TESTIMONY OF

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ON

MONEY LAUNDERING LEGISLATION

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

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Good morning, Mr. Chairman and Members of the Committee. Thank you for the opportunity to present the Federal Deposit Insurance Corporation's views on pending legislation to further curb the practice of money laundering. The FDIC supports the fight to curtail money laundering activities and related crimes. Money laundering is a serious crime against society, and we believe it should be prosecuted to the full extent of the law.

Before addressing the legislation, we will explain briefly to the Committee how the FDIC identifies money laundering in the banks under its supervision and what actions we take to refer that activity for criminal or civil prosecution.

As the primary federal regulator of state nonmember banks, the FDIC generally discovers possible money laundering activities in banks either through FDIC examinations or through the Reports of Apparent Crime that the banks are required to submit under FDIC regulations. Our current instructions for reports relating to money laundering offenses require banks to submit them to the Internal Revenue Service's Criminal Investigation Division at the same time they are sent to us. The IRS is responsible for evaluating the reports and actually determining whether a civil action or a criminal investigation is appropriate under the circumstances. If the IRS decides to conduct a criminal investigation, it frequently calls upon the FDIC to assist in cases involving insured nonmember banks and their directors, officers and employees.

In most instances, the FDIC also sends copies of the Reports of Apparent Crime to Treasury's Office of Financial Enforcement. During 1989, the FDIC forwarded 248 such Reports involving suspicious currency transactions to the Office of Financial Enforcement. The purpose of forwarding the Reports is to enable Treasury to keep track of criminal referrals and to get more involved in an investigation if necessary.

The FDIC has no specific authority to prosecute criminal actions against banks or individuals who violate the Bank Secrecy Act. FDIC regulations and enforcement activities in the money laundering area focus primarily on ensuring that state nonmember banks adopt and maintain adequate procedures to enable them to comply with the Bank Secrecy Act. Banks that fail to comply with FDIC regulations can be subjected to formal cease and desist actions and civil money penalties for those violations. Violations of the law also can be the basis for FDIC termination of the insurance of an insured depository institution. To date, the mere threat of formal action by the FDIC has been sufficient to persuade banks that are not in compliance to comply with FDIC regulations.

Now to turn to the legislation pending before Congress.

Mr. Chairman, we agree with the goals of S. 2327 and H.R. 3848 -- namely, that removal from the banking business can be an appropriate remedy for depository institutions and individuals associated with them who engage in money laundering activities. Thus, we applaud you, Senator Kerry and the other members of this Committee who have taken the initiative on this important legislation. Financial institution regulators, including the FDIC, could benefit greatly from a grant of more explicit authority to deal with institutions and individuals involved in money laundering. We have a number of recommendations, however, that we believe would provide appropriate flexibility in strengthening the ability of the FDIC and other regulators covered by the legislation to deal equitably with institutions and their associated persons who are implicated in money laundering schemes.

Insurance Termination/Charter Revocation Hearing

First, we believe it may not be the most efficient use of resources to require a hearing on the record -- as is required by S. 2327 -- every time an insured institution is convicted of criminal money laundering. Such a mandatory hearing in every instance seems even more inappropriate with respect to so-called structuring offenses under Title 31 which also trigger an automatic hearing under H.R. 3848, but not under S. 2327. The formal hearing process is very time consuming for agency staff -- it takes an average of six to nine months from beginning to end -- and it also consumes a considerable amount of resources.

Thus, we would favor changes to both bills that give regulators a little more flexibility and discretion. We believe S. 2327 is the better approach in that it requires a hearing for criminal convictions under Title 18, but leaves to the regulators' discretion the determination as to whether to initiate deposit insurance termination or charter revocation proceedings in the case of structuring offense convictions under Title 31.

But, even in the case of Title 18 criminal convictions, we believe it would be appropriate to establish a higher threshold for a required hearing than is now contained in either bill. S. 2327 requires a hearing upon the conviction of an institution alone, whether or not any specific officers or directors also are implicated. H.R. 3848 would require a hearing any time an institution and directors or senior executive officers are convicted of any money laundering offense -- effectively requiring a hearing when two or more individuals are involved. While we favor the House approach in this regard, we believe the threshold should be more flexible. The participation by only two senior officials may be a significant level of involvement in the case of small institutions, but may not be significant enough to mandate a hearing in all instances when the conviction involves a larger institution. Thus, in addition to discretionary hearings in Title 31 conviction cases, we would support a higher or, preferably, more flexible threshold as a trigger for automatic hearings in the case of Title 18 convictions.

With respect to the timing of any hearing requirement, we strongly favor the approach taken in S. 2327 over that in H.R. 3848. H.R. 3848 would require the regulators to hold a hearing within 30 days of sending out a notice of a money laundering conviction. S. 2327, on the other hand, contains no such narrow time requirement. Instead, S. 2327 gives the regulators the time they need to build an adequate case against the convicted institution. If the goal of money laundering legislation is to curtail money laundering and get guilty institutions out of the banking business -- and we support that goal -- then the regulators must be allowed the necessary time to prepare for a hearing and build a record that will withstand judicial review. An unreasonably short time frame in which to prepare for and hold a hearing invites closer judicial scrutiny and may encourage reviewing courts to overturn an insurance termination or charter revocation decision.

Another very positive aspect of S. 2327, from the FDIC's point of view, is the enumerated factors the bank regulatory agencies must consider in deciding whether to terminate deposit insurance or revoke an institution's charter. Those factors specifically include: 1) whether there will be significant losses to the Federal deposit insurance funds or the RTC as a result of termination or revocation, and 2) whether the interest of the local community in adequate deposit and credit services would be threatened. Neither of these factors are included in the list of those to be considered under H.R. 3848. We urge that they be included in any final money laundering legislation.

In addition to the principal concerns and positions just enumerated, we also would like to comment on a few of the other aspects of the insurance termination/charter revocation hearing requirements.

There is one logistical problem with the hearing requirement. The FDIC and other bank regulators do not always receive notice of money laundering or other criminal convictions involving financial institutions or their associated persons. This absence of notice is especially problematic in the House money laundering bill -- H.R. 3848 -- which requires the regulators to hold a hearing within a very short time after conviction. It would be useful to have a provision added to any final money laundering legislation requiring the Attorney General to provide written notice to the appropriate bank regulatory agency of money laundering convictions before any hearing requirement is triggered.

S. 2327 also would require publication of a notice of the termination of the insured status of an institution. The timing and content of the required public notice is unclear. If it requires publication of the final order of insurance termination, then we would support the requirement. In fact, such a requirement would be in keeping with provisions in existing law that require agency publication of all final orders. On the other hand, we would object if the provision is intended to require publication of the Notice of Intention to

Terminate Insurance -- which notice may precede actual insurance termination by several months. Such an advance notice is likely to unduly alarm the depositors of the institution and could encourage runs on the institution.

Additionally, S. 2327 refers to having a "pretermination hearing." Since this is a new term and the requirement does not expressly supercede the hearing prescribed in Section 8(a)(3) of the Federal Deposit Insurance Act (FDI Act), it could be interpreted to require the FDIC to hold two hearings prior to issuance of a termination of insurance order. We believe this is not what was intended by the bill -- but some clarification would be helpful.

Removal of Institution-Affiliated Parties

We agree that individual officers, directors and other institution-affiliated parties should be removed from office if they engage in money laundering crimes. However, H.R. 3848 mandates removal, with no opportunity for hearing and without any consideration given to the egregiousness of the offense. Thus, we prefer S. 2327. It provides broader discretion to the agencies and affords the individual the right to a hearing, by listing conviction of money-laundering as a ground for removal, without strictly mandating removal.

We are also concerned that the addition of money laundering as a specific ground for removal of institution-affiliated parties under the FDI Act could be interpreted by the courts to somehow limit the authority of the bank regulatory agencies to suspend or remove such parties for offenses that are not specifically listed in the FDI Act. We would urge the Committee to include in its report, and in any conference report on money laundering legislation, a statement that the addition of money laundering as a specific ground for insurance termination and removal of institution-affiliated parties is not intended to affect or in any way limit the FDIC's authority to terminate insurance or remove individuals for non-specified crimes. We would be pleased to work with the Committee on appropriate report language.

Draft D'Amato "Money Laundering Enforcement Act"

We also have been asked to comment on Senator D'Amato's proposed "Money Laundering Enforcement Act of 1990." The draft bill contains provisions that would appear to be appropriate enhancements to the body of law designed to stem the tide of money laundering activities. However, with the exception of the proposed amendments to the Right to Financial Privacy Act (RFPA), the provisions do not cover areas in which the FDIC normally would have reason to express an opinion.

The FDIC believes that the amendments to the RFPA sought by the Department of Treasury would establish helpful exceptions to that Act. Exceptions designed to remove impediments to the transfer of financial records relevant to possible violations of money laundering statutes should aid in the detection and prosecution of money laundering offenses.

We question, however, the apparent breadth of the amendment that would permit one agency to transfer records to another agency if those records are "relevant to any matter" within the receiving agency's jurisdiction. "Agency" is not a defined term under the RFPA. Therefore, it is not clear what governmental bodies would benefit from the exception. However, if the exception would allow <u>all</u> governmental bodies access to "financial records" any time the records are relevant to <u>any</u> matter within the receiving agency's jurisdiction, that exception would drive a major wedge in the body of protections contained in the RFPA.

<u>Conclusion</u>

In conclusion, Mr. Chairman, we support the goals of S. 2327 and H.R. 3848 and welcome having additional tools at our disposal to punish money launderers and remove such persons from banking. We look forward to working with the Committee in hopes of incorporating some of the flexibility suggestions and other recommendations in our testimony.

Thank you again, Mr. Chairman. I will be happy to answer any questions you and the other members of the Committee may have.