

Public Law 95-630
95th Congress

An Act

To extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions.

Nov. 10, 1978
[H.R. 14279]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Financial Institutions Regulatory and Interest Rate Control Act of 1978".

Financial
Institutions
Regulatory and
Interest Rate
Control Act of
1978.
12 USC 226 note.

TITLE I—SUPERVISORY AUTHORITY OVER
DEPOSITORY INSTITUTIONS

SEC. 101. The Federal Reserve Act is amended by redesignating sections 29 and 30 as sections 30 and 31, respectively, and by inserting after section 28 a new section as follows:

12 USC 226 note.

"SEC. 29. (a) Any member bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such member bank who violates any provision of section 22 or 23A of this Act, or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than \$1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Comptroller of the Currency in the case of a national bank, or the Board in the case of a State member bank, by written notice. As used in this section, the term 'violates' includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

Civil penalty.
12 USC 504.

12 USC 375,
375a, 375b, 376,
503.
12 USC 371c.
Notice.

"Violates."

"(b) In determining the amount of the penalty the Comptroller of the Currency or the Board, as the case may be, shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the member bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

Hearing
opportunity.

"(c) The member bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subsection (d). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

"(d) Any member bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the member bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Comptroller of the Currency or the Board, as the case may be. The Comptroller of the Currency or the Board, as the case may be, shall promptly certify and file

Review.

Certification.

in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Comptroller of the Currency or the Board, as the case may be, shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2) (E) of title 5, United States Code.

“(e) If any member bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Comptroller of the Currency or the Board, as the case may be, shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

Regulations.

“(f) The Comptroller of the Currency and the Board shall promulgate regulations establishing procedures necessary to implement this section.

“(g) All penalties collected under authority of this section shall be covered into the Treasury of the United States.”

12 USC 505.

SEC. 102. Section 19 of the Federal Reserve Act is amended by adding at the end thereof the following new subsection:

Civil penalty.

“(j) (1) Any member bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such member bank who violates any provision of this section, or any regulation or order issued by the Board pursuant thereto, shall forfeit and pay a civil money penalty of not more than \$100 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Board by written notice. As used in this section, the term ‘violates’ includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

Notice.

“Violates.”

“(2) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the member bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

Hearing

opportunity.

“(3) The member bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in paragraph (4). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

Review.

“(4) Any member bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the member bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Board. The Board shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Board shall be set aside if found to be unsupported by substantial evidence as provided by section 706 (2) (E) of title 5, United States Code.

Certification.

"(5) If any member bank or person fails to pay an assessment after it has become a final and unappealable order or after the court of appeals has entered final judgment in favor of the agency, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

"(6) The Board shall promulgate regulations establishing procedures necessary to implement this subsection. Regulations.

"(7) All penalties collected under authority of this subsection shall be covered into the Treasury of the United States."

SEC. 103. Section 5239 of the Revised Statutes (12 U.S.C. 93) is amended by inserting "(a)" immediately after "SEC. 5239." and by inserting at the end thereof the following new subsection:

"(b) (1) Any national banking association which violates, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such association who violates any of the provisions of this chapter, or any regulation issued pursuant thereto, shall forfeit and pay a civil money penalty of not more than \$1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Comptroller of the Currency by written notice. As used in the section, the term 'violates' includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation. Civil penalty.

"(2) In determining the amount of the penalty the Comptroller shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the association or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require. Notice.

"(3) The association or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in subsection (4). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order. "Violates."

"(4) Any association or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the bank is located, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Comptroller. The Comptroller shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28. The findings of the Comptroller shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(e) of title 5. Hearing opportunity.

"(5) If any association or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Comptroller shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review. Review.

Certification.

"(6) The Comptroller may, in his discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under this section.

Regulations.

"(7) The Comptroller shall promulgate regulations establishing procedures necessary to implement this subsection.

"(8) All penalties collected under authority of this section shall be covered into the Treasury of the United States."

12 USC 375b.

SEC. 104. Section 22 of the Federal Reserve Act is amended by adding at the end thereof the following new subsection:

Loan or extension
of credit to
executive
officers,
prohibitions.

"(h) (1) No member bank shall make any loan or extension of credit in any manner to any of its executive officers, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, except in the case of such a bank located in a city, town, or village with less than thirty thousand in population, in which case such per centum shall be 18 per centum, or to any company controlled by such an executive officer or person, or to any political or campaign committee the funds or services of which will benefit such an executive officer or person or which is controlled by such an executive officer or person, where the amount of such loan or extension of credit, when aggregated with the amount of all other loans or extensions of credit then outstanding by such bank to such executive officer or person and to all companies controlled by such executive officer or person and to all political or campaign committees the funds or services of which will benefit such executive officer or person or which are controlled by such executive officer or person, would exceed the limits on loans to a single borrower established by section 5200 of the Revised Statutes, as amended. For purposes of this paragraph, the provisions of section 5200 of the Revised Statutes, as amended, shall be deemed to apply to a State member bank as if such State member bank were a national banking association.

12 USC 84.

"(2) No member bank shall make any loan or extension of credit in any manner to any of its executive officers or directors, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, or to any company controlled by such an executive officer, director, or person, or to any political or campaign committee the funds or services of which will benefit such executive officer, director, or person or which is controlled by such executive officer, director, or person, where the amount of such loan or extension of credit, when aggregated with the amount of all other loans or extensions of credit then outstanding by such bank to such executive officer, director, or person and to all companies controlled by such executive officer, director, or person and to all political or campaign committees the funds or services of which will benefit such executive officer, director, or person or which are controlled by such executive officer, director, or person, would exceed \$25,000, unless such loan, line of credit, or extension of credit is approved in advance by a majority of the entire board of directors with the interested party abstaining from participating directly or indirectly in the voting.

"(3) No member bank shall make any loan or extension of credit in any manner to any of its executive officers or directors, or to any person who directly or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, or to any

company controlled by such executive officer, director, or person, or to any political or campaign committee the funds or services of which will benefit such executive officer, director, or person or which is controlled by such executive officer, director, or person, unless such loan or extension of credit is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

“(4) No member bank may pay an overdraft on an account at such bank of an executive officer or director.

Overdrafts.

“(5) For purposes of this subsection, an executive officer, director, or person shall be considered to have control of a company if such executive officer, director, or person, directly or indirectly or acting through or in concert with one or more other persons—

“(A) owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the company;

“(B) controls in any manner the election of a majority of the directors of the company; or

“(C) has the power to exercise a controlling influence over the management or policies of such company.

“(6) For the purposes of this subsection—

Definitions.

“(A) the term ‘person’ means an individual or company;

“(B) the term ‘company’ means any corporation, partnership, business trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, any other form of business entity not specifically listed herein, or any other trust, but shall not include any insured bank or any corporation the majority of shares of which is owned by the United States or by any State;

“(C) the term ‘extension of credit’ has the same meaning assigned such term in the fourth paragraph of section 23A of this Act;

12 USC 371c.

“(D) a person shall be deemed to be a ‘director’ of a member bank or a ‘person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has power to vote more than 10 per centum of any class of voting securities of a member bank’ if such person has such relationship with any bank holding company of which such member is a subsidiary, as defined by the Bank Holding Company Act (12 U.S.C. 1841), or with any other subsidiary of such bank holding company;

“(E) a person shall be deemed to be an ‘officer’ of a member bank if such person is an officer of any bank holding company of which such member bank is a subsidiary, as defined by the Bank Holding Company Act (12 U.S.C. 1841), or with any other subsidiary of such bank holding company;

“(F) the term ‘executive officer’ has the same meaning assigned such term under section 22(g) of this Act; and

12 USC 375a.

“(G) the term ‘pay an overdraft on an account’ means the payment by a member bank of an amount for an account holder in excess of the funds on deposit in the account and does not include a payment of funds by the member bank in accordance with either a written preauthorized, interest-bearing extension of credit specifying a method of repayment or a written preauthorized transfer of funds from another account of the account holder at that bank.

“(7) The Board of Governors of the Federal Reserve System may prescribe such rules and regulations, including definitions of terms, as it deems necessary to effectuate the purposes and to prevent evasions of

Rules and regulations.

Rules.	this subsection. The Board may further prescribe rules providing a reasonable period of time after the date of enactment of this subsection within which the amount of outstanding loans or extensions of credit made prior to such date of enactment shall be reduced so as to conform to the limitations of this subsection. ²⁷
Bank holding company, termination. Notice, hearing opportunity.	<p>SEC. 105. (a) Section 5 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844), is amended by adding at the end thereof the following new subsection:</p> <p>“(e) (1) Notwithstanding any other provision of this Act, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank’s primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the bank holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.</p>
12 USC 1464 note.	<p>“(2) The Board may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the holding 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, but except as provided in section 9 of this Act, 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.”</p> <p>(b) (1) Section 408(h) of the National Housing Act (12 U.S.C. 1730a(h)) is amended by adding immediately after “under subsection (a) (2) (D)” in paragraphs (3) (A) and (3) (B) of subsection (h) the phrase “or under subsection (h) (5)” and is amended by redesignating paragraph (h) (5) as (h) (6) and by adding a new paragraph (h) (5) to read as follows:</p>
Enforcement and jurisdiction.	<p>“(5) (A) Notwithstanding any other provision of this section, the Corporation may, whenever it 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 insured institution and is inconsistent with the sound operation of an insured savings and loan institution or with the purposes of this section or with the Financial Institutions Supervisory 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 one hundred and twenty days or such longer period as the</p>
Savings and loan holding company, termination. Notice, hearing opportunity.	

Corporation 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 Corporation may in its 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, but except as provided in subsection (k), 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.”

Enforcement and jurisdiction.

(2) Section 406(f) of the National Housing Act (12 U.S.C. 1729 (f)) is amended to read as follows:

“(f) (1) In order to prevent a default in an insured institution or in order to restore an insured institution in default to normal operation, the Corporation is authorized, in its discretion and upon such terms and conditions as it may determine, to make loans to, to purchase the assets of, or to make a contribution to, an insured institution or an insured institution in default.

Insured institutions, default prevention and restoration.

“(2) Whenever an insured institution is in default or, in the judgment of the Corporation, is in danger of default, the Corporation may, in order to facilitate a merger or consolidation of such insured institution with another insured institution or the sale of the assets of such insured institution and the assumption of its liabilities by another insured institution and upon such terms and conditions as the Corporation may determine, purchase any such assets or assume any such liabilities, or make loans to such other insured institution, or guarantee such other insured institution against loss by reason of its merging or consolidating with or assuming the liabilities and purchasing the assets of such insured institution in or in danger of default.

“(3) No contribution or guarantee shall be made pursuant to paragraphs (1) or (2) of this subsection (f) in an amount in excess of that which the Corporation finds to be reasonably necessary to save the cost of liquidating such insured institution in or in danger of default, but if the Corporation determines that the continued operation of such institution is essential to provide adequate savings or home financing services in its community, such limitation upon the amount of a contribution or guarantee shall not apply.”

SEC. 106. (a) Section 8 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1847), is amended by redesignating “Sec. 8.” as “Sec. 8. (a)” and by adding a new subsection (b) to read as follows:

“(b) (1) Any company which violates or 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 \$1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Board by written notice. As used in the section, the term ‘violates’ includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

Civil penalty.

Notice.
“Violates.”

“(2) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the company or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

Hearing
opportunity.

“(3) The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in section 9. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

12 USC 1848.

“(4) If any company or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Board, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

Regulations.

“(5) The Board shall promulgate regulations establishing procedures necessary to implement this subsection.

“(6) All penalties collected under authority of this subsection shall be covered into the Treasury of the United States.”

12 USC 1844.

(b) Section 5 of the Bank Holding Company Act is amended by adding the following new paragraph:

“(f) In the course of or in connection with an application, examination, investigation or other proceeding under this Act, the Board, or any member or designated representative thereof, including any person designated to conduct any hearing under this Act, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum; and the Board is empowered to make rules and regulations to effectuate the purposes of this subsection. 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 or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this Act 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 the enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any service required under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Any court having jurisdiction of any proceeding instituted under this subsection may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience

Rules and
regulations.

Misdemeanor.

to the subpoena of the Board, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year or both."

(c) Section 408(j) of the National Housing Act (12 U.S.C. 1730a(j)), is amended by adding thereto a new paragraph (j) (4) to read as follows:

"(4) (A) Any company which violates or any individual 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 \$1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Corporation by written notice. As used in the section, the term 'violates' includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

Civil penalty.

Notice.
"Violates."

"(B) In determining the amount of the penalty the Corporation shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the company or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

"(C) The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

Hearing
opportunity.

"(D) Any company or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the company is located, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation. The Corporation shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Corporation shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2) (E) of title 5, United States Code.

Review.

Certification.

"(E) If any company or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Corporation shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

"(F) The Corporation shall promulgate regulations establishing procedures necessary to implement this paragraph.

Regulations.

"(G) All penalties collected under authority of this paragraph shall be covered into the Treasury of the United States."

SEC. 107. (a) (1) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended to read as follows:

"(b) (1) If, in the opinion of the appropriate Federal banking agency, any insured bank, bank which has insured deposits, or any director, officer, employee, agent, or other person participating in the

Notice of charges.

conduct of the affairs of such a bank is engaging or has engaged, or the agency has reasonable cause to believe that the bank or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank is about to engage, in an unsafe or unsound practice in conducting the business of such bank, or is violating or has violated, or the agency has reasonable cause to believe that the bank or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank is about to violate, a law, rule, or regulation, or any condition imposed in writing by the agency in connection with the granting of any application or other request by the bank or any written agreement entered into with the agency, the agency may issue and serve upon the bank or such director, officer, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the bank or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the agency at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the agency shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the agency may issue and serve upon the bank or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the bank or its directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such bank to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

“(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the bank or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.”

(2) Section 407(e) of the National Housing Act (12 U.S.C. 1730(e)) is amended to read as follows:

“(e) (1) If, in the opinion of the Corporation, any insured institution, institution which has insured accounts or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is engaging or has engaged, or the Corporation has reasonable cause to believe that the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is about to engage, in an unsafe or unsound practice in conducting the business of such institution, or is violating or has violated, or the Corporation has reasonable cause to believe that the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institu-

Hearing

Cease-and-desist order.

Notice of charges.

tion is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Corporation in connection with the granting of any application or other request by the institution or any written agreement entered into with the Corporation, including any agreement entered into under section 403 of this title, the Corporation may issue and serve upon the institution or such director, officer, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Corporation at the request of any party so served. Unless the party or parties so served shall appear at the hearing by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the Corporation shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Corporation may issue and serve upon the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the institution or directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such institution to cease and desist from the same, and further to take affirmative action to correct the conditions resulting from any such violation or practice.

“(2) A cease-and-desist order shall become effective at the expiration of thirty days after service of such order upon the institution or the party or parties so served (except in the case of a cease-and-desist 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 Corporation or a reviewing court.

“(3) This subsection and subsections (f), (g), (h), (j), (k), (m) (3), (n), (o), (p), and (q) of this section shall apply to any savings and loan holding company, and to any subsidiary (other than an insured institution) of a savings and loan holding company, as those terms are defined in section 408 of this title, and to any affiliate service corporation of an insured institution in the same manner as they apply to insured institutions”.

(3) Section 5(d)(2) of the Home Owners' Loan Act, as amended (12 U.S.C. 1464(d)(2)), is amended to read as follows:

“(2) (A) If, in the opinion of the Board, any association or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such association is engaging or has engaged, or the Board has reasonable cause to believe that the association or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such association is about to engage, in an unsafe or unsound practice in conducting the business of such association, or is violating or has violated or the Board has reasonable cause to believe that the association or any director, officer, employee, agent,

12 USC 1726.

Hearing.

Cease-and-desist order.

Notice of charges.

Hearing.

Cease-and-desist
order.

or other person participating in the conduct of the affairs of such association is about to violate, a law, rule, or regulation, or charter, or any condition imposed in writing by the Board in connection with the granting of any application or other request by the association or any written agreement entered into with the Board, the Board may issue and serve upon the association or such director, officer, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the association or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such association. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Board at the request of any party so served. Unless the party or parties so served shall appear at the hearing by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the Board shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board may issue and serve upon the association or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such association an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the association or its directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such association to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

“(B) A cease-and-desist order shall become effective at the expiration of thirty days after service of such order upon the association or the party or parties so served (except in the case of a cease-and-desist 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 Board or a reviewing court.

“(C) This paragraph and paragraphs (3), (4), (5), (7), (8), (9), (10), (12) (A) and (B), (13), and (14) of this subsection (d) shall apply to any savings and loan holding company or to any subsidiary (other than an association) of a savings and loan holding company, as those terms are defined in section 408 of the National Housing Act (12 U.S.C. 1730a), as amended, and to any affiliate service corporation of an association in the same manner as they apply to an association.”.

(4) Section 206(e) of the Federal Credit Union Act (12 U.S.C. 1786(e)(1)) is amended to read as follows:

Notice of charges.

“(e) (1) If, in the opinion of the Administrator, any insured credit union, credit union which has insured accounts, or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such a credit union is engaging or has engaged, or the Administrator has reasonable cause to believe that the credit union or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union is about to engage, in an unsafe or unsound practice in conducting the business of such credit union, or is violating or has violated, or the Administrator has reasonable cause to believe that the

credit union or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Administrator in connection with the granting of any application or other request by the credit union or any written agreement entered into with the Administrator, the Administrator may issue and serve upon the credit union or such director, officer, committee member, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the credit union or the director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Administrator at the request of any party so served. Unless the party or parties so served shall appear at the hearing by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the Administrator shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Administrator may issue and serve upon the credit union or the director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the credit union or its directors, officers, committee members, employees, agents, and other persons participating in the conduct of the affairs of such credit union to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

Hearing.

Cease-and-desist order.

“(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the credit union or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court.”

(b) Section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)) is amended to read as follows:

“(3) This subsection and subsections (c) through (f) and (h) through (n) of this section shall apply to any bank holding company, and to any subsidiary (other than a bank) of a bank holding company, as those terms are defined in the Bank Holding Company Act of 1956, and to any organization organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act, in the same manner as they apply to a State member insured bank. Nothing in this subsection or in subsection (c) of this section shall authorize any Federal banking agency, other than the Board of Governors of the Federal Reserve System, to issue a notice of charges or cease-and-desist order against a bank holding company or any subsidiary thereof (other than a bank or subsidiary of that bank).”

12 USC 1841
note.
12 USC
601-604a,
611-632.

(c) (1) Sections 8(c) (1) and (2) of the Federal Deposit Insurance Act (12 U.S.C. 1818(c) (1) and (2)) are amended to read as follows:

Cease-and-desist
order.

“(c) (1) Whenever the appropriate Federal banking agency shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the bank or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank pursuant to paragraph (1) of subsection (b) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank, or is likely to seriously weaken the condition of the bank or otherwise seriously prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of this section, the agency may issue a temporary order requiring the bank or such director, officer, employee, agent, or other person to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the bank or such director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the bank or such director, officer, employee, agent, or other person, until the effective date of such order.

“(2) Within ten days after the bank concerned or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such bank has been served with a temporary cease-and-desist order, the bank or such director, officer, employee, agent, or other person may apply to the United States district court for the judicial district in which the home office of the bank is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the bank or such director, officer, employee, agent, or other person under paragraph (1) of subsection (b) of this section, and such court shall have jurisdiction to issue such injunction.”

(2) Section 407(f) (1) and (2) of the National Housing Act (12 U.S.C. 1730(f) (1) and (2)) is amended to read as follows:

Cease-and-desist
order.

“(f) (1) Whenever the Corporation shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution or any institution any of the accounts of which are insured pursuant to paragraph (1) of subsection (e) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to seriously weaken the condition of the institution or otherwise seriously prejudice the interests of its insured members prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (c) of this section, the Corporation may issue a temporary order requiring the institution or such director, officer, employee, agent, or other person to cease and desist from any such violation or practice and to take affirmative action to prevent such

insolvency, dissipation, condition or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the institution and/or such director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Corporation shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the institution or such director, officer, employee, agent, or other person, until the effective date of any such order.

“(2) Within ten days after the institution concerned or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution has been served with a temporary cease-and-desist order, the institution or such director, officer, employee, agent, or other person may apply to the United States district court for the judicial district in which the principal office of the institution is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the institution or such director, officer, employee, agent, or other person under paragraph (1) of subsection (e) of this section, and such court shall have jurisdiction to issue such injunction.”

Injunction.

(3) Section 5(d)(3)(A) and (B) of the Home Owners' Loan Act, as amended (12 U.S.C. 1464(d)(3)(A) and (B)), is amended to read as follows:

“(3)(A) Whenever the Board shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the association or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such association pursuant to paragraph (2)(A) of this subsection, or the continuation thereof, is likely to cause insolvency (as defined in paragraph (6)(A)(i) of this subsection) or substantial dissipation of assets or earnings of the association, or is likely to seriously weaken the condition of the association or otherwise seriously prejudice the interests of its savings account holders prior to the completion of the proceedings conducted pursuant to paragraph (2)(A) of this subsection the Board may issue a temporary order requiring the association or such director, officer, employee, agent, or other person to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the association or such director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution and, unless set aside, limited, or suspended by a court in proceedings authorized by subparagraph (B) of this paragraph, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Board shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the association or such director, officer, employee, agent, or other person, until the effective date of such order.

Cease-and-desist order.

“(B) Within ten days after the association concerned or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such association has been served with a temporary

Injunction.

cease-and-desist order, the association or such director, officer, employee, agent, or other person may apply to the United States district court for the judicial district in which the home office of the association is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the bank or such director, officer, employee, agent, or other person under paragraph (2)(A) of this subsection, and such court shall have jurisdiction to issue such injunction.”

(4) Sections 206(f) (1) and (2) of the Federal Credit Union Act (12 U.S.C. 1786(f) (1) and (2)) are amended to read as follows:

Cease-and-desist
order.

“(f) (1) Whenever the Administrator shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the credit union or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union pursuant to paragraph (1) of subsection (e) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the credit union, or is likely to seriously weaken the condition of the credit union or otherwise seriously prejudice the interests of its insured members prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (e) of this section, the Administrator may issue a temporary order requiring the credit union or such director, officer, committee member, employee, agents, or other person to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the credit union or such director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Administration shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the credit union or such director, officer, committee member, employee, agent, or other person, until the effective date of such order.

Injunction.

“(2) Within ten days after the credit union concerned or any director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of such credit union has been served with a temporary cease-and-desist order, the credit union or such director, officer, committee member, employee, agent, or other person may apply to the United States district court for the judicial district in which the home office of the credit union is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the credit union or such director, officer, committee member, employee, agent, or other person under paragraph (1) of subsection (e) of this section, and such court shall have jurisdiction to issue such injunction.”

(d) (1) Section 8(e) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818(e)), is amended to read as follows:

“(e) (1) Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured bank has committed any violation of law, rule, or regulation or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the bank, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the agency determines that the bank has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or one which demonstrates a willful or continuing disregard for the safety or soundness of the bank, the agency may serve upon such director or officer a written notice of its intention to remove him from office.

Removal from office, notice of intent.

“(2) Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured bank, by conduct or practice with respect to another insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to continue as a director or officer and, whenever, in the opinion of the appropriate Federal banking agency, any other person participating in the conduct of the affairs of an insured bank, by conduct or practice with respect to such bank or other insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such insured bank, the agency may serve upon such director, officer, or other person a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the bank.

“(3) In respect to any director or officer of an insured bank or any other person referred to in paragraph (1) or (2) of this subsection, the appropriate Federal banking agency may, if it deems it necessary for the protection of the bank or the interests of its depositors, by written notice to such effect served upon such director, officer, or other person, suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the bank. Such suspension or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (f) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1) or (2) of this subsection and until such time as the agency shall dismiss the charges specified in such notice, or, if an order of removal or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the bank of which he is a director or officer or in the conduct of whose affairs he has participated.

“(4) A notice of intention to remove a director, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an insured bank, shall contain a statement of the facts con-

Hearing.

stituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the agency at the request of (A) such director or officer or other person, and for good cause shown, or (B) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the agency shall find that any of the grounds specified in such notice have been established, the agency may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the bank, as it may deem appropriate. In any action brought under this section by the Comptroller of the Currency in respect to any director, officer or other person with respect to a national banking association or a District bank, the findings and conclusions of the Administrative Law Judge shall be certified to the Board of Governors of the Federal Reserve System for the determination of whether any order shall issue. Any such order shall become effective at the expiration of thirty days after service upon such bank and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court."

(2) Section 407(g) (1) and (2) of the National Housing Act (12 U.S.C. 1730(g) (1) and (2)) is amended to read as follows:

Removal from
office, notice of
intent.

"(g) (1) Whenever, in the opinion of the Corporation, any director or officer of an insured institution has committed any violation of law, rule, or regulation or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the institution or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Corporation determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interests of its insured members could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or one which demonstrates a willful or continuing disregard for the safety or soundness of the institution, the Corporation may serve upon such director or officer a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

"(2) Whenever, in the opinion of the Corporation, any director or officer of an insured institution, by conduct or practice with respect to another insured institution or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to continue as a director or officer and, whenever, in the opinion of the Corporation, any other person participating in the conduct of the affairs of an insured institution, by conduct or practice with respect to such institution or other insured institution or other business institution which

resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and in addition, has evidenced his unfitness to participate in the conduct of affairs of such insured institution, the Corporation may serve upon such director, officer, or other person a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.”

(3) Section 5(d)(4)(A) and (B) of the Home Owners' Loan Act, as amended (12 U.S.C. 1464(d)(4)(A) and (B)) is amended to read as follows:

“(4)(A) Whenever, in the opinion of the Board, any director or officer of an association has committed any violation of law, rule, or regulation or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the association, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Board determines that the association has suffered or will probably suffer substantial financial loss or other damage or that the interests of its savings account holders could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or a willful or continuing disregard for the safety or soundness of the association, the Board may serve upon such director or officer a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the association.

“(B) Whenever, in the opinion of the Board, any director or officer of an association, by conduct or practice with respect to another savings and loan association or other business institution which resulted in substantial financial loss or other damage, has evidence either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, whenever, in the opinion of the Board, any other person participating in the conduct of the affairs of an association, by conduct or practice with respect to such association or other savings and loan association or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such association, the Board may serve upon such director, officer, or other person a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the association.”

(4) Section 206(g)(3) through (4) of the Federal Credit Union Act, as amended (12 U.S.C. 1786(g)(3) through (4)), is amended to read as follows:

“(3) In respect to any director, committee member, or officer of an insured credit union or any other person referred to in paragraph (1) or (2) of this subsection, the Administrator may, if he deems it necessary for the protection of the credit union or the interests of its members, by written notice to such effect served upon such director, committee member, officer, or other person, suspend him from office or prohibit him from further participation in any manner in the conduct

Removal from office, notice of intent.

Suspension from office.

of the affairs of the credit union. Such suspension or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by paragraph (5) of this subsection, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1) or (2) of this subsection and until such time as the Administrator shall dismiss the charges specified in such notice, or, if an order of removal and prohibition is issued against the director, committee member, or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the credit union of which he is a director, committee member, or officer or in the conduct of whose affairs he has participated.

Hearing.

“(4) A notice of intention to remove a director, committee member, officer, or other person from office or to prohibit his participation in the conduct of the affairs of an insured credit union, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Administrator at the request of (A) such director, committee member, or officer or other person, and for good cause shown, or (B) the Attorney General of the United States. Unless such director, committee member, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Administrator shall find that any of the grounds specified in such notice have been established, the Administrator may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the credit union, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such credit union and the director, committee member, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court.”

(e)(1) Section 8(i) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818(i)), is amended by redesignating section 8(i) as 8(i)(1) and by adding at the end thereof a new paragraph as follows:

Civil penalty.

“(2)(i) Any insured bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such a bank who violates the terms of any order which has become final and was issued pursuant to subsection (b) or (c) of this section, shall forfeit and pay a civil penalty of not more than \$1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the appropriate Federal banking agency by written notice. As used in this section, the term ‘violates’ includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

Notice.

“Violates.”

“(ii) In determining the amount of the penalty the appropriate Federal banking agency shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the insured bank or person charged, the gravity of the viola-

tion, the history of previous violations, and such other matters as justice may require.

“(iii) The insured bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (iv). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

Hearing
opportunity.

“(iv) Any insured bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the insured bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The agency shall promptly certify and file in such Court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the agency shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

Review.

“(v) If any insured bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the agency shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

Certification.

“(vi) Each Federal banking agency shall promulgate regulations establishing procedures necessary to implement this paragraph.

Regulations.

“(vii) All penalties collected under authority of this section shall be covered into the Treasury of the United States.”

(2) Section 407(k) of the National Housing Act (12 U.S.C. 1730(k)) is amended by adding a new paragraph (k)(3) to read as follows:

“(3)(A) Any insured institution or any institution any of the accounts of which are insured which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such an institution who violates the term of any order which has become final and was issued pursuant to subsection (e) or (f) of this section shall forfeit and pay a civil penalty of not more than \$1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Corporation by written notice. As used in this section, the term ‘violates’ includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

Civil penalty.

“(B) In determining the amount of the penalty the Corporation shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the insured institution or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

Notice.
“Violates.”

“(C) The insured institution or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues

Hearing
opportunity.

shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

Review.

“(D) Any insured institution or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the insured institution is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation.

Certification.

The Corporation shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the agency shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

“(E) If any insured institution or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Corporation shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

Regulations.

“(F) The Corporation shall promulgate regulations establishing procedures necessary to implement this paragraph.

“(G) All penalties collected under authority of this paragraph shall be covered into the Treasury of the United States.”

(3) Section 5(d)(8) of the Home Owners' Loan Act, as amended (12 U.S.C. 1464(5)(d)(8)), is amended by redesignating section 5(d)(8) as 5(d)(8)(A) and by adding the following new paragraph:

Civil penalty.

“(B) (i) Any association which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such an association who violates the terms of any order which has become final and was issued pursuant to paragraph (2) or (3) of this subsection, shall forfeit and pay a civil penalty of not more than \$1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Board by written notice. As used in this section, the term ‘violates’ includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

Notice.

“Violates.”

“(ii) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the association bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

Hearing opportunity.

“(iii) The association or person charged shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (iv). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

“(iv) Any association or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the association is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Board. The agency shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the agency shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

Review.

“(v) If any association or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

Certification.

“(vi) The Board shall promulgate regulations establishing procedures necessary to implement this paragraph.

Regulations.

“(vii) All penalties collected under authority of this paragraph shall be covered into the Treasury of the United States.”

(4) Section 206(j) of the Federal Credit Union Act, as amended (12 U.S.C. 1786(j)), is amended by redesignating section 206(j) as 206(j)(1) and by adding a new paragraph as follows:

“(2)(A) Any insured credit union which violates or any officer, director, committee member, employee, agent, or other person participating in the conduct of the affairs of such a credit union who violates the terms of any order which has become final and was issued pursuant to subsection (e) or (f) of this section, shall forfeit and pay a civil penalty of not more than \$1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Administrator by written notice. As used in this section, the term ‘violates’ includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

Civil penalty.

“(B) In determining the amount of the penalty, the Administrator shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the insured credit union or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

Notice.
“Violates.”

“(C) The insured credit union or person charged shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The Administrator’s determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

Hearing
opportunity.

“(D) Any insured credit union or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the insured credit union is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court

Review.

- within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Administrator. The Administrator shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Administrator shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.
- Certification.** “(E) If any insured credit union or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Administrator, the Administrator shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.
- Regulations.** “(F) The Administrator shall promulgate regulations establishing procedures necessary to implement this paragraph.
“(G) All penalties collected under authority of this paragraph shall be covered into the Treasury of the United States.”
- Ante*, p. 3644. **Sec. 108.** Section 18(j) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1828(j)), is amended by redesignating section 18(j) as “18(j)(1)” and by adding at the end thereof the following:
“(2) The provisions of section 22(h) of the Federal Reserve Act, as amended, relating to limits on loans and extensions of credit by a member bank to its executive officers or directors or to any person who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, except in the case of such a bank located in a city, town, or village with less than thirty thousand in population, in which case such per centum shall be 18 per centum, or to companies controlled by such an executive officer, director, or person, or to political or campaign committees the funds or services of which will benefit such an officer, director, or person or which are controlled by such an officer, director, or person and relating to board of directors’ approval of and terms of such loan, shall be applicable to every nonmember insured bank in the same manner and to the same extent as if such nonmember insured bank were a State member bank.
- Civil penalty.** “(3)(A) Any nonmember insured bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such nonmember insured bank who violates any provision of section 23A or 22(h) of the Federal Reserve Act, as amended, or any lawful regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than \$1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Corporation by written notice. As used in this section, the term ‘violates’ includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.
- 12 USC 371c, ante, p. 3644.** “(B) In determining the amount of the penalty the Corporation shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the member bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.
- Notice.** “Violates.” “(C) The nonmember insured bank or person charged shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing
- Hearing opportunity.**

all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided the assessment shall constitute a final and unappealable order.

“(D) Any nonmember insured bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the member bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation. The Corporation shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Corporation shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

Review.

“(E) If any nonmember insured bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Corporation shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

Certification.

“(F) The Corporation shall promulgate regulations establishing procedures necessary to implement this paragraph.

Regulations.

“(G) All penalties collected under the authority of this paragraph shall be covered into the Treasury of the United States.”

SEC. 109. Any amendment made by this title which provides for the imposition of civil penalties shall apply only to violations occurring or continuing after the date of its enactment.

12 USC 93 note.

SEC. 110. Section 22(g) of the Federal Reserve Act, as amended (12 U.S.C. 375a), is amended by inserting the figure “\$60,000” in lieu of the figure “\$30,000” in paragraph (2), and by inserting the figure “\$20,000” in lieu of the figure “\$10,000” in paragraph (3); and by inserting the figure “\$10,000” in lieu of the figure “\$5,000” in paragraph (4).

SEC. 111. (a) (1) Section 8(g) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)) is amended to read as follows:

“(g) (1) Whenever any director or officer of an insured bank, or other person participating in the conduct of the affairs of such bank, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the appropriate Federal banking agency may, if continued service or participation by the individual may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank, by written notice served upon such director, officer, or other person, suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the bank. A copy of such notice shall also be served upon the bank. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the agency. In the event that a judgment of conviction with respect to such crime is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate

Suspension from office.

review, the agency may, if continued service or participation by the individual may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank, issue and serve upon such director, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the bank except with the consent of the appropriate agency. A copy of such order shall also be served upon such bank, whereupon such director or officer shall cease to be a director or officer of such bank. A finding of not guilty or other disposition of the charge shall not preclude the agency from thereafter instituting proceedings to remove such director, officer, or other person from office or to prohibit further participation in bank affairs, pursuant to paragraph (1), (2), or (3) of subsection (e) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the agency.

"(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a national bank less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a national bank are suspended pursuant to this section, the Comptroller of the Currency shall appoint persons to serve temporarily as directors in their place and stand pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the bank and their respective successors take office.

"(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the director, officer, or other person concerned may request in writing an opportunity to appear before the agency to show that the continued service to or participation in the conduct of the affairs of the bank by such individual does not, or is not likely to, pose a threat to the interests of the bank's depositors or threaten to impair public confidence in the bank. Upon receipt of any such request, the appropriate Federal banking agency shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, officer, or other person) and place at which the director, officer, or other person may appear, personally or through counsel, before one or more members of the agency or designated employees of the agency to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the agency shall notify the director, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the bank will be continued, terminated, or otherwise modified, or whether the order removing said director, officer or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the bank will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the agency's decision, if adverse to the director, officer or other person. The Federal banking agencies are authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection."

Notification.

Rules.

(2) Section 8(h)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(h)(1)) is amended by inserting after "Any hearing provided for in this section" the following: "(other than the hearing provided for in subsection (g)(3) of this section)".

(3) Section 8(j) of the Federal Deposit Insurance Act (12 U.S.C. 1818(j)) is amended by striking out "(e)(5), (e)(7), (e)(8)" and inserting in lieu thereof "(e)(3), (e)(4)".

(4) Section 8(k) of the Federal Deposit Insurance Act (12 U.S.C. 1818(k)) is amended by striking out "paragraph (1) of subsection (g)" and inserting in lieu thereof "paragraph (1) or (3) of subsection (g)".

(5) Section 8(n) of the Federal Deposit Insurance Act (12 U.S.C. 1818(n)) is amended by adding at the end thereof the following new sentence: "Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the appropriate Federal banking agency, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year or both."

Misdemeanor.

(b)(1) Section 407(h) of the National Housing Act (12 U.S.C. 1730(h)) is amended to read as follows:

"(h)(1) Whenever any director or officer of an insured institution, or other persons participating in the conduct of the affairs of such institution, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Corporation may, if continued service or participation by the individual may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the institution, by written notice served upon such director, officer, or other person suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the institution. A copy of such notice shall also be served upon the institution. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Corporation. In the event that a judgment of conviction with respect to such crime is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Corporation may, if continued service or participation by the individual may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the institution, issue and serve upon such director, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the institution except with the consent of the Corporation. A copy of such order shall also be served upon such institution, whereupon such director or officer shall cease to be a director or officer of such institution. A finding of not guilty or other disposition of the charge shall not preclude the Corporation from thereafter instituting proceedings to remove such director, officer, or other person from office or to prohibit further participation in institution affairs, pursuant to paragraph (1), (2), or (3) of subsection (g) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and

Notice of suspension from office.

Removal from office.

outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the Corporation.

“(2) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the director, officer, or other person concerned may request in writing an opportunity to appear before the Corporation to show that the continued service to or participation in the conduct of the affairs of the institution by such individual does not, or is not likely to, pose a threat to the interests of the institution’s depositors or threaten to impair public confidence in the institution. Upon receipt of any such request, the Corporation shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, officer, or other person) and place at which the director, officer, or other person may appear, personally or through counsel, before one or more members of the Corporation or designated employees of the Corporation to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the Corporation shall notify the director, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the institution will be continued, terminated or otherwise modified, or whether the order removing said director, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the institution will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Corporation’s decision, if adverse to the director, officer, or other person. The Corporation is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.”

Notification.

Rules.

(2) Section 407(j)(1) of such Act (12 U.S.C. 1730(j)(1)) is amended by inserting after “Any hearing provided for in this section” the following: “(other than the hearing provided for in subsection (h)(2) of this section)”.

(3) Section 407(j)(2) of such Act (12 U.S.C. 1730(j)(2)) is amended by inserting “(1)” after “subsection (h)”.

(c)(1) Section 5(d)(5) of the Home Owners’ Loan Act of 1933 (12 U.S.C. 1464(d)(5)) is amended to read as follows:

Suspension from office.

“(5)(A) Whenever any director or officer of an association, or other person participating in the conduct of the affairs of such association, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Board may, if continued service or participation by the individual may pose a threat to the interests of the association’s depositors or may threaten to impair public confidence in the association, by written notice served upon such director, officer, or other person suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the association. A copy of such notice shall also be served upon the association. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Board. In the event that a judgment of conviction with respect to such crime is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Board may, if continued service or participation by the individual may pose a

threat to the interests of the association's depositors or may threaten to impair public confidence in the association, issue and serve upon such director, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the association except with the consent of the Board. A copy of such order shall also be served upon such association, whereupon such director or officer shall cease to be a director or officer of such association. A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting proceedings to remove such director, officer, or other person from office or to prohibit further participation in association affairs, pursuant to subparagraph (A), (B), or (C) of paragraph (4). Any notice of suspension or order of removal issued under this subparagraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under subparagraph (C) hereof unless terminated by the Board.

“(B) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of an association less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of an association are suspended pursuant to this section, the Board shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the association and their respective successors take office.

“(C) Within thirty days from service of any notice of suspension or order of removal issued pursuant to subparagraph (A), the director, officer, or other person concerned may request in writing an opportunity to appear before the Board to show that the continued service to or participation in the conduct of the affairs of the association by such individual does not, or is not likely to, pose a threat to the interests of the association's depositors or threaten to impair public confidence in the association. Upon receipt of any such request, the Board shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, officer, or other person) and place at which the director, officer, or other person may appear, personally or through counsel, before one or more members of the agency or designated employees of the Board to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the Board shall notify the director, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the association will be continued, terminated or otherwise modified, or whether the order removing said director, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the association will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Board's decision, if adverse to the director, officer, or other person. The Board is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.”

Hearing.

Notification.

Rules.

(2) Section 5(d)(7)(A) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(7)(A)) is amended by inserting after “Any hearing provided for in this subsection (d)” the following: “(other than the hearing provided for in paragraph (5)(C) of this section)”.

(3) Section 5(d)(12)(A) of such Act (12 U.S.C. 1464(d)(12)(A)) is amended by striking "or 5(A)" and inserting in lieu thereof the following: "5(A), or 5(C)".

(4) Section 5(d)(13)(A)(1) of such Act (12 U.S.C. 1464(d)(13)(A)(1)) is amended by inserting after "paragraph (5)(A)" the following: "or (C)".

(d)(1) Section 206(h) of the Federal Credit Union Act (12 U.S.C. 1786(h)) is amended to read as follows:

Suspension from
office.

"(h)(1) Whenever any director, committee member, or officer of an insured credit union, or other person participating in the conduct of the affairs of such credit union, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Administrator may, if continued service or participation by the individual may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, by written notice served upon such director, committee member, officer, or other person suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the credit union. A copy of such notice shall also be served upon the credit union. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Administrator. In the event that a judgment of conviction with respect to such crime is entered against such director, committee member, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Administrator may, if continued service or participation by the individual may pose a threat to the interests of the credit union's depositors or may threaten to impair public confidence in the credit union, issue and serve upon such director, committee member, officer, or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the Administrator. A copy of such order shall also be served upon such credit union, whereupon such director, committee member, or officer shall cease to be a director, committee member, or officer of such credit union. A finding of not guilty or other disposition of the charge shall not preclude the Administrator from thereafter instituting proceedings to remove such director, committee member, officer, or other person from office or to prohibit further participation in the affairs of the credit union, pursuant to subsection (g) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the Administrator.

Removal from
office.

"(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a Federal credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a Federal credit union are suspended pursuant to this section, the Administrator shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time

as those who have been suspended cease to be directors of the credit union and their respective successors have been elected by the members at an annual or special meeting and have taken office. Directors appointed temporarily by the Administrator shall, within thirty days following their appointment, call a special meeting for the election of new directors, unless during the thirty-day period (A) the regular annual meeting is scheduled, or (B) the suspensions giving rise to the appointment of temporary directors are terminated.

“(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the director, committee member, officer, or other person concerned may request in writing an opportunity to appear before the Administrator to show that the continued service to or participation in the conduct of the affairs of the credit union by such individual does not, or is not likely to, pose a threat to the interests of the credit union’s members or threaten to impair public confidence in the credit union. Upon receipt of any such request, the Administrator shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, committee member, officer, or other person) and place at which the director, committee member, officer, or other person may appear, personally or through counsel, before the Administrator or his designee to submit written materials (or, at the discretion of the Administrator, oral testimony) and oral argument. Within sixty days of such hearing, the Administrator shall notify the director, committee member, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the credit union will be continued, terminated or otherwise modified, or whether the order removing said director, committee member, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the credit union will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Administrator’s decision, if adverse to the director, committee member, officer, or other person. The Administrator is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.”

Hearing.

Notification.

Rules.

(2) Section 206(i)(1) of the Federal Credit Union Act (12 U.S.C. 1786(i)(1)) is amended by inserting after “Any hearing provided for in this section” the following: “(other than the hearing provided for in subsection (h)(3) of this section)”.

(3) Section 206(i)(2) of such Act (12 U.S.C. 1786(i)(2)) is amended by inserting “(1)” after “subsection (h)”.

SEC. 112. Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended by striking out “The prohibitions in this section shall not apply to any bank holding company which is (i) a labor, agricultural, or horticultural organization and which is exempt from taxation under section 501 of the Internal Revenue Code of 1954,” and inserting in lieu thereof the following: “The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code of 1954, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred.”

26 USC 501.

SEC. 113. The third sentence of the second paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 412) is amended by striking the

words "direct obligations of the United States" and inserting in lieu thereof the words "any obligations which are direct obligations of, or are fully guaranteed as to principal and interest by, the United States or any agency thereof".

Depository
Institution
Management
Interlocks Act.
Short title.
12 USC 3201
note.
Definitions.
12 USC 3201.

TITLE II—INTERLOCKING DIRECTORS

SEC. 201. This title may be cited as the "Depository Institution Management Interlocks Act".

SEC. 202. As used in this title—

(1) the term "depository institution" means a commercial bank, a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union;

(2) the term "depository holding company" means a bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956, a company which would be a bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956 but for the exemption contained in section 2(a)(5)(F) thereof, or a savings and loan holding company as defined in section 408(a)(1)(D) of the National Housing Act;

(3) the characterization of any corporation (including depository institutions and depository holding companies), as an "affiliate of," or as "affiliated" with any other corporation means that—

(A) one of the corporations is a depository holding company and the other is a subsidiary thereof, or both corporations are subsidiaries of the same depository holding company, as the term "subsidiary" is defined in either section 2(d) of the Bank Holding Company Act of 1956 in the case of a bank holding company or section 408(a)(1)(H) of the National Housing Act in the case of a savings and loan holding company; or

(B) more than 50 per centum of the voting stock of one corporation is beneficially owned in the aggregate by one or more persons who also beneficially own in the aggregate more than 50 per centum of the voting stock of the other corporation; or

(C) one of the corporations is a trust company all of the stock of which, except for directors qualifying shares, was owned by one or more mutual savings banks on the date of enactment of this Act, and the other corporation is a mutual savings bank; or

(D) one of the corporations is a bank, insured by the Federal Deposit Insurance Corporation and chartered under State law, the voting securities of which are held by other banks, as permitted by State law, and which bank is primarily engaged in providing banking services for other banks and not the public: *Provided, however,* That in no case shall the voting securities of such corporation be held by any such other bank in excess of 5 per centum of the paid-in capital and 5 per centum of the surplus of such other bank; or

(E) one of the corporations is a bank, chartered under State law and insured by the Federal Deposit Insurance Corporation, the voting securities of which are held only by per-

12 USC 1841.

12 USC 1730a.

sons who are officers of other banks, as permitted by State law, and which bank is primarily engaged in providing banking services for other banks and not the public: *Provided, however*, That in no case shall the voting securities of such corporation be held by such officers of other banks in excess of 6 per centum of the paid-in capital and 6 per centum of the surplus of such a bank.

(4) the term "management official" means an employee or officer with management functions, a director (including an advisory or honorary director), a trustee of a business organization under the control of trustees, or any person who has a representative or nominee serving in any such capacity: *Provided*, That if a corporator, trustee, director, or other officer of a State-chartered savings bank or cooperative bank is specifically authorized under the laws of the State in which said institution is located to serve as a trustee, director, or other officer of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings deposits from natural persons, then, for the purposes of this title, such corporator, trustee, director, or other officer shall not be deemed to be a management official of such trust company: *And provided further*, That if a management official of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings deposits from natural persons is specifically authorized under the laws of the State in which said institution is located to serve as a corporator, trustee, director, or other officer of a State-chartered savings bank or cooperative bank, then, for the purposes of this title, such management official shall not be deemed to be a management official of any such savings bank or cooperative bank; and

(5) the term "office" used with reference to a depository institution means either a principal office or a branch.

SEC. 203. A management official of a depository institution or a depository holding company may not serve as a management official of any other depository institution or depository holding company not affiliated therewith if an office of one of the institutions or any depository institution that is an affiliate of such institutions is located within either—

(1) the same standard metropolitan statistical area as defined by the Office of Management and Budget, except in the case of depository institutions with less than \$20,000,000 in assets in which case the provision of paragraph (2) shall apply, as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or

(2) the same city, town, or village as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or in any city, town, or village contiguous or adjacent thereto.

SEC. 204. If a depository institution or a depository holding company has total assets exceeding \$1,000,000,000, a management official of such institution or any affiliate thereof may not serve as a management official of any other nonaffiliated depository institution or depository holding company having total assets exceeding \$500,000,000 or as a management official of any affiliate of such other institution.

SEC. 205. The prohibitions contained in sections 203 and 204 shall not apply in the case of any one or more of the following or subsidiary thereof:

Service in
another
institution,
prohibition.
12 USC 3202.

Service in
another
institution,
prohibition.
12 USC 3203.

12 USC 3204.

(1) A depository institution or depository holding company which has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function.

12 USC
601-604a,
611-632.

(2) A corporation operating under section 25 or 25A of the Federal Reserve Act.

(3) A credit union being served by a management official of another credit union.

(4) A depository institution or depository holding company which does not do business within any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands except as an incident to its activities outside the United States.

(5) A State-chartered savings and loan guaranty corporation.

(6) A Federal Home Loan Bank or any other bank organized specifically to serve depository institutions.

12 USC 3205.

SEC. 206. A person whose service in a position as a management official began prior to the date of enactment of this title and was not immediately prior to the date of enactment of this title in violation of section 8 of the Clayton Act is not prohibited by section 203 or section 204 of this title from continuing to serve in that position for a period of ten years after the date of enactment of this title. The appropriate Federal banking agency (as set forth in section 209) may provide a reasonable period of time for compliance with this title, not exceeding fifteen months, after any change in circumstances which makes such service prohibited by this title.

15 USC 19.

Administration
and enforcement.
12 USC 3206.

SEC. 207. This title shall be administered and enforced by—

(1) the Comptroller of the Currency with respect to national banks and banks located in the District of Columbia,

(2) the Board of Governors of the Federal Reserve System with respect to State banks which are members of the Federal Reserve System, and bank holding companies,

(3) the Board of Directors of the Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation,

(4) the Federal Home Loan Bank Board with respect to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, and savings and loan holding companies,

(5) the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National Credit Union Administration, and

(6) Upon referral by the agencies named in the foregoing paragraphs (1) through (5), the Attorney General shall have the authority to enforce compliance by any person with this title.

SEC. 208. (a) Section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) is amended by adding at the end thereof the following new paragraph:

“Officer” and
“director.”

“(5) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term ‘officer’ as used in this subsection means an employee or officer with management functions, and the term ‘director’ includes an advisory or honorary director, a trustee of a bank under the control of trustees, or any person who has a representative or nominee serving in any such capacity.”

(b) Section 5(d) of the Homeowners' Loan Act (12 U.S.C. 1464(d)) is amended by adding at the end thereof the following new paragraph:

"(15) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term 'officer' as used in this subsection means an employee or officer with management functions, and the term 'director' includes an advisory or honorary director, a trustee of an association under the control of trustees, or any person who has a representative or nominee serving in any such capacity."

"Officer" and
"director."

(c) Section 407(q) of the National Housing Act is amended by adding at the end thereof the following:

12 USC 1730.

"(4) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term 'officer' as used in this subsection means an employee or officer with management functions, and the term 'director' includes an advisory or honorary director, a trustee of an association under the control of trustees, or any person who has a representative or nominee serving in any such capacity."

"Officer" and
"director."

SEC. 209. Rules and regulations to carry out this title, including rules or regulations which permit service by a management official which would otherwise be prohibited by section 203 or section 204, may be prescribed by—

Rules and
regulations.
12 USC 3207.

(1) the Comptroller of the Currency with respect to national banks and banks located in the District of Columbia,

(2) the Board of Governors of the Federal Reserve System with respect to State banks which are members of the Federal Reserve System, and bank holding companies,

(3) the Board of Directors of the Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation,

(4) the Federal Home Loan Bank Board with respect to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, and savings and loan holding companies, and

(5) the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National Credit Union Administration.

TITLE III—FOREIGN BRANCHING

SEC. 301. (a) Section 3(o) of the Federal Deposit Insurance Act (12 U.S.C. 1813(o)) is amended—

(1) by inserting "domestic" immediately before "branch" the first place it appears; and

(2) by inserting before the period at the end thereof a semicolon and the following: "and the term 'foreign branch' means any office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, or the Virgin Islands, at which banking operations are conducted".

"Foreign
branch."

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

(1) by inserting "(1)" after "(d)";

(2) by inserting "domestic" between "new" and "branch";

(3) by inserting "such" between "any" and "branch"; and

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

Regulations.

"(2) No State nonmember insured bank shall establish or operate any foreign branch, except with the prior written consent of the Corporation and upon such conditions and pursuant to such regulations as the Corporation may prescribe from time to time."

(c) Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end thereof the following new subsection:

Regulations.

"(1) When authorized by State law, a State nonmember insured bank may, but only with the prior written consent of the Corporation and upon such conditions and under such regulations as the Corporation may prescribe from time to time, acquire and hold, directly or indirectly, stock or other evidences of ownership in one or more banks or other entities organized under the law of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the Board of Directors, shall be incidental to the international or foreign business of such foreign bank or entity; and, notwithstanding the provisions of subsection (j) of this section, such State nonmember insured bank may, as to such foreign bank or entity, engage in transactions that would otherwise be covered thereby, but only in the manner and within the limit prescribed by the Corporation by general or specific regulation or ruling."

SEC. 302. The sixth sentence of section 7(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(3)) is amended to read as follows: "The correctness of said report of conditions shall be attested by the signatures of at least two directors or trustees of the reporting bank other than the officer making such declaration, with a declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct."

SEC. 303. Section 8(n) of the Federal Deposit Insurance Act (12 U.S.C. 1818(n)) is amended—

(1) by inserting in the first sentence after "this section," the first place it appears therein the following: "or in connection with any claim for insured deposits or any examination or investigation under section 10(c)";

(2) by inserting "examination, or investigation or considering the claim for insured deposits," in the first sentence after "proceeding," the second place it appears therein;

(3) by striking out "proceedings" at the end of the first sentence thereof and inserting in lieu thereof "proceedings, claims, examinations, or investigations";

(4) by inserting "such agency or any" after "Any" at the beginning of the third sentence thereof; and

(5) by striking out "section" and inserting in lieu thereof "subsection" in the fourth sentence thereof.

SEC. 304. Section 8(q) of the Federal Deposit Insurance Act (12 U.S.C. 1818(q)) is amended to read as follows:

Liabilities
assumption.

"(q) Whenever the liabilities of an insured bank for deposits shall have been assumed by another insured bank or banks, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract (1) the insured status of the bank whose liabilities are so assumed shall terminate on the date of receipt by the Corporation of satisfactory evidence of such assumption; (2) the separate insurance of all deposits so assumed shall terminate at the end of six months from the date such assumption takes effect or, in the case of any time deposit, the earliest maturity date after the six-month period; and (3)

the assuming or resulting bank shall give notice of such assumption to each of the depositors of the bank whose liabilities are so assumed within thirty days after such assumption takes effect. Where the deposits of an insured bank are assumed by a newly insured bank, the bank whose deposits are assumed shall not be required to pay any assessment upon the deposits which have been so assumed after the semiannual period in which the assumption takes effect.”

SEC. 305. (a) Section 10(b) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)) is amended by inserting “or other institution” in the first sentence after the words “any State nonmember bank” and by striking out the last two sentences of that subsection.

(b) Section 10 (c) and (d) of the Federal Deposit Insurance Act (12 U.S.C. 1820 (c) and (d)) are amended to read as follows:

“(c) In connection with examinations of insured banks, State nonmember banks or other institutions making application to become insured banks, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, the appropriate Federal banking agency, or its designated representatives, are authorized to administer oaths and affirmations, and to examine and to take and preserve testimony under oath as to any matter in respect to the affairs or ownership of any such bank or institution or affiliate thereof, and to exercise such other powers as are set forth in section 8(n) of this Act.

“(d) For purposes of this section, the term ‘affiliate’ shall have the same meaning as in section 23A of the Federal Reserve Act, except that the term ‘member bank’ in such section 23A and in section 2(b) of the Banking Act of 1933 shall be deemed to refer to an insured bank.”

“Affiliate” and
“member bank.”
12 USC 371c.

12 USC 221a.

SEC. 306. Section 18(c) (1) (B) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c) (1) (B)) is amended by inserting after the word “deposits” the following: “(including liabilities which would be ‘deposits’ except for the proviso in section 3(1) (5) of this Act)”.

12 USC 1813.

SEC. 307. Section 1114 of title 18, United States Code, is amended by inserting before “shall be punished” the following: “or any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration engaged in or on account of the performance of his official duties”.

SEC. 308. Section 5 of the Bank Service Corporation Act (12 U.S.C. 1865) is amended to read as follows:

“SEC. 5. Whenever any bank which is regularly examined by a Federal supervisory agency, or any subsidiary or affiliate of such bank which is subject to examination by that agency, causes to be performed, by contract or otherwise, any bank services for itself, whether on or off its premises—

“(1) such performance shall be subject to regulation and examination by such agency to the same extent as if the services were being performed by the bank itself on its own premises, and

“(2) the bank shall notify such agency of the existence of a service relationship within 30 days after the making of such service contract or the performance of the service, whichever occurs first.”.

Notification.

SEC. 309. The last sentence of section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) is amended to read as follows:

Rules and regulations.

"Tenth. To prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of this Act or of any other law which it has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency)."

SEC. 310. (a) Section 7(a)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(4)) is amended by adding at the end thereof the following new sentence: "Deposits which are accumulated for the payment of personal loans and are assigned or pledged to assure payment of loans at maturity shall not be included in the total deposits in such reports, but shall be deducted from the loans for which such deposits are assigned or pledged to assure repayment."

(b) Section 7(a)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(5)) is amended by striking out "deposits accumulated for the payment of personal loans," in the second sentence thereof.

(c) Section 7(b)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(6)) is amended by striking out subparagraph (B), and redesignating subparagraphs (C) and (D) as (B) and (C), respectively.

12 USC 601 note.

SEC. 311. Section 9 of the International Banking Act of 1978 (P.L. 95-369) is amended by inserting "(a)" immediately after "Sec. 9." and by inserting at the end thereof the following new subsection:

Foreign bank operations.
12 USC 3106a.

"(b)(1) Every branch or agency of a foreign bank and every commercial lending company controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank shall conduct its operations in the United States in full compliance with provisions of any law of the United States or any State thereof which—

"(A) prohibit discrimination against any individual or other person on the basis of the race, color, religion, sex, marital status, age, or national origin of (i) such individual or other person or (ii) any officer, director, employee, or creditor of, or any owner of any interest in, such individual or other person; and

"(B) apply to national banks or State-chartered banks doing business in the State in which such branch or agency or commercial lending company, as the case may be, is doing business.

Application approval.

"(2) No application for a branch or agency shall be approved by the Comptroller or by a State bank supervisory authority, as the case may be, unless the entity making the application has agreed to conduct all of its operations in the United States in full compliance with provisions of any law of the United States or any State thereof which—

"(A) prohibit discrimination against individuals or other persons on the basis of the race, color, religion, sex, marital status, age, or national origin of (i) such individual or other person or (ii) any officer, director, employee, or creditor of, or any owner of any interest in, such individual or other person; and

"(B) apply to national banks or State-chartered banks doing business in the State in which the entity to be established is to do business."

TITLE IV—AMERICAN ARTS GOLD MEDALLIONS

American Arts
Gold Medallion
Act.
Short title.

SEC. 401. This title may be cited as the "American Arts Gold Medallion Act".

SEC. 402. The Secretary of the Treasury (hereinafter referred to as the "Secretary") shall, during each of the first five calendar years beginning after the date of enactment of this title, strike and sell to the general public, as provided by this title, gold medallions (hereinafter referred to as "medallions") containing, in the aggregate, not less than one million troy ounces of fine gold, and commemorating outstanding individuals in the American arts.

SEC. 403. (a) Medallions struck under authority of this title shall be minted in two sizes containing, respectively, one troy ounce and one-half troy ounce of fine gold. During the first year in which such medallions are struck, at least five hundred thousand troy ounces of fine gold shall be struck in each size of medallions authorized by this subsection. In succeeding years, the proportion of gold devoted to each size of medallions shall be determined by the Secretary on the basis of expected demand.

(b) Medallions struck under authority of this title shall be of such fineness that, of one thousand parts by weight, nine hundred shall be of fine gold and one hundred of alloy. Medallions shall not be struck from ingots which deviate from the standard of this subsection by more than one part per thousand.

(c) Medallions struck under the authority of this title shall bear such designs and inscriptions as the Secretary may approve subject to the following—

Designs and
inscriptions.

(1) during the first calendar year beginning after the date of enactment of this title, one ounce medallions shall be struck with a picture of Grant Wood on the obverse side and one-half ounce medallions shall be struck with a picture of Marian Anderson on the obverse side;

(2) during the second calendar year beginning after the date of enactment of this title, one ounce medallions shall be struck with a picture of Mark Twain on the obverse side and one-half ounce medallions shall be struck with a picture of Willa Cather on the obverse side;

(3) during the third calendar year beginning after the date of enactment of this title, one ounce medallions shall be struck with a picture of Louis Armstrong on the obverse side and one-half ounce medallions shall be struck with a picture of Frank Lloyd Wright on the obverse side;

(4) during the fourth calendar year beginning after the date of enactment of this title, one ounce medallions shall be struck with a picture of Robert Frost on the obverse side and one-half ounce medallions shall be struck with a picture of Alexander Calder on the obverse side; and

(5) during the fifth calendar year beginning after the date of enactment of this title, one ounce medallions shall be struck with a picture of Helen Hayes on the obverse side and one-half ounce medallions shall be struck with a picture of John Steinbeck on the obverse side.

The reverse side of each medallion shall be of different design, shall be representative of the artistic achievements of the individual on the obverse side, and shall include the inscription "American Arts Commemorative Series".

Regulations.

SEC. 404. Dies for use in striking the medallions authorized by this title may be executed by the engraver, and the medallions struck by the Superintendent of coining department of the mint at Philadelphia, under such regulations as the Superintendent, with the approval of the Director of the Mint, may prescribe. In order to carry out this title, the Secretary may enter into contracts: *Provided*, That suitable precautions are maintained to secure against counterfeiting and against unauthorized issuance of medallions struck under authority of this title.

Contracts.

SEC. 405. For purposes of section 485 of title 18 of the United States Code, a coin of a denomination of higher than 5 cents shall be deemed to include any medallion struck under the authority of this title.

SEC. 406. (a) Medallions struck under authority of this title shall be sold to the general public at a competitive price equal to the free market value of the gold contained therein plus the cost of manufacture, including labor, materials, dies, use of machinery, and overhead expenses including marketing costs. In order to carry out the purposes of this section, the Secretary shall enter into such arrangements with the Administrator of General Services (hereinafter referred to as the "Administrator") as may be appropriate.

Sale.

(b) The Administrator shall make such arrangements for the sale of medallions as will encourage broad public participation and will not preclude purchases of single pieces.

Rules and regulations.

(c) The Administrator may, after consultation with the Secretary, issue rules and regulations to carry out this section.

Effective date.

SEC. 407. This title shall take effect on October 1, 1979.

TITLE V—CREDIT UNION RESTRUCTURING

SEC. 501. Section 102 of the Federal Credit Union Act (12 U.S.C. 1752a) is amended to read as follows:

"CREATION OF ADMINISTRATION

National Credit Union Administration Establishment.

"SEC. 102. (a) There is hereby established in the executive branch of the Government an independent agency to be known as the National Credit Union Administration. The Administration shall be under the management of a National Credit Union Administration Board.

Membership.

"(b) The Board shall consist of three members, who are broadly representative of the public interest, appointed by the President, by and with the advice and consent of the Senate. In appointing the members of the Board, the President shall designate the Chairman. Not more than two members of the Board shall be members of the same political party.

Term.

"(c) The term of office of each member of the Board shall be six years, except that the terms of the two members, other than the Chairman, initially appointed shall expire one upon the expiration of two years after the date of appointment, and the other upon the expiration of four years after the date of appointment. Board members shall not be appointed to succeed themselves except the initial members appointed for less than a six-year term may be reappointed for a full six-year term and future members appointed to fill unexpired terms may be reappointed for a full six-year term. Any Board member may continue to serve as such after the expiration of said member's term until a successor has qualified.

Management Rules.

"(d) The management of the Administration shall be vested in the Board. The Board shall adopt such rules as it sees fit for the trans-

action of its business and shall keep permanent and complete records and minutes of its acts and proceedings. A majority of the Board shall constitute a quorum. Not later than April 1 of each calendar year, and at such other times as the Congress shall determine, the Board shall make a report to the President and to the Congress. Such a report shall summarize the operations of the Administration and set forth such information as is necessary for the Congress to review the financial program approved by the Board.

Quorum.

Report to
President and
Congress.

“(e) The Chairman of the Board shall be the spokesman for the Board and shall represent the Board and the National Credit Union Administration in its official relations with other branches of the Government. The Chairman shall determine each Board member’s area of responsibility and shall review such assignments biennially. It shall be the Chairman’s responsibility to direct the implementation of the adopted policies and regulations of the Board.

“(f) The financial transactions of the Administration shall be subject to audit on a calendar year basis by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the Administration are kept.”

Audit.
Rules and
regulations.

SEC. 502. (a) Section 101 of the Federal Credit Union Act is amended—

12 USC 1752.

(1) by striking out clause (2) and inserting in lieu thereof the following:

“(2) the term ‘Chairman’ means the Chairman of the National Credit Union Administration Board;”;

(2) by inserting “Administration” after “Union” in clause (4).

(b) The Federal Credit Union Act is amended by striking out “Administrator” each place it appears and inserting in lieu thereof “Board”, and by striking out the personal pronouns “he”, “him”, and “his” when referring to the Administrator and inserting in lieu thereof “it”, “them”, and “its” as appropriate wherever such words appear therein.

(c) Section 5108(a) of title 5, United States Code, is amended by changing the number “3,301” in the first sentence to read “3,310”.

(d) Section 5314 of title 5, United States Code, is amended by adding the following new paragraph:

“(66) Chairman, National Credit Union Administration Board.”.

(e) Section 5315 (93) of title 5, United States Code, is amended by striking out “Administrator of the National Credit Union Administration” and inserting in lieu thereof “Members, National Credit Union Administration Board (2)”.

SEC. 503. (a) Paragraph (4) of section 101 of the Federal Credit Union Act (12 U.S.C. 1752) which begins with “The terms ‘member account’” is redesignated paragraph “(5)” and the succeeding paragraphs numbered (5) through (8) are redesignated as paragraphs (6) through (9), respectively.

(b) Paragraph (5) of section 101 of the Federal Credit Union Act (12 U.S.C. 1752), as redesignated by subsection (a) of this section, is amended—

(1) by striking “(when referring to the account of a member of credit union)”;

(2) by striking "share, share certificate, or share deposit" each time it appears therein and inserting "share or share certificate" in lieu thereof;

(3) by striking "those" and inserting "share or share certificate" in lieu thereof; and

(4) by striking all language after "political subdivisions thereof" and inserting "enumerated in section 207 of this Act: *Provided*, That for purposes of insured State credit unions, reference in this paragraph to 'share' or 'share certificate' accounts includes, as determined by the Board, the equivalent of such accounts under State law;" in lieu thereof.

(c) Paragraph (9) of section 101 of the Federal Credit Union Act (12 U.S.C. 1752), as redesignated by (a) of this section, is amended by—

(1) inserting ", including the trust territories," after "several territories"; and

"Branch."

(2) adding the following new sentence: "The term 'branch' also includes a suboffice, operated by a Federal credit union or by a credit union authorized by the Department of Defense, located on an American military installation in a foreign country or in the trust territories of the United States."

SEC. 504. (a) Subsection (a) of section 201 of the Federal Credit Union Act (12 U.S.C. 1781) is amended by inserting ", including the trust territories," after "several territories".

(b) Paragraph (b) (7) of such section is amended by inserting "except for accounts authorized by State law for State credit unions" before the semicolon.

(c) Such section is further amended by striking all of subsection (d) and redesignating subsection (e) as (d).

SEC. 505. (a) Section 202 of the Federal Credit Union Act (12 U.S.C. 1782) is amended by striking out "his" in the fifth sentence of paragraph (a) (1) and inserting "such officer's" in lieu thereof.

(b) Subsection (h) (3) of such section is amended to read as follows:

"Member account."

"(3) The term 'member account' when applied to the premium charge for insurance of accounts shall not include amounts received from other federally insured credit unions in excess of the insured account limit set forth in section 207(c) (1)."

SEC. 506. Section 208 of the Federal Credit Union Act (12 U.S.C. 1788) is amended by striking out "SPECIAL ASSISTANCE TO AVOID LIQUIDATION" and inserting "SPECIAL ASSISTANCE FOR FEDERALLY INSURED CREDIT UNIONS" in lieu thereof.

SEC. 507. Section 105 of the Federal Credit Union Act (12 U.S.C. 1755) is amended to read as follows:

"FEES

Rules.

"SEC. 105. (a) In accordance with rules prescribed by the Board, each Federal credit union shall pay to the Administration an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.

"(b) The fee assessed under this section shall be determined according to a schedule, or schedules, or other method determined by the Board to be appropriate, which gives due consideration to the expenses of the Administration in carrying out its responsibilities under this Act and to the ability of Federal credit unions to pay the fee. The Board shall, among other things, determine the periods for which the fee shall be assessed and the date or dates for the payment of the fee or increments thereof.

“(c) If the annual operating fee is composed of separate charges, no supervision charge shall be payable by a Federal credit union, and the Board may waive payment of any or all other charges comprising the fee, with respect to the year in which its charter is issued, or in which final distribution is made in its liquidation or the charter is canceled.

“(d) All operating fees shall be deposited with the Treasurer of the United States for the account of the Administration and may be expended by the Board to defray the expenses incurred in carrying out the provisions of this Act including the examination and supervision of Federal credit unions.”

SEC. 508. Section 106 of the Federal Credit Union Act (12 U.S.C. 1756) is amended to read as follows:

“REPORTS AND EXAMINATIONS

“SEC 106. Federal credit unions shall be under the supervision of the Board, and shall make financial reports to it as and when it may require, but at least annually. Each Federal credit union shall be subject to examination by, and for this purpose shall make its books and records accessible to, any person designated by the Board.”

SEC. 509. The amendments made by this title take effect upon the effective date of this Act, except that the functions of the Administrator of the National Credit Union Administration under the provisions of the Federal Credit Union Act, as in effect on the date preceding the date of enactment of this title, shall continue to be performed by him in accordance with such provisions until such time as all the members of the National Credit Union Administration Board, established under the amendments made by this title, take office. All rules, regulations, policies, and procedures of the Administrator in effect on the date of enactment of this title shall remain in effect until amended, superseded, or repealed.

Effective date.
12 USC 1752
note.

TITLE VI—CHANGE IN BANK CONTROL ACT

SEC. 601. This title may be cited as the “Change in Bank Control Act of 1978”.

SEC. 602. Subsection (j) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) is amended to read as follows:

Change in Bank
Control Act of
1978.
Short title.
12 USC 1817
note.

“(j) (1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured bank through a purchase, assignment, transfer, pledge, or other disposition of voting stock of such insured bank unless the appropriate Federal banking agency has been given sixty days' prior written notice of such proposed acquisition and within that time period the agency has not issued a notice disapproving the proposed acquisition or extending for up to another thirty days the period during which such a disapproval may issue. The period for disapproval may be further extended only if the agency determines that any acquiring party has not furnished all the information required under section (j) (6) or that in its judgment any material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the agency issues written notice of its intent not to disapprove the action. For purposes of this subsection (j), the term ‘insured bank’ shall include any ‘bank holding company’, as that term is defined in section 2 of the Bank Holding Company Act, which has control of any such insured bank,

“Insured bank.”

12 USC 1841.

and the appropriate Federal banking agency in the case of bank holding companies shall be the Board of Governors of the Federal Reserve System.

"(2) Upon receiving any notice under this subsection, the appropriate Federal banking agency shall forward a copy thereof to the appropriate State bank supervisory agency if the bank the voting shares of which are sought to be acquired is a State bank, and shall allow thirty days within which the views and recommendations of such State bank supervisory agency may be submitted. The appropriate Federal banking agency shall give due consideration to the views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this section (j) (2), if the appropriate Federal banking agency determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the probable failure of the bank involved in the proposed acquisition, such Federal banking agency may dispense with the requirements of this subsection (j) (2) or, if a copy of the notice is forwarded to the State bank supervisory agency, such Federal banking agency may request that the views and recommendations of such State bank supervisory agency be submitted immediately in any form or by any means acceptable to such Federal banking agency.

Notification.

"(3) Within three days after its decision to disapprove any proposed acquisition, the appropriate Federal banking agency shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

Hearing.

"(4) Within ten days of receipt of such notice of disapproval, the acquiring party may request an agency hearing on the proposed acquisition. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The length of the hearing shall be determined by the appropriate Federal banking agency. At the conclusion thereof, the appropriate Federal banking agency shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

Review.

"(5) Any person whose proposed acquisition is disapproved after agency hearings under this subsection may obtain review by the United States court of appeals for the circuit in which the home office of the bank to be acquired is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the disapproval was based. The findings of the appropriate Federal banking agency shall be set aside if found to be arbitrary or capricious or if found to violate procedures established by this subsection.

Certification.

"(6) Except as otherwise provided by regulation of the appropriate Federal banking agency, a notice filed pursuant to this subsection shall contain the following information:

"(A) The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a State or Federal court.

“(B) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the filing of the notice.

“(C) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

“(D) The identity, source and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons.

“(E) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it with any company or to make any other major change in its business or corporate structure or management.

“(F) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation.

“(G) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

“(H) Any additional relevant information in such form as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular notice.

“(7) The appropriate Federal banking agency may disapprove any proposed acquisition if—

“(A) the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

“(B) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

“(C) the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

“(D) the competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank,

or in the interest of the public to permit such person to control the bank; or

“(E) any acquiring person neglects, fails, or refuses to furnish the appropriate Federal banking agency all the information required by the appropriate Federal banking agency.

“Person.”

“(8) For the purposes of this subsection, the term—

“(A) ‘person’ means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein; and

“Control.”

“(B) ‘control’ means the power, directly or indirectly, to direct the management or policies of an insured bank or to vote 25 per centum or more of any class of voting securities of an insured bank.

“(9) Whenever any insured bank makes a loan or loans, secured, or to be secured, by 25 per centum or more of the outstanding voting stock of an insured bank, the president or other chief executive officer of the lending bank shall promptly report such fact to the appropriate Federal banking agency of the bank whose stock secures the loan or loans upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more or where the stock is that of the newly organized bank prior to its opening.

“(10) The reports required by paragraph (9) of this subsection shall contain such of the information referred to in paragraph (6) of this subsection, and such other relevant information, as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular report.

“(11) The Federal banking agency receiving a notice or report filed pursuant to paragraph (1) or (9) shall immediately furnish to the other Federal banking agencies a copy of such notice or report.

“(12) Whenever such a change in control occurs, each insured bank shall report promptly to the appropriate Federal banking agency any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

Rules and regulations.
Report to Congress.

“(13) The appropriate Federal banking agencies are authorized to issue rules and regulations to carry out this subsection.

“(14) Within two years after the effective date of the Change in Bank Control Act of 1978, and each year thereafter in each appropriate Federal banking agency’s annual report to the Congress, the appropriate Federal banking agency shall report to the Congress the results of the administration of this subsection, and make any recommendations as to changes in the law which in the opinion of the appropriate Federal banking agency would be desirable.

Civil penalty.

“(15) Any person who willfully violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency pursuant thereto, shall forfeit and pay a civil penalty of not more than \$10,000 per day for each day during which such violation continues. The appropriate Federal banking agency shall have authority to assess such a civil penalty, after giving notice and an opportunity to the person to submit data, views, and arguments, and after giving due consideration to the appropriateness of the penalty with respect to the size of financial resources and good faith of the person charged, the gravity of the violation, and any data, views, and arguments submitted. The agency may collect such civil

Notice.

penalty by agreement with the person or by bringing an action in the appropriate United States district court, except that in any such action, the person against whom the penalty has been assessed shall have a right to trial de novo.

“(16) This subsection shall not apply to a transaction subject to section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) or section 18 of this Act (12 U.S.C. 1828).”.

TITLE VII—CHANGE IN SAVINGS AND LOAN CONTROL ACT

SEC. 701. This title may be cited as the “Change in Savings and Loan Control Act of 1978”.

SEC. 702. Paragraph (6) of section 407(1) of the National Housing Act (12 U.S.C. 1730(1)(6)) is amended to read as follows:

“(6) As used in this subsection, the term ‘stock’ means rights, interests, or powers with respect to a mutual institution and the term ‘insured institution’ means a mutual insured institution.”.

SEC. 703. Section 407 of the National Housing Act (12 U.S.C. 1730) is amended by redesignating section 407(q) as 407(r) and inserting immediately after “(p)” the following:

“(q)(1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured institution through a purchase assignment, transfer, pledge, or other disposition of voting stock of such insured institution unless the Corporation has been given sixty days’ prior written notice of such proposed acquisition and within that time period the Corporation has not issued a notice disapproving the proposed acquisition or extending up to another thirty days the period during which a disapproval may issue. The period for disapproval may be further extended only if the Corporation determines that any acquiring party has not furnished all the information required under subsection (q)(6) or that in its judgment any material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the Corporation issues written notice of its intent not to disapprove the action. For purposes of this subsection (q), the term ‘insured institution’ shall include any ‘savings and loan holding company’, as that term is defined in section 408 of the National Housing Act, which has control of any such insured institution.

“(2) Upon receiving any notice under this subsection, the Corporation shall forward a copy thereof to the appropriate State savings and loan association supervisory agency if the insured institution the voting shares of which are sought to be acquired is a State chartered institution, and shall allow thirty days within which the views and recommendations of such State supervisory agency may be submitted. The Corporation shall give due consideration to the views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this subsection (q)(2), if the Corporation determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the probable failure of the institution involved in the proposed acquisition, the Corporation may dispense with the requirement of this subsection (1)(2) or, if a copy of the notice is forwarded to the State supervisory agency, the Corporation may request that the views and recommendations of such State supervisory agency be submitted immediately in any form or by any means acceptable to the Corporation.

Change in
Savings and Loan
Control Act of
1978.
Short title.
12 USC 1730
note.

“Stock” and
“insured
institution.”

“Insured
institution.”

12 USC 1730a.

Notification.

“(3) Within three days after its decision to disapprove any proposed acquisition, the Corporation shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

Hearing.

“(4) Within ten days of receipt of such notice of disapproval, the acquiring party may request an agency hearing on the proposed acquisition. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The length of the hearing shall be determined by the Corporation. At the conclusion thereof, the Corporation shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

Review.

“(5) Any person whose proposed acquisition is disapproved after agency hearing under this subsection may obtain review by the United States court of appeals for the circuit in which the home office of the institution to be acquired is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation. The Corporation shall promptly certify and file in such court the record upon which the disapproval was based. The findings of the Corporation shall be set aside if found to be arbitrary or capricious or if found to violate procedures established by this subsection.

Certification.

“(6) Except as otherwise provided by regulation of the Corporation, a notice filed pursuant to this subsection shall contain the following information:

“(A) The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a State or Federal court.

“(B) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the filing of the notice.

“(C) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

“(D) The identity, source, and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons.

“(E) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the institution, to sell its assets or merge it with any company or to make any other major change in its business or corporate structure or management.

“(F) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation.

“(G) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

“(H) Any additional relevant information in such form as the Corporation may require by regulation or by specific request in connection with any particular notice.

“(7) The Corporation may disapprove any proposed acquisition if—

“(A) the proposed acquisition of control would result in a monopoly or 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;

“(B) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

“(C) the financial condition of any acquiring person is such as might jeopardize the financial stability of the institution or prejudice the interests of the depositors of the institution;

“(D) the competence, experience, or integrity of any acquiring person or any of the proposed management personnel indicates that it would not be in the interest of the depositors of the institution or in the interest of the public to permit such person to control the institution; or

“(E) any acquiring person neglects, fails, or refuses to furnish the Corporation all the information required by the Corporation.

“(8) For the purposes of this subsection, the term—

“(A) ‘person’ means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein, and

“(B) ‘control’ means the power, directly or indirectly, to direct the management or policies of an insured institution or to vote 25 per centum or more of any class of voting securities of an insured institution.

“(9) Whenever any insured institution or an insured bank makes a loan, or loans, secured, or to be secured, by 25 per centum or more of the outstanding voting stock of an insured institution, the president or other chief executive officer of the lending insured institution or insured bank shall promptly report such fact to the Corporation upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more or where the stock is that of the newly organized institution prior to its opening.

“(10) The reports required by paragraph (9) of this subsection shall contain such of the information referred to in paragraph (6) of this subsection, and such other relevant information, as the Corporation may require by regulation or by specific request in connection with any particular report.

“Person.”

“Control.”

Report.

Report.

“(11) Whenever a change in control occurs, each insured institution shall report promptly to the Corporation any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

“(12) Without limitation by or on the foregoing provisions of this subsection, the Corporation may require insured institutions and individuals or other persons who have or have had any connection with the management of any insured institution, as defined by the Corporation, to provide, in such manner as the Corporation may prescribe, such periodic or other reports and disclosures, including proxy statements and the solicitation of proxies thereby, as the Corporation may determine to be necessary or appropriate for the protection of investors or the Corporation.

“Stock.”

“(13) As used in this subsection, the term ‘stock’ means such stock or other equity securities or equity interests in an insured institution which is a stock company, or rights, interests, or powers with respect thereto.

Rules and
regulations.
Report to
Congress.

“(14) The Corporation is authorized to issue rules and regulations to carry out this subsection.

“(15) Within two years after the effective date of the Change in Savings and Loan Control Act of 1978 and each year thereafter in the Corporation’s annual report to the Congress, the Corporation shall report to the Congress the results of the administration of this subsection, and make any recommendations as to changes in the law which in the opinion of the Corporation would be desirable.

Civil penalty.

“(16) Any person who willfully violates any provision of this subsection, or any regulation or order issued by the Corporation pursuant thereto, shall forfeit and pay a civil penalty of not more than \$10,000 per day for each day during which such violation continues. The Corporation shall have authority to assess such a civil penalty, after giving notice and an opportunity to the person to submit data, views, and arguments, and after giving due consideration to the appropriateness of the penalty with respect to the size of financial resources and good faith of the person charged, the gravity of the violation, and any data, views, and arguments submitted. The agency may collect such civil penalty by agreement with the person or by bringing an action in the appropriate United States district court, except that in any such action, the person against whom the penalty has been assessed shall have a right to trial de novo.

“(17) This subsection shall not apply to a transaction subject to section 408 of this Act (12 U.S.C. 1730a).”

TITLE VIII—CORRESPONDENT ACCOUNTS

SEC. 801. Section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972) is amended by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, by inserting “(1)” immediately after “(b)”, and by inserting at the end thereof the following new paragraph:

“(2) (A) No bank which maintains a correspondent account in the name of another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting

securities of, such other bank unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

“(B) No bank shall open a correspondent account at another bank while such bank has outstanding an extension of credit to an executive officer or director of, or other person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, the bank desiring to open the account, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

“(C) No bank which maintains a correspondent account at another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

“(D) No bank which has outstanding an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, another bank shall open a correspondent account at such other bank, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

“(E) For purposes of this paragraph, the term ‘extension of credit’ shall have the same meaning given it in section 23A of the Federal Reserve Act and the term ‘executive officer’ shall have the same meaning given it under section 22(g) of the Federal Reserve Act.

“(F) (i) Any bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such bank who violates any provision of section 106(b) (2) shall forfeit and pay a civil penalty of not more than \$1,000 per day for each day during which such violation continues. The penalty shall be assessed and collected by the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, or the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank, by written notice. As used in this section, the term ‘violates’ includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counselling, or aiding or abetting a violation.

“(ii) In determining the amount of the penalty the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall take into account the appropriateness of the penalty with respect to the size of the financial resources and good

“Extension of credit” and “executive officer.”

Civil penalty.

Notice.

“Violates.”

faith of the bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

Hearing
opportunity.

“(iii) The bank or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order which may be reviewed only as provided in subsection (iv). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

Review.

“(iv) Any bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be. The Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28, United States Code. The findings of the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

Certification.

“(v) If any bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Comptroller of the Currency, the Board or the Federal Deposit Insurance Corporation, as the case may be, shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

Regulations.

“(vi) The Comptroller of the Currency, the Board and the Federal Deposit Insurance Corporation shall promulgate regulations establishing procedures necessary to implement this section.

“(vii) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

Report.

“(G)(i) Each executive officer and each stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of an insured bank shall make a written report to the board of directors of such bank for any year during which such executive officer or shareholder has outstanding an extension of credit from a bank which maintains a corresponding account in the name of such bank. Such report shall include the following information:

“(1) the maximum amount of indebtedness to the bank maintaining the correspondent account during such year of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder, or which is controlled by such executive officer or stockholder;

“(2) the amount of indebtedness to the bank maintaining the correspondent account outstanding as of a date not more than ten days prior to the date of filing of such report of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder;

“(3) the range of interest rates charged on such indebtedness of such executive officer or stockholder of record; and

“(4) the terms and conditions of such indebtedness of such executive officer or stockholder of record.

“(ii) Each insured bank shall compile the reports filed pursuant to subparagraph (G) (i) and forward such compilation to the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, and the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank.

Reports
compilation.

“(iii) Each insured bank shall include in the report required to be made under subsection (k) (1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(k) (1)) a list by name of each executive officer or stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of the bank who files information required by subparagraph (G) (i) and the aggregate amount of all extensions of credit by correspondent banks to such executive officers or stockholders of record, any company controlled by such executive officers or stockholders, and any political or campaign committee the funds or services of which will benefit such executive officers or stockholders, or which is controlled by such executive officers or stockholders.”

TITLE IX—DISCLOSURE OF MATERIAL FACTS

SEC. 901. Section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended by adding at the end thereof the following new subsection:

“(k) (1) Each insured bank shall make to the appropriate Federal banking agency an annual report which shall contain the following information with respect to the preceding calendar year:

Annual report.

“(A) A list by name of each stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of the bank.

“(B) A list by name of each executive officer or stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of the bank and the aggregate amount of all extensions of credit by such bank during such year to: (i) such executive officers or stockholders of record, (ii) any company controlled by such executive officers, or stockholders, or (iii) any political or campaign committee the funds or services of which will benefit such executive officers or stockholders, or which is controlled by such executive officers or stockholders.

“(2) For purposes of this subsection, the term ‘executive officer’ shall have the same meaning given it under section 22(g) of the Federal Reserve Act.

“Executive
officer.”
12 USC 375a.

“(3) The appropriate Federal banking agencies are authorized to issue rules and regulations to carry out this subsection, including authority to incorporate the information required to be filed by this

Rules and
regulations.

subsection in any other report required to be filed by all insured banks which would be available in its entirety to the public upon request.
“(4) Copies of any report required to be filed under this subsection shall be made available, by the appropriate Federal banking agency or by the bank, upon request, to the public.”

Federal Financial Institutions Examination Council Act of 1978.
Short title.
12 USC 3301 note.

TITLE X—FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

SEC. 1001. This title may be cited as the “Federal Financial Institutions Examination Council Act of 1978”.

PURPOSE

12 USC 3301.

SEC. 1002. It is the purpose of this title to establish a Financial Institutions Examination Council which shall prescribe uniform principles and standards for the Federal examination of financial institutions by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, and the National Credit Union Administration and make recommendations to promote uniformity in the supervision of these financial institutions. The Council’s actions shall be designed to promote consistency in such examination and to insure progressive and vigilant supervision.

DEFINITIONS

12 USC 3302.

SEC. 1003. As used in this title—
(1) the term “Federal financial institutions regulatory agencies” means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration;
(2) the term “Council” means the Financial Institutions Examination Council; and
(3) the term “financial institution” means a commercial bank, a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, or a credit union;

ESTABLISHMENT OF THE COUNCIL

Financial Institutions Examination Council.
12 USC 3303.

SEC. 1004. (a) There is established the Financial Institutions Examination Council which shall consist of—
(1) the Comptroller of the Currency,
(2) the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation,
(3) a Governor of the Board of Governors of the Federal Reserve System designated by the Chairman of the Board,
(4) the Chairman of the Federal Home Loan Bank Board, and
(5) the Chairman of the National Credit Union Administration Board.

Members.

(b) The members of the Council shall select the first chairman of the Council. Thereafter the chairmanship shall rotate among the members of the Council.

Term.

(c) The term of the Chairman of the Council shall be two years.

(d) The members of the Council may, from time to time, designate other officers or employees of their respective agencies to carry out their duties on the Council.

(e) Each member of the Council shall serve without additional compensation but shall be entitled to reasonable expenses incurred in carrying out his official duties as such a member.

EXPENSES OF THE COUNCIL

SEC. 1005. One-fifth of the costs and expenses of the Council, including the salaries of its employees, shall be paid by each of the Federal financial institutions regulatory agencies. Annual assessments for such share shall be levied by the Council based upon its projected budget for the year, and additional assessments may be made during the year if necessary.

12 USC 3304.

FUNCTIONS OF THE COUNCIL

SEC. 1006. (a) The Council shall establish uniform principles and standards and report forms for the examination of financial institutions which shall be applied by the Federal financial institutions regulatory agencies.

Principles and standards.
12 USC 3305.

(b) (1) The Council shall make recommendations for uniformity in other supervisory matters, such as, but not limited to, classifying loans subject to country risk, identifying financial institutions in need of special supervisory attention, and evaluating the soundness of large loans that are shared by two or more financial institutions. In addition, the Council shall make recommendations regarding the adequacy of supervisory tools for determining the impact of holding company operations on the financial institutions within the holding company and shall consider the ability of supervisory agencies to discover possible fraud or questionable and illegal payments and practices which might occur in the operation of financial institutions or their holding companies.

(2) When a recommendation of the Council is found unaccepted by one or more of the applicable Federal financial institutions regulatory agencies, the agency or agencies shall submit to the Council, within a time period specified by the Council, a written statement of the reasons the recommendation is unacceptable.

(c) The Council shall develop uniform reporting systems for federally supervised financial institutions, their holding companies, and nonfinancial institution subsidiaries of such institutions or holding companies. The authority to develop uniform reporting systems shall not restrict or amend the requirements of section 12(i) of the Securities Exchange Act of 1934.

Reporting systems.

(d) The Council shall conduct schools for examiners and assistant examiners employed by the Federal financial institutions regulatory agencies. Such schools shall be open to enrollment by employees of State financial institutions supervisory agencies under conditions specified by the Council.

(e) Nothing in this title shall be construed to limit or discourage Federal regulatory agency research and development of new financial institutions supervisory methods and tools, nor to preclude the field testing of any innovation devised by any Federal regulatory agency.

(f) Not later than April 1 of each year, the Council shall prepare an annual report covering its activities during the preceding year.

Annual report.

STATE LIAISON

Establishment.
12 USC 3306.

Allowance.

SEC. 1007. To encourage the application of uniform examination principles and standards by State and Federal supervisory agencies, the Council shall establish a liaison committee composed of five representatives of State agencies which supervise financial institutions which shall meet at least twice a year with the Council. Members of the liaison committee shall receive a reasonable allowance for necessary expenses incurred in attending meetings.

ADMINISTRATION

12 USC 3307.

SEC. 1008. (a) The Chairman of the Council is authorized to carry out and to delegate the authority to carry out the internal administration of the Council, including the appointment and supervision of employees and the distribution of business among members, employees, and administrative units.

(b) in addition to any other authority conferred upon it by this title, in carrying out its functions under this title, the Council may utilize, with their consent and to the extent practical, the personnel, services, and facilities of the Federal financial institutions regulatory agencies, Federal Reserve banks, and Federal Home Loan Banks, with or without reimbursement therefor.

(c) In addition, the Council may—

(1) subject to the provisions of title 5, United States Code, relating to the competitive service, classification, and General Schedule pay rates, appoint and fix the compensation of such officers and employees as are necessary to carry out the provisions of this title, and to prescribe the authority and duties of such officers and employees; and

Experts and consultants services.

(2) obtain the services of such experts and consultants as are necessary to carry out the provisions of this title.

ACCESS TO INFORMATION BY THE COUNCIL

12 USC 3308.

SEC. 1009. For the purpose of carrying out this title, the Council shall have access to all books, accounts, records, reports, files, memorandums, papers, things, and property belonging to or in use by Federal financial institutions regulatory agencies, including reports of examination of financial institutions or their holding companies from whatever source, together with workpapers and correspondence files related to such reports, whether or not a part of the report, and all without any deletions.

AUDITS BY THE COMPTROLLER GENERAL

31 USC 67.

SEC. 1010. Section 117 of the Accounting and Auditing Act of 1950, as amended by the Federal Banking Agency Audit Act (Public Law 95-320), is further amended by:

(1) redesignating clauses (A), (B), and (C) of subsection (e) (1) as (B), (C), and (D), respectively, and inserting in subsection (e) (1) the clause "(A) of the Financial Institutions Examination Council;" immediately following "audits"; and

(2) striking out in subsection (e) (2) "and (C)" and inserting in lieu thereof "(C), and (D)".

TITLE XI—RIGHT TO FINANCIAL PRIVACY

SEC. 1100. This title may be cited as the "Right to Financial Privacy Act of 1978".

DEFINITIONS

SEC. 1101. For the purpose of this title, the term—

(1) "financial institution" means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) "financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution;

(3) "Government authority" means any agency or department of the United States, or any officer, employee, or agent thereof;

(4) "person" means an individual or a partnership of five or fewer individuals;

(5) "customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name;

(6) "supervisory agency" means, with respect to any particular financial institution any of the following which has statutory authority to examine the financial condition or business operations of that institution—

(A) the Federal Deposit Insurance Corporation;

(B) the Federal Savings and Loan Insurance Corporation;

(C) the Federal Home Loan Bank Board;

(D) the National Credit Union Administration;

(E) the Board of Governors of the Federal Reserve System;

(F) the Comptroller of the Currency;

(G) the Securities and Exchange Commission;

(H) the Secretary of the Treasury, with respect to the Bank Secrecy Act and the Currency and Foreign Transactions Reporting Act (Public Law 91-508, title I and II); or

(I) any State banking or securities department or agency;

and

(7) "law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

CONFIDENTIALITY OF RECORDS—GOVERNMENT AUTHORITIES

SEC. 1102. Except as provided by section 1103 (c) or (d), 1113, or 1114, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer

Right to
Financial Privacy
Act of 1978.

Short title.

12 USC 3401

note.

12 USC 3401.

12 USC

1829b-1831,

1951-1959.

31 USC 1051

note.

12 USC 3402.

from a financial institution unless the financial records are reasonably described and—

(1) such customer has authorized such disclosure in accordance with section 1104;

(2) such financial records are disclosed in response to an administrative subpoena or summons which meets the requirements of section 1105;

(3) such financial records are disclosed in response to a search warrant which meets the requirements of section 1106;

(4) such financial records are disclosed in response to a judicial subpoena which meets the requirements of section 1107; or

(5) such financial records are disclosed in response to a formal written request which meets the requirements of section 1108.

CONFIDENTIALITY OF RECORDS—FINANCIAL INSTITUTIONS

12 USC 3403.

SEC. 1103. (a) No financial institution, or officer, employees, or agent of a financial institution, may provide to any Government authority access to or copies of, or the information contained in, the financial records of any customer except in accordance with the provisions of this title.

(b) A financial institution shall not release the financial records of a customer until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provisions of this title.

(c) Nothing in this title shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation.

(d) (1) Nothing in this title shall preclude a financial institution, as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary, from providing copies of any financial record to any court or Government authority.

(2) Nothing in this title shall preclude a financial institution, as an incident to processing an application for assistance to a customer in the form of a Government loan, loan guaranty, or loan insurance agreement, or as an incident to processing a default on, or administering, a Government guaranteed or insured loan, from initiating contact with an appropriate Government authority for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement.

CUSTOMER AUTHORIZATIONS

12 USC 3404.

SEC. 1104. (a) A customer may authorize disclosure under section 1102(1) if he furnishes to the financial institution and to the Government authority seeking to obtain such disclosure a signed and dated statement which—

(1) authorizes such disclosure for a period not in excess of three months;

(2) states that the customer may revoke such authorization at any time before the financial records are disclosed;

(3) identifies the financial records which are authorized to be disclosed;

- (4) specifies the purposes for which, and the Government authority to which, such records may be disclosed; and
- (5) states the customer's rights under this title.
- (b) No such authorization shall be required as a condition of doing business with any financial institution.
- (c) The customer has the right, unless the Government authority obtains a court order as provided in section 1109, to obtain a copy of the record which the financial institution shall keep of all instances in which the customer's record is disclosed to a Government authority pursuant to this section, including the identity of the Government authority to which such disclosure is made.
- (d) All financial institutions shall promptly notify all of their customers of their rights under this title. The Board of Governors of the Federal Reserve System shall prepare a statement of customers' rights under this title. Any financial institution that provides its customers a statement of customers' rights prepared by the Board shall be deemed to be in compliance with this subsection.

Notification.
Statement.

ADMINISTRATIVE SUBPENA AND SUMMONS

SEC. 1105. A Government authority may obtain financial records under section 1102(2) pursuant to an administrative subpoena or summons otherwise authorized by law only if—

Financial records.
12 USC 3405.

(1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpoena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpoena or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached subpoena or summons are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States district courts:

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date

of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer.”; and

(3) ten days have expired from the date of service of the notice or fourteen days have expired from the date of mailing the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 1110 have been complied with.

SEARCH WARRANTS

Financial records.
12 USC 3406.
18 USC app.

SEC. 1106. (a) A Government authority may obtain financial records under section 1102(3) only if it obtains a search warrant pursuant to the Federal Rules of Criminal Procedure.

(b) No later than ninety days after the Government authority serves the search warrant, it shall mail to the customer's last known address a copy of the search warrant together with the following notice:

“Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date) for the following purpose: . . . You may have rights under the Right to Financial Privacy Act of 1978.”

(c) Upon application of the Government authority, a court may grant a delay in the mailing of the notice required in subsection (b), which delay shall not exceed one hundred and eighty days following the service of the warrant, if the court makes the findings required in section 1109(a). If the court so finds, it shall enter an ex parte order granting the requested delay and an order prohibiting the financial institution from disclosing that records have been obtained or that a search warrant for such records has been executed. Additional delays of up to ninety days may be granted by the court upon application, but only in accordance with this subsection. Upon expiration of the period of delay of notification of the customer, the following notice shall be mailed to the customer along with a copy of the search warrant:

“Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date). Notification was delayed beyond the statutory ninety-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning . . . You may have rights under the Right to Financial Privacy Act of 1978.”

JUDICIAL SUBPENA

Financial records.
12 USC 3407.

SEC. 1107. A Government authority may obtain financial records under section 1102(4) pursuant to judicial subpena only if—

(1) such subpena is authorized by law and there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpena has been served upon the customer or mailed to his last known address on or before the date on which the subpena was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions which are held by the financial institution named in the attached subpoena are being sought by this (agency or department or authority) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of the Court.

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights. If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer;" and

(3) ten days have expired from the date of service or fourteen days from the date of mailing of the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 1110 have been complied with.

FORMAL WRITTEN REQUEST

Sec. 1108. A Government authority may request financial records under section 1102(5) pursuant to a formal written request only if—

Financial records.
12 USC 3408.

(1) no administrative summons or subpoena authority reasonably appears to be available to that Government authority to obtain financial records for the purpose for which such records are sought;

(2) the request is authorized by regulations promulgated by the head of the agency or department;

(3) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry; and

(4) (A) a copy of the request has been served upon the customer or mailed to his last known address on or before the date on which the request was made to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached request are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose:

"If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States District Courts:

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein may be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer;" and

(B) ten days have expired from the date of service or fourteen days from the date of mailing of the notice by the customer and within such time period the customer has not filed a sworn statement and an application to enjoin the Government authority in an appropriate court, or the customer challenge provisions of section 1110 have been complied with.

DELAYED NOTICE—PRESERVATION OF RECORDS

12 USC 3409.

SEC. 1109. (a) Upon application of the Government authority, the customer notice required under section 1104(c), 1105(2), 1106(c), 1107(2), 1108(4), or 1112(b) may be delayed by order of an appropriate court if the presiding judge or magistrate finds that—

(1) the investigation being conducted is within the lawful jurisdiction of the Government authority seeking the financial records;

(2) there is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry; and

(3) there is reason to believe that such notice will result in—

(A) endangering life or physical safety of any person;

(B) flight from prosecution;

(C) destruction of or tampering with evidence;

(D) intimidation of potential witnesses; or

(E) otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same extent as the circumstances in the preceding subparagraphs.

An application for delay must be made with reasonable specificity.

(b) (1) If the court makes the findings required in paragraphs (1), (2), and (3) of subsection (a), it shall enter an ex parte order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution from disclosing that records have been obtained or that a request for records has been made, except that, if the records have been sought by a Government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), the International Emergency Economic Powers Act (title II, Public Law 95-223), or section 5 of the United Nations Participation Act (22 U.S.C. 287c), and the court finds that there is reason to believe that such notice may endanger the lives or physical safety of a customer or group of customers, or any person or group of persons associated with a customer, the court may specify that the delay be indefinite.

50 USC 1701
note.

(2) Extensions of the delay of notice provided in paragraph (1) of up to ninety days each may be granted by the court upon application, but only in accordance with this subsection.

(3) Upon expiration of the period of delay of notification under paragraph (1) or (2), the customer shall be served with or mailed a copy of the process or request together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the Government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under the Right to Financial Privacy Act of 1978 that such notice might (state reason). The purpose of the investigation or official proceeding was _____."

(c) When access to financial records is obtained pursuant to section 1114(b) (emergency access), the Government authority shall, unless a court has authorized delay of notice pursuant to subsections (a) and (b), as soon as practicable after such records are obtained serve upon the customer, or mail by registered or certified mail to his last known address, a copy of the request to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records concerning your transactions held by the financial institution named in the attached request were obtained by (agency or department) under the Right to Financial Privacy Act of 1978 on (date) for the following purpose: _____ Emergency access to such records was obtained on the grounds that (state grounds)."

(d) Any memorandum, affidavit, or other paper filed in connection with a request for delay in notification shall be preserved by the court. Upon petition by the customer to whom such records pertain, the court may order disclosure of such papers to the petitioner unless the court makes the findings required in subsection (a).

CUSTOMER CHALLENGE PROVISIONS

SEC. 1110. (a) Within ten days of service or within fourteen days of mailing of a subpoena, summons, or formal written request, a customer may file a motion to quash an administrative summons or judicial subpoena, or an application to enjoin a Government authority from obtaining financial records pursuant to a formal written request, with

12 USC 3410.

copies served upon the Government authority. A motion to quash a judicial subpoena shall be filed in the court which issued the subpoena. A motion to quash an administrative summons or an application to enjoin a Government authority from obtaining records pursuant to a formal written request shall be filed in the appropriate United States district court. Such motion or application shall contain an affidavit or sworn statement—

(1) stating that the applicant is a customer of the financial institution from which financial records pertaining to him have been sought; and

(2) stating the applicant's reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the Government authority in its notice, or that there has not been substantial compliance with the provisions of this title.

Service shall be made under this section upon a Government authority by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this title. For the purposes of this section, "delivery" has the meaning stated in rule 5(b) of the Federal Rules of Civil Procedure.

"Delivery."

28 USC app.
Sworn response
filing.

(b) If the court finds that the customer has complied with subsection (a), it shall order the Government authority to file a sworn response, which may be filed in camera if the Government includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided within seven calendar days of the filing of the Government's response.

Motion or
application
denial.

(c) If the court finds that the applicant is not the customer to whom the financial records sought by the Government authority pertain, or that there is a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, it shall deny the motion or application, and, in the case of an administrative summons or court order other than a search warrant, order such process enforced. If the court finds that the applicant is the customer to whom the records sought by the Government authority pertain, and that there is not a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, or that there has not been substantial compliance with the provisions of this title, it shall order the process quashed or shall enjoin the Government authority's formal written request.

(d) A court ruling denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer. An appeal of a ruling denying a motion or application under this section may be taken by the customer (1) within such period of time as provided by law as part of any appeal from a final order in any legal proceeding initiated against him arising out of or based upon the financial records, or (2) within thirty days after a notification that no legal proceeding is contemplated against him. The Government authority obtaining the financial records shall promptly notify a customer when a determination has been made that no legal proceeding against him is contemplated. After one hundred and eighty days from the denial of the motion or application, if the Government authority obtaining the records has not initiated such

Notification.

Certification.

a proceeding, a supervisory official of the Government authority shall certify to the appropriate court that no such determination has been made. The court may require that such certifications be made, at reasonable intervals thereafter, until either notification to the customer has occurred or a legal proceeding is initiated as described in clause (A).

(e) The challenge procedures of this title constitute the sole judicial remedy available to a customer to oppose disclosure of financial records pursuant to this title.

(f) Nothing in this title shall enlarge or restrict any rights of a financial institution to challenge requests for records made by a Government authority under existing law. Nothing in this title shall entitle a customer to assert the rights of a financial institution.

DUTY OF FINANCIAL INSTITUTIONS

SEC. 1111. Upon receipt of a request for financial records made by a Government authority under section 1105 or 1107, the financial institution shall, unless otherwise provided by law, proceed to assemble the records requested and must be prepared to deliver the records to the Government authority upon receipt of the certificate required under section 1103(b). 12 USC 3411.

USE OF INFORMATION

SEC. 1112. (a) Financial records originally obtained pursuant to this title shall not be transferred to another agency or department unless the transferring agency or department certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department. Transfer, certification. 12 USC 3412.

(b) When financial records subject to this title are transferred pursuant to subsection (a), the transferring agency or department shall, within fourteen days, send to the customer a copy of the certification made pursuant to subsection (a) and the following notice, which shall state the nature of the law enforcement inquiry with reasonable specificity: "Copies of, or information contained in, your financial records lawfully in possession of _____ have been furnished to _____ pursuant to the Right of Financial Privacy Act of 1978 for the following purpose: Notice.

. If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974."

(c) Notwithstanding subsection (b), notice to the customer may be delayed if the transferring agency or department has obtained a court order delaying notice pursuant to section 1109 (a) and (b) and that order is still in effect, or if the receiving agency or department obtains a court order authorizing a delay in notice pursuant to section 1109 (a) and (b). Upon the expiration of any such period of delay, the transferring agency or department shall serve to the customer the notice specified in subsection (b) above and the agency or department that obtained the court order authorizing a delay in notice pursuant to section 1109 (a) and (b) shall serve to the customer the notice specified in section 1109 (b).

(d) Nothing in this title prohibits any supervisory agency from exchanging examination reports or other information with another supervisory agency. Nothing in this title prohibits the transfer of a customer's financial records needed by counsel for a Government

authority to defend an action brought by the customer. Nothing in this title shall authorize the withholding of information by any officer or employee of a supervisory agency from a duly authorized committee or subcommittee of the Congress.

EXCEPTIONS

12 USC 3413.

SEC. 1113. (a) Nothing in this title prohibits the disclosure of any financial records or information which is not identified with or identifiable as being derived from the financial records of a particular customer.

(b) Nothing in this title prohibits examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.

26 USC 1 *et seq.*

(c) Nothing in this title prohibits the disclosure of financial records in accordance with procedures authorized by the Internal Revenue Code.

(d) Nothing in this title shall authorize the withholding of financial records or information required to be reported in accordance with any Federal statute or rule promulgated thereunder.

(e) Nothing in this title shall apply when financial records are sought by a Government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the Government authority and the customer are parties.

(f) Nothing in this title shall apply when financial records are sought by a Government authority pursuant to an administrative subpoena issued by an administrative law judge in an adjudicatory proceeding subject to section 554 of title 5, United States Code, and to which the Government authority and the customer are parties.

50 USC 1701
note.

(g) The notice requirements of this title and sections 1110 and 1112 shall not apply when a Government authority by a means described in section 1102 and for a legitimate law enforcement inquiry is seeking only the name, address, account number, and type of account of any customer or ascertainable group of customers associated (1) with a financial transaction or class of financial transactions, or (2) with a foreign country or subdivision thereof in the case of a Government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)); the International Emergency Economic Powers Act (title II, Public Law 95-223); or section 5 of the United Nations Participation Act (22 U.S.C. 287(c)).

(h) (1) Nothing in this title (except sections 1103, 1117 and 1118) shall apply when financial records are sought by a Government authority—

(A) in connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records or at a legal entity which is not a customer; or

(B) in connection with the authority's consideration or administration of assistance to the customer in the form of a Government loan, loan guaranty, or loan insurance program.

Certification.

(2) When financial records are sought pursuant to this subsection, the Government authority shall submit to the financial institution the certificate required by section 1103(b). For access pursuant to paragraph (1)(B), no further certification shall be required for subse-

quent access by the certifying Government authority during the term of the loan, loan guaranty, or loan insurance agreement.

(3) After the effective date of this title, whenever a customer applies for participation in a Government loan, loan guaranty, or loan insurance program, the Government authority administering such program shall give the customer written notice of the authority's access rights under this subsection. No further notification shall be required for subsequent access by that authority during the term of the loan, loan guaranty, or loan insurance agreement.

Notice.

(4) Financial records obtained pursuant to this subsection may be used only for the purpose for which they were originally obtained, and may be transferred to another agency or department only when the transfer is to facilitate a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records, or at a legal entity which is not a customer, except that—

(A) nothing in this paragraph prohibits the use or transfer of a customer's financial records needed by counsel representing a Government authority in a civil action arising from a Government loan, loan guaranty, or loan insurance agreement; and

(B) nothing in this paragraph prohibits a Government authority providing assistance to a customer in the form of a loan, loan guaranty, or loan insurance agreement from using or transferring financial records necessary to process, service or foreclose a loan, or to collect on an indebtedness to the Government resulting from a customer's default.

(5) Notification that financial records obtained pursuant to this subsection may relate to a potential civil, criminal, or regulatory violation by a customer may be given to an agency or department with jurisdiction over that violation, and such agency or department may then seek access to the records pursuant to the provisions of this title.

(6) Each financial institution shall keep a notation of each disclosure made pursuant to paragraph (1) (B) of this subsection, including the date of such disclosure and the Government authority to which it was made. The customer shall be entitled to inspect this information.

(i) Nothing in this title (except sections 1115 and 1120) shall apply to any subpoena or court order issued in connection with proceedings before a grand jury.

(j) This title shall not apply when financial records are sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination or audit directed at a government authority.

Audit.

SPECIAL PROCEDURES

SEC. 1114. (a) (1) Nothing in this title (except sections 1115, 1117, 1118, and 1121) shall apply to the production and disclosure of financial records pursuant to requests from—

12 USC 3414.

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities; or

(B) the Secret Service for the purpose of conducting its protective functions (18 U.S.C. 3056; 3 U.S.C. 202, Public Law 90-331, as amended).

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 1103(b) signed by a supervisory official of a rank designated by the head of the Government authority.

Certification.

- Disclosure, prohibition. (3) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that a Government authority described in paragraph (1) has sought or obtained access to a customer's financial records.
- (4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.
- Obtaining financial records. (b) (1) Nothing in this title shall prohibit a Government authority from obtaining financial records from a financial institution if the Government authority determines that delay in obtaining access to such records would create imminent danger of—
- (A) physical injury to any person;
 - (B) serious property damage; or
 - (C) flight to avoid prosecution.
- (2) In the instances specified in paragraph (1), the Government shall submit to the financial institution of the certificate required in section 1103(b) signed by a supervisory official of a rank designated by the head of the Government authority.
- (3) Within five days of obtaining access to financial records under this subsection, the Government authority shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the Government authority setting forth the grounds for the emergency access. The Government authority shall thereafter comply with the notice provisions of section 1109(c).
- Annual tabulation. (4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

COST REIMBURSEMENT

- 12 USC 3415. SEC. 1115. (a) Except for records obtained pursuant to section 1103(d) or 1113 (a) through (h), or as otherwise provided by law, a Government authority shall pay to the financial institution assembling or providing financial records pertaining to a customer and in accordance with procedures established by this title a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced. The Board of Governors of the Federal Reserve System shall, by regulation, establish the rates and conditions under which such payment may be made.
- Regulation. (b) This section shall take effect on October 1, 1979.
- Effective date.

JURISDICTION

- 12 USC 3416. SEC. 1116. An action to enforce any provision of this title may be brought in any appropriate United States district court without regard to the amount in controversy within three years from the date on which the violation occurs or the date of discovery of such violation, whichever is later.

CIVIL PENALTIES

- 12 USC 3417. SEC. 1117. (a) Any agency or department of the United States or financial institution obtaining or disclosing financial records or information contained therein in violation of this title is liable to the customer to whom such records relate in an amount equal to the sum of—
- (1) \$100 without regard to the volume of records involved;
 - (2) any actual damages sustained by the customer as a result of the disclosure;

(3) such punitive damages as the court may allow, where the violation is found to have been willful or intentional; and

(4) in the case of any successful action to enforce liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Whenever the court determines that any agency or department of the United States has violated any provision of this title and the court finds that the circumstances surrounding the violation raise questions of whether an officer or employee of the department or agency acted willfully or intentionally with respect to the violation, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. The Commission after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(c) Any financial institution or agent or employee thereof making a disclosure of financial records pursuant to this title in good-faith reliance upon a certificate by any Government authority shall not be liable to the customer for such disclosure.

Liability.

(d) The remedies and sanctions described in this title shall be the only authorized judicial remedies and sanctions for violations of this title.

INJUNCTIVE RELIEF

SEC. 1118. In addition to any other remedy contained in this title, injunctive relief shall be available to require that the procedures of this title are complied with. In the event of any successful action, costs together with reasonable attorney's fees as determined by the court may be recovered.

12 USC 3418.

SUSPENSION OF STATUTES OF LIMITATIONS

SEC. 1119. If any individual files a motion or application under this title which has the effect of delaying the access of a Government authority to financial records pertaining to such individual, any applicable statute of limitations shall be deemed to be tolled for the period extending from the date such motion or application was filed until the date upon which the motion or application is decided.

12 USC 3419.

GRAND JURY INFORMATION

SEC. 1120. Financial records about a customer obtained from a financial institution pursuant to a subpoena issued under the authority of a Federal grand jury—

12 USC 3420.

(1) shall be returned and actually presented to the grand jury;

(2) shall be used only for the purpose of considering whether to issue an indictment or presentment by that grand jury, or of prosecuting a crime for which that indictment or presentment is issued, or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure;

18 USC app.

(3) shall be destroyed or returned to the financial institution if not used for one of the purposes specified in paragraph (2); and

(4) shall not be maintained, or a description of the contents of such records shall not be maintained by any Government authority

other than in the sealed records of the grand jury, unless such record has been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure.

18 USC app.

REPORTING REQUIREMENTS

Report to congressional committees.
12 USC 3421.

SEC. 1121. (a) In April of each year, the Director of the Administrative Office of the United States Courts shall send to the appropriate committees of Congress a report concerning the number of applications for delays of notice made pursuant to section 1109 and the number of customer challenges made pursuant to section 1110 during the preceding calendar year. Such report shall include: the identity of the Government authority requesting a delay of notice; the number of notice delays sought and the number granted under each subparagraph of section 1109(a)(3); the number of notice delay extensions sought and the number granted; and the number of customer challenges made and the number that are successful.

Report to congressional committees.

(b) In April of each year, each Government authority that requests access to financial records of any customer from a financial institution pursuant to section 1104, 1105, 1106, 1107, 1108, 1109, or 1114 shall send to the appropriate committees of Congress a report describing requests made during the preceding calendar year. Such report shall include the number of requests for records made pursuant to each section of this title listed in the preceding sentence and any other related information deemed relevant or useful by the Government authority.

12 USC 3422.

SEC. 1122. The Securities and Exchange Commission shall not be subject to the provisions of this title for a period of two years from the date of enactment of the title.

TITLE XII—CHARTERS FOR THRIFT INSTITUTIONS

SEC. 1201. Section 2(d) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462(d)) is amended to read as follows:

"Association."

"(d) The term 'association' means a Federal savings and loan association or a Federal mutual savings bank chartered by the Board under section 5, and any reference in any other law to a Federal savings and loan association shall be deemed to be also a reference to a Federal mutual savings bank, unless the context indicates otherwise."

SEC. 1202. Section 5(a) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(a)) is amended to read as follows:

Rules and regulations.

"SEC. 5. (a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations', or 'Federal mutual savings banks' (but only in the case of institutions which, prior to conversion, were State mutual savings banks located in States which authorize the chartering of State mutual savings banks, provided such conversion is not in contravention of State law), and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States. An association which was formerly organized as a savings bank under State law may not convert from the mutual to the stock form of ownership. An association which was formerly organized as a savings bank

under State law may not convert from the mutual to the stock form of ownership." An association which was formally organized as a savings bank under State law may, to the extent authorized by the Board, continue to carry on any activities it was engaged in on December 31, 1977, and to retain or make any investments of a type it held on that date, except that its equity, corporate bond, and consumer loan investments may not exceed the average ratio of such investments to total assets for the five-year period immediately preceding the filing of an application for conversion and such an association which was formerly organized as a savings bank under State law shall only be permitted to establish branch offices and other facilities in accordance with the limitations imposed by State law controlling applications of a savings bank organized under such State law, provided that such an association: (1) shall be exempt from any numerical limitations of State law on the establishment of branch offices and other facilities, and (2) may, in any case, subject to the approval of the Board, establish branch offices and other facilities in its own Standard Metropolitan Statistical Area, its own county or within thirty-five miles of its home office, but only in its State of domicile. An association which was formerly organized as a savings bank under State law shall be subject to the requirements of State law (including any regulations promulgated thereunder and any sanction for the violation of any such law or regulation) in effect at the time of conversion, in the State of its original charter—

"(1) pertaining to discrimination in the extension of home mortgage loans or adjustment in the terms of mortgage instruments based on neighborhood or geographical area,

"(2) pertaining to requirements imposed under the Consumer Credit Protection Act,

if the Board determines that State law and regulations impose more stringent requirements than Federal law and regulations."

SEC. 1203. Section 403(a) of the National Housing Act (12 U.S.C. 1726(a)) is amended by inserting after "Federal savings and loan associations" the following: "and Federal mutual savings banks".

SEC. 1204. The first paragraph of section 5(i) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(i)) is amended by inserting "(including a savings bank)" after "member of a Federal Home Loan Bank".

SEC. 1205. The Federal Deposit Insurance Act is amended by adding at the end thereof the following new section:

"CONVERSION OF MUTUAL SAVINGS BANKS

"SEC. 26. With respect to any State-chartered insured mutual savings bank which converts into a Federal savings bank or merges or consolidates into a Federal savings bank or a savings bank which is (or within sixty days after the merger or consolidation becomes) an insured institution within the meaning of section 401 of the National Housing Act, the Corporation shall indemnify the Federal Savings and Loan Insurance Corporation against any losses incurred by it which arise out of losses incurred by the converting bank prior to conversion as follows: One hundred per centum of such losses incurred by the Federal Savings and Loan Insurance Corporation during the first two years after conversion, 75 per centum during the third year, 50 per centum during the fourth year, and 25 per centum during the fifth year. The Corporation and the Federal Savings and Loan Insurance Corporation shall, within six months after enactment hereof, mutually agree on what shall be treated as 'losses incurred by it which arise out of losses incurred by the converting bank prior to conversion'

15 USC 1601
note.

Indemnification.
12 USC 1831c.

for purposes hereof and, failing such agreement, the General Accounting Office shall prescribe the meaning of those terms. Any conversion, merger, or consolidation covered by this section shall not be deemed a termination of insured status under section 8(a) of this Act."

TITLE XIII—NOW ACCOUNTS

SEC. 1301. Section 2(a) of Public Law 93-100 (12 U.S.C. 1832(a)) is amended by inserting "New York," after "Vermont,".

SEC. 1302. This title shall take effect upon enactment.

Effective date.
12 USC 1832
note.

TITLE XIV—INSURANCE OF IRA AND KEOGH ACCOUNTS

SEC. 1401. (a) Section 11(a) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1821(a)), is amended by adding at the end thereof the following new paragraph:

"(3) Notwithstanding any limitation in this Act or in any other provision of law relating to the amount of deposit insurance available for the account of any one depositor, time and savings deposits in an insured bank made pursuant to a pension or profit-sharing plan described in section 401(d) of the Internal Revenue Code of 1954, as amended, or made in the form of individual retirement accounts as described in section 408(a) of the Internal Revenue Code of 1954, as amended, shall be insured in the amount of \$100,000 per account. As to any plan qualifying under section 401(d) or section 408(a) of the Internal Revenue Code of 1954, the term 'per account' means the present vested and ascertainable interest of each beneficiary under the plan, excluding any remainder interest created by, or as a result of, the plan."

26 USC 401.

"Per account."

26 USC 408.

(b) Section 405(d) of the National Housing Act, as amended (12 U.S.C. 1728(d)), is amended by adding at the end thereof the following new paragraph:

"(3) Notwithstanding any limitation in this title or in any other provision of law relating to the amount of deposit insurance available for any one account, funds invested in an insured institution pursuant to a pension or profit-sharing plan described in section 401(d) of the Internal Revenue Code of 1954, as amended, and funds invested in an insured institution in the form of individual retirement accounts as described in section 408(a) of the Internal Revenue Code of 1954, as amended, shall be insured in the amount of \$100,000 per account. As to any plan qualifying under section 401(d) or section 408(a) of the Internal Revenue Code of 1954, the term 'per account' means the present vested and ascertainable interest of each beneficiary under the plan, excluding any remainder interest created by, or as a result of, the plan."

"Per account."

(c) Section 207(c) of the Federal Credit Union Act, as amended (12 U.S.C. 1787(c)), is amended by adding at the end thereof the following paragraph:

"(3) Notwithstanding any limitation in this title or in any other provision of law relating to the amount of insurance available for the account of any one depositor or member, funds invested in a credit union insured in accordance with this title pursuant to a pension or profit-sharing plan described in section 401(d) of the Internal Revenue Code of 1954, as amended, and funds invested in such an insured

credit union in the form of individual retirement accounts as described in section 408(a) of the Internal Revenue Code of 1954, as amended, shall be insured in the amount of \$100,000 per account. As to any plan qualifying under section 401(d) or section 408(a) of the Internal Revenue Code of 1954, the term 'per account' means the present vested and ascertainable interest of each beneficiary under the plan, excluding any remainder interest created by, or as a result of, the plan."

"Per account."

26 USC 401,
408.

Effective date.
12 USC 1728
note.

SEC. 1402. This title shall take effect upon enactment.

TITLE XV—MISCELLANEOUS PROVISIONS

SEC. 1501. Paragraph (2) of section 3(c) of Public Law 94-222 (15 U.S.C. 1666f note) is amended to read as follows:

"(2) The amendment made by paragraph (1) shall cease to be effective on February 27, 1981."

SEC. 1502. Section 803 of Public Law 95-128 (12 U.S.C. 2902) is amended by adding at the end thereof the following new subsection:

"(4) A financial institution whose business predominately consists of serving the needs of military personnel who are not located within a defined geographic area may define its 'entire community' to include its entire deposit customer base without regard to geographic proximity."

"Entire
community."

SEC. 1503. The last sentence of section 245 of the National Housing Act is amended by inserting immediately before "limiting the amount of interest" "(1)" and by inserting immediately before the period at the end thereof the following: "; or (2) requiring a minimum amortization of principle or otherwise relating to the amortization of principle under the mortgage or loan".

12 USC
1715z-10.

SEC. 1504. Section 5169 of the Revised Statutes (12 U.S.C. 27) is amended by adding at the end thereof the following new sentence: "A National Bank Association, to which the Comptroller of the Currency has heretofore issued or hereafter issues such certificate, is not illegally constituted solely because its operations are or have been required by the Comptroller of the Currency to be limited to those of a trust company and activities related thereto."

SEC. 1505. This title shall take effect upon enactment.

Effective date.
12 USC 27 note.

TITLE XVI—INTEREST RATE CONTROL

SEC. 1601. Section 7 of the Act of September 21, 1966 (Public Law 89-597) is amended by striking out "December 15, 1978" and inserting in lieu thereof "December 15, 1980".

12 USC 461 note.

SEC. 1602. Section 102 of Public Law 94-200 (12 U.S.C. 461 note) is amended by adding at the end thereof the following new subsection:

"(c) In any State where any provision of State or Federal law authorizes any savings and loan, building and loan, or homestead association (including any cooperative bank) the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation or any mutual savings bank, as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), to offer any third-party payment account, there shall be no differential in the maximum interest rate payable between (1) banks (other than savings banks) the deposits of which are insured by the Federal Deposit Insurance Corporation, and (2) savings and loan, building and loan, or homestead associations (including cooperative banks) the deposits or accounts of which are insured by the Federal Savings and Loan Insur-

ance Corporation or mutual savings banks, as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), with respect to savings deposits or accounts from which automatic transfers to the institution itself or to a demand or other deposit account of the same depositor or accountholder at such institution may be made as a normal practice, pursuant to a prearranged agreement with the depositor or accountholder to make such transfers to cover checks, drafts, or similar instruments drawn by the depositor or accountholder on such institution. Notwithstanding any of the provisions of subsection (b) of this section, the maximum rate of interest payable on a savings deposit or account described in the preceding sentence shall be the rate which banks (other than mutual savings banks) the deposits of which are insured by the Federal Deposit Insurance Corporation may pay on such accounts.”

Effective date.
12 USC 461 note.

SEC. 1603. This title shall take effect upon enactment.

TITLE XVII—FEDERAL SAVINGS AND LOAN INVESTMENT AUTHORITY

SEC. 1701. With the exception of undesignated paragraph 15, 17, and 23, section 5(c) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(c)) is amended to read as follows:

Rules and
regulations.

“(C) An association may, to such extent, and subject to such rules and regulations as the Board may prescribe from time to time invest in, sell, or otherwise deal with the following loans, or other investments:

“(1) LOANS OR INVESTMENTS WITHOUT PERCENTAGE OF ASSETS LIMITATION.—Without limitation as a percentage of assets, the following are permitted:

“(A) SAVINGS ACCOUNT LOANS.—Loans on the security of its savings accounts.

“(B) SINGLE FAMILY AND MULTIFAMILY MORTGAGE LOANS.—

Loans on the security of first liens upon residential real property within one hundred miles of its home office or within the State in which such home office is located; loans so secured shall not exceed \$60,000 in principal amount (except that with respect to residential real estate in Alaska, Guam, and Hawaii the foregoing limitation may be increased by not to exceed 50 per centum) for each single family dwelling nor exceed such amount per room within the limits allowable (at the time of the loan) in section 207(c)(3) of the National Housing Act for any other dwelling unit covered by such lien.

12 USC 1713.

“(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 ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act.

12 USC 1454,
1455.

“(F) OTHER GOVERNMENT SECURITIES.—Investments in obligations, participations, securities, or other instruments

of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Student Loan Marketing Association or the Government National Mortgage Association, or any other agency of the United States and an association may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act.

12 USC 1721.

“(G) BANK DEPOSITS.—Investments in the time deposits, certificates, or accounts of any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

“(H) STATE SECURITIES.—Investments in general obligations of any State or any political subdivision thereof.

“(I) PURCHASE OF INSURED LOANS.—Purchase subject to all the provisions of paragraph (1)(B), except the area restriction, loans secured by first liens on improved real estate which are insured under provisions of the National Housing Act, or insured as provided in the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38 of the United States Code.

12 USC 1701.

38 USC 1801.

“(J) HOME IMPROVEMENT AND MOBILE HOME LOANS.—Loans made for the repair, equipping, alteration, or improvement of any residential real property, and loans made for the purpose of mobile home financing.

“(K) INSURED LOANS TO FINANCE THE PURCHASE OF FEE SIMPLE.—Loans as to which the association has the benefit of insurance under section 240 of the National Housing Act, or of a commitment or agreement therefor.

12 USC 1715z-5.

“(L) LOANS TO FINANCIAL INSTITUTIONS, BROKERS, AND DEALERS.—Loans to financial institutions with respect to which the United States or an agency or instrumentality thereof has any function of examination or supervision, or to any broker or dealer registered with the Securities and Exchange Commission, secured by loans, obligations, or investments in which the association has the statutory authority to invest directly.

“(M) LIQUIDITY INVESTMENTS.—Investments which, at the time of making, are assets eligible for inclusion toward the satisfaction of any liquidity requirement imposed by the Board pursuant to section 5A of the Federal Home Loan Bank Act, but only to the extent that the investment is permitted to be so included under regulations of the Board or is otherwise authorized.

12 USC 1425a.

“(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 that Act.

42 USC 3931.

42 USC 3937.

“(O) HOUSING AND URBAN DEVELOPMENT GUARANTEED INVESTMENTS.—Loans as to which the association has the benefit of any guaranty under title IV of the Housing and Urban Development Act of 1968 or under part B of the Urban Growth and New Community Development Act of 1970 or under section 802 of the Housing and Community Development Act of 1974 as now or hereafter in effect, or of a commitment or agreement therefor.

42 USC 3901.

42 USC 4511.

42 USC 1440.

12 USC 1701.

“(P) STATE HOUSING CORPORATION INVESTMENTS.—Investments in, commitments to invest in, loans to, or commitments to lend to any State housing corporation, provided that 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, as amended, and that in the event of default, the holder of such obligations or loans would have 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.

“(2) LOANS OR INVESTMENTS LIMITED TO 20 PER CENTUM OF ASSETS.—The following loans or investments are permitted, but authority conferred in the following subparagraphs is limited to not in excess of 20 per centum of the assets of the association for each subparagraph:

“(A) OTHER REAL ESTATE LOANS.—Loans on security of first liens upon improved real estate; but the amount deemed to be loaned in transactions which, except for excess in amount, would be eligible for such association under subparagraphs (1) (B) or (1) (I) shall be only the outstanding amount of such excess.

“(B) PARTICIPATION LOANS.—Without regard to the area restriction contained in subparagraph (1) (B), investments for the making or purchase of participation interests in first liens on residential real property.

“(3) LOANS OR INVESTMENTS LIMITED TO 5 PER CENTUM OF ASSETS.—The following loans or investments are permitted, but the authority conferred in the following subparagraphs is limited to not in excess of 5 per centum of assets of the association for each subparagraph:

“(A) EDUCATION LOANS.—Loans made for the payment of expenses of college, university, or vocational education.

“(B) LAND ACQUISITION.—An association whose general reserves, surplus, and undivided profits aggregate a sum in excess of 5 per centum of its withdrawable accounts is authorized to invest in, subject to the area restriction contained in subparagraph (1) (B), loans to finance the acquisition and development of land for primary residential usage.

“(C) HOUSING FACILITIES FOR THE AGING.—Subject to the area restriction contained in subparagraph (1) (B), amortized loans which are secured by first liens upon improved real estate used to provide housing facilities for the aging.

“(D) 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, as amended but no investment in real property may exceed an aggregate investment of 2 per centum of the assets of the association.

“(E) 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 section.

42 USC 5301.

“(F) CONSTRUCTION LOANS, WITH OR WITHOUT SECURITY.—Subject to the area restriction of subparagraph (1)(B), investments not exceeding the greater of (A) the sum of its surplus, undivided profits, and reserves or (B) 5 per centum of the assets of the association, in loans the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate where (i) the association relies substantially for repayment on the borrower’s general credit standing and forecast of income, with or without other security, or (ii) the association relies on other assurances for repayment, including but not limited to a guaranty or similar obligation of a third party, and, in either case described in clause (i) or (ii), regardless of whether or not the association takes security; and investments under this subsection shall not be included in any percentage of assets or other percentage referred to in this subsection.

“(4) OTHER LOANS AND INVESTMENTS.—The following additional loans and other investments to the extent authorized below:

“(A) BUSINESS DEVELOPMENT CREDIT CORPORATIONS.—An association whose general reserves, surplus and undivided profits aggregate a sum in excess of 5 per centum of its withdrawable accounts is authorized to 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 and loan associations chartered by such State are authorized, but the aggregate amount of such investments, loans, and commitments of any such association shall not exceed one-half of 1 per centum of the total outstanding loans of the association or \$250,000, whichever is less.

“(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 home office of the association is located, if the entire capital stock of such corporation is available for purchase only by savings and loan associations of that State and by Federal associations having their home offices therein, but no association may make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 1 per centum of the assets of the association.

“(C) FOREIGN ASSISTANCE, CERTAIN GUARANTEED LOANS.—(i) Loans secured by mortgages as to which the association has the benefit of insurance under title X of the National Housing Act or of a commitment or agreement for such insurance, or (ii) acquire and hold 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 guaranty 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 having the benefit of any guaranty under section 221 or 222 of such Act as hereafter amended or

22 USC 2181.

22 USC 2184.

22 USC 2181,
2182.

extended, or of any commitment or agreement for any such guaranty. Investments under clause (i) of this subparagraph shall not be included in any percentage of assets or other percentage referred to in this section. Investments under clause (ii) of this subparagraph shall not exceed, in the case of any association, 1 per centum of the assets of such association.

“(D) STATE AND LOCAL GOVERNMENT OBLIGATIONS.—An association whose general reserves, surplus, and undivided profits aggregate a sum in excess of 5 per centum of its withdrawable accounts is authorized to invest in obligations which constitute prudent investments, as defined by the Board, of its home State and political subdivisions thereof (including any agency, corporation, or instrumentality): *Provided*, That the proceeds of such obligations are to be used for rehabilitation, financing, or the construction of residential real estate: *And provided further*, That the aggregate amount of all investments under this subparagraph shall not exceed the amount of the association’s general reserves, surplus and undivided profits.

“(5) CONVERTED STATE-CHARTERED ASSOCIATIONS.—Any association which is converted from a State-chartered institution may continue to make loans in the territory in which it made loans while operating under State charter.

“(6) DEFINITIONS.—As used in this section—

“(A) the terms ‘residential real property’ or ‘residential real estate’ include leaseholds and mean homes (including condominiums and cooperatives except that in connection with loans on individual cooperative units, the first lien requirement shall not apply but such loans shall be adequately secured as defined by the Board), combinations of homes and business property, other dwelling units, or combinations of dwelling units including homes and business property involving only minor or incidental business use;

“(B) 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; and

“(C) the term ‘State’ means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, and any territory or possession of the United States.”

(b) Undesignated paragraph 15 of such section 5(c) is transferred to the end of section 5 of the Home Owners’ Loan Act of 1933 (12 U.S.C. 1464) and redesignated as subsection (m) of that section, undesignated paragraph 17 of such section 5(c) is transferred to the end of section 5 of the Home Owners’ Loan Act of 1933 and redesignated as subsection (l) of that section, and undesignated paragraph 23 of such section 5(c) is transferred to the end of section 5(b) of the Home Owners’ Loan Act of 1933 and redesignated as section 5(b)(3).

SEC. 1702. Section 302(h) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451(h)) is amended by adding the following at the end thereof: “The term ‘residential mortgage’ is also deemed to include a secured loan or advance of credit the proceeds of which are intended to finance the rehabilitation, renovation, modernization, refurbishment, or improvement of properties as to which the Corporation may purchase a ‘residential mortgage’ as defined under the first

“Residential mortgage.”

sentence of this subsection. The maximum principal obligation of loans purchased by virtue of the preceding sentence shall not exceed the dollar limits prescribed by the Federal Home Loan Bank Board with respect to similar types of loans made by Federal savings and loan associations. A 'secured loan or advance of credit' is one in which a security interest is taken in the rehabilitated, renovated, modernized, refurbished, or improved property."

SEC. 1703. This title shall take effect upon enactment.

TITLE XVIII—NATIONAL CREDIT UNION CENTRAL LIQUIDITY FACILITY

SEC. 1801. This title may be cited as the "National Credit Union Central Liquidity Facility Act".

SEC. 1802. The Federal Credit Union Act (12 U.S.C. 1751 et seq.) is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER III—CENTRAL LIQUIDITY FACILITY

"SEC. 301. The Congress finds that the establishment of a National Credit Union Central Liquidity Facility is needed to improve general financial stability by meeting the liquidity needs of credit unions and thereby encourage savings, support consumer and mortgage lending, and provide basic financial resources to all segments of the economy.

"DEFINITIONS

"SEC. 302. As used in this subchapter, the term—

"(1) 'liquidity needs' means the needs of credit unions primarily serving natural persons for—

"(A) short-term adjustment credit available to assist in meeting temporary requirements for funds or to cushion more persistent outflows of funds pending an orderly adjustment of credit union assets and liabilities;

"(B) seasonal credit available for longer periods to assist in meeting seasonal needs for funds arising from a combination of expected patterns of movement in share and deposit accounts and loans; and

"(C) protracted adjustment credit available in the event of unusual or emergency circumstances of a longer term nature resulting from national, regional or local difficulties.

"(2) 'Central Liquidity Facility' or 'Facility' means the National Credit Union Central Liquidity Facility;

"(3) 'paid-in and unimpaired capital and surplus' means the balance of the paid-in share accounts and deposits as of a given date, less any loss that may have been incurred for which there is no reserve or which has not been charged against undivided earnings, plus the credit balance (or less the debit balance) of the undivided earnings account as of a given date, after all losses have been provided for and net earnings or net losses have been added thereto or deducted therefrom. Reserves shall not be considered as part of surplus, and

"(4) 'member' means a Regular or an Agent member of the Facility.

"Secured loan or advance of credit."

Effective date.
12 USC 1464

note.
National Credit Union Central Liquidity Facility Act.

Short title.
12 USC 1751 note.

12 USC 1795.

12 USC 1795a.

"ESTABLISHMENT OF THE NATIONAL CREDIT UNION ADMINISTRATION
CENTRAL LIQUIDITY FACILITY

12 USC 1795b.

"SEC. 303. There is hereby created the National Credit Union Administration Central Liquidity Facility. The Central Liquidity Facility shall exist within the National Credit Union Administration and be managed by the Administrator. The United States district court shall have original jurisdiction over any case to which the Administrator on behalf of the Facility is a party, without regard to the amount in controversy.

"MEMBERSHIP

12 USC 1795c.

"SEC. 304. (a) A credit union primarily serving natural persons may be a Regular member of the Facility by subscribing to the capital stock of the Facility in an amount not less than one-half of 1 per centum of the credit union's paid-in and unimpaired capital and surplus.

"(b) A credit union or group of credit unions, primarily serving other credit unions, may be an Agent member of the Facility by—

"(1) obtaining the approval of the Administrator;

"(2) subscribing to the capital stock of the Facility in an amount not less than one-half of 1 per centum of the paid-in and unimpaired capital and surplus of all those credit unions which primarily serve natural persons, which are members of such credit union or of any credit union comprising such credit union group, and which are not regular members;

"(3) agreeing to comply with rules and regulations the Administrator shall prescribe with respect to, but not limited to, management quality, asset and liability safety and soundness, internal operating and control practices and procedures, and participation of natural persons in the affairs or such credit union or credit union group; and

"(4) agreeing to submit to the supervision of the Administrator which shall include, but not be limited to, reporting requirements and periodic unrestricted examinations.

"(c) Stock subscriptions provided for in subsections (a) and (b) (2) of this section shall be—

"(1) based on an arithmetic average of paid-in capital and surplus over the six months preceding application and membership; and

"(2) adjusted at the close of each calendar year in accordance with an arithmetic average of paid-in capital and surplus over a period determined by the Administrator.

"(d) An Agent member of the Facility shall perform for its member credit unions those functions required by the Administrator to carry out this subchapter.

"(e) (1) A member of the Facility whose capital stock subscription constitutes less than 5 per centum of such stock outstanding, may withdraw from membership in the Facility six months after notifying the Administrator of its intention to do so.

"(2) A member of the Facility whose capital stock subscription constitutes 5 per centum or more of such stock outstanding, may withdraw from membership in the Facility twenty-four months after notifying the Administrator of its intention to do so.

"(3) The Administrator may terminate membership in the Facility if, after opportunity for a hearing, the Administrator determines a member has failed to comply with any provision of this subchapter or regulation issued pursuant thereto.

Rules and
regulations.

Stock
subscriptions.

Membership
termination,
hearing
opportunity.

"CAPITAL STOCK

"SEC. 305. (a) As soon as practicable, the Administrator shall open books for subscriptions to the capital stock of the Facility. The minimum subscription shall be \$50.

Subscriptions.
12 USC 1795d.

"(b) The capital stock of the Facility—

"(1) shall be divided into shares having a par value of \$50 each;

"(2) shall be paid for with cash or with securities of the United States or any Agency thereof in accordance with requirements the Administrator may impose;

"(3) shall share in dividend distributions without preference and at rates to be determined by the Administrator; and

"(4) shall not be transferred or hypothecated except as provided for herein.

"(c) When circumstances require that all or a portion of a member's stock be redeemed by the Facility, the Administrator shall pay an amount equal to what the member originally paid for the stock less any amount owed by the member to the Facility.

"(d) At least one-half of the payment for the subscription amount required for membership under section 304 of this subchapter shall be transferred to the Facility. The remainder may be held by the member on call of the Administrator and shall be invested in assets designated by the Administrator.

"(e) A credit union or credit union group that becomes a member of the Facility later than six months after the date the Administrator opens books for capital stock subscriptions, may not borrow or receive advances from the Facility without approval by the Administrator for a period of six months after becoming a member.

"EXTENSIONS OF CREDIT

"SEC. 306. (a) (1) A member may apply for an extension of credit from the Facility to meet its liquidity needs. The Administrator shall approve or deny any such application within five working days after receiving it. The Administrator shall not approve an application for credit the intent of which is to expand credit union portfolios.

Application.
12 USC 1795e.

"(2) The Administrator may advance funds to a member on terms and conditions prescribed by the Administrator after giving due consideration to creditworthiness.

"(3) The Administrator shall not advance funds for the benefit of a credit union whose share or deposit accounts are insured by a State share or deposit guaranty credit union, insurance corporation, or guaranty association, without consultation with the appropriate State share or deposit guaranty credit union, insurance corporation, or guaranty association.

"(b) The Secretary of the Treasury is authorized to lend to the Facility up to \$500,000,000, in the event the Administrator certifies to the Secretary that the Facility does not have sufficient funds to meet liquidity needs of credit unions. Any such loan shall bear an interest rate not greater than one-eighth of 1 per centum above the current average market yield on outstanding obligations of the United States with remaining time to maturity comparable to the maturity of such loan. The authority of the Secretary to lend under this subsection shall be limited to such extent or in such amounts as are provided in advance in appropriation Acts.

Certification.

"POWERS OF THE ADMINISTRATOR

12 USC 1795f.

"SEC. 307. The Administrator on behalf of the Facility shall have the ability to—

Rules and
regulations.

"(1) prescribe the manner in which the general business of the Facility shall be conducted;

"(2) prescribe rules and regulations to carry out this subchapter;

"(3) determine the expenditures incurred by the Administration to carry out this subchapter, and the expenditures incurred by the Facility to carry out subchapters I and II of this chapter, and annually assess the Facility and the Administration accordingly;

"(4) borrow from—

"(A) any source, provided that the total face value of these obligations shall not exceed twelve times the subscribed capital stock and surplus of the Facility; and

"(B) the National Credit Union Share Insurance Fund up to \$500,000 to defray initial organizational and operating expenses of the Facility at such rates and terms consistent with prevailing market conditions;

"(5) guarantee performance of the terms of any financial obligation of a member but only when such obligation bears a clear and conspicuous notice on its face that only the resources of the Facility underlie such guarantee;

"(6) purchase any asset from a member with the member's endorsement;

"(7) invest in obligations of the United States or any agency thereof;

"(8) make deposits in federally insured financial institutions and make investments in shares or deposits of credit unions;

"(9) sue and be sued, complain, and defend, in any State or Federal court;

"(10) adopt a seal;

"(11) pursue to final disposition by way of compromise or otherwise claims both for and against the United States (other than tort claims, claims involving administrative expenses, and claims in excess of \$5,000 arising out of contracts for construction, repairs, and the purchase of supplies and materials) which are not in litigation and have not been referred to the Department of Justice;

"(12) appoint officers and employees to assist in carrying out this subchapter, who shall be appointed subject to the provisions of title 5, United States Code;

"(13) conduct business, carry on operations, have offices, and exercise the powers granted by this subchapter in any State or territory;

"(14) lease, purchase, or otherwise acquire and own, hold, improve, use, or otherwise deal in and with property, real, personal, or mixed, or any interest therein, wherever situated;

Contracts.

"(15) enter into contracts with any public or private organization, partnership, corporation, or individual, to the extent or in such amounts as are provided in advance in appropriation Acts; and

"(16) advance funds on a fully secured basis to a State credit union share or deposit insurance corporation, guaranty credit union, or guaranty association. Such advance shall not exceed twelve months in maturity, shall be relent at an interest rate not exceeding that imposed by the Facility, and shall not be renewable.

"DEPOSITORIES, CUSTODIANS, AND FISCAL AGENTS

"SEC. 308. The Federal Reserve Banks are authorized to act as depositories, custodians and/or fiscal agents for the Central Liquidity Facility in the general performance of its powers conferred by this subchapter. Each Federal Reserve Bank when designated by the Administrator as fiscal agent for the Central Liquidity Facility, shall be entitled to be reimbursed for all expenses incurred as such fiscal agent.

12 USC 1795g.

"AUDIT OF FINANCIAL TRANSACTIONS

"SEC. 309. The Comptroller General of the United States shall audit the Central Liquidity Facility under such rules and regulations as the Comptroller may prescribe.

Rules and regulations.

12 USC 1795h.

"ANNUAL REPORT

"SEC. 310. The annual report required by section 102(e) shall include a full report of the activities of the Facility."

12 USC 1795i.

SEC. 1803. (a) Paragraph (6) of section 107 of the Federal Credit Union Act (12 U.S.C. 1757) is amended by inserting "from the Central Liquidity Facility," after "prescribed,".

(b) Paragraph (7) of such section is amended by striking the word "and" preceding "(H)", and adding at the end thereof the following: "and (J) in the capital stock of the National Credit Union Central Liquidity Facility;".

(c) Paragraph (9) of such section is amended by inserting "except as authorized by the Administrator in carrying out the provisions of subchapter III," after "exceeding".

SEC. 1804. Section 709 of title 18 of the United States Code is amended by striking the fourth paragraph and inserting in lieu thereof the following new paragraph:

"Whoever, other than a bona fide organization or association of Federal or State credit unions or except as permitted by the laws of the United States, uses as a firm or business name or transacts business using the words 'National Credit Union', 'National Credit Union Administration', 'National Credit Union Board', 'National Credit Union Share Insurance Fund', 'Share Insurance', or 'Central Liquidity Facility', or the letters 'NCUA', 'NCUSIF', or 'CLF', or any other combination or variation of those words or letters alone or with other words or letters, or any device or symbol or other means, reasonably calculated to convey the false impression that such name or business has some connection with, or authorization from, the National Credit Union Administration, the Government of the United States, or any agency thereof, which does not in fact exist, or falsely advertises or otherwise represents by any device whatsoever that his or its business, product, or service has been in any way endorsed, authorized, or approved by the National Credit Union Administration, the Government of the United States, or any agency thereof, or falsely advertises or otherwise represents by any device whatsoever that his or its deposit liabilities, obligations, certificates, shares, or accounts are insured under the Federal Credit Union Act or by the United States or any instrumentality thereof, or being an insured credit union as defined in that Act falsely advertises or otherwise represents by any device whatsoever the extent to which or the manner in which share holders in such credit union are insured under such Act; or"

False advertising.

SEC. 1805. Section 201 of the Government Corporation Control Act (31 U.S.C. 856) is amended—

- (1) by striking out “and” before “(8)”; and
- (2) by inserting before the period at the end thereof a comma and the following: “and (9) the National Credit Union Administration Central Liquidity Facility”.

SEC. 1806. This title shall take effect on October 1, 1979.

Effective date.
12 USC 1795
note.
Export-Import
Bank Act
Amendments of
1978.
Short title.
12 USC 635 note.

TITLE XIX—EXPORT-IMPORT BANK ACT AMENDMENTS

SEC. 1901. That this title may be cited as the “Export-Import Bank Act Amendments of 1978”.

PRENOTIFICATION

12 USC 635.

SEC. 1902. Section 2(b)(3) of the Export-Import Bank Act of 1945 is amended—

(1) by striking out “No” in the first sentence and inserting in lieu thereof “Except as provided by the fourth sentence of this paragraph, no”;

(2) by striking out “\$60,000,000” in the first sentence and inserting in lieu thereof “\$100,000,000”; and

(3) by adding at the end thereof the following: “If the Bank submits a statement to the Congress under this paragraph and either House of Congress is in an adjournment for a period which continues for at least ten days after the date of submission of the statement, then any such loan or guarantee or combination thereof may, subject to the second sentence of this paragraph, be finally approved by the Board of Directors upon the termination of the twenty-five-day period referred to in the first sentence of this paragraph or upon the termination of a thirty-five-calendar-day period (which commences upon the date of submission of the statement), whichever occurs sooner.”.

FRACTIONAL CHARGES

12 USC 635.

SEC. 1903. Section 2(c)(1) of the Export-Import Bank Act of 1945 is amended by striking out “\$20,000,000,000” and inserting in lieu thereof “\$25,000,000,000”.

DENIAL OF EXPORT APPLICATIONS

12 USC 635.

SEC. 1904. Section 2(b)(1)(B) of the Export-Import Bank Act of 1945 is amended by striking out the remainder of the paragraph after “and employment in the United States,” and inserting in lieu thereof “and shall give particular emphasis to the objective of strengthening the competitive position of United States exporters and thereby of expanding total United States exports. Only in cases where the President determines that such action would be in the national interest where such action would clearly and importantly advance United States policy in such areas as international terrorism, nuclear proliferation, environmental protection and human rights, should the Export-Import Bank deny applications for credit for nonfinancial or noncommercial considerations”.

AUTHORIZATION

SEC. 1905. Section 7(a) of the Export-Import Bank Act of 1945 is amended by striking out "\$25,000,000,000" and inserting in lieu thereof "\$40,000,000,000". 12 USC 635e.

EXTENSION OF AUTHORITY

SEC. 1906. Section 8 of the Export-Import Bank Act of 1945 is amended by striking out "December 31, 1978" and inserting in lieu thereof "September 30, 1983". 12 USC 635f.

ENERGY POLICY

SEC. 1907. (a) Section 2(b)(1) of the Export-Import Bank Act of 1945 is amended by adding at the end thereof the following: 12 USC 635.

"(C) Consistent with the policy of section 501 of the Nuclear Non-Proliferation Act of 1978 and section 119 of the Foreign Assistance Act of 1961, the Board of Directors shall name an officer of the Bank whose duties shall include advising the President of the Bank on ways of promoting the export of goods and services to be used in the development, production, and distribution of nonnuclear renewable energy resources, disseminating information concerning export opportunities and the availability of Bank support for such activities, and acting as a liaison between the Bank and the Department of Commerce and other appropriate departments and agencies." *Ante*, p. 148.
22 USC 2151q.

(b) Section 9(b) of such Act is amended by adding at the end thereof the following: "In addition, the Bank shall include in the report a description of specific activities and programs undertaken by it to achieve the policy of section 501 of the Nuclear Non-Proliferation Act of 1978, and section 119 of the Foreign Assistance Act of 1961, as required by section 2(b)(1)(C) of this Act." 12 USC 635g.
Supra.

EXPORT CREDIT COMPETITION

SEC. 1908. (a) The President is authorized and requested to begin negotiations at the ministerial level with other major exporting countries to end predatory export financing programs and other forms of export subsidies, including mixed credits, in third country markets as well as within the United States. The President shall report to the Congress prior to January 15, 1979, on progress toward meeting the goals of this section. *Negotiations.*
12 USC 635a-1.

(b) The Export-Import Bank of the United States is authorized to provide guarantees, insurance, and extensions of credit at rates and terms and other conditions which are, in the opinion of the Board of Directors of the Bank, competitive with those provided by the government-supported export credit instrumentalities of other nations. *Report to Congress.*

SEC. 1909. Section 2(b) of the Export-Import Bank Act of 1945 is amended by inserting at the end thereof the following new paragraph: 12 USC 635.

"(7) The Bank shall supplement but not compete with private capital and the programs of the Commodity Credit Corporation to ensure that adequate financing will be made available to assist the export of agricultural commodities, except that, consistent with section 2(b)(1)(A) of this Act, the Bank in assisting any such export transactions shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in Government-

supported export financing, and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce Government subsidized export financing. In order to carry out the purposes of this subsection, the Bank shall consult with the Secretary of Agriculture and where the Secretary of Agriculture has recommended against Bank financing of the export of a particular agricultural commodity, shall take such recommendation into consideration in determining whether to provide credit or other assistance for any export sale of such commodity, and shall consider the importance of agricultural commodity exports to the United States export market and the nation's balance of trade in deciding whether or not to provide assistance under this subsection. The Bank shall include in the report to Congress under section 9(a) of this Act a description of the measures undertaken by it pursuant to this subsection."

12 USC 635.

Sec. 1910. Section 2(b)(1)(A) of the Export-Import Bank Act of 1945 is amended by striking the words "goods and related services" in the first sentence and inserting in lieu thereof "manufactured goods, agricultural products, and other goods and services".

Regulations.

12 USC 635a-2.

Sec. 1911. The Bank shall implement such regulations and procedures as may be appropriate to insure that full consideration is given to the extent to which any loan or financial guarantee is likely to have an adverse effect on industries, including agriculture, and employment in the United States, either by reducing demand for goods produced in the United States or by increasing imports to the United States. To carry out the purposes of this subsection, the Bank shall request, and the United States International Trade Commission shall furnish, a report assessing the impact of the Bank's activities on industries and employment in the United States. Such report shall include an assessment of previous loans or financial guarantees and shall provide recommendations concerning general areas which may adversely affect domestic industries, including agriculture, and employment.

Inquiry.

12 USC 635a-3.

Sec. 1912. (a)(1) Upon receipt of information that foreign sales to the United States are being offered involving foreign official export credits which exceed limits under existing standstills, minutes, or practices to which the United States and other major exporting countries have agreed, the Secretary of the Treasury shall immediately conduct an inquiry to determine whether "noncompetitive financing" is being offered.

(2) If the Secretary determines that such foreign "noncompetitive" financing is being offered, he shall request the immediate withdrawal of such financing by the foreign official export credit agency involved.

Notification.

(3) If the offer is not withdrawn or if there is no immediate response to the withdrawal request, the Secretary of the Treasury shall notify the country offering such financing and all parties to the proposed transaction that the Eximbank may be authorized to provide competing United States sellers with financing to match that available through the foreign official export financing entity.

(b) The Secretary of the Treasury shall only issue such authorization to the Bank to provide guarantees, insurance and credits to competing United States sellers, if he determines that:

(1) the availability of foreign official noncompetitive financing is likely to be a determining factor in the sale, and

(2) the foreign noncompetitive financing has not been withdrawn on the date the Bank is authorized to provide competitive financing.

(c) Upon receipt of authorization by the Secretary of the Treasury, the Export-Import Bank may provide financing to match that offered by the foreign official export credit entity: *Provided, however*, That loans, guarantees and insurance provided under this authority shall conform to all provisions of the Export-Import Bank Act of 1945, as amended.

SEC. 1913. No environmental rule, regulation, or procedure shall become effective with regard to exports subject to the provisions of 22 U.S.C. 3201 et seq., the Nuclear Non-Proliferation Act of 1978, until such time as the President has reported to Congress on the progress achieved pursuant to section 407 of the Act (42 U.S.C. 2153e) entitled "Protection of the Environment" which requires the President to seek to provide, in agreements required under the Act, for cooperation between the parties in protecting the environment from radioactive, chemical or thermal contaminations arising from peaceful nuclear activities.

42 USC 2153e-1.

SEC. 1914. Section 7(a) of the Export-Import Bank Act of 1945 is amended by adding at the end thereof the following: "All spending authority provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts."

12 USC 635e.

SEC. 1915. Section 2(b) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)) is amended by inserting at the end thereof the following new paragraph:

"(8) In no event shall the Bank guarantee, insure, or extend credit or participate in the extension of credit (a) in support of any export which would contribute to enabling the Government of the Republic of South Africa to maintain or enforce apartheid; (b) in support of any export to the Government of the Republic of South Africa or its agencies unless the President determines that significant progress toward the elimination of apartheid has been made and transmits to the Congress a statement describing and explaining that determination; or (c) in support of any export to other purchasers in the Republic of South Africa unless the United States Secretary of State certifies that the purchaser has endorsed and has proceeded toward the implementation of the following principles: nonsegregation of the races in all work facilities; equal and fair employment for all employees; equal pay for equal work for all employees; initiation and development of training programs to prepare nonwhite South Africans for supervisory, administrative, clerical, and technical jobs; increasing the number of nonwhites in management and supervisory positions; a willingness to engage in collective bargaining with labor unions; and improving the quality of life for employees in such areas as housing, transportation, schooling, recreation, and health facilities."

Government of the Republic of South Africa support, extension of credit prohibition.

SEC. 1916. Section 2(b) (1) (B) of the Export-Import Bank Act of 1945 is amended by inserting after "in matters affecting small business concerns;" the following: "that the Bank should give emphasis to assisting new and small business entrants in the agricultural export market, and shall, in cooperation with other relevant Government agencies, including the Commodity Credit Corporation, develop a program of education to increase awareness of export opportunities among small agribusinesses and cooperatives;"

SEC. 1917. This title shall take effect upon enactment.

Effective date.
12 USC 635
note.

TITLE XX—ELECTRONIC FUND TRANSFERS

SEC. 2001. The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end thereof the following new title:

Electronic Fund
Transfer Act.
15 USC 1601
note.

"TITLE IX—ELECTRONIC FUND TRANSFERS

"§ 901. Short title

"This title may be cited as the 'Electronic Fund Transfer Act'.

15 USC 1693.

"§ 902. Findings and purpose

"(a) The Congress finds that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers. However, due to the unique characteristics of such systems, the application of existing consumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.

"(b) It is the purpose of this title to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of this title, however, is the provision of individual consumer rights.

15 USC 1693a.

"§ 903. Definitions

"As used in this title—

"(1) the term 'accepted card or other means of access' means a card, code, or other means of access to a consumer's account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

"(2) the term 'account' means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 103(i) of this Act), as described in regulations of the Board, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement;

"(3) the term 'Board' means the Board of Governors of the Federal Reserve System;

"(4) the term 'business day' means any day on which the offices of the consumer's financial institution involved in an electronic fund transfer are open to the public for carrying on substantially all of its business functions;

"(5) the term 'consumer' means a natural person;

"(6) the term 'electronic fund transfer' means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions,

direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include—

“(A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer’s account;

“(B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;

“(C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;

“(D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer’s demand deposit account; or

“(E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated;

as determined under regulations of the Board;

“(7) the term ‘electronic terminal’ means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines;

“(8) the term ‘financial institution’ means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer;

“(9) the term ‘preauthorized electronic fund transfer’ means an electronic fund transfer authorized in advance to recur at substantially regular intervals;

“(10) the term ‘State’ means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing; and

“(11) the term ‘unauthorized electronic fund transfer’ means an electronic fund transfer from a consumer’s account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer’s account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized, (B) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (C) which constitutes an error committed by a financial institution.

15 USC 1693b.

“§ 904. Regulations

“(a) The Board shall prescribe regulations to carry out the purposes of this title. In prescribing such regulations, the Board shall:

“(1) consult with the other agencies referred to in section 917 and take into account, and allow for, the continuing evolution of electronic banking services and the technology utilized in such services,

“(2) prepare an analysis of economic impact which considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers, including the extent to which additional documentation, reports, records, or other paper work would be required, and the effects upon competition in the provision of electronic banking services among large and small financial institutions and the availability of such services to different classes of consumers, particularly low income consumers,

“(3) to the extent practicable, the Board shall demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions, and

“(4) any proposed regulations and accompanying analyses shall be sent promptly to Congress by the Board.

“(b) The Board shall issue model clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of section 905 and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers by utilizing readily understandable language. Such model clauses shall be adopted after notice duly given in the Federal Register and opportunity for public comment in accordance with section 553 of title 5, United States Code. With respect to the disclosures required by section 905(a) (3) and (4), the Board shall take account of variations in the services and charges under different electronic fund transfer systems and, as appropriate, shall issue alternative model clauses for disclosure of these differing account terms.

“(c) Regulations prescribed hereunder may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. The Board shall by regulation modify the requirements imposed by this title on small financial institutions if the Board determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of this title.

“(d) In the event that electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by this title are made applicable to such persons and services.

Notice in Federal Register.

15 USC 1693c.

“§ 905. Terms and conditions of transfers

“(a) The terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Board. Such disclosures shall be in readily understandable language and shall include, to the extent applicable—

“(1) the consumer's liability for unauthorized electronic fund transfers and, at the financial institution's option, notice of the

advisability of prompt reporting of any loss, theft, or unauthorized use of a card, code, or other means of access;

“(2) the telephone number and address of the person or office to be notified in the event the consumer believes that an unauthorized electronic fund transfer has been or may be effected;

“(3) the type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of an electronic fund transfer system, as determined by the Board;

“(4) any charges for electronic fund transfers or for the right to make such transfers;

“(5) the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure to initiate such a stop payment order;

“(6) the consumer's right to receive documentation of electronic fund transfers under section 906;

“(7) a summary, in a form prescribed by regulations of the Board, of the error resolution provisions of section 908 and the consumer's rights thereunder. The financial institution shall thereafter transmit such summary at least once per calendar year;

“(8) the financial institution's liability to the consumer under section 910; and

“(9) under what circumstances the financial institution will in the ordinary course of business disclose information concerning the consumer's account to third persons.

“(b) A financial institution shall notify a consumer in writing at least twenty-one days prior to the effective date of any change in any term or condition of the consumer's account required to be disclosed under subsection (a) if such change would result in greater cost or liability for such consumer or decreased access to the consumer's account. A financial institution may, however, implement a change in the terms or conditions of an account without prior notice when such change is immediately necessary to maintain or restore the security of an electronic fund transfer system or a consumer's account. Subject to subsection (a)(3), the Board shall require subsequent notification if such a change is made permanent.

Notification.

“(c) For any account of a consumer made accessible to electronic fund transfers prior to the effective date of this title, the information required to be disclosed to the consumer under subsection (a) shall be disclosed not later than the earlier of—

“(1) the first periodic statement required by section 906(c) after the effective date of this title; or

“(2) thirty days after the effective date of this title.

“§ 906. Documentation of transfers; periodic statements

15 USC 1693d.

“(a) For each electronic fund transfer initiated by a consumer from an electronic terminal, the financial institution holding such consumer's account shall, directly or indirectly, at the time the transfer is initiated, make available to the consumer written documentation of such transfer. The documentation shall clearly set forth to the extent applicable—

“(1) the amount involved and date the transfer is initiated;

“(2) the type of transfer;

“(3) the identity of the consumer's account with the financial institution from which or to which funds are transferred;

"(4) the identity of any third party to whom or from whom funds are transferred; and

"(5) the location or identification of the electronic terminal involved.

"(b) For a consumer's account which is scheduled to be credited by a preauthorized electronic fund transfer from the same payor at least once in each successive sixty-day period, except where the payor provides positive notice of the transfer to the consumer, the financial institution shall elect to provide promptly either positive notice to the consumer when the credit is made as scheduled, or negative notice to the consumer when the credit is not made as scheduled, in accordance with regulations of the Board. The means of notice elected shall be disclosed to the consumer in accordance with section 905.

"(c) A financial institution shall provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an electronic fund transfer. Except as provided in subsections (d) and (e), such statement shall be provided at least monthly for each monthly or shorter cycle in which an electronic fund transfer affecting the account has occurred, or every three months, whichever is more frequent. The statement, which may include information regarding transactions other than electronic fund transfers, shall clearly set forth—

"(1) with regard to each electronic fund transfer during the period, the information described in subsection (a), which may be provided on an accompanying document;

"(2) the amount of any fee or charge assessed by the financial institution during the period for electronic fund transfers or for account maintenance;

"(3) the balances in the consumer's account at the beginning of the period and at the close of the period; and

"(4) the address and telephone number to be used by the financial institution for the purpose of receiving any statement inquiry or notice of account error from the consumer. Such address and telephone number shall be preceded by the caption 'Direct Inquiries To:' or other similar language indicating that the address and number are to be used for such inquiries or notices.

"(d) In the case of a consumer's passbook account which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, a financial institution may, in lieu of complying with the requirements of subsection (c), upon presentation of the passbook provide the consumer in writing with the amount and date of each such transfer involving the account since the passbook was last presented.

"(e) In the case of a consumer's account, other than a passbook account, which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, the financial institution may provide a periodic statement on a quarterly basis which otherwise complies with the requirements of subsection (c).

"(f) In any action involving a consumer, any documentation required by this section to be given to the consumer which indicates that an electronic fund transfer was made to another person shall be admissible as evidence of such transfer and shall constitute prima facie proof that such transfer was made.

“§ 907. Preauthorized transfers

15 USC 1693e.

“(a) A preauthorized electronic fund transfer from a consumer’s account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made. A consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial institution orally or in writing at any time up to three business days preceding the scheduled date of such transfer. The financial institution may require written confirmation to be provided to it within fourteen days of an oral notification if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent.

“(b) In the case of preauthorized transfers from a consumer’s account to the same person which may vary in amount, the financial institution or designated payee shall, prior to each transfer, provide reasonable advance notice to the consumer, in accordance with regulations of the Board, of the amount to be transferred and the scheduled date of the transfer.

“§ 908. Error resolution

15 USC 1693f.

“(a) If a financial institution, within sixty days after having transmitted to a consumer documentation pursuant to section 906 (a), (c), or (d) or notification pursuant to section 906(b), receives oral or written notice in which the consumer—

“(1) sets forth or otherwise enables the financial institution to identify the name and account number of the consumer;

“(2) indicates the consumer’s belief that the documentation, or, in the case of notification pursuant to section 906(b), the consumer’s account, contains an error and the amount of such error; and

“(3) sets forth the reasons for the consumer’s belief (where applicable) that an error has occurred, the financial institution shall investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days. The financial institution may require written confirmation to be provided to it within ten business days of an oral notification of error if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent. A financial institution which requires written confirmation in accordance with the previous sentence need not provisionally recredit a consumer’s account in accordance with subsection (c), nor shall the financial institution be liable under subsection (e) if the written confirmation is not received within the ten-day period referred to in the previous sentence.

“(b) If the financial institution determines that an error did occur, it shall promptly, but in no event more than one business day after such determination, correct the error, subject to section 909, including the crediting of interest where applicable.

“(c) If a financial institution receives notice of an error in the manner and within the time period specified in subsection (a), it may, in lieu of the requirements of subsections (a) and (b), within ten business days after receiving such notice provisionally recredit the consumer’s account for the amount alleged to be in error, subject to section 909, including interest where applicable, pending the conclusion of its investigation and its determination of whether an error has occurred. Such investigation shall be concluded not later than

Investigation.

forty-five days after receipt of notice of the error. During the pendency of the investigation, the consumer shall have full use of the funds provisionally recredited.

“(d) If the financial institution determines after its investigation pursuant to subsection (a) or (c) that an error did not occur, it shall deliver or mail to the consumer an explanation of its findings within 3 business days after the conclusion of its investigation, and upon request of the consumer promptly deliver or mail to the consumer reproductions of all documents which the financial institution relied on to conclude that such error did not occur. The financial institution shall include notice of the right to request reproductions with the explanation of its findings.

“(e) If in any action under section 915, the court finds that—

“(1) the financial institution did not provisionally recredit a consumer's account within the ten-day period specified in subsection (c), and the financial institution (A) did not make a good faith investigation of the alleged error, or (B) did not have a reasonable basis for believing that the consumer's account was not in error; or

“(2) the financial institution knowingly and willfully concluded that the consumer's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation, then the consumer shall be entitled to treble damages determined under section 915 (a) (1).

“(f) For the purpose of this section, an error consists of—

“(1) an unauthorized electronic fund transfer;

“(2) an incorrect electronic fund transfer from or to the consumer's account;

“(3) the omission from a periodic statement of an electronic fund transfer affecting the consumer's account which should have been included;

“(4) a computational error by the financial institution;

“(5) the consumer's receipt of an incorrect amount of money from an electronic terminal;

“(6) a consumer's request for additional information or clarification concerning an electronic fund transfer or any documentation required by this title; or

“(7) any other error described in regulations of the Board.

15 USC 1693g.

“§ 909. Consumer liability for unauthorized transfers

“(a) A consumer shall be liable for any unauthorized electronic fund transfer involving the account of such consumer only if the card or other means of access utilized for such transfer was an accepted card or other means of access and if the issuer of such card, code, or other means of access has provided a means whereby the user of such card, code, or other means of access can be identified as the person authorized to use it, such as by signature, photograph, or fingerprint or by electronic or mechanical confirmation. In no event, however, shall a consumer's liability for an unauthorized transfer exceed the lesser of—

“(1) \$50; or

“(2) the amount of money or value of property or services obtained in such unauthorized electronic fund transfer prior to the time the financial institution is notified of, or otherwise becomes aware of, circumstances which lead to the reasonable belief that an unauthorized electronic fund transfer involving the

consumer's account has been or may be effected. Notice under this paragraph is sufficient when such steps have been taken as may be reasonably required in the ordinary course of business to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution does in fact receive such information.

Notwithstanding the foregoing, reimbursement need not be made to the consumer for losses the financial institution establishes would not have occurred but for the failure of the consumer to report within sixty days of transmittal of the statement (or in extenuating circumstances such as extended travel or hospitalization, within a reasonable time under the circumstances) any unauthorized electronic fund transfer or account error which appears on the periodic statement provided to the consumer under section 906. In addition, reimbursement need not be made to the consumer for losses which the financial institution establishes would not have occurred but for the failure of the consumer to report any loss or theft of a card or other means of access within two business days after the consumer learns of the loss or theft (or in extenuating circumstances such as extended travel or hospitalization, within a longer period which is reasonable under the circumstances), but the consumer's liability under this subsection in any such case may not exceed a total of \$500, or the amount of unauthorized electronic fund transfers which occur following the close of two business days (or such longer period) after the consumer learns of the loss or theft but prior to notice to the financial institution under this subsection, whichever is less.

“(b) In any action which involves a consumer's liability for an unauthorized electronic fund transfer, the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized or, if the electronic fund transfer was unauthorized, then the burden of proof is upon the financial institution to establish that the conditions of liability set forth in subsection (a) have been met, and, if the transfer was initiated after the effective date of section 905, that the disclosures required to be made to the consumer under section 905 (a) (1) and (2) were in fact made in accordance with such section.

“(c) In the event of a transaction which involves both an unauthorized electronic fund transfer and an extension of credit as defined in section 103(e) of this Act pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn, the limitation on the consumer's liability for such transaction shall be determined solely in accordance with this section.

15 USC 1602.

“(d) Nothing in this section imposes liability upon a consumer for an unauthorized electronic fund transfer in excess of his liability for such a transfer under other applicable law or under any agreement with the consumer's financial institution.

“(e) Except as provided in this section, a consumer incurs no liability from an unauthorized electronic fund transfer.

“§ 910. Liability of financial institutions

15 USC 1693h.

“(a) Subject to subsections (b) and (c), a financial institution shall be liable to a consumer for all damages proximately caused by—

“(1) the financial institution's failure to make an electronic fund transfer, in accordance with the terms and conditions of an account, in the correct amount or in a timely manner when properly instructed to do so by the consumer, except where—

“(A) the consumer's account has insufficient funds;

“(B) the funds are subject to legal process or other encumbrance restricting such transfer;

“(C) such transfer would exceed an established credit limit;

“(D) an electronic terminal has insufficient cash to complete the transaction; or

“(E) as otherwise provided in regulations of the Board;

“(2) the financial institution’s failure to make an electronic fund transfer due to insufficient funds when the financial institution failed to credit, in accordance with the terms and conditions of an account, a deposit of funds to the consumer’s account which would have provided sufficient funds to make the transfer, and

“(3) the financial institution’s failure to stop payment of a preauthorized transfer from a consumer’s account when instructed to do so in accordance with the terms and conditions of the account.

“(b) A financial institution shall not be liable under subsection (a) (1) or (2) if the financial institution shows by a preponderance of the evidence that its action or failure to act resulted from—

“(1) an act of God or other circumstance beyond its control, that it exercised reasonable care to prevent such an occurrence, and that it exercised such diligence as the circumstances required; or

“(2) a technical malfunction which was known to the consumer at the time he attempted to initiate an electronic fund transfer or, in the case of a preauthorized transfer, at the time such transfer should have occurred.

“(c) In the case of a failure described in subsection (a) which was not intentional and which resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, the financial institution shall be liable for actual damages proved.

15 USC 1693i.

“§ 911. Issuance of cards or other means of access

“(a) No person may issue to a consumer any card, code, or other means of access to such consumer’s account for the purpose of initiating an electronic fund transfer other than—

“(1) in response to a request or application therefor; or

“(2) as a renewal of, or in substitution for, an accepted card, code, or other means of access, whether issued by the initial issuer or a successor.

“(b) Notwithstanding the provisions of subsection (a), a person may distribute to a consumer on an unsolicited basis a card, code, or other means of access for use in initiating an electronic fund transfer from such consumer’s account, if—

“(1) such card, code, or other means of access is not validated;

“(2) such distribution is accompanied by a complete disclosure, in accordance with section 905, of the consumer’s rights and liabilities which will apply if such card, code, or other means of access is validated;

“(3) such distribution is accompanied by a clear explanation, in accordance with regulations of the Board, that such card, code, or other means of access is not validated and how the consumer may dispose of such code, card, or other means of access if validation is not desired; and

“(4) such card, code, or other means of access is validated only in response to a request or application from the consumer, upon verification of the consumer’s identity.

“(c) For the purpose of subsection (b), a card, code, or other means of access is validated when it may be used to initiate an electronic fund transfer.

“§ 912. Suspension of obligations

15 USC 1693j.

“If a system malfunction prevents the effectuation of an electronic fund transfer initiated by a consumer to another person, and such other person has agreed to accept payment by such means, the consumer’s obligation to the other person shall be suspended until the malfunction is corrected and the electronic fund transfer may be completed, unless such other person has subsequently, by written request, demanded payment by means other than an electronic fund transfer.

“§ 913. Compulsory use of electronic fund transfers

15 USC 1693k.

“No person may—

“(1) condition the extension of credit to a consumer on such consumer’s repayment by means of preauthorized electronic fund transfers; or

“(2) require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.

“§ 914. Waiver of rights

15 USC 1693l.

“No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this title. Nothing in this section prohibits, however, any writing or other agreement which grants to a consumer a more extensive right or remedy or greater protection than contained in this title or a waiver given in settlement of a dispute or action.

“§ 915. Civil liability

15 USC 1693m.

“(a) Except as otherwise provided by this section and section 910, any person who fails to comply with any provision of this title with respect to any consumer, except for an error resolved in accordance with section 908, is liable to such consumer in an amount equal to the sum of—

“(1) any actual damage sustained by such consumer as a result of such failure;

“(2) (A) in the case of an individual action, an amount not less than \$100 nor greater than \$1,000; or

“(B) in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of \$500,000 or 1 per centum of the net worth of the defendant; and

“(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney’s fee as determined by the court.

“(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

“(1) in any individual action under subsection (a) (2) (A), the frequency and persistence of noncompliance, the nature of such noncompliance, and the extent to which the noncompliance was intentional; or

“(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance, the nature of such noncompliance, the resources of the defendant, the number of persons adversely affected, and the extent to which the noncompliance was intentional.

“(c) Except as provided in section 910, a person may not be held liable in any action brought under this section for a violation of this title if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

“(d) No provision of this section or section 916 imposing any liability shall apply to—

“(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor; or

“(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Board,

notwithstanding that after such act, omission, or failure has occurred, such rule, regulation, approval, or model clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

“(e) A person has no liability under this section for any failure to comply with any requirement under this title if, prior to the institution of an action under this section, the person notifies the consumer concerned of the failure, complies with the requirements of this title, and makes an appropriate adjustment to the consumer's account and pays actual damages or, where applicable, damages in accordance with section 910.

“(f) On a finding by the court that an unsuccessful action under this section was brought in bad faith or for purposes of harassment, the court shall award to the defendant attorney's fees reasonable in relation to the work expended and costs.

“(g) Without regard to the amount in controversy, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

15 USC 1693n.

“§ 916. Criminal liability

“(a) Whoever knowingly and willfully—

“(1) gives false or inaccurate information or fails to provide information which he is required to disclose by this title or any regulation issued thereunder; or

“(2) otherwise fails to comply with any provision of this title; shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

“(b) Whoever—

“(1) knowingly, in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating \$1,000 or more; or

“(2) with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

“(3) with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

“(4) knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (A) within any one-year period has a value aggregating \$1,000 or more, (B) has moved in or is part of, or which constitutes interstate or foreign commerce, and (C) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

“(5) knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (A) within any one-year period have a value aggregating \$500 or more, and (B) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

“(6) in a transaction affecting interstate or foreign commerce, furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating \$1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

“(c) As used in this section, the term ‘debit instrument’ means a card, code, or other device, other than a check, draft, or similar paper instrument, by the use of which a person may initiate an electronic fund transfer.

“Debit instrument.”

“§ 917. Administrative enforcement

15 USC 1693o.

“(a) Compliance with the requirements imposed under this title shall be enforced under—

“(1) section 8 of the Federal Deposit Insurance Act, in the case of—

12 USC 1818.

“(A) national banks, by the Comptroller of the Currency;

“(B) member banks of the Federal Reserve System (other than national banks), by the Board;

“(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

“(2) section 5(d) of the Home Owners’ Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings

12 USC 1464.

12 USC 1730.

12 USC 1426,

1437.

and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

12 USC 1751.

“(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

49 USC 1301
note.

“(4) the Federal Aviation Act of 1958, by the Civil Aeronautics Board, with respect to any air carrier or foreign air carrier subject to that Act; and

15 USC 78a.

“(5) the Securities Exchange Act of 1934, by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act.

“(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

“(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

15 USC 41 *et seq.*

15 USC 1693p.

“§ 918. Reports to Congress

“(a) Not later than twelve months after the effective date of this title and at one-year intervals thereafter, the Board and the Attorney General shall, respectively, make reports to the Congress concerning the administration of their functions under this title, including such recommendations as the Board and the Attorney General, respectively, deem necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with this title is being achieved, and a summary of the enforcement actions taken under section 917 of this title. In such report, the Board shall particularly address the effects of this title on the costs and benefits to financial institutions and consumers, on competition, on the introduction of new technology, on the operations of financial institutions, and on the adequacy of consumer protection. The report of the Attorney General shall contain an analysis of the impact of this title on the operation, workload, and efficiency of the Federal courts.

“(b) In the exercise of its functions under this title, the Board may obtain upon request the views of any other Federal agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of persons subject to this title.

“§ 919. Relation to State laws

15 USC 1693q.

“This title does not annul, alter, or affect the laws of any State relating to electronic fund transfers, except to the extent that those laws are inconsistent with the provisions of this title, and then only to the extent of the inconsistency. A State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection afforded by this title. The Board shall, upon its own motion or upon the request of any financial institution, State, or other interested party, submitted in accordance with procedures prescribed in regulations of the Board, determine whether a State requirement is inconsistent or affords greater protection. If the Board determines that a State requirement is inconsistent, financial institutions shall incur no liability under the law of that State for a good faith failure to comply with that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This title does not extend the applicability of any such law to any class of persons or transactions to which it would not otherwise apply.

“§ 920. Exemption for State regulation

15 USC 1693r.

“The Board shall by regulation exempt from the requirements of this title any class of electronic fund transfers within any State if the Board determines that under the law of that State that class of electronic fund transfers is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

“§ 921. Effective date15 USC 1693
note.

“This title takes effect upon the expiration of eighteen months from the date of its enactment, except that sections 909 and 911 take effect upon the expiration of ninety days after the date of enactment.”.

TITLE XXI—EFFECTIVE DATE

Sec. 2101. Except as otherwise provided herein, this Act shall take effect upon the expiration of one hundred and twenty days after the date of its enactment.

12 USC 375b
note.

Approved November 10, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-1115 accompanying H.R. 12157, No. 95-1315 accompanying H.R. 13007, and No. 95-1383 accompanying H.R. 13471 all from (Comm. on Banking, Finance and Urban Affairs).

SENATE REPORTS: No. 95-323 accompanying S. 71, No. 95-844 accompanying S. 3077, No. 95-915 accompanying S. 3156, and No. 95-1273 accompanying S. 3499 all from (Comm. on Banking, Housing, and Urban Affairs) and No. 95-1039 accompanying S. 3077 (Comm. on Environmental and Public Works).

CONGRESSIONAL RECORD, Vol. 124 (1978):

July 27, H.R. 12157 considered and passed House.

Aug. 5, S. 71 considered and passed Senate.

Aug. 11, H.R. 13007 considered and passed House.

Oct. 11, considered and passed House.

Oct. 12, considered and passed Senate, amended.

Oct. 15, House concurred in Senate amendments with amendments; Senate concurred in House amendments.