cc: Mr. Harl
Mr. Cook
Mr. Sailor-Gen. Files
Legal Division ✓
Mr. Moroney

April 6, 1949

SPEECH BY JUDGE NORRIS C. BAKKE
Meeting of Supervising Examiners
Washington, D.C.

Re: **Banking Legislation**

On Monday the Chairman told you about the bill which would increase per diem to $10 a day and mileage reimbursement to 7¢ a mile (H. R. 3005) and about the important Reorganization bill (S. 526, H. R. 2361). The reorganization bill, as originally proposed, would have permitted the President to make any reorganization of the departments and agencies and submit it as one or more plans to the Congress. The plan would become law unless both Houses disapproved it within a short period, whereas under the ordinary legislative procedure either House may disapprove a legislative proposal. In the House a special provision was added requiring that any reorganization of the Board of Governors of the Federal Reserve System and three other agencies would have to be submitted separately. The Senate Committee has now added a provision permitting either House to disapprove any reorganization plan and has indicated that if that amendment is provided in the bill there would be no specific agency exemptions or any special plan provisions. As you are no doubt aware, the Army Engineers' Corps has undoubtedly made the most aggressive fight for exemption from the reorganization scheme. On April 4, the Senate Committee by a 5 to 4 vote rejected the plea of the Engineers for exemption in spite of the fact that Chairman McClellan argued in behalf of the amendment which would have exempted them. If the Senate bill is adopted, it would be of little aid in the reorganization, for the President without the bill can make reorganization proposals to Congress and if both Houses approve them, the reorganization could be effected by a law.

As you know, the staff of the Hoover Commission recommended that our functions be transferred to the Board of Governors of the Federal Reserve System. However, the Hoover Commission, with five of its twelve members dissenting, recommended that this Corporation's functions be transferred to the Treasury. Of course, no one would presume to guess what the ultimate results of the Hoover recommendations will be but I am venturing the guess that the present status of this Corporation will not be changed during the present administration, as far as its independent status is concerned.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

The National Bank Conversion bill, which passed the House last year, too late to receive consideration in the Senate, has again been introduced (S. 101, H.R. 1161). This bill contains, in addition to authority for national banks to become state banks, several amendments to our law which we consider particularly desirable. Section 5 would give this Corporation control over conversion, merger, consolidation and assumption transactions between insured banks and any noninsured banks or institutions. Our present control is limited to merger, consolidation and assumption transactions between insured and noninsured banks. It would also give this Corporation the necessary control to prevent capital and surplus diminution in such transactions between insured banks where the resulting, continuing or assuming bank is an insured nonmember state bank. Similar control on such transactions involving only insured banks is given to the Comptroller of the Currency and the Board of Governors of the Federal Reserve System over resulting, continuing or assuming banks under their respective supervision in cases not now provided for by existing law.

Section 6 provides for the automatic insurance and continuance of insured status of a new state bank resulting from the conversion of an insured national bank. This provision complements the present provision in our Act that a member national bank resulting from the conversion of an insured state bank continues as an insured bank. When the insured status is so continued, the bank obtains the benefit of the assessment paid by the predecessor bank for the current assessment period and an assessment need not be paid as in the case of a new insured bank under our law (12 U.S.C. 264(h)(4)). This automatic insurance is justified by the control of capital surplus provided in Section 5.

It may be of interest to you men to know that when this reciprocal conversion proposal was submitted to us by the American Bankers Association before its submission to Congress, we had on our desk a letter from Mr. Hopkins stating that something should be done about controlling capital diminution in merger and assumption transactions. That coincidence doubtless prompted us to take advantage of that favorable opportunity to get the bankers and state bank supervisors behind the proposal which we needed. It also explains how your ideas get into the law or at least into a bill with good possibilities.

Hearings on the national bank conversion bill have been postponed in the House on the objection of the Board of Governors of the Federal Reserve System that the bill would facilitate the movement of national banks away from the

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

Federal Reserve System because of any increase in reserves. They suggest that the bill be not enacted until its proposed authority to require supplementary reserves (in addition to state reserves) of all insured state banks has been adopted. The President in his Economic Report approved their supplementary reserve requirement proposal for nonmember state banks. In commenting on this to the Bureau of the Budget we pointed out that this was a serious threat to the dual banking system. Membership in the Federal Reserve System by state banks has always been voluntary. We pointed out that the proposed reserve requirement for nonmember state banks may be regarded as a step in the direction of compulsory reserves for all insured state banks. We pointed out that it might induce banks to abandon their insurance. We complained that it would reduce earning assets and that it was more desirable that bank income be maintained and possibly increased rather than curtailed. We suggested that cooperation on the part of state bank authorities might be more fully explored. We pointed out our doubts as to the existence or continuance of any strong inflationary pressures requiring additional reserves.

The Federal Reserve System has several other proposals which have not yet been introduced in Congress. One would reduce the capital requirements for state member banks and branches from the minimum capital requirements of national banks to the lower and varied requirements of the states. Congressman Crawford has again introduced his proposal for reducing the capital requirements for national banks and member state banks and their branches to the amount required in each state (H. R. 2019). The Board of Governors is also planning to introduce bank holding company proposals.

There have been several proposals to increase the amount of our insurance of deposits. One would increase it to $10,000 (H. R. 884) and another would increase it to $15,000 (S. 80). In our comments on this latter bill, which have not yet been approved by the Bureau of the Budget, we have concluded that it would be unwise at this time to increase insurance coverage because historical experience indicates that our surplus and income are low in relation to the potential liability in protecting deposits up to $5,000 and that the loss experience during the last 15 good years cannot be taken as typical. There appears to be little pressure for the increase of the amount of insurance coverage, as compared to the pressure that is building up for the reduction of assessments. No proposal has, as yet, been introduced in Congress but consideration is now being given by us to

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

changes in the assessment base which would do away with the present expensive bookkeeping in connection with float and outstanding drafts.

There are several employee compensation bills which would give a general increase of $500 to $600 a year and there is a possibility of changes in the Classification Act which would involve minor increases in pay. The top executive pay bill as approved by the Senate Committee (S. 494, H. R. 1245) would increase our Directors' pay from $15,000 to $16,000 and give the same pay to the Board of Governors of the Federal Reserve System and the Comptroller of the Currency.

Another bill to effect the recommendations of the Hoover Commission on the operation of the Executive Departments (S. 942, H. R. 2613) would permit the President to direct and control the exercise of any function of any agency (except quasi-judicial functions) including the time, manner and the extent of its exercise. Our Board of Directors has not yet expressed its views on this proposal.

Other proposals of interest are one for the insurance by this Corporation of share balances in credit unions (H. R. 1775), a bill providing for the disposal of unclaimed dividends and safe deposit contents received by this Corporation or the Comptroller of the Currency in the liquidation of national banks (S. 944), and a bill providing that the absorption of exchange and collection charges shall not be deemed the payment of interest on deposits (H. R. 494).

Last year we were required to give a lot of attention to legislative proposals by the Home Loan Bank Board relating to its Federal Savings and Loan system and its insurance corporation. We were also involved for a while with the problem of advertising by their member institutions and the national associations of their member institutions. Last session our Board successfully opposed their efforts to obtain authority for the Home Loan banks to borrow $1 billion from the Treasury. This authority would enable them to furnish additional funds to member institutions for relending and for repurchasing shares. However, in his budget message the President approved an authorization of the billion dollar loan with the provision that the Home Loan Bank Board have certain regulatory control over the member institutions in connection with reserves, real estate loans and borrowing for relending purposes. Disagreement on the extent of these regulatory con-

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

trols is, we understand, holding up these proposals in the Bureau of the Budget.

A bill providing for the retirement of Government capital in the Federal Savings and Loan Insurance Corporation, for a Treasury loan authorization of $750 million dollars to that insurance corporation and for a reduction of the premium rate on insured associations from 1/8 of 1% to 1/12 of 1% has been introduced (H. R. 1732). Another bill providing for the reciprocal conversion of mutual savings banks and federal savings and loan associations in states which permit mutuals to convert into federal savings and loan associations has also been introduced (H. R. 2559, S. 1175). No state now permits mutuals to so convert.

After conferences with the American Bankers Association and the Home Loan Bank Board, our Board determined to avoid involvement in the advertising difficulties of the insured banks and associations insured by the Federal Savings and Loan Insurance Corporation, except where misrepresentations were made concerning our insurance of deposits. It is our view, and we believe, it is the view of the American Bankers Association, that little will be done to correct the present representations of such savings and loan institutions until restrictive legislation is obtained requiring accurate information in advertisements of such institutions.

During the last thirty days, I have experienced one of the most unusual problems that I have had in my professional career. I have already said something about the dealings that we have had with the savings and loan people in connection with their advertising. In three cases, we considered the matter serious enough to report it to the Department of Justice but this recent development is something out of this world. For several years now, the savings and loan people have tried to have their law amended in such a way as to give them legal authority to describe their organizations as Federal savings associations and their share accounts as "deposits" and dividend payments as "interest." Failing in this, their Board has just recently resorted to the unprecedented act of incorporating these changes in a set of regulations which was recently published in the Federal Register, which, as you know, is the first step toward making them effective. I say this is unprecedented because in all of my professional experience I never knew of any group that would presume to enact or promulgate rules and regulations which ordinarily have the same binding effect as law after the law-making power has refused to incorporate the suggestions in the law. If the Home

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

Loan Bank Board insists on going through with this proposal, I certainly hope that the American Bankers Association will promptly initiate legal proceedings to have these so-called regulations set aside, because it is inconceivable to me that any court would put its stamp of approval on any such presumptive action. I understand this is the way things are done in certain parts of the world, but it will certainly be a sad day for America if this type of procedure can be followed with impunity.

A matter of growing importance in State legislation is the authorization to destroy bank records. Mississippi and Oklahoma permit the destruction of records after ten and five years, respectively, except ledger sheets showing depositor liabilities and, in Oklahoma, records showing property held as agent, pledgee, bailee or trustee. Iowa, Nebraska, Maine and North Dakota have varied periods after which records may be destroyed. Generally these four states require retention of deposit records and provide a limitation on actions for amounts other than deposits or limitation on actions for amounts of deposits inconsistent with the banks' records. A recent Indiana law gives the Department of Financial Institutions control over destruction of records.

We are concerned over the possible destruction by banks of records of any existing liabilities and of records of the payment of any liabilities. We plan to furnish you with a full study of this matter later with proposals that you may discuss with the State bank supervisory authorities.

I could not close these remarks without at least mentioning another very unusual experience I have had since I have been with the Corporation. There is a very smart lawyer over in Philadelphia who a number of years ago became involved in some dealings with a Philadelphia bank to whose assistance we had to go. Among the assets we took over was this lawyer's note for about a half million dollars with which was pledged some valuable stock under a purported "secret" agreement. Under the D'Oench Duhme decision, with which you are all no doubt somewhat familiar, no one is permitted to raise such a so-called secret agreement against the Corporation. Ultimately we sold this stock and the lawyer sued us in the U. S. District Court. He was unsuccessful, and unsuccessful in the U. S. Circuit Court of Appeals, as well as in the U. S. Supreme Court. He has filed no less than eleven petitions for a re-hearing with the Supreme Court of the U. S. with successive denials of each petition. About a month ago, while

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

his latest petition was still pending in the Supreme Court of the U. S., he was successful, believe it or not, in having a U. S. District judge grant him a new trial, which is certainly something novel in my professional experience. Of course we immediately made application in the U. S. Circuit Court of Appeals for a Writ of Prohibition to stop the U. S. District judge from proceeding with the hearing and the hearing on our application for the Writ has been set for April 18. As I told the Chairman the other day, it is inconceivable to me how we can lose this case but after my experience in this entire litigation, I am frank to confess that anything can happen. Now the reason I mention this in connection with Federal legislation is that he is not satisfied with having had at least eleven days in court, but he has also presumed upon Members of Congress to propose legislation which would have the effect of setting aside the law as it is now established in behalf of the Corporation but also to compel repayment to him of the money which the Supreme Court of the U. S. has said he is not entitled to. I am confident that we will be able to keep any of these bills from being reported out as we were able to do in connection with the 80th Congress when this attorney made a similar attempt, but it is very distressing to have this type of thing to contend with considering the heavy load of legal work which the Division is called upon to perform, all of which reminds me of a story I heard the other day about the country lawyer down in the Carolinas who was driving along a country road and he had a flat tire. It so happened that the car was stopped just in front of the farm belonging to the insane asylum. One of the inmates who was working in the yard saw the lawyer in this trouble and asked him what his business was, and the lawyer said "I am trying to make a living practicing law." The man on the other side of the fence said "Have you ever tried being crazy?" The lawyer said "No." The other fellow said "Well, you ought to try it sometime because it's not nearly as hard work and you have a lot more fun."

There can be no doubt that the flood of promised assistance to the Corporation now that its independence has been challenged is an indication of the high esteem in which this Corporation is held in the minds of the people. You men know this. That high esteem is no accident. It is the result of continuous, untiring efforts to run its affairs on an efficient and high-principled basis. It is no easy assignment to maintain this reputation but there is compensation in reading the many complimentary statements that have been made by leaders of the Government and that have appeared in innumerable places in the Congressional

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

Record. I know that you men who are the leaders of the task forces of the Corporation out in the field are anxious to maintain the reputation which this Corporation enjoys. That task requires continued devotion to duty and an alertness to every situation which might possibly jeopardize the position of the Corporation. In this task, all of us here in Washington, certainly the members of the Legal Division, which I pause long enough to say is as good a Legal Division as any in Washington and many of you men know that better than I do, wish you God speed. A week from next Sunday is Easter. I know that it has for you men a very rich significance. I still like to think that the power that was able to roll the stone away on that first Easter morning is sufficiently concerned about us to roll the stones of worry and trouble away from our hearts on Easter morning, and I hope if any of you have any such stones in your life now that they may be rolled away on Easter. It has been grand to have you fellows with us this week. It has been good for me to shake the hand of each one of you.

We appreciate your assistance in the past and hope that you will continue to give us your advice and assistance on legislative matters.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis