FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 81-246
December 30, 1981

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Proposed Amendments to the Financial
Institutions Regulatory and Interest Rate
Control Act of 1978 (FIRIRCA)

TO ALL MEMBER BANKS
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:

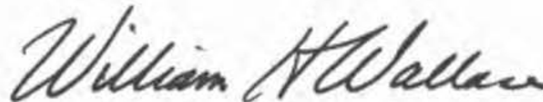
The Federal Financial Institutions Examination Council announced that is has recommended to the five Federal agencies represented on the Council approval of a series of proposed amendments to the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRIRCA). Agency action is requested by December 18, 1981.

Printed on the following pages is a copy of the Federal Financial Institutions Examination Council's press release dated December 3, 1981, and a copy of an analysis of all of the Council's proposed amendments to FIRIRCA.

Questions concerning the proposed amendments should be directed to the Legal Department of this Bank, Extension 6171.

Additional copies of this circular will be furnished upon request to the Department of Communications, Financial and Community Affairs, Ext. 6289.

Sincerely yours,



William H. Wallace
First Vice President

Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank: 1-800-442-7140 (intrastate) and 1-800-527-9200 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

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Federal Financial Institutions Examination Council, Washington, D.C. 20219

Press Release

For immediate release December 3, 1981

Chairman J. Charles Partee of the Federal Financial Institutions Examination Council today announced that the Council has recommended to the five Federal agencies represented on the Council approval of a series of proposed amendments to the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRIRCA).

The Council asked for agency action on its proposals by December 18. Following action by the agencies the Council will transmit the proposals to Congress on behalf of approving agencies.

Chairman Partee, a member of the Federal Reserve Board, said in a letter informing interested members of Congress of the Council's recommendations to the agencies that the proposals are "designed to strengthen and improve the efficiency of Federal supervision of financial institutions and reduce the burden on regulated institutions." Mr. Partee noted that although every proposal was not unanimously supported in the Council, each had been individually approved by a majority of the members of the Council.

An analysis of all of the Council's proposed amendments to FIRIRCA, setting forth the amendment proposed, the provision of current law it would amend and the Council's reasons for suggesting revision is attached.

Attachment

FINANCIAL INSTITUTIONS REGULATORY ACT AMENDMENTS OF 1981

SECTION-BY-SECTION ANALYSIS

I. Title I - Supervisory Authority Over Depository Institutions

Section 101: amends Section 5239(b)(1) of the Revised Statutes to provide that violation of any of the provisions of the first section of the Act of September 28, 1962, which is the statute granting trust powers to National banks, would subject the violating bank or officer to the civil money penalty provision of Section 5239(b).

Current Statute: The Office of the Comptroller of the Currency has civil money penalty authority with respect to any violation of the National Banking Act. National bank trust powers, however, derive not from the National Banking Act, but from Public Law 87-7222 enacted September 28, 1962, and are, therefore, not subject to existing agency civil money penalty authority.

Amendment: The Council recommends expansion of the Comptroller's authority to impose civil money penalty remedies for violations of the agency's trust regulations. This amendment would eliminate an apparent loophole in the agency's overall enforcement authority.

Section 102: amends Section 22(h)(2) of the Federal Reserve Act by deleting the explicit $25,000 limit on loans to insiders and substituting in lieu thereof authority for the financial regulatory agencies to set a limit based on current economic conditions after consultation with the Examination Council.

Current Statute: Section 104 of FIRIRCA - Financial Institutions Regulatory and Interest Rate Control Act of 1978 (P.L. 95-630)(92 Stat. 3641) - amended the Federal Reserve Act to, among other things, require prior approval by a majority of the bank's board of directors of any loan, line of credit or extension of credit to an executive officer, director or principal shareholder or interests of such persons which exceed $25,000.

Amendment: The FIRIRCA technical amendments forwarded to Congress in March, 1981, would modify this provision by allowing prior approval by a loan or executive committee of the bank's board of directors. The Council now suggests that the $25,000 limit is too low and will become increasingly obsolete over time. There is a perceived need for a flexible limit which can be adjusted periodically as conditions change.

The Council recommends to the Congress that the Council be given authority to make recommendations to the banking agencies on appropriate limitations. The Council is not recommending a specific limitation at this time; however, consideration will be given to a limit based on a percentage of bank capital (e.g., two percent) or a fixed amount (e.g., $100,000), whichever is greater. A final determination of an appropriate limit would be made at a later date, assuming the recommended amendment is enacted.

Section 103: amends Section 22(h) of the Federal Reserve Act by deleting paragraph (4) which currently states that no member bank may pay an overdraft on an account of an executive officer or director of that bank.

Current Statute: Section 104 of FIRIRCA amended the Federal Reserve Act to, prohibit among other things, banks from paying overdrafts of executive officers and directors.

Amendment: The Council recommends elimination of this prohibition. Overdrafts of executive officers and directors can be addressed and scrutinized in the general context of analyzing insider transactions for preferential treatment. This approach will place affected insiders on an equal footing with other bank customers who have overdraft privileges. The agencies believe that they have sufficient tools to correct abuses in this area.

Section 104: amends the enforcement provisions of each of the eight consumer statutes listed below to provide the five agencies represented on the Council with authority to impose civil money penalties of up to $1,000 per day for violations of these statutes. This section contains eight separate amendments, one for each consumer statute.

The consumer statutes that the Council recommends be amended to allow civil money penalty remedies are the Consumer Credit Protection Act, the Home Mortgage Disclosure Act, the Federal Trade Commission Act, the Fair Housing Act, the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the Real Estate Settlement Procedures Act, and the Right to Financial Privacy Act.

The Council believes that adding civil money penalty authority to the existing enforcement tools the agencies have with regard to the consumer laws will provide a greater degree of flexibility to fashion remedies appropriate to each supervisory situation.

Section 105: amends Section 22(g) of the Federal Reserve Act by replacing the current $10,000 limit on "other" loans by member banks (i.e., other than real estate and education loans) to executive officers with authority for the financial regulatory agencies to set an appropriate limit based on current conditions after consultation with the Examination Council.

Current Statute: Section 22(g) of the Federal Reserve Act sets limits on mortgage loans ($60,000), educational loans ($20,000) and other loans ($10,000) to executive officers of member banks.

Amendment: The FIRIRCA technical amendments previously sent to Congress proposed elimination of limits on mortgage and educational loans, but retained the limit on other loans. The Council believes that the $10,000 limit is too rigid and that a mechanism should be fashioned to adjust the limitation as circumstances warrant. The Council recommends eliminating the statutory limit and requests the authority to make recommendations to the affected agencies on the appropriate limit for other loans to executive officers of member banks.

II. Title II - Correspondent Accounts

Section 201: amends Section 106(b)(2) of the Bank Holding Company Act by deleting subsection (G) which currently contains an extensive reporting requirement that is not justified by the limited benefits it provides to supervisory authorities.

Current Statute: Title VIII of FIRIRCA added to the Bank Holding Company Act Section 106(b)(2), subsection (G) which provides for a comprehensive reporting system of loans to insiders from another bank where the insider's bank maintains a correspondent banking relationship. The report covers executive officers, principal shareholders and related interests of those persons and requires information on the maximum balance of a loan during a calendar year, the balance as of ten days prior to report date (year-end) as well as the original amount, maturity date, payment terms, interest rate, description of collateral, if any, and any unusual terms. The report must be filed with the insider's bank and retained for examiner review.

Amendment: The Council recommends elimination of this reporting requirement. The costs of preparing these reports are not justified by the benefits accruing to the supervisory authorities in identifying instances of abuse. The Council believes that this matter is best handled through the examination process. If this amendment is adopted and the restrictions on exchanging examination information among the agencies are relaxed (see suggested amendment under Title XI - Right to Financial Privacy), it is believed that a substitute system can be devised to report questionable transactions, perhaps on an exception basis, among the banking agencies for follow-up at regular examinations.

Section 202: further amends Section 106(b)(2) of the Bank Holding Company Act by adding a new subsection (G) to define the term "bank" as used throughout paragraph (2) to include mutual savings banks as well as commercial banks.

Current Statute: Title VIII of FIRIRCA added Section 106(b)(2) to the Bank Holding Company Act. This section, in part, prohibits the granting of preferential loans to executive officers, directors and principal shareholders of banks that maintain correspondent accounts with the lending bank. The definition of bank for the purposes of Section 106(b) currently includes only institutions that accept deposits and grant commercial loans. Thus, many mutual savings banks are excluded from coverage.

Amendment: The Council recommends extending the prohibitions of paragraph (2) to include mutual savings banks. It is believed that the potential exists for executive officers and/or trustees of mutual savings banks to place funds with a correspondent bank in exchange for preferential loans. The Council does not perceive any sound policy reason for excluding mutual savings banks from coverage, given the fact that all other banking institutions are covered.

Sections 203 through 206: amend subsections (A), (B), (C), and (D), respectively, of Section 106(b)(2) of the Bank Holding Company Act to extend the prohibitions of those subsections to cover the "related interests" of directors, executive officers, and principal shareholders as well as those persons themselves.

Current Statute: Title VIII of FIRIRCA added Section 106(b)(2) to the Bank Holding Company Act. This section currently prohibits the granting of preferential loans only to individual executive officers, directors and principal shareholders of other banks which maintain correspondent balances with the lending bank.

Amendment: The Council recommends expansion of these prohibitions to include related interests of executive officers, directors and principal shareholders. The current prohibition is asymetrical to the extent that it omits coverage of insider interests. It is believed the existing prohibition has served a useful purpose, but should be strengthened by closing this apparent loophole in the law. Although instances of abusive conduct in granting preferential loans to interests of insiders have been encountered infrequently, the Council perceives a clear potential for this type of activity. It is also believed the proposed amendment would provide the capability to more effectively deal with the practice when it is encountered, particularly since the lending bank would be subject to civil money penalties for violations.

III. Title III - Disclosure of Material Facts

Section 301: deletes subsection (k) of Section 7 of the Federal Deposit Insurance Act which currently requires annual disclosures of a bank's principal stockholders, and of extensions of credit by the bank or its correspondents to such stockholders and executive offices of the bank.

Current Statute: Title IX of FIRIRCA amended Section 7 of the Federal Deposit Insurance Act by adding subsection (k). This subsection requires banks to make an annual report of all principal stockholders of record and of certain loans to executive officers and principal shareholders and related interests of those persons to the supervisory agencies. The report must be available for public inspection. In 1979 the supervisory agencies issued a standard disclosure form (Form FFIEC 003) to meet these requirements. The report FFIEC 003 requires the bank to list its principal shareholders, the name of each executive officer and principal shareholder who was indebted to the bank during a calendar year together with the maximum aggregate amount of indebtness outstanding during the year, and a list of each executive officer and principal shareholder indebted to a correspondent bank during the year and the maximum aggregate amount of such debts outstanding. The Regional Offices/District Banks keep files of these reports for public inspection.

Amendment: The Council recommends elimination of this reporting requirement on the grounds that the costs of preparing the report are not justified by the benefits for supervisory and public disclosure purposes. Review of insider loans is a routine practice at all examinations and the report required by Section 7(k) is not considered necessary to accomplish this task. The number of public requests for the report at the agencies' Regional Offices/District Banks has been minimal.

IV. Title IV - Right to Financial Privacy

Section 401: amends Section 1113 ("Exceptions") of the Right to Financial Privacy Act by adding a new subsection (k) to provide that, other provisions of the statute notwithstanding, the exchange of financial records or information regarding financial institutions is permitted among and between the five member supervisory agencies of the Federal Financial Institutions Examination Council.

Current Statute: There is some confusion as to whether Title XI of FIRIRCA ("Right to Financial Privacy Act of 1978") allows the exchange of reports only among those supervisory agencies which have authority to examine the financial condition or business operations of the institution. Those agencies that believe such a restriction is required will exchange reports with those agencies that do not have authority to examine the institution only after deleting the names of bank customers or, alternatively, by providing notice to named customers that such information has been released.

Amendment: The Council recommends clarification of the statute so there is no doubt that the Right to Financial Privacy Act does not inhibit the preexisting discretionary authority of the member agencies to disclose reports to each other and to specifically recognize the right to exchange such information between the member agencies. The confusion as to the prohibition of such exchanges adversely affects supervisory efforts by limiting the flow of information that is useful for efficient supervision. It creates an administrative burden to the extent that customer information must be deleted from examination reports. Given the customary confidential treatment accorded to examination reports by the agencies concerned, this restriction is considered unnecessary in order to protect consumer privacy.

V. Title V - Miscellaneous Amendments

Section 501: amends the various statutes containing agency authority to impose civil money penalties to extend the period during which an appeal may be filed from ten to twenty days, and to begin counting the appeal period from the date the order is served.

Pursuant to Title I of FIRIRCA, the various statutory sections dealing with imposition of civil money penalties generally provide that an appeal to an order must be filed with the U.S. Court of Appeals within ten days from the date of such order. The Council believes these sections should be amended to read within twenty days after service of the order. This amendment is designed to provide sufficient time for appealing a civil money penalty. As currently constructed, the statutory timeframe for appealing a civil money penalty is extremely tight, particularly if a delay in the service and/or receipt of the order occurs.

Section 502: amends Section 8(q) of the Federal Deposit Insurance Act by deleting the requirement that "the assuming or resulting bank shall give notice of such assumption to each of the depositors of the bank whose liabilities as so assumed within 30 days after such assumption takes effect," whenever one insured bank assumes the liabilities of another insured bank by way of merger, consolidation, assumption or contract.

This is primarily an issue involving the FDIC. Under Section 8(q) of the FDIC Act, the resulting bank must give notice of an assumption within 30 days after such assumption takes effect. Furnishing notice to depositors is designed to advise a depositor who may have more than $100,000 on account in the combined banks that separate insurance of deposits in the assumed bank will continue for six months after the assumption takes effect or, in the case of a time deposit with a maturity of greater than six months, the earliest maturity date after the six-month period.

Council recommends elimination of this requirement. Section 8(q) of the FDIC Act appears to be burdensome and unnecessary. Prior to the enactment of FIRIRCA, notification of depositors in the case of a merger or a consolidation was not required, with no apparent adverse effect. Providing separate insurance for a specific period of time appears to be a valid and necessary provision, but the requirement that the bank notify every depositor is deemed excessive. Banks involved in merger-type transactions notify depositors of the transaction as a matter of routine public relations, and a law to require this appears unnecessary.

Section 503: amends Section 102(f) of the Federal Credit Union Act to provide that audits of the National Credit Union Administration by the General Accounting Office will be conducted on a fiscal year basis rather than a calendar year basis.

The General Accounting Office has requested this amendment in order to facilitate its audits of the National Credit Union Administration, since the Administration's fiscal year does not correspond to the calendar year. The Council concurs with GAO's recommendation.