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April 1, 1935.

Honorable Henry B. Steagall, Chairman,
Committee on Banking and Currency,
House of Representatives,
Washington, D. C.

Dear Mr. Steagall:

I am inclosing for your information and for the consideration of your Committee a memorandum discussing Professor Walter E. Spahr's criticisms of the drafting of Title II of the Banking Act of 1935 (H.R. 5357 and S. 1715). It is believed that most of Professor Spahr's criticisms of the drafting of the bill are without merit; but, in order to eliminate argument about unimportant points, the attached memorandum suggests certain detailed changes in the phraseology of the bill. All of the suggested changes are summarized on the last page of the memorandum for convenience.

Pursuant to our telephone conversation this morning, I have requested the Board's General Counsel to hold himself in readiness to render you or your Committee any assistance which you may request.

Cordially yours,

(Signed) Marriner S. Eccles

Marriner S. Eccles,
Governor.

Inclosure.

X-9170-a

MEMORANDUM REGARDING COMMENTS OF
PROFESSOR WALTER E. SPAHR ON
DRAFTSMANSHIP OF TITLE II OF
BANKING ACT OF 1935.
(H.R.5357 and S. 1715)

In his prepared statement of comments on Title II of the proposed Banking Act of 1935, Professor Spahr has presented an analysis of various sections of the act. In several places he states that sections of the bill reveal "careless bill-drafting". It is respectfully suggested that most of Professor Spahr's criticisms may be the result of "careless bill-reading". However, Professor Spahr's criticism of the draftsmanship of the bill will be discussed below and a few changes will be suggested for the purpose of eliminating unnecessary arguments about unimportant points.

On page 5 of his mimeographed statement, Professor Spahr refers to the fact that, although the bill abolishes the office of Federal Reserve Agent, it provides (page 40, lines 14 to 16) that, "All duties prescribed by law for the Federal Reserve Agent shall be performed by such person as the Federal Reserve Board shall designate". He seems to think that this would authorize the Board to appoint a local representative at the Federal reserve bank who would perform duties now performed by the Federal Reserve Agent. However, he overlooks or ignores the fact that the bill (page 38, lines 13 to 16) would repeal the paragraph of the Federal Reserve Act which provides

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for the appointment of a Federal Reserve Agent and for his service as a local representative of the Federal Reserve board. This, together with the amendments to section 16 of the Federal Reserve Act contained in section 208 of the bill, would abolish all of the important functions of the Federal Reserve Agent and leave only a few odds and ends. It was contemplated that such odds and ends would be taken care of by having the Federal Reserve Board designate the Governor of the bank or some other officer of the bank appointed by its board of directors to perform the few remaining functions which the law assigns to the Federal Reserve Agent.

However, in order to eliminate any argument on this unimportant question, it is suggested that the bill be amended on page 40 by striking out the sentence commencing in line 14 and substituting the following:

"All duties prescribed by law for the Federal Reserve Agent shall be performed by the Governor of the bank or by such other person or persons as he may designate."

Professor Spahr states that the last paragraph of section 201(a), page 40, lines 17-22, permitting present members of the boards of directors of the Federal reserve banks to serve out their terms "would seem to require a modification of these parts of the bill which provide that this section shall be effective ninety days after enactment".

Apparently the parts of the bill which Professor Spahr thinks should be modified are those which provide as follows:

"Effective 90 days after the enactment of the Act containing this amendment, the offices of Governor and chairman of the board of directors of each Federal Reserve bank shall be combined." (page 39, line 9).

"Effective 90 days after the enactment of the Act contained in this amendment, any Federal Reserve agent who shall not have been appointed Governor of the bank shall cease to be a class C director and chairman of the board of directors." (Page 40, line 10).

It will be observed that the above provisions affect only the class C director who is the Federal reserve agent and do not apply to the other two class C directors. Instead of providing "that this section shall be effective 90 days after enactment" as stated by Professor Spahr, the above quoted portions of the bill merely provide that the offices of Governor and Federal reserve agent shall be combined and that a Federal reserve agent who has not been appointed Governor shall cease to be a class C director 90 days after the enactment of the Act. The paragraph which Professor Spahr cites provides that no member of the board of directors, other than the Governor and Vice Governor, shall serve as a director for more than two consecutive terms of three years each, "but this shall not prevent the present incumbents from serving out the remainders of their present terms". It is obvious that the word "this" refers only to the provisions of the paragraph in which it occurs. Only by construing the

word "this" to mean "this section" could a conflict be created between the paragraph in which such word appears and the above quoted provisions regarding the Federal reserve agent. It is submitted, therefore, that Professor Spahr's comment upon this point is the result either of a strained construction or a hasty reading.

On page 6 of his memorandum, Professor Spahr says that, "Section 203(2) provides a means by which Mr. Hamlin may retire at once and Messrs. Miller and James in 1936, thus removing from the Board in a very short time, even if more arbitrary methods are not used, its three most experienced members". In order to eliminate any argument about this point, it is suggested that the bill be amended, on page 43, line 8, by inserting before the quotation marks the following:

"Nothing in this section shall prevent the President from reappointing any member of the Federal Reserve Board holding office on July 1, 1935."

Although Professor Spahr did not mention this point, it is also suggested that, in order to diminish the possibility of vacancies in the membership of the Board, the bill be amended, on page 43, by inserting between lines 21 and 22 the following new paragraph:

(4) By adding at the end of the second paragraph the following:

"Upon the expiration of their terms of office, members of the Federal Reserve Board shall continue to serve until their successors are appointed and have qualified."

Similar bills with reference to members of the Interstate Commerce Commission passed the House on March 4, 1935 (H.R. 4751) and the Senate on February 12, 1935 (S.945); and it is believed that provision should be made for members of the Federal Reserve Board to hold over until their successors are appointed and have qualified.

Professor Spahr's next criticism of the draftsmanship of the bill is directed at the provision of section 203(2) (page 42, line 17) that each member of the Federal Reserve Board retiring at age 70 "who shall have served for at least 5 years shall receive, during the remainder of his life, retirement pay in an amount equal to the annual salary paid to appointive members prior to the enactment of the Act containing this amendment". The professor interprets this provision to mean that a retiring board member would receive a total pension of \$12,000 "for the rest of his life", rather than annual retirement pay in the amount of \$12,000. It is believed that a reasonable construction of the language of this provision as it now stands is that a retiring board member who has reached 70 years of age and who has served 5 or more years shall receive annual retirement pay based upon the years served, the yearly amount to be determined by the number of years served multiplied by \$1,000, but not to exceed \$12,000 per annum. Even Professor Spahr states that the section "probably was intended" to have this effect. However, even if Professor Spahr's criticism

of the provision has any substance, it can be removed by the insertion of the word "annual" before the word "retirement" in two places. (Page 42, lines 19 and 23).

Professor Spahr also suggests that the word "served" be inserted after the word "year" on page 42, line 25. It seems that an unprejudiced reading of the language of this proviso makes it clear that the words "each year" in line 25 mean each year that the retiring member has served. The words "of such service" on page 43, line 1 clearly modify the word "year" in both instances where such word appears in line 25 of page 42. It thus appears that the insertion of the word "annual" before the word "retirement" in two places as suggested above will eliminate any possible doubt as to the meaning of this section which Professor Spahr finds so "badly muddled".

It is stated by Professor Spahr that section 206 of the bill (page 45, line 18) "seems to be tacked on to the preceding parts of section 13 of the Federal Reserve Act without any regard to how it affects the preceding paragraphs of that section". He states that it would appear that most of the preceding paragraphs of section 13 are nullified but that it would be difficult to determine just what the law is. It would seem clear that the new paragraph to be added by section 206 of the Bill, being a later enactment would prevail over any conflicting provisions of the present law.

However, the question raised by Professor Spahr may easily be eliminated by inserting on page 45, line 21, at the beginning of the new paragraph added by section 206, the words, "Notwithstanding any other provision of law,".

With regard to section 208(1) of the bill (page 46, line 15), Professor Spahr states: "When a money is legal tender for all purposes, it can be used to pay all debts, public and private. This means, literally, that these notes could be used for lawful reserves and could be used to redeem any other currency. * * * In contradiction to this, lines 24-25 exclude these notes from the lawful money for reserve purposes in the Federal Reserve banks. This means that the Federal Reserve notes are not permitted to fulfill their functions as full legal tender money. The two provisions are in direct conflict * * *."

The Professor appears to be engaged in a somewhat circular process in the above argument. First he criticizes the provision stating that Federal reserve notes shall be legal tender (which they already are under existing law) because he says it will enable such notes to be used as lawful reserves. Next he attacks the provision which prevents Federal reserve notes from being counted as reserves, on the ground that such provision does not permit the notes to fulfill their functions as legal tender. It is not clear whether Professor Spahr is indulging in a form of mental shadow-boxing or whether he is

vague as to the meaning of the term "legal tender". Legal tender is money which may lawfully be used as a tender in payment of a debt. The question of what may constitute reserves is of course an entirely different matter and is governed by statute. The fact that Federal reserve notes cannot be used as reserves against deposits with a Federal reserve bank creates no inconsistency with the provision making such notes legal tender.

Professor Spahr states that there appears to be no good reason for repealing the provision of section 16 of the Federal Reserve Act for a 5 per cent redemption fund for Federal reserve notes with the Treasurer of the United States. The professor states: "The omission of the redemption fund may be due to careless bill-drafting."

The provision for the redemption fund was omitted intentionally and not as a result of "careless bill-drafting". Inasmuch as the Federal reserve banks maintain deposits with the Treasury in the Gold Settlement Fund and the Treasurer can charge their accounts with all Federal reserve notes retired, it is not necessary to have a separate fund for this purpose.

Professor Spahr again alleges "careless bill-drafting" in section 208(2) (page 48, line 13). He complains that the words "or subtreasuries" are allowed to stand in the second line following the

last deletion provided by section 208. This statement is apparently caused by the Professor's inadequate information; since all of the proviso in which such words appear was eliminated from section 16 of the Federal Reserve Act by the Act of January 30, 1934.

RESUME OF AMENDMENTS NOW SUGGESTED.

On page 40, strike out the sentence commencing in line 14 and substitute the following: "All duties prescribed by law for the Federal Reserve agent shall be performed by the Governor of the bank or by such other person or persons as he may designate."

On page 42, before the word "retirement" in lines 19 and 23, insert the word "annual".

On page 43, line 8, insert before the quotation marks the following: "Nothing in this section shall prevent the President from reappointing any member of the Federal Reserve Board holding office on July 1, 1935."

On page 43, between lines 21 and 22, insert the following new paragraph:

(4) By adding at the end of the second paragraph the following: "Upon the expiration of their terms of office, members of the Federal Reserve Board shall continue to serve until their successors are appointed and have qualified."

On page 45, line 21, immediately before the word "upon" insert: "notwithstanding any other provision of law,".