERTAIN FSLIC RESOLUTIONS.—Notwithstanding any other provision of this Act, the Comptroller General of the United States shall examine and monitor all insolvent institution cases resolved by the Federal Savings and Loan Insurance Corporation from January 1, 1988, through the date of the enactment of this Act, and not later than April 30, 1990, shall report to Congress with an estimate of the costs of the agreements entered into by the Corporation pursuant to such resolutions. Not less than annually thereafter, the last report being due on April 30, 1992, the Comptroller General shall provide Congress with revisions to such estimates, to take into account any new information that he obtains with regard to such agreements.

Subtitle B—Resolution Funding Corporation

SEC. 511. RESOLUTION FUNDING CORPORATION ESTABLISHED.

(a) IN GENERAL.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 21A the following new section:

12 USC 1441b.

"SEC. 21B. RESOLUTION FUNDING CORPORATION ESTABLISHED.

"(a) PURPOSE.—The purpose of the Resolution Funding Corporation is to provide funds to the Resolution Trust Corporation to enable the Resolution Trust Corporation to carry out the provisions of this Act.

"(b) ESTABLISHMENT.—There is established a corporation to be known as the Resolution Funding Corporation.

"(c) MANAGEMENT OF FUNDING CORPORATION.—

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

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

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

"(2) TERMS.—Of the 2 members appointed under paragraph (1)(B), 1 shall be appointed for an initial term of 2 years and 1 shall be appointed for an initial term of 3 years. Thereafter, such members shall be appointed for a term of 3 years.

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

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

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

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

"(5) CHAIRPERSON.—The Oversight Board shall select the chairperson of the Directorate from among the 3 members of the Directorate.

"(6) STAFF.—

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

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

"(7) ADMINISTRATIVE EXPENSES.—

"(A) IN GENERAL.—All administrative expenses of the Funding Corporation, including custodian fees, shall be paid by the Federal Home Loan Banks.

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

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

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

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

"(9) NO COMPENSATION FROM FUNDING CORPORATION.—Members of the Directorate of the Funding Corporation shall receive

no pay, allowance, or benefit from the Funding Corporation for serving on the Directorate.

"(d) POWERS OF THE FUNDING CORPORATION.—The Funding Corporation shall have only the powers described in paragraphs (1) through (9), subject to the other provisions of this section and such regulations, orders, and directions as the Oversight Board may prescribe:

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

"(2) PURCHASE CAPITAL STOCK; TRANSFER AMOUNTS.—To purchase capital certificates issued by the Resolution Trust Corporation under section 21A, and to transfer amounts to the Resolution Trust Corporation pursuant to subsection (e)(8) of this section.

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

"(4) IMPOSE ASSESSMENTS.—To impose assessments in accordance with subsection (e)(7).

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

"(6) SUCCESSION.—To have succession until dissolved.

"(7) CONTRACTS.—To enter into contracts.

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

"(9) INCIDENTAL POWERS.—To exercise such incidental powers not inconsistent with the provisions of this section and section 21A as are necessary and appropriate to carry out the provisions of this section.

"(e) CAPITALIZATION OF FUNDING CORPORATION, ETC.—

"(1) IN GENERAL.—

"(A) AMOUNT REQUIRED.—The Oversight Board shall ensure that the aggregate of the amounts obtained under this subsection shall be sufficient so that—

"(i) the Funding Corporation may transfer the amounts required under paragraph (8); and

"(ii) the total of the face amounts (the amount of principal payable at maturity) of noninterest bearing instruments in the Funding Corporation Principal Fund are equal to the aggregate amount of principal on the obligations of the Funding Corporation.

"(B) PURCHASES OF STOCK BY FEDERAL HOME LOAN BANKS.—Each Federal Home Loan Bank shall purchase stock in the Funding Corporation at times and in amounts prescribed by the Oversight Board.

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

"(3) MAXIMUM INVESTMENT AMOUNT LIMITATION FOR EACH FEDERAL HOME LOAN BANK.—The cumulative amount of funds invested in nonvoting capital stock of the Funding Corporation

by each Federal Home Loan Bank under paragraph (1) shall not at any time exceed the sum of the amounts calculated under subparagraphs (A) and (B), as adjusted in subparagraph (C), as follows:

"(A) RESERVES AND UNDIVIDED PROFITS ON DECEMBER 31, 1988.—The sum on December 31, 1988, of—

"(i) the reserves maintained by such Bank pursuant to the reserve requirement contained in the first 2 sentences of section 16 (as in effect on December 31, 1988); and

"(ii) the undivided profits of such Bank, minus the amounts invested in the capital stock of the Financing Corporation pursuant to section 21.

"(B) SUBSEQUENT ADDITIONS TO RESERVES AND UNDIVIDED PROFITS.—The amount, calculated until the date on which the Funding Corporation Principal Fund is fully funded, equal to—

"(i) the sum of—

"(I) the amounts added to reserves by such Bank after December 31, 1988, pursuant to the reserve requirement contained in the first 2 sentences of section 16 (as in effect on December 31, 1988); and

"(II) the quarterly additions to undivided profits of the Bank after December 31, 1988; minus

"(ii) the amounts invested by such Bank in the capital stock of the Financing Corporation after December 31, 1988, pursuant to the requirement contained in section 21.

"(C) ANNUAL ADJUSTMENT.—The amounts in subparagraph (B) shall be adjusted as follows:

"(i) INCREASE IN LIMIT.—If the aggregate amount for all Federal Home Loan Banks determined under subparagraph (B)(i) is less than $300,000,000 per year, the limit for each Bank shall be increased by an amount determined by the Oversight Board by multiplying the aggregate deficiency by the percentage applicable to such Bank arrived at in the manner described in paragraph (5).

"(ii) DECREASE IN LIMIT.—If the aggregate amount for all Federal Home Loan Banks determined under subparagraph (B)(i) is more than $300,000,000 per year, the limit for each Bank shall be decreased by an amount determined by the Oversight Board by multiplying the aggregate excess by the percentage applicable to such Bank arrived at in the manner described in paragraph (5).

"(4) PRO RATA DISTRIBUTION OF FIRST $1,000,000,000 INVESTED IN FUNDING CORPORATION BY FEDERAL HOME LOAN BANKS.—Of the first $1,000,000,000 of the aggregate that the Federal Housing Finance Board (pursuant to section 21) or the Oversight Board (under this section) may require the Federal Home Loan Banks collectively to invest in the capital stock of the Financing Corporation or invest in the capital stock of the Funding Corporation, respectively, the amount which each Federal Home Loan Bank (or any successor to the Bank) shall invest shall be determined by the Federal Housing Finance Board or the Oversight Board (as the case may be) by multiplying the aggregate

amount of such investment by all Banks by the percentage appearing in the following table for each such Bank:

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

"(5) PRO RATA DISTRIBUTION OF AMOUNTS REQUIRED TO BE INVESTED IN EXCESS OF $1,000,000,000.—Of any amount which the Oversight Board may require the Federal Home Loan Banks to invest in capital stock of the Funding Corporation under this subsection in excess of the $1,000,000,000 amount referred to in paragraph (4), the amount which each Federal Home Loan Bank (or any successor to such Bank) shall invest shall be determined by the Oversight Board by multiplying the excess amount by the percentage arrived at by dividing—

"(A) the sum of the total assets (as of the most recent December 31) held by all Savings Association Insurance Fund members which are members of such Bank; by

"(B) the sum of the total assets (as of such date) held by all Savings Association Insurance Fund members which are members of a Federal Home Loan Bank.

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

"(A) IN GENERAL.—If the amount of any Federal Home Loan Bank's allocation under paragraph (5) exceeds the maximum amount applicable with respect to such Bank (in this paragraph referred to as a 'deficient Bank') under paragraph (3) at the time of such determination (in this paragraph referred to as the 'excess amount')—

"(i) the Oversight Board shall require each Federal Home Loan Bank that is not allocated an amount under paragraph (5) that exceeds its maximum under paragraph (3) (in this paragraph referred to as a 'remaining Bank') to purchase stock in the Funding Corporation (in addition to the amount determined under paragraph (5) for such remaining Bank and subject to the maximum amount applicable with respect to such remaining Bank under paragraph (3) at the time of such determination) on behalf of the deficient Bank the amount determined under subparagraph (B);

"(ii) the Oversight Board shall require the deficient Bank to subsequently reimburse the remaining Banks out of its net earnings (or reimbursements received from other Banks) in the manner described in subparagraphs (C) and (D); and

"(iii) the requirements contained in subparagraph (D) relating to the use of net earnings shall apply to the deficient Bank until such Bank has reimbursed the remaining Banks for all of the excess amount.

"(B) ALLOCATION OF EXCESS AMOUNT AMONG REMAINING FEDERAL HOME LOAN BANKS.—

"(i) IN GENERAL.—The amount of stock each remaining Federal Home Loan Bank shall be required to purchase under subparagraph (A)(i) is the amount determined by the Oversight Board by multiplying the excess amount by the percentage arrived at by dividing—

"(I) the cumulative amount of stock in the Funding Corporation purchased under this subsection by such remaining Bank at the time of such determination; by

"(II) the aggregate of the cumulative amounts invested under this subsection by all remaining Banks at such time.

"(ii) REALLOCATION.—If the allocation under this subparagraph results in a remaining Bank exceeding its maximum amount under paragraph (3), such excess amount shall be reallocated to the other remaining Bank in accordance with this subparagraph.

"(C) REIMBURSEMENT PROCEDURE.—

"(i) IN GENERAL.—A Bank on whose behalf stock is purchased under subparagraph (A)(i) shall make payments annually from amounts, if any, in its reserve account (as described in subparagraph (D)) to each Bank that made payments on its behalf until a full reimbursement has been completed. A full reimbursement shall require repayment of the excess amounts invested by other Banks plus interest which shall accrue at a rate equal to the annual average cost of funds in the most recent year to all Federal Home Loan Banks and which shall begin to accrue 2 years after the investments under subparagraph (A)(i) are made.

"(ii) DETERMINATION OF AMOUNTS.—The Oversight Board shall annually determine the dollar amounts of such reimbursements by distributing the amount available for such reimbursements (at the time of such determination) from the reimbursing Bank to the Banks that made purchases on its behalf according to the shares of the reimbursing Bank's excess amount that the other Banks invested.

"(D) TRANSFER TO ACCOUNT FOR REIMBURSEMENTS REQUIRED.—

"(i) IN GENERAL.—Of the net earnings for any year of a Bank on whose behalf a purchase is made under subparagraph (A)(i) and any reimbursements received from other Banks, the amount necessary to make the reimbursements required under subparagraph (A)(ii) shall be placed in a reserve account (established in the manner prescribed by the Oversight Board), which shall be available only for such reimbursements.

"(ii) LIMITATION.—The total amount placed in such reserve account in any year by any Bank shall not exceed an amount equal to 20 percent of the net earnings of such Bank for such year.

"(7) ADDITIONAL SOURCES.—If each Federal Home Loan Bank has exhausted the amount applicable with respect to the Bank

under paragraph (3) after purchases under paragraphs (4), (5), and (6), the amounts necessary to provide additional funding for the Funding Corporation Principal Fund shall be obtained from the following sources:

"(A) ASSESSMENTS.—The Funding Corporation, with the approval of the Board of Directors of the Federal Deposit Insurance Corporation, shall assess against each Savings Association Insurance Fund member an assessment (in the same manner as assessments are assessed against such members by the Federal Deposit Insurance Corporation pursuant to section 7 of the Federal Deposit Insurance Act) except that—

"(i) the maximum amount of the aggregate amount assessed shall be the amount of additional funds necessary to fund the Funding Corporation Principal Fund;

"(ii) the sum of—

"(I) the amount assessed under this subparagraph; and

"(II) the amount assessed by the Financing Corporation under section 21;

shall not exceed the amount authorized to be assessed against Savings Association Insurance Fund members pursuant to section 7 of the Federal Deposit Insurance Act;

"(iii) the Financing Corporation shall have first priority to make the assessment; and

"(iv) the amount of the applicable assessment determined under such section 7 shall be reduced by the sum described in clause (ii) of this subparagraph.

"(B) RECEIVERSHIP PROCEEDS.—To the extent the amounts available pursuant to subparagraph (A) are insufficient to fund the Funding Corporation Principal Fund, the Federal Deposit Insurance Corporation shall transfer amounts to the Funding Corporation from the liquidating dividends and payments made on claims received by the FSLIC Resolution Fund from receiverships.

"(8) TRANSFER TO RTC.—The Funding Corporation shall transfer to the Resolution Trust Corporation $1,200,000,000 in fiscal year 1989.

"(f) OBLIGATIONS OF FUNDING CORPORATION.—

"(1) ISSUANCE.—The Funding Corporation may issue bonds, notes, debentures, and similar obligations in an aggregate amount not to exceed $30,000,000,000. No obligation may be issued under this paragraph unless, at the time of issuance, the face amounts (the amount of principal payable at maturity) of noninterest bearing instruments in the Funding Corporation Principal Fund are equal to the aggregate amount of principal on the obligations of the Funding Corporation that will be outstanding following such issuance.

"(2) INTEREST PAYMENTS.—The Funding Corporation shall pay the interest due on such obligations from funds obtained for such interest payments from the following sources:

"(A) EARNINGS ON CERTAIN ASSETS.—Earnings on assets of the Funding Corporation which are not invested in the Funding Corporation Principal Fund shall be used for in-

terest payments on outstanding debt of the Funding Corporation.

"(B) PROCEEDS FROM RESOLUTION TRUST CORPORATION.—To the extent the amounts available pursuant to subparagraph (A) are insufficient to cover the amount of interest payments, the Resolution Trust Corporation shall pay to the Funding Corporation—

"(i) the liquidating dividends and payments made on claims received by the Resolution Trust Corporation from receiverships to the extent such proceeds are determined by the Oversight Board to be in excess of funds presently necessary for resolution costs; and

"(ii) any proceeds from warrants and participations acquired by the Resolution Trust Corporation.

"(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—To the extent the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, the Federal Home Loan Banks shall pay to the Funding Corporation each calendar year the aggregate amount of $300,000,000 minus the amounts required in such year for Financing Corporation principal payments (pursuant to section 21) and the amounts required in such year by the Funding Corporation pursuant to subsection (e). Each Bank's individual share of any amounts required to be paid by the Banks under this subparagraph shall be determined as follows:

"(i) AMOUNTS UP TO 20 PERCENT OF NET EARNINGS.—Each Federal Home Loan Bank shall pay an equal percentage of its net earnings for the year for which such amount is required to be paid, up to a maximum of 20 percent of net earnings.

"(ii) AMOUNTS IN EXCESS OF 20 PERCENT OF NET EARNINGS.—If the aggregate amount required to be paid by the Federal Home Loan Banks under this subparagraph for any year exceeds 20 percent of the aggregate net earnings of the Banks for such year, each Bank shall pay 20 percent of its net earnings for such year as provided in clause (i), and each Bank's individual share of the excess of the required amount over 20 percent of the aggregate net earnings of the Banks for such year shall be determined by dividing—

"(I) the average month-end level in the prior year of advances outstanding by such Bank to Savings Associations Insurance Fund members; by

"(II) the average month-end level in the prior year of advances outstanding by all such Banks to Savings Associations Insurance Fund members.

"(D) PROCEEDS FROM SALE OF ASSETS.—To the extent the amounts available pursuant to subparagraphs (A), (B), and (C) are insufficient to cover the amount of interest payments, the FSLIC Resolution Fund shall transfer to the Funding Corporation any net proceeds from the sale of assets received from the Resolution Trust Corporation, which shall be used by the Funding Corporation to pay such interest.

"(E) TREASURY BACKUP.—

"(i) IN GENERAL.—To the extent the amounts available pursuant to subparagraphs (A), (B), (C), and (D) are insufficient to cover the amount of interest payments, the Secretary of the Treasury shall pay to the Funding Corporation the additional amount due, which shall be used by the Funding Corporation to pay such interest.

"(ii) LIABILITY OF FUNDING CORPORATION.—In each instance where the Secretary is required to make a payment under this subparagraph to the Funding Corporation, the amount of the payment shall become a liability of the Funding Corporation to be repaid to the Secretary upon dissolution of the Funding Corporation (to the extent the Funding Corporation may have any remaining assets).

"(iii) APPROPRIATION OF FUNDS.—There are hereby appropriated to the Secretary, for fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to carry out clause (i).

"(3) PRINCIPAL PAYMENTS.—On maturity of an obligation issued under this subsection, the obligation shall be repaid by the Funding Corporation from the liquidation of noninterest bearing instruments held in the Funding Corporation Principal Fund.

"(4) PROCEEDS TO BE TRANSFERRED TO RESOLUTION TRUST CORPORATION.—Subject to terms and conditions approved by the Oversight Board, the proceeds (less any discount, plus any premium, net of issuance costs) of any obligation issued by the Funding Corporation shall be used to—

"(A) purchase the capital certificates issued by the Resolution Trust Corporation under section 21A; or

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

"(5) INVESTMENT OF UNITED STATES FUNDS IN OBLIGATIONS.—Obligations issued under this section by the Funding Corporation, at the direction of the Oversight Board shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer of the United States.

"(6) MARKET FOR OBLIGATIONS.—All persons having the power to invest in, sell, underwrite, purchase for their own accounts, accept as security, or otherwise deal in obligations of the Federal Home Loan Banks shall also have the power to do so with respect to obligations of the Funding Corporation.

"(7) TAX EXEMPT STATUS.—

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

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

"(8) OBLIGATIONS NOT EXEMPT SECURITIES.—

"(A) IN GENERAL.—For purposes of the laws administered by the Securities and Exchange Commission, obligations of the Funding Corporation—

"(i) shall not be considered to be securities issued or guaranteed by a person controlled or supervised by, or acting as an instrumentality of, the Government of the United States; and

"(ii) shall not be considered to be 'exempted securities' within the meaning of section 3(a)(12)(A)(i) of the Securities Exchange Act of 1934, except that such obligations shall be considered to be exempted securities for purposes of section 15 of such Act.

"(B) AUTHORITY OF COMMISSION.—Notwithstanding subparagraph (A), the Securities and Exchange Commission may, by rule or order, consistent with the public interest and the protection of investors, exempt securities issued by the Funding Corporation from the registration requirements of the Securities Act of 1933, subject to such terms and conditions as the Commission may prescribe.

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

"(10) NO FULL FAITH AND CREDIT OF THE UNITED STATES.—Obligations of the Funding Corporation shall not be obligations of, or guaranteed as to principal by, the Federal Home Loan Bank System, the Federal Home Loan Banks, the United States, or the Resolution Trust Corporation and the obligations shall so plainly state. The Secretary shall pay interest on such obligations as required pursuant to this subsection.

"(g) USE AND DISPOSITION OF ASSETS OF FUNDING CORPORATION NOT TRANSFERRED TO RESOLUTION TRUST CORPORATION.—

"(1) IN GENERAL.—Subject to regulations, restrictions, and limitations prescribed by the Oversight Board, assets of the Funding Corporation which are not required to be invested in capital certificates issued by the Resolution Trust Corporation under section 21A and are not needed for current interest payments shall be invested in direct obligations of the United States issued by the Secretary.

"(2) SEPARATE ACCOUNT FOR ZERO COUPON INSTRUMENTS HELD TO ENSURE PAYMENT OF PRINCIPAL.—Except as provided in subsection (e)(8), the Funding Corporation shall invest amounts received pursuant to subsection (e) in, and hold in a separate account to be known as the Funding Corporation Principal Fund, noninterest bearing instruments—

"(A) which are direct obligations of the United States issued by the Secretary; and

"(B) the total of the face amounts (the amount of principal payable at maturity) of which is approximately equal to the aggregate amount of principal on the obligations of the Funding Corporation.

"(h) MISCELLANEOUS PROVISIONS.—

"(1) TREATMENT FOR CERTAIN PURPOSES.—Except as provided in subsection (f)(7)(B), the Funding Corporation shall be treated

as a Federal Home Loan Bank for purposes of section 13 (to the extent such section relates to State, municipal, and local taxation) and section 23.

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

"(3) APPLICABILITY OF CERTAIN PROVISIONS RELATING TO GOVERNMENT CORPORATIONS.—The Funding Corporation shall be treated, for purposes of sections 9105, 9107, and 9108 of title 31, United States Code, as a mixed-ownership Government corporation which has capital of the Government.

"(4) JURISDICTION AND POWER TO REMOVE.—

"(A) FEDERAL COURT JURISDICTION.—Notwithstanding any other provision of law, any civil action, suit, or proceeding to which the Funding Corporation is a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction over such action, suit, or proceeding.

"(B) REMOVAL.—The Funding Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States District Court for the District of Columbia.

"(i) ANNUAL REPORT.—

"(1) IN GENERAL.—The Oversight Board shall annually submit a full report of the operations, activities, budget, receipts, and expenditures of the Funding Corporation for the preceding 12-month period.

"(2) CONTENTS.—The report required under paragraph (1) shall include—

"(A) audited statements and any information necessary to make known the financial condition and operations of the Funding Corporation in accordance with generally accepted accounting principles;

"(B) the financial operating plans and forecasts (including estimates of actual and future spending, and estimates of actual and future cash obligations) of the Funding Corporation taking into account its financial commitments, guarantees, and other contingent liabilities; and

"(C) the results of the annual audit of the financial transactions of the Funding Corporation conducted by the Comptroller General pursuant to section 9105(a) of title 31, United States Code.

"(3) SUBMISSION TO CONGRESS AND PRESIDENT.—The Oversight Board shall submit each annual report required under this subsection to the Congress and the President as soon as practicable after the end of the calendar year for which the report is made, but not later than June 30 of the year following such calendar year.

"(j) TERMINATION OF FUNDING CORPORATION.—

"(1) IN GENERAL.—The Funding Corporation shall be dissolved, as soon as practicable, after the maturity and full payment of all obligations issued by the Funding Corporation under this section.

"(2) AUTHORITY OF OVERSIGHT BOARD TO CONCLUDE AFFAIRS OF FUNDING CORPORATION.—Effective on the date of the dissolution of the Funding Corporation under paragraph (1), the Oversight

Board may exercise on behalf of the Funding Corporation any power of the Funding Corporation which the Oversight Board determines to be necessary to settle and conclude the affairs of the Funding Corporation.

"(k) DEFINITIONS.—For purposes of this section:

"(1) ADMINISTRATIVE EXPENSES.—The term 'administrative expenses' does not include—

"(A) any interest on, or any redemption premium with respect to, any obligation of the Funding Corporation; or

"(B) issuance costs.

"(2) CUSTODIAN FEE.—The term 'custodian fee' means—

"(A) any fee incurred by the Funding Corporation in connection with the transfer of any security to, or the maintenance of any security in, the segregated account established under subsection (g); and

"(B) any other expense incurred by the Funding Corporation in connection with the establishment or maintenance of such account.

"(3) FUNDING CORPORATION.—The term 'Funding Corporation' means the Resolution Funding Corporation established in subsection (b).

"(4) FUNDING CORPORATION PRINCIPAL FUND.—The term 'Funding Corporation Principal Fund' means the separate account established under subsection (g)(2).

"(5) ISSUANCE COSTS.—The term 'issuance costs'—

"(A) means issuance fees and commissions incurred by the Funding Corporation in connection with the issuance or servicing of any obligation of the Funding Corporation; and

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

"(6) NET EARNINGS.—The term 'net earnings' means net earnings without reduction for chargeoffs or expenses incurred by a Federal Home Loan Bank for the purchase of capital stock of the Financing Corporation or payments relating to the Funding Corporation required by the Oversight Board under subsections (e) and (f).

"(7) OVERSIGHT BOARD.—The term 'Oversight Board' means—

"(A) the Oversight Board of the Resolution Trust Corporation under section 21A; and

"(B) after the termination of the Resolution Trust Corporation—

"(i) the Secretary of the Treasury;

"(ii) the Chairman of the Board of Governors of the Federal Reserve System; and

"(iii) the Secretary of Housing and Urban Development.

"(8) SAVINGS ASSOCIATION INSURANCE FUND MEMBER.—The term 'Savings Association Insurance Fund member' means a Savings Association Insurance member as such term is defined by section 7(l) of the Federal Deposit Insurance Act.

"(9) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

"(10) UNDIVIDED PROFITS.—The term 'undivided profits' means earnings retained after dividends have been paid minus the sum of—

"(A) that portion required to be added to reserves maintained pursuant to the first 2 sentences of section 16; and

"(B) the dollar amounts held by the respective Federal Home Loan Banks in special dividend stabilization reserves on December 31, 1985, as determined by the table set forth in section 21(d)(7).

"(l) REGULATIONS.—The Oversight Board may prescribe any regulations necessary to carry out this section.".

(b) FUNDING CORPORATION AS MIXED-OWNERSHIP GOVERNMENT CORPORATION.—

(1) IN GENERAL.—Section 9101(2) of title 31, United States Code, is amended by adding at the end the following new subparagraph:

"(M) the Resolution Funding Corporation.".

(2) ANNUAL GAO AUDIT.—

(A) IN GENERAL.—Section 9105(a)(2) of title 31, United States Code, is amended by adding at the end the following new sentence: "The Comptroller General shall audit the Resolution Funding Corporation annually.".

(B) CONFORMING AMENDMENT.—Section 9105(a)(2) of title 31, United States Code, is amended by striking "Federal Savings and Loan Insurance Corporation and".

SEC. 512. FINANCING CORPORATION.

Section 21 of the Federal Home Loan Bank Act (12 U.S.C. 1441) is amended—

(1) by striking "insured institution" each place it appears and inserting "Savings Association Insurance Fund member";

(2) by striking "Federal Home Loan Bank Board" and "Board" each place they appear and inserting "Federal Housing Finance Board";

(3) in subsection (c)(2), by inserting before the period the following: "prior to the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and thereafter to transfer the proceeds of any obligation issued by the Financing Corporation to the FSLIC Resolution Fund";

(4) in subsection (c)(9) by striking "or section 402(b) of the National Housing Act";

(5) by amending the portion of subsection (d)(4) appearing before the table to read as follows: "Of the first $1,000,000,000 in the aggregate which the Oversight Board pursuant to section 21B or the Federal Housing Finance Board under this section (as the case may be) may require the Federal Home Loan Banks collectively to invest in the stock of the Funding Corporation or invest in the capital stock of the Financing Corporation, respectively, the amount which each Federal Home Loan Bank (or any successor to such Bank) shall invest shall be determined by the Oversight Board or the Federal Housing Finance Board (as the case may be) by multiplying the aggregate amount of such payment or investment by all Banks by the percentage appearing in the following table for each such Bank:";

(6) in subsection (d)(5), by striking "$1,000,000,000 which the Board" and inserting "the $1,000,000,000 amount referred to in paragraph (4) which the Federal Housing Finance Board";

(7) in subsection (d)(6)(A)(iii), by striking "available for dividends";

(8) in subsection (d)(6)(D), by striking "available for dividends";

(9) in subsection (d)(6)(E), by striking "available for dividends";

(10) by striking subsection (d)(6)(F) and adding at the end of subsection (l) the following:

"(4) NET EARNINGS DEFINED.—The term 'net earnings' means net earnings without reduction for any chargeoffs or expenses incurred by a Bank in connection with the purchase of capital stock of the Financing Corporation or the purchase of stock of the Funding Corporation required by the Oversight Board under subsections (e) and (f) of section 21B.";

(11) in subsection (e)(3)(A)—

(A) by striking "used to";

(B) by inserting "used to" before "purchase" and "refund"; and

(C) by inserting before the semicolon the following: "prior to the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and thereafter transferred to the FSLIC Resolution Fund";

(12) in subsection (e)—

(A) by striking paragraph (2) and redesignating paragraphs (3) through (10) as paragraphs (2) through (9), respectively, and

(B) in paragraph (6) as redesignated, by striking "the Federal Savings and Loan Insurance Corporation" and inserting "the FSLIC Resolution Fund";

(13) by striking subsection (f) and inserting the following:

"(f) SOURCES OF FUNDS FOR INTEREST PAYMENTS; FINANCING CORPORATION ASSESSMENT AUTHORITY.—The Financing Corporation shall obtain funds for anticipated interest payments, issuance costs, and custodial fees on obligations issued hereunder from the following sources:

"(1) PREENACTMENT ASSESSMENTS.—The Financing Corporation assessments which were assessed on insured institutions pursuant to this section as in effect prior to the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(2) NEW ASSESSMENT AUTHORITY.—To the extent the amounts available pursuant to paragraph (1) are insufficient to cover the amount of interest payments, issuance costs, and custodial fees, the Financing Corporation, with the approval of the Board of Directors of the Federal Deposit Insurance Corporation, shall assess against each Savings Association Insurance Fund member an assessment (in the same manner as assessments are assessed against such members by the Federal Deposit Insurance Corporation under section 7 of the Federal Deposit Insurance Act), except that—

"(A) the sum of—

"(i) the amount assessed under this paragraph; and

"(ii) the amount assessed by the Funding Corporation under section 21B;

shall not exceed the amount authorized to be assessed against Savings Association Insurance Fund members pursuant to section 7 of the Federal Deposit Insurance Act;

"(B) the Financing Corporation shall have first priority to make the assessment; and

"(C) the amount of the applicable assessment determined under such section 7 shall be reduced by the sum described in subparagraph (A) of this paragraph.

"(3) RECEIVERSHIP PROCEEDS.—To the extent the amounts available pursuant to paragraphs (1) and (2) are insufficient to cover the amount of interest payments, issuance costs, and custodial fees, and if the funds are not required by the Resolution Funding Corporation to provide funds for the Funding Corporation Principal Fund under section 21B, the Federal Deposit Insurance Corporation shall transfer to the Financing Corporation, from the liquidating dividends and payments made on claims received by the FSLIC Resolution Fund (established under section 11A of the Federal Deposit Insurance Act) from receiverships, the remaining amount of funds necessary for the Financing Corporation to make interest payments.";

(14) in subsection (g)(1) by striking "National Housing Act," and inserting "National Housing Act before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and after such date in capital certificates issued by the FSLIC Resolution Fund,";

(15) in subsection (g), by inserting the following at the end of paragraph (2): "For purposes of the foregoing, the Financing Corporation shall be deemed to hold noninterest bearing instruments that it lends temporarily to primary United States Treasury dealers in order to enhance market liquidity and facilitate deliveries, provided that United States Treasury securities of equal or greater value have been delivered as collateral.";

(16) in subsection (j), by striking subparagraph (A) of paragraph (1) and inserting the following:

"(A) the maturity and full payment of all obligations issued by the Financing Corporation pursuant to this section; or"; and

(17) in subsection (l)—

(A) by striking paragraph (1) and inserting the following:

"(1) SAVINGS ASSOCIATION INSURANCE FUND MEMBER.—The term 'Savings Association Insurance Fund member' means a savings association which is a Savings Association Insurance Fund member as defined by section 7(l) of the Federal Deposit Insurance Act."; and

(B) by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

TITLE VI—THRIFT ACQUISITION ENHANCEMENT PROVISIONS

SEC. 601. ACQUISITION OF THRIFT INSTITUTIONS BY BANK HOLDING COMPANIES.

(a) IN GENERAL.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended by adding at the end the following new subsection:

"(i) ACQUISITION OF SAVINGS ASSOCIATIONS.—

"(1) IN GENERAL.—The Board may approve an application by any bank holding company under subsection (c)(8) to acquire any savings association in accordance with the requirements and limitations of this section.

"(2) PROHIBITION ON TANDEM RESTRICTIONS.—In approving an application by a bank holding company to acquire a savings association, the Board shall not impose any restriction on transactions between the savings association and its holding company affiliates, except as required under sections 23A and 23B of the Federal Reserve Act or any other applicable law.".

(b) MODIFICATION OF PRIOR APPROVALS.—If the Board of Governors of the Federal Reserve System, in approving an application by a bank holding company to acquire a savings association, imposed any restriction that would have been prohibited under section 4(i)(2) of the Bank Holding Company Act of 1956 (as added by subsection (a) of this section) if that section had been in effect when the application was approved, the Board shall modify that approval in a manner consistent with that section.

12 USC 1843 note.

SEC. 602. TECHNICAL AMENDMENTS TO THE BANK HOLDING COMPANY ACT.

(a) DEFINITIONS.—Section 2(j) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(j)) is amended to read as follows:

"(j) DEFINITION OF SAVINGS ASSOCIATIONS AND RELATED TERM.—The term 'savings association' or 'insured institution' means—

"(1) any Federal savings association or Federal savings bank;

"(2) any building and loan association, savings and loan association, homestead association, or cooperative bank if such association or cooperative bank is a member of the Savings Association Insurance Fund; and

"(3) any savings bank or cooperative bank which is deemed by the Director of the Office of Thrift Supervision to be a savings association under section 10(l) of the Home Owners' Loan Act.".

(b) INSURANCE REQUIRED.—Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)) is amended by striking "an insured bank as defined in section 3(h)" and inserting "an insured depository institution as defined in section 3".

SEC. 603. PASSIVE INVESTMENTS BY COMPANIES CONTROLLING CERTAIN NONBANK BANKS.

(a) IN GENERAL.—Section 4(f)(2)(A)(ii) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(2)(A)(ii)) is amended to read as follows:

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

"(I) shares held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

"(II) shares held by any person as a bona fide fiduciary solely for the benefit of employees of either the company described in paragraph (1) or any subsidiary of that company and the beneficiaries of those employees;

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

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

"(V) shares over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

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

"(VII) shares or assets acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

"(VIII) shares or assets of a savings association described in paragraph (10) or (12) of this subsection;

"(IX) shares of a savings association held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940, except as provided in paragraph (11); and

"(X) shares issued in a qualified stock issuance under section 10(q) of the Home Owners' Loan Act;

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), (V), and (VIII)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association; or".

(b) TECHNICAL AMENDMENTS.—

(1) Section 4(f)(10) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(10)) is amended—

(A) by striking "and (ii)(V)" and inserting "and (ii)(VIII)"; and

(B) in subparagraph (A), by inserting "or section 13(k) of the Federal Deposit Insurance Act" after "National Housing Act".

(2) Section 4(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)) is amended by adding at the end the following:

"(11) SHARES HELD BY INSURANCE AFFILIATES.—Shares described in clause (ii)(IX) of paragraph (2)(A) shall not be excluded for purposes of clause (ii) of such paragraph if—

"(A) all shares held under such clause (ii)(IX) by all insurance company affiliates of such savings association in the aggregate exceed 5 percent of all outstanding shares or of the voting power of the savings association; or

"(B) such shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association.".

SEC. 604. PURCHASE OF MINORITY INTEREST IN UNDERCAPITALIZED SAVINGS ASSOCIATIONS BY HOLDING COMPANIES ALLOWED.

(a) AMENDMENT TO DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.—Section 205 of the Depository Institution Management Interlocks Act (12 U.S.C. 3204) is amended by adding at the end thereof the following new paragraph:

"(9) Any savings association (as defined in section 10(a)(1)(A) of the Home Owners' Loan Act or any savings and loan holding company (as defined in section 10(a)(1)(D) of such Act) which has issued stock in connection with a qualified stock issuance pursu-

ant to section 10(q) of such Act, except that this paragraph shall apply only with respect to service as a single management official of such savings association or holding company, or any subsidiary of such savings association or holding company, by a single management official of the savings and loan holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the Director of the Office of Thrift Supervision has determined that such service is consistent with the purposes of this Act and the Home Owners' Loan Act.".

(b) AMENDMENTS TO BANK HOLDING COMPANY ACT.—Section 4(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)) is amended—

(1) by adding at the end thereof the following new paragraphs:

"(12) EXEMPTION UNAFFECTED BY CERTAIN OTHER ACQUISITIONS.—For purposes of clauses (i) and (ii)(VIII) of paragraph (2)(A), an insured institution is described in this paragraph if the insured institution was acquired (or any shares or assets of such institution were acquired) by a company described in paragraph (1)—

"(A) from the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or the Director of the Office of Thrift Supervision, in any capacity; or

"(B) in an acquisition in which the insured institution has been found to be in danger of default (as defined in section 3 of the Federal Deposit Insurance Act) by the appropriate Federal or State authority.

"(13) SPECIAL RULE RELATING TO SHARES ACQUIRED IN A QUALIFIED STOCK ISSUANCE.—A company described in paragraph (1) that holds shares issued in a qualified stock issuance pursuant to section 10(q) of the Home Owners' Loan Act by any savings association or savings and loan holding company (neither of which is a subsidiary) shall not be deemed to control such savings association or savings and loan holding company solely because such company holds such shares unless—

"(A) the company fails to comply with any requirement or condition imposed by paragraph (2)(A)(ii)(X) or section 10(q) of the Home Owners' Loan Act with respect to such shares; or

"(B) the shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company."; and

(2) in clause (i) of paragraph (2)(A), by striking out "paragraph (10)" and inserting in lieu thereof "paragraph (10) or (12)".

TITLE VII—FEDERAL HOME LOAN BANK SYSTEM REFORMS

Subtitle A—Federal Home Loan Bank Act Amendments

SEC. 701. DEFINITIONS.

(a) IN GENERAL.—Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) is amended—

(1) by striking paragraphs (1) and (2) and inserting the following:

"(1) BOARD.—The term 'Board' means the Federal Housing Finance Board established under section 2A.

"(2)(A) BANK.—The term 'Federal Home Loan Bank' or 'Bank' means a bank established under the authority of the Federal Home Loan Bank Act.

"(B) BANK SYSTEM.—The term 'Federal Home Loan Bank System' means the Federal Home Loan Banks under the supervision of the Board.";

(2) in paragraph (4) by striking "(except when used in reference to the member of the Board)"; and

(3) by striking paragraph (9) and adding at the end the following:

"(9) SAVINGS ASSOCIATION.—The term 'savings association' has the meaning given to such term in section 3 of the Federal Deposit Insurance Act.

"(10) CHAIRPERSON.—The term 'Chairperson' means the Chairperson of the Board.

"(11) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

"(12) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' means—

"(A) an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), and

"(B) except as used in sections 21A and 21B, an insured credit union (as defined in section 101 of the Federal Credit Union Act).".

(b) CHANGE IN TERMS.—

12 USC 1421 *et seq.*

(1) IN GENERAL.—Except as otherwise specifically provided in this title, the Federal Home Loan Bank Act is amended by striking "board" (other than in section 7) and "Federal Home Loan Bank Board" each place such terms appear and inserting "Board".

12 USC 1421 *et seq.*

(2) CHAIRPERSON.—The Federal Home Loan Bank Act is amended by striking "Chairman" and "chairman" each place such terms appear and inserting "Chairperson" and "chairperson".

(3) EXCEPTIONS.—

(A) GENERAL RULE.—The amendments made by paragraph (1) shall not apply to sections 18(c), 21A, and 21B of the Federal Home Loan Bank Act.

(B) CONFORMING AMENDMENT.—Section 18(c) of the Federal Home Loan Bank Act (12 U.S.C. 1438(c)) is amended by striking "Federal Home Loan Bank Board" and "board" each place such terms appear and inserting "Director of the Office of Thrift Supervision".

(c) TECHNICAL AMENDMENTS.—Section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431) is amended—

(1) in subsection (e)(2)(C), by inserting "Federal Home Loan" before "Banks,"; and

(2) in the first sentence of the third paragraph of subsection (i) by inserting "Federal" before "Home Loan Bank System".

SEC. 702. FEDERAL HOUSING FINANCE BOARD ESTABLISHED.

(a) IN GENERAL.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 2 the following new sections:

"SEC. 2A. FEDERAL HOUSING FINANCE BOARD. 12 USC 1422a.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—There is established the Federal Housing Finance Board, which shall succeed to the authority of the Federal Home Loan Bank Board with respect to the Federal Home Loan Banks.

"(2) STATUS.—The Board shall be an independent agency in the executive branch of the Government.

"(3) DUTIES.—The duties of the Board shall be—

"(A) to supervise the Federal Home Loan Banks,

"(B) to ensure that the Federal Home Loan Banks carry out their housing finance mission,

"(C) to ensure the Federal Home Loan Banks remain adequately capitalized and able to raise funds in the capital markets, and

"(D) to ensure the Federal Home Loan Banks operate in a safe and sound manner.

"(b) MANAGEMENT.—

"(1) IN GENERAL.—The management of the Board shall be vested in a Board of Directors consisting of 5 directors as follows:

"(A) The Secretary who shall serve without additional compensation.

"(B) Four citizens of the United States, appointed by the President, by and with the advice and consent of the Senate, each of whom shall hold office for a term of 7 years.

"(2) PROVISIONS RELATING TO APPOINTED DIRECTORS.—

"(A) IN GENERAL.—The directors appointed pursuant to paragraph (1)(B) shall be from among persons with extensive experience or training in housing finance or with a commitment to providing specialized housing credit. An appointed director shall not hold any other appointed office during his or her term as director. Not more than 3 directors shall be members of the same political party. Not more than 1 appointed director shall be from any single district of the Federal Home Loan Bank System. Nominations pursuant to this subparagraph shall be referred in the Senate to the Committee on Banking, Housing, and Urban Affairs.

"(B) CONSUMER REPRESENTATIVE.—At least 1 director shall be chosen from an organization with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections.

"(C) LIMITATIONS ON CONFLICTS OF INTEREST.—No director may—

"(i) serve as a director or officer of any Federal Home Loan Bank or any member of any Bank; or

"(ii) hold shares of, or any other financial interest in, any member of any such Bank.

"(3) INITIAL TERMS.—Notwithstanding paragraph (2), of the directors first appointed—

"(A) one shall be appointed for a term of 1 year;

"(B) one shall be appointed for a term of 3 years; and

"(C) one shall be appointed for a term of 5 years.

"(c) CHAIRPERSON; TRANSITIONAL PROVISIONS.—

President of U.S.

"(1) IN GENERAL.—The President shall designate 1 of the appointed directors to be the Chairperson of the Board. The Chairperson shall designate another director to serve as Acting Chairperson during the absence or disability of the Chairperson.

"(2) TRANSITIONAL PROVISION.—Beginning on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, until such time that at least 2 directors are appointed and confirmed pursuant to subsection (b), the Secretary shall act for all purposes and with the full powers of the Board of Directors. The Secretary may utilize the services of employees from the Department of Housing and Urban Development to perform services for the Board of Directors during such transition period.

"(d) VACANCIES.—

"(1) IN GENERAL.—Any vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made. Any director appointed to fill a vacancy occurring before the expiration of the term for which such director's predecessor was appointed shall be appointed only for the remainder of such term. Each director may continue to serve until a successor has been appointed and qualified.

"(2) THE SECRETARY.—In the event of a vacancy in the office of Secretary or during the absence or disability of the Secretary, the Acting Secretary shall act as a director in place of the Secretary.

12 USC 1422b.

"SEC. 2B. POWERS AND DUTIES.

"(a) GENERAL POWERS.—The Board shall have the following powers:

"(1) To supervise the Federal Home Loan Banks and to promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of this Act.

"(2) To suspend or remove for cause a director, officer, employee, or agent of any Federal Home Loan Bank or joint office. The cause of such suspension or removal shall be communicated in writing to such director, officer, employee, or agent and to such Bank or joint office. Notwithstanding any other provision of this Act, no officer, employee, or agent of a Bank or joint office shall be a Federal officer or employee under any definition of either term in title 5, United States Code.

"(3) To determine necessary expenditures of the Board under this Act and the manner in which such expenditures shall be incurred, allowed, and paid.

"(4) To use the United States mails in the same manner and under the same conditions as a department or agency of the United States.

"(b) STAFF.—

"(1) BOARD STAFF.—Subject to title IV of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Board may employ, direct, and fix the compensation and number of employees, attorneys, and agents of the Federal Housing Finance Board, except that in no event shall the Board

delegate any function to any employee, administrative unit of any Bank, or joint office of the Federal Home Loan Bank System. The prohibition contained in the preceding sentence shall not apply to the delegation of ministerial functions including issuing consolidated obligations pursuant to section 11(b). In directing and fixing such compensation, the Board shall consult with and maintain comparability with the compensation at the Federal bank regulatory agencies. Such compensation shall be paid without regard to the provisions of other laws applicable to officers or employees of the United States, except the Chairperson and other Directors shall be compensated as prescribed in sections 5314 and 5315 of title 5, United States Code, respectively.

"(2) ABOLITION OF JOINT OFFICES.—The joint or collective offices of the Federal Home Loan Bank System, except for the Office of Finance, are hereby abolished.

"(c) RECEIPTS OF THE BOARD.—Receipts of the Board derived from assessments levied upon the Federal Home Loan Banks and from other sources (other than receipts from the sale of consolidated Federal Home Loan Bank bonds and debentures issued under section 11 of this Act) shall be deposited in the Treasury of the United States. Salaries of the directors and other employees of the Board and all other expenses thereof may be paid from such assessments or other sources and shall not be construed to be Government Funds or appropriated monies, or subject to apportionment for the purposes of chapter 15 of title 31, United States Code, or any other authority.

"(d) ANNUAL REPORT.—The Board shall make an annual report to the Congress.".

(b) AUDITS AND REPORTS.—Section 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440) is amended by adding at the end the following: "In addition to such examinations, the Comptroller General may audit or examine the Board and the Banks, to determine the extent to which the Board and the Banks are fairly and effectively fulfilling the purposes of this Act.".

(c) APPOINTMENT OF INSPECTOR GENERAL.—Section 8E(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking "Federal Home Loan Bank Board," and inserting "Federal Housing Finance Board,".

SEC. 703. TERMINATION OF THE FEDERAL HOME LOAN BANK BOARD.

(a) IN GENERAL.—Section 17 of the Federal Home Loan Bank Act (12 U.S.C. 1437) is hereby repealed.

SEC. 704. ELIGIBILITY FOR MEMBERSHIP.

(a) INSURED DEPOSITORY INSTITUTIONS.—Section 4(a) of the Federal Home Loan Bank Act (12 U.S.C. 1424(a)) is amended to read as follows:

"(a) CRITERIA FOR ELIGIBILITY.—

"(1) IN GENERAL.—Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution (as defined in section 2 of this Act), shall be eligible to become a member of a Federal Home Loan Bank if such institution—

"(A) is duly organized under the laws of any State or of the United States;

"(B) is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States; and

"(C) makes such home mortgage loans as, in the judgment of the Board, are long-term loans (except that in the case of a savings bank, this subparagraph applies only 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).

"(2) QUALIFIED THRIFT LENDER.—An insured depository institution that is not a member on January 1, 1989, may become a member of a Federal Home Loan Bank only if—

"(A) the insured depository institution has at least 10 percent of its total assets in residential mortgage loans;

"(B) the insured depository institution's financial condition is such that advances may be safely made to such institution; and

"(C) the character of its management and its home-financing policy are consistent with sound and economical home financing.

An insured depository institution commencing its initial business operations after January 1, 1989, may become a member of a Federal Home Loan Bank if it complies with regulations and orders prescribed by the Board for the 10 percent asset requirement (described in the preceding sentence) within one year after the commencement of its operations.".

(c) REPEAL OF SECTION 27.—Section 27 of the Federal Home Loan Bank Act (12 U.S.C. 1447) is hereby repealed.

SEC. 705. REPEAL OF PROVISION RELATING TO RATE OF INTEREST ON DEPOSITS.

Section 5B of the Federal Home Loan Bank Act (12 U.S.C. 1425b) is hereby repealed.

SEC. 706. CAPITAL STOCK.

Section 6 of the Federal Home Loan Bank Act (12 U.S.C. 1426) is amended—

(1) by striking subsections (a), (e), (f), and (g) and redesignating subsections (b), (c), (d), (h), (i), (j), (k), and (m) as subsections (a), (b), (c), (d), (e), (f), (g), and (h), respectively;

(2) by striking the second sentence of subsection (e) (as redesignated by paragraph (1) of this section) and inserting the following: "If any member's membership in a Federal Home Loan Bank is terminated, the indebtedness of such member to the Federal Home Loan Bank shall be liquidated in an orderly manner (as determined by the Federal Home Loan Bank), and upon completion of such liquidation, the capital stock in the Federal Home Loan Bank owned by such member shall be surrendered and canceled. Any such liquidation shall be deemed a prepayment of any such indebtedness, and shall be subject to any penalties or other fees applicable to such prepayment."; and

(3) in subsection (h) (as redesignated by paragraph (1) of this section), by striking "charter" and all that follows through the end period and inserting "charter as a Federal savings association (as defined in section 3 of the Federal Deposit Insurance Act).".

SEC. 707. ELECTION OF BANK DIRECTORS.

Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) is amended—

(1) in subsection (a)—

(A) by striking "appointed by the Federal Home Loan Bank Board referred to in subsection (b) of section 17, hereinafter in this section referred to as the Board" and inserting "appointed by the Board referred to in section 2A",

(B) by inserting after the last sentence the following: "At least 2 of the Federal Home Loan Bank directors who are appointed by the Board shall be representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections. No Federal Home Loan Bank director who is appointed pursuant to this subsection may, during such Bank director's term of office, serve as an officer of any Federal Home Loan Bank or a director or officer of any member of a Bank, or hold shares, or any other financial interest in, any member of a Bank.";

(2) by inserting after the first sentence of subsection (b) the following: "No person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of Federal Home Loan Bank director.";

(3) by amending subsection (f) to read as follows:

"(f) VACANCIES.—

"(1) IN GENERAL.—A Bank director appointed or elected to fill a vacancy shall be appointed or elected for the unexpired term of his or her predecessor in office.

"(2) APPOINTED BANK DIRECTORS.—In the event of a vacancy in any appointive Bank directorship, such vacancy shall be filled through appointment by the Board for the unexpired term. If any appointive Bank director shall cease to have the qualifications set forth in subsection (a), the office held by such person shall immediately become vacant, but such person may continue to act as a Bank director until his or her successor assumes the vacated office or the term of such office expires, whichever occurs first.

"(3) ELECTED BANK DIRECTORS.—In the event of a vacancy in any elective Bank directorship, such vacancy shall be filled by an affirmative vote of a majority of the remaining Bank directors, regardless of whether such remaining Bank directors constitute a quorum of the Bank's board of directors. A Bank director so elected shall satisfy the requirements for eligibility which were applicable to his predecessor. If any elective Bank director shall cease to have any qualification set forth in this section, the office held by such person shall immediately become vacant, and such person shall not continue to act as a Bank director."; and

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

"(k) INDEMNIFICATION OF DIRECTORS, OFFICERS, AND EMPLOYEES.—The board of directors of each Bank shall determine the terms and conditions under which such Bank may indemnify its directors, officers, employees or agents.".

SEC. 708. REPEAL OF PROVISIONS RELATING TO CERTAIN POWERS OF THE FEDERAL HOME LOAN BANK BOARD.

Section 19 of the Federal Home Loan Bank Act (12 U.S.C. 1439) is hereby repealed.

SEC. 709. POWERS AND DUTIES OF BANKS.

Section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431) is amended—

(1) in subsection (e)(1), by inserting "incidental to activities" after "not";

(2) in subsection (f), by striking out "or whenever in the judgment of at least 4 members of the board an emergency exists requiring such action";

(3) by amending subsection (k) to read as follows:

"(k) BANK LOANS TO SAIF.—

"(1) LOANS AUTHORIZED.—Subject to paragraph (3), the Federal Home Loan Banks may, upon the request of the Federal Deposit Insurance Corporation, make loans to such Corporation for the use of the Savings Association Insurance Fund.

"(2) LIABILITY OF THE FUND.—Any loan by a Federal Home Loan Bank pursuant to paragraph (1) shall be a direct liability of the Savings Association Insurance Fund.

"(3) INTEREST ON AND SECURITY FOR SUCH LOANS.—Any loan by a Federal Home Loan Bank pursuant to paragraph (1) shall—

"(A) bear a rate of interest not less than such Bank's current marginal cost of funds, taking into account the maturities involved; and

"(B) be adequately secured.".

SEC. 710. ELIGIBILITY OF BORROWERS TO SECURE ADVANCES.

(a) IN GENERAL.—Section 9 of the Federal Home Loan Bank Act (12 U.S.C. 1429) is amended by striking "or nonmember borrower" in the first sentence.

(b) CONFORMING AMENDMENTS.—The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended—

12 USC 1422, 1424.

(1) in sections 2(5) and 4(b), by striking "or a nonmember borrower" wherever it appears;

12 USC 1426.

(2) in section 6(e) (as redesignated by section 706 of this Act), by striking "or nonmember borrower" wherever it appears;

(3) in section 6(e) (as redesignated by section 706 of this Act), by striking "or deprive any nonmember borrower of the privilege of further advances,";

12 USC 1427, 1430.

(4) in sections 7(j) and 10(c), by striking "or nonmember borrower" wherever it appears;

(5) in section 10(c), by striking ", or made to a nonmember borrower" in the second sentence; and

12 USC 1431.

(6) in sections 11(g) and 11(h), by striking "or nonmember borrowers" wherever it appears.

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

"(g) COMMUNITY SUPPORT REQUIREMENTS.—

Regulations.

"(1) IN GENERAL.—Before the end of the 2-year period beginning on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Board shall adopt regulations establishing standards of community

investment or service for members of Banks to maintain continued access to long-term advances.

"(2) FACTORS TO BE INCLUDED.—The regulations promulgated pursuant to paragraph (1) shall take into account factors such as a member's performance under the Community Reinvestment Act of 1977 and the member's record of lending to first-time homebuyers.".

SEC. 711. ADMINISTRATIVE EXPENSES.

Section 18(b) of the Federal Home Loan Bank Act (12 U.S.C. 1437(b)) is amended to read as follows: 12 USC 1438.

"(b) ASSESSMENTS FOR ADMINISTRATIVE EXPENSES.—

"(1) IN GENERAL.—The Board may impose a semiannual assessment on the Federal Home Loan Banks, the aggregate amount of which is sufficient to provide for the payment of the Board's estimated expenses for the period for which such assessment is made.

"(2) DEFICIENCIES.—If, at any time, amounts available from any assessment for any semiannual period are insufficient to cover the expenses of the Board incurred in carrying out the provisions of this Act during such period, the Board may make an immediate assessment against the Banks to cover the amount of the deficiency for such semiannual period.

"(3) SURPLUSES.—If, at the end of any semiannual period for which an assessment is made, any amount remains from such assessment, such amount will be deducted from the assessment on the Banks by the Board for the following semiannual period.

"(4) TRANSITION PROVISION.—On or after the effective date of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Board may levy a one-time special assessment on the Banks pursuant to this subsection for the Board's estimated expenses for the transitional period following enactment of such Act, if such assessment is made before the Board's first semiannual assessment under paragraph (1).".

SEC. 712. NONADMINISTRATIVE EXPENSES.

Subsection (a) of section 18 of the Federal Home Loan Bank Act (12 U.S.C. 1438(a)) and section 19A of such Act (12 U.S.C. 1439-1) are hereby repealed.

SEC. 713. FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION INDUSTRY ADVISORY COMMITTEE.

Subsection (i) of section 21 of the Federal Home Loan Bank Act (12 U.S.C. 1441) is repealed and subsections (j), (k), and (l) are redesignated subsections (i), (j), and (k), respectively.

SEC. 714. ADVANCES.

(a) IN GENERAL.—Subsection (a) of section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended by striking everything after "members" to the end period and inserting the following: "upon collateral sufficient, in the judgment of the Bank, to fully secure advances obtained from the Bank under this section or section 11(g) of this Act. All long-term advances shall only be made for the purpose of providing funds for residential housing finance. A Bank, at the time of origination or renewal of a loan or advance, shall obtain and maintain a security interest in collateral eligible pursuant to one or more of the following categories:

"(1) Fully disbursed, whole first mortgages on improved residential property (not more than 90 days delinquent), or securities representing a whole interest in such mortgages.

"(2) Securities issued, insured, or guaranteed by the United States Government or any agency thereof (including without limitation, mortgage-backed securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Corporation, and the Government National Mortgage Association).

"(3) Deposits of a Federal Home Loan Bank.

"(4) Other real estate related collateral acceptable to the Bank if such collateral has a readily ascertainable value and the Bank can perfect its interest in the collateral. The aggregate amount of outstanding advances secured by such other real estate related collateral shall not exceed 30 percent of such member's capital.

"(5) Paragraphs (1) through (4) shall not affect the ability of any Federal Home Loan Bank to take such steps as it deems necessary to protect its security position with respect to outstanding advances, including requiring deposits of additional collateral security, whether or not such additional security would be eligible to originate an advance. If an advance existing on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 matures and the member does not have sufficient eligible collateral to fully secure a renewal of such advance, a Bank may renew such advance secured by such collateral as the Bank and the Board determines is appropriate. A member that has an advance secured by such insufficient eligible collateral must reduce its level of outstanding advances promptly and prudently in accordance with a schedule determined by the Board.".

(b) REDUCED ELIGIBILITY FOR ADVANCES.—Section 10(e) of the Federal Home Loan Bank Act (12 U.S.C. 1430(e)) is amended to read as follows:

"(e) QUALIFIED THRIFT LENDER STATUS.—

"(1) IN GENERAL.—A member that is not a qualified thrift lender may only receive an advance if it holds stock in its Federal Home Loan Bank at the time it receives that advance in an amount equal to at least—

"(A) 5 percent of that member's total advances, divided by

"(B) such member's actual thrift investment percentage.

Such members that are not qualified thrift lenders may only apply for advances under this section for the purpose of obtaining funds for housing finance.

"(2) PRIORITY.—The Board, by regulation, shall establish a priority for advances to members that are qualified thrift lenders. The aggregate amount of any Bank's advances to members that are not qualified thrift lenders shall not exceed 30 percent of a Bank's total advances.

"(3) MINIMUM STOCK PURCHASE REQUIREMENT FOR MEMBERSHIP.—Each member of a Federal Home Loan Bank shall, at a minimum, purchase and maintain stock in its Federal Home Loan Bank in the amount that would be required under section 6(b) if at least 30 percent of such member's assets were home mortgage loans.

"(4) EXCEPTIONS.—Paragraphs (1) and (2) of this subsection do not apply to—

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

"(B) a Federal savings association in existence as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

"(i) that was chartered as a savings bank or cooperative bank prior to October 15, 1982; or

"(ii) that acquired its principal assets from an institution which was chartered prior to October 15, 1982, as a savings bank or cooperative bank under State law.

"(5) DEFINITIONS.—As used in this subsection—

"(A) SAVINGS ASSOCIATION.—The term 'savings association' has the same meaning as in section 10(a)(1)(A) of the Home Owners' Loan Act.

"(B) QUALIFIED THRIFT LENDER.—The term 'qualified thrift lender' has the same meaning as in section 10(m) of the Home Owners' Loan Act.

"(C) ACTUAL THRIFT INVESTMENT PERCENTAGE.—The term 'actual thrift investment percentage' has the same meaning as in section 10(m) of the Home Owners' Loan Act.".

(c) SPECIAL LIQUIDITY ADVANCES.—Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) (as amended by section 710(c) of this Act) is amended by adding at the end the following new subsection:

"(h) SPECIAL LIQUIDITY ADVANCES.—

"(1) IN GENERAL.—Subject to paragraph (2), the Federal Home Loan Banks may, upon the request of the Director of the Office of Thrift Supervision, make short-term liquidity advances to a savings association that—

"(A) is solvent but presents a supervisory concern because of such association's poor financial condition; and

"(B) has reasonable and demonstrable prospects of returning to a satisfactory financial condition.

"(2) INTEREST ON AND SECURITY FOR SPECIAL LIQUIDITY ADVANCES.—Any loan by a Federal Home Loan Bank pursuant to paragraph (1) shall be subject to all applicable collateral requirements, including the requirements of section 10(a) of this Act, and shall be at an interest rate no less favorable than those made available for similar short-term liquidity advances to savings associations that do not present such supervisory concern.".

SEC. 715. AMENDMENTS RELATING TO WITHDRAWAL FROM FEDERAL HOME LOAN BANK MEMBERSHIP.

Section 6(h) of the Federal Home Loan Bank Act (as redesignated by section 706 of this Act) is amended by striking "five" and inserting "10".

SEC. 716. REPEAL OF PROVISIONS RELATING TO LAWFUL CONTRACT RATE.

Section 5 of the Federal Home Loan Bank Act (12 U.S.C. 1425) is hereby repealed.

SEC. 717. BANK STOCK AND OBLIGATIONS.

Section 23 of the Federal Home Loan Bank Act (12 U.S.C. 1443) is amended to read as follows:

"SEC. 23. FORMS OF BANK STOCK AND OBLIGATIONS.

"Any stock, debentures, bonds, notes, or other obligations issued under the authority of this Act may be issued in uncertificated form, utilizing a book entry method, or in certificated form under such rules, regulations, or guidelines as the Board of Directors of the Federal Housing Finance Board may provide.".

SEC. 718. THRIFT ADVISORY COUNCIL.

Section 8a of the Federal Home Loan Bank Act (12 U.S.C. 1428a) is hereby repealed.

SEC. 719. EXAMINATION OF MEMBERS.

Section 22 of the Federal Home Loan Bank Act (12 U.S.C. 1442) is amended to read as follows:

"SEC. 22. MEMBER FINANCIAL INFORMATION.

Classified information.

"(a) IN GENERAL.—In order to enable the Federal Home Loan Banks to carry out the provisions of this Act, the Secretary of the Treasury, the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, the Chairperson of the Federal Deposit Insurance Corporation, the Chairperson of the National Credit Union Administration, and the Director of the Office of Thrift Supervision, upon request by any Federal Home Loan Bank—

"(1) shall make available in confidence to any Federal Home Loan Bank, such reports, records, or other information as may be available, relating to the condition of any member of any Federal Home Loan Bank or any institution with respect to which any such Bank has had or contemplates having transactions under this Act; and

"(2) may perform through their examiners or other employees or agents, for the confidential use of the Federal Home Loan Bank, examinations of institutions for which such agency is the appropriate Federal banking regulatory agency.

Reports.

In addition, the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, the Chairperson of the National Credit Union Administration, and the Director of the Office of Thrift Supervision shall make available to the Board or any Federal Home Loan Bank the financial reports filed by members of any Bank to enable the Board or a Bank to compile and publish cost of funds indices or other financial or statistical reports.

"(b) CONSENT BY MEMBERS.—Every member of a Federal Home Loan Bank shall, as a condition precedent thereto, be deemed—

"(1) to consent to such examinations as the Bank or the Board may require for the purposes of this Act;

"(2) to agree that reports of examinations by local, State, or Federal agencies or institutions may be furnished by such authorities to the Bank or the Board upon request; and

"(3) to agree to give the Bank or the Federal agency, upon request, such information as they may need to compile and publish cost of funds indices and to publish other reports or statistical summaries pertaining to the activities of Bank members.".

SEC. 720. LIQUIDITY.

Section 5A of the Federal Home Loan Bank Act (12 U.S.C. 1425a) is hereby repealed.

SEC. 721. AFFORDABLE HOUSING.

Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) (as amended by section 710 and section 714 of this Act) is amended by adding at the end the following:

"(i) COMMUNITY INVESTMENT PROGRAM.—

"(1) IN GENERAL.—Each Bank shall establish a program to provide funding for members to undertake community-oriented mortgage lending. Each Bank shall designate a community investment officer to implement community lending and affordable housing advance programs of the Banks under this subsection and subsection (j) and provide technical assistance and outreach to promote such programs. Advances under this program shall be priced at the cost of consolidated Federal Home Loan Bank obligations of comparable maturities, taking into account reasonable administrative costs.

"(2) COMMUNITY-ORIENTED MORTGAGE LENDING.—For purposes of this subsection, the term 'community-oriented mortgage lending' means providing loans—

"(A) to finance home purchases by families whose income does not exceed 115 percent of the median income for the area,

"(B) to finance purchase or rehabilitation of housing for occupancy by families whose income does not exceed 115 percent of median income for the area,

"(C) to finance commercial and economic development activities that benefit low- and moderate-income families or activities that are located in low- and moderate-income neighborhoods, and

"(D) to finance projects that further a combination of the purposes described in subparagraphs (A) through (C).

"(j) AFFORDABLE HOUSING PROGRAM.—

"(1) IN GENERAL.—Pursuant to regulations promulgated by the Board, each Bank shall establish an Affordable Housing Program to subsidize the interest rate on advances to members engaged in lending for long term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates.

Disadvantaged persons.

"(2) STANDARDS.—The Board's regulations shall permit Bank members to use subsidized advances received from the Banks to—

"(A) finance homeownership by families with incomes at or below 80 percent of the median income for the area; or

"(B) finance the purchase, construction, or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term.

"(3) PRIORITIES FOR MAKING ADVANCES.—In using advances authorized under paragraph (1), each Bank member shall give priority to qualified projects such as the following:

"(A) purchase of homes by families whose income is 80 percent or less of the median income for the area,

"(B) purchase or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States; and

"(C) purchase or rehabilitation of housing sponsored by any nonprofit organization, any State or political subdivision of any State, any local housing authority or State housing finance agency.

"(4) REPORT.—Each member receiving advances under this program shall report annually to the Bank making such advances concerning the member's use of advances received under this program.

"(5) CONTRIBUTION TO PROGRAM.—Each Bank shall annually contribute the percentage of its annual net earnings prescribed in the following subparagraphs to support subsidized advances through the Affordable Housing Program:

"(A) In 1990, 1991, 1992, and 1993, 5 percent of the preceding year's net income, or such prorated sums as may be required to assure that the aggregate contribution of all the Banks shall not be less than $50,000,000 for each such year.

"(B) In 1994, 6 percent of the preceding year's net income, or such prorated sum as may be required to assure that the aggregate contribution of the Banks shall not be less than $75,000,000 for such year.

"(C) In 1995, and subsequent years, 10 percent of the preceding year's net income, or such prorated sums as may be required to assure that the aggregate contribution of the Banks shall not be less than $100,000,000 for each such year.

"(6) GROUNDS FOR SUSPENDING CONTRIBUTIONS.—

"(A) IN GENERAL.—If a Bank finds that the payments required under this paragraph are contributing to the financial instability of such Bank, it may apply to the Federal Housing Finance Board for a temporary suspension of such payments.

"(B) FINANCIAL INSTABILITY.—In determining the financial instability of a Bank, the Federal Housing Finance Board shall consider such factors as (i) whether the Bank's earnings are severely depressed, (ii) whether there has been a substantial decline in membership capital, and (iii) whether there has been a substantial reduction in advances outstanding.

"(C) REVIEW.—The Board shall review the application and any supporting financial data and issue a written decision approving or disapproving such application. The Board's decision shall be accompanied by specific findings and reasons for its action.

"(D) MONITORING SUSPENSION.—If the Board grants a suspension, it shall specify the period of time such suspension shall remain in effect and shall continue to monitor the Bank's financial condition during such suspension.

"(E) LIMITATIONS ON GROUNDS FOR SUSPENSION.—The Board shall not suspend payments to the Affordable Housing Program if the Bank's reduction in earnings is a result of (i) a change in the terms for advances to members which is not justified by market conditions, (ii) inordinate operating and administrative expenses, or (iii) mismanagement.

"(F) The Federal Housing Finance Board shall notify the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not less than 60 days before such suspension takes effect. Such suspension shall become effective unless a joint resolution is enacted disapproving such suspension.

"(7) FAILURE TO USE AMOUNTS FOR AFFORDABLE HOUSING.—If any Bank fails to utilize or commit the full amount provided in this subsection in any year, 90 percent of the amount that has not been utilized or committed in that year shall be deposited by the Bank in an Affordable Housing Reserve Fund administered by the Board. The 10 percent of the unutilized and uncommitted amount retained by a Bank should be fully utilized or committed by that Bank during the following year and any remaining portion must be deposited in the Affordable Housing Reserve Fund. Under regulations established by the Board, funds from the Affordable Housing Reserve Fund may be made available to any Bank to meet additional affordable housing needs in such Bank's district pursuant to this section.

"(8) NET EARNINGS.—The net earnings of any Federal Home Loan Bank shall be determined for purposes of this paragraph—

"(A) after reduction for any payment required under section 21 or 21B of this Act; and

"(B) before declaring any dividend under section 16.

"(9) REGULATIONS.—The Federal Housing Finance Board shall promulgate regulations to implement this subsection. Such regulations shall, at a minimum—

"(A) specify activities eligible to receive subsidized advances from the Banks under this program;

"(B) specify priorities for the use of such advances;

"(C) ensure that advances made under this program will be used only to assist projects for which adequate long-term monitoring is available to guarantee that affordability standards and other requirements of this subsection are satisfied;

"(D) ensure that a preponderance of assistance provided under this subsection is ultimately received by low- and moderate-income households;

"(E) ensure that subsidies provided by Banks to member institutions under this program are passed on to the ultimate borrower;

"(F) establish uniform standards for subsidized advances under this program and subsidized lending by member institutions supported by such advances, including maximum subsidy and risk limitations for different categories of loans made under this subsection; and

"(G) coordinate activities under this subsection with other Federal or federally-subsidized affordable housing activities to the maximum extent possible.

"(10) OTHER PROGRAMS.—No provision of this subsection or subsection (i) shall preclude any Bank from establishing additional community investment cash advance programs or contributing additional sums to the Affordable Housing Reserve Fund.

"(11) ADVISORY COUNCIL.—Each Bank shall appoint an Advisory Council of 7 to 15 persons drawn from community and

nonprofit organizations actively involved in providing or promoting low- and moderate-income housing in its district. The Advisory Council shall meet with representatives of the board of directors of the Bank quarterly to advise the Bank on low- and moderate-income housing programs and needs in the district and on the utilization of the advances for these purposes. Each Advisory Council established under this paragraph shall submit to the Board at least annually its analysis of the low-income housing activity of the Bank by which it is appointed.

"(12) REPORTS TO CONGRESS.—

"(A) The Board shall monitor and report annually to the Congress and the Advisory Council for each Bank the support of low-income housing and community development by the Banks and the utilization of advances for these purposes.

"(B) The analyses submitted by the Advisory Councils to the Board under paragraph (11) shall be included as part of the report required by this paragraph.

"(C) The Comptroller General of the United States shall audit and evaluate the Affordable Housing Program established by this subsection after such program has been operating for 2 years. The Comptroller General shall report to Congress on the conclusions of the audit and recommend improvements or modifications to the program.

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

"(A) LOW- OR MODERATE-INCOME HOUSEHOLD.—The term 'low- or moderate-income household' means any household which has an income of 80 percent or less of the area median.

"(B) VERY LOW-INCOME HOUSEHOLD.—The term 'very low-income household' means any household that has an income of 50 percent or less of the area median.

"(C) LOW- OR MODERATE-INCOME NEIGHBORHOOD.—The term 'low- or moderate-income neighborhood' means any neighborhood in which 51 percent or more of the households are low- or moderate-income households.

"(D) AFFORDABLE FOR VERY-LOW INCOME HOUSEHOLDS.—For purposes of paragraph (2)(B) the term 'affordable for very-low income households' means that rents charged to tenants for units made available for occupancy by low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the income for the area (as determined by the Secretary of Housing and Urban Development) with adjustment for family size.".

12 USC 1437 note.

SEC. 722. TRANSFERRED EMPLOYEES OF FEDERAL HOME LOAN BANKS AND JOINT OFFICES.

(a) IN GENERAL.—Each employee of the Federal Home Loan Banks or joint offices of such Banks performing a function identified for transfer under section 403 of this Act, including employees who otherwise would be ineligible for employment by the United States because of their citizenship, shall be transferred for employment not later than 60 days after the date of the enactment of this Act.

(b) NOTICE TO EMPLOYEES.—Transferring employees shall receive notice of their position assignments not later than 120 days after the effective date of their transfer.

(c) GUARANTEED POSITION.—Each transferred employee shall be guaranteed a position with the same status and tenure as that held by such employee on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated for one year after the date of transfer, except for cause.

(d) PAY AND BENEFITS.—Each employee transferred under this section shall be entitled to receive, during the one-year period immediately following the transfer, pay and benefits comparable to those received by such employee immediately preceding the transfer. Where necessary or appropriate to further the safety and soundness of the thrift industry, the employing agency may continue the pre-transfer compensation of any transferring employee for up to 2 years beyond the expiration of the period provided for under the preceding sentence. Such pay and benefits shall be subject to the comparability provisions of this Act. Any transferred employee who suffers a reduction of pay or benefits as a result of such comparability provisions shall be compensated for such reduction during the 1 year period following the transfer by assessments from the Federal Home Loan Bank or joint office of such Banks, from which the employee transferred. In any event, this subsection shall only apply to a transferred employee while such employee remains with the agency to which the employee is transferred.

(e) HEALTH INSURANCE.—If the health insurance program of a transferred employee is not continued by the agency to which the employee is transferred, such employee may elect to participate in the agency's health insurance program notwithstanding health conditions pre-existing at the time of election or enrollment into an alternate health insurance program of the agency to which he or she is transferred and without regard to any other regularly scheduled open season. Such election shall be made within 30 days of the transfer.

(f) EQUITABLE TREATMENT.—The Director of the Office of Thrift Supervision or the Chairperson of the Federal Housing Finance Board shall take such action as is necessary on a case-by-case basis so that employees transferring under this section receive equitable treatment regarding credit for prior service with a Federal entity or instrumentality, or with a Federal Home Loan Bank or joint office of such Banks, with respect to the transferring employees' retirement accounts and the transferring employees' accrued leave or vacation time, in recognition of the transferring employees' supervisory service.

(g) SPECIAL RULE FOR CERTAIN ANNUITANTS.—An individual who was a reemployed annuitant on July 26, 1989, and who is transferred under this section, shall not be subject to the deduction from pay required by section 8344 or 8468 of title 5, United States Code, during the 1-year period beginning on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

SEC. 723. TRANSITIONAL PROVISIONS.

12 USC 1437 note.

(a) FEDERAL HOME LOAN BANKS' SHARE OF ADMINISTRATIVE EXPENSES.—The Federal Home Loan Banks shall pay to the Director of the Office of Thrift Supervision the amount obtained by multiplying the administrative expenses of the Office of Thrift Supervision incurred in connection with functions of the Banks that are trans-

ferred to the Office (less any fees or assessments collected by the Office) by a fraction—

(1) the numerator of which is the amount of such expenses of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation paid by the Banks during the 1-year period ending on the date of enactment of this Act; and

(2) the denominator of which is the total expenses of such Board and Corporation during such period.

No payment under this subsection is required after December 31, 1989.

(b) COMPENSATION OF SUPERVISORY AND EXAMINATIONS EMPLOYEES.—The Federal Home Loan Banks shall continue to pay the compensation of employees of the Federal Home Loan Banks or the joint offices of such banks who, on the day before the date of the enactment of this Act, are performing supervisory and examination functions until such supervisory and examination functions are transferred under this Act. Thereafter, the obligation of the Federal Home Loan Banks hereunder to pay such applicable compensation shall continue until the later of—

(1) the date which is 120 days after the date of transfer of such supervisory and examination functions to the Office of Thrift Supervision, or

(2) March 31, 1990.

Payment of such compensation by the Federal Home Loan Banks shall be in lieu of, and not in addition to, the payment of compensation by the Office of Thrift Supervision.

(c) FACILITIES AND SUPPORT SERVICES.—Until December 31, 1990, the Federal Home Loan Banks, as necessary, shall (with respect to supervisory and examination functions performed by employees transferred from the Federal Home Loan Banks or joint offices of such Banks to the Office of Thrift Supervision), provide the Office of Thrift Supervision facilities and support services comparable to those presently provided for the employees of the Federal Home Loan Banks or joint offices of such Banks performing such supervisory and examination functions, including office space, furniture and equipment, computer, personnel, and other support services. With respect to supervisory and examination functions presently performed by employees of individual Federal Home Loan Banks, each such Bank will only be required to provide such facilities and support services to the extent that the functions continue to be performed in that Bank's offices.

(d) PRINCIPAL SUPERVISORY AGENT.—Beginning on the date of enactment of this Act until the Director of the Office of Thrift Supervision shall otherwise provide, the Principal Supervisory Agent for each Federal Home Loan Bank district shall be the senior supervisory official (other than the President of the Federal Home Loan Bank) employed by the Federal Home Loan Bank in such district on the day before the date of the enactment of this Act, and such employees performing supervisory and examination functions shall continue to be responsible for the supervision and examination of savings associations within such district.

SEC. 724. FEDERAL HOME LOAN BANK RESERVES.

(a) IN GENERAL.—Section 16(a) of the Federal Home Loan Bank Act (12 U.S.C. 1436(a)) is amended—

(1) by striking the first three sentences and inserting in lieu thereof: "Each Federal Home Loan Bank may carry to a reserve

account from time-to-time such portion of its net earnings as may be determined by its board of directors."; and

(2) by striking the fifth sentence and inserting the following: "No dividends shall be paid except out of net earnings remaining after reductions for all reserves, chargeoffs, purchases of capital certificates of the Financing Corporation, and payments relating to the Funding Corporation required under this Act have been provided for, other than chargeoffs or expenses incurred by a Bank in connection with the purchase of capital stock of the Financing Corporation under section 21 or payments relating to the Funding Corporation Principal Fund under section 21B(e), and then only with the approval of the Federal Housing Finance Board. Beginning on January 1, 1992, the preceding sentence shall be applied by substituting 'previously retained earnings or current net earnings' for 'net earnings'.".

Effective date.

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(1) shall take effect on January 1, 1992.

12 USC 1436 note.

SEC. 725. SPECIAL ACCOUNT.

12 USC 1437 note.

At the time of dissolution of the Federal Home Loan Bank Board, all such moneys and funds as shall remain in the special deposit account of the Federal Home Loan Bank Board, or other such accounts, shall become the property of the Federal Housing Finance Board.

Subtitle B—Federal Home Loan Mortgage Corporation

SEC. 731. FEDERAL HOME LOAN MORTGAGE CORPORATION.

(a) STATEMENT OF PURPOSE.—

(1) IN GENERAL.—Section 301 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note) is amended—

(A) by inserting "(a)" after the section designation; and

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

"(b) It is the purpose of the Federal Home Loan Mortgage Corporation—

"(1) to provide stability in the secondary market for home mortgages;

"(2) to respond appropriately to the private capital market; and

"(3) to provide ongoing assistance to the secondary market for home mortgages (including mortgages securing housing for low- and moderate-income families involving a reasonable economic return to the Corporation) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for home mortgage financing.".

(2) CONFORMING AMENDMENT.—The section heading for section 301 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note) is amended to read as follows:

"SHORT TITLE AND STATEMENT OF PURPOSE".

(b) BOARD OF DIRECTORS.—

(1) NEW BOARD.—Section 303(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)) is amended to read as follows:

"(a)(1) There is hereby created the Federal Home Loan Mortgage Corporation, which shall be a body corporate under the direction of a Board of Directors. Within the limitations of law and regulation, the Board of Directors shall determine the general policies that govern the operations of the Corporation. The principal office of the Corporation shall be in the District of Columbia or at any other place determined by the Corporation.

District of Columbia.

"(2)(A) The Board of Directors of the Corporation shall consist of 18 persons, 5 of whom shall be appointed annually by the President of the United States and the remainder of whom shall be elected annually by the voting common stockholders. The Board of Directors shall at all times have as members appointed by the President of the United States at least 1 person from the homebuilding industry, at least 1 person from the mortgage lending industry, and at least 1 person from the real estate industry.

President of U.S.

"(B) Each member of the Board of Directors shall be such or elected for a term ending on the date of the next annual meeting of the voting common stockholders.

"(C) Any appointive seat on the Board of Directors that becomes vacant shall be filled by appointment by the President of the United States, but only for the unexpired portion of the term. Any elective seat on the Board of Directors that becomes vacant after the annual election of the directors shall be filled by the Board of Directors, but only for the unexpired portion of the term.

"(D) Any member of the Board of Directors who is a full-time officer or employee of the Federal Government shall not, as such member, receive compensation for services as such a member.".

12 USC 1452 note.

(2) TRANSITIONAL PROVISIONS.—

(A) INTERIM BOARD.—

(i) ESTABLISHMENT.—There shall be an interim Board of Directors of the Federal Home Loan Mortgage Corporation, which shall serve from the date of the enactment of this Act until the date of the 1st meeting of the voting common shareholders of the Corporation at which the first election of the directors elected by the shareholders occurs.

(ii) MEMBERS.—The interim Board of Directors of the Federal Home Loan Mortgage Corporation shall consist of—

(I) the President of the Corporation; and

(II) the persons who were (on the day before the date of the enactment of this Act) the Chairman of the Federal Home Loan Bank Board and the Secretary of Housing and Urban Development (or their designees).

(iii) QUORUM.—A quorum of the interim Board of Directors of the Federal Home Loan Mortgage Corporation shall consist of a majority of the directors duly serving from time to time.

(B) ELECTION OF PERMANENT DIRECTORS.—The first meeting of the voting common shareholders of the Federal Home Loan Mortgage Corporation for election of directors shall occur, under procedures established by the Corporation, within 6 months after the date of the enactment of this Act.

(c) REGULATORY POWER.—Section 303 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452) is amended—

(1) by redesignating subsections (b) through (f) as subsections (c) through (g), respectively; and

(2) by inserting after subsection (a) the following new subsection:

"(b)(1) The Secretary of Housing and Urban Development shall have general regulatory power over the Corporation and shall make such rules and regulations as shall be necessary and proper to ensure that the purposes of this title are accomplished.

"(2) The Secretary of Housing and Urban Development may require that a reasonable portion of the mortgage purchases of the Corporation be related to the national goal of providing adequate housing for low- and moderate-income families, but with reasonable economic return to the Corporation. Disadvantaged persons.

"(3) The aggregate amount of cash dividends paid by the Corporation in any fiscal year on account of any share of its common stock shall not exceed any rate that may be determined from time to time by the Secretary of Housing and Urban Development to be a fair rate of return after consideration of the current earnings and capital condition of the Corporation.

"(4) The Secretary of Housing and Urban Development may examine and audit the books and financial transactions of the Corporation and may require the Corporation to issue any reports on its activities that the Secretary determines to be advisable. The Secretary shall, not later than June 30 of each year, submit to the Congress a report describing the activities of the Corporation under this Act. Reports.

"(5) The aggregate amount of notes, debentures, or substantially identical types of unsecured obligations outstanding at any time shall not exceed the amount which is 15 times the sum of the Corporation's capital, capital surplus, general surplus, reserves, and undistributed earnings unless a greater ratio shall be fixed at any time or from time to time by the Secretary of Housing and Urban Development. The outstanding total principal amount of any obligations of the Corporation which are entirely subordinated to the general debt obligations of the Corporation shall be deemed to be capital of the Corporation for the purpose of determining the aggregate amount of notes, debentures, or substantially identical types of unsecured obligations outstanding at any time.

"(6) All issuances of stock, and debt obligations convertible into stock, by the Corporation shall be made only with the approval of the Secretary of Housing and Urban Development.

"(7)(A) The exercise of the authority of the Corporation pursuant to commitments or otherwise to purchase, service, sell, lend on the security of, or otherwise deal in conventional residential mortgages under section 305(a) shall be subject to the approval of the Secretary of Housing and Urban Development.

"(B) Any conventional mortgage programs or activities with respect to purchasing, servicing, selling, lending on the security of, or otherwise dealing in mortgages in which the Corporation has engaged or is engaging as of the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 shall be deemed to have been approved by the Secretary of Housing and Urban Development as required by this paragraph.

"(8) If the Corporation submits to the Secretary of Housing and Urban Development a request for approval or other action under Reports.

this title, the Secretary shall, not later than the expiration of the 45-day period following the submission of the request, approve the request or transmit to the Congress a report explaining why the request has not been approved. The period may be extended for an additional 15-day period if the Secretary requests additional information from the Corporation, but the 45-day period may not be extended for any other reason or for any period in addition to or other than the 15-day period. If the Secretary fails to transmit the report to the Congress within the 45-day period or 60-day period, as the case may be, the Corporation may proceed as if the request had been approved.".

(d) COMMON STOCK.—

(1) IN GENERAL.—Section 304(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1453(a)) is amended to read as follows:

"(a)(1) The common stock of the Corporation shall consist of—

"(A) nonvoting common stock, which shall be issued only to Federal home loan banks; and

"(B) voting common stock, which shall be issued to such holders in the manner and amount, and subject to any limitations on concentration of ownership, as may be established by the Corporation.

"(2) The nonvoting common stock and the voting common stock shall have such par value and other characteristics as the Corporation provides. The voting common stock shall be vested with all voting rights, each share being entitled to 1 vote. The free transferability of the voting common stock at all times to any person, firm, corporation or other entity shall not be restricted except that, as to the Corporation, it shall be transferable only on the books of the Corporation. Nonvoting common stock of the Corporation shall be evidenced in the manner and shall be transferable only to the extent, to the transferees, and in the manner, provided by the Corporation.".

12 USC 1453 note.

(2) CONVERSION OF STOCK.—On the date of the enactment of this Act, each share of outstanding senior participating preferred stock of the Federal Home Loan Mortgage Corporation, with a par value of $2.50 per share, shall be changed into and shall become 1 share of voting common stock of the Corporation. Such voting common stock shall, with respect to the nonvoting common stock of the Corporation, retain all of the rights, priorities and privileges of the senior participating preferred stock. The transformation of the senior participating preferred stock into voting common stock under this paragraph shall be deemed to satisfy the obligation of the Corporation to redeem senior participating preferred stock for non-callable common stock.

(3) CONFORMING AMENDMENTS.—

(A) SUBSCRIPTIONS OF FEDERAL HOME LOAN BANKS.—Section 304(b) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1453(b)) is amended by inserting "nonvoting" before "common".

(B) ALLOCATION OF SUBSCRIPTIONS.—Section 304(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1453(c)) is amended by striking "such" and by inserting "nonvoting common" before "stock".

(C) RETIREMENT OF STOCK.—Section 304(d) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1453(d)) is

amended by inserting "nonvoting common" before "stock" each place it appears.

(e) MORTGAGE OPERATIONS.—

(1) PROHIBITION ON FEES.—Section 305(a)(1) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(1)) is amended by adding at the end the following: "Nothing in this section authorizes the Corporation to impose any charge or fee upon any mortgagee approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act solely because of such status.".

(2) LENDING ACTIVITIES.—Section 305(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)) is amended by adding at the end the following new paragraph:

"(5) The Corporation is authorized to lend on the security of, and to make commitments to lend on the security of, any mortgage that the Corporation is authorized to purchase under this section. The volume of the Corporation's lending activities and the establishment of its loan ratios, interest rates, maturities, and charges or fees in its secondary market operations under this paragraph, shall be determined by the Corporation from time to time; and such determinations shall be consistent with the objectives that the lending activities shall be conducted on such terms as will reasonably prevent excessive use of the Corporation's facilities, and that the operations of the Corporation under this paragraph shall be within its income derived from such operations and that such operations shall be fully self-supporting. The Corporation shall not be permitted to use its lending authority under this paragraph (A) to advance funds to a mortgage seller on an interim basis, using mortgage loans as collateral, pending the sale of the mortgages in the secondary market; or (B) to originate mortgage loans. Notwithstanding any Federal, State, or other law to the contrary, the Corporation is hereby empowered, in connection with any loan under this paragraph, whether before or after any default, to provide by contract with the borrower for the settlement or extinguishment, upon default, of any redemption, equitable, legal, or other right, title, or interest of the borrower in any mortgage or mortgages that constitute the security for the loan; and with respect to any such loan, in the event of default and pursuant otherwise to the terms of the contract, the mortgages that constitute such security shall become the absolute property of the Corporation.".

(f) REFERENCES TO FSLIC AND FHLBB.—

(1) SECTION 302.—Section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) is amended—

(A) in the 4th sentence, by striking out "Federal Savings and Loan Insurance Corporation" and inserting in lieu thereof "Resolution Trust Corporation"; and

(B) in the 8th sentence, by striking out "Federal Home Loan Bank Board" and inserting in lieu thereof "Federal Housing Finance Board".

(2) SECTION 305.—Section 305 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454) is amended—

(A) by striking out "Federal Savings and Loan Insurance Corporation" each place it appears and inserting in lieu thereof "Resolution Trust Corporation"; and

(B) in subsection (a)(2), by striking out "Federal Home Loan Bank Board" and inserting in lieu thereof "Federal Housing Finance Board".

(g) STANDBY CREDIT.—Section 306(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455(c)) is amended to read as follows:

"(c)(1) The Secretary of the Treasury may purchase any obligations issued under subsection (a). For such purpose, the Secretary may use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include such purpose.

"(2) The Secretary of Treasury shall not at any time purchase any obligations under this subsection if the purchase would increase the aggregate principal amount of the outstanding holdings of obligations under this subsection by the Secretary to an amount greater than $2,250,000,000.

"(3) Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon terms and conditions established to yield a rate of return determined by the Secretary to be appropriate, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the making of the purchase.

"(4) The Secretary of the Treasury may at any time sell, upon terms and conditions and at prices determined by the Secretary, any of the obligations acquired by the Secretary under this subsection.

"(5) All redemptions, purchases and sales by the Secretary of the Treasury of obligations under this subsection shall be treated as public debt transactions of the United States.".

(h) PREFERRED STOCK.—Section 306(f) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455(f)) is amended to read as follows:

"(f) The Corporation may have preferred stock on such terms and conditions as the Board of Directors shall prescribe. Any preferred stock shall not be entitled to vote with respect to the election of any member of the Board of Directors.".

(i) TERMS OF OBLIGATIONS.—Section 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455) is amended by adding at the end the following new subsections:

"(j)(1) Any notes, debentures, or substantially identical types of unsecured obligations of the Corporation evidencing money borrowed, whether general or subordinated, shall be issued upon the approval of the Secretary of the Treasury and shall have such maturities and bear such rate or rates of interest as may be determined by the Corporation with the approval of the Secretary of the Treasury.

"(2) Any notes, debentures, of substantially identical types of unsecured obligations of the Corporation having maturities of 1 year or less that the Corporation has issued or is issuing as of the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 shall be deemed to have been approved by the Secretary of the Treasury as required by this subsection. Such deemed approval shall expire 365 days after such date of enactment.

"(3) Any notes, debentures, or substantially identical types of unsecured obligations of the Corporation having maturities of more than 1 year that the Corporation has issued or is issuing as of the date of the enactment of the Financial Institutions Reform, Recov-

ery, and Enforcement Act of 1989 shall be deemed to have been approved by the Secretary of the Treasury as required by this subsection. Such deemed approval shall expire 60 days after such date of enactment.

"(k)(1) Any securities in the form of debt obligations or trust certificates of beneficial interest, or both, and based upon mortgages held and set aside by the Corporation, shall be issued upon the approval of the Secretary of the Treasury and shall have such maturities and shall bear such rate or rates of interest as may be determined by the Corporation with the approval of the Secretary of the Treasury.

"(2) Any securities in the form of debt obligations or trust certificates of beneficial interest, or both, and based upon mortgages held and set aside by the Corporation, that the Corporation has issued or is issuing as of the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 shall be deemed to have been approved by the Secretary of the Treasury as required by this subsection.".

(j) STATE LIMITATIONS.—

(1) The second sentence of section 307(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(a)) is amended to read as follows: "The Corporation is authorized to conduct its business without regard to any qualification or similar statute in any State.".

(2) The amendment made by this subsection shall not apply to any assertion of priority by the Federal Home Loan Mortgage Corporation with respect to any cause of action or claim filed before the date of the enactment of this Act.

12 USC 1456 note.

(k) PENAL PROVISIONS.—Section 308 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1457) is amended—

(1) in subsection (a), by striking the subsection designation; and

(2) by striking subsections (b), (c), (d), (e), and (f).

(l) CONSTRUCTION.—Section 310 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1459) is amended—

(1) in the section heading, by striking "CONSTRUCTION AND"; and

(2) by striking the first sentence.

(m) CONFORMING AMENDMENTS TO FEDERAL NATIONAL MORTGAGE ASSOCIATION CHARTER ACT.—

(1) STATEMENT OF PURPOSE.—Section 301 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716) is amended—

(A) by striking paragraphs (a) and (b) and inserting the following new paragraphs:

"(1) provide stability in the secondary market for home mortgages;

"(2) respond appropriately to the private capital market;

"(3) provide ongoing assistance to the secondary market for home mortgages (including mortgages securing housing for low- and moderate-income families involving a reasonable economic return) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for home mortgage financing; and"; and

(B) by redesignating paragraph (c) as paragraph (4).

(2) LENDING ACTIVITIES.—Section 304(a)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(a)(2)) is amended—

(A) by inserting after the 3rd sentence the following new sentence: "The corporation shall not be permitted to use its lending authority (A) to advance funds to a mortgage seller on an interim basis, using mortgage loans as collateral, pending the sale of the mortgages in the secondary market; or (B) to originate mortgage loans."; and

(B) by striking the 1st and 2d sentences.

(3) AUDITS BY GAO.—Section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a) is amended by adding at the end the following new subsection:

"(j) The mortgage transactions of the corporation may be subject to audit by the Comptroller General of the United States in accordance with the principles and procedures applicable to commercial corporation transactions under such rules and regulations as may be prescribed by the Comptroller General. The representatives of the General Accounting Office shall have access to such books, accounts, financial records, reports, files, and such other papers, things, or property belonging to or in use by the corporation and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. A report on each such audit shall be made by the Comptroller General to the Congress. The corporation shall reimburse the General Accounting Office for the full cost of any such audit as billed therefor by the Comptroller General.".

Reports.

Subtitle C—Technical and Conforming Amendments

SEC. 741. REPEAL OF LIMITATION OF OBLIGATION FOR ADMINISTRATIVE EXPENSES.

Section 7(b) of the First Deficiency Appropriation Act of 1936 (15 U.S.C. 712a(b)) is amended by striking the following:

"1. Federal Home Loan Bank Board;";

"2. Home Owners' Loan Corporation;"; and

"11. Federal Savings and Loan Insurance Corporation;".

SEC. 742. AMENDMENT OF TITLE 5, UNITED STATES CODE.

(a) EXECUTIVE SCHEDULE.—

(1) Section 5314 of title 5, United States Code (5 U.S.C. 5315) is amended—

(A) by striking

"Chairman of the Federal Home Loan Bank Board."; and

(B) by adding at the end thereof the following:

"Director of the Office of Thrift Supervision.

"Chairperson of the Federal Housing Finance Board.".

(2) Section 5315 of title 5, United States Code (5 U.S.C. 5315) is amended—

(A) by striking out

"Members, Federal Home Loan Bank Board.", and

(B) by inserting

"Directors, Federal Housing Finance Board.".

(b) LIMITATION ON PAY FIXED BY ADMINISTRATIVE ACTION.—Section 5373(2) of title 5, United States Code, is amended by inserting after "481," the following: "1437, 1439,".

(c) DEFINITION OF AGENCY.—Section 3132(a)(1) of title 5, United States Code (5 U.S.C. 3132(a)(1)), is amended—

(1) in subparagraph (B), by striking "or" after the semicolon;

(2) in subparagraph (C), by inserting "or" after the semicolon; and

(3) by adding at the end the following:

"(D) the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Housing Finance Board, the Resolution Trust Corporation, and the National Credit Union Administration;".

SEC. 743. AMENDMENT OF BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT PROVISIONS.

(a) Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended—

(1) by inserting after the item relating to the Comptroller of the Currency the following new item:

"Director of the Office of Thrift Supervision;";

(2) by striking out "Federal Home Loan Bank Board;" and inserting in lieu thereof the following new items:

"Federal Deposit Insurance Corporation, Bank Insurance Fund;

"Federal Deposit Insurance Corporation, FSLIC Resolution Fund;

"Federal Deposit Insurance Corporation, Savings Association Insurance Fund;";

(3) by striking out "Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation" and inserting in lieu thereof "Federal Housing Finance Board"; and

(4) by inserting after the item relating to the Postal service fund the following new items:

"Resolution Funding Corporation;

"Resolution Trust Corporation;".

(b) Section 256(b)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 256(b)(4)) is amended— 2 USC 906.

(1) by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraph

"(C) Office of Thrift Supervision.";

(2) by striking subparagraph (D) and inserting in lieu thereof the following new subparagraph:

"(D) Office of Thrift Supervision."; and

(3) by adding at the end thereof the following new subparagraphs:

"(H) Resolution Funding Corporation.

"(I) Resolution Trust Corporation.".

(c) Section 255(g)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking "Federal Savings and Loan Insurance Corporation fund (82-4037-0-3-371);".

SEC. 744. CONFORMING AMENDMENTS TO FINANCIAL INSTITUTION RELATED ACTS.

(a) FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT.—

(1) SECTION 1003.—Section 1003 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302) is amended—

(A) in paragraph (1), by striking out "Federal Home Loan Bank Board" and inserting in lieu thereof "Office of Thrift Supervision"; and

(B) in paragraph (3), by striking out "savings and loan association" and inserting in lieu thereof "savings association".

(2) SECTION 1004.—Section 1004(a)(4) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)(4)) is amended by striking out "Chairman of the Federal Home Loan Bank Board, and" and inserting in lieu thereof "Director, Office of Thrift Supervision".

(3) SECTION 1006.—Section 1006(d) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3305(d)) is amended in the 2d sentence by inserting "and employees of the Federal Housing Finance Board" after "supervisory agencies".

(b) RIGHT TO FINANCIAL PRIVACY ACT.—Section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) is amended—

(1) in paragraph (1), by striking out "savings and loan" and inserting in lieu thereof "savings association";

(2) in paragraph (6), by striking out subparagraph (B) and redesignating the remaining subparagraphs as subparagraphs (B) through (H), respectively; and

(3) in paragraph (6)(B) (as so redesignated), by striking out "the Federal Home Loan Bank Board" and inserting in lieu thereof "Director, Office of Thrift Supervision".

(c) ALTERNATIVE MORTGAGE TRANSACTIONS PARITY ACT.—The Alternative Mortgage Transactions Parity Act of 1982 (12 U.S.C. 3801-06) is amended by striking out "Federal Home Loan Bank Board" each place such term appears and inserting in lieu thereof "Director of the Office of Thrift Supervision".

(d) EXPEDITED FUNDS AVAILABILITY ACT.—Section 610(a)(2) of the Expedited Funds Availability Act (12 U.S.C. 4009(a)(2)) is amended to read as follows:

"(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and".

(e) PAPERWORK REDUCTION ACT.—Section 2(a)(10) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3502(a)(10)) is amended by striking out "Federal Home Loan Bank Board" and inserting in lieu thereof "the Federal Housing Finance Board".

(f) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT.—Section 602(11) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 474(11)) is amended—

(1) by inserting "or the Resolution Trust Corporation" after "Department of Housing and Urban Development";

(2) by striking out "savings and loan accounts" and inserting in lieu thereof "savings association accounts"; and

(3) by inserting "under the Federal Deposit Insurance Act or any other law." after "National Housing Act".

(g) PUBLIC BUILDINGS ACT.—Section 13(4) of the Public Buildings Act of 1959 (40 U.S.C. 612(d)) is amended by striking out subparagraph (D).

(h) BANK PROTECTION ACT.—Section 2 of the Bank Protection Act of 1968 (12 U.S.C. 1881) is amended—

(1) in paragraph (4), by—

(A) striking out "Federal Home Loan Bank Board" and inserting in lieu thereof "Director of the Office of Thrift Supervision";

(B) striking out "and loan"; and

(C) striking "associations" and all that follows through "Corporation"; and

(2) in paragraph (3), by inserting "and State savings associations" before ", and".

(i) THE FEDERAL RESERVE ACT.—

(1) SECTION 11.—Section 11(a)(2) of the Federal Reserve Act (12 U.S.C. 248(a)(2)) is amended by striking "(iii) Federal Home Loan Bank Board in the case of any institution insured by the Federal Savings and Loan Insurance Corporation" and inserting "(iii) the Director of the Office of Thrift Supervision in the case of any savings association which is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act)".

(2) SECTION 19(b).—Section 19(b)(1)(A)(vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(vi)) is amended to read as follows:

"(vi) any savings association (as defined in section 3 of the Federal Deposit Insurance Act) which is an insured depository institution (as defined in such Act) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act; and".

(3) SECTION 19.—Section 19 of the Federal Reserve Act (12 U.S.C. 461) is amended by striking out "the Federal Home Loan Bank Board," and inserting in lieu thereof "the Director of the Office of Thrift Supervision," each place it appears.

(j) PUBLIC LAW 93-495.—Section 3 of title I of Public Law 93-495 (12 U.S.C. 250) is amended by striking "Federal Home Loan Bank Board" and inserting "Director of the Office of Thrift Supervision".

(k) TRUTH IN LENDING ACT.—Section 108(a)(2) of the Truth in Lending Act (15 U.S.C. 1607(a)(2)) is amended to read as follows:

"(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.".

(l) FAIR CREDIT REPORTING ACT.—Section 621(b)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681s(b)(2)) is amended to read as follows:

"(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;".

(m) EQUAL CREDIT OPPORTUNITY ACT.—Section 704(a)(2) of the Equal Credit Opportunity Act (15 U.S.C. 1691c(a)(2)) is amended to read as follows:

"(2) Section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.".

(n) FAIR DEBT COLLECTION PRACTICES ACT.—Section 814(b)(2) of the Fair Debt Collection Practices Act (15 U.S.C. 1692*l*(b)(2)) is amended to read as follows:

"(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;".

(o) ELECTRONIC FUND TRANSFER ACT.—Section 917(a)(2) of the Electronic Fund Transfer Act (15 U.S.C. 1693o(a)(2)) is amended to read as follows:

"(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;".

(p) HOME MORTGAGE DISCLOSURE ACT OF 1975.—

(1) SECTION 305.—Section 305(b)(2) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2804(b)(2)) is amended to read as follows:

"(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation; and".

(2) SECTION 306.—Section 306(b)(2) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2805(b)(2)) is amended to read as follows:

"(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.".

(3) SECTION 307.—Section 307 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2806) is amended by striking "Federal Home Loan Bank Board" each place it appears and inserting "Director of the Office of Thrift Supervision".

(q) COMMUNITY REINVESTMENT ACT OF 1977.—Section 803(1)(D) of the Community Reinvestment Act of 1977 (12 U.S.C. 2902(1)(D)) is amended to read as follows:

"(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and a savings and loan holding company;".

(r) DEPOSITORY INSTITUTIONS MANAGEMENT INTERLOCKS ACT.—

(1) Section 207(4) of the Depository Institutions Management Interlocks Act (12 U.S.C. 3206(4)) is amended to read as follows:

"(4) the Director of the Office of Thrift Supervision with respect to a savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and savings and loan holding companies,".

(s) DEPOSITORY INSTITUTIONS DEREGULATION ACT OF 1980.—Section 208(a)(2) of the Depository Institutions Deregulation Act of 1980 (12 U.S.C. 3507(a)(2)) is amended to read as follows:

"(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.".

(t) FEDERAL TRADE COMMISSION ACT.—Section 18(f)(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(3)) is amended to read as follows:

"(3) Compliance with regulations prescribed under this subsection shall be enforced under section 8 of the Federal Deposit Insurance Act with respect to savings associations as defined in section 3 of the Federal Deposit Insurance Act.".

(u) SECURITIES EXCHANGE ACT OF 1934.—

(1) SECTION 3.—Section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)) is amended—

(A) in subparagraph (G)—

(i) by striking clauses (iv) and (v) and inserting the following:

"(iv) the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;"; and

(ii) by redesignating clause (vi) as clause (v); and

(B) in the second sentence, by striking "the Federal Home Loan Bank Board" and inserting "the Office of Thrift Supervision".

(2) SECTION 12.—Section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(i)) is amended—

(A) in the first sentence—

(i) by inserting "and savings associations" after "banks" the first place it appears;

(ii) by striking "or institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation"; and

(iii) by striking paragraph (4) and inserting "(4) with respect to savings associations the accounts of which are insured by the Federal Deposit Insurance Corporation are vested in the Office of Thrift Supervision"; and

(B) in the second sentence, by striking "the Federal Home Loan Bank Board" and inserting "the Office of Thrift Supervision".

(3) SECTION 15.—Section 15C(f)(1) (15 U.S.C. 78o-5(f)(1)) of such Act is amended by striking "Federal Home Loan Bank Board" and inserting "Director of the Office of Thrift Supervision".

TITLE VIII—BANK CONSERVATION ACT AMENDMENTS

SEC. 801. DEFINITIONS.

Section 202 of the Bank Conservation Act (12 U.S.C. 202) is amended—

(1) by inserting after "national banking association" the following: "or any other financial institution chartered or licensed under Federal law and subject to the supervision of the Comptroller of the Currency"; and

(2) by inserting before "and the term 'State' " the following: "the term 'voluntary dissolution and liquidation' means a transaction pursuant to section 5220 of the Revised Statutes that involves the assumption of the bank's insured deposit liabilities

and the sale of the bank, or of control of the bank, as a going concern;".

SEC. 802. APPOINTMENT OF CONSERVATOR.

Section 203 of the Bank Conservation Act (12 U.S.C. 203) is amended to read as follows:

"SEC. 203. APPOINTMENT OF CONSERVATOR.

"(a) APPOINTMENT.—The Comptroller of the Currency may, without notice or prior hearing, appoint a conservator, which may be the Federal Deposit Insurance Corporation, to take possession and control of a bank whenever the Comptroller determines that one or more of the following circumstances exist:

"(1) any one or more of the conditions for appointment of a receiver for the bank specified in the first section of the Act of June 30, 1876 (12 U.S.C. 191) are present;

"(2) the bank is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course of business;

"(3) the bank is in an unsafe or unsound condition to transact business, including having substantially insufficient capital or otherwise;

"(4)(A) the bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and

"(B) there is no reasonable prospect for the bank's capital to be replenished without Federal assistance;

"(5) there is a violation or violations of laws, rules, or regulations, or any unsafe or unsound practice or condition which is likely to cause insolvency or substantial dissipation of assets or earnings, or is likely to weaken the bank's condition or otherwise seriously prejudice the interests of its depositors;

"(6) there is concealment of books, papers, records, or assets of the bank, or refusal to submit books, papers, records, or affairs of the bank for inspection to any examiner or to any lawful agent of the Comptroller;

"(7) there is a willful or continuing violation of an order enforceable against the bank under section 8(i) of the Federal Deposit Insurance Act; or

"(8) the bank's board of directors consists of fewer than 5 members.

"(b) JUDICIAL REVIEW.—

"(1) IN GENERAL.—Not later than 20 days after the initial appointment of a conservator pursuant to this section, the bank may bring an action in the United States district court for the judicial district in which the home office of such bank is located, or in the United States District Court for the District of Columbia, for an order requiring the Comptroller to terminate the appointment of the conservator, and the court, upon the merits, shall dismiss such action or shall direct the Comptroller to terminate the appointment of such conservator. The Comptroller's decision to appoint a conservator pursuant to this section shall be set aside only if the court finds that such decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(2) STAY.—The conservator may request that any judicial action or proceeding to which the conservator or the bank is or may become a party be stayed for a period of up to 45 days after

the appointment of the conservator. Upon petition, the court shall grant such stay as to all parties.

"(3) ACTIONS AND ORDERS.—Except as otherwise provided in this subsection, no court may take any action regarding the removal of a conservator, or restrain, or affect the exercise of powers or functions of a conservator. A court, upon application by the Comptroller, shall have jurisdiction to enforce an order of the Comptroller relating to—

"(A) the conservatorship and the bank in conservatorship, or

"(B) restraining or affecting the exercise of powers or functions of a conservator.

"(c) ADDITIONAL GROUNDS FOR APPOINTMENT.—In addition to the foregoing provisions, the Comptroller may appoint a conservator for a bank if—

"(1) the bank, by an affirmative vote of a majority of its board of directors or by an affirmative vote of a majority of its shareholders, consents to such appointment, or

"(2) the Federal Deposit Insurance Corporation terminates the bank's status as an insured bank.

The appointment of a conservator pursuant to this subsection shall not be subject to review.

"(d) EXCLUSIVE AUTHORITY.—The Comptroller shall have exclusive power and jurisdiction to appoint a conservator for a bank. Whenever the Comptroller appoints a conservator for any bank, the Comptroller may appoint the Federal Deposit Insurance Corporation conservator for such bank. The Federal Deposit Insurance Corporation, as such conservator, shall have all the powers granted under the Federal Deposit Insurance Act, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators of banks under this Act and any other provision of law. The Comptroller may also appoint another person as conservator, who shall be subject to the provisions of this Act.

"(e) REPLACEMENT OF CONSERVATOR.—The Comptroller may, without notice or hearing, replace a conservator with another conservator. Such replacement shall not affect the bank's right under subsection (b) to obtain judicial review of the Comptroller's original decision to appoint a conservator.".

SEC. 803. EXAMINATIONS.

Section 204 of the Bank Conservation Act (12 U.S.C. 204) is amended to read as follows:

"SEC. 204. EXAMINATIONS.

"The Comptroller of the Currency (in consultation with the Board of Directors of the Federal Deposit Insurance Corporation when the Corporation is appointed conservator) is authorized to examine and supervise the bank in conservatorship as long as the bank continues to operate as a going concern. The Comptroller may use reports and other information provided by the Federal Deposit Insurance Corporation for this purpose.".

SEC. 804. TERMINATION OF CONSERVATORSHIP.

Section 205 of the Bank Conservation Act (12 U.S.C. 205) is amended to read as follows:

"SEC. 205. TERMINATION OF CONSERVATORSHIP.

"(a) GENERAL RULE.—At any time the Comptroller becomes satisfied that it may safely be done and that it would be in the public interest, the Comptroller (with the agreement of the Board of Directors of the Federal Deposit Insurance Corporation when the Corporation has been appointed conservator) may—

"(1) terminate the conservatorship and permit the involved bank to resume the transaction of its business subject to such terms, conditions, and limitations as the Comptroller may prescribe; or

"(2) terminate the conservatorship upon a sale, merger, consolidation, purchase and assumption, change in control, or voluntary dissolution and liquidation of the involved bank.

"(b) OTHER GROUNDS FOR TERMINATION.—The Comptroller also may terminate the conservatorship upon the appointment of a receiver pursuant to the first section of the Act of June 30, 1876 (12 U.S.C. 191).

Courts, U.S.

"(c) ENFORCEMENT UNDER FEDERAL DEPOSIT INSURANCE ACT.—Such terms, conditions, and limitations as may be prescribed under subsection (a)(1) shall be enforceable under the provisions of section 8(i) of the Federal Deposit Insurance Act, to the same extent as an order issued pursuant to section 8(b) of the Federal Deposit Insurance Act which has become final. The bank may bring an action in the United States district court for the judicial district in which the home office of such bank is located or in the United States District Court for the District of Columbia for an order requiring the Comptroller to terminate the order. An action for judicial review of the terms, conditions, and limitations may not be commenced later than 20 days from the date of the termination of the conservatorship or the imposition of the order, whichever is later.

Courts, U.S.

"(d) ACTION UPON TERMINATION.—

"(1) IN GENERAL.—Upon termination of the conservatorship under subsection (a)(2), the Federal Deposit Insurance Corporation, as conservator, or when another person is appointed conservator, such other person, shall conclude the affairs of the conservatorship in accordance with paragraph (2).

"(2) DEPOSIT AND DISTRIBUTION OF PROCEEDS.—(A) Within 180 days of the sale, merger, consolidation, purchase and assumption, change in control, or voluntary dissolution and liquidation, the conservator shall deposit all net proceeds received from the transaction, less any outstanding expenses of the conservatorship, with the United States district court for the judicial district in which the home office of such bank is located and shall cause notice to be published for three consecutive months and notify by mail all known and remaining creditors and shareholders. Within 60 days thereafter, any depositor, creditor, or other claimant of the bank, or any shareholder of the bank may bring an action in interpleader in that court for distribution of the proceeds. The district court shall distribute such funds equitably. If no such action is instituted within one year after the date the funds are deposited with the district court, title to such net proceeds shall revert to the United States and the district court shall remit the funds to the Treasury of the United States.

"(B) The conservator shall be deemed to have discharged all responsibility of the conservatorship upon the deposit of the proceeds with the district court and giving the required notifications.".

SEC. 805. CONSERVATOR; POWERS AND DUTIES.

Section 206 of the Bank Conservation Act (12 U.S.C. 206) is amended to read as follows:

"SEC. 206. CONSERVATOR; POWERS AND DUTIES.

"(a) GENERAL POWERS.—A conservator shall have all the powers of the shareholders, directors, and officers of the bank and may operate the bank in its own name unless the Comptroller in the order of appointment limits the conservator's authority.

"(b) SUBJECT TO RULES OF COMPTROLLER.—The conservator shall be subject to such rules, regulations, and orders as the Comptroller from time to time deems appropriate; and, except as otherwise specifically provided in such rules, regulations, or orders or in section 209 of this Act, shall have the same rights and privileges and be subject to the same duties, restrictions, penalties, conditions, and limitations as apply to directors, officers, or employees of a national bank.

"(c) PAYMENT OF DEPOSITORS AND CREDITORS.—The Comptroller may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors such amounts as in the opinion of the Comptroller may safely be used for that purpose. All depositors and creditors who are similarly situated shall be treated in the same manner.

"(d) COMPENSATION OF CONSERVATOR AND EMPLOYEES.—The conservator and professional employees appointed to represent or assist the conservator shall not be paid amounts greater than are payable to employees of the Federal Government for similar services, except that the Comptroller of the Currency may authorize payment at higher rates (but not in excess of rates prevailing in the private sector), if the Comptroller determines that paying such higher rates is necessary in order to recruit and retain competent personnel.

"(e) EXPENSES.—All expenses of any such conservatorship shall be paid by the bank and shall be a lien upon the bank which shall be prior to any other lien.".

SEC. 806. LIABILITY PROTECTION.

Section 209 of the Bank Conservation Act (12 U.S.C. 209) is amended to read as follows:

"SEC. 209. LIABILITY PROTECTION.

"(a) FEDERAL AGENCY AND EMPLOYEES.—In any case in which the conservator is a Federal agency or an employee of the Government, the provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to such conservator's liability for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship.

"(b) OTHER CONSERVATORS.—In any case where the conservator is not a conservator described in subsection (a), the conservator shall not be liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship, unless such acts or omissions constitute gross negligence, including any similar conduct or any form of intentional tortious conduct, as determined by a court.

"(c) INDEMNIFICATION.—The Comptroller shall have authority to indemnify the conservator on such terms as the Comptroller deems proper.".

SEC. 807. RULES AND REGULATIONS.

Section 211 of the Bank Conservation Act (12 U.S.C. 211) is amended to read as follows:

"SEC. 211. RULES AND REGULATIONS.

"(a) IN GENERAL.—The Comptroller of the Currency may prescribe such rules and regulations as the Comptroller may deem necessary to carry out the provisions of this Act.

"(b) F.D.I.C. AS CONSERVATOR.—In any case in which the Federal Deposit Insurance Corporation is the conservator, any rules or regulations prescribed by the Comptroller shall be consistent with any rules and regulations prescribed by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act.".

SEC. 808. REPEALS.

Sections 207 and 208 of the Bank Conservation Act (12 U.S.C. 207 and 208) are repealed.

TITLE IX—REGULATORY ENFORCEMENT AUTHORITY AND CRIMINAL ENHANCEMENTS

Subtitle A—Expanded Enforcement Powers, Increased Penalties, and Improved Accountability

SEC. 901. INSTITUTION-AFFILIATED PARTIES OF A DEPOSITORY INSTITUTION SUBJECT TO ADMINISTRATIVE ENFORCEMENT ORDERS; SUBSTITUTION OF "DEPOSITORY INSTITUTION" FOR "BANK" IN ENFORCEMENT PROVISIONS.

(a) INSTITUTION-AFFILIATED PARTY DEFINED.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end thereof the following new subsection:

"(r) INSTITUTION-AFFILIATED PARTY DEFINED.—For purposes of this Act, the term 'institution-affiliated party' means—

"(1) any committee member, director, officer, or employee of, or agent for, an insured credit union;

"(2) any consultant, joint venture partner, and any other person as determined by the Board (by regulation or on a case-by-case basis) who participates in the conduct of the affairs of an insured credit union; and

"(3) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

"(A) any violation of any law or regulation;

"(B) any breach of fiduciary duty; or

"(C) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured credit union.".

(b) AMENDMENTS RELATING TO USE OF "INSTITUTION-AFFILIATED PARTY".—

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

(A) in subsection (b)(1)—

(i) by striking out "director, officer, employee, agent, or other person participating in the conduct of the affairs of such a bank" and inserting in lieu thereof "institution-affiliated party"; and

(ii) by striking out "directors, officers, employees, agents, or other persons participating in the conduct of the affairs of such bank" and inserting in lieu thereof "institution-affiliated parties";

(B) in each of subsections (b)(1) and (c)—

(i) by striking out "director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank" each place such term appears and inserting in lieu thereof "institution-affiliated party"; and

(ii) by striking out "such director, officer, employee, agent, or other person" each place such term appears and inserting in lieu thereof "such party";

(C) in subsection (e)(4), as so redesignated by section 903(a)(2) of this Act—

(i) by striking out "a director, officer, or other person from office or to prohibit his participation" and inserting in lieu thereof "an institution-affiliated party from office or to prohibit such party from participating";

(ii) by striking out "such director or officer or other person" and inserting in lieu thereof "such party";

(iii) by striking out "such director, officer, or other person" and inserting in lieu thereof "such party";

(iv) by striking out "he" and inserting in lieu thereof "such party";

(v) by striking out "any director, officer or other person" and inserting in lieu thereof "any such party"; and

(vi) by striking out "the director, officer, or other person concerned" and inserting in lieu thereof "such party";

(D) in subsection (e)(5), as so redesignated by section 903(a)(2) of this Act—

(i) by inserting after "the term 'officer' " the following: "within the term 'institution-affiliated party' "; and

(ii) by inserting after "the term 'director' " the following: "within the term 'institution-affiliated party' as used in this subsection";

(E) in subsection (f)—

(i) by striking out "any director, officer, or other person" and inserting in lieu thereof "any institution-affiliated party"; and

(ii) by striking out "such director, officer, or other person" each place such term appears and inserting in lieu thereof "such party";

(F) in subsection (g)(1)—

(i) by striking out "director or officer of an insured bank, or other person participating in the conduct of

the affairs of such bank" and inserting in lieu thereof "institution-affiliated party";

(ii) by striking out "the individual" each place such term appears and inserting in lieu thereof "such party";

(iii) by striking out "such director, officer, or other person" each place such term appears and inserting in lieu thereof "such party";

(iv) by striking out "him" each place such term appears and inserting in lieu thereof "such party";

(v) by striking out "director, officer or other person" and inserting in lieu thereof "party"; and

(vi) by striking out "whereupon such director or officer" and inserting in lieu thereof "whereupon such party (if a director or an officer)";

(G) in subsection (g)(3)—

(i) by striking out "the director, officer, or other person concerned" and inserting in lieu thereof "the institution-affiliated party concerned";

(ii) by striking out "such individual" each place such term appears and inserting in lieu thereof "such party";

(iii) by striking out "the concerned director, officer, or other person" and inserting in lieu thereof "such party";

(iv) by striking out "the director, officer, or other person" each place such term appears (except in "the director, officer, or other person concerned") and inserting in lieu thereof "such party";

(v) by striking out "said director, officer or other person" and inserting in lieu thereof "such party"; and

(vi) by striking out "the director, officer or other person" and inserting in lieu thereof "such party";

(H) in subsection (h)(2), by striking out "director or officer or other person" and inserting in lieu thereof "institution-affiliated party";

(I) in subsection (l), by striking out "director or officer thereof or other person participating in the conduct of its affairs" and inserting in lieu thereof "institution-affiliated party"; and

(J) in subsection (m), by striking out "director or officer or other person participating in the conduct of its affairs" and inserting in lieu thereof "institution-affiliated party".

(2) FCUA.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended—

(A) in subsection (e)(1)—

(i) by striking out "director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such a credit union" and inserting in lieu thereof "institution-affiliated party"; and

(ii) by striking out "directors, officers, committee members, employees, agents, or other persons participating in the conduct of the affairs of such credit union" and inserting in lieu thereof "institution-affiliated parties";

(B) in each of subsections (e)(1) and (f)—

(i) by striking out "director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union" each place such term appears and inserting in lieu thereof "institution-affiliated party"; and

(ii) by striking out "such director, officer, committee member, employee, agent, or other person" each place such term appears and inserting in lieu thereof "such party"; and

(C) in subsection (f)(1), by striking out "such director, officer, committee member, employee, agents, or other person" and inserting in lieu thereof "such party";

(D) in subsection (i)(1)—

(i) by striking out "director, committee member, or officer of an insured credit union, or other person participating in the conduct of the affairs of such credit union" and inserting in lieu thereof "institution-affiliated party";

(ii) by striking out "the individual" each place such term appears and inserting in lieu thereof "such party";

(iii) by striking out "such director, committee member, officer, or other person" each place such term appears and inserting in lieu thereof "such party";

(iv) by striking out "him" and inserting in lieu thereof "such party";

(v) by striking out "director, officer or other person" and inserting in lieu thereof "party"; and

(vi) by striking out "whereupon such director, committee member, or officer" and inserting in lieu thereof "whereupon such party (if a director, a committee member, or an officer)";

(E) in subsection (i)(3)—

(i) by striking out "director, committee member, officer, or other person concerned" and inserting in lieu thereof "institution-affiliated party concerned"; and

(ii) by striking out "such individual" each place such term appears and inserting in lieu thereof "such party";

(iii) by striking out "the concerned director, committee member, officer, or other person" and inserting in lieu thereof "such party";

(iv) by striking out "the director, committee member, officer, or other person" each place such term appears (except in "the director, committee member, officer, or other person concerned") and inserting in lieu thereof "such party"; and

(v) by striking out "said director, committee member, officer or other person" and inserting in lieu thereof "such party";

(F) in subsection (j)(2), by striking out "director, officer, committee member, or other person" and inserting in lieu thereof "institution-affiliated party"; and

(G) in subsection (o), by striking out "director, officer, committee member or other person participating in the conduct of its affairs" and inserting in lieu thereof "institution-affiliated party".

(d) SUBSTITUTION OF "DEPOSITORY INSTITUTION" FOR "BANK".—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), as amended by subsection (b)(1) of this section, is amended by striking out "bank" and "banks" each place such terms appear and inserting in lieu thereof "depository institution" and "depository institutions", respectively, except in subsections (b)(3), (b)(4), (m), (o), and (r).

SEC. 902. AMENDMENTS TO CEASE AND DESIST AUTHORITY WITH RESPECT TO RESTITUTION, RESTRICTIONS ON SPECIFIC ACTIVITIES, GROUNDS FOR ISSUANCE OF A TEMPORARY ORDER, AND INCOMPLETE OR INACCURATE RECORDS.

(a) DEPOSITORY INSTITUTIONS INSURED BY THE FDIC.—

(1) CEASE AND DESIST AUTHORITY.—Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended—

(A) in paragraph (3), by striking out "subsections (c) through (f) and (h) through (n)" and inserting in lieu thereof "subsections (c) through (s) and subsection (u)";

(B) in paragraph (4), by striking out "subsections (c) through (f) and (h) through (n)" and inserting in lieu thereof "subsections (c) through (s) and subsection (u)"; and

(C) by adding at the end thereof the following new paragraphs:

"(6) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority to issue an order under this subsection and subsection (c) which requires an insured depository institution or any institution-affiliated party to take affirmative action to correct any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such depository institution or such party to—

"(A) make restitution or provide reimbursement, indemnification, or guarantee against loss if—

"(i) such depository institution or such party was unjustly enriched in connection with such violation or practice; or

"(ii) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the appropriate Federal banking agency;

"(B) restrict the growth of the institution;

"(C) dispose of any loan or asset involved;

"(D) rescind agreements or contracts; and

"(E) employ qualified officers or employees (who may be subject to approval by the appropriate Federal banking agency at the direction of such agency); and

"(F) take such other action as the banking agency determines to be appropriate.

"(7) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this subsection or subsection (c) includes the authority to place limitations on the activities or functions of an insured depository institution or any institution-affiliated party.

"(8) EXPANSION OF AUTHORITY TO SAVINGS AND LOAN AFFILIATES AND ENTITIES.—Subsections (a) through (s) and subsection (u) shall apply to any savings and loan holding company and to any subsidiary (other than a bank or subsidiary of that bank) of a savings and loan holding company, to any service corporation of a savings association and to any subsidiary of such service

corporation, whether wholly or partly owned, in the same manner as such subsections apply to a savings association.".

(2) TEMPORARY CEASE AND DESIST AUTHORITY.—Section 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818(c)) is amended—

(A) in paragraph (1)—

(i) by striking out "substantial" and inserting in lieu thereof "significant";

(ii) by striking out "seriously" each place such term appears; and

(iii) by inserting after the 1st sentence the following new sentence: "Such order may include any requirement authorized under subsection (b)(6)(B).";; and

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

"(3) INCOMPLETE OR INACCURATE RECORDS.—

"(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b)(1) specifies, on the basis of particular facts and circumstances, that an insured depository institution's books and records are so incomplete or inaccurate that the appropriate Federal banking agency is unable, through the normal supervisory process, to determine the financial condition of that depository institution or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that depository institution, the agency may issue a temporary order requiring—

"(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

"(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

"(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

"(i) shall become effective upon service; and

"(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

"(I) the completion of the proceeding initiated under subsection (b)(1) in connection with the notice of charges; or

"(II) the date the appropriate Federal banking agency determines, by examination or otherwise, that the insured depository institution's books and records are accurate and reflect the financial condition of the depository institution.".

(b) CREDIT UNIONS INSURED BY THE NCUA.—

(1) CEASE AND DESIST AUTHORITY.—Section 206(e) of the Federal Credit Union Act (12 U.S.C. 1786(e)) is amended by adding at the end thereof the following new paragraphs:

"(3) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority to issue an order under this subsection and subsection (f) which requires an insured credit union or any institution-affiliated party to take affirmative action to correct any conditions resulting from any violation or practice with respect to which such order is issued

includes the authority to require such insured credit union or such party to—

"(A) make restitution or provide reimbursement, indemnification, or guarantee against loss if—

"(i) such credit union or such party was unjustly enriched in connection with such violation or practice; or

"(ii) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Board;

"(B) restrict the growth of the institution;

"(C) rescind agreements or contracts;

"(D) dispose of any loan or asset involved; and

"(E) employ qualified officers or employees (who may be subject to approval by the Board at the direction of such Board); and

"(F) take such other action as the Board determines to be appropriate.

"(4) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this subsection or subsection (f) includes the authority to place limitations on the activities or functions of an insured credit union or any institution-affiliated party.".

(2) TEMPORARY CEASE AND DESIST AUTHORITY.—Section 206(f) of the Federal Credit Union Act (12 U.S.C. 1786(f)) is amended—

(A) by redesignating paragraph (3) as paragraph (4);

(B) in paragraph (1)—

(i) by striking out "substantial" and inserting in lieu thereof "significant";

(ii) by striking out "seriously" each place such term appears; and

(iii) by inserting after the 1st sentence the following new sentence: "Such order may include any requirement authorized under subsection (e)(3)(B)."; and

(C) by inserting after paragraph (2) the following new paragraph:

"(3) INCOMPLETE OR INACCURATE RECORDS.—

"(A) TEMPORARY ORDER.—If a notice of charges served under subsection (e)(1) specifies, on the basis of particular facts and circumstances, that an insured credit union's books and records are so incomplete or inaccurate that the Board is unable, through the normal supervisory process, to determine the financial condition of that insured credit union or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that insured credit union, the Board may issue a temporary order requiring—

"(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

"(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (e)(1).

"(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

"(i) shall become effective upon service; and

"(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

"(I) the completion of the proceeding initiated under subsection (e)(1) in connection with the notice of charges; or

"(II) the date the Board determines, by examination or otherwise, that the insured credit union's books and records are accurate and reflect the financial condition of the credit union.".

SEC. 903. MERGER OF REMOVAL AND PROHIBITION AUTHORITY.

(a) DEPOSITORY INSTITUTIONS INSURED BY THE FDIC.—

(1) IN GENERAL.—Section 8(e)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(1)) is amended to read as follows:

"(e) REMOVAL AND PROHIBITION AUTHORITY.—

"(1) AUTHORITY TO ISSUE ORDER.—Whenever the appropriate Federal banking agency determines that—

"(A) any institution-affiliated party has, directly or indirectly—

"(i) violated—

"(I) any law or regulation;

"(II) any cease-and-desist order which has become final;

"(III) any condition imposed in writing by the appropriate Federal banking agency in connection with the grant of any application or other request by such depository institution; or

"(IV) any written agreement between such depository institution and such agency;

"(ii) engaged or participated in any unsafe or unsound practice in connection with any insured depository institution or business institution; or

"(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

"(B) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

"(i) such insured depository institution or business institution has suffered or will probably suffer financial loss or other damage;

"(ii) the interests of the insured depository institution's depositors have been or could be prejudiced; or

"(iii) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

"(C) such violation, practice, or breach—

"(i) involves personal dishonesty on the part of such party; or

"(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such insured depository institution or business institution,

the agency may serve upon such party a written notice of the agency's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any insured depository institution.".

(2) TEMPORARY SUSPENSION OR PROHIBITION.—Section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) is amended by striking out paragraphs (2) and (4), by redesignating paragraphs (3), (5), and (6) as paragraphs (2), (4), and (5), respectively, and by inserting after paragraph (2) (as so redesignated) the following new paragraph:

"(3) SUSPENSION ORDER.—

"(A) SUSPENSION OR PROHIBITION AUTHORIZED.—If the appropriate Federal banking agency serves written notice under paragraph (1) or (2) to any institution-affiliated party of such agency's intention to issue an order under such paragraph, the appropriate Federal banking agency may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the depository institution, if the agency—

"(i) determines that such action is necessary for the protection of the depository institution or the interests of the depository institution's depositors; and

"(ii) serves such party with written notice of the suspension order.

"(B) EFFECTIVE PERIOD.—Any suspension order issued under subparagraph (A)—

"(i) shall become effective upon service; and

"(ii) unless a court issues a stay of such order under subsection (f), shall remain in effect and enforceable until—

"(I) the date the appropriate Federal banking agency dismisses the charges contained in the notice served under paragraph (1) or (2) with respect to such party; or

"(II) the effective date of an order issued by the agency to such party under paragraph (1) or (2).

"(C) COPY OF ORDER.—If an appropriate Federal banking agency issues a suspension order under subparagraph (A) to any institution-affiliated party, the agency shall serve a copy of such order on any insured depository institution with which such party is associated at the time such order is issued.".

(3) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) is amended by adding after paragraph (5) (as so redesignated by paragraph (2) of this subsection) the following new paragraph:

"(6) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this subsection shall not—

"(A) participate in any manner in the conduct of the affairs of any institution or agency specified in paragraph (7)(A);

"(B) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in subparagraph (A);

"(C) violate any voting agreement previously approved by the appropriate Federal banking agency; or

"(D) vote for a director, or serve or act as an institution-affiliated party.".

(4) CONFORMING AMENDMENTS.—

(A) Section 8(f) of the Federal Deposit Insurance Act (12 U.S.C. 1818(f)) is amended—

(i) by striking out "(e)(4)" and inserting in lieu thereof "(e)(3)"; and

(ii) by striking out "(e)(1), (e)(2), or (e)(3)" and inserting in lieu thereof "(e)(1) or (e)(2)".

(B) Section 8(g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)(1)) is amended by striking out "(1), (2), (3), or (4)" and inserting in lieu thereof "(1), (2), or (3)".

(b) CREDIT UNIONS INSURED BY THE NCUA.—

(1) IN GENERAL.—Section 206(g)(1) of the Federal Credit Union Act (12 U.S.C. 1786(g)(1)) is amended to read as follows:

"(g) REMOVAL AND PROHIBITION AUTHORITY.—

"(1) AUTHORITY TO ISSUE ORDER.—Whenever the Board determines that—

"(A) any institution-affiliated party has, directly or indirectly—

"(i) violated—

"(I) any law or regulation;

"(II) any cease-and-desist order which has become final;

"(III) any condition imposed in writing by the Board in connection with the grant of any application or other request by such credit union; or

"(IV) any written agreement between such credit union and the Board;

"(ii) engaged or participated in any unsafe or unsound practice in connection with any insured credit union or business institution; or

"(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

"(B) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

"(i) such insured credit union or business institution has suffered or will probably suffer financial loss or other damage;

"(ii) the interests of the insured credit union's members have been or could be prejudiced; or

"(iii) such party has received financial gain or other benefit by reason of such violation, practice or breach; and

"(C) such violation, practice, or breach—

"(i) involves personal dishonesty on the part of such party; or

"(ii) demonstrates such party's unfitness to serve as a director or officer of, or to otherwise participate in the conduct of the affairs of, an insured credit union,

the Board may serve upon such party a written notice of the Board's intention to remove such party from office or to prohibit any further participation, by such party, in any manner in the conduct of the affairs of any insured credit union.".

(2) TEMPORARY SUSPENSION OR PROHIBITION.—Section 206(g) of the Federal Credit Union Act (12 U.S.C. 1786(g)) is amended by striking out paragraphs (2) and (4), by redesignating paragraphs (3) and (5) as paragraphs (2) and (4), respectively, and by insert-

ing after paragraph (2) (as so redesignated) the following new paragraph:

"(3) SUSPENSION ORDER.—

"(A) SUSPENSION OR PROHIBITION AUTHORIZED.—If the Board serves written notice under paragraph (1) or (2) to any institution-affiliated party of the Board's intention to issue an order under such paragraph, the Board may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the institution, if the Board—

"(i) determines that such action is necessary for the protection of the credit union or the interests of the credit union's members; and

"(ii) serves such person with written notice of the suspension order.

"(B) EFFECTIVE PERIOD.—Any suspension order issued under subparagraph (A)—

"(i) shall become effective upon service; and

"(ii) unless a court issues a stay of such order under paragraph (6), shall remain in effect and enforceable until—

"(I) the date the Board dismisses the charges contained in the notice served under paragraph (1) or (2) with respect to such party; or

"(II) the effective date of an order issued by the Board to such person under paragraph (1) or (2).

"(C) COPY OF ORDER.—If the Board issues a suspension order under subparagraph (A) to any institution-affiliated party, the Board shall serve a copy of such order on any insured credit union with which such party is associated at the time such order is issued.".

(3) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES REQUIRED.—Section 206(g) of the Federal Credit Union Act (12 U.S.C. 1786(g)) is amended by adding after paragraph (4) (as so redesignated by paragraph (2) of this subsection) the following new paragraph:

"(5) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this subsection shall not—

"(A) participate in any manner in the conduct of the affairs of any institution or agency specified in paragraph (7)(A);

"(B) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in subparagraph (A);

"(C) violate any voting agreement previously approved by the appropriate Federal banking agency; or

"(D) vote for a director, or serve or act as an institution-affiliated party.".

(4) CONFORMING AMENDMENTS.—Section 206(g)(6) of the Federal Credit Union Act (12 U.S.C. 1786(g)(6)) is amended—

(A) by striking out "paragraph (4)" and inserting in lieu thereof "paragraph (3)"; and

(B) by striking out "(1), (2), or (3)" and inserting in lieu thereof "(1) or (2)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to violations committed and activities engaged in after the date of the enactment of this Act.

12 USC 1786 note.

SEC. 904. INDUSTRYWIDE APPLICATION OF REMOVAL, SUSPENSION, AND PROHIBITION ORDERS.

(a) DEPOSITORY INSTITUTIONS INSURED BY THE FDIC.—Section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) is amended by inserting after the paragraph added by section 903(a)(3) of this Act the following new paragraph:

"(7) INDUSTRYWIDE PROHIBITION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any person who, pursuant to an order issued under this subsection or subsection (g), has been removed or suspended from office in an insured depository institution or prohibited from participating in the conduct of the affairs of an insured depository institution may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

"(i) any insured depository institution;

"(ii) any institution treated as an insured bank under subsection (b)(3) or (b)(4), or as a savings association under subsection (b)(8);

"(iii) any insured credit union under the Federal Credit Union Act;

"(iv) any institution chartered under the Farm Credit Act of 1971;

"(v) any appropriate Federal depository institution regulatory agency;

"(vi) the Federal Housing Finance Board and any Federal home loan bank; and

"(vii) the Resolution Trust Corporation.

"(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this subsection which removes or suspends from office any institution-affiliated party or prohibits such party from participating in the conduct of the affairs of an insured depository institution, such party receives the written consent of—

"(i) the agency that issued such order; and

"(ii) the appropriate Federal financial institutions regulatory agency of the institution described in any clause of subparagraph (A) with respect to which such party proposes to become an institution-affiliated party,

subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent. Any agency that grants such a written consent shall report such action to the Corporation and publicly disclose such consent.

Reports. Public information.

"(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of subparagraph (A) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

"(D) APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCY DEFINED.—For purposes of this paragraph

and subsection (j), the term "appropriate Federal financial institutions regulatory agency" means—

"(i) the appropriate Federal banking agency, in the case of an insured depository institution;

"(ii) the Farm Credit Administration, in the case of an institution chartered under the Farm Credit Act of 1971;

"(iii) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act);

"(iv) the Secretary of the Treasury, in the case of the Federal Housing Finance Board and any Federal home loan bank; and

"(v) the Oversight Board, in the case of the Resolution Trust Corporation.

"(E) CONSULTATION BETWEEN AGENCIES.—The agencies referred to in clauses (i) and (ii) of subparagraph (B) shall consult with each other before providing any written consent described in subparagraph (B).

"(F) APPLICABILITY.—This paragraph shall only apply to a person who is an individual, unless the appropriate Federal banking agency specifically finds that it should apply to a corporation, firm, or other business enterprise.".

(b) CREDIT UNIONS INSURED BY THE NCUA.—Section 206(g)(7) of the Federal Credit Union Act (12 U.S.C. 1786(g)(7)) is amended to read as follows:

"(7) INDUSTRYWIDE PROHIBITION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any person who, pursuant to an order issued under this subsection or subsection (i), has been removed or suspended from office in an insured credit union or prohibited from participating in the conduct of the affairs of an insured credit union may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

"(i) any insured depository institution;

"(ii) any institution treated as an insured bank under paragraph (3) or (4) of section 8(b) of the Federal Deposit Insurance Act, or as a savings association under section 8(b)(8) of such Act;

"(iii) any insured credit union;

"(iv) any institution chartered under the Farm Credit Act of 1971;

"(v) any appropriate Federal depository institution regulatory agency;

"(vi) the Federal Housing Finance Board and any Federal home loan bank; and

"(vii) the Resolution Trust Corporation.

"(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this subsection which removes or suspends from office any institution-affiliated party or prohibits such party from participating in the conduct of the affairs of an insured credit union, such party receives the written consent of—

"(i) the Board; and

"(ii) the appropriate Federal financial institutions regulatory agency of the institution described in any

clause of subparagraph (A) with respect to which such party proposes to become an institution-affiliated party,

subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent. If any person receives such a written consent from the Board, the Board shall publicly disclose such consent. If the agency referred to in clause (ii) grants such a written consent, such agency shall report such action to the Board and publicly disclose such consent.

Reports. Public information.

"(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of subparagraph (A) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

"(D) APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCY DEFINED.—For purposes of this paragraph and subsection (1), the term "appropriate Federal financial institutions regulatory agency" means—

"(i) the appropriate Federal banking agency, as provided in section 3(q) of the Federal Deposit Insurance Act;

"(ii) the Farm Credit Administration, in the case of an institution chartered under the Farm Credit Act of 1971;

"(iii) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act);

"(iv) the Secretary of the Treasury, in the case of the Federal Housing Finance Board and any Federal home loan bank; and

"(v) the Oversight Board, in the case of the Resolution Trust Corporation.

"(E) CONSULTATION BETWEEN AGENCIES.—The agencies referred to in clauses (i) and (ii) of subparagraph (B) shall consult with each other before providing any written consent described in subparagraph (B).

"(F) APPLICABILITY.—This paragraph shall only apply to a person who is an individual, unless the Board specifically finds that it should apply to a corporation, firm, or other business enterprise.".

SEC. 905. ENFORCEMENT PROCEEDINGS ALLOWED AFTER SEPARATION FROM SERVICE.

(a) DEPOSITORY INSTITUTIONS INSURED BY THE FDIC.—Section 8(i) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)) is amended by adding at the end thereof the following new paragraph:

"(3) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (including a separation caused by the closing of an insured depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depository institution (whether such date occurs before, on, or after the date of the enactment of this paragraph).".

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

"(3) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of a institution-affiliated party (including a separation caused by the closing of an insured credit union) shall not affect the jurisdiction and authority of the Board to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such credit union (whether such date occurs before, on, or after the date of the enactment of this paragraph).".

(c) CHANGE IN CONTROL OF DEPOSITORY INSTITUTION.—Section 7(j)(15) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(15)) is amended by adding at the end thereof the following new sentence: "The resignation, termination of employment or participation, divestiture of control, or separation of or by an institution-affiliated party (including a separation caused by the closing of a depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this subsection against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depository institution (whether such date occurs before, on, or after the date of the enactment of this sentence).".

(d) NONMEMBER INSURED BANKS AND SAVINGS ASSOCIATIONS.—Section 18(j) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)) is amended by adding at the end the following new paragraph:

"(6) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (including a separation caused by the closing of a nonmember bank or a savings association) shall not affect the jurisdiction and authority of the Corporation or the Director of the Office of Thrift Supervision, as appropriate, to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such nonmember bank or such savings association (whether such date occurs before, on, or after the date of the enactment of this paragraph).".

(e) NATIONAL BANKS.—Section 5239 of the Revised Statutes (12 U.S.C. 93) is amended by adding at the end thereof the following new subsection:

"(c) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such an association (including a separation caused by the closing of such an association) shall not affect the jurisdiction and authority of the Comptroller of the Currency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such association (whether

such date occurs before, on, or after the date of the enactment of this subsection).".

(f) MEMBER BANKS.—Section 29 of the Federal Reserve Act (12 U.S.C. 504(a)), as added by section 907(g) of this Act, is amended by adding at the end the following new subsection:

"(m) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a member bank (including a separation caused by the closing of such a bank) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such bank (whether such date occurs before, on, or after the date of the enactment of this subsection).".

(g) MEMBER BANKS.—Section 19 of the Federal Reserve Act (12 U.S.C. 505) is amended by adding at the end thereof the following new subsection: 12 USC 506.

"(m) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a member bank (including a separation caused by the closing of such a bank) shall not affect the jurisdiction and authority of the Board to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such bank (whether such date occurs before, on, or after the date of the enactment of this subsection).".

(h) BANKS.—Section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(2)) is amended by adding at the end the following new subparagraph:

"(I) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such a bank (including a separation caused by the closing of such a bank) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such bank (whether such date occurs before, on, or after the date of the enactment of this subparagraph).".

(i) BANK HOLDING COMPANIES.—Section 8 of the Bank Holding Company Act of 1956 (12 U.S.C. 1847) is amended by adding at the end the following new subsection:

"(c) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a bank holding company (including a separation caused by the deregistration of such a company) shall not affect the jurisdiction and authority of the Board to issue any notice and proceed under this section against any such party, if such notice is served before

the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such holding company (whether such date occurs before, on, or after the date of the enactment of this subsection).".

(j) SAVINGS AND LOAN HOLDING COMPANIES.—Section 10(i) of the Home Owners' Loan Act (as amended by section 301 of this Act) is amended by adding at the end thereof the following new paragraph:

"(5) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a savings and loan holding company or subsidiary thereof (including a separation caused by the deregistration of such a company or such a subsidiary) shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such holding company or its subsidiary (whether such date occurs before, on, or after the date of the enactment of this paragraph).".

SEC. 906 EXPANSION OF REMOVAL POWERS FOR STATE CRIMINAL PROCEEDINGS.

(a) DEPOSITORY INSTITUTIONS INSURED BY THE FDIC.—Section 8(g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)(1)) is amended—

(1) in the 1st sentence, by striking "authorized by a United States attorney"; and

(2) in the 4th sentence, by striking "with respect to such crime" and inserting in lieu thereof "or an agreement to enter a pre-trial diversion or other similar program".

(b) CREDIT UNIONS INSURED BY THE NCUA.—Section 206(i)(1) of the Federal Credit Union Act (12 U.S.C. 1786(i)) is amended—

(1) in the 1st sentence, by striking "authorized by a United States Attorney"; and

(2) in the 4th sentence, by striking "with respect to such crime" and inserting in lieu thereof "or an agreement to enter a pre-trial diversion or other similar program".

SEC. 907. AMENDMENTS TO EXPAND AND INCREASE CIVIL MONEY PENALTIES.

(a) GENERAL PROVISIONS FOR DEPOSITORY INSTITUTIONS INSURED BY THE FDIC.—Section 8(i)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2)) is amended to read as follows:

"(2) CIVIL MONEY PENALTY.—

"(A) FIRST TIER.—Any insured depository institution which, and any institution-affiliated party who—

"(i) violates any law or regulation;

"(ii) violates any final order or temporary order issued pursuant to subsection (b), (c), (e), (g), or (s);

"(iii) violates any condition imposed in writing by the appropriate Federal banking agency in connection with the grant of any application or other request by such depository institution; or

"(iv) violates any written agreement between such depository institution and such agency,

shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

"(B) SECOND TIER.—Notwithstanding subparagraph (A), any insured depository institution which, and any institution-affiliated party who—

"(i)(I) commits any violation described in any clause of subparagraph (A);

"(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of such insured depository institution; or

"(III) breaches any fiduciary duty;

"(ii) which violation, practice, or breach—

"(I) is part of a pattern of misconduct;

"(II) causes or is likely to cause more than a minimal loss to such depository institution; or

"(III) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

"(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any insured depository institution which, and any institution-affiliated party who—

"(i) knowingly—

"(I) commits any violation described in any clause of subparagraph (A);

"(II) engages in any unsafe or unsound practice in conducting the affairs of such depository institution; or

"(III) breaches any fiduciary duty; and

"(ii) knowingly or recklessly causes a substantial loss to such depository institution or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

"(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

"(i) in the case of any person other than an insured depository institution, an amount to not exceed $1,000,000; and

"(ii) in the case of any insured depository institution, an amount not to exceed the lesser of—

"(I) $1,000,000; or

"(II) 1 percent of the total assets of such institution.

"(E) ASSESSMENT.—

"(i) WRITTEN NOTICE.—Any penalty imposed under subparagraph (A), (B), or (C) may be assessed and collected by the appropriate Federal banking agency by written notice.

"(ii) FINALITY OF ASSESSMENT.—If, with respect to any assessment under clause (i), a hearing is not requested pursuant to subparagraph (H) within the period of time allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

"(F) AUTHORITY TO MODIFY OR REMIT PENALTY.—Any appropriate Federal banking agency may compromise, modify, or remit any penalty which such agency may assess or had already assessed under subparagraph (A), (B), or (C).

"(G) MITIGATING FACTORS.—In determining the amount of any penalty imposed under subparagraph (A), (B), or (C), the appropriate agency shall take into account the appropriateness of the penalty with respect to—

"(i) the size of financial resources and good faith of the insured depository institution or other person charged;

"(ii) the gravity of the violation;

"(iii) the history of previous violations; and

"(iv) such other matters as justice may require.

"(H) HEARING.—The insured depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

"(I) COLLECTION.—

"(i) REFERRAL.—If any insured depository institution or other person fails to pay an assessment after any penalty assessed under this paragraph has become final, the agency that imposed the penalty shall recover the amount assessed by action in the appropriate United States district court.

"(ii) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any civil action under clause (i), the validity and appropriateness of the penalty shall not be subject to review.

"(J) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

"(K) REGULATIONS.—Each appropriate Federal banking agency shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.".

(b) GENERAL PROVISIONS FOR CREDIT UNIONS INSURED BY THE NCUA.—Section 206(k)(2) of the Federal Credit Union Act (12 U.S.C. 1786(k)(2)) is amended to read as follows:

"(2) CIVIL MONEY PENALTY.—

"(A) FIRST TIER.—Any insured credit union which, and any institution-affiliated party who—

"(i) violates any law or regulation;

"(ii) violates any final order or temporary order issued pursuant to subsection (e), (f), (g), (i), or (q);

"(iii) violates any condition imposed in writing by the Board in connection with the grant of any application or other request by such credit union; or

"(iv) violates any written agreement between such credit union and such agency,

shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

"(B) SECOND TIER.—Notwithstanding subparagraph (A), any insured credit union which, and any institution-affiliated party who—

"(i)(I) commits any violation described in any clause of subparagraph (A);

"(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of such credit union; or

"(III) breaches any fiduciary duty;

"(ii) which violation, practice, or breach—

"(I) is part of a pattern of misconduct;

"(II) causes or is likely to cause more than a minimal loss to such credit union; or

"(III) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

"(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any insured credit union which, and any institution-affiliated party who—

"(i) knowingly—

"(I) commits any violation described in any clause of subparagraph (A);

"(II) engages in any unsafe or unsound practice in conducting the affairs of such credit union; or

"(III) breaches any fiduciary duty; and

"(ii) knowingly or recklessly causes a substantial loss to such credit union or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

"(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

"(i) in the case of any person other than an insured credit union, an amount to not exceed $1,000,000; and

"(ii) in the case of any insured credit union, an amount not to exceed the lesser of—

"(I) $1,000,000; or

"(II) 1 percent of the total assets of such credit union.

"(E) ASSESSMENT.—

"(i) WRITTEN NOTICE.—Any penalty imposed under subparagraph (A), (B), or (C) may be assessed and collected by the Board by written notice.

"(ii) FINALITY OF ASSESSMENT.—If, with respect to any assessment under clause (i), a hearing is not requested pursuant to subparagraph (H) within the period of time

allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

"(F) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Board may compromise, modify, or remit any penalty which such agency may assess or had already assessed under subparagraph (A), (B), or (C).

"(G) MITIGATING FACTORS.—In determining the amount of any penalty imposed under subparagraph (A), (B), or (C), the Board shall take into account the appropriateness of the penalty with respect to—

"(i) the size of financial resources and good faith of the insured credit union or the person charged;

"(ii) the gravity of the violation;

"(iii) the history of previous violations; and

"(iv) such other matters as justice may require.

"(H) HEARING.—The insured credit union or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

"(I) COLLECTION.—

"(i) REFERRAL.—If any insured credit union or other person fails to pay an assessment after any penalty assessed under this paragraph has become final, the Board shall recover the amount assessed by action in the appropriate United States district court.

"(ii) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any civil action under clause (i), the validity and appropriateness of the penalty shall not be subject to review.

"(J) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

"(K) VIOLATE DEFINED.—For purposes of this section, the term 'violate' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(L) REGULATIONS.—The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.".

(c) NONMEMBER INSURED BANKS AND SAVINGS ASSOCIATIONS.—Paragraphs (4) and (5) of section 18(j) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)) are amended to read as follows:

"(4) CIVIL MONEY PENALTY.—

"(A) FIRST TIER.—Any nonmember insured bank or savings association which, and any institution-affiliated party who, violates any provision of section 22(h), 23A, or 23B of the Federal Reserve Act or any lawful regulation issued pursuant thereto, and any nonmember insured bank which, and any institution-affiliated party who, violates any provision of section 20 of the Banking Act of 1933, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

"(B) SECOND TIER.—Notwithstanding subparagraph (A), any nonmember insured bank or savings association which, and any institution-affiliated party who—

"(i)(I) commits any violation described in any clause of subparagraph (A);

"(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of such bank or association, as the case may be; or

"(III) breaches any fiduciary duty;

"(ii) which violation, practice, or breach—

"(I) is part of a pattern of misconduct;

"(II) results in more than a minimal loss to such bank or association, as the case may be; or

"(III) causes or is likely to cause pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

"(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any nonmember insured bank or savings association which, and any institution-affiliated party who—

"(i) knowingly—

"(I) commits any violation described in any clause of subparagraph (A);

"(II) engages in any unsafe or unsound practice in conducting the affairs of such bank or association; or

"(III) breaches any fiduciary duty; and

"(ii) knowingly or recklessly causes a substantial loss to such bank or association or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

"(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

"(i) in the case of any person other than a nonmember insured bank or savings association, an amount to not exceed $1,000,000; and

"(ii) in the case of any nonmember insured bank or savings association, an amount not to exceed the lesser of—

"(I) $1,000,000; or

"(II) 1 percent of the total assets of such bank or association.

"(E) ASSESSMENT; ETC.—Any penalty imposed under subparagraph (A), (B), or (C) shall be assessed and collected by the appropriate Federal banking agency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

"(F) HEARING.—The nonmember insured bank, savings association, or other person against whom any penalty is assessed under this paragraph shall be afforded an agency

hearing if such nonmember insured bank, savings association, or other person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) shall apply to any proceeding under this paragraph.

"(G) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

"(5) REGULATIONS.—The appropriate Federal banking agency shall prescribe regulations establishing such procedures as may be necessary to carry out paragraph (4).".

(d) CHANGE IN CONTROL OF DEPOSITORY INSTITUTION.—Section 7(j)(16) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(16)) is amended to read as follows:

"(16) CIVIL MONEY PENALTY.—

"(A) FIRST TIER.—Any person who violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency under this subsection, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

"(B) SECOND TIER.—Notwithstanding subparagraph (A), any person who—

"(i)(I) commits any violation described in any clause of subparagraph (A);

"(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of a depository institution; or

"(III) breaches any fiduciary duty;

"(ii) which violation, practice, or breach—

"(I) is part of a pattern of misconduct;

"(II) causes or is likely to cause more than a minimal loss to such institution; or

"(III) results in pecuniary gain or other benefit to such person,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

"(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any person who—

"(i) knowingly—

"(I) commits any violation described in any clause of subparagraph (A);

"(II) engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or

"(III) breaches any fiduciary duty; and

"(ii) knowingly or recklessly causes a substantial loss to such institution or a substantial pecuniary gain or other benefit to such person by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

"(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (c).—The maximum daily amount of any civil penalty which may be assessed pursu-

ant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

"(i) in the case of any person other than a depository institution, an amount to not exceed $1,000,000; and

"(ii) in the case of a depository institution, an amount not to exceed the lesser of—

"(I) $1,000,000; or

"(II) 1 percent of the total assets of such institution.

"(E) ASSESSMENT; ETC.—Any penalty imposed under subparagraph (A), (B), or (C) shall be assessed and collected by the appropriate Federal banking agency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

"(F) HEARING.—The depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or other person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) shall apply to any proceeding under this paragraph.

"(G) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.".

(e) NATIONAL BANKS.—Section 5239(b) of the Revised Statutes (12 U.S.C. 93(b)) is amended to read as follows:

"(b) CIVIL MONEY PENALTY.—

"(1) FIRST TIER.—Any national banking association which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such association who, violates any provision of this title or any of the provisions of the first section of the Act of September 28, 1962, (76 Stat. 668; 12 U.S.C. 92a), or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

"(2) SECOND TIER.—Notwithstanding paragraph (1), any national banking association which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such association who, commits any violation described in paragraph (1) which—

"(A)(i) commits any violation described in any paragraph (1);

"(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such association; or

"(iii) breaches any fiduciary duty;

"(B) which violation, practice, or breach—

"(i) is part of a pattern of misconduct;

"(ii) causes or is likely to cause more than a minimal loss to such association; or

"(iii) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

"(3) THIRD TIER.—Notwithstanding paragraphs (1) and (2), any national banking association which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such association who—

"(A) knowingly—

"(i) commits any violation described in paragraph (1);

"(ii) engages in any unsafe or unsound practice in conducting the affairs of such association; or

"(iii) breaches any fiduciary duty; and

"(B) knowingly or recklessly causes a substantial loss to such association or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues.

"(4) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is—

"(A) in the case of any person other than a national banking association, an amount to not exceed $1,000,000; and

"(B) in the case of a national banking association, an amount not to exceed the lesser of—

"(i) $1,000,000; or

"(ii) 1 percent of the total assets of such association.

"(5) ASSESSMENT; ETC.—Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Comptroller of the Currency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

"(6) HEARING.—The association or other person against whom any penalty is assessed under this subsection shall be afforded an agency hearing if such association or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

"(7) DISBURSEMENT.—All penalties collected under authority of this subsection shall be deposited into the Treasury.

"(8) VIOLATE DEFINED.—For purposes of this section, the term 'violate' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(12) REGULATIONS.—The Comptroller shall prescribe regulations establishing such procedures as may be necessary to carry out this subsection.".

(f) NATIONAL BANKS.—The 2d paragraph of section 5240 of the Revised Statutes (12 U.S.C. 481) is amended by striking "$100" and inserting "$5,000".

(g) MEMBER BANKS.—Section 29 of the Federal Reserve Act (12 U.S.C. 504) is amended to read as follows:

"SEC. 29. CIVIL MONEY PENALTY.

"(a) FIRST TIER.—Any member bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such member bank who, violates any provision of section 22, 23A, or 23B, or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

"(b) SECOND TIER.—Notwithstanding subsection (a), any member bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such member bank who

"(1)(A) commits any violation described in subsection (a);

"(B) recklessly engages in an unsafe or unsound practice in conducting the affairs of such member bank; or

"(C) breaches any fiduciary duty;

"(2) which violation, practice, or breach—

"(A) is part of a pattern of misconduct;

"(B) causes or is likely to cause more than a minimal loss to such member bank; or

"(C) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

"(c) THIRD TIER.—Notwithstanding subsections (a) and (b), any member bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such member bank who—

"(1) knowingly—

"(A) commits any violation described in subsection (a);

"(B) engages in any unsafe or unsound practice in conducting the affairs of such credit union; or

"(C) breaches any fiduciary duty; and

"(2) knowingly or recklessly causes a substantial loss to such credit union or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subsection (d) for each day during which such violation, practice, or breach continues.

"(d) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBSECTION (c).—The maximum daily amount of any civil penalty which may be assessed pursuant to subsection (c) for any violation, practice, or breach described in such subsection is—

"(1) in the case of any person other than a member bank, an amount to not exceed $1,000,000; and

"(2) in the case of a member bank, an amount not to exceed the lesser of—

"(A) $1,000,000; or

"(B) 1 percent of the total assets of such member bank.

"(e) ASSESSMENT; ETC.—Any penalty imposed under subsection (a), (b), or (c) shall be assessed and collected by

"(1) in the case of a national bank, by the Comptroller of the Currency; and

"(2) in the case of a State member bank, by the Board, in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties

imposed (under such section) and any such assessment shall be subject to the provisions of such section.

"(f) HEARING.—The member bank or other person against whom any penalty is assessed under this section shall be afforded an agency hearing if such member bank or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this section.

"(g) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

"(h) VIOLATE DEFINED.—For purposes of this section, the term 'violate' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(i) REGULATIONS.—The Comptroller of the Currency and the Board shall prescribe regulations establishing such procedures as may be necessary to carry out this section.".

(h) MEMBER BANK.—Section 19(l) of the Federal Reserve Act (12 U.S.C. 505(l)) is amended to read as follows:

"(l) CIVIL MONEY PENALTY.—

"(1) FIRST TIER.—Any member bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such member bank who, violates any provision of this section, or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

"(2) SECOND TIER.—Notwithstanding paragraph (1), any member bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such member bank who—

"(A)(i) commits any violation described in paragraph (1);

"(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such member bank; or

"(iii) breaches any fiduciary duty;

"(B) which violation, practice, or breach—

"(i) is part of a pattern of misconduct;

"(ii) causes or is likely to cause more than a minimal loss to such member bank; or

"(iii) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

"(3) THIRD TIER.—Notwithstanding paragraphs (1) and (2), any member bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such member bank who—

"(A) knowingly—

"(i) commits any violation described in paragraph (1);

"(ii) engages in any unsafe or unsound practice in conducting the affairs of such member bank; or

"(iii) breaches any fiduciary duty; and

"(B) knowingly or recklessly causes a substantial loss to such member bank or a substantial pecuniary gain or other

benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues.

"(4) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is—

"(A) in the case of any person other than a member bank, an amount not to exceed $1,000,000; and

"(B) in the case of a member bank, an amount not to exceed the lesser of—

"(i) $1,000,000; or

"(ii) 1 percent of the total assets of such member bank.

"(5) ASSESSMENT; ETC.—Any penalty imposed under paragraph (1), (2), or (3) may be assessed and collected by the Board in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

"(6) HEARING.—The member bank or other person against whom any penalty is assessed under this subsection shall be afforded an agency hearing if such member bank or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

"(7) DISBURSEMENT.—All penalties collected under authority of this subsection shall be deposited into the Treasury.

"(8) VIOLATE DEFINED.—For purposes of this section, the term 'violate' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(9) REGULATIONS.—The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this subsection.".

(i) BANKS.—Section 106(b)(2)(F) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(2)(F)) is amended to read as follows:

"(F) CIVIL MONEY PENALTY.—

"(i) FIRST TIER.—Any bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such bank who, violates any provision of this paragraph shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

"(ii) SECOND TIER.—Notwithstanding clause (i), any bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such bank who—

"(I)(aa) commits any violation described in clause (i);

"(bb) recklessly engages in an unsafe or unsound practice in conducting the affairs of such bank; or

"(cc) breaches any fiduciary duty;

"(II) which violation, practice, or breach—

"(aa) is part of a pattern of misconduct;

"(bb) causes or is likely to cause more than a minimal loss to such bank; or

"(cc) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

"(iii) THIRD TIER.—Notwithstanding clauses (i) and (ii), any bank which, and any institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such bank who—

"(I) knowingly—

"(aa) commits any violation described in clause (i);

"(bb) engages in any unsafe or unsound practice in conducting the affairs of such bank; or

"(cc) breaches any fiduciary duty; and

"(II) knowingly or recklessly causes a substantial loss to such bank or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under clause (iv) for each day during which such violation, practice, or breach continues.

"(iv) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN CLAUSE (iii).—The maximum daily amount of any civil penalty which may be assessed pursuant to clause (iii) for any violation, practice, or breach described in such clause is—

"(I) in the case of any person other than a bank, an amount to not exceed $1,000,000; and

"(II) in the case of a bank, an amount not to exceed the lesser of—

"(aa) $1,000,000; or

"(bb) 1 percent of the total assets of such bank.

"(v) ASSESSMENT; ETC.—Any penalty imposed under clause (i), (ii), or (iii) may be assessed and collected—

"(I) in the case of a national bank, by the Comptroller of the Currency;

"(II) in the case of a State member bank, by the Board; and

"(III) in the case of an insured nonmember State bank, by the Federal Deposit Insurance Corporation,

in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

"(vi) HEARING.—The bank or other person against whom any penalty is assessed under this subparagraph shall be afforded an agency hearing if such bank or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subparagraph.

"(vii) DISBURSEMENT.—All penalties collected under authority of this subsection shall be deposited into the Treasury.

"(viii) VIOLATE DEFINED.—For purposes of this paragraph, the term 'violate' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(ix) REGULATIONS.—The Comptroller of the Currency, the Board, and the Federal Deposit Insurance Corporation shall prescribe regulations establishing such procedures as may be necessary to carry out this subparagraph.".

(j) BANK HOLDING COMPANIES.—Section 8 of the Bank Holding Company Act of 1956 (12 U.S.C. 1847) is amended—

(1) in subsection (a), by striking out the first 2 sentences and inserting in lieu thereof the following:

"(a) CRIMINAL PENALTY.—

"(1) Whoever knowingly violates any provision of this Act or, being a company, violates any regulation or order issued by the Board under this Act, shall be imprisoned not more than 1 year, fined not more than $100,000 per day for each day during which the violation continues, or both.

"(2) Whoever, with the intent to deceive, defraud, or profit significantly, knowingly violates any provision of this Act shall be imprisoned not more than 5 years, fined not more than $1,000,000 per day for each day during which the violation continues, or both."; and

(2) by amending subsection (b) to read as follows:

"(b) CIVIL MONEY PENALTY.—

"(1) PENALTY.—Any company which violates, and any individual who participates in a violation of, any provision of this Act, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

"(2) ASSESSMENT; ETC.—Any penalty imposed under paragraph (1) may be assessed and collected by the Board in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

"(3) HEARING.—The company or other person against whom any penalty is assessed under this subsection shall be afforded an agency hearing if such association or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

"(4) DISBURSEMENT.—All penalties collected under authority of this subsection shall be deposited into the Treasury.

"(5) VIOLATE DEFINED.—For purposes of this section, the term 'violate' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(6) REGULATIONS.—The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this subsection.".

(k) SAVINGS AND LOAN HOLDING COMPANIES.—Section 10(i) of the Home Owners Loan Act of 1933 (as amended by section 301 of this Act) is amended—

(1) by striking paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) CRIMINAL PENALTY.—

"(A) Whoever knowingly violates any provision of this section or being a company, violates any regulation or order issued by the Director under this section, shall be imprisoned not more than 1 year, fined not more than $100,000 per day for each day during which the violation continues, or both.

"(B) Whoever, with the intent to deceive, defraud, or profit significantly, knowingly violates any provision of this section shall be fined not more than $1,000,000 per day for each day during which the violation continues, imprisoned not more than 5 years, or both.";

(2) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(3) by amending paragraph (3) (as so redesignated by paragraph (2) of this subsection) to read as follows:

"(3) CIVIL MONEY PENALTY.—

"(A) PENALTY.—Any company which violates, and any person who participates in a violation of, any provision of this section, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

"(B) ASSESSMENT; ETC.—Any penalty imposed under subparagraph (A) may be assessed and collected by the Director in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

"(C) HEARING.—The company or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such company or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this paragraph.

"(D) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

"(E) VIOLATE DEFINED.—For purposes of this section, the term 'violate' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(F) REGULATIONS.—The Director shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.".

12 USC 93 note.

(l) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to conduct engaged in by any person after the date of the enactment of this Act, except that the increased maximum civil penalties of $5,000 and $25,000 per violation or per day may apply to such conduct engaged in before such date if such conduct—

(1) is not already subject to a notice (initiating an administrative proceeding) issued by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) or the National Credit Union Administration Board; and

(2) occurred after the completion of the last report of examination of the institution involved by the appropriate Federal

banking agency (as so defined) occurring before the date of the enactment of this Act.

SEC. 908. CLARIFICATION OF CRIMINAL PENALTY PROVISIONS FOR VIOLATION OF CERTAIN ORDERS.

(a) DEPOSITORY INSTITUTIONS INSURED BY THE FDIC.—Section 8(j) of the Federal Deposit Insurance Act (12 U.S.C. 1818(j)) is amended to read as follows:

"(j) CRIMINAL PENALTY.—Whoever, being subject to an order in effect under subsection (e) or (g), without the prior written approval of the appropriate Federal financial institutions regulatory agency, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order or in subsection (e)(6)) in the conduct of the affairs of—

"(1) any insured depository institution;

"(2) any institution treated as an insured bank under subsection (b)(3) or (b)(4), or as a savings association under subsection (b)(8);

"(3) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act);

"(4) any institution chartered under the Farm Credit Act of 1971; or

"(5) the Resolution Trust Corporation,

shall be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.".

(b) CREDIT UNIONS INSURED BY THE NCUA.—Section 206(l) of the Federal Credit Union Act (12 U.S.C. 1786(l)) is amended to read as follows:

"(l) CRIMINAL PENALTY FOR VIOLATION OF CERTAIN ORDERS.—Whoever—

"(1) under this Act, is suspended or removed from, or prohibited from participating in the affairs of any credit union described in section 206(g)(5); and

"(2) knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order or in subsection (g)(5)) in the conduct of the affairs of such a credit union;

shall be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.".

SEC. 909. SUPERVISORY RECORDS.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by inserting after subsection (m) (as added by section 214 of this Act) the following new subsection:

"(o) SUPERVISORY RECORDS.—In addition to the requirements of section 7(a)(2) to provide to the Corporation copies of reports of examination and reports of condition, whenever the Corporation has been appointed as receiver for an insured depository institution, the appropriate Federal banking agency shall make available all supervisory records to the receiver which may be used by the receiver in any manner the receiver determines to be appropriate.".

SEC. 910. INCREASED PENALTY FOR PARTICIPATION BY CONVICTED INDIVIDUALS.

(a) BANKS INSURED BY THE FDIC.—Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) is amended to read as follows:

"SEC. 19. PENALTY FOR UNAUTHORIZED PARTICIPATION BY CONVICTED INDIVIDUAL.

"(a) PROHIBITION.—Except with the prior written consent of the Corporation—

"(1) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust may not participate, directly or indirectly, in any manner in the conduct of the affairs of an insured depository institution; and

"(2) an insured depository institution may not permit such participation.

"(b) PENALTY.—Whoever knowingly violates subsection (a) shall be fined not more than $1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.".

(b) CREDIT UNIONS INSURED BY THE NCUA.—Section 205(d) of the Federal Credit Union Act (12 U.S.C. 1785(d)) is amended to read as follows:

"(d) PENALTY FOR PROHIBITED PARTICIPATION.—

"(1) PROHIBITION.—Except with the prior written consent of the Board—

"(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust may not participate, directly or indirectly, in any manner in the conduct of the affairs of an insured credit union; and

"(B) an insured credit union may not permit such participation.

"(2) PENALTY.—Whoever knowingly violates paragraph (1) shall be fined not more than $1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.".

SEC. 911. AMENDMENTS TO VARIOUS PROVISIONS OF LAW RELATING TO REPORTS.

(a) BANK PROTECTION ACT.—Section 3(b) of the Bank Protection Act of 1968 (12 U.S.C. 1882) is amended by striking out "and shall require the submission of periodic reports with respect to the installation, maintenance, and operation of security devices and procedures".

(b) AMENDMENTS RELATING TO NATIONAL BANKS.—

(1) Section 5211 of the Revised Statutes (12 U.S.C. 161) is amended—

(A) in the 5th sentence of subsection (a), by striking out "within ten days after the receipt of a request therefor from him" and inserting in lieu thereof "within the period of time specified by the Comptroller"; and

(B) in subsection (c), by striking out the last sentence.

(2) Section 5213 of the Revised Statutes (12 U.S.C. 164) is amended to read as follows:

"SEC. 5213. PENALTY FOR FAILURE TO MAKE REPORTS.

"(a) FIRST TIER.—Any association which—

"(1) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error—

"(A) fails to make, obtain, transmit, or publish any report or information required by the Comptroller of the Currency under section 5211 of this chapter, within the period of time specified by the Comptroller; or

"(B) submits or publishes any false or misleading report or information; or

"(2) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The association shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

"(b) SECOND TIER.—Any association which—

"(1) fails to make, obtain, transmit, or publish any report or information required by the Comptroller of the Currency under section 5211 of this chapter, within the period of time specified by the Comptroller; or

"(2) submits or publishes any false or misleading report or information,

in a manner not described in subsection (a) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

"(c) THIRD TIER.—Notwithstanding subsections (a) and (b), if any association knowingly or with reckless disregard for the accuracy of any information or report described in subsection (b) submits or publishes any false or misleading report or information, the Comptroller may assess a penalty of not more than $1,000,000 or 1 percent of total assets of the association, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

"(d) ASSESSMENT; ETC.—Any penalty imposed under subsection (a), (b), or (c) shall be assessed and collected by the Comptroller of the Currency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.

"(e) HEARING.—Any association against which any penalty is assessed under this subsection shall be afforded an agency hearing if such association submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this section.".

(c) AMENDMENT RELATING TO STATE NONMEMBER INSURED BANKS.—Section 7(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(1)) is amended by striking out the last sentence and inserting in lieu thereof the following new sentences: "Any such bank which (A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, or (B) inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. Such bank shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any such bank which fails to make or publish any report required under this

paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any such bank knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Corporation may assess a penalty of not more than $1,000,000 or 1 percent of total assets of such bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any such bank against which any penalty is assessed under this subsection shall be afforded an agency hearing if such bank submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) shall apply to any proceeding under this paragraph.".

(d) AMENDMENT RELATING TO STATE MEMBER BANKS.—The 6th undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 324) is amended by striking out the penultimate sentence and inserting in lieu thereof the following new sentences: "Any bank which (A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make or publish any report required under this paragraph, within the period of time specified by the Board, or submits or publishes any false or misleading report or information, or (B) inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The bank shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any bank which fails to make or publish such reports within the period of time specified by the Board, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any bank knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Board may assess a penalty of not more than $1,000,000 or 1 percent of total assets of such bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Board in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any bank against which

any penalty is assessed under this subsection shall be afforded an agency hearing if such bank submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this paragraph.".

(e) AMENDMENT RELATING TO BANK HOLDING COMPANIES.—Section 8 of the Bank Holding Company Act of 1956 (12 U.S.C. 1847) is amended by adding after the subsection added by section 905(i) of this Act the following new subsection:

"(d) PENALTY FOR FAILURE TO MAKE REPORTS.—

"(1) FIRST TIER.—Any company which—

"(A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error—

"(i) fails to make, submit, or publish such reports or information as may be required under this Act or under regulations prescribed by the Board pursuant to this Act, within the period of time specified by the Board; or

"(ii) submits or publishes any false or misleading report or information; or

"(B) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The company shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

"(2) SECOND TIER.—Any company which—

"(A) fails to make, submit, or publish such reports or information as may be required under this Act or under regulations prescribed by the Board pursuant to this Act, within the period of time specified by the Board; or

"(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

"(3) THIRD TIER.—Notwithstanding paragraph (2), if any company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Board may, in its discretion, assess a penalty of not more than $1,000,000 or 1 percent of total assets of such company, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

"(4) ASSESSMENT; ETC.—Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Board in the manner provided in subsection (b) (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

"(5) HEARING.—Any company against which any penalty is assessed under this subsection shall be afforded an agency hearing if such company submits a request for such hearing

within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.".

(f) AMENDMENT RELATING TO CREDIT UNIONS.—Section 202(a)(3) of the Federal Credit Union Act (12 U.S.C. 1782(a)(3)) is amended by striking out the 2nd sentence and inserting in lieu thereof the following new sentences: "Any insured credit union which maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit or publish any report required under this subsection or section 106, within the period of time specified by the Board, or submits or publishes any false or misleading report or information, or inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The insured credit union shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any insured credit union which fails to submit or publish any report required under this subsection or section 106, within the period of time specified by the Board, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any insured credit union knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Board may assess a penalty of not more than $1,000,000 or 1 percent of total assets of such credit union, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Board in the manner provided in section 206(k)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any insured credit union against which any penalty is assessed under this subsection shall be afforded an agency hearing if such insured credit union submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 206(j) shall apply to any proceeding under this subsection.".

12 USC 161 note.

(i) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to reports filed or required to be filed after the date of the enactment of this Act.

SEC. 912. AUTHORITY OF THE FDIC TO TAKE ENFORCEMENT ACTION AGAINST SAVINGS ASSOCIATIONS.

Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end thereof the following new subsection:

"(t) AUTHORITY OF BOARD TO TAKE ENFORCEMENT ACTION AGAINST SAVINGS ASSOCIATIONS.—

"(1) AUTHORITY TO RECOMMEND THAT DIRECTOR OF OFFICE OF THRIFT SUPERVISION TAKE ENFORCEMENT ACTION.—The Corporation, based on an examination of a savings association by the Corporation or by the Director of the Office of Thrift Supervision or on other information, may recommend that the Direc-

tor take any enforcement action authorized under section 7(j), this section, or section 18(j) with respect to any savings association.

"(2) AUTHORITY OF BOARD TO ORDER CORPORATION TO TAKE ENFORCEMENT ACTION IF DIRECTOR OF OFFICE OF THRIFT SUPERVISION FAILS TO FOLLOW RECOMMENDATION.—If the Director fails to take the recommended action or to provide an acceptable plan for addressing the concerns of the Corporation as set forth in its recommendation before the close of the 60-day period beginning on the date of the receipt of the formal recommendation from the Corporation, the Board of Directors may order the Corporation to take such action if the Board determines that—

"(A) the association is in an unsafe or unsound condition; or

"(B) failure to take the recommended action will result in continuance of unsafe or unsound practices in conducting the business of the savings association.

"(3) EFFECT OF EXIGENT CIRCUMSTANCES.—

"(A) AUTHORITY TO ACT.—Notwithstanding paragraphs (1) and (2), the Board of Directors may order the Corporation to exercise its authority, without regard to the time period set forth, in exigent circumstances after notifying the Director.

"(B) AGREEMENT ON EXIGENT CIRCUMSTANCES.—The Corporation shall, by agreement with the Director, set forth those exigent circumstances in which the Corporation may act without regard to the time period set forth above.

"(4) REQUESTS FOR FORMAL ACTIONS AND INVESTIGATIONS.—

"(A) SUBMISSION OF REQUESTS.—The regional offices of the Office of Thrift Supervision shall concurrently submit all requests for formal investigations or enforcement actions to both the Director and the Corporation.

"(B) DIRECTOR REQUIRED TO REPORT ON REQUESTS.—The Director shall report semiannually to the Corporation the status or disposition of all such requests, including the reasons for the Director's decision to either approve or deny all such requests.

"(5) NONDELEGATION.—Any decisions by the Board of Directors to order actions described in this subsection shall not be delegated.".

SEC. 913. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS REQUIRED.

(a) ORDERS ISSUED BY APPROPRIATE FEDERAL BANKING AGENCIES.—Section 8 of the Federal Deposit Insurance Act is amended by adding after the subsection added by section 912 of this Act the following new subsection:

"(u) PUBLIC DISCLOSURE OF FINAL ORDERS.—

"(1) IN GENERAL.—The appropriate Federal banking agency shall publish and make available to the public—

"(A) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other provision of law; and

"(B) any modification to or termination of any final order described in subparagraph (A) of this paragraph.

"(2) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the appropriate Federal banking agency makes a determination in writing that the publication of any final order pursuant to paragraph (1) would seriously threaten

the safety or soundness of an insured depository institution, such agency may delay the publication of such order for a reasonable time.".

(b) ORDERS ISSUED BY NCUA.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by inserting after the subsection added by section 901(b) of this Act the following new subsection:

"(s) PUBLIC DISCLOSURE OF FINAL ORDERS.—

"(1) IN GENERAL.—The Board shall publish and make available to the public—

"(A) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other provision of law; and

"(B) any modification to or termination of any final order described in subparagraph (A).

"(2) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Board makes a determination in writing that the publication of any final order pursuant to paragraph (1) would seriously threaten the safety or soundness of an insured credit union or other federally regulated depository institution, the Board may delay the publication of such order for a reasonable time.".

SEC. 914. AGENCY DISAPPROVAL OF DIRECTORS AND SENIOR EXECUTIVE OFFICERS OF CERTAIN DEPOSITORY INSTITUTIONS.

(a) DEPOSITORY INSTITUTION INSURED BY THE FDIC.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding after the section added by section 226 of this Act the following new section:

12 USC 1831i.

"SEC. 32. AGENCY DISAPPROVAL OF DIRECTORS AND SENIOR EXECUTIVE OFFICERS OF INSURED DEPOSITORY INSTITUTIONS OR DEPOSITORY INSTITUTION HOLDING COMPANIES.

"(a) PRIOR NOTICE REQUIRED.—An insured depository institution or depository institution holding company shall notify the appropriate Federal banking agency of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such institution or holding company at least 30 days before such addition or employment becomes effective, if the insured depository institution or depository institution holding company—

"(1) has been chartered less than 2 years in the case of an insured depository institution;

"(2) has undergone a change in control within the preceding 2 years; or

"(3) is not in compliance with the minimum capital requirement applicable to such institution or is otherwise in a troubled condition, as determined by such agency on the basis of such institution's or holding company's most recent report of condition or report of examination or inspection.

"(b) DISAPPROVAL BY AGENCY.—An insured depository institution or depository institution holding company may not add any individual to the board of directors or employ any individual as a senior executive officer if the appropriate Federal banking agency issues a notice of disapproval of such addition or employment before the end of the 30-day period beginning on the date the agency receives notice of the proposed action pursuant to subsection (a).

"(c) EXCEPTION IN EXTRAORDINARY CIRCUMSTANCES.—

"(1) IN GENERAL.—Each appropriate Federal banking agency may prescribe by regulation conditions under which the prior notice requirement of subsection (a) may be waived in the event of extraordinary circumstances.

"(2) NO EFFECT ON DISAPPROVAL AUTHORITY OF AGENCY.—Such waivers shall not affect the authority of each agency to issue notices of disapproval of such additions or employment of such individuals within 30 days after each such waiver.

"(d) ADDITIONAL INFORMATION.—Any notice submitted to an appropriate Federal banking agency with respect to an individual by any insured depository institution or depository institution holding company pursuant to subsection (a) shall include—

"(1) the information described in section 7(j)(6)(A) about the individual; and

"(2) such other information as the agency may prescribe by regulation.

"(e) STANDARD FOR DISAPPROVAL.—The appropriate Federal banking agency shall issue a notice of disapproval with respect to a notice submitted pursuant to subsection (a) if the competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interests of the depositors of the depository institution or in the best interests of the public to permit the individual to be employed by, or associated with, the depository institution or depository institution holding company.

"(f) DEFINITION REGULATIONS.—Each appropriate Federal banking agency shall prescribe by regulation a definition for the terms 'troubled condition' and 'senior executive officer' for purposes of subsection (a).".

(b) CREDIT UNIONS INSURED BY THE NCUA.—Title II of the Federal Credit Union Insurance Act (12 U.S.C. 1781 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 212. BOARD DISAPPROVAL OF DIRECTORS, COMMITTEE MEMBERS, AND SENIOR EXECUTIVE OFFICERS OF INSURED CREDIT UNIONS. 12 USC 1790a.

"(a) PRIOR NOTICE REQUIRED.—An insured credit union shall notify the Board of the proposed addition of any individual to the board of directors or committee or the employment of any individual as a senior executive officer of such credit union at least 30 days before such addition or employment becomes effective, if the insured credit union—

"(1) has been chartered less than 2 years; or

"(2) is in troubled condition, as determined on the basis of such credit union's most recent report of condition or report of examination.

"(b) DISAPPROVAL BY THE BOARD.—An insured credit union may not add any individual to the board of directors or employ any individual as a senior executive officer if the Board issues a notice of disapproval of such addition or employment before the end of the 30-day period beginning on the date the agency receives notice of the proposed action pursuant to subsection (a).

"(c) EXCEPTION IN EXTRAORDINARY CIRCUMSTANCES.—

"(1) IN GENERAL.—The Board may prescribe by regulation conditions under which the prior notice requirement of subsection (a) may be waived in the event of extraordinary circumstances.

"(2) NO EFFECT ON DISAPPROVAL AUTHORITY OF BOARD.—Such waivers shall not affect the authority of the Board to issue notices of disapproval of such additions or employment of such individuals within 30 days after each such waiver.

"(d) ADDITIONAL INFORMATION.—Any notice submitted to the Board by any insured credit union pursuant to subsection (a) shall include—

"(1) the information described in section 7(j)(6)(A) of the Federal Deposit Insurance Act about the individual; and

"(2) such other information as the Board may prescribe by regulation.

"(e) STANDARD FOR DISAPPROVAL.—The Board shall issue a notice of disapproval with respect to a notice submitted pursuant to subsection (a) if the competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interests of the depositors of the insured credit union or in the best interests of the public to permit the individual to be employed by, or associated with, such insured credit union.

"(f) DEFINITION REGULATIONS.—The Board shall prescribe by regulation a definition for the terms 'troubled condition' and 'senior executive officer' for purposes of subsection (a).".

SEC. 915. CLARIFICATION OF NCUA'S AUTHORITY TO CONDUCT COMPLIANCE INVESTIGATIONS.

(a) EXAMINATIONS.—Section 204(b) of the Federal Credit Union Act (12 U.S.C. 1784(b)) is amended—

(1) by inserting after "insured credit unions," the following: "or with other types of investigations to determine compliance with applicable law and regulations,"; and

(2) by inserting after "subpena duces tecum" the following: "and to exercise such others powers as are set forth in section 206(p)".

(b) ENFORCEMENT.—Section 206(p) of the Federal Credit Union Act (12 U.S.C. 1786(p)) is amended in the 1st sentence—

(1) by inserting after "any proceeding under this section" the following: "or in connection with any claim for insured deposits or any examination or investigation under section 204(b)";

(2) by inserting after "the Board" the 1st place such term appears the following: ", in conducting the proceeding, examination, or investigation or considering the claim for insured deposits,"; and

(3) by inserting ", claims, examinations, or investigations" before the period.

(c) PAYMENT OF CLAIMS.—Section 207(c)(1) of the Federal Credit Union Act (12 U.S.C. 1787(c)(1)) is amended in the last sentence by inserting after "before paying the insured accounts," the following: "may investigate said claims under section 206(p),".

12 USC 1818 note.

SEC. 916. IMPROVED ADMINISTRATIVE HEARINGS AND PROCEDURES.

Before the close of the 24-month period beginning on the date of the enactment of this Act, the appropriate Federal banking agencies (as defined in section 3(q) of the Federal Deposit Insurance Act) and the National Credit Union Administration Board shall jointly—

(1) establish their own pool of administrative law judges, and

(2) develop a set of uniform rules and procedures for administrative hearings, including provisions for summary judgment

rulings where there are no disputes as to material facts of the case.

SEC. 917. TASK FORCE STUDY OF DELEGATION OF ENFORCEMENT ACTIONS. 12 USC 1818 note.

(a) CREATION OF TASK FORCE.—The appropriate Federal banking agencies (as defined in section 3(q) of the Federal Deposit Insurance Act) and the National Credit Union Administration Board shall create a joint task force to study the desirability and feasibility of delegating investigation and enforcement authority to their regional or district offices or banks.

(b) COMPOSITION OF TASK FORCE.—The composition of the task force shall be reasonably balanced between officials from headquarters and officials from the regions, districts, or district banks.

(c) REPORT.—Not later than September 30, 1990, the task force shall report to the Congress the findings and recommendations of the Task Force, together with the responses of the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairman of the National Credit Union Administration.

SEC. 918. ANNUAL REPORT TO CONGRESS. 12 USC 1833.

(a) IN GENERAL.—Each agency described in subsection (b) shall submit an annual report to the Congress which shall contain the following information with respect to the 12-month period for which such report is made:

(1) The number of formal and informal supervisory, administrative, and civil enforcement actions initiated by such agency during such 12-month period, and the number of such actions completed by such agency during such 12-month period, including actions initiated or taken with respect to memoranda of understanding, written agreements, cease and desist orders (including temporary orders), suspension orders, removal or prohibition orders, and civil money penalty assessments.

(2) The number of individuals and institutions against whom civil money penalties were assessed by such agency during such 12-month period, the amount of each such penalty, the total amount of all such penalties, and data on uncollected penalties for such period and prior years.

(3) A description of all other enforcement efforts and initiatives relating to unsafe and unsound practices, criminal misconduct, and insider abuse which were undertaken by such agency during such 12-month period.

(4) The number of criminal referrals made to the Department of Justice.

(5) With respect to the criminal referrals received by the Department of Justice and with respect to investigations of similar matters initiated without such a referral, the number and status of grand jury investigations and investigations being conducted by the Federal Bureau of Investigation, and the number and disposition of prosecutions and civil actions commenced by the Attorney General.

(6) Recommendations concerning the need for additional legislation or financial resources.

(b) AGENCIES REQUIRED TO SUBMIT REPORTS.—The agencies referred to in subsection (a) are as follows:

(1) The Comptroller of the Currency.
(2) The Board of Governors of the Federal Reserve System.
(3) The Federal Deposit Insurance Corporation.
(4) The Federal Housing Finance Board.
(5) The Office of Thrift Supervision.
(6) The National Credit Union Administration.
(7) The Attorney General of the United States.

SEC. 919. CREDIT UNION AUDIT REQUIREMENTS.

Section 202(a) of the Federal Credit Union Act (12 U.S.C. 1782(a)) is amended by adding at the end thereof the following new paragraph:

"(6) AUDIT REQUIREMENT.—

Regulations.

"(A) IN GENERAL.—Before the end of the 120-day period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and notwithstanding any other provision of Federal or State law, the Board shall prescribe, by regulation, audit standards which require an outside, independent audit of any insured credit union by a certified public accountant for any fiscal year (of such credit union)—

"(i) for which such credit union has not conducted an annual supervisory committee audit;

"(ii) for which such credit union has not received a complete and satisfactory supervisory committee audit; or

"(iii) during which such credit union has experienced persistent and serious recordkeeping deficiencies, as determined by the Board.

"(B) UNSAFE OR UNSOUND PRACTICE.—The Board may treat the failure of any insured credit union to obtain an outside, independent audit for any fiscal year for which such audit is required under subparagraph (A) as an unsafe or unsound practice within the meaning of section 206(b).".

SEC. 920. TECHNICAL AMENDMENTS RELATING TO ADMINISTRATIVE AND JUDICIAL REVIEW.

(a) FDIA.—Section 8(h)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1818(h)(2)) is amended by striking "Any party" and all that follows through "therein," and inserting in lieu thereof "Any party to any proceeding under paragraph (1)".

(b) FCUA.—Section 206(j)(2) of the Federal Credit Union Act (12 U.S.C. 1786(j)(2)) is amended by striking "Any party" and all that follows through "therein," and inserting in lieu thereof "Any party to any proceeding under paragraph (1)".

(c) MISCELLANEOUS CONFORMING AMENDMENT.—Section 8(k) of the Federal Deposit Insurance Act (12 U.S.C. 1818(k)) is amended by striking out all that follows "(k)".

Subtitle B—Termination of Deposit Insurance

SEC. 926. REVISION OF PROCEDURES FOR TERMINATION OF FDIC DEPOSIT INSURANCE.

Section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)) is amended—

(1) by striking out "(a) Any insured bank" and all that follows through the period at the end of the 4th sentence and inserting in lieu thereof the following:

"(a) TERMINATION OF INSURANCE.—

"(1) VOLUNTARY TERMINATION.—Any insured depository institution which is not—

"(A) a national member bank;

"(B) a State member bank;

"(C) a Federal branch;

"(D) a Federal savings association; or

"(E) an insured branch which is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act of 1978,

may terminate such depository institution's status as an insured depository institution if such insured institution provides written notice to the Corporation of the institution's intent to terminate such status not less than 90 days before the effective date of such termination.

"(2) INVOLUNTARY TERMINATION.—

"(A) NOTICE TO PRIMARY REGULATOR.—If the Board of Directors determines that—

"(i) an insured depository institution or the directors or trustees of an insured depository institution have engaged or are engaging in unsafe or unsound practices in conducting the business of the depository institution;

"(ii) an insured depository institution is in an unsafe or unsound condition to continue operations as an insured institution; or

"(iii) an insured depository institution or the directors or trustees of the insured institution have violated any applicable law, regulation, order, condition imposed in writing by the Corporation in connection with the approval of any application or other request by the insured depository institution, or written agreement entered into between the insured depository institution and the Corporation,

the Board of Directors shall notify the appropriate Federal banking agency with respect to such institution (if other than the Corporation) or the State banking supervisor of such institution (if the Corporation is the appropriate Federal banking agency) of the Board's determination and the facts and circumstances on which such determination is based for the purpose of securing the correction of such practice, condition, or violation. Such notice shall be given to the appropriate Federal banking agency not less than 30 days before the notice required by subparagraph (B), except that this period for notice to the appropriate Federal banking agency may be reduced or eliminated with the agreement of such agency.

"(B) NOTICE OF INTENTION TO TERMINATE INSURANCE.—If, after giving the notice required under subparagraph (A) with respect to an insured depository institution, the Board of Directors determines that any unsafe or unsound practice or condition or any violation specified in such notice requires the termination of the insured status of the insured depository institution, the Board shall—

"(i) serve written notice to the insured depository institution of the Board's intention to terminate the insured status of the institution;

"(ii) provide the insured depository institution with a statement of the charges on the basis of which the determination to terminate such institution's insured status was made (or a copy of the notice under subparagraph (A)); and

"(iii) notify the insured depository institution of the date (not less than 30 days after notice under this subparagraph) and place for a hearing before the Board of Directors (or any person designated by the Board) with respect to the termination of the institution's insured status.

"(3) HEARING; TERMINATION.—If, on the basis of the evidence presented at a hearing before the Board of Directors (or any person designated by the Board for such purpose), in which all issues shall be determined on the record pursuant to section 554 of title 5, United States Code, and the written findings of the Board of Directors (or such person) with respect to such evidence (which shall be conclusive), the Board of Directors finds that any unsafe or unsound practice or condition or any violation specified in the notice to an insured depository institution under subparagraph (B) has been established, the Board of Directors may issue an order terminating the insured status of such depository institution effective as of a date subsequent to such finding.";

(2) by striking out "Unless the" and inserting in lieu thereof the following:

"(4) APPEARANCE; CONSENT TO TERMINATION.—Unless the";

(3) by striking out "Any insured" and all that follows through "status" the 1st place such term appears and inserting in lieu thereof the following:

"(5) JUDICIAL REVIEW.—Any insured depository institution whose insured status";

(4) by striking out "The Corporation may publish" and inserting in lieu thereof the following:

"(6) PUBLICATION OF NOTICE OF TERMINATION.—The Corporation may publish";

(5) by striking out "After the termination of the insured status" and inserting in lieu thereof the following:

"(7) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—After the termination of the insured status";

(6) in paragraph (7) (as so designated by the amendment made by paragraph (5) of this section)—

(A) by striking out "of two years" the 1st place such term appears and inserting in lieu thereof "of at least 6 months or up to 2 years, within the discretion of the Board of Directors";

(B) by striking out "of two years" the 2nd place such term appears and inserting in lieu thereof "the period referred to in the 1st sentence"; and

(C) by striking out "of two years" the 3rd place such term appears;

(7) by adding at the end the following new paragraphs:

"(8) TEMPORARY SUSPENSION OF INSURANCE.—

"(A) IN GENERAL.—If the Board of Directors initiates a termination proceeding under paragraph (2), and the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured depository institution (other than a savings association to which subparagraph (B) applies) has no tangible capital under the capital guidelines or regulations of the appropriate Federal banking agency, the Corporation may issue a temporary order suspending deposit insurance on all deposits received by the institution.

"(B) SPECIAL RULE FOR CERTAIN SAVINGS INSTITUTIONS.—

"(i) CERTAIN GOODWILL INCLUDED IN TANGIBLE CAPITAL.—In determining the tangible capital of a savings association for purposes of this paragraph, the Board of Directors shall include goodwill to the extent it is considered a component of capital under section 5(t) of the Home Owners' Loan Act. Any savings association which would be subject to a suspension order under subparagraph (A) but for the operation of this subparagraph, shall be considered by the Corporation to be a 'special supervisory association'.

"(ii) SUSPENSION ORDER.—The Corporation may issue a temporary order suspending deposit insurance on all deposits received by a special supervisory association whenever the Board of Directors determines that—

"(I) the capital of such association, as computed utilizing applicable accounting standards, has suffered a material decline;

"(II) that such association (or its directors or officers) is engaging in an unsafe or unsound practice in conducting the business of the association;

"(III) that such association is in an unsafe or unsound condition to continue operating as an insured association; or

"(IV) that such association (or its directors or officers) has violated any applicable law, rule, regulation, or order, or any condition imposed in writing by a Federal banking agency, or any written agreement including a capital improvement plan entered into with any Federal banking agency, or that the association has failed to enter into a capital improvement plan which is acceptable to the Corporation within the time period set forth in section 5(t) of the Home Owners' Loan Act.

Nothing in this paragraph limits the right of the Corporation or the Director of the Office of Thrift Supervision to enforce a contractual provision which authorizes the Corporation or the Director of the Office of Thrift Supervision, as a successor to the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank Board, to require a savings association to write down or amortize goodwill at a faster rate than otherwise required under this Act or under applicable accounting standards.

"(C) EFFECTIVE PERIOD OF TEMPORARY ORDER.—Any order issued under subparagraph (A) shall become effective not earlier than 10 days from the date of service upon the

institution and, unless set aside, limited, or suspended by a court in proceedings authorized hereunder, such temporary order shall remain effective and enforceable until an order of the Board under paragraph (3) becomes final or until the Corporation dismisses the proceedings under paragraph (3).

"(D) JUDICIAL REVIEW.—Before the close of the 10-day period beginning on the date any temporary order has been served upon an insured depository institution under subparagraph (A), such institution may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the home office of the institution is located, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order, and such court shall have jurisdiction to issue such injunction.

"(E) CONTINUATION OF INSURANCE FOR PRIOR DEPOSITS.—The insured deposits of each depositor in such depository institution on the effective date of the order issued under this paragraph, minus all subsequent withdrawals from any deposits of such depositor, shall continue to be insured, subject to the administrative proceedings as provided in this Act.

"(F) PUBLICATION OF ORDER.—The depository institution shall give notice of such order to each of its depositors in such manner and at such times as the Board of Directors may find to be necessary and may order for the protection of depositors.

"(G) NOTICE BY CORPORATION.—If the Corporation determines that the depository institution has not substantially complied with the notice to depositors required by the Board of Directors, the Corporation may provide such notice in such manner as the Board of Directors may find to be necessary and appropriate.

"(H) LACK OF NOTICE.—Notwithstanding subparagraph (A), any deposit made after the effective date of a suspension order issued under this paragraph shall remain insured to the extent that the depositor establishes that—

(i) such deposit consists of additions made by automatic deposit the depositor was unable to prevent; or

(ii) such depositor did not have actual knowledge of the suspension of insurance.

"(9) FINAL DECISIONS TO TERMINATE INSURANCE.—Any decision by the Board of Directors to—

"(A) issue a temporary order terminating deposit insurance; or

"(B) issue a final order terminating deposit insurance (other than under subsection (p) or (q));

shall be made by the Board of Directors and may not be delegated.

"(10) LOW- TO MODERATE-INCOME HOUSING LENDER.—In making any determination regarding the termination of insurance of a solvent savings association, the Corporation may consider the extent of the association's low- to moderate-income housing loans.".

Subtitle C—Improving Early Detection of Misconduct and Encouraging Informants

SEC. 931. INFORMATION REQUIRED TO BE MADE AVAILABLE TO OUTSIDE AUDITORS.

(a) DEPOSITORY INSTITUTIONS INSURED BY THE FDIC.—Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) is amended by adding at the end thereof the following new paragraph:

"(8) REPORT TO INDEPENDENT AUDITOR.—

"(A) IN GENERAL.—Each insured depository institution which has engaged the services of an independent auditor to audit such depository institution within the past 2 years shall transmit to such auditor a copy of the the most recent report of condition made by such depository institution (pursuant to this Act or any other provision of law) and a copy of the most recent report of examination received by such depository institution.

"(B) ADDITIONAL INFORMATION.—In addition to the copies of the reports required to be provided to an auditor under subparagraph (A), each insured depository institution shall provide such auditor with—

"(i) a copy of any supervisory memorandum of understanding with such depository institution and any written agreement between a Federal or State banking agency and the depository institution which is in effect during the period covered by the audit; and

"(ii) a report of any action initiated or taken by a Federal banking agency during such period under subsection (a), (b), (c), (e), (g), (i), or (s) of section 8, or of any similar action taken by a State banking agency under State law, or any other civil money penalty assessed under any other provision of law with respect to—

"(I) the depository institution; or

"(II) any institution-affiliated party.".

(b) INSTITUTIONS INSURED BY THE NCUA.—Section 202(a) of the Federal Credit Union Act (12 U.S.C. 1782(a)) is amended by adding after the paragraph added by section 922 of this Act the following new paragraph:

"(7) REPORT TO INDEPENDENT AUDITOR.—

"(A) IN GENERAL.—Each insured credit union which has engaged the services of an independent auditor to audit such depository institution within the past 2 years shall transmit to such auditor a copy of the most recent report of condition made by such credit union (pursuant to this Act or any other provision of law) and a copy of the most recent report of examination received by such credit union.

"(B) ADDITIONAL INFORMATION.—In addition to the copies of the reports required to be provided to an auditor under subparagraph (A), each insured credit union shall provide such auditor with—

"(i) a copy of any supervisory memorandum of understanding with such credit union and any written agreement between the Board or a State regulatory agency

and the credit union which is in effect during the period covered by the audit; and

"(ii) a report of any action initiated or taken by the Board during such period under subsection (e), (f), (g), (i), (l), or (q) of section 206, or any similar action taken by a State regulatory agency under State law, or any other civil money penalty assessed by the Board under this Act, with respect to—

"(I) the credit union; or

"(II) any institution-affiliated party.".

SEC. 932. DEPOSITORY INSTITUTION EMPLOYEE PROTECTION REMEDY.

(a) EMPLOYEES OF DEPOSITORY INSTITUTIONS INSURED BY THE FDIC.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding after the section added by section 914(a) of this Act the following new section:

12 USC 1831j.

"SEC. 33. DEPOSITORY INSTITUTION EMPLOYEE PROTECTION REMEDY.

"(a) PROHIBITION AGAINST DISCRIMINATION AGAINST WHISTLEBLOWERS.—No federally insured depository institution may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any Federal banking agency or to the Attorney General regarding a possible violation of any law or regulation by the depository institution or any of its officers, directors, or employees.

"(b) ENFORCEMENT.—Any employee or former employee who believes he has been discharged or discriminated against in violation of subsection (a) may file a civil action in the appropriate United States district court before the close of the 2-year period beginning on the date of such discharge or discrimination. The complainant shall also file a copy of the complaint initiating such action with the appropriate Federal banking agency.

"(c) REMEDIES.—If the district court determines that a violation of subsection (a) has occurred, it may order the depository institution which committed the violation—

"(1) to reinstate the employee to his former position,

"(2) to pay compensatory damages; or

"(3) take other appropriate actions to remedy any past discrimination.

"(d) LIMITATION.—The protections of this section shall not apply to any employee who—

"(1) deliberately causes or participates in the alleged violation of law or regulation; or

"(2) knowingly or recklessly provides substantially false information to such an agency or the Attorney General.".

(b) EMPLOYEES OF CREDIT UNIONS INSURED BY THE NCUA.—The Federal Credit Union Act (12 U.S.C. 1751 et seq.) is amended by inserting after the section added by section 914(b) of this Act the following new section:

12 USC 1790b.

"SEC. 213. CREDIT UNION EMPLOYEE PROTECTION REMEDY.

"(a) PROHIBITION AGAINST DISCRIMINATION AGAINST WHISTLEBLOWERS.—No federally insured credit union may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because

the employee (or any person acting pursuant to the request of the employee) provided information to the Board or to the Attorney General regarding a possible violation of any law or regulation by the credit union or any of its officers, directors, or employees.

"(b) ENFORCEMENT.—Any employee or former employee who believes he has been discharged or discriminated against in violation of subsection (a) may file a civil action in the appropriate United States district court before the close of the 2-year period beginning on the date of such discharge or discrimination. The complainant shall also file a copy of the complaint initiating such action with the Board.

"(c) REMEDIES.—If the district court determines that a violation of subsection (a) has occurred, it may order the credit union which committed the violation—

"(1) to reinstate the employee to his former position,

"(2) to pay compensatory damages, or

"(3) take other appropriate actions to remedy any past discrimination.

"(d) LIMITATIONS.—The protections of this section shall not apply to any employee who—

"(1) deliberately causes or participates in the alleged violation of law or regulation, or

"(2) knowingly or recklessly provides substantially false information to such an agency or the Attorney General.".

SEC. 933. REWARD FOR INFORMATION LEADING TO RECOVERIES OR CIVIL PENALTIES.

(a) DEPOSITORY INSTITUTIONS INSURED BY THE FDIC.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding after the section added by section 932(a) of this Act the following new section:

"SEC. 34. REWARD FOR INFORMATION LEADING TO RECOVERIES OR CIVIL PENALTIES. 12 USC 1831k.

"(a) IN GENERAL.—An appropriate Federal banking agency, with the concurrence of the Attorney General, may pay a reward to a person who provides original information which leads to—

"(1) recovery, in an amount that exceeds $50,000, of a criminal fine, restitution, or civil penalty—

"(A) under—

"(i) the Federal Deposit Insurance Act;

"(ii) the Federal Credit Union Act;

"(iii) sections 5213, 5239(b), and 5240 of the Revised Statutes;

"(iv) the Federal Reserve Act;

"(v) the Bank Holding Company Act Amendments of 1970;

"(vi) the Bank Holding Company Act of 1956;

"(vii) the Home Owners' Loan Act; or

"(viii) section 3663 of title 18, United States Code, pursuant to a conviction for an offense referred to in subparagraph (B) of this paragraph,

"(B) pursuant to a conviction for an offense under section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of title 18, United States Code, affecting a depository institution insured by the Federal Deposit Insurance Corporation, or for a conspiracy to commit such an offense; or

"(C) under section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; or

"(2) a forfeiture under section 981 or 982 of title 18, United States Code, that—

"(A) arises in connection with a depository institution insured by the Federal Deposit Insurance Corporation; and

"(B) exceeds $50,000.

"(b) PERCENTAGE LIMITATION.—An appropriate Federal banking agency may not pay a reward under subsection (a) of more than 25 percent of the amount of the fine, penalty, restitution, or forfeiture or $100,000, whichever is less.

"(c) OFFICIALS AND PERSONS INELIGIBLE.—An appropriate Federal banking agency may not pay a reward under subsection (a) to—

"(1) an officer or employee of the United States or of a State or local government who provides information described in subsection (a), obtained in the performance of official duties; or

"(2) a person who—

"(A) deliberately causes or participates in the alleged violation of law or regulation, or

"(B) knowingly or recklessly provides substantially false information to such an agency or the Attorney General.

"(d) NONREVIEWABILITY.—Any agency decision under this section is final and not reviewable by any court.".

(b) CREDIT UNIONS INSURED BY THE NCUA.—Title II of the Federal Credit Union Act (12 U.S.C. 1790 et seq.) is amended by inserting after the section added by section 932(b) of this Act the following new section:

12 USC 1790c.

"SEC. 214. REWARD FOR INFORMATION LEADING TO RECOVERIES OR CIVIL PENALTIES.

"The Board may pay rewards in connection with an offense affecting an insured credit union, under the same circumstances and subject to the same limitations that a Federal banking agency may pay rewards under section 33 of the Federal Deposit Insurance Act in connection with an offense affecting a depository institution insured by the Federal Deposit Insurance Corporation.".

Subtitle D—Right to Financial Privacy Act Amendments

SEC. 941. DEFINITIONS.

Section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401), as amended by section 744(b) of this Act, is amended—

(1) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(2) in paragraph (7) (as so redesignated), by striking all that precedes subparagraph (A) and inserting in lieu thereof the following:

"(7) 'supervisory agency' means with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary—"; and

(3) by inserting after paragraph (5) the following new paragraph:

"(6) 'holding company' means—

"(A) any bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956);

"(B) any company described in section 3(f)(1) of the Bank Holding Company Act of 1956; and

"(C) any savings and loan holding company (as defined in the Home Owners' Loan Act);".

SEC. 942. ADDITIONAL EXCEPTIONS.

Section 1113 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(b)) is amended—

(1) by amending subsection (b) to read as follows:

"(b) This chapter shall not apply to the examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions, including conservatorship or receivership functions, with respect to any financial institution, holding company, subsidiary of a financial institution or holding company, institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a financial institution, holding company, or subsidiary, or other person participating in the conduct of the affairs thereof."; and

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

"(m) This title shall not apply to the examination by or disclosure to employees or agents of the Board of Governors of the Federal Reserve System or any Federal Reserve Bank of financial records or information in the exercise of the Federal Reserve System's authority to extend credit to the financial institutions or others.

"(n) This title shall not apply to the examination by or disclosure to the Resolution Trust Corporation or its employees or agents of financial records or information in the exercise of its conservatorship, receivership, or liquidation functions with respect to a financial institution.

"(o) This title shall not apply to the examination by or disclosure to the Federal Housing Finance Board or any of the Federal home loan banks of financial records or information in the exercise of the Federal Housing Finance Board's authority to extend credit (either directly or through a Federal home loan bank) to financial institutions or others.".

SEC. 943. PROHIBITION.

Section 1120 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3420) is redesignated as section 1120(a) and is amended by adding at the end the following new subsection:

"(b)(1) No officer, director, partner, employee, or shareholder of, or agent or attorney for, a financial institution shall, directly or indirectly, notify any person named in a grand jury subpoena served on such institution in connection with an investigation relating to a possible—

"(A) crime against any financial institution or supervisory agency; or

"(B) conspiracy to commit such a crime,

about the existence or contents of such subpoena, or information that has been furnished to the grand jury in response to such subpoena.

"(2) Section 8 of the Federal Deposit Insurance Act and section 206(k)(2) of the Federal Credit Union Act shall apply to any violation of this subsection.".

SEC. 944. MISCELLANEOUS PROVISIONS.

Section 1112(e) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(e)) is amended—

(1) by inserting after "with respect to a depository institution" the following: ", holding company, or any subsidiary of a depository institution or holding company,"; and

(2) by striking out "Council" and inserting in lieu thereof "Council and the Securities and Exchange Commission".

Subtitle E—Civil Penalties For Violations Involving Financial Institutions

12 USC 1833a.

SEC. 951. CIVIL PENALTIES.

(a) IN GENERAL.—Whoever violates any provision of law to which this section is made applicable by subsection (c) shall be subject to a civil penalty in an amount assessed by the court in a civil action under this section.

(b) MAXIMUM AMOUNT OF PENALTY.—

(1) GENERALLY.—The amount of the civil penalty shall not exceed $1,000,000.

(2) SPECIAL RULE FOR CONTINUING VIOLATIONS.—In the case of a continuing violation, the amount of the civil penalty may exceed the amount described in paragraph (1) but may not exceed the lesser of $1,000,000 per day or $5,000,000.

(3) SPECIAL RULE FOR VIOLATIONS CREATING GAIN OR LOSS.—(A) If any person derives pecuniary gain from the violation, or if the violation results in pecuniary loss to a person other than the violator, the amount of the civil penalty may exceed the amounts described in paragraphs (1) and (2) but may not exceed the amount of such gain or loss.

(B) As used in this paragraph, the term "person" includes the Bank Insurance Fund, the Savings Association Insurance Fund, and the National Credit Union Share Insurance Fund.

(c) VIOLATIONS TO WHICH PENALTY IS APPLICABLE.—This section applies to a violation of, or a conspiracy to violate—

(1) section 215, 656, 657, 1005, 1006, 1007, 1014, or 1344 of title 18, United States Code; or

(2) section 1341 or 1343 of title 18, United States Code, affecting a federally insured financial institution.

(d) ATTORNEY GENERAL TO BRING ACTION.—A civil action to recover a civil penalty under this section shall be commenced by the Attorney General.

(e) BURDEN OF PROOF.—In a civil action to recover a civil penalty under this section, the Attorney General must establish the right to recovery by a preponderance of the evidence.

(f) ADMINISTRATIVE SUBPOENAS.—

(1) IN GENERAL.—For the purpose of conducting a civil investigation in contemplation of a civil proceeding under this section, the Attorney General may—

(A) administer oaths and affirmations;

(B) take evidence; and

(C) by subpoena, summon witnesses and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry. Such subpoena may require the attendance of witnesses and the production of any such records from any place in the United States at any place in the United States designated by the Attorney General.

(2) PROCEDURES APPLICABLE.—The same procedures and limitations as are provided with respect to civil investigative demands in subsections (g), (h), and (j) of section 1968 of title 18, United States Code, apply with respect to a subpoena issued under this subsection. Process required by such subsections to be served upon the custodian shall be served on the Attorney General. Failure to comply with an order of the court to enforce such subpoena shall be punishable as contempt.

(3) LIMITATION.—In the case of a subpoena for which the return date is less than 5 days after the date of service, no person shall be found in contempt for failure to comply by the return date if such person files a petition under paragraph (2) not later than 5 days after the date of service.

Subtitle F—Criminal Law and Procedure

SEC. 961. INCREASED CRIMINAL PENALTIES FOR CERTAIN FINANCIAL INSTITUTION OFFENSES.

(a) RECEIPT OF COMMISSIONS OR GIFTS FOR PROCURING LOANS.—Section 215(a) of title 18, United States Code, is amended—

(1) by striking "$5,000" and inserting "$1,000,000"; and

(2) by striking "five" and inserting "20".

(b) THEFT, EMBEZZLEMENT, OR MISAPPLICATION BY BANK OFFICER OR EMPLOYEE.—Section 656 of title 18, United States Code, is amended—

(1) by striking "$5,000" and inserting "$1,000,000"; and

(2) by striking "five" and inserting "20".

(c) LENDING, CREDIT, AND INSURANCE INSTITUTIONS.—Section 657 of title 18, United States Code, is amended—

(1) by striking "$5,000" and inserting "$1,000,000"; and

(2) by striking "five" and inserting "20".

(d) BANK ENTRIES, REPORTS, AND TRANSACTIONS.—Section 1005 of title 18, United States Code, is amended—

(1) in the 1st paragraph, by inserting "bank or savings and loan holding company," after "member bank,";

(2) in the 3rd paragraph—

(A) by inserting "or company" after "bank" each place it appears; and

(B) by striking the "—" at the end and inserting a semicolon;

(3) by adding after the 3rd paragraph the following:

"Whoever with intent to defraud the United States or any agency thereof, or any financial institution 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 financial institution—"; Fraud.

(4) by striking "$5,000" and inserting "$1,000,000"; and

(5) by striking "five" and inserting "20".

(e) FEDERAL CREDIT INSTITUTION ENTRIES, REPORTS, AND TRANSACTIONS.—Section 1006 of title 18, United States Code, is amended—

(1) by striking "$10,000" and inserting "$1,000,000"; and

(2) by striking "five" and inserting "20".

(f) FEDERAL DEPOSIT INSURANCE CORPORATION TRANSACTIONS.—Section 1007 of title 18, United States Code, is amended to read as follows:

"§ 1007. Federal Deposit Insurance Corporation Transactions

Fraud.

"Whoever, for the purpose of influencing in any way the action of the Federal Deposit Insurance Corporation, knowingly makes or invites reliance on a false, forged, or counterfeit statement, document, or thing shall be fined not more than $1,000,000 or imprisoned not more than 20 years, or both.".

(g) FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION TRANSACTIONS.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by striking section 1008.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by striking the item relating to section 1008.

(h) LOAN AND CREDIT APPLICATIONS GENERALLY; RENEWALS AND DISCOUNTS; CROP INSURANCE.—Section 1014 of title 18, United States Code, is amended—

(1) by striking "a Federal Home Loan Bank, the Federal Home Loan Bank Board, the Home Owners' Loan Corporation, a Federal Saving and Loan Association";

(2) by striking "the Federal Saving and Loan Insurance Corporation, any bank the deposits of which are insured by";

(3) by striking "any member of";

(4) by inserting "the Resolution Trust Corporation" after "Federal Deposit Insurance Corporation,";

(5) by striking "$5,000" and inserting "$1,000,000"; and

(6) by striking "two" and inserting "20".

(i) FRAUDS AND SWINDLES.—Section 1341 of title 18, United States Code, is amended by adding at the end: "If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 20 years, or both.".

(j) FRAUD BY WIRE, RADIO, OR TELEVISION.—Section 1343 of title 18, United States Code, is amended by adding at the end: "If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 20 years, or both.".

(k) BANK FRAUD.—Section 1344 of title 18, United States Code, is amended to read as follows:

"§ 1344. Bank fraud

"Whoever knowingly executes, or attempts to execute, a scheme or artifice—

"(1) to defraud a financial institution; or

"(2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;

shall be fined not more than $1,000,000 or imprisoned not more than 20 years, or both.".

(l) LIMITATIONS.—

(1) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

"§ 3293. Financial institution offenses

"No person shall be prosecuted, tried, or punished for a violation of, or a conspiracy to violate—

"(1) section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, or 1344; or

"(2) section 1341 or 1343, if the offense affects a financial institution;

unless the indictment is returned or the information is filed within 10 years after the commission of the offense.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 213 of title 18, United States Code, is amended by adding at the end the following new item:

"3293. Financial institution offenses.".

(3) EFFECT OF AMENDMENTS ON OFFENSES FOR WHICH THE CURRENT PERIOD OF LIMITATIONS HAD NOT RUN.—The amendments made by this subsection shall apply to an offense committed before the effective date of this section, if the statute of limitations applicable to that offense under this chapter had not run as of such date. 18 USC 3293 note.

(m) SENTENCING GUIDELINES.—Pursuant to section 994 of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or amend existing guidelines, to provide for a substantial period of incarceration for a violation of, or a conspiracy to violate, section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of title 18, United States Code, that substantially jeopardizes the safety and soundness of a federally insured financial institution. 28 USC 994 note.

SEC. 962. MISCELLANEOUS REVISIONS TO TITLE 18.

(a) SPECIFIC TERMINOLOGY CHANGES AND REPEAL.—

(1) SECTION 212.—Section 212 of title 18, United States Code, is amended—

(A) by striking "bank" the first place it appears and inserting "financial institution" in lieu thereof;

(B) by striking "land bank" and all that follows through "farm credit examiner" and inserting "Farm Credit Bank, bank for cooperatives, production credit association, Federal land bank association, agricultural credit association, Federal land credit association, service organization chartered under section 4.26 of the Farm Credit Act of 1971, the Farm Credit System Financial Assistance Corporation, the Federal Agricultural Mortgage Credit Corporation, the Federal Farm Credit Banks Funding Corporation, the National Consumer Cooperative Bank, or other institution subject to examination by a Farm Credit Administration examiner";

(C) in the 2nd undesignated paragraph, by striking "insured banks" and inserting "insured financial institutions" in lieu thereof; and

(D) in the 2nd undesignated paragraph, by striking "or by the Federal Deposit Insurance Corporation" and inserting in lieu thereof ", by the Federal Deposit Insurance Corpora-

tion, by the Office of Thrift Supervision, or by the Federal Housing Finance Board".

(2) SECTION 213.—Section 213 of title 18, United States Code, is amended by striking "banks the deposits of which" and inserting "financial institutions the deposits of which".

(3) REPEAL OF SECTION 1009.—Title 18, United States Code, is amended by striking out section 1009.

(4) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by striking out the item relating to section 1009.

(5) SECTION 1030(e)(4).—Section 1030(e)(4) of title 18, United States Code, is amended—

(A) in subparagraph (A), by striking "a bank" and inserting "an institution,";

(B) by striking subparagraph (C); and

(C) by redesignating subparagraphs (D), (E), (F), (G), and (H), as subparagraphs (C), (D), (E), (F), and (G), respectively.

(6) SECTION 1114.—Section 1114 of title 18, United States Code, is amended—

(A) by striking "the Federal Savings and Loan Insurance Corporation,"; and

(B) by striking "the Federal Home Loan Bank Board" and inserting "the Office of Thrift Supervision, the Federal Housing Finance Board, the Resolution Trust Corporation".

(7) CHANGES RELATING TO NATIONAL CREDIT UNION ADMINISTRATION.—Sections 657, 1006, 1014, and 2113(h) of title 18, United States Code, are each amended by striking "Administrator of the National Credit Union Administration" and inserting "National Credit Union Administration Board".

(8) CHANGES RELATING TO THE FARM CREDIT SYSTEM.—

(A) Sections 657 and 1006 of title 18, United States Code, are each amended by striking "any land bank, intermediate credit bank," and inserting in lieu thereof "the Farm Credit System Insurance Corporation, a Farm Credit Bank, a".

(B) Section 1014 of title 18, United States Code, is amended—

(i) by striking "any Federal intermediate credit bank" and all that follows through "Title 12" and inserting in lieu thereof "any Farm Credit Bank, production credit association, agricultural credit association, bank for cooperatives, or any division, officer, or employee thereof"; and

(ii) by striking "Federal Savings and Loan Insurance Corporation" and inserting "Farm Credit System Insurance Corporation" in lieu thereof.

(b) CROSS REFERENCE CHANGE.—Section 1306 of title 18, United States Code, is amended by striking "section 20 of the Federal Deposit Insurance Act, or section 410 of the National Housing Act" and inserting "or section 20 of the Federal Deposit Insurance Act".

(c) OBSTRUCTION OF CRIMINAL INVESTIGATIONS.—Section 1510 of title 18, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

"(b)(1) Whoever, being an officer of a financial institution, with the intent to obstruct a judicial proceeding, directly or indirectly notifies any other person about the existence or contents of a subpoena for records of that financial institution, or information

that has been furnished to the grand jury in response to that subpoena, shall be fined under this title or imprisoned not more than 5 years, or both.

"(2) Whoever, being an officer of a financial institution, directly or indirectly notifies—

"(A) a customer of that financial institution whose records are sought by a grand jury subpoena; or

"(B) any other person named in that subpoena;

about the existence or contents of that subpoena or information that has been furnished to the grand jury in response to that subpoena, shall be fined under this title or imprisoned not more than one year, or both.

"(3) As used in this subsection—

"(A) the term 'an officer of a financial institution' means an officer, director, partner, employee, agent, or attorney of or for a financial institution; and

"(B) the term 'subpoena for records' means a Federal grand jury subpoena for customer records that has been served relating to a violation of, or a conspiracy to violate—

"(i) section 215, 656, 657, 1005, 1006, 1007, 1014, or 1344; or

"(ii) section 1341 or 1343 affecting a financial institution.".

(d) CONFORMING TERMINOLOGY IN BANK ROBBERY SECTION.—Section 2113 of title 18, United States Code, is amended—

(1) in subsection (f), by striking "any bank the deposits of which" and inserting "any institution the deposits of which";

(2) by adding before the period at the end of subsection (h) ", and any 'Federal credit union' as defined in section 2 of the Federal Credit Union Act"; and

(3) by striking subsection (g) and redesignating subsection (h) as subsection (g).

(e) CREATION OF GENERAL DEFINITION OF FINANCIAL INSTITUTION FOR TITLE 18.—

(1) IN GENERAL.—Subsection (b) of section 215 of title 18, United States Code, is transferred to the end of chapter 1 of such title.

(2) UPDATING AND TECHNICAL AMENDMENTS.—Such subsection (b), as so transferred, is amended—

(A) by inserting at the beginning the following section heading:

"§ 20. Financial institution defined"

(B) by striking "(b)";

(C) by striking "this section" and inserting "this title";

(D) so that paragraph (1) reads as follows:

"(1) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);";

(E) by striking paragraphs (2) and (8);

(F) so that paragraph (5) reads as follows:

"(5) a System institution of the Farm Credit System, as defined in section 5.35(3) of the Farm Credit Act of 1971;";

(G) so that paragraph (7) reads as follows:

"(7) a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act.";

and

(H) by redesignating paragraphs (3), (4), (5), (6), and (7) (as amended by this paragraph) as paragraphs (2), (3), (4), (5), and (6), respectively.

(3) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 18, United States Code, is amended by adding at the end the following new item:

"20. Financial institution defined.".

SEC. 963. CIVIL AND CRIMINAL FORFEITURE.

(a) CIVIL FORFEITURE.—Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following:

Real property.

"(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section 215, 656, 657, 1005, 1006, 1007, 1014, or 1344 of this title.".

(b) TRANSFER OF PROPERTY UNDER CIVIL FORFEITURE.—Section 981(e) of title 18, United States Code, is amended—

(1) in the matter before paragraph (1), by striking out "determine to—" and inserting in lieu thereof "determine—";

(2) by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) to any other Federal agency;

"(2) to any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property;

"(3) in the case of property referred to in subsection (a)(1)(C) (if the affected financial institution is in receivership or liquidation), to any Federal financial institution regulatory agency—

"(A) to reimburse the agency for payments to claimants or creditors of the institution; and

"(B) to reimburse the insurance fund of the agency for losses suffered by the fund as a result of the receivership or liquidation;

"(4) in the case of property referred to in subsection (a)(1)(C) (if the affected financial institution is not in receivership or liquidation), upon the order of the appropriate Federal financial institution regulatory agency, to the financial institution as restitution, with the value of the property so transferred to be set off against any amount later recovered by the financial institution as compensatory damages in any State or Federal proceeding; or

"(5) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency, to the extent of the agency's contribution of resources to, or expenses involved in, the seizure and forfeiture, and the investigation leading directly to the seizure and forfeiture, of such property."; and

(3) by adding at the end the following new sentence: "The United States shall not be liable in any action arising out of a transfer under paragraph (3), (4), or (5) of this subsection.".

(c) CRIMINAL FORFEITURE.—Section 982 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting "(1)" after "(a)"; and

(B) by adding at the end the following:

"(2) The court, in imposing sentence on a person convicted of a violation of, or a conspiracy to violate, section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of this title, affecting a financial

institution, shall order that the person forfeit to the United States any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of such violation."; and

(2) in subsection (b), by striking "(b) The provisions" and all that follows through "However, the" and inserting in lieu thereof the following:

"(b)(1) Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed—

"(A) in the case of a forfeiture under subsection (a)(1) of this section, by subsections (c) and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853); and

"(B) in the case of a forfeiture under subsection (a)(2) of this section, by subsections (b), (c), (e), and (g) through (p) of section 413 of such Act.

"(2) The".

SEC. 964. GRAND JURY SECRECY.

(a) IN GENERAL.—Chapter 215 of title 18, United States Code, is amended by striking section 3322 and all that follows through section 3328 and inserting the following:

"§ 3322. Disclosure of certain matters occurring before grand jury

"(a) A person who is privy to grand jury information concerning a banking law violation—

"(1) received in the course of duty as an attorney for the government; or

"(2) disclosed under rule 6(e)(3)(A)(ii) of the Federal Rules of Criminal Procedure;

may disclose that information to an attorney for the government for use in enforcing section 951 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 or for use in connection with civil forfeiture under section 981 of title 18, United States Code, of property described in section 981(a)(1)(C) of such title.

"(b)(1) Upon motion of an attorney for the government, a court may direct disclosure of matters occurring before a grand jury during an investigation of a banking law violation to identified personnel of a financial institution regulatory agency—

"(A) for use in relation to any matter within the jurisdiction of such regulatory agency; or

"(B) to assist an attorney for the government to whom matters have been disclosed under subsection (a).

"(2) A court may issue an order under paragraph (1) upon a finding of a substantial need.

"(c) A person to whom matter has been disclosed under this section shall not use such matter other than for the purpose for which such disclosure was authorized.

"(d) As used in this section—

"(1) the term 'banking law violation' means a violation of, or a conspiracy to violate—

"(A) section 215, 656, 657, 1005, 1006, 1007, 1014, or 1344; or

"(B) section 1341 or 1343 affecting a financial institution;

"(2) the term 'attorney for the government' has the meaning given such term in the Federal Rules of Criminal Procedure; and

"(3) the term 'grand jury information' means matters occurring before a grand jury other than the deliberations of the grand jury or the vote of any grand juror.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 215 of title 18, United States Code, is amended by striking out the item relating to sections 3322 through 3328 and inserting the following:

"3322. Disclosure of certain matters occurring before grand jury.".

(c) FAIR CREDIT REPORTING ACT AMENDMENT.—Paragraph (1) of section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b) is amended by inserting before the period at the end the following: ", or a subpoena issued in connection with proceedings before a Federal grand jury".

SEC. 965. CRIMINAL DIVISION FRAUD SECTION REGIONAL OFFICE.

Texas.

(a) ESTABLISHMENT.—Not later than 120 days after the date of enactment of this Act, the Department of Justice shall create a regional office of the Fraud Section of the Criminal Division in the Northern District of Texas, and maintain such office, by providing sufficient legal and other staff and office space, through fiscal year 1992.

Reports.

(b) STUDY.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall study and report to the Congress on whether additional regional offices of the Fraud Section of the Criminal Division should be established in other parts of the country.

SEC. 966. DEPARTMENT OF JUSTICE APPROPRIATION AUTHORIZATION.

(a) IN GENERAL.—There is authorized to be appropriated to the Attorney General, without fiscal year limitation—

(1) $65,000,000 for each of fiscal years 1990 through 1992, for purposes of investigations and prosecutions involving financial institutions to which this Act and amendments made by this Act apply; and

(2) $10,000,000 for each of fiscal years 1990 through 1992, for purposes of civil proceedings involving financial institutions to which this Act and amendments made by this Act apply.

(b) SUPPLANTATION AND REALLOCATION PROHIBITED.—Sums authorized by this section—

(1) are in addition to any other sums authorized to be appropriated for such purposes;

(2) shall not be used to supplant sums otherwise available for such purposes; and

(3) shall not be reallocated for any other purpose.

SEC. 967. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE JUDICIARY.

There is authorized to be appropriated to the Federal courts system $10,000,000, to carry out such system's duties under this Act, for each of fiscal years 1990 through 1992.

SEC. 968. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS.

Section 1961(1) of title 18, United States Code, is amended by inserting "section 1344 (relating to financial institution fraud)," after "(relating to wire fraud),".

TITLE X—STUDIES OF FEDERAL DEPOSIT INSURANCE, BANKING SERVICES, AND THE SAFETY AND SOUNDNESS OF GOVERNMENT-SPONSORED ENTERPRISES

12 USC 1811 note.

SEC. 1001. STUDY OF FEDERAL DEPOSIT INSURANCE SYSTEM.

(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the National Credit Union Administration Board, the Director of the Office of Management and Budget, and individuals from the private sector, shall conduct a study of the Federal deposit insurance system.

(b) TOPICS.—As part of the study required under subsection (a), the Secretary of the Treasury shall investigate, review, and evaluate the following:

(1) The feasibility of establishing a deposit insurance premium rate structure which would take into account, on an institution-by-institution basis—

(A) asset quality risk;

(B) interest rate risk;

(C) quality of management; and

(D) profitability and capital.

(2) Incentives for market discipline, including the advantages of—

(A) limiting each depositor to 1 insured account per institution;

(B) reducing the amount insured, or providing for a graduated decrease in the percentage of the amounts deposited which are insured as the amounts deposited increase;

(C) combining Federal with private insurance in order to bring the market discipline of private insurance to bear on the management of the depository institution; and

(D) ensuring, by law or regulation, that on the closing of any insured depository institution, the appropriate Federal insurance fund will honor only its explicit liabilities, and will never make good any losses on deposits not explicitly covered by Federal deposit insurance.

(3) The scope of deposit insurance coverage and its impact on the liability of the insurance fund.

(4) The feasibility of market value accounting, assessments on foreign deposits, limitations on brokered deposits, the addition of collateralized borrowings to the deposit insurance base, and multiple insured accounts.

(5) The impact on the deposit insurance funds of varying State and Federal bankruptcy exemptions and the feasibility of—

(A) uniform exemptions;

(B) limits on exemptions when necessary to repay obligations owed to federally insured depository institutions; and

(C) requiring borrowers from federally insured depository institutions to post a personal or corporate bond when obtaining a mortgage on real property.

(6) Policies to be followed with respect to the recapitalization or closure of insured depository institutions whose capital is depleted to, or near the point of, insolvency.

(7) The efficiency of housing subsidies through the Federal home loan bank system.

(8) Alternatives to Federal deposit insurance.

(9) The feasibility of developing and administering, through the appropriate Federal banking agency, an examination of the principles and techniques of risk management and the application of such principles and techniques to the management of insured institutions.

(10) The adequacy of capital of insured credit unions and the National Credit Union Share Insurance Fund, including whether the supervision of such fund should be separated from the other functions of the National Credit Union Administration.

(11) The feasibility of requiring, by statute or other means, that—

(A) independent auditors and accountants of a depository institution report the results of any audit of the institution to the relevant regulatory agency or agencies;

(B) a regulator share reports on a depository institution with the institution's independent auditors and accountants; and

(C) independent auditors and accountants participate in conferences between the regulator and the depository institution.

(12) The feasibility of adopting regulations which are the same as or similar to the provisions of England's Banking Act, 1987, ch. 22 (4 Halsbury's Statutes of England and Wales 527-650 (1987)), enacted on May 15, 1987, relating to the Bank of England's relationship with auditors and reporting accountants (including sections 8, 39, 41, 45, 46, 47, 82, 83, 85, and 94 of such Act).

(c) FINAL REPORT.—Not later than the close of the 18-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall submit to the Congress a final report containing a detailed statement of findings made, and conclusions drawn from, the study conducted under this section, including such recommendations for administrative and legislative action as the Secretary determines to be appropriate.

SEC. 1002. SURVEY OF BANK FEES AND SERVICES.

(a) ANNUAL SURVEY REQUIRED.—The Board of Governors of the Federal Reserve System shall obtain a sample, which is representative by geographic location and size of institution, of—

(1) certain retail banking services provided by insured depository institutions; and

(2) the fees, if any, which are imposed by such institutions for providing such services.

(b) ANNUAL REPORT TO CONGRESS REQUIRED.—

(1) PREPARATION.—The Board of Governors of the Federal Reserve System shall prepare a report of the results of each survey conducted pursuant to subsection (a).

(2) CONTENTS OF REPORT.—Each report prepared pursuant to paragraph (1) shall include—

(A) a description of any discernable trends in the cost and availability of retail banking services; and

(B) a description of the correlation, if any, between—

(i) any increase in the amount of any deposit insurance premium assessed by the Federal Deposit Insurance Corporation against insured depository institutions;

(ii) any increase in the amount of the fees imposed by such institutions for providing retail banking services; and

(iii) any decrease in the availability of such services.

(3) SUBMISSION TO CONGRESS.—The Board of Governors of the Federal Reserve System shall submit— Reports.

(A) the first annual report required under paragraph (1) not later than June 1, 1990; and

(B) each subsequent annual report not later than June 1 of each calendar year beginning after 1990.

(c) SUNSET.—The requirements of subsection (a) shall terminate at the end of the 2-year period beginning on the later of—

(1) the 5-year period beginning on the date of the enactment of this Act; or

(2) the date (if any) during the 2-year period beginning at the end of such 5-year period, on which deposit insurance premiums are increased under section 7 of the Federal Deposit Insurance Act.

SEC. 1003. GENERAL ACCOUNTING OFFICE STUDY.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of deposit insurance issues raised by section 1001 emphasizing in particular—

(1) analysis of the policy considerations affecting the scope of deposit insurance coverage;

(2) evaluation of the risks associated with bank insurance contracts both as to the issuing institution and the deposit insurance funds; and

(3) the effect of proposed changes in the definition of "deposit" on—

(A) market discipline; and

(B) the ability of other participants in capital markets to raise funds.

(b) REPORT.—Not later than the close of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit to the Congress the results of the study required by subsection (a).

SEC. 1004. STUDY REGARDING CAPITAL REQUIREMENTS FOR GOVERNMENT-SPONSORED ENTERPRISES.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the risks undertaken by all government-sponsored enterprises and the appropriate level of capital for such enterprises consistent with—

(1) the financial soundness and stability of the government-sponsored enterprises;

(2) minimizing any potential financial exposure of the Federal Government; and

(3) minimizing any potential impact on borrowing of the Federal Government.

(b) CONSULTATION AND COOPERATION WITH OTHER AGENCIES.—The Comptroller General shall determine the structure and methodology of the study under this section in consultation with and with the cooperation of the Secretary of Agriculture and the Farm Credit Administration (with respect to the Farm Credit Banks, the Banks for Cooperatives, and the Federal Agricultural Mortgage Corporation), the Secretary of Education (with respect to the Student Loan Marketing Association and the College Construction Loan Corporation), the Secretary of Housing and Urban Development (with respect to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation), and the government-sponsored enterprises.

(c) ACCESS TO RELEVANT INFORMATION.—Each government-sponsored enterprise shall provide full and prompt access to the Comptroller General to its books and records and shall promptly provide any other information requested by the Comptroller General. In conducting the study under this section, the Comptroller General may request information from, or the assistance of, any department or agency of the Federal Government that is authorized by law to supervise or approve any of the activities of any government-sponsored enterprise.

(d) SPECIFIC REQUIREMENTS.—The study shall examine and evaluate—

(1) the degrees and types of risks that are undertaken by the government-sponsored enterprises in the course of their operations, including credit risk, interest rate risk, management and operational risk, and business risk;

(2) the most appropriate method or methods for quantifying the types of risks undertaken by the government-sponsored enterprises;

(3) the actual level of risk that exists with respect to each government-sponsored enterprise, which shall take into account factors including the volume and type of securities outstanding that are issued or guaranteed by each government-sponsored enterprise and the extent of off-balance sheet expense of each government-sponsored enterprise;

(4) the appropriateness of applying a risk-based capital standard to each government-sponsored enterprise, taking into account the nature of the business each government-sponsored enterprise conducts;

(5) the costs and benefits to the public from application of a risk-based capital standard to the government-sponsored enterprises and the impact of such a standard on the capability of each government-sponsored enterprise to carry out its purpose under law;

(6) the impact, if any, of the operation of the government-sponsored enterprises on borrowing of the Federal Government;

(7) the overall level of capital appropriate for each of the government-sponsored enterprises; and

(8) the quality and timeliness of information currently available to the public and the Federal Government concerning the extent and nature of the activities of government-sponsored enterprises and the financial risk associated with such activities.

(e) REPORTS TO CONGRESS.—The Comptroller General shall submit to the Congress 2 reports regarding the study under this section. The first report shall be submitted to the Congress not later than 9

months after the date of the enactment of this Act and the second report shall be submitted to the Congress not later than 21 months after the date of the enactment of this Act. Each report shall set forth—

(1) the results of the study under this section;

(2) any recommendations of the Comptroller General with respect to appropriate capital standards for each government-sponsored enterprise;

(3) any recommendations of the Comptroller General with respect to information that, in the determination of the Comptroller General, should be provided to the Congress concerning—

(A) the extent and nature of the activities of the government-sponsored enterprises; and

(B) the nature of any periodic reports that the Comptroller General believes should be submitted to the Congress relating to the capital condition and operations of the government-sponsored enterprises; and

(4) any recommendations and opinions of the Secretary of Agriculture, the Secretary of Education, the Secretary of Housing and Urban Development, and the Secretary of the Treasury regarding the report, to the extent that the recommendations and views of such officers differ from the recommendations and opinions of the Comptroller General.

(f) DEFINITION.—For purposes of this section, the term "government-sponsored enterprises" means the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Home Loan Bank System, the Farm Credit Banks, the Banks for Cooperatives, the Federal Agricultural Mortgage Corporation, the College Construction Loan Insurance Corporation, the Student Loan Marketing Association.

TITLE XI—REAL ESTATE APPRAISAL REFORM AMENDMENTS

SEC. 1101. PURPOSE. 12 USC 3331.

The purpose of this title is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

SEC. 1102. ESTABLISHMENT OF APPRAISAL SUBCOMMITTEE OF THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.

The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 1011. ESTABLISHMENT OF APPRAISAL SUBCOMMITTEE. 12 USC 3310.

"There shall be within the Council a subcommittee to be known as the 'Appraisal Subcommittee', which shall consist of the designees of the heads of the Federal financial institutions regulatory agencies.

Each such designee shall be a person who has demonstrated knowledge and competence concerning the appraisal profession.".

12 USC 3332.

SEC. 1103. FUNCTIONS OF APPRAISAL SUBCOMMITTEE.

(a) IN GENERAL.—The Appraisal Subcommittee shall—

(1) monitor the requirements established by States for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility;

(2) monitor the requirements established by the Federal financial institutions regulatory agencies and the Resolution Trust Corporation with respect to—

(A) appraisal standards for federally related transactions under their jurisdiction, and

(B) determinations as to which federally related transactions under their jurisdiction require the services of a State certified appraiser and which require the services of a State licensed appraiser;

(3) maintain a national registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions; and

Reports.

(4) transmit an annual report to the Congress not later than January 31 of each year which describes the manner in which each function assigned to the Appraisal Subcommittee has been carried out during the preceding year.

(b) MONITORING AND REVIEWING FOUNDATION.—The Appraisal Subcommittee shall monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation.

12 USC 3333.

SEC. 1104. CHAIRPERSON OF APPRAISAL SUBCOMMITTEE; TERM OF CHAIRPERSON; MEETINGS.

(a) CHAIRPERSON.—The Council shall select the Chairperson of the subcommittee. The term of the Chairperson shall be 2 years.

(b) MEETINGS; QUORUM; VOTING.—The Appraisal Subcommittee shall meet at the call of the Chairperson or a majority of its members when there is business to be conducted. A majority of members of the Appraisal Subcommittee shall constitute a quorum but 2 or more members may hold hearings. Decisions of the Appraisal Subcommittee shall be made by the vote of a majority of its members.

12 USC 3334.

SEC. 1105. OFFICERS AND STAFF.

The Chairperson of the Appraisal Subcommittee shall appoint such officers and staff as may be necessary to carry out the functions of this title consistent with the appointment and compensation practices of the Council.

12 USC 3335.

SEC. 1106. POWERS OF APPRAISAL SUBCOMMITTEE.

The Appraisal Subcommittee may, for the purpose of carrying out this title, establish advisory committees, hold hearings, sit and act at times and places, take testimony, receive evidence, provide information, and perform research, as the Appraisal Subcommittee considers appropriate.

SEC. 1107. PROCEDURES FOR ESTABLISHING APPRAISAL STANDARDS AND REQUIRING THE USE OF CERTIFIED AND LICENSED APPRAISERS. 12 USC 3336.

Appraisal standards and requirements for using State certified and licensed appraisers in federally related transactions pursuant to this title shall be prescribed in accordance with procedures set forth in section 553 of title 5, United States Code, including the publication of notice and receipt of written comments or the holding of public hearings with respect to any standards or requirements proposed to be established.

SEC. 1108. STARTUP FUNDING. 12 USC 3337.

(a) IN GENERAL.—For purposes of this title, the Secretary of the Treasury shall pay to the Appraisal Subcommittee a one-time payment of $5,000,000 on the date of the enactment of this Act. Thereafter, expenses of the subcommittee shall be funded through the collection of registry fees from certain certified and licensed appraisers pursuant to section 1109 or, if required, pursuant to section 1122(b) of this title.

(b) ADDITIONAL FUNDS.—Except as provided in section 1122(b) of this title, funds in addition to the funds provided under subsection (a) may be made available to the Appraisal Subcommittee only if authorized and appropriated by law.

SEC. 1109. ROSTER OF STATE CERTIFIED OR LICENSED APPRAISERS; AUTHORITY TO COLLECT AND TRANSMIT FEES. 12 USC 3338.

(a) IN GENERAL.—Each State with an appraiser certifying and licensing agency whose certifications and licenses comply with this title, shall—

(1) transmit to the Appraisal Subcommittee, no less than annually, a roster listing individuals who have received a State certification or license in accordance with this title; and

(2) collect from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than $25, such fees to be transmitted by the State agencies to the Council on an annual basis.

Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees, up to a maximum of $50 per annum, as necessary to carry out its functions under this title.

(b) USE OF AMOUNTS APPROPRIATED OR COLLECTED.—Amounts appropriated for or collected by the Appraisal Subcommittee under this section shall be used—

(1) to maintain a registry of individuals who are qualified and eligible to perform appraisals in connection with federally related transactions;

(2) to support its activities under this title;

(3) to reimburse the general fund of the Treasury for amounts appropriated to and expended by the Appraisal Subcommittee during the 24-month startup period following the date of the enactment of this title; and

(4) to make grants in such amounts as it deems appropriate to the Appraisal Foundation, to help defray those costs of the foundation relating to the activities of its Appraisal Standards and Appraiser Qualification Boards.

12 USC 3339.

SEC. 1110. FUNCTIONS OF THE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES RELATING TO APPRAISAL STANDARDS.

Each Federal financial institutions regulatory agency and the Resolution Trust Corporation shall prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of each such agency or instrumentality. These rules shall require, at a minimum—

(1) that real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

(2) that such appraisals shall be written appraisals.

Each such agency or instrumentality may require compliance with additional standards if it makes a determination in writing that such additional standards are required in order to properly carry out its statutory responsibilities.

12 USC 3340.

SEC. 1111. TIME FOR PROPOSAL AND ADOPTION OF STANDARDS.

Appraisal standards established under this title shall be proposed not later than 6 months and shall be adopted in final form and become effective not later than 12 months after the date of the enactment of this Act.

12 USC 3341.

SEC. 1112. FUNCTIONS OF THE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES RELATING TO APPRAISER QUALIFICATIONS.

Each Federal financial institutions regulatory agency and the Resolution Trust Corporation shall prescribe, in accordance with sections 1113 and 1114 of this title, which categories of federally related transactions should be appraised by a State certified appraiser and which by a State licensed appraiser under this title.

12 USC 3342.

SEC. 1113. TRANSACTIONS REQUIRING THE SERVICES OF A STATE CERTIFIED APPRAISER.

In determining whether an appraisal in connection with a federally related transaction shall be performed by a State certified appraiser, an agency or instrumentality under this title shall consider whether transactions, either individually or collectively, are of sufficient financial or public policy importance to the United States that an individual who performs an appraisal in connection with such transactions should be a State certified appraiser, except that—

(1) a State certified appraiser shall be required for all federally related transactions having a value of $1,000,000 or more; and

Housing.

(2) 1-to-4 unit, single family residential appraisals may be performed by State licensed appraisers unless the size and complexity requires a State certified appraiser.

12 USC 3343.

SEC. 1114. TRANSACTIONS REQUIRING THE SERVICES OF A STATE LICENSED APPRAISER.

All federally related transactions not requiring the services of a State certified appraiser shall be performed by either a State certified or licensed appraiser.

SEC. 1115. TIME FOR PROPOSAL AND ADOPTION OF RULES. 12 USC 3344.

As appropriate, rules issued under sections 1113 and 1114 shall be proposed not later than 6 months and shall be effective upon adoption in final form not later than 12 months after the date of the enactment of this Act.

SEC. 1116. CERTIFICATION AND LICENSING REQUIREMENTS. 12 USC 3345.

(a) IN GENERAL.—For purposes of this title, the term "State certified real estate appraiser" means any individual who has satisfied the requirements for State certification in a State or territory whose criteria for certification as a real estate appraiser currently meets the minimum criteria for certification issued by the Appraiser Qualification Board of the Appraisal Foundation.

(b) RESTRICTION.—No individual shall be a State certified real estate appraiser under this section unless such individual has achieved a passing grade upon a suitable examination administered by a State or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualification Board of the Appraisal Foundation.

(c) DEFINITION.—As used in this section, the term "State licensed appraiser" means an individual who has satisfied the requirements for State licensing in a State or territory.

(d) ADDITIONAL QUALIFICATION CRITERIA.—Nothing in this title shall be construed to prevent any Federal agency or instrumentality under this title from establishing such additional qualification criteria as may be necessary or appropriate to carry out the statutory responsibilities of such department, agency, or instrumentality.

SEC. 1117. ESTABLISHMENT OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES. 12 USC 3346.

To assure the availability of State certified and licensed appraisers for the performance in a State of appraisals in federally related transactions and to assure effective supervision of the activities of certified and licensed appraisers, a State may establish a State appraiser certifying and licensing agency.

SEC. 1118. MONITORING OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES. 12 USC 3347.

(a) IN GENERAL.—The Appraisal Subcommittee shall monitor State appraiser certifying and licensing agencies for the purpose of determining whether a State agency's policies, practices, and procedures are consistent with this title. The Appraisal Subcommittee and all agencies, instrumentalities, and federally recognized entities under this title shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, or procedures are found to be inconsistent with this title.

(b) DISAPPROVAL BY APPRAISAL SUBCOMMITTEE.—The Federal financial institutions, regulatory agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Resolution Trust Corporation shall accept certifications and licenses awarded by a State appraiser certifying the licensing agency unless the Appraisal Subcommittee issues a written finding that—

(1) the State agency fails to recognize and enforce the standards, requirements, and procedures prescribed pursuant to this title;

(2) the State agency is not granted authority by the State which is adequate to permit the agency to carry out its functions under this title; or

(3) decisions concerning appraisal standards, appraiser qualifications and supervision of appraiser practices are not made in a manner that carries out the purposes of this title.

(c) REJECTION OF STATE CERTIFICATIONS AND LICENSES.—

(1) OPPORTUNITY TO BE HEARD OR CORRECT CONDITIONS.—Before refusing to recognize a State's appraiser certifications or licenses, the Appraisal Subcommittee shall provide that State's certifying and licensing agency a written notice of its intention not to recognize the State's certified or licensed appraisers and ample opportunity to provide rebuttal information or to correct the conditions causing the refusal.

(2) ADOPTION OF PROCEDURES.—The Appraisal Subcommittee shall adopt written procedures for taking actions described in this section.

(3) JUDICIAL REVIEW.—A decision of the subcommittee under this section shall be subject to judicial review.

12 USC 3348.

SEC. 1119. RECOGNITION OF STATE CERTIFIED AND LICENSED APPRAISERS FOR PURPOSES OF THIS TITLE.

(a) EFFECTIVE DATE FOR USE OF CERTIFIED OR LICENSED APPRAISERS ONLY.—

(1) IN GENERAL.—Not later than July 1, 1991, all appraisals performed in connection with federally related transactions shall be performed only by individuals certified or licensed in accordance with the requirements of this title.

(2) EXTENSION OF EFFECTIVE DATE.—Subject to the approval of the council, the Appraisal Subcommittee may extend, until December 31, 1991, the effective date for the use of certified or licensed appraisers if it makes a written finding that a State has made substantial progress in establishing a State certification and licensing system that appears to conform to the provisions of this title.

(b) TEMPORARY WAIVER OF APPRAISER CERTIFICATION OR LICENSING REQUIREMENTS FOR STATE HAVING SCARCITY OF QUALIFIED APPRAISERS.—Subject to the approval of the Council, the Appraisal Subcommittee may waive any requirement relating to certification or licensing of a person to perform appraisals under this title if the Appraisal Subcommittee or a State agency whose certifications and licenses are in compliance with this title, makes a written determination that there is a scarcity of certified or licensed appraisers to perform appraisals in connection with federally related transactions in a State leading to inordinate delays in the performance of such appraisals. The waiver terminates when the Appraisal Subcommittee determines that such inordinate delays have been eliminated.

(c) REPORTS TO STATE CERTIFYING AND LICENSING AGENCIES.—The Appraisal Subcommittee, any other Federal agency or instrumentality, or any federally recognized entity shall report any action of a State certified or licensed appraiser that is contrary to the purposes of this title, to the appropriate State agency for a disposition of the subject of the referral. The State agency shall provide the Appraisal Subcommittee or the other Federal agency or instrumentality with a report on its disposition of the matter referred. Subsequent to such disposition, the subcommittee or the agency or instrumentality may

take such further action, pursuant to written procedures, it deems necessary to carry out the purposes of this title.

SEC. 1120. VIOLATIONS IN OBTAINING AND PERFORMING APPRAISALS IN FEDERALLY RELATED TRANSACTIONS. 12 USC 3349.

(a) VIOLATIONS.—Except as authorized by the Appraisal Subcommittee in exercising its waiver authority pursuant to section 1119(b), it shall be a violation of this section—

(1) for a financial institution to seek, obtain, or give money or any other thing of value in exchange for the performance of an appraisal by a person who the institution knows is not a State certified or licensed appraiser in connection with a federally related transaction; and

(2) for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Resolution Trust Corporation to knowingly contract for the performance of any appraisal by a person who is not a State certified or licensed appraiser in connection with a real estate related financial transaction defined in section 1121(5) to which such association or corporation is a party.

(b) PENALTIES.—A financial institution that violates subsection (a)(1) shall be subject to civil penalties under section 8(i)(2) of the Federal Deposit Insurance Act or section 206(k)(2) of the Federal Credit Union Act, as appropriate.

(c) PROCEEDING.—A proceeding with respect to a violation of this section shall be an administrative proceeding which may be conducted by a Federal financial institutions regulatory agency in accordance with the procedures set forth in subchapter II of chapter 5 of title 5, United States Code.

SEC. 1121. DEFINITIONS. 12 USC 3350.

For purposes of this title:

(1) STATE APPRAISER CERTIFYING AND LICENSING AGENCY.—The term "State appraiser certifying and licensing agency" means a State agency established in compliance with this title.

(2) APPRAISAL SUBCOMMITTEE; SUBCOMMITTEE.—The terms "Appraisal Subcommittee" and "subcommittee" mean the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(3) COUNCIL.—The term "Council" means the Federal Financial Institutions Examinations Council.

(4) FEDERALLY RELATED TRANSACTION.—The term "federally related transaction" means any real estate-related financial transaction which—

(A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and

(B) requires the services of an appraiser.

(5) REAL ESTATE RELATED FINANCIAL TRANSACTION.—The term "real estate-related financial transaction" means any transaction involving—

(A) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;

(B) the refinancing of real property or interests in real property; and

(C) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(6) FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES.—The term "Federal financial institutions regulatory agencies" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporations, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration.

(7) FINANCIAL INSTITUTION.—The term "financial institution" means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act or an insured credit union as defined in section 101 of the Federal Credit Union Act.

(8) CHAIRPERSON.—The term "Chairperson" means the Chairperson of the Appraisal Subcommittee selected by the council.

(9) FOUNDATION.—The terms "Appraisal Foundation" and "Foundation" means the Appraisal Foundation established on November 30, 1987, as a not for profit corporation under the laws of Illinois.

(10) WRITTEN APPRAISAL.—The term "written appraisal" means a written statement used in connection with a federally related transaction that is independently and impartially prepared by a licensed or certified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information.

12 USC 3351.

SEC. 1122. MISCELLANEOUS PROVISIONS.

(a) TEMPORARY PRACTICE.—A State appraiser certifying or licensing agency shall recognize on a temporary basis the certification or license of an appraiser issued by another State if—

(1) the property to be appraised is part of a federally related transaction,

(2) the appraiser's business is of a temporary nature, and

(3) the appraiser registers with the appraiser certifying or licensing agency in the State of temporary practice.

(b) SUPPLEMENTAL FUNDING.—Funds available to the Federal financial institutions regulatory agencies may be made available to the Federal Financial Institutions Examination Council to support the council's functions under this title.

(c) PROHIBITION AGAINST DISCRIMINATION.—Criteria established by the Federal financial institutions regulatory agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Resolution Trust Corporation for appraiser qualifications in addition to State certification or licensing shall not exclude a certified or licensed appraiser for consideration for an assignment solely by virtue of membership or lack of membership in any particular appraisal organization.

(d) OTHER REQUIREMENTS.—A corporation, partnership, or other business entity may provide appraisal services in connection with federally related transactions if such appraisal is prepared by individuals certified or licensed in accordance with the requirements of this title. An individual who is not a State certified or licensed appraiser may assist in the preparation of an appraisal if—

(1) the assistant is under the direct supervision of a licensed or certified individual; and

(2) the final appraisal document is approved and signed by an individual who is certified or licensed.

(e) STUDIES.—

(1) STUDY.—The Appraisal Subcommittee shall—

(A) conduct a study to determine whether real estate sales and financing information and data that is available to real estate appraisers in the States is sufficient to permit appraisers to properly estimate the values of properties in connection with federally related transactions; and

(B) study the feasibility and desirability of extending the provisions of this title to the function of personal property appraising and to personal property appraisers in connection with Federal financial and public policy interests.

(2) REPORT.—The Appraisal Subcommittee shall—

(A) report its findings to the Congress with respect to the study described in paragraph (1)(A) no later than 12 months after the date of the enactment of this title, and

(B) report its findings with respect to the study described in paragraph (1)(B) to Congress not later than 18 months after the date of the enactment of this title.

TITLE XII—MISCELLANEOUS PROVISIONS

SEC. 1201. GAO STUDY OF CREDIT UNION SYSTEM.

12 USC 1752a note.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a comprehensive study of the Nation's credit union system. In conducting the study, the Comptroller General shall examine—

(1) credit unions' present and future role in the financial marketplace;

(2) the financial condition of credit unions;

(3) credit union capital;

(4) credit union regulation and supervision on both the Federal and State levels;

(5) whether the National Credit Union Administration examinations of credit unions are comparable in frequency and quality to supervisory examinations of insured banks and savings associations;

(6) the structure and financial condition of the National Credit Union Share Insurance Fund, including whether supervision of that Fund should be separated from the other functions of the National Credit Union Administration Board; and

(7) whether the common bond rules regarding credit union membership continue to serve their original purpose.

Comparative information with other types of depository institutions should be included.

(b) SUBMISSION.—Before the close of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a final report which shall contain a detailed statement of findings and conclusions, including recommendations for such administrative and legislative action as the Comptroller General deems advisable.

Reports.

SEC. 1202. OCC EMPLOYMENT PROVISION.

The 3rd undesignated paragraph of section 5240 of the Revised Statutes (12 U.S.C. 482) is amended—

(1) by striking out the 1st sentence and inserting in lieu thereof the following:

"Notwithstanding any of the preceding provisions of this section to the contrary, the Comptroller of the Currency shall fix the compensation and number of, and appoint and direct, all employees of the Office of the Comptroller of the Currency. Rates of basic pay for all employees of the Office may be set and adjusted by the Comptroller without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code. The Comptroller may provide additional compensation and benefits to employees of the Office if the same type of compensation or benefits are then being provided by any other Federal bank regulatory agency or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and benefits for employees of the Office, the Comptroller shall consult with, and seek to maintain comparability with, other Federal banking agencies."; and

(2) by redesignating the remaining sentences of such undesignated paragraph as a new undesignated paragraph.

SEC. 1203. NCUA EMPLOYMENT PROVISION.

Section 120 of the Federal Credit Union Act (12 U.S.C. 1766) is amended by adding at the end thereof the following new subsection:

"(j) STAFF.—

"(1) APPOINTMENT AND COMPENSATION.—The Board shall fix the compensation and number of, and appoint and direct, employees of the Board. Rates of basic pay for employees of the Board may be set and adjusted by the Board without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

"(2) ADDITIONAL COMPENSATION AND BENEFITS.—The Board may provide additional compensation and benefits to employees of the Board if the same type of compensation or benefits are then being provided by any other Federal bank regulatory agency or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and benefits for employees of the Board, the Board shall seek to maintain comparability with other Federal bank regulatory agencies.

"(3) FUNDING.—The salaries and expenses of the Board and employees of the Board shall be paid from fees and assessments (including income earned on insurance deposits) levied on insured credit unions under this Act.".

12 USC 1811 note.

SEC. 1204. EXPANSION OF USE OF UNDERUTILIZED MINORITY BANKS, WOMEN'S BANKS, AND LOW-INCOME CREDIT UNIONS.

(a) CONSULTATION ON EXPANDED USE.—The Secretary of the Treasury shall consult with the appropriate Federal banking agencies and the National Credit Union Administration Board on methods for increasing the use of underutilized minority banks, women's banks, and limited income credit unions as depositaries or financial agents of Federal agencies.

(b) REPORT TO CONGRESS.—The Secretary of the Treasury shall include, in the 1st annual report submitted to the Congress under section 331(a) of title 31, United States Code, after the completion of the consultation required by subsection (a), a report of the actions taken by the Secretary to increase the use of underutilized minority banks, women's banks, and limited income credit unions as depositaries or financial agents of Federal agencies.

(c) DEFINITIONS.—For purposes of this section:

(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the meaning given to such term in section 3(q) of the Federal Deposit Insurance Act.

(2) MINORITY BANK.—The term "minority bank" means any depository institution described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act—

(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

(3) MINORITY.—The term "minority" means any Black American, Native American, Hispanic American, or Asian American.

(4) LOW-INCOME CREDIT UNION.—The term "low-income credit union" means any depository institution described in section 19(b)(1)(A)(iv) of the Federal Reserve Act which serves predominately low-income members (as defined by the National Credit Union Administration Board pursuant to section 101(5) of the Federal Credit Union Act).

(5) WOMEN'S BANK.—The term "women's bank" means any depository institution described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act—

(A) more than 50 percent of the outstanding shares of which are held by 1 or more women;

(B) a majority of the directors on the board of directors of which are women; and

(C) a significant percentage of senior management positions of which are held by women.

SEC. 1205. CREDIT STANDARDS ADVISORY COMMITTEE.

12 USC 1818 note.

(a) ESTABLISHMENT.—There is hereby established the Credit Standards Advisory Committee (in this section referred to as the "Committee").

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Committee shall consist of 11 members, as follows:

(A) The Chairman of the Board of Governors of the Federal Reserve System, or the Chairman's designee.

(B) The Director of the Office of Thrift Supervision, or the Director's designee.

(C) The Chairperson of the Federal Deposit Insurance Corporation, or the Chairperson's designee.

(D) The Comptroller of the Currency, or the Comptroller's designee.

(E) The Chairman of the National Credit Union Administration, or the Chairman's designee.

(F) 6 members of the public appointed by the President who are knowledgeable with the credit standards and lend-

ing practices of insured depository institutions, no more than 3 of whom shall be from the same political party.

(2) TERMS.—Each member appointed under paragraph (1)(F) shall serve for the life of the Committee.

(3) CHAIRPERSON.—The members shall elect a chairperson of the Committee who shall serve for a term of 1 year.

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

(5) PAY AND EXPENSES.—Members of the Committee shall serve without pay but each member of the Committee shall be reimbursed for expenses incurred in connection with attendance of such members at meetings of the Committee. All expenses of the Committee shall be shared on a pro rata basis, based upon each agency's total budget for the preceding year by the Federal financial regulators specified in subparagraphs (A) through (E) of paragraph (1).

(6) MEETINGS.—The Committee shall meet, not less frequently than quarterly, at the call of the chairperson or a majority of the members.

(c) DUTIES OF THE COMMITTEE.—The Committee shall do the following:

(1) REVIEW CREDIT STANDARDS, LENDING PRACTICES, AND SUPERVISION BY FEDERAL REGULATORS.—Review the credit standards and lending practices of insured depository institutions and the supervision of such standards and practices by the Federal financial regulators.

(2) PREPARE RECOMMENDATIONS.—Prepare written comments and recommendations for the Federal financial regulators to ensure that insured depository institutions adhere to prudential credit standards and lending practices that are consistent for all insured depository institutions, to the maximum extent possible.

(3) MONITOR CREDIT STANDARDS, LENDING PRACTICES, AND SUPERVISION BY FEDERAL REGULATORS.—Monitor the credit standards and lending practices of insured depository institutions, and the supervision of such standards and practices by the Federal financial regulators, to ensure that insured depository institutions can meet the demands of a modern and globally competitive financial world.

(d) ANNUAL REPORT.—

(1) REQUIRED.—Not later than January 30 of each year, the Committee shall submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) CONTENTS.—The report required by paragraph (1) shall describe the activities of the Committee during the preceding year and the reports and recommendations made by the Committee to the Federal financial regulators.

(e) CONFLICT OF INTEREST GUIDELINES.—The Committee shall prescribe such guidelines as the Committee determines to be appropriate to avoid conflicts of interest with respect to the disclosure to and use by members of the Committee of information relating to insured depository institutions and the Federal financial regulators.

SEC. 1206. COMPARABILITY IN COMPENSATION SCHEDULES. 12 USC 1833b.

The Federal Deposit Insurance Corporation, the Comptroller of the Currency, the National Credit Union Administration Board, the Federal Housing Finance Board, the Oversight Board of the Resolution Trust Corporation, the Farm Credit Administration, and the Office of Thrift Supervision, in establishing and adjusting schedules of compensation and benefits which are to be determined solely by each agency under applicable provisions of law, shall inform the heads of the other agencies and the Congress of such compensation and benefits and shall seek to maintain comparability regarding compensation and benefits.

SEC. 1207. STUDY BY SECRETARY OF THE TREASURY. Reports. 12 USC 1811 note.

Not later than the close of the 18-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall conduct a study and report to the Congress on—

(1) whether, and to what extent, the issuance of securities by the United States Government in small denominations benefits small investors, increases the participation of small investors in United States Government securities offerings, and promotes savings and thrift by the average United States taxpayer; and

(2) additional measures the Secretary recommends be taken to expand the availability of securities issued by the United States Government to benefit small investors, increase their participation in United States Government securities offerings, and to promote savings and thrift by the average United States taxpayer.

SEC. 1208. EXPENDITURE OF TAXPAYER MONEY ONLY FOR DEPOSIT INSURANCE PURPOSES. 12 USC 1811 note.

Funds appropriated to the Secretary of the Treasury pursuant to an authorization contained in this Act, and any amount authorized to be borrowed from the Secretary of the Treasury by any entity pursuant to this Act, may only be used as permitted by law, and may not otherwise be used for making any payment to any shareholder in, or creditor to, any insured depository institution.

SEC. 1209. AMENDMENT TO SECTION 5373 OF TITLE 5, UNITED STATES CODE.

Paragraph (2) of section 5373 of title 5, United States Code, is amended to read as follows:

"(2) sections 248, 482, 1766, and 1819 of title 12, section 206 of the Bank Conservation Act, sections 2B(b) and 21A(e)(4) of the Federal Home Loan Bank Act, section 2A(i) of the Home Owners' Loan Act, and sections 5.11 and 5.58 of the Farm Credit Act of 1971;".

SEC. 1210. FARM CREDIT ADMINISTRATION AND FARM CREDIT SYSTEM INSURANCE CORPORATION EMPLOYMENT PROVISION.

Section 5.11(c)(2) of the Farm Credit Act of 1971 (12 U.S.C. 2245) is amended to read as follows:

"(2) OFFICERS AND EMPLOYEES.—

"(A) APPOINTMENT, COMPENSATION, AND BENEFITS.—The Chairman shall fix the compensation and number of, and appoint and direct, employees of the Administration. The Chairman may set and adjust the rates of basic pay for employees of the Administration without regard to the

provisions of chapter 51, or subchapter III of chapter 53, of title 5, United States Code. The Chairman may provide such additional compensation and benefits to employees of the Administration as is necessary to maintain comparability with the total amount of compensation and benefits provided by other Federal bank regulatory agencies. In setting and adjusting the total amount of compensation and benefits for employees of the Administration, the Chairman shall consult with, and seek to maintain comparability with, other Federal bank regulatory agencies.

"(B) OTHER FEDERAL BANK REGULATORY AGENCIES DEFINED.—For purposes of this subsection, the term 'other Federal bank regulatory agencies' has the same meaning given to the term 'appropriate Federal banking agency' in section 3(q) of the Federal Deposit Insurance Act.

"(C) ETHICS IN GOVERNMENT.—The officers and employees of the agency shall be—

"(i) subject to the Ethics in Government Act of 1978; and

"(ii) considered officers or employees of the United States for the purposes of sections 201 through 203, and sections 205 through 209, of title 18, United States Code.".

SEC. 1211. FAIR LENDING OVERSIGHT AND ENFORCEMENT.

(a) INFORMATION REGARDING INCOME LEVEL, RACIAL CHARACTERISTICS, AND GENDER OF MORTGAGORS AND MORTGAGE APPLICANTS.—Section 304(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(b)) is amended—

(1) in paragraph (2), by striking out "and" after the semicolon at the end;

(2) in paragraph (3), by striking out the period at the end and inserting in lieu thereof "; and"; and

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

"(4) the number and dollar amount of mortgage loans and completed applications involving mortgagors or mortgage applicants grouped according to census tract, income level, racial characteristics, and gender.".

(b) SUBMISSION TO AGENCIES.—Section 304 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803) is amended by adding at the end the following:

"(h) SUBMISSION TO AGENCIES.—The data required to be disclosed under subsection (b)(4) shall be submitted to the appropriate agency for each institution reporting under this title. Notwithstanding the requirement of section 304(a)(2)(A) for disclosure by census tract, the Board, in cooperation with other appropriate regulators, including—

Regulations. Public information.

"(1) the Comptroller of the Currency for national banks;

"(2) the Director of the Office of Thrift Supervision for savings associations;

"(3) the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, and any other depository institution described in section 303(2)(A) which is not otherwise referred to in this paragraph;

"(4) the National Credit Union Administration Board for credit unions; and

"(5) the Secretary of Housing and Urban Development for other lending institutions not regulated by the agencies referred to in paragraphs (1) through (4),

shall develop regulations prescribing the format for such disclosures, the method for submission of the data to the appropriate regulatory agency, and the procedures for disclosing the information to the public. These regulations shall also require the collection of data required to be disclosed under subsection (b)(4) with respect to loans sold by each institution reporting under this title, and, in addition, shall require disclosure of the class of the purchaser of such loans. Any reporting institution may submit in writing to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans.".

(c) INFORMATION REGARDING LOAN APPLICATIONS.—

(1) GENERAL REPORTING REQUIREMENT.—Section 304(a)(1) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(a)(1)) is amended by striking out "originated, or" and inserting in lieu thereof "originated (or for which the institution received completed applications), or".

(2) CONFORMING AMENDMENTS.—

(A) The last sentence of section 304(a)(2) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(a)(2)) is amended by inserting after "originated or purchased" the following: "(or for which completed applications were received)".

(B) Section 304(g)(1) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(g)(1)) is amended by inserting after "made" the following: "(or for which completed applications are received)".

(C) Section 304(g)(2) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(g)(2)) is amended by inserting after "approved" the following: "(or for which completed applications are received)".

(D) The first sentence of section 311 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2810) is amended by inserting after "approved" the following: "(or for which completed applications are received)".

(d) APPLICABILITY OF REPORTING REQUIREMENTS TO ALL MORTGAGE LENDERS.—Section 303(2) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2802(2)) is amended to read as follows:

"(2) the term 'depository institution'—

"(A) means—

"(i) any bank (as defined in section 3(a)(1) of the Federal Deposit Insurance Act);

"(ii) any savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act); and

"(iii) any credit union,

which makes federally related mortgage loans as determined by the Board; and

"(B) includes any other lending institution (as defined in paragraph (4)) other than any institution described in subparagraph (A);".

(e) COMPLETED APPLICATION DEFINED.—Section 303 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2802) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (5) and (6), respectively; and

(2) by inserting after paragraph (2) the following new paragraphs:

"(3) the term 'completed application' means an application in which the creditor has received the information that is regularly obtained in evaluating applications for the amount and type of credit requested;

"(4) the term 'other lending institutions' means any person engaged for profit in the business of mortgage lending;".

(f) APPLICABILITY OF HOME MORTGAGE DISCLOSURE ACT.—Section 304(a)(2) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(a)(2)) is amended by inserting at the end the following new sentence: "For purposes of this paragraph, other lending institutions shall be deemed to have a home office or branch office within a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas if such institutions have originated or purchased or received completed applications for at least 5 mortgage loans in such area in the preceding calendar year.".

(g) AMENDMENT TO ENFORCEMENT PROVISIONS.—Section 305(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2804(b)) is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

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

"(4) other lending institutions, by the Secretary of Housing and Urban Development.".

(h) REPORT ON UTILITY OF DATA.—Section 308 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2807) is amended to read as follows:

"SEC. 308. REPORT.

"The Board, in consultation with the Secretary of Housing and Urban Development, shall report annually to the Congress on the utility of the requirements of section 304(b)(4).".

(i) CONFORMING AMENDMENT TO FORMAT REQUIREMENT.—Section 304(e) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(e)) is amended by striking out "The Board" and inserting in lieu thereof "Subject to subsection (h), the Board".

(j) EXEMPTION FROM CERTAIN DISCLOSURE REQUIREMENTS.—Section 304 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803) is amended by inserting after subsection (h) (as added by subsection (b) of this section) the following new subsection:

"(i) EXEMPTION FROM CERTAIN DISCLOSURE REQUIREMENTS.—The requirements of subsection (b)(4) shall not apply with respect to any depository institution described in section 303(2)(A) which has total assets, as of the most recent full fiscal year of such institution, of $30,000,000 or less.".

12 USC 2802 note.

(k) EFFECTIVE DATE.—The amendments made by this section shall apply to each calendar year beginning after December 31, 1989.

SEC. 1212. AMENDMENT TO THE COMMUNITY REINVESTMENT ACT OF 1977.

(a) CONFORMING AMENDMENT TO DEFINITION OF REGULATED FINANCIAL INSTITUTION.—Section 803(2) of the Community Reinvestment Act of 1977 (12 U.S.C. 2902(2)) is amended by striking out "insured bank as defined in section 3 of the Federal Deposit Insurance Act or

an insured institution as defined in section 401 of the National Housing Act" and inserting in lieu thereof "insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act)".

(b) EXAMINATION IMPROVEMENT.—The Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) is amended by adding at the end the following new section:

"SEC. 807. WRITTEN EVALUATIONS. 12 USC 2906.

"(a) REQUIRED.—

"(1) IN GENERAL.—Upon the conclusion of each examination of an insured depository institution under section 804, the appropriate Federal depository institutions regulatory agency shall prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. Disadvantaged persons.

"(2) PUBLIC AND CONFIDENTIAL SECTIONS.—Each written evaluation required under paragraph (1) shall have a public section and a confidential section.

"(b) PUBLIC SECTION OF REPORT.—

"(1) FINDINGS AND CONCLUSIONS.—The public section of the written evaluation shall—

"(A) state the appropriate Federal depository institutions regulatory agency's conclusions for each assessment factor identified in the regulations prescribed by the Federal depository institutions regulatory agencies to implement this Act;

"(B) discuss the facts supporting such conclusions; and

"(C) contain the institution's rating and a statement describing the basis for the rating.

"(2) ASSIGNED RATING.—The institution's rating referred to in paragraph (1)(C) shall be 1 of the following:

"(A) 'Outstanding record of meeting community credit needs'.

"(B) 'Satisfactory record of meeting community credit needs'.

"(C) 'Needs to improve record of meeting community credit needs'.

"(D) 'Substantial noncompliance in meeting community credit needs'.

Such ratings shall be disclosed to the public on and after July 1, 1990.

"(c) CONFIDENTIAL SECTION OF REPORT.—

"(1) PRIVACY OF NAMED INDIVIDUALS.—The confidential section of the written evaluation shall contain all references that identify any customer of the institution, any employee or officer of the institution, or any person or organization that has provided information in confidence to a Federal or State depository institutions regulatory agency.

"(2) TOPICS NOT SUITABLE FOR DISCLOSURE.—The confidential section shall also contain any statements obtained or made by the appropriate Federal depository institutions regulatory agency in the course of an examination which, in the judgment of the agency, are too sensitive or speculative in nature to disclose to the institution or the public.

"(3) DISCLOSURE TO DEPOSITORY INSTITUTION.—The confidential section may be disclosed, in whole or part, to the institution, if

the appropriate Federal depository institutions regulatory agency determines that such disclosure will promote the objectives of this Act. However, disclosure under this paragraph shall not identify a person or organization that has provided information in confidence to a Federal or State depository institutions regulatory agency.".

12 USC 1833c.

SEC. 1213. COMPTROLLER GENERAL AUDIT AND ACCESS TO RECORDS.

(a) AUDIT OF AGENCIES OR OTHER PERSONS PERFORMING FUNCTIONS UNDER BANKING LAWS.—

(1) IN GENERAL.—Except as provided in paragraph (2), all agencies, corporations, organizations, and other persons of any description which perform any function or activity under this Act, or any other Act which is amended by this Act, shall be subject to audit by the Comptroller General of the United States with respect to such function or activity.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

(A) any function or activity of the Board of Governors of the Federal Reserve System or the Federal Reserve banks that is described in any paragraph of section 714(b) of title 31, United States Code; and

(B) any function or activity of the Federal National Mortgage Association, except as provided in section 309(j) of the Federal National Mortgage Association Charter Act.

(b) AUDIT OF PERSONS PROVIDING CERTAIN GOODS OR SERVICES.—All persons and organizations which, by contract, grant, or otherwise, provide goods or services to, or receive financial assistance from, any agency or other person performing functions or activities under this Act shall be subject to audit by the Comptroller General with respect to such provision of goods or services or receipt of financial assistance.

(c) PROVISIONS APPLICABLE TO AUDITS UNDER THIS SECTION.—

(1) NATURE AND SCOPE OF AUDIT.—The Comptroller General shall determine the nature, scope, and terms and conditions of audits conducted under this section.

(2) COORDINATION WITH OTHER PROVISIONS OF LAW.—The authority of the Comptroller General under this section shall be in addition to any audit authority available to the Comptroller General under other provisions of this Act or any other law.

(3) RIGHTS OF ACCESS, EXAMINATION, AND COPYING.—The Comptroller General, and any duly authorized representative of the Comptroller General, shall have access to, and the right to examine and copy, all records and other recorded information in any form, and to examine any property, within the possession or control of any agency or person which is subject to audit under this section which the Comptroller General deems relevant to an audit conducted under this section.

(4) ENFORCEMENT OF RIGHT OF ACCESS.—The Comptroller General's right of access to information under this section shall be enforceable pursuant to section 716 of title 31, United States Code.

(5) MAINTENANCE OF CONFIDENTIAL RECORDS.—The provisions of section 716(e) of title 31, United States Code, shall apply to information obtained by the Comptroller General under this section.

SEC. 1214. AMENDMENT RELATED TO THE HART-SCOTT-RODINO ACT.

Section 7A(c) of the Clayton Act (15 U.S.C. 18a(c)) is amended—

(1) in paragraph (7), by inserting "section 10(e) of the Home Owners' Loan Act," after "transactions which require agency approval under"; and

(2) in paragraph (8), by striking out ", section 403 or 408(e) of the National Housing Act (12 U.S.C. 1726 and 1730a),".

SEC. 1215. CAPITAL AND ACCOUNTING STANDARDS. 12 USC 1833d.

Before the end of the 1-year period beginning on the date of the enactment of this Act, each appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) shall establish uniform accounting standards to be used for determining the capital ratios of all federally insured depository institutions and for other regulatory purposes. Each such agency shall report annually to the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives any differences between the capital standard used by such agency and capital standards used by any other such agency. Each such report shall contain an explanation of the reasons for any discrepancy in such capital standards, and shall be published in the Federal Register.

Reports.

Federal Register, publication.

SEC. 1216. EQUAL OPPORTUNITY. 12 USC 1833e.

(a) IN GENERAL.—For purposes of this Act, Executive Order Numbered 11478, providing for equal employment opportunity in the Federal Government, shall apply to—

(1) the Comptroller of the Currency;

(2) the Director of the Office of Thrift Supervision;

(3) the Federal home loan banks;

(4) the Federal Deposit Insurance Corporation;

(5) the Oversight Board of the Resolution Trust Corporation; and

(6) the Resolution Trust Corporation.

(b) AFFIRMATIVE PROGRAM FOR EQUAL EMPLOYMENT OPPORTUNITY.—For purposes of this Act, sections 1 and 2 of Executive Order Numbered 11478, providing for the adoption and implementation of equal employment opportunity, shall apply to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(c) SOLICITATION OF CONTRACTS.—The Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Housing Finance Board, the Oversight Board of the Resolution Trust Corporation, and the Resolution Trust Corporation shall each prescribe regulations to establish and oversee a minority outreach program within each such agency to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the agency with such persons or entities, public and private, in order to manage the institutions and their assets for which the agency is responsible or to perform such other functions authorized under any law applicable to such agency.

Regulations. Minorities. Women.

(d) REPORT TO CONGRESS.—Before the end of the 180-day period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

(1) the Federal Deposit Insurance Corporation;
(2) the Comptroller of the Currency;
(3) the Director of the Office of Thrift Supervision;
(4) the Federal Housing Finance Board;
(5) the Oversight Board of the Resolution Trust Corporation;
(6) the Resolution Trust Corporation;
(7) the Federal Home Loan Mortgage Corporation; and
(8) the Federal National Mortgage Association,

shall each submit to the Congress a report containing a complete description of the actions taken by such agency pursuant to subsections (a) and (b) and such recommendations for administrative and legislative action as each such agency may determine to be appropriate to carry out the purposes of such subsection.

SEC. 1217. NCUA POWERS AS LIQUIDATING AGENT AND CONSERVATOR.

(a) IN GENERAL.—Section 207 of the Federal Credit Union Act (12 U.S.C. 1787) is amended—

(1) in subsection (a), by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2);
(2) by striking subsections (d) and (j);
(3) by redesignating subsections (b), (c), (e), (f), (g), (h), and (i) as subsections (j), (k), (l), (m), (n), (o), and (p), respectively;
(4) by inserting after subsection (a) the following new subsections:

"(b) POWERS AND DUTIES OF BOARD AS CONSERVATOR OR LIQUIDATING AGENT.—

"(1) RULEMAKING AUTHORITY OF BOARD.—The Board may prescribe such regulations as the Board determines to be appropriate regarding the conduct of the Board as conservator or liquidating agent.

"(2) GENERAL POWERS.—

"(A) SUCCESSOR TO CREDIT UNION.—The Board shall, as conservator or liquidating agent, and by operation of law, succeed to—

"(i) all rights, titles, powers, and privileges of the credit union, and of any member, accountholder, officer, or director of such credit union with respect to the credit union and the assets of the credit union; and

"(ii) title to the books, records, and assets of any previous conservator or other legal custodian of such credit union.

"(B) OPERATE THE CREDIT UNION.—The Board may, as conservator or liquidating agent—

"(i) take over the assets of and operate the credit union with all the powers of the members or shareholders, the directors, and the officers of the credit union and shall be authorized to conduct all business of the credit union;

"(ii) collect all obligations and money due the credit union;

"(iii) perform all functions of the credit union in the name of the credit union which is consistent with the appointment as conservator or liquidating agent; and

"(iv) preserve and conserve the assets and property of such credit union.

"(C) FUNCTIONS OF CREDIT UNION'S OFFICERS, DIRECTORS, AND SHAREHOLDERS.—The Board may, by regulation or order, provide for the exercise of any function by any member or stockholder, director, or officer of any credit union for which the Board has been appointed conservator or liquidating agent.

"(D) POWERS AS CONSERVATOR.—The Board may, as conservator, take such action as may be—

"(i) necessary to put the credit union in a sound and solvent condition; and

"(ii) appropriate to carry on the business of the credit union and preserve and conserve the assets and property of the credit union.

"(E) ADDITIONAL POWERS AS LIQUIDATING AGENT.—The Board may, as liquidating agent, place the credit union in liquidation and proceed to realize upon the assets of the credit union, having due regard to the conditions of credit in the locality.

"(F) PAYMENT OF VALID OBLIGATIONS.—The Board, as conservator or liquidating agent, shall pay all valid obligations of the credit union in accordance with the prescriptions and limitations of this Act.

"(G) INCIDENTAL POWERS.—The Board may, as conservator or liquidating agent—

"(i) exercise all powers and authorities specifically granted to conservators or liquidating agents, respectively, under this Act and such incidental powers as shall be necessary to carry out such powers; and

"(ii) take any action authorized by this Act,

which the Board determines is in the best interests of the credit union, its account holders, or the Board.

"(3) AUTHORITY OF LIQUIDATING AGENT TO DETERMINE CLAIMS.—

"(A) IN GENERAL.—The Board may, as liquidating agent, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (4).

"(B) NOTICE REQUIREMENTS.—The liquidating agent, in any case involving the liquidation or winding up of the affairs of a closed credit union, shall—

"(i) promptly publish a notice to the credit union's creditors to present their claims, together with proof, to the liquidating agent by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

"(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

"(C) MAILING REQUIRED.—The liquidating agent shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the credit union's books—

"(i) at the creditor's last address appearing in such books; or

"(ii) upon discovery of the name and address of a claimant not appearing on the credit union's books within 30 days after the discovery of such name and address.

"(4) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—The Board may prescribe regulations regarding the allowance or disallowance of claims by the liquidating agent and providing for administrative determination of claims and review of such determination.

"(5) PROCEDURES FOR DETERMINATION OF CLAIMS.—

"(A) DETERMINATION PERIOD.—

"(i) IN GENERAL.—Before the end of the 180-day period beginning on the date any claim against a credit union is filed with the Board as liquidating agent, the Board shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

"(ii) EXTENSION OF TIME.—The period described in clause (i) may be extended by a written agreement between the claimant and the Board.

"(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

"(I) on the credit union's books;

"(II) in the claim filed by the claimant; or

"(III) in documents submitted in proof of the claim.

"(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

"(I) a statement of each reason for the disallowance; and

"(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

"(B) ALLOWANCE OF PROVEN CLAIMS.—The liquidating agent shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the liquidating agent from any claimant which is proved to the satisfaction of the liquidating agent.

"(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—

"(i) IN GENERAL.—Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (3)(B)(i) shall be disallowed and such disallowance shall be final.

"(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (3)(B)(i) and such claim may be considered by the liquidating agent if—

"(I) the claimant did not receive notice of the appointment of the liquidating agent in time to file such claim before such date; and

"(II) such claim is filed in time to permit payment of such claim.

"(D) AUTHORITY TO DISALLOW CLAIMS.—The liquidating agent may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the liquidating agent.

"(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).—No court may review the Board's determination pursuant to subparagraph (D) to disallow a claim.

"(F) LEGAL EFFECT OF FILING.—

"(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the liquidating agent shall constitute a commencement of an action.

"(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (12), the filing of a claim with the liquidating agent shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the liquidating agent.

"(6) PROVISION FOR AGENCY REVIEW OR JUDICIAL DETERMINATION OF CLAIMS.—

"(A) IN GENERAL.—Before the end of the 60-day period beginning on the earlier of—

"(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a credit union for which the Board is liquidating agent; or

"(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i),

the claimant may request administrative review of the claim in accordance with subparagraph (A) or (B) of paragraph (7) or file suit on such claim (or continue an action commenced before the appointment of the liquidating agent) in the district or territorial court of the United States for the district within which the credit union's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

"(B) STATUTE OF LIMITATIONS.—If any claimant fails to—

"(i) request administrative review of any claim in accordance with subparagraph (A) or (B) of paragraph (7); or

"(ii) file suit on such claim (or continue an action commenced before the appointment of the liquidating agent),

before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the liquidating agent) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

"(7) REVIEW OF CLAIMS.—

"(A) ADMINISTRATIVE HEARING.—If any claimant requests review under this subparagraph in lieu of filing or continuing any action under paragraph (6) and the Board agrees to such request, the Board shall consider the claim after opportunity for a hearing on the record. The final deter-

mination of the Board with respect to such claim shall be subject to judicial review under chapter 7 of title 5, United States Code.

"(B) OTHER REVIEW PROCEDURES.—

"(i) IN GENERAL.—The Board shall also establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

"(ii) CRITERIA.—In establishing alternative dispute resolution processes, the Board shall strive for procedures which are expeditious, fair, independent, and low cost.

"(iii) VOLUNTARY BINDING OR NONBINDING PROCEDURES.—The Board may establish both binding and nonbinding processes, which may be conducted by any government or private party, but all parties, including the claimant and the Board, must agree to the use of the process in a particular case.

"(iv) CONSIDERATION OF INCENTIVES.—The Board shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

"(8) EXPEDITED DETERMINATION OF CLAIMS.—

"(A) ESTABLISHMENT REQUIRED.—The Board shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

"(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any credit union for which the Board has been appointed liquidating agent; and

"(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

"(B) DETERMINATION PERIOD.—Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Board shall—

"(i) determine—

"(I) whether to allow or disallow such claim; or

"(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (5); or

"(ii) notify the claimant of the determination, and if the claim is disallowed, a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

"(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the liquidating agent, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—

"(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

"(ii) the date the Board denies the claim.

"(D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the

30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the liquidating agent), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

"(E) LEGAL EFFECT OF FILING.—

"(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the liquidating agent shall constitute a commencement of an action.

"(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (12), the filing of a claim with the liquidating agent shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the liquidating agent.

"(9) AGREEMENT AS BASIS OF CLAIM.—

"(A) REQUIREMENTS.—Except as provided in subparagraph (B), any agreement which does not meet the requirements set forth in section 208(a)(3) shall not form the basis of, or substantially comprise, a claim against the liquidating agent or the Board.

"(B) EXCEPTION TO CONTEMPORANEOUS EXECUTION REQUIREMENT.—Notwithstanding section 208(a)(3), any agreement between a Federal home loan bank or Federal Reserve bank and any insured credit union which was executed before the extension of credit by such bank to such credit union shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (A).

"(10) PAYMENT OF CLAIMS.—

"(A) IN GENERAL.—The liquidating agent may, in the liquidating agent's discretion and to the extent funds are available, pay creditor claims which are allowed by the liquidating agent, approved by the Board pursuant to a final determination pursuant to paragraph (7) or (8), or determined by the final judgment of any court of competent jurisdiction in such manner and amounts as are authorized under this Act.

"(B) PAYMENT OF DIVIDENDS ON CLAIMS.—The liquidating agent may, in the liquidating agent's sole discretion, pay dividends on proved claims at any time, and no liability shall attach to the Board (in such Board's corporate capacity or as liquidating agent), 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.

"(11) DISTRIBUTION OF ASSETS.—

"(A) SUBROGATED CLAIMS; CLAIMS OF UNINSURED ACCOUNTHOLDERS AND OTHER CREDITORS.—The liquidating agent shall—

"(i) retain for the account of the Board such portion of the amounts realized from any liquidation as the Board may be entitled to receive in connection with the subrogation of the claims of accountholders; and

"(ii) pay to accountholders and other creditors the net amounts available for distribution to them.

"(B) DISTRIBUTION TO SHAREHOLDERS OF AMOUNTS REMAINING AFTER PAYMENT OF ALL OTHER CLAIMS AND EXPENSES.—In any case in which funds remain after all accountholders, creditors, other claimants, and administrative expenses are paid, the liquidating agent shall distribute such funds to the credit union's shareholders or members together with the accounting report required under paragraph (14)(C).

"(12) SUSPENSION OF LEGAL ACTIONS.—

"(A) IN GENERAL.—After the appointment of a conservator or liquidating agent for an insured credit union, the conservator or liquidating agent may request a stay for a period not to exceed—

"(i) 45 days, in the case of any conservator; and

"(ii) 90 days, in the case of any liquidating agent,

in any judicial action or proceeding to which such credit union is or becomes a party.

"(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by any conservator or liquidating agent pursuant to subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

"(13) ADDITIONAL RIGHTS AND DUTIES.—

"(A) PRIOR FINAL ADJUDICATION.—The Board shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Board as conservator or liquidating agent.

"(B) RIGHTS AND REMEDIES OF CONSERVATOR OR LIQUIDATING AGENT.—In the event of any appealable judgment, the Board as conservator or liquidating agent shall—

"(i) have all the rights and remedies available to the credit union (before the appointment of such conservator or liquidating agent) and the Board in its corporate capacity, including removal to Federal court and all appellate rights; and

"(ii) not be required to post any bond in order to pursue such remedies.

"(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the liquidating agent.

"(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this subsection, no court shall have jurisdiction over—

"(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any credit union for which the Board has been appointed liquidating agent, including assets which the Board may acquire from itself as such liquidating agent; or

"(ii) any claim relating to any act or omission of such credit union or the Board as liquidating agent.

"(14) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY CONSERVATOR OR LIQUIDATING AGENT.—

"(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to

any action brought by the Board as conservator or liquidating agent shall be—

"(i) in the case of any contract claim, the longer of—

"(I) the 6-year period beginning on the date the claim accrues; or

"(II) the period applicable under State law; and

"(ii) in the case of any tort claim, the longer of—

"(I) the 3-year period beginning on the date the claim accrues; or

"(II) the period applicable under State law.

"(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitation begins to run on any claim described in such subparagraph shall be the later of—

"(i) the date of the appointment of the Board as conservator or liquidating agent; or

"(ii) the date on which the cause of action accrues.

"(15) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

"(A) IN GENERAL.—The Board as conservator or liquidating agent shall, consistent with the accounting and reporting practices and procedures established by the Board, maintain a full accounting of each conservatorship and liquidation or other disposition of credit unions in default.

"(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each conservatorship or liquidation to which the Board was appointed, the Board shall make an annual accounting or report, as appropriate, available to the Comptroller General of the United States or, in the case of a State-chartered credit union, the authority which appointed the Board as conservator or liquidating agent.

"(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) shall be made available by the Board upon request to any shareholder of the credit union for which the Board was appointed conservator or liquidating agent or any other member of the public.

"(D) RECORDKEEPING REQUIREMENT.—After the end of the 6-year period beginning on the date the Board is appointed as liquidating agent of an insured credit union, the Board may destroy any records of such credit union which the Board, in the Board's discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

"(c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR LIQUIDATING AGENT.—

"(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a conservator or liquidating agent may have, the conservator or liquidating agent for any insured credit union may disaffirm or repudiate any contract or lease—

"(A) to which such credit union is a party;

"(B) the performance of which the conservator or liquidating agent, in the conservator's or liquidating agent's discretion, determines to be burdensome; and

"(C) the disaffirmance or repudiation of which the conservator or liquidating agent determines, in the conservator's or liquidating agent's discretion, will promote the orderly administration of the credit union's affairs.

"(2) TIMING OF REPUDIATION.—The conservator or liquidating agent appointed for any insured credit union shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

"(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

"(A) IN GENERAL.—Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or liquidating agent for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

"(i) limited to actual direct compensatory damages; and

"(ii) determined as of—

"(I) the date of the appointment of the conservator or liquidating agent; or

"(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

"(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term 'actual direct compensatory damages' does not include—

"(i) punitive or exemplary damages;

"(ii) damages for lost profits or opportunity; or

"(iii) damages for pain and suffering.

"(C) MEASURE OF DAMAGES FOR REPUDIATION OF FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

"(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

"(ii) paid in accordance with this subsection and subsection (f) except as otherwise specifically provided in this section.

"(4) LEASES UNDER WHICH THE CREDIT UNION IS THE LESSEE.—

"(A) IN GENERAL.—If the conservator or liquidating agent disaffirms or repudiates a lease under which the credit union was the lessee, the conservator or liquidating agent shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

"(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

"(i) be entitled to the contractual rent accruing before the later of the date—

"(I) the notice of disaffirmance or repudiation is mailed; or

"(II) the disaffirmance or repudiation becomes effective,

unless the lessor is in default or breach of the terms of the lease;

"(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

"(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (b).

"(5) LEASES UNDER WHICH THE CREDIT UNION IS THE LESSOR.—

"(A) IN GENERAL.—If the conservator or liquidating agent repudiates an unexpired written lease of real property of the credit union under which the credit union is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either— Real property.

"(i) treat the lease as terminated by such repudiation; or

"(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

"(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

"(i) the lessee—

"(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease;

"(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the credit union under the lease after such date; and

"(ii) the conservator or liquidating agent shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

"(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

"(A) IN GENERAL.—If the conservator or liquidating agent repudiates any contract (which meets the requirements of each paragraph of section 208(a)(3)) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

"(i) treat the contract as terminated by such repudiation; or

"(ii) remain in possession of such real property.

"(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

"(i) the purchaser—

"(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

"(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the credit union under the contract; and

"(ii) the conservator or liquidating agent shall—

"(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

"(II) deliver title to the purchaser in accordance with the provisions of the contract; and

"(III) have no obligation under the contract other than the performance required under subclause (II).

"(C) ASSIGNMENT AND SALE ALLOWED.—

"(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the conservator or liquidating agent to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

"(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the conservator or liquidating agent shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

"(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

"(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any insured credit union for which the Board has been appointed conservator or liquidating agent, any claim of such person for services performed before the appointment of the conservator or the liquidating agent shall be—

"(i) a claim to be paid in accordance with subsection (b); and

"(ii) deemed to have arisen as of the date the conservator or liquidating agent was appointed.

"(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described in subparagraph (A), the conservator or liquidating agent accepts performance by the other person before the conservator or liquidating agent makes any determination to exercise the right of repudiation of such contract under this section—

"(i) the other party shall be paid under the terms of the contract for the services performed; and

"(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or liquidation.

"(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by any conservator or liquidating agent of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or liquidating agent to repudiate such contract under this section at any time after such performance.

"(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

"(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraph (12) of this subsection and notwithstanding any other provision of this Act (other than subsection (b)(9) of this section and section 208(a)(3)), any other Federal law, or the

law of any State, no person shall be stayed or prohibited from exercising—

"(i) any right to cause the termination or liquidation of any qualified financial contract with an insured credit union which arises upon the appointment of the Board as liquidating agent for such credit union at any time after such appointment;

"(ii) any right under any security arrangement relating to any contract or agreement described in clause (i); or

"(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

"(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (b)(12) shall apply in the case of any judicial action or proceeding brought against any liquidating agent referred to in subparagraph (A), or the credit union for which such liquidating agent was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such credit union.

"(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

"(i) IN GENERAL.—Notwithstanding paragraph (11), the Board, whether acting as such or as conservator or liquidating agent of an insured credit union, may not avoid any transfer of money or other property in connection with any qualified financial contract with an insured credit union.

"(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with an insured credit union if the Board determines that the transferee had actual intent to hinder, delay, or defraud such credit union, the creditors of such credit union, or any conservator or liquidating agent appointed for such credit union.

"(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this subsection—

"(i) QUALIFIED FINANCIAL CONTRACT.—The term 'qualified financial contract' means any securities contract, forward contract, repurchase agreement, and any similar agreement that the Board determines by regulation to be a qualified financial contract for purposes of this paragraph.

"(ii) SECURITIES CONTRACT.—The term 'securities contract'—

"(I) has the meaning given to such term in section 741(7) of title 11, United States Code, except that the term 'security' (as used in such section) shall be deemed to include any mortgage loan, any mortgage-related security (as defined in section 3(a)(41) of the Securities Exchange Act of 1934), and any interest in any mortgage loan or mortgage-related security; and

"(II) does not include any participation in a commercial mortgage loan unless the Board deter-

mines by regulation, resolution, or order to include any such participation within the meaning of such term.

"(iii) FORWARD CONTRACT.—The term 'forward contract' has the meaning given to such term in section 101(24) of title 11, United States Code.

"(iv) REPURCHASE AGREEMENT.—The term 'repurchase agreement'—

"(I) has the meaning given to such term in section 101(41) of title 11, the United States Code, except that the items (as described in such section) which may be subject to any such agreement shall be deemed to include mortgage-related securities (as such term is defined in section 3(a)(41) of the Securities Exchange Act of 1934, any mortgage loan, and any interest in any mortgage loan; and

"(II) does not include any participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such participation within the meaning of such term.

"(v) TRANSFER.—The term 'transfer' has the meaning given to such term in section 101(50) of title 11, United States Code.

"(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this Act (other than paragraph (12) of this subsection, subsection (b)(9) of this section, and section 208(a)(3) of this Act), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

"(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a credit union in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

"(ii) any right under any security arrangement relating to such qualified financial contracts; or

"(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

"(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—In making any transfer of assets or liabilities of a credit union in default which includes any qualified financial contract, the conservator or liquidating agent for such credit union shall either—

"(A) transfer to 1 credit union (other than a credit union in default)—

"(i) all qualified financial contracts between—

"(I) any person or any affiliate of such person; and

"(II) the credit union in default;

"(ii) all claims of such person or any affiliate of such person against such credit union under any such contract (other than any claim which, under the terms of

any such contract, is subordinated to the claims of general unsecured creditors of such credit union);

"(iii) all claims of such credit union against such person or any affiliate of such person under any such contract; and

"(iv) all property securing any claim described in clause (ii) or (iii) under any such contract; or

"(B) transfer none of the financial contracts, claims, or property referred to in subparagraph (A) (with respect to such person and any affiliate of such person).

"(10) NOTIFICATION OF TRANSFER.—

"(A) IN GENERAL.—If—

"(i) the conservator or liquidating agent for an insured credit union in default makes any transfer of the assets and liabilities of such credit union; and

"(ii) the transfer includes any qualified financial contract,

the conservator or liquidating agent shall use such conservator's or liquidating agent's best efforts to notify any person who is a party to any such contract of such transfer by 12:00, noon (local time), on the business day following such transfer.

"(B) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term 'business day' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

"(11) CERTAIN SECURITY INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any credit union except where such an interest is taken in contemplation of the credit union's insolvency or with the intent to hinder, delay, or defraud the credit union or the creditors of such credit union.

"(12) AUTHORITY TO ENFORCE CONTRACTS.—

"(A) IN GENERAL.—The conservator or liquidating agent may enforce any contract, other than a director's or officer's liability insurance contract or a credit union bond, entered into by the credit union notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of a conservator or liquidating agent.

"(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the conservator or liquidating agent to enforce or recover under a directors or officers liability insurance contract or credit union bond under other applicable law.

"(13) EXCEPTION FOR FEDERAL RESERVE AND FEDERAL HOME LOAN BANKS.—No provision of this subsection shall apply with respect to—

"(A) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

"(B) any security interest in the assets of the institution securing any such extension of credit.

"(d) PAYMENT OF INSURED DEPOSITS.—

"(1) IN GENERAL.—In case of the liquidation of any insured credit union, payment of the insured deposits in such credit union shall be made by the Board as soon as possible, subject to the provisions of subsection (e) of this section, either by cash or by making available to each accountholder a transferred deposit in a new credit union in the same community or in another insured credit union in an amount equal to the insured deposit of such accountholder.

"(2) PROOF OF CLAIMS.—The Board, in its discretion, may require proof of claims to be filed and may approve or reject such claims for insured deposits.

"(3) RESOLUTION OF DISPUTES.—

"(A) RESOLUTIONS IN ACCORDANCE TO BOARD REGULATIONS.—In the case of any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit, the Board may resolve such disputed claim in accordance with regulations prescribed by the Board establishing procedures for resolving such claims.

"(B) ADJUDICATION OF CLAIMS.—If the Board has not prescribed regulations establishing procedures for resolving disputed claims, the Board may require the final determination of a court of competent jurisdiction before paying any such claim.

Courts, U.S. District of Columbia.

"(4) REVIEW OF BOARD'S DETERMINATION.—Final determination made by the Board shall be reviewable in accordance with chapter 7 of title 5, United States Code, by the United States Court of Appeals for the District of Columbia or the court of appeals for the Federal judicial circuit where the principal place of business of the credit union is located.

"(5) STATUTE OF LIMITATIONS.—Any request for review of a final determination by the Board shall be filed with the appropriate circuit court of appeals not later than 60 days after such determination is ordered.

"(e) SUBROGATION OF BOARD.—

"(1) IN GENERAL.—Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Board, upon the payment to any accountholder as provided in subsection (d) in connection with any insured credit union described in such subsection or the assumption of any deposit in such credit union by another insured credit union pursuant to this section, shall be subrogated to all rights of the accountholder against such credit union to the extent of such payment or assumption.

"(2) DIVIDENDS ON SUBROGATED AMOUNTS.—The subrogation of the Board under paragraph (1) with respect to any insured credit union shall include the right on the part of the Board to receive the same dividends from the proceeds of the assets of such credit union as would have been payable to the accountholder on a claim for the insured deposit, but such accountholder shall retain such claim for any uninsured or unassumed portion of the deposit.

"(f) VALUATION OF CLAIMS IN DEFAULT.—

"(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, this subsection shall govern the rights of the creditors (other than insured accountholders) of such credit union.

"(2) MAXIMUM LIABILITY.—The maximum liability of the Board, acting as liquidating agent or in any other capacity, to any person having a claim against the liquidating agent or the insured credit union for which such liquidating agent is appointed shall equal the amount such claimant would have received if the Board had liquidated the assets and liabilities of such credit union without exercising the Board's authority under subsection (n) of this section.

"(3) ADDITIONAL PAYMENTS AUTHORIZED.—

"(A) IN GENERAL.—The Board may, in its discretion and in the interests of minimizing its losses, use its own resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. The Board shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category or claimants.

"(B) MANNER OF PAYMENT.—The Board may make the payments or credit the amounts specified in subparagraph (A) directly to the claimants or may make such payments or credit such amounts to an open insured credit union to induce the open insured credit union to accept liability for such claims.

"(g) LIMITATION ON COURT ACTION.—Except as provided in this section, no court may take any action, except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Board as a conservator or a liquidating agent.

"(h) LIABILITY OF DIRECTORS AND OFFICERS.—A director or officer of an insured credit union may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Board, which action is prosecuted wholly or partially for the benefit of the Board—

"(1) acting as conservator or liquidating agent of such insured credit union,

"(2) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such liquidating agent or conservator, or

"(3) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by an insured credit union or its affiliate in connection with assistance provided under section 208,

for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law. Nothing in this paragraph shall impair or affect any right, if any, of the Board under other applicable law.

"(i) DAMAGES.—In any proceeding related to any claim against an insured credit union's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an insured credit union, recoverable damages determined to result from the improvident or otherwise improper use or investment of any insured credit union's assets shall include principal losses and appropriate interest."; and

(5) in subsection (k) (as so redesignated by paragraph (3) of this subsection) by striking out the 1st and 5th sentences.

(b) LIMITATION ON COURT ACTION.—Section 206(h)(3) of the Federal Credit Union Act (12 U.S.C. 1786(h)(3)) is amended by adding at the end thereof the following sentence: "Except as provided in this paragraph, no court may take any action, except at the request of the Board by regulation or order, to restrain or affect the exercise of powers or functions of the Board as conservator.".

SEC. 1218. RISK MANAGEMENT TRAINING.

The Federal Financial Institutions Examination Council Act (12 U.S.C. 3301 et seq.) is amended by adding at the end the following new section:

12 USC 3309.

"SEC. 1009A. RISK MANAGEMENT TRAINING.

"(a) SEMINARS.—The Council shall develop and administer training seminars in risk management for its employees and the employees of insured financial institutions.

"(b) STUDY OF RISK MANAGEMENT TRAINING PROGRAM.—Not later than end of the 1-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Council shall—

"(1) conduct a study on the feasibility and appropriateness of establishing a formalized risk management training program designed to lead to the certification of Risk Management Analysts; and

Reports.

"(2) report to the Congress the results of such study.".

SEC. 1219. CROSS-MARKETING RESTRICTIONS.

Section 4(f)(3)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(f)(3)(B)) is amended by striking clause (ii) and inserting the following:

"(ii) offer or market products or services of an affiliate that are not permissible for bank holding companies to provide under subsection (c)(8), or permit its products or services to be offered or marketed in connection with products and services of an affiliate, unless—

"(I) the Board, by regulation, has determined such products and services are permissible for bank holding companies to provide under subsection (c)(8);

"(II) such products and services are described in section 20 of the Banking Act of 1933 and the Board, by regulation, has permitted bank holding companies to offer or market such products or services, but has prohibited bank holding companies and their affiliates from principally engaging in the offering or marketing of such products or services; or

"(III) such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date;".

SEC. 1220. REPORT ON LOAN DISCRIMINATION.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary of Housing and Urban Development, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Director of the Office of Thrift Supervision, shall each transmit to the Congress a report containing—

(1) findings, based on a review of currently available loan acceptance and rejection statistics, on the extent of discriminatory lending practices by mortgage lenders subject to regulation or supervision by such agency; and

(2) recommendations for appropriate measures to assure nondiscriminatory lending practices.

(b) SCOPE OF HUD REPORT.—The Secretary of Housing and Urban Development may exclude from the report under subsection (a) any data pertaining to mortgage lenders which are approved mortgagees under title II of the National Housing Act if data pertaining to such lenders is or will be included in the other reports under such subsection.

SEC. 1221. SEPARABILITY OF PROVISIONS.

12 USC 1811 note.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

TITLE XIII—PARTICIPATION BY STATE HOUSING FINANCE AUTHORITIES AND NONPROFIT ENTITIES

SEC. 1301. DEFINITIONS.

12 USC 1441a-1.

For purposes of this title:

(1) STATE HOUSING FINANCE AUTHORITY.—The term "State housing finance authority" means any public agency, authority, or corporation which—

(A) serves as an instrumentality of any State or any political subdivision of any State; and

(B) functions as a source of residential mortgage loan financing in that State.

(2) NONPROFIT ENTITY.—The term "nonprofit entity" means any not-for-profit corporation chartered under State law that is exempt from Federal taxation under section 501(c) of the Internal Revenue Code of 1986 and no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual (including any nonprofit entity established by the corporation established under title IX of the Housing and Urban Development Act of 1968).

(3) MORTGAGE-RELATED ASSETS.—The term "mortgage-related assets" means—

(A) residential mortgage loans secured by 1- to 4-family or multifamily dwellings; and

(B) real property improved with 1- to 4-family or multifamily residential dwellings,

which are located within the jurisdiction of the applicable State housing finance authority or within the geographical area served by the nonprofit entity.

(4) NET INCOME.—The term "net income" means income after deduction of all associated expenses calculated in accordance with generally accepted accounting principles.

12 USC 1441a-2.

SEC. 1302. AUTHORIZATION FOR STATE HOUSING FINANCE AGENCIES AND NONPROFIT ENTITIES TO PURCHASE MORTGAGE-RELATED ASSETS.

(a) AUTHORIZATION.—Notwithstanding any other provision of Federal or State law, a State housing finance authority or nonprofit entity may purchase mortgage-related assets from the Resolution Trust Corporation or from financial institutions with respect to which the Federal Deposit Insurance Corporation is acting as a conservator or receiver (including assets associated with any trust business), and any contract for such purchase shall be effective in accordance with its terms without any further approval, assignment, or consent with respect to that contract.

Disadvantaged persons.

(b) INVESTMENT REQUIREMENT.—Any State housing finance authority or nonprofit entity which purchases mortgage-related assets pursuant to subsection (a) shall invest any net income attributable to the ownership of those assets in financing, refinancing, or rehabilitating low- and moderate-income housing within the jurisdiction of the State housing finance authority or within the geographical area served by the nonprofit entity.

TITLE XIV—TAX PROVISIONS

SEC. 1401. EARLY TERMINATION OF SPECIAL REORGANIZATION RULES FOR FINANCIAL INSTITUTIONS.

(a) GENERAL RULE.—

(1) REORGANIZATIONS.—Subparagraph (D) of section 368(a)(3) of the Internal Revenue Code of 1986 (as amended by section 4012 of the Technical and Miscellaneous Revenue Act of 1988) is amended to read as follows:

26 USC 368.

"(D) AGENCY RECEIVERSHIP PROCEEDINGS WHICH INVOLVE FINANCIAL INSTITUTIONS.—For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court."

(2) NET OPERATING LOSS RULES.—The last sentence of section 382(l)(5)(F) of such Code (as so amended) is amended by striking "after December 31, 1989" and inserting "on or after May 10, 1989".

26 USC 382.

(3) FINANCIAL ASSISTANCE.—

(A) Section 597 of such Code (as so amended) is amended to read as follows:

26 USC 597.

"SEC. 597. TREATMENT OF TRANSACTIONS IN WHICH FEDERAL FINANCIAL ASSISTANCE PROVIDED.

"(a) GENERAL RULE.—The treatment for purposes of this chapter of any transaction in which Federal financial assistance is provided with respect to a bank or domestic building and loan association shall be determined under regulations prescribed by the Secretary.

"(b) PRINCIPLES USED IN PRESCRIBING REGULATIONS.—

"(1) TREATMENT OF TAXABLE ASSET ACQUISITIONS.—In the case of any acquisition of assets to which section 381(a) does not apply, the regulations prescribed under subsection (a) shall—

"(A) provide that Federal financial assistance shall be properly taken into account by the institution from which the assets were acquired, and

"(B) provide the proper method of allocating basis among the assets so acquired (including rights to receive Federal financial assistance).

"(2) OTHER TRANSACTIONS.—In the case of any transaction not described in paragraph (1), the regulations prescribed under subsection (a) shall provide for the proper treatment of Federal financial assistance and appropriate adjustments to basis or other tax attributes to reflect such treatment.

"(3) DENIAL OF DOUBLE BENEFIT.—No regulations prescribed under this section shall permit the utilization of any deduction (or other tax benefit) if such amount was in effect reimbursed by nontaxable Federal financial assistance.

"(c) FEDERAL FINANCIAL ASSISTANCE.—The purposes of this section, the term 'Federal financial assistance' means—

"(1) any money or other property provided with respect to a domestic building and loan association by the Federal Savings and Loan Insurance Corporation or the Resolution Trust Corporation pursuant to section 406(f) of the National Housing Act or section 21A of the Federal Home Loan Bank Act (or under any other similar provision of law), and

"(2) any money or other property provided with respect to a bank or domestic building and loan association by the Federal Deposit Insurance Corporation pursuant to section 11(f) or 13(c) of the Federal Deposit Insurance Act (or under any other similar provision of law),

regardless of whether any note or other instrument is issued in exchange therefor.

"(d) DOMESTIC BUILDING AND LOAN ASSOCIATION.—For purposes of this section, the term 'domestic building and loan association' has the meaning given such term by section 7701(a)(19) without regard to subparagraph (C) thereof."

(B) Subparagraph (B) of section 904(c)(2) of the Tax Reform Act of 1986 is hereby repealed. 26 USC 597 note.

(C) The table of sections for part II of subchapter H of chapter 1 of such Code is amended by striking the item relating to section 597 and inserting the following:

"Sec. 597. Treatment of transactions in which Federal financial assistance provided."

(b) TECHNICAL AMENDMENTS.—

(1) Section 904 of the Tax Reform Act of 1986 (other than subsection (c)(2)(B) thereof) is hereby repealed and the Internal Revenue Code of 1986 shall be applied as if the amendments made by such section had not been enacted. 26 USC 597 note.

(2) The last sentence of paragraph (3) of section 4012(c) of the Technical and Miscellaneous Revenue Act of 1988 is amended to read as follows: 26 USC 597 note.

"In the case of any bank or any institution treated as a domestic building and loan association for purposes of section 597 of the 1986 Code by reason of the amendment made by subsection (b)(2)(B), the amendments made by this subsection shall also

apply to any transfer before January 1, 1989, to which the amendments made by subsection (b)(2) apply."

26 USC 593.

(3) The last sentence of section 593(e)(1) of such Code is amended to read as follows: "This paragraph shall not apply to any transaction to which section 381 applies, or to any distribution to the Federal Savings and Loan Insurance Corporation (or any successor thereof) or the Federal Deposit Insurance Corporation in redemption of an interest in an association, if such interest was originally received by any such entity in exchange for assistance provided under a provision of law referred to in section 597(c).".

(c) EFFECTIVE DATES.—

26 USC 368 note.

(1) SUBSECTION (a)(1).—The amendment made by subsection (a)(1) shall apply to acquisitions on or after May 10, 1989.

26 USC 382 note.

(2) SUBSECTION (a)(2).—The amendment made by subsection (a)(2) shall apply to transactions on or after May 10, 1989.

26 USC 597 note.

(3) SUBSECTION (a)(3).—

(A) IN GENERAL.—The amendments made by subsection (a)(3) shall apply to any amount received or accrued by the financial institution on or after May 10, 1989, except that such amendments shall not apply to transfers on or after such date pursuant to an acquisition to which the amendment made by subsection (a)(1) does not apply.

(B) INTERIM RULE.—In the case of any payment pursuant to a transaction on or after May 10, 1989, and before the date on which the Secretary of the Treasury (or his delegate) takes action in exercise of his regulatory authority under section 597 of the Internal Revenue Code of 1986 (as amended by subsection (a)(3)), the taxpayer may rely on the legislative history for the amendments made by subsection (a)(3) in determining the proper treatment of such payment.

26 USC 597 note.

(4) SUBSECTION (b)(1).—The provisions of subsection (b)(1) shall take effect on the date of the enactment of the Tax Reform Act of 1986.

26 USC 597 note.

(5) SUBSECTION (b)(2).—The amendment made by subsection (b)(2) shall take effect on the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988.

26 USC 593 note.

(6) SUBSECTION (b)(3).—The amendment made by subsection (b)(3) shall take effect on the date of the enactment of this Act.

26 USC 597 note.

(7) CLARIFICATION OF PRIOR LAW.—Any reference to the Federal Savings and Loan Insurance Corporation in section 597 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) shall be treated as including a reference to the Resolution Trust Corporation and the FSLIC Resolution Fund.

SEC. 1402. TAX EXEMPTION FOR RESOLUTION TRUST CORPORATION AND RESOLUTION FUNDING CORPORATION.

(a) GENERAL RULE.—Subsection (l) of section 501 of the Internal Revenue Code of 1986 (relating to government corporations exempt under subsection (c)(1)) is amended to read as follows:

26 USC 501.

"(l) GOVERNMENT CORPORATIONS EXEMPT UNDER SUBSECTION (c)(1).—For purposes of subsection (c)(1), the following organizations are described in this subsection:

"(1) The Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).

"(2) The Resolution Trust Corporation established under section 21A of the Federal Home Loan Bank Act.

"(3) The Resolution Funding Corporation established under section 21B of the Federal Home Loan Bank Act."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act. 26 USC 501 note.

SEC. 1403. ANNUAL REPORTS ON TRANSACTIONS IN WHICH FEDERAL FINANCIAL ASSISTANCE PROVIDED. 26 USC 597 note.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall submit to the Senate and to the Committee on Ways and Means of the House of Representatives annual reports on—

(1)(A) the transactions which occur during the year for which the report is made and with respect to which Federal financial assistance is provided;

(B) the aggregate amount of Federal financial assistance provided with respect to such transactions; and

(C) any tax benefits available by reason of such transactions; and

(2) the aggregate amount of Federal financial assistance provided during such year, and the aggregate tax benefits utilized during such year, which are attributable to such transactions in prior years.

(b) DEFINITION.—For purposes of this section, the term "Federal financial assistance" means any assistance to which section 597 of the Internal Revenue Code of 1986 applies.

SEC. 1404. STUDIES OF RELATIONSHIP BETWEEN PUBLIC DEBT AND ACTIVITIES OF GOVERNMENT-SPONSORED ENTERPRISES. 12 USC 1811 note.

(a) IN GENERAL.—In order to better manage the bonded indebtedness of the United States, the Secretary shall conduct 2 annual studies to assess the financial safety and soundness of the activities of all Government-sponsored enterprises and the impact of their operations on Federal borrowing.

(b) ACCESS TO RELEVANT INFORMATION.— Records.

(1) INFORMATION FROM GSE'S.—Each Government-sponsored enterprise shall provide full and prompt access to the Secretary to its books and records, and shall promptly provide any other information requested by the Secretary.

(2) INFORMATION FROM SUPERVISORY AGENCIES.—In conducting the studies under this section, the Secretary may request information from, or the assistance of, any Federal department or agency authorized by law to supervise the activities of any Government-sponsored enterprise.

(3) CONFIDENTIALITY OF INFORMATION.—

(A) IN GENERAL.—The Secretary shall determine and maintain the confidentiality of any book, record, or information made available under this subsection in a manner generally consistent with the level of confidentiality established for the material by the Government-sponsored enterprise involved.

(B) EXEMPTION FROM PUBLIC DISCLOSURE REQUIREMENTS.—The Department of the Treasury shall be exempt from section 552 of title 5, United States Code, with respect to any book, record, or information made available under this subsection and determined by the Secretary to be confidential under subparagraph (A).

(C) PENALTY FOR UNAUTHORIZED DISCLOSURE.—Any officer or employee of the Department of the Treasury shall be subject to the penalties set forth in section 1906 of title 18, United States Code, if—

(i) by virtue of his employment or official position, he has possession of or access to any book, record, or information made available under this subsection and determined by the Secretary to be confidential under subparagraph (A); and

(ii) he discloses the material in any manner other than—

(I) to an officer or employee of the Department of the Treasury; or

(II) pursuant to the exceptions set forth in such section 1906.

(c) ASSESSMENT OF RISK.—In assessing the financial safety and soundness of the activities of Government-sponsored enterprises, and the impact of their activities on Federal borrowing, the Secretary shall quantify the risks associated with each Government-sponsored enterprise. In quantifying such risks, the Secretary shall determine the volume and type of securities outstanding which are issued or guaranteed by each Government-sponsored enterprise, the capitalization of each Government-sponsored enterprise, and the degree of risk involved in the operations of each Government-sponsored enterprise due to factors such as credit risk, interest rate risk, management and operations risk, and business risk. The Secretary shall also report on the quality and timeliness of information currently available to the public and the Federal Government concerning the extent and nature of the activities of Government-sponsored enterprises and the financial risk associated with such activities.

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(d) REPORTS TO CONGRESS.—The Secretary shall submit to the Congress—

(1) by May 15, 1990, a report setting forth the results of the 1st annual study conducted under this section; and

(2) by May 15, 1991, a report setting forth the results of the 2nd annual study conducted under this section.

(e) DEFINITIONS.—For purposes of this section:

(1) GOVERNMENT-SPONSORED ENTERPRISE.—The term "Government-sponsored enterprise" means—

(A) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank System, the Farm Credit Banks, the Banks for Cooperatives, the Federal Agricultural Mortgage Corporation, the Student Loan Marketing Association, the College

Construction Loan Insurance Association, and any of their affiliated or member institutions; and

(B) any other Government-sponsored enterprise, as designated by the Secretary.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

Approved August 9, 1989.

LEGISLATIVE HISTORY—H.R. 1278 (S. 774):

HOUSE REPORTS: No. 101-54, Pt. 1 (Comm. on Banking, Finance and Urban Affairs), Pt. 2 (Comm. on Ways and Means), Pt. 3 (Comm. on Banking, Finance and Urban Affairs), Pt. 4 (Comm. on Rules), Pt. 5 (Comm. on the Judiciary), Pt. 6 (Comm. on Government Operations), and Pt. 7 (Comm. on Banking, Finance and Urban Affairs); and Nos. 101-209 and 101-222 both from (Comm. of Conference).

SENATE REPORTS: No. 101-19 accompanying S. 774 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 135 (1989):

Apr. 17-19, S. 774 considered and passed Senate.

June 14, 15, H.R. 1278 considered and passed House.

June 21, considered and passed Senate, amended.

Aug. 3, House agreed to conference report. Senate ruled conference report out of order.

Aug. 4, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 25 (1989):

Aug. 9, Presidential remarks.